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**Ombudsman in Malaysia: An Alternative Dispute Resolution (ADR)
in promoting good governance principles**

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Abstract

Public complaints against maladministration and abuse of power are issues that must be resolved to ensure the government authorities are performing their functions accordingly. The ombudsman system was introduced in European countries to settle these issues. This research focuses on the ombudsman in Malaysia and its importance in strengthening good governance in state civil service. Its implementation and effectiveness will be analysed and compared with selected countries that have adopted this system; particularly in administrative law matters. The expected outcome is an improvement in society's awareness on the importance of ombudsman as one of the alternatives to resolve public complaints.

Keywords: Ombudsman; Administrative Law; Alternative Dispute Resolution; Good Governance

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1.0 Introduction

Issues of public complaints against maladministration or abuse of powers on the part of government authorities and administrators have led to the establishment of the ombudsman system in order to ensure the government practises good governance. In this context, to practise good governance, the principle of open government is widely accepted as 'a culture of governance that promotes the principles of transparency, accountability and stakeholder participation in support of democracy and inclusive growth' (OECD, 2022). Referring to these principles, the ombudsman system is established to emphasise the independency, impartiality, objectivity and fairness as well as integrity and high moral authority of the public authorities; in which it is now an important feature in a democratic governance and also the protection of human rights and the rule of law (OECD, 2018).

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The ombudsman system has been widely adopted by many countries in this modern era in settling disputes outside of the court system. It is now an alternative dispute resolution method that is globally recognised. The European Ombudsman is one of the established ombudsman systems in the world. The purpose of its establishment is to protect citizens' rights and strengthen the rule of law in the European Union (Zawadzki, P. 2020). As for the function of European Ombudsman, it acts as an intermediary institution between European Union citizens and its institutions by receiving public complaints and investigating the complaints accordingly (Firdin, U. E. & Mazlum, S. 2022). The European Ombudsman has the authority to make a recommendation based on the investigation conducted.

Ombudsman derives from the word '*ombud*' in Swedish which means a representative, agent, intermediary, delegate, etc. (Batalli, M. 2015). In other words, ombudsman may also be classified as a 'public advocate' because he represents the public and investigates cases of improper management (Agrawal, A. 2022). The word ombudsman originated in Sweden in 1809 when the office of Civil Ombudsman was established under the Swedish Constitution (Jägerskiöld, S. 1961). The introduction of ombudsman was influenced by the philosophies of Locke and Montesquieu that later spread to other countries including Finland, Denmark, Norway, New Zealand and the United Kingdom (Gellhorn, W. 1965). It is believed that the ombudsman is independent from other government officials and his main duty is to supervise the courts and other public authorities, and to ensure these public authorities perform their duties and responsibilities according to their jurisdictions.

The ombudsman system has been adopted as one of the alternative dispute resolution mechanisms in many countries to solve public complaints and disputes between the public and public administrators. After the introduction of the ombudsman system by Sweden in 1805, the system has been practised in many areas such as financial services, health care services, administrative matters and many more. Malaysia is one of the countries that have adopted the ombudsman system despite all other available alternatives such as arbitration, mediation, and negotiation as it is the most appropriate alternative to settle disputes (Ikhwan, M. et al. 2022).

The objective of this research is to analyse the practice of ombudsman system in Malaysia. The work highlights the concept of ADR in resolving disputes between the public and administrators; particularly with reference to administrative issues and its co-relation with ombudsman as one of the alternatives. Afterwards, the paper discusses the practices of ombudsman in Malaysia; the OFS and UNIONS and the procedures established by the ombudsman in solving disputes. In the next part of the research, an analytical comparison between Malaysia with the selected countries is made to understand the extent of powers and jurisdictions given to the ombudsman adopted by these countries. The research adopted the qualitative methodology through the analysis of related article journals under the same field of study.

2.0 Literature Review

Alternative dispute resolution ('ADR') is one of the alternative methods in resolving disputes between the public and government officials or authorities (Abdur Rahman, K & Shirin Asa, R. 2021). It is a substitute to litigation and the court system; and the procedures are cost-effective, time-efficient, informal as well do not impose a fee on the parties. The European countries prefer ADR to resolve disputes because of the nature of ADR itself such as its lower cost than the judicial process and the element of confidentiality (Jayanth S, S. & Durai, K. 2023).

ADR is classified into several methods which include negotiation, conciliation and mediation, and arbitration (J Alkhayer, et al. 2022). Negotiation is a formal discussion between people who have different aims or intentions, especially in business or politics, during which they try to reach an agreement. It is the simplest method due to the fact that it does not involve a third party in the negotiation process. The primary advantage of negotiation is the parties may have control over the outcome of the dispute (S. Subashini. 2023). As for conciliation and mediation, a conciliator or mediator manages the session between the parties, and acts as the advisor (J Alkhayer, et al. 2022). It is important to note that the conciliator or mediator has the responsibility not to disclose any confidential information received throughout the session and the decision or award will be binding on the parties. Arbitration is the most similar to judicial process and is the method adopted by the ombudsman system. Even though arbitration is similar to judicial process, it is much more flexible. It involves an arbitrator who is independent and the decision made by the arbitrator shall be binding on the parties.

The advantages of the ADR process as a medium to resolve disputes have been discussed in detailed (Cortes, P. 2023). Firstly, the parties have the chance to decide the result of their disputes because the discussion is conducted in private. Secondly, it is inevitable that the court system requires more time to settle disputes between the parties, sometimes taking months and probably years to come to a decision; this compares to ADR which resolves the disputes in a prompt manner. Thirdly, the decisions or awards through ADR process are usually kept confidential because the public has no access to these decisions or awards. It is affirmed that the ADR process is fast, not expensive, simple and confidential (Abdur Rahman, K & Shirin Asa, R. 2021). In contrast, the litigation process is much slower, incurs more cost, and involves formal procedures and delays.

3.0 Methodology

This research adopted qualitative research methodology to reach the research objectives. This research is based on secondary data which comprises journal articles, statutes and websites. Content analysis was conducted to dissect the secondary data which includes journal articles in the area of administrative law and alternative dispute resolutions from year 2015 to 2023. This research also analysed statutory provisions from the Financial Services Act 2013, the Islamic Financial Services Act 2013, Financial Services (Financial Ombudsman Scheme) Regulations 2015, Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 and Development Financial Institutions (Financial Ombudsman Scheme) Regulations 2016 and the Parliamentary Commissioner Act 1967.

The websites of Ombudsman Financial Service in Kuala Lumpur and UNIONS in Sarawak and the selected countries were studied to get information on ombudsman. Additionally, comparative analysis was employed to analyse the ombudsman system in Malaysia and selected countries. These countries were chosen because their ombudsman systems are well-established and adopted by their governments in promoting good governance principles in administration.

4.0 Findings

In terms of the practice of ombudsman in Malaysia, the OFS in Kuala Lumpur is the first organisation which adopted the ombudsman scheme; however it only focuses on financial matters related to its members and the public but not on administrative law. According to the OFS 2022 Annual Report, in 2022, it recorded a total of 14,133 enquiries and complaints submitted by public and out of the total caseload, 5,909 were newly received through electronic channels. Case numbers increased from 1,156 reported in 2021 to 1,394 in 2022; out of a total of 1,108 cases, 723 were settled at the Case Management stage and 385 at the Adjudication Stage. In addition, with reference to the resolution methods, approximately 24% of disputes were settled through mutual agreement between the parties (OFS 2022 Annual Report). Although there had been an increase in the number of disputes reported from the previous year, this number is nevertheless still insufficient compared to other countries.

The existence of Sarawak’s UNIONS under the office of the Premier makes it the only state that practises the ombudsman system in promoting good governance by resolving disputes related to public complaints against public authorities or government officials on maladministration issues; this is aligned with the ombudsman system introduced in Sweden. However, in terms of its implementation and practice, the ombudsman system in Sarawak has limited jurisdiction as compared to the ombudsman system practised in other countries. It is not governed by any statutes or acts and there is no certified ombudsman appointed. Any dispute is resolved by the officer in charge under UNIONS. On top of that, the total number of complaints is relatively small compared to the OFS because UNIONS was only established quite recently in 2018 and there is a lack of awareness among the public on the ombudsman functions.

5.0 Discussion

5.1 Ombudsman for Financial Service (OFS) in Kuala Lumpur

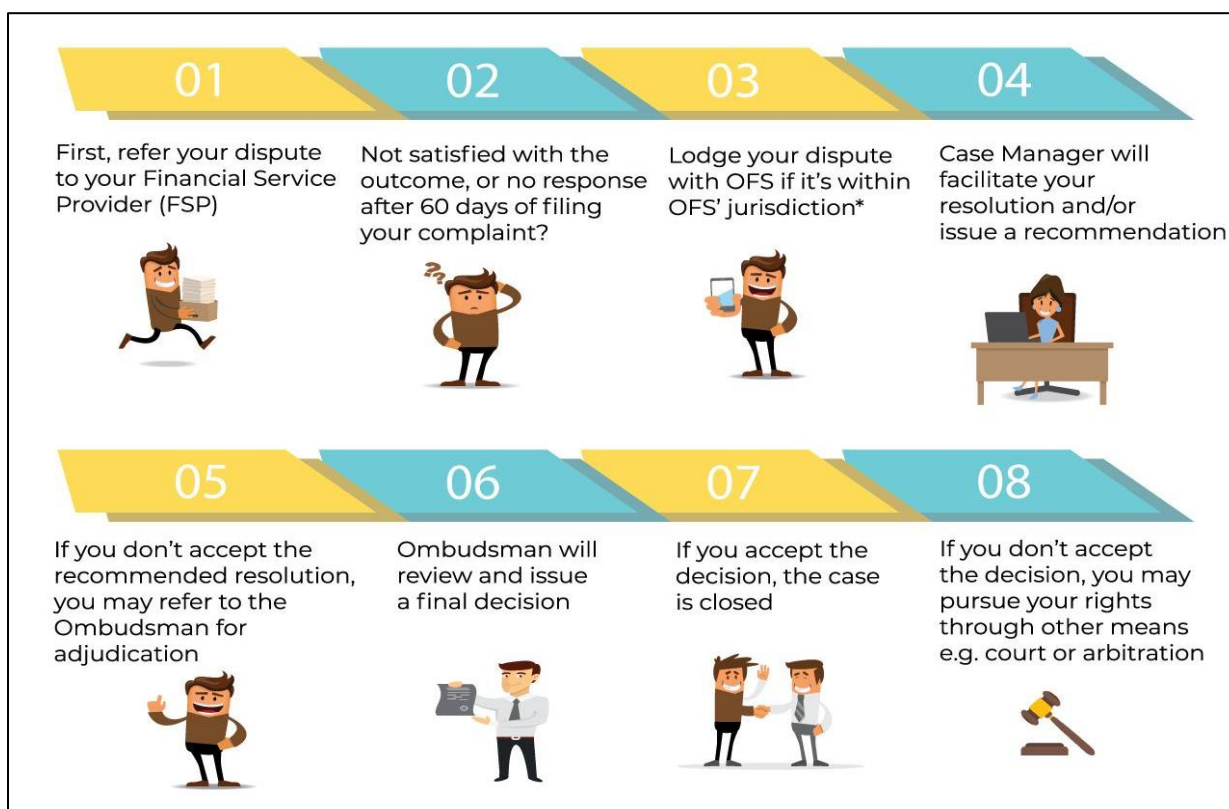


Figure 1. Illustration on How the OFS Resolves a Dispute
(Source: https://www.ofs.org.my/en/how_ofs_resolves_your_disputes)

In Malaysia, the Ombudsman for Financial Services (OFS) is the first scheme operator that was approved by the Central Bank of Malaysia (BNM) pursuant to the Financial Services Act 2013 and the Islamic Financial Services Act 2013. It was previously known as

the Financial Mediation Bureau (FMB). The OFS was incorporated under the Companies Act 1965 on 30th August 2004 and began its operation on 20th January 2005. The OFS plays its role as an alternative dispute resolution medium to settle disputes between financial service providers licensed or approved by BNM and financial consumers. The regulations related to the establishment of OFS are Financial Services (Financial Ombudsman Scheme) Regulations 2015, Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015 and Development Financial Institutions (Financial Ombudsman Scheme) Regulations 2016. These regulations lay out the details on OFS operations which include the functions and jurisdictions of the ombudsman, the effect of the award issued by the ombudsman as well as type of disputes that can be referred to the ombudsman.

According to Section 121 of the Financial Services Act 2013, parties that are eligible to lodge a complaint for their grievances are financial consumers who use or have used any financial services or products provided by a member either for personal, domestic or household purposes or in connection with a small business. No fee is charged for an eligible complainant. Additionally, the OFS has the discretion to determine the eligibility of complainants under these categories; the insured persons under group insurance, persons covered under a group takaful, a third party making a claim for property damage involving motor insurance or takaful, guarantor of a credit facility, nominee or beneficiary under a life policy or family takaful certificate or a personal accident takaful certificate and insured person and beneficiary of the insured person under group insurance.

Under the 'Terms of Reference' for the OFS, there are two stages of dispute resolution process involved namely Case Management (First Stage) and Adjudication by an Ombudsman (Second Stage). It must be noted that during the Case Management Stage, the case manager will facilitate the resolution and issue a recommendation. If the complainant does not accept the recommended resolution, the complainant may refer to the ombudsman for adjudication. This is where the Adjudication by an Ombudsman will take place. The ombudsman will review the dispute and issue a final decision. In a case where the complainant accepts the decision, the case is closed. However, if the complainant does not accept the decision, the complainant may pursue their rights through other means such as through a court hearing or arbitration.

The OFS has jurisdiction to resolve disputes related to banking claims in which the amount does not exceed RM250,000. As for claims under motor third party property damage, it shall not exceed RM10,000. Another authority of the OFS is to settle disputes related to unauthorised transaction through the use of designated payment or channels

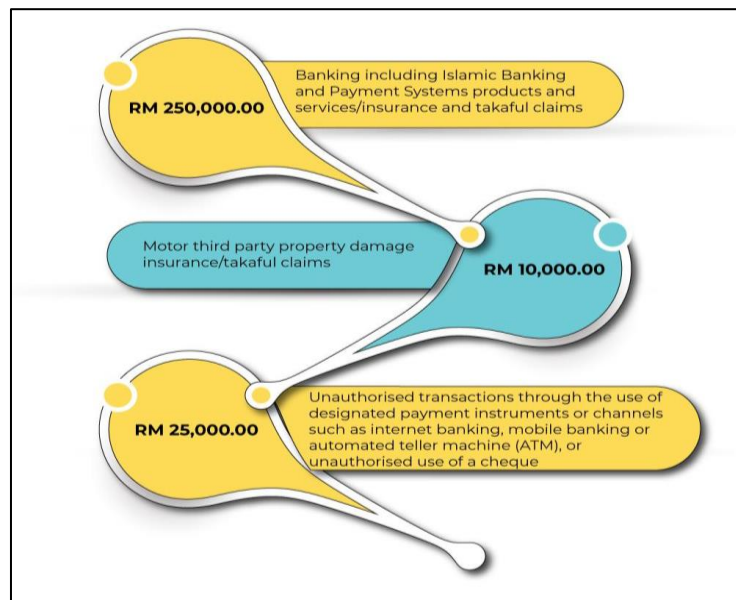


Figure 2: Illustration on Jurisdiction of the OFS
(Source: https://www.ofs.org.my/en/our_scope)

5.2 Integrity and Ombudsman Unit Sarawak (UNIONS)

In Malaysia, an ombudsman body has been one of the agendas under the National Anti-Corruption Plan 2019–2023 to replace the Public Complaints Bureau. The Sarawak government took the step to establish the Unit Integriti dan Ombudsman Sarawak (UNIONS) directly under the Premier's Department. The establishment allows UNIONS to conduct investigation on any complaints regarding maladministration, allegations of corruption or misconduct among civil servants and officials. Additionally, UNIONS is given the authority to rectify issues related to the complaints. This includes the power to refer the matters to the Malaysian Anti-Corruption Commission or other related authorities. Any parties can lodge complaints to UNIONS if they are victims to the maladministration of public officers. Integrity officers play the role of complaint investigators in UNIONS. The ombudsman system in Sarawak is based on the ombudsman system in Sweden. Sweden established its ombudsman institution since the 19th century and it has successfully made the transition to become a country with high integrity standards. The introduction of ombudsman system in Sarawak is aimed at ensuring accountability and transparency in the public service sector. It is also essential to improve the quality of service of civil servants. Furthermore, an Ombudsman Ordinance will be tabled in the State Legislative assembly to strengthen Sarawak's ombudsman system.

5.3 Comparison with the Ombudsman System in Selected Countries

In 1919, after Sweden introduced the ombudsman system, Finland adopted a similar ombudsman system and model. However, the powers of Finnish Ombudsman are more extensive than the Swedish Ombudsman such as the ombudsman has the authority to initiate criminal proceedings. Subsequently, in 1952, Norway established the ombudsman institution with limited jurisdiction. Later in 1962, an institution was established to deal with administrative matters (Batalli, M. 2015). Denmark adopted the ombudsman system in 1953. After rapid development of the ombudsman system in these countries, the United Kingdom appointed its own ombudsman later in 1954 to settle public complaints related to government agencies or officials due to the issue of maladministration. During this time, the public expressed their dissatisfaction with the government officials on the efficiency of government administration. Under the Parliamentary Commissioner Act 1967, the ombudsman has the authority to deal with administrative matters by examining public complaints, proposing policies to reduce the gap on the issues involved and reporting to Parliament on the outcome of the disputes (Agrawal, A. 2022).

In most of these countries, the ombudsman system and institutions were established under statutes or acts; and the ombudsman has vast authority and jurisdiction under the law. It is essential to note that the ombudsman system introduced by the Swedish government has been widely accepted by countries around the world to ensure good governance practices as encouraged by the OECD and European Union. These countries' practices are more structured and systematic compared to Malaysia. A comparison between these selected countries and Malaysia is illustrated as follows:

Country	Establishment	Jurisdiction	Certified Ombudsman
1. Malaysia • Ombudsman for Financial Services (OFS)	Companies Act 1965	Related financial matters only	Yes
2. Malaysia • Integrity and Ombudsman Unit (UNIONS)	Premier Department of Sarawak	Administrative matters including maladministration or abuse of power by the public authorities with limited jurisdictions	No (Appointed Officer under the Premier's Department)
3. Sweden	The Swedish Constitution	Administrative matters related to public authorities including all central and local government agencies and bodies	Yes (Appointed by the Parliamentary Ombudsman)
4. Finland	The Finnish Republican Constitution	Oversees the legality of the actions of authorities and officials	Yes (Appointed by the Finnish Parliament)
5. Denmark	The Danish Constitution	All matters related to public administration	Yes (Appointed by the Danish Parliament)
6. Norway	The Constitution of the Kingdom of Norway	All matters dealing with public administration	Yes (Appointed by the Norwegian Parliament)
7. United Kingdom	Parliamentary Commissioner Act 1967	All administrative matters relating to government administration	Yes (Appointed by the Parliament)

Figure 3: Comparison of ombudsman practices in few selected countries

6.0 Conclusions and Recommendations

In a nutshell, the ombudsman system in Malaysia has a lot to learn from other countries. It is essential to establish standard policies and regulations related to the ombudsman system in Malaysia that could be followed by all thirteen (13) states and three (3) federal territories in implementing good governance practices by public authorities and government officials; regardless whether they are related to the financial sectors or administrative matters. The establishment of these standard policies and regulations will boost the public's confidence in the ombudsman system and eventually the government; as this will provide them with an option to choose other methods to resolve disputes instead of filing cases in the court which will take a longer time to reach settlement. The rationale behind this recommendation is the fact that the ombudsman process is much more flexible and cost-effective in comparison with the traditional court system.

In addition, the principles adopted by the ombudsman system focus on the concepts of independency, impartiality and integrity; these are aligned with Goal 16: Peace. Justice. Strong Institutions as introduced by the United Nations under the Sustainable Development Goals (SDGs) 2030. This goal promotes peaceful and inclusive societies for sustainable development, provides access to justice for all, and builds effective, accountable and inclusive institutions at all levels. Malaysia is one of the countries that have adopted the SDGs and with the implementation of ombudsman system, this goal will be achieved gradually. It is also suggested that an

awareness program be conducted for the public in order for them to have a better understanding of the functions of ombudsman. This program can be carried out on social media platforms because people nowadays are more attracted to information shared online.

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Paper Contribution to Related Field of Study

This research contributes to the practice of open government through the adoption of ombudsman system as one of the alternative dispute resolutions initiated by the government in promoting good governance. After Sweden introduced the ombudsman system in 1804, many countries realised the importance of having an ombudsman institution in resolving disputes between the public and government officials in relation to the issue of maladministration. Malaysia is slowly adopting this ombudsman system as can be perceived from the intention of UNIONS to propose ordinance relating to ombudsman. In essence, this paper contributes to the establishment of the new law by analysing the current practice in Malaysia and its effectiveness through comparison with other countries practising ombudsman.

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