

The Effectiveness of the Ombudsman in Overseeing Local Fiscal Incentive Policies: A Study on the Potential for Abuse of Local Economic Authority

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Abstract

Local fiscal incentive policies in the form of reductions, relief, or exemptions from local taxes and fees, as stipulated in Law No. 1 of 2022 on Financial Relations between the Central Government and Local Governments are intended to promote investment and local economic growth based on local government performance. However, the broad discretion in determining the criteria and recipients of these incentives creates opportunities for abuse of authority, including favoritism toward certain business actors and weak public accountability for these policies. This article aims to analyze the effectiveness of the Ombudsman of the Republic of Indonesia in overseeing local fiscal incentive policies and to identify patterns of potential abuse of local economic authority associated with them. This study employs a normative legal methodology using legislative, conceptual, and case-based approaches, analyzing Law No. 37 of 2008 on the Ombudsman of the Republic of Indonesia, along with the Law on Financial Relations between the Central Government and Local Governments and Law No. 23 of 2014 on Regional Government. The results of the study indicate that the Ombudsman's authority remains limited to procedural aspects of public service and does not yet cover the substance of fiscal policies involving economic discretion; consequently, gaps in oversight regarding potential conflicts of interest and economic maladministration persist. The non-legally binding nature of the Ombudsman's recommendations further limits the effectiveness of these preventive functions. Therefore, it is necessary to strengthen institutional collaboration among the Ombudsman, the Government Internal Oversight Agency, and the Business Competition Supervisory Commission, as well as to harmonize regulations regarding the transparency of criteria for granting local fiscal incentives.

Keywords: Ombudsman; Local Fiscal Incentives; Abuse of Authority; Economic Oversight; Administrative Law.

INTRODUCTION

Fiscal decentralization in Indonesia has undergone significant reforms since the enactment of Law No. 1 of 2022 on Financial Relations between the Central Government and Local Governments, which replaced the old system based on Law No.

33 of 2004 and Law No. 28 of 2009. One of the key instruments within the framework of Transfers to Regions under this law is fiscal incentives funds provided to regions that meet specific performance criteria as both a reward and an incentive to improve governance. At the local level, regional governments are also authorized to provide incentives in the form of reductions, relief, exemptions, or deferrals of local taxes and levies to business operators, with the aim of attracting investment, promoting the growth of micro, small, and medium-sized enterprises, and enhancing the region's economic competitiveness.

Although regional fiscal incentive policies serve legitimate economic objectives, their nature as discretionary measures by regional heads creates opportunities for abuse. The absence of standardized and transparent criteria for determining incentive recipients has the potential to lead to favoritism toward certain business groups, collusion between regional officials and business actors, and the granting of fiscal benefits that are disproportionate to the recipients' actual economic contributions. This risk is exacerbated by the structural position of the Government's Internal Oversight Agency, which falls under the control of local government heads; consequently, internal oversight of policies issued by their own superiors is prone to conflicts of interest. These conditions place external oversight institutions particularly the Ombudsman of the Republic of Indonesia in a strategic position to help ensure that local fiscal incentive policies do not deviate from the general principles of good governance.

Numerous studies have been conducted on the role of the Ombudsman in preventing and resolving maladministration, but most have focused on conventional public service sectors, such as land affairs, licensing, and civil registration services. Research specifically examining the Ombudsman's role regarding local fiscal incentive policies as economic instruments remains very limited, even though such policies involve the allocation of significant state financial resources and have a direct impact on healthy business competition. This gap warrants further study, given that oversight of local fiscal policies has thus far been approached primarily from the perspectives of state finance and tax law, while the administrative law dimension specifically regarding the limits of external oversight over the economic discretion of local government heads has received little academic attention.

Based on the above discussion, this article raises two research questions. First, to what extent does the scope of the Ombudsman of the Republic of Indonesia's authority include oversight of local fiscal incentive policies? Second, what patterns of potential abuse of local economic authority can be identified in the practice of granting local fiscal incentives, and how effective is the Ombudsman's oversight in this regard? The novelty of this article lies in its effort to position local fiscal incentive policies not merely as a matter of state finances, but as an object of administrative law oversight that is vulnerable to abuse of authority, while simultaneously evaluating the institutional effectiveness of the Ombudsman as an instrument of external oversight over discretionary economic policies.

RESEARCH METHOD

This study employs a normative legal methodology, which focuses primarily on positive legal norms. The approaches used include the statutory approach, the conceptual approach, and the case-based approach. The statutory approach is used to examine Law No. 37 of 2008 on the Ombudsman of the Republic of Indonesia, Law No. 1 of 2022 on Financial Relations between the Central Government and Local Governments, and Law No. 23 of 2014 on Local Government along with its implementing regulations. The conceptual approach is used to examine the concepts of maladministration, discretion, and external oversight in administrative law, while the case approach is used to explore practices and findings related to the Ombudsman's oversight of regional economic policies.

The legal sources used consist of primary, secondary, and tertiary sources. Primary legal sources include the laws and regulations mentioned above. Secondary legal sources include articles from academic journals, books, the annual reports of the Ombudsman of the Republic of Indonesia, and official publications from the Ministry of Finance regarding financial relations between the central and local governments. Tertiary legal sources consist of legal dictionaries and glossaries of technical terms. All of these legal sources were gathered through a literature review by identifying, analyzing, and selecting sources relevant to the research problem.

The legal materials that were collected were analyzed using descriptive-qualitative methods through systematic and teleological interpretation. Systematic interpretation was used to situate the norms governing the Ombudsman's oversight authority within the broader context of the state's administrative legal system, while teleological interpretation was used to explore the purposes behind the establishment of these norms. The results of this interpretation were then linked to the practice of granting local fiscal incentives to assess the effectiveness of the Ombudsman's oversight and to identify patterns of potential abuse of local economic authority associated with it.

RESULTS

Legal Framework for Local Government Authority in Granting Fiscal Incentives

Law No. 1 of 2022 on Financial Relations between the Central Government and Local Governments establishes fiscal incentives as one of the components of Transfers to Regions, granted based on the achievement of specific performance targets, in addition to Revenue-Sharing Funds, General Allocation Funds, and Special Allocation Funds. In addition to these fiscal incentives from the central government, the same law also grants local governments the authority to restructure the types and rates of local taxes and fees, including granting reductions, relief, or exemptions from such obligations to certain taxpayers or fee payers. This authority essentially constitutes a form of local taxing power that has been strengthened as a result of the simplification of the local tax and fee system.

Provisions regarding local fiscal incentives are generally further regulated through local regulations and regulations issued by local government heads, which establish the

criteria, procedures, and limitations for granting such incentives. However, a review of a number of local legal instruments indicates that the criteria for granting fiscal incentives are often formulated in general terms and are open to various interpretations, such as the phrase “to support strategic regional investment” without clear quantitative indicators. This situation grants regional heads broad discretion in determining incentive recipients, while mechanisms for public accountability regarding the exercise of such discretion remain inadequately regulated in many local regulations.

Scope and Limits of the Ombudsman’s Oversight Authority Regarding Local Fiscal Incentive Policies

Law No. 37 of 2008 on the Ombudsman of the Republic of Indonesia grants the Ombudsman the authority to oversee the delivery of public services, whether provided by state or local government entities, including state-owned and local-owned enterprises. The Ombudsman’s oversight focuses on acts of maladministration that is, conduct that violates the law, exceeds authority, uses authority for other purposes, or constitutes a failure to fulfill legal obligations, thereby causing harm to the public. Thus, local fiscal incentive policies may be subject to the Ombudsman’s oversight as long as there are indications of abuse of authority in the process of their formulation.

Nevertheless, an analysis of the Ombudsman’s practices in handling reports indicates that the focus of its oversight has tended to be on procedural aspects of public service such as speed, certainty, and equity in service delivery rather than on the substance of discretionary economic policies. The Ombudsman generally takes action only after receiving reports from the public regarding alleged maladministration; thus, its oversight function is reactive and depends on the complainant’s legal awareness, rather than being a systematic, proactive oversight of fiscal policies that are susceptible to abuse. Furthermore, the Ombudsman’s authority to assess the substantive appropriateness of a fiscal incentive policy for example, evaluating the reasonableness of the economic criteria used traces a fine line with the policy discretion (*beleidsvrijheid*) of regional heads, which, according to legal doctrine, cannot be interfered with by external oversight bodies.

Another limitation lies in the nature of the Ombudsman’s final oversight product recommendations which, according to Article 37 of Law No. 37 of 2008, must be implemented by the respondent but lack the same legal enforceability as a court ruling. Sanctions for noncompliance with these recommendations are more administrative and reputational in nature than coercive, so their effectiveness depends heavily on the political commitment of the relevant regional head. This characteristic places the Ombudsman in a relatively weak position when dealing with fiscal incentive policies that have already provided economic benefits to certain parties.

Patterns of Potential Abuse of Authority in the Practice of Granting Local Fiscal Incentives

Based on an analysis of the legal framework and characteristics of local fiscal incentive policies, several patterns of potential abuse of authority can be identified. First, the criteria for determining incentive recipients are not transparent and are not adequately

publicized, making it difficult for the public or oversight agencies to verify whether recipients truly meet the required qualifications. Second, incentives are granted to business entities that have affiliations or personal relationships with policymakers, which has the potential to create conflicts of interest but is difficult to detect because there is no obligation to disclose such affiliations during the application process for local fiscal incentives.

Third, the lack of periodic evaluations of the economic impact of the fiscal incentives that have been provided, meaning that these incentives could potentially continue to be extended without evidence of a tangible contribution to local government revenue or job creation. Fourth, there is an overlap in oversight authority among the Ombudsman, the Government Internal Oversight Agency, and the State Audit Board; rather than strengthening oversight, this overlap risks creating oversight gaps because each institution considers the matter to fall within the jurisdiction of another. These patterns indicate that the effectiveness of the Ombudsman's oversight of local fiscal incentive policies cannot be viewed in isolation but must be situated within a complementary, cross-institutional oversight ecosystem.

DISCUSSION

The findings of this study indicate that the Ombudsman's effectiveness in overseeing local fiscal incentive policies remains limited. On the one hand, the Ombudsman's authority is normatively broad enough to address acts of maladministration in the process of granting fiscal incentives. On the other hand, the nature of fiscal incentive policies as products of local heads' economic discretion places most of their substance beyond the effective scope of the Ombudsman's oversight, which is doctrinally geared more toward assessing administrative procedures than the economic feasibility of a policy.

When compared to internal oversight mechanisms carried out by the Government Internal Oversight Agency or competition oversight by the Competition Supervisory Commission, the Ombudsman has the advantage of institutional independence from the local government structures it oversees. However, the Ombudsman lacks the authority to assess the impact of fiscal incentives on fair competition which falls within the purview of the Competition Supervisory Commission or the authority to conduct financial audits, as held by the State Audit Agency. This situation underscores that no single oversight agency is capable on its own of addressing all dimensions of the risk of abuse of authority in local fiscal incentive policies; therefore, a more structured inter-agency coordination mechanism is necessary.

From a policy perspective, efforts to strengthen the effectiveness of oversight can be pursued through at least three steps. First, requiring local governments to publicly disclose the criteria and list of recipients of fiscal incentives through local government information systems, thereby creating a database accessible to both the Ombudsman and the public for oversight purposes. Second, establishing an information-sharing mechanism among the Ombudsman, the Government's Internal Oversight Agency, and the Business Competition Supervisory Commission so that findings from one institution can be followed up by other institutions in accordance with their respective authorities.

Third, encourage the strengthening of the binding nature of the Ombudsman's recommendations through a mandatory reporting mechanism to the Regional People's Representative Council if the recommendations are not implemented within a certain period, thereby creating more effective political pressure on the relevant regional head.

This study has limitations because it is of a normative legal nature and does not use empirical data regarding the number and characteristics of public complaints related to local fiscal incentive policies handled by the Ombudsman. Thus, the patterns of potential abuse of authority identified in this study are conceptual in nature, based on an analysis of the legal framework, rather than the results of empirical measurements of practices in the field. Further empirical research such as case studies in specific regions or an analysis of Ombudsman report data is highly recommended to validate these conceptual findings.

Overall, strengthening oversight of local fiscal incentive policies should be viewed as an institutional investment aimed at preserving the integrity of the local investment climate. Business confidence in the fairness of the fiscal incentive grant process is a key prerequisite for fostering healthy business competition, while public confidence in the accountability of local fiscal incentives is a prerequisite for the legitimacy of local government economic policies as a whole.

CONCLUSION

The Ombudsman of the Republic of Indonesia has the legal authority to oversee regional fiscal incentive policies if there are indications of abuse of authority in the process, as stipulated in Law No. 37 of 2008. However, this authority is more effective in addressing procedural aspects than the substance of economic policies which fall under the authority of regional heads so that certain potential abuses of authority, such as a lack of transparency in criteria, conflicts of interest, and the absence of economic impact assessments, tend to fall outside the scope of the Ombudsman's effective oversight.

This study makes a theoretical contribution by positioning local fiscal incentive policies as a subject of administrative law, rather than merely a matter of public finance or tax law. In practical terms, the findings of this study can serve as a reference for the Ombudsman of the Republic of Indonesia and local governments in formulating better mechanisms for transparency and inter-institutional coordination, particularly through the mandatory publication of fiscal incentive criteria, strengthening information sharing among the Ombudsman, the Government Internal Oversight Agency, and the Business Competition Supervisory Commission, as well as strengthening mechanisms for following up on the Ombudsman's recommendations.

Future research is recommended to adopt an empirical approach for example, through case studies in specific regions with active fiscal incentive policies to validate the patterns of potential abuse of authority that have been conceptually identified in this study, while also measuring more concretely the extent to which the Ombudsman's recommendations influence improvements in the governance of local fiscal policies.

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