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**Towards the Establishment of Ombudsman in Malaysia:
What can we learn from Sweden?**

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Abstract

This paper analyses the establishment of the Ombudsman in Sweden by examining its historical background, scope, and effectiveness. These discussions are essential to provide a best practice model for Malaysia in its efforts to establish an Ombudsman. This research used a qualitative approach through document analysis. The findings demonstrate that the Ombudsman Institution in Sweden is clear evidence of the country's commitment to protecting people's rights and improving the quality of governance. The excellence of the Ombudsman Institution in Sweden largely depends on the procedures and practices of complaint management, which other countries, primarily Malaysia, can adopt.

Keywords: Ombudsman; governance; Malaysia; document analyses

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1.0 Introduction

The administration of a country relies heavily on the efficiency of government officials and employees in carrying out their assigned tasks. The effectiveness of public administration in a country can significantly impact its development, economy, and social aspects, as well as transparent governance practices that meet the people's aspirations. However, it is undeniable that bureaucracy needs to be established within any administrative organisation to ensure the smoothness and transparency of administrative processes. This, in turn, can prevent misconduct, mismanagement, and maladministration among public servants, which could lead to dissatisfaction among the people who are the main customers of the public administration system. Based on this awareness, Sweden established a system known as the *Justitieombudsman*, commonly known as the Ombudsman, to oversee misconduct by public servants in the country through the Constitution of 1809. This system has been expanded and adapted worldwide following its successful implementation. To date, the Ombudsman Institution is recognized and established in 140 countries with a diversity of ideologies and governance (International Ombudsman Institute, n.d).

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The Ombudsman institution, in general, can be defined as an investigative commission or intermediary that serves as a platform for the people to lodge various complaints, including misconduct and administrative injustices by the government, and suggest resolutions for both parties. Rowat (1968) defines the ombudsman as, "...an officer of Parliament who investigates complaints from citizens that they have been unfairly dealt with by government departments and who, if he finds that a complaint is justified, seeks a remedy." The word ombudsman originates from the Swedish word "ombud," which means representative. This explains the definition by Rowat (1968) as mentioned above, that the ombudsman serves as a place for the people to express dissatisfaction with services perceived as unfair by the government. In this context, the ombudsman acts as a representative of the people while at the same time connecting the people with the government. Reif (2000) further discusses the definition of the ombudsman by incorporating the ombudsman's role in carrying out duties as a representative of the people. Therefore, by integrating the findings from document analyses, this paper aims to shed light on establishing the Ombudsman institution in Sweden. It analyses its implementation, effectiveness, weaknesses, and how Malaysia can adopt them.

2.0 Literature Review

The concept of the ombudsman emerged in Sweden in 1713, when King Charles XII, who was ruling at the time, had to leave the country for 12 years to lead a war against Russia. To oversee the administration of the government and its officials, King Charles XII appointed a Koningen Hoogste Ombudsman, and this concept was accepted until the establishment of the *Justitieombudsman* in 1809.

According to Ruppel-Schlichting (2022), the earlier ombudsman system established before 1809 is not considered the beginning of the universally accepted Ombudsman Institution because the earlier ombudsman system was closely related to the executive power and reported directly to the government, namely the King. In contrast, the establishment of the Ombudsman Institution in 1809 was a result of a power shift by democratic forces, which led to the function of the Ombudsman Institution as an independent body under the parliament to ensure that public servants carry out their entrusted duties with good governance and to bring allegations of misconduct by officials to court.

The Ombudsman institution, which serves as an intermediary between the people and the government, should possess specific characteristics. Although the characteristics of the Ombudsman have been defined by many scholars in various ways, differing remarkably in their interpretations, the main ideas behind each characteristic are similar. For example, Tate (2006) outlines three main attributes of an Ombudsman institution, which are: i) Independence from political influence; ii) Investigations conducted in a fair, impartial, and unbiased manner; and iii) Focus on ensuring justice in the implementation of directives and promoting fair public administration in carrying out its responsibilities. Hill (1976) added two additional characteristics: a high-status institution and possessing extensive and unlimited resources to carry out its tasks. Discussing the necessary attributes of an Ombudsman institution, Scott (1994) states that it should have freedom, broad jurisdiction, no restrictions on access to documents and information, and effective mechanisms for addressing issues. Although the Ombudsman institution is accountable to parliament, it is not a member of parliament. Its purpose is to protect individual rights. It has the power to investigate and recommend improvements in cases it investigates but does not have the power to make legally binding decisions.

However, an Ombudsman institution does not have a specific or fixed membership (Lundvik 1968). It may be held by an individual or a group. The Ombudsman consists of experienced, authoritative, and specialized individuals in specific fields to deliberate and decide on matters considered unfair and serve as grounds for demanding or challenging bureaucratic decisions. The Ombudsman is also impartial and acts as a mediator between the government and the people or individuals, devoid of partisanship. The most notable power held by the Ombudsman institution is having unrestricted access to documents held by government agencies and bodies (Carl, 2018). In other words, the Ombudsman institution functions as a legislative committee or a special institution established to investigate people's complaints regarding public authority, such as administrative mistakes and injustices, and to safeguard people's rights from being abused by government officials (Seneviratne, 2002). Furthermore, the Ombudsman institution operates independently and does not rely on any other body (Gregory & Giddings, 1997). The jurisdiction of the Ombudsman institution is limited to the functions stated above and is not in a position to give directions to judges or government officials or to change any decisions that have been made. The Ombudsman also has the power to prosecute judges or government officials if misconduct or neglect of duties is proven.

3.0 Methodology

This study employs a qualitative research design utilizing document analysis as the primary methodological approach. Document analysis was chosen due to its effectiveness in examining existing textual materials to uncover themes, patterns, and insights relevant to the research objectives. This approach allows for the in-depth exploration of documents pertinent to the phenomenon under investigation. Documents were selected based on their significance in providing insight into the phenomenon of interest. Inclusion criteria encompassed reports, policy documents, and scholarly articles published previously. It is acknowledged that document analysis may be limited by the availability and quality of the selected documents.

Once documents are gathered, we systematically analyze them to identify key concepts, themes, or categories relevant to the research questions. This process may involve using coding schemes, creating a coding framework, or developing categories that emerge from the data itself. Once the data are coded and categorized, we proceed with interpreting and analyzing the documents. This involves examining the relationships between codes, identifying patterns or trends, exploring variations or contradictions, and making sense of the information contained in the documents to extract meaningful insights. To enhance the validity and reliability of the findings, multiple

coders independently analyzed a subset of documents, followed by a process of an inter-coder agreement to ensure consistency in coding. Triangulation of data sources and member checking were employed to corroborate findings and minimize researcher bias.

4.0 Findings

4.1 Establishment of the Ombudsman Institution in Sweden, Scope of Duties, and Implementation

The Ombudsman Institution in Sweden is commonly known as the *Justitieombudsman* (J.O.) or Parliamentary Ombudsman. It was officially established in 1809, and Lars Augustin Mannerheim was appointed as the first chief ombudsman in 1810. The Ombudsman Institution in Sweden is generally subject to several laws, such as the Instrument of Government 1809, The Riksdag Act 1810 (revised in 1975), the Act of Instruction to the Parliamentary Ombudsman 1986, Administrative Directives for the Secretariat of the Parliamentary Ombudsmen 1993, and Public Access to Information and Secrecy Act 2009. These laws serve as the foundation for the establishment of the Ombudsman Institution and guide the procedures and methods for handling complaints from the public. Objectively, the Ombudsman Institution in Sweden was established to protect the individual rights of Swedish citizens and act as a guarantor to counteract misconduct in public administration and maintain public confidence in public administration. The Ombudsman Institution in Sweden is empowered to investigate misconduct, report the findings of investigations to the authorities and the parliament, and prosecute government officials proven to have engaged in misconduct, negligence, or dereliction of duty, including due to lack of skills.

Meanwhile, the Ombudsman Institution in Sweden is responsible for reporting to the parliament in the form of an Annual Report, which contains a summary of observations made on public administration throughout the previous year, including findings on weaknesses in existing laws and recommendations for their improvement. Ombudsman officials are appointed by Parliament for a period of 4 years from among judges who possess recognized legal ability and outstanding integrity. According to Article 96 of The Riksdag Act 1810, "the Ombudsman has to be a citizen of known legal ability and outstanding integrity." Therefore, Ombudsman officials are free from any influence, have extensive knowledge of their duties, possess deep legal knowledge, and are concerned with human rights and the needs of the public. Similarly, developing countries such as Brazil, Kenya, and Philippines also have their Ombudsman institutions to promote transparency and integrity in government service.

4.2 Sweden: The Effectiveness of the Ombudsman Institution in Enhancing Public Administration Efficiency

In analyzing the effectiveness of the Ombudsman Institution in Sweden, three aspects need examination: evidence of the institution's success at the national and international levels; the cases that have been resolved and reported; and whether the institution has any weaknesses.

4.2.1 The Success of the Ombudsman Institution

The success of the ombudsman system introduced by Sweden influenced other Scandinavian countries to adopt this method. The first country to follow in Sweden's footsteps was Finland, which established the Ombudsman in 1919, followed by Denmark in 1955 and Norway in 1961. Seeing the positive developments in public administration in Scandinavian countries that practice the ombudsman system, the government of New Zealand took a wise step by establishing the Ombudsman Institution in the country in 1962, making New Zealand the first non-Scandinavian country to adopt the ombudsman system, followed by Britain in 1967. Additionally, the Ombudsman institution is no longer limited to the Parliamentary Ombudsman but also encompasses various disciplines such as human rights, children's rights, ethnic equality, gender, and others. Furthermore, in some countries, the private sector has also established its ombudsman to enhance efficiency in competition with government agencies.

During the initial establishment of the Ombudsman Institution in Sweden, there was only one *Justitieombudsman* appointed to handle complaints from the public against public administration. However, the number of *Justitieombudsman* has increased to four, with one of them serving as the Chief Parliamentary Ombudsman. Although they still retain the name of the institution as *Justitieombudsman* or Parliamentary Ombudsman, these four *Justitieombudsman* are also responsible for overseeing other ombudsman bodies established within Sweden, which almost cover all aspects of human rights. The success of the *Justitieombudsman* has inspired private parties to establish their ombudsman bodies, as evidenced by the establishment of the Office of Press Ombudsman in 1969, taking over the functions of the Swedish Press Council.

The members of the Office of Press Ombudsman are appointed by a special committee consisting of the Chief Parliamentary Ombudsman, the Chairman of the Swedish Bar Association, and the Chairman of the National Press Club, and their membership is free from government intervention. Seneviratne (2002) states that due to the effectiveness of the system played by the Ombudsman Institution, it has attracted the attention of the private sector to emulate this concept. Until today, we can see that the Ombudsman Institution in Sweden remains an independent body free from government interference, even though it was established under Acts enacted by the Riksdag, and the *Justitieombudsman* is required to report to the Riksdag. The ability of the Swedish Parliament to respect and refrain from interfering in the management, investigation, and decisions made by the Ombudsman Institution in Sweden has created transparency in public administration, thereby enhancing the effectiveness of services according to the people's will. This has also been emphasized by Monteiro (1966), "...in the universal quest for the machinery to control administration, no other single institution has held so much attraction for so many as the Scandinavian ombudsman."

4.2.2 Example of Cases Resolved by the Ombudsman Institution in Sweden.

The effectiveness of the Ombudsman Institution in Sweden is demonstrated based on the variety of cases resolved, proving that the role of the Ombudsman Institution is serious and not merely symbolic.

Case 1: Equal Opportunities Case

A woman who was unaware of her pregnancy succeeded in a job interview. After discovering her pregnancy, she informed her employer, which led to the job offer being withdrawn because she would be taking maternity leave for several weeks and would not be able to attend training. The Ombudsman's officer found that there was no law prohibiting pregnant women from being hired. The company was directed to provide compensation for violating the Equality Opportunities Act.

Case 2: Ethnic Discrimination Case

A Swedish citizen of Czechoslovak origin residing in Solna, Sweden, filed a complaint stating that he had been a victim of ethnic discrimination after his application for a statistical position at the National Council for Cultural Affairs was rejected. Before appealing to the *Justitieombudsman*, he appealed to the Council, but they decided to retain the appointment of another candidate. He then appealed to the government, but his appeal was rejected without reason. He also sought assistance from the Trade Union, but they were unable to help him. The *Justitieombudsman*, while examining his case, determined that the National Council for Cultural Affairs had conducted the hiring process fairly and openly based on the advertised qualifications and requirements. However, the *Justitieombudsman* suggested that the complainant file a complaint with the District Court. As a corrective measure, the *Justitieombudsman* recommended in the Annual Report that the Employment Act be amended to ensure equal rights and opportunities for all Swedish citizens.

Looking at these two cases, the investigations and decisions made by the Ombudsman Institution have upheld human rights, even though there are times when the decisions may not favor the complainant. This is because, in addition to providing an opportunity for the complainant to express dissatisfaction with the decisions of public administration, the Ombudsman Institution in Sweden also plays a role in bringing human rights issues to the attention of the Riksdag, thereby prompting appropriate actions such as amendments to related laws and other suitable measures.

4.2.3 Weaknesses in the Ombudsman Institution

Like any other organization, the Ombudsman Institution in Sweden is not immune to weaknesses. From the research conducted through qualitative analyses, two weaknesses can be identified:

- i. The effectiveness of the Ombudsman Institution depends entirely on the appointed *Justitieombudsman* by the Riksdag. If the appointed Ombudsman fails to perform their duties properly, the institution will fail as well.
- ii. The Ombudsman Institution does not have the power to influence the administration and the Riksdag directly to implement changes based on the findings of their investigations. Their power is limited to monitoring and making recommendations.

However, up until now, these two weaknesses have not affected the effectiveness of the Ombudsman Institution because the selection of the *Justitieombudsman* is based on recognized capabilities and approved by the Riksdag as a whole. Regarding the jurisdictional limitation of the Ombudsman Institution to directly influence the administration and the Riksdag, it should be noted that the Annual Report prepared by the institution is highly regarded by the Riksdag and government offices as a guide in formulating policies and relevant laws in the interest of the people. In most cases, the Riksdag does not reject the institution's proposed improvements, especially those involving amendments to laws that restrict people's human rights.

5.0 Discussion: What Can be Learned by Malaysia?

It cannot be denied that the existence of the Ombudsman Institution has placed the Swedish public service and the institution itself at an admirable level, serving as an example and inspiration for other countries worldwide. Umami Farhani et al. (2022) state that despite the limited powers of the Ombudsman Institution, it does not hinder its effectiveness.

As for Malaysia, the initiative to establish the Ombudsman institution has been planned since 2018 by Tun Mahathir, to replace the Public Complaints Bureau (PCB) (Kenneth Tee, 2023, May 8). The Ombudsman Malaysia acts as an independent body that will oversee all public complaints against government agencies. However, due to the political instability, it derailed the plan and further delayed the tabling of the Bill.

Regarding the establishment of the Ombudsman institution in Malaysia, based on the above discussion, several aspects can be learned by Malaysia. First, the existence of the Ombudsman Institution in Sweden directly safeguards the rights of citizens and prevents government officials from abusing power, neglecting their duties, or engaging in misconduct, as emphasized by Melin (2009), who states that the main task of the Ombudsman Institution is to protect individuals' rights from unfair, unreasonable, and rule-violating services provided by authorities. Thus, Malaysia can emulate Sweden by ensuring that its Ombudsman operates independently from political influence and government agencies. This independence is crucial for the Ombudsman to effectively investigate complaints and hold public officials accountable.

Second, the Ombudsman Institution in Sweden is responsible for ensuring that authorities and government departments enhance accountability and transparency in their administration because every action and decision is subject to investigation by the Ombudsman, either after receiving complaints or through the institution's initiatives. Malaysia can adopt Sweden's practices of promoting transparency

and accessibility within the Ombudsman institution. This includes implementing user-friendly complaint mechanisms, publishing investigation reports, and providing information to the public about the Ombudsman's role and responsibilities.

Third, the Ombudsman Institution acts as a check and balance body in public administration, pointing out mistakes made by the administration and having the power to recommend improvements to existing systems, laws, and policies. Malaysia can study Sweden's legal framework governing the Ombudsman institution to develop robust legislation that clearly defines the Ombudsman's mandate, powers, and procedures. This framework should provide the Ombudsman with the authority to investigate complaints, access relevant information, and recommend corrective actions.

The fourth aspect of the effectiveness of the Ombudsman Institution in Sweden is its role as an intermediary between citizens and the administration in achieving the country's goals. Through this institution, the voices and grievances of the people are channeled and brought to the attention of the administration and the parliament for action to be taken. Malaysia can replicate Sweden's efforts to engage in public outreach and education to raise awareness about citizens' rights and the Ombudsman's role. This can involve conducting outreach events, publishing educational materials, and leveraging digital platforms to reach a wider audience.

Last, the most important role, that has been effectively carried out by the Ombudsman Institution in Sweden so far, is ensuring the implementation of laws and public administration based on democratic principles. Melin (2009) argues that "... the institution of parliamentary ombudsman may be regarded as an early expression of the democratic ideal – and that the mission pursued by the ombudsmen contributed to the advancement of that ideal. Malaysia can learn from Sweden's experience by ensuring strong political support for the Ombudsman institution. This includes garnering support from government leaders, lawmakers, and civil society organizations to uphold the Ombudsman's independence and effectiveness. In addition, Malaysia can adopt Sweden's practice of continuously evaluating and improving the Ombudsman institution to ensure its effectiveness and relevance. This may involve conducting regular reviews, soliciting feedback from stakeholders, and implementing reforms based on lessons learned.

6.0 Conclusion & Recommendations

Overall, the existence of the Ombudsman Institution in Sweden has provided significant benefits to society and public administration. Its success in enhancing accountability, preventing abuse of power, and promoting justice and democracy makes it an exemplary model for other countries to follow. The Ombudsman Institution in Sweden is clear evidence of the country's commitment to protecting people's rights and improving the quality of governance.

While this study provides valuable insights into the Ombudsman through document analysis, several limitations must be acknowledged. Firstly, the reliance on secondary data sources may have constrained the depth of analysis, as it is subject to the availability and quality of the selected documents. Additionally, the scope of the study was limited to documents published between the 1960s and 2010, potentially overlooking earlier or more recent literature relevant to the research topic. Furthermore, the interpretation of textual data is inherently subjective and may be influenced by the researchers' perspectives, despite efforts to mitigate bias through rigorous coding procedures.

To address the limitations identified in this study, future research could adopt a mixed-methods approach, combining document analysis with primary data collection methods such as surveys or interviews. This would allow for a more comprehensive understanding of the Ombudsman in Sweden and what can be learned by Malaysia. Building on the findings of this study, future research could explore additional dimensions of the Ombudsman in Malaysia, such as its implementation, effectiveness, and weaknesses. Furthermore, comparative studies across different geographical contexts and socio-economic settings would provide valuable insights into the implementation of the Ombudsman in different countries.

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