



**CONSTITUTIONAL COURT  
REPUBLIC OF INDONESIA**

**JUDGMENT SUMMARY OF  
CASE NUMBER 7/PUU-XIX/2021**

**Regarding**

**Objects of Reports Denied by the Ombudsman**

- Applicant** : **Hendry Agus Sutrisno**
- Case Type** : Judicial Review of Law Number 37 of 2008 on the Ombudsman of the Republic of Indonesia (UU 37/2008) to the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Merits of Case** : Article 36 paragraph (1) letter b of Law 37/2008 contradicts Article 28D paragraph (1), Article 28G paragraph (1) and Article 28I paragraph (4) of the 1945 Constitution
- Judgment** : Reject the Applicant's request in its entirety.
- Judgment Date** : Tuesday, August 31<sup>st</sup>, 2021.
- Judgment Summary** :

The Applicant is an individual Indonesian citizen, who has submitted a report to the Ombudsman of the Republic of Indonesia (ORI) related to the alleged maladministration by the Depok Police Investigator, thus requesting a re-investigation, but is declared unable to be

examined because the Applicant's report has been examined by the Court so that it is not the ORI's authority to examine the issue;

Whereas related to the authority of the Court, since the Applicant's Request is a request to examine the constitutionality of the norms of the Law, in this case Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (UU 37/2008) to the 1945 Constitution, then based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Power Law, the Court has the authority to hear the *a quo* request;

Whereas with regard to the legal position of the Applicant, according to the Court, the Applicants have clearly outlined and explained their qualifications and have explained specifically their constitutional rights which in their opinion are impaired by the request of the norms for which judicial review is requested, namely the right to obtain legal protection. Thus, it appears that there is a causal relation between the Applicant's assumption regarding the perceived loss of constitutional rights experienced and the enactment of the legal norms for which the review is requested, so that if the request is granted, such loss will no longer occur. Therefore, regardless of whether the Applicant's argument is proven or not regarding the unconstitutionality of the legal norms requested for review, according to the Court, the Applicant has the legal position to act as the Applicant in the *a quo* Request;

Whereas the Applicant basically postulated the provisions of Article 36 paragraph (1) letter b of Law 37/2008 which means that the Ombudsman cannot accept reports from the public which substance is currently being and has become the object of court examination, including pretrial, unless the report concerns acts of maladministration in the examination process at courts, including pretrial. Meanwhile, the authority possessed by pretrial institutions is only limited to examining and deciding cases submitted from the formal aspect, not including the material aspects of the cases submitted. The limitation of reports received

by the Ombudsman only examines and decides on cases submitted from the formal aspect but does not include the material aspect, causing a legal deadlock due to the Ombudsman as a state institution authorized by law to receive public reports on the alleged maladministration that occurred cannot carry out its obligations to receive reports that the Applicant reported;

Whereas because the *a quo* request is clear, by relying on Article 54 of the Constitutional Court Law, the Court is of the opinion that there is no urgency and relevance to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law;

Whereas the provisions of Article 36 paragraph (1) letter b of Law 37/2008 have been submitted previously and have been decided in the Judgment of the Constitutional Court Number 46/PUUXV/2017, dated March 20<sup>th</sup>, 2018. However, there are differences in the basis for review and constitutional reasons in the request for Case Number 46 /PUU-XV/2017 on the basis of review and constitutional reasons for the *a quo* request, moreover Case Number 46/PUU-XV/2017 does not consider the principal of the request, regardless of whether the *a quo* request is legally grounded or not, the *a quo* request is formally based on the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021, can be resubmitted;

Whereas with respect to the Applicant's *a quo* argument, the Court is of the opinion that it is clear that every citizen who experiences maladministration by all state/government and private administrators using the state budget and/or provincial budget may file a report to ORI in accordance with the laws and regulations. The existence of restrictions on several things carried out by ORI on the submitted reports, the Court can understand that these restrictions are actually aimed at respecting the authority of other parties/institutions that are currently or have carried out the examination process, especially the judiciary as actors of judicial power who have the authority to resolve all dispute, both private and public, including those relating to state/government administrators. Moreover, the mandate of Article

36 paragraph (1) letter b of Law 37/2008 has been expressly aimed at avoiding overlapping authorities, in particular the judiciary which is the institution authorized to adjudicate cases submitted by every citizen seeking justice due to abuse of authority committed by the state/government administrators or other parties. In other words, in addition to providing opportunities for the public and institutions authorized to resolve disputes in accordance with applicable legal mechanisms, it is also to avoid interfering in matters relating to the main duties and functions of the court, unless maladministration is found in the court examination process. Thus, the formulation of the norms of the *a quo* article has not only fulfilled the sense of justice for the parties seeking justice, but also provides legal certainty for the reporting and the reported party.

Whereas it is further important to emphasize, regarding the problems submitted by the Applicants as the basis for submitting the *a quo* request, in which the provisions of the norm of Article 36 paragraph (1) letter b of Law 37/2008 especially on the phrase "process of examination in court" are interpreted by expanding or adding the phrase "**and/or concerning acts of maladministration at the level of initial investigation and/or investigation**". Regarding this matter, the Court affirms that the request submitted by the Applicant is an exaggeration, because in *a contrario* without being requested by the Applicant, in fact, maladministration at the initial investigation and/or investigation level, has already been included in the act of state/government officials who, if committed maladministration, can be reported to ORI [vide Article 1 paragraph (1) and Article 6 of Law 37/2008]. Therefore, if the Applicant's wishes are accommodated, it will actually narrow the scope of the object of the party that can be reported to ORI if it is suspected that he has committed maladministration, including in this case the loss of the initial investigator and the investigator to become one of the legal subjects who can be reported to ORI if excluded from the clump of state/government administrators. In addition to these reasons, including maladministration committed by initial

investigators and investigators as part of the exception to Article 36 paragraph (1) letter b of Law 37/2008 will also create ambiguity in the report that can be an option for prospective whistleblowers due to 2 (two) ) norms, namely the provisions of Article 1 paragraph (1) and Article 6 of Law 37/2008 with Article 36 paragraph (1) letter b of Law 37/2008, which actually contradict each other and have different characteristics, where the provisions of Article 1 paragraph (1) and Article 6 of Law 37/2008 regulates ORI's authority to receive every report, while the provisions of Article 36 paragraph (1) letter b of Law 37/2008 regulates ORI's authority to be able to reject reports. Therefore, it is clear that if the *a quo* Applicant's request is granted by the Court, it will create legal uncertainty. This is because, apart from simply accommodating the concrete cases experienced by the Applicants which actually have no relevance to the unconstitutionality of the norms of Article 36 paragraph (1) letter b of Law 37/2008, it will also cause other problems with the emergence of new interpretations of the request of the norms of *a quo* Article;

Based on all the above legal considerations, regarding the constitutional issues of Article 36 paragraph (1) letter b of Law 37/2008 regarding ORI's authority over reports, it is completely unreasonable according to law. Thus, the Court has issued a judgment which rejected the Applicant's request in its entirety.