

APB Rembau e-Bulletin

e-ISSN: 2682-776X

Edition: 13/2024

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AN OMBUDSMAN ACT – A RESOLUTION TO MALADMINISTRATION AMONGST PUBLIC SERVANTS IN MALAYSIA

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Introduction

The maladministration among public servants has long been an issue in Malaysia. How Malaysia used to combat it is through, inter alia, the Public Complaints Bureau (PCB). This article will look into the evolution of the PCB and why there has been a shift in perspective and a movement to pass an Ombudsman Act and establish an ombudsman office in Malaysia to address maladministration among civil servants in Malaysia.

Public Complaints Bureau (PCB)

The PCB used to be one of the mechanisms to counter the maladministration of civil servants in Malaysia. The PCB was established under the Prime Minister's Department in 1972.

It investigates complaints from the public against civil servants. Although it seems obvious that PCB would be the channel to resolve disputes between the public and the

civil servants, its viability and integrity can be subject to questions and challenges.

There would always remain a conflict of interest in PCB managing the complaints against the civil servants. For the most obvious reason it is established under the Prime Minister's department, a definite executive arm.

PCB is subject to the Permanent Committee on Public Complaints (PCPC), which was introduced in 1992, and its members and chairpersons include high-ranking officers in the civil service. This PCPC is responsible to the Cabinet. One might wonder how transparent and accountable the PCB can be in investigating civil servants when it inevitably indirectly reports to the Cabinet.

Although PCB may have acted responsibly in investigating civil servants, the fact that it operates from a Prime Minister's department, i.e., a representation from the executive, does not do well for its credibility in investigating the indiscretions of the civil servants.

A proper presentation and an independent body to investigate the maladministration of public servants have been advocated to replace the PCB as a suitable public redressal body. The substitute for PCB has been strongly advocated as early as 2017 (Lee, R. (2017, February 28)). The supposed substitute for PCB is creating an ombudsman office in Malaysia. This idea has

been mooted and was well received by the then-newly elected government in 2018.

Ombudsman – Definition and Duties

An ombudsman is defined as a government official (as in Sweden or New Zealand) appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials (<https://www.merriam-webster.com/dictionary/ombudsman>).

Originating from Sweden, this independent body of persons has the power given by the state to investigate the maladministration of civil servants.

Generally, the primary duties of an organizational ombudsman are.

(1) to work with individuals and groups in an organization to explore and assist them in determining options to help resolve conflicts, problematic issues or concerns and

(2) to bring systemic concerns to the attention of the organization for resolution (<https://www.ombudsassociation.org/what-is-an-ombuds->)

Ombudsman works because it's focused largely on the maladministration of civil servants. It gives confidentiality to the people who file complaints and protects the identity of those who disclose information. The ombudsman has the authority to report to Parliament any adverse findings against the

civil servants and also to make the information public. This privilege is not available to the Public Complaints Bureau (PCB).

In some jurisdictions, ombudsmen even have the power to file complaints, redress, and prosecute. They can proceed independently against the civil servants complained against. There would be no limit on an ombudsman's powers to expose and take remedial actions against the public servants complained against. Various jurisdictions in the world, viz, Sweden, New Zealand, India, United Kingdom, etc., have all applied the ombudsman system to a certain level of success (Batalli, P. D. M. (2015)).

Ombudsman institution in Malaysia

The government has presented the Ombudsman Malaysia 2023 Bill in Parliament in October 2023. Datuk Seri Azalina Said, Minister in the Prime Minister's Department (Law and Institutional Reforms), said that the Ombudsman Bill, which handles complaints of misconduct and abuse in public service, is now in its final stage.

Sarawak is now the first state in Malaysia to have an ombudsman law, with the appointment of an Ombudsman, after the Sarawak Ombudsman Bill 2023 was passed at the State Legislative Assembly (DUN) on 20 November 2023.

Under item 7 of List II (State List) of the Ninth Schedule of the Federal Constitution, the state is empowered to legislate on matters relating to the machinery of the state government, which is exclusively for state services.

Sarawak was now exercising its constitutional authority to establish the Sarawak Ombudsman institution with the primary objective of elevating the standards of accountability in public administration and providing measures against maladministration by public service agencies.

The passing of the landmark Bill, tabled by Deputy Premier Datuk Amar Awang Tengah Ali Hasan and seconded by Deputy Premier Datuk Amar Dr Sim Kui Hian, received unanimous support from all the members of the Assembly present.

Deputy Premier Datuk Amar Awang Tengah Ali Hasan believes that the establishment of Sarawak's very own law on ombudsman would provide independent monitoring of the performance of the state public service agencies as it will enhance transparency and accountability in government agencies by allowing the public to report maladministration to the Ombudsman.

(2023, November 21)

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Statutes

1. Official Secrets Act 1972
2. Whistleblower Protection Act 2010