



## Analysis of the Relationship between the Concept of Onrechtmatige Overheidsdaad and Maladministration Practices in Public Services in Indonesia

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| ARTICLE INFO  | ABSTRACT   |
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| <p><b>Keywords:</b><br/>Maladministration;<br/>onrechtmatige<br/>overheidsdaad; public<br/>service</p> <p><b>How to cite:</b><br/>Pratiwi, S. A., Arfah, W.<br/>L., Sianturi, S. (2024)<br/>Analysis of the<br/>Relationship between<br/>the Concept of<br/>Onrechtmatige<br/>Overheidsdaad and<br/>Maladministration<br/>Practices in Public<br/>Services in Indonesia.<br/><i>Veteran Law Review</i>. 7(1)<br/>1-8.</p> <p><b>Received: 2023-04-11</b><br/><b>Revised: 2023-05-12</b><br/><b>Accepted: 2024-05-12</b></p> | <p>Effective public service provision is an essential responsibility of government institutions, and it is imperative to ensure that these services operate within the confines of applicable laws and regulations. Maladministration refers to the illegal or deviant practices carried out by government administrators or officials in the provision of public services. This study aims to classify maladministration as an act of illegality by the government, or onrechtmatige overheidsdaad, and examine the government's role in resolving these issues. Normative legal research methods were employed to achieve the study objectives. The findings of this research indicate that maladministration constitutes an unlawful act by state authorities/officials that causes harm to the community. Furthermore, Indonesia, as a state of law, has instituted legal and non-legal measures for resolving these issues.</p> |

### 1. Introduction

As the largest nation in the world, Indonesia has an ambition to foster regional peace and stability. A state or nation is an organization with political institutions and an effective government that possesses sovereignty and the authority to determine national objectives. The state has mechanisms to regulate groups of individuals so that their actions or attitudes conform to its authority or will. The state's objectives can be summed up in two words:

security and safety, and prosperity and welfare. The founders of the Republic of Indonesia's unitary state emphasized the purpose and direction of government. One of these objectives and directions is the development of honest, transparent, and equitable public services. Therefore, the promotion of public service reform in Indonesia continues in order to realize this objective. However, the reform movement in Indonesia's public services is not as simple and straightforward as anticipated.

Public services are typically regarded as a set of benefits that the community as citizens receives, which are provided by the state as the primary producer of such services aimed at the benefit of the community. Therefore, the primary objective of public services is to furnish quality services to the general public through the application of sound public administration practices. Thus, the expectations regarding public services are usually high, as they are expected to offer services with optimal quality and a high degree of alignment between aspirations, expectations, and reality. This expectation is primarily driven by the fact that public service is considered as a representation of the duties held by government officials as public servants, which includes the responsibility of effectively meeting public demands (Padol & Satoto, 2022). In other words, Indonesian citizens possess the legal right to receive quality public services that align with the existing regulations. However, this expectation is hardly in tandem with the current state of public services in Indonesia, as these objectives are yet to be realized. According to a report compiled by the Ombudsman of the Republic of Indonesia, a staggering 33,648 reports of alleged maladministration in public services were registered in Indonesia from 2018 to 2022 (RI, 2022). As a result, the trend of maladministration continues to be prevalent, leading to unsatisfactory performance of public services in Indonesia. The definition of maladministration is provided in Law No. 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, which refers to actions that contravene the law, exceed one's authority, or involve the misuse of power for other purposes, leading to defects or non-compliance with the provision of public services by state and government administrators resulting in tangible and intangible losses for the community and individuals (Hayati, 2021). Thus, it can be deduced that the perpetration of maladministration practices can be attributed to rulers or state officials. Consequently, maladministration practices can be classified as a form of unlawful activity, or "onrechtmatige overheidsdaad", as defined by the authorities.

The term "onrechtmatige overheidsdaad" refers to illegal acts by authorities or government officials that are inconsistent with human rights and applicable laws (Padol & Satoto, 2022). Thus, a connection is established between onrechtmatige overheidsdaad and maladministration practices, where government officials or entities become the "subjectum litis" or organizers/perpetrators of legal violations, while the "objectum litis" refers to factual actions that have an adverse effect on the general public (Bimasakti, 2018). Therefore, this study aims to analyze maladministration practices in Indonesia from the perspective of onrechtmatige overheidsdaad and evaluate the government's role in preventing or addressing maladministration cases in Indonesia. This research is expected to aid in

identifying common forms of maladministration prevalent in Indonesia, such as corruption, nepotism, collusion, and abuse of authority. By identifying these forms, the government can take appropriate measures to prevent and address such practices.

## **2. Method**

The normative juridical research method was utilized by the researcher to achieve the research findings. This method was chosen since the analysis process is concerned with legal norms that are enshrined in laws and regulations. In addition, literature review was also conducted to gather literature sources that are pertinent to the research topic, ensuring that the explanation and analysis process are grounded in credible sources. The analytical descriptive method was used by the researcher in the analysis process. The researcher collated all the data that was gathered through the literature review, conducted an in-depth analysis, and subsequently formulated a conclusion as the final outcome of the research. The conclusion of this study addresses the research questions that were raised and is consistent with the objectives of the study.

## **3. Results and Discussion**

The study findings demonstrate that maladministration is a manifestation of *onrechtmatige overheidsdaad*, as actions or decisions based on maladministration can be deemed unlawful actions that may cause harm to the general public. As a result, the government can adopt several measures to curb maladministration cases.

### **3.1. Onrechtmatige Overheidsdaad: Maladministration in Public Services in Indonesia**

Public service is commonly associated with record-keeping or documentation in a government agency, but its significance extends beyond that. Public service entails the commitment of public institutions to provide high-quality services to the community. As a result, violations or transgressions of the law in public services are not necessarily limited to accounting or record-keeping, but can encompass a broader scope, such as deviations from the discharge of duties, authority, and public processes in state administration to the public. Such deviations are categorized as maladministration.

In accordance with Law Number 37 of 2008, Article 1, Paragraph 3, which pertains to the Ombudsman of the Republic of Indonesia, maladministration refers to criminal acts committed by public service providers beyond their jurisdiction, utilizing authority beyond the scope of their agency. As a result, these actions can result in tangible and intangible losses for the community, who are the recipients of public services. Furthermore, in accordance with the provisions outlined in Law No. 37, Article 1, Paragraph 3, such fraudulent activities are deemed to be acts committed by the state and state administrators. This is because government officials, as the state apparatus,

may exhibit an abuse of authority by violating established laws and regulations. Additionally, administrative irregularities may represent a failure to perform duties or comply with community entitlements for public service access. Thus, when state administrators or officials engage in activities that are in violation of the law, such acts are considered to be unlawful acts or, more specifically, *onrechtmatige overheidsdaad*.

*Onrechtmatige overheidsdaad* refers to the actions of the government or government officials that infringe on the rights of individuals or communities by violating their duties and flouting the existing laws and regulations. Such actions may manifest in different forms, including illegal land or property acquisition, coercion or use of force, illegal detention, discrimination, and others (Bimasakti, 2018). Regardless of the form of such actions, they can be committed by officials at all levels of the government, ranging from the national to the local level. The impact of *onrechtmatige overheidsdaad* can be severe and detrimental to the affected parties. It can result in financial losses, physical harm, deprivation of rights, as well as psychological and social harm.

Thus, there are several factors in how maladministration is classified as *onrechtmatige overheidsdaad*, namely:

1. The perpetrators of maladministration are government officials which is in accordance with the definition of *onrechtmatige overheidsdaad*.
2. Maladministration practices in public services are not in accordance with laws and regulations. This refers to the concept of legal *Overheidsdaad*, i.e. government actions that violate applicable laws and regulations.
3. Victims of maladministration practices. In this case, between maladministration practices and *onrechtmatige overheidsdaad* practices, both are forms of legal violations that have a negative impact on individuals or groups as a society.
4. Both *onrechtmatige overheidsdaad* and maladministration practices provide material and immaterial losses to the victims, namely the community.

In light of the findings of this study, it can be inferred that maladministration constitutes a tangible manifestation of *onrechtmatige overheidsdaad*, as it involves actions or decisions that contravene legal norms and may result in harm to the community. Consequently, the government should take measures to address instances of maladministration, including the imposition of appropriate sanctions or legal action. The subsequent subsection will elaborate on the ways in which the government can effectively respond to maladministration.

### **3.2. The Government's Role in Addressing Maladministration Practices in Public Services in Indonesia**

From the perspective of public service, maladministration constitutes a poor quality of service that undermines the rights of the community, resulting in substantial losses. Accordingly, addressing adverse public service problems as stipulated in Law Number 25 of 2009 can be achieved through legal and

non-legal means. The losses stemming from maladministration can be resolved through legal recourse. State action represents government actions grounded in specific legal norms, aiming to generate legal consequences in designated legal domains (Hayati, 2021). In Indonesia, there are two legal avenues for handling maladministration cases, namely law enforcement and disciplinary measures.

In order to address maladministration cases, the government can pursue legal action against the perpetrators through criminal and civil channels, known as law enforcement. This involves prosecution and court proceedings, as well as the implementation of court decisions that have permanent legal force. In Indonesia, the Public Service Law provides for two types of legal power in cases of administrative fraud: absolute power over administrative compensation, which can be brought before the court as a dispute case in the field of State Administration (TUN), and a legal remedy dispute (Padol & Satoto, 2022). The resolution of maladministration cases through legal means is always subject to the terms *subjectum litis* and *objectum litis*, as determined by the court.

In settling maladministration cases through legal means, disputes are typically centered on two main issues, namely *subjectum litis* and *objectum litis*. In disputes relating to public services, *subjectum litis* refers to legal issues where citizens act as complainants against state authorities or officials who are responsible for providing public services. Meanwhile, *objectum litis* concerns the actual provision of public services in the form of goods or administrative services that may cause harm to the community. Once a binding court decision is made, there will be regulations and executions that must be carried out to ensure compliance. Article 116 of State Administrative Court Law No. 5 of 1986, State Administrative Court Law No. 9 of 2004 No. 51 of 2009 provide several types of enforcement at the State Administrative Court, such as automatic enforcement, mandatory administration, or court administration. In addition, sanctions, enforcement by notifying the media, and notifying the President are also means by which administrative officials or organs may be compelled to implement the contents of a binding decision (Ru'ati et al., 2022).

From a governance perspective, maladministration is considered as a violation of the principles of good governance, which is an essential element of public service delivery. To ensure accountability and transparency in the public service, the government can take disciplinary measures against state apparatus or employees who commit maladministration. Disciplinary action can include administrative sanctions such as reprimands, warnings, demotions, and even dismissal from service. In addition, the government can conduct audits of the performance of state apparatus and employees to ensure they work in accordance with applicable regulations and to prevent future maladministration. These measures are important to maintain the integrity of the public service and to promote good governance in Indonesia.

To settle maladministration cases, not only legal means but also non-legal means can be used, such as through public oversight institutions. In Indonesia, the Ombudsman of the Republic of Indonesia is the public oversight institution tasked with eradicating maladministration, with

procedures regulated under Ombudsman Law No. 37 of 2008. The Ombudsman prioritizes the principle of win-win solutions and applies value standards in carrying out its duties, such as the principles of decency, justice, non-discrimination, impartiality, responsibility, balance, transparency, and confidentiality (Padol & Satoto, 2022). Additionally, Ombudsman Decree No. 26/2017 provides for three ways of resolving disputes related to maladministration: mediation, conciliation, and adjudication. Through these non-legal means, maladministration can be resolved in a way that benefits both the community and the government.

In the process of resolving maladministration disputes, the Ombudsman of the Republic of Indonesia plays a crucial role in utilizing mediation as an alternative method for conflict resolution. During this process, a mediator serves as an intermediary for both parties to the dispute. Furthermore, the Ombudsman may also utilize mediation during the reporting process, where the mediator is authorized to provide recommendations for solutions at the conclusion of the trial, regardless of whether or not both parties are able to comply with these recommendations. Finally, the judicial method, consisting of the case settlement process, determines the amount of compensation that public service providers are obligated to pay to complainants, whether individuals or communities, proven to have suffered losses due to maladministration.

Furthermore, the Indonesian government can also do various ways to suppress the increase in non-legal maladministration cases, namely:

1. Increase transparency  
The government can improve transparency in government management, including in the use of budgets and work programs. This can be done by publishing information related to government policies and facilitating public participation in decision-making;
2. Community empowerment  
The government can strengthen the role of the public in government oversight. This can be achieved by creating spaces for public participation and participation in decision-making processes, and by providing education and training related to government oversight;
3. Implementation of Good Governance  
These include transparency, accountability, participation, responsiveness, efficiency, and fairness;
4. Capacity building of state apparatus  
This can be done through training and career development, as well as the implementation of a good performance management system; and
5. Collaboration with other parties  
The government can collaborate with other parties, such as the private sector, NGOs and the mass media to address maladministration. This can be done by strengthening inter-agency cooperation, as well as strengthening monitoring and reporting mechanisms.

Thus it can be deduced that the government has implemented various approaches to combat the occurrence of maladministration practices in public services, both through legal and non-legal means. With the existence of a comprehensive legal framework, the Ombudsman acting as a

supervisory entity, and the various measures implemented by the government, it is anticipated that these measures can curtail the prevalence of maladministration issues in public services across Indonesia.

#### 4. Conclusion

In conclusion, this article has explored the issue of maladministration in public services in Indonesia, which is a deviant behavior committed by public officials that causes material and non-material losses to the community and individuals. Mismanagement is one specific example of illegal actions of the authorities that can cause harm to the community due to the failure of public officials to follow existing laws and regulations. To overcome this issue, the government has developed several legal and non-legal ways to address maladministration. The legal methods include resolving maladministration through the judicial system, both through public administration litigation and unlawful activity. Non-litigative methods involve handling administrative violations through supervisory authorities, such as the Ombudsman of the Republic of Indonesia. The Ombudsman uses mediation, conciliation, and assessment to provide a win-win solution to disputes related to maladministration. The existence of laws and regulations, the Ombudsman as a supervisory institution, and the government's various ways to deal with maladministration provide hope that it can be reduced in public services in Indonesia. It is hoped that the implementation of these measures will help overcome maladministration and ultimately reduce the number of maladministration reports in Indonesia.

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