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# 3<sup>rd</sup> ImCoSS

THE THIRD INTERNATIONAL MULTIDISCIPLINARY  
CONFERENCE ON SOCIAL SCIENCES

5 - 7 JUNE 2015

BANDAR LAMPUNG UNIVERSITY  
INDONESIA

## PROCEEDINGS

Hosted by :

- Faculty of Teacher Training and Education
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# 3<sup>rd</sup> IMCoSS 2015

**THE THIRD INTERNATIONAL MULTIDISCIPLINARY  
CONFERENCE ON SOCIAL SCIENCES**

5, 6 June 2015  
Bandar Lampung University (UBL)  
Lampung, Indonesia

## PROCEEDINGS

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## *PREFACE*

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the **The Third International Multidisciplinary Conference on Social Sciences (The 3<sup>rd</sup> IMCoSS) 2015** organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 112 technical papers were received for this conference.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also grateful to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

Bandar Lampung, 6 June 2015

**Mustofa Usman, Ph.D**  
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# THE FULFILMENT OF THE RIGHT TO HEALTH SERVICES THROUGH CONTROL OF OMBUDSMAN FUNCTIONS IN THE REGION

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**ABSTRACT** - *The right to good health care is a basic right of citizens guaranteed by the constitution that must be fulfilled. But the vagueness of the benchmarks of public services and the effectiveness of oversight institutions become an obstacle in fulfilling the right to health services, especially in the era of regional autonomy by implementing decentralization of authority to the regions in health. Therefore, in this study discussed on how the right to health services through the oversight function of the Ombudsman in the area and whether barriers. Based on research conducted using normative legal research methods using statutory approach and conceptual approach as well as social-legal mind that the right to health care is an obligation of the state in efforts to implement human rights norms that honor to respect, to protect and to fulfil and must meet the principles, among others, the availability of health services, accessibility, acceptability and quality. In the context of regional autonomy, decentralization in the health sector to the region has given local authorities organize public services, although in practice, there are still many areas which were not optimal in the rain due to differences in the ability of the financial implications for the implementation of public service which is not in accordance with prescribed standards. The presence of the Ombudsman to be important even though there are various barriers internally, among others related to statutory provisions that have not been given the strengthening of the Ombudsman institution in the state system, the binding force of law issued by the Ombudsman products is only morally binding so that execution given the government agency itself has not been fully implemented and the lack of resources and funding sources Ombudsman. While externally the object of supervision, such as government and society in general who do not understand the essence of the establishment of the Ombudsman institution and do not want to run any recommendations of the Ombudsman.*

**keywords:** Health Services, Ombudsman, Regional Autonomy.

## 1. INTRODUCTION

The right to health through the provision of care facilities and good service delivery processes are fundamental rights and the constitutional rights of citizens guaranteed by the constitution that must be met and organized by the state, as mandated by the Constitution of the Republic of Indonesia 1945. It is set forth in Article 28H paragraph (1) and Article 34 paragraph (3) which states that the state has the duty to carry out the implementation of health as well as possible. Article 28H (1) states that every person has the right to live physically and spiritual prosperity, residue, and get a good environment and healthy and receive medical care. Furthermore, in Article 34 paragraph (3) stated that the State is responsible for the provision of health care facilities and public service facilities are decent. In Law Number 36 of 2009 on Health, which is meant by health is good health, both physically, mentally, spiritually and socially to enable more people to live socially and economically productive. While the definition of the public service is an activity or series of activities in fulfilling the needs of the service in accordance with the laws and regulations for every citizen and resident in the goods, services, and / or administrative services provided by public service providers. A series of both these definitions are very closely related to the responsibility of the State to achieve better health care for its citizens.

Public service delivery in the health sector is a legal act of the government. As a legal act of government,

should be considered beneficial to the community as the party that will receive the legal acts. Naturally, this legal act performed does not always provide benefits to society, even though the initial goal is for the good and benefit. In practice in the field, including government legal acts in the implementation of health care frequently encountered legal acts of government at the expense of society. Of the few cases that are currently being discussed such rampant malpractice cases, doctors against patients that often occur in several areas including the doctor Ayu cases that occurred in April 2010 and sparked the doctors at the end of 2013 and the case of abandonment of the poor patient who happened in Lampung on January 20, 2014 and allegedly disposed of Dadi Tjokrodipo Hospital, Lampung, by some unscrupulous employees of the hospital because they cannot afford treatment. Obscurity benchmark public service is one of the obstacles in determining the right one or the suitability of the service, held by a common will or regulations should be. So clear benchmarks will certainly determine whether the poor public services performed. In addition, supervision of the implementation of public services also plays an important role in creating good public services by the State to its people. This is understandable because the bureaucratic system during this run more likely to deviate from the benchmarks that have been set. The establishment of Law No. 25 of 2009 on the Public Service as an affirmation of the existence of the Ombudsman as an institution of public service watchdog domiciled

outside the bureaucracy will enable the realization of adequate supervision and open access for the public to get good service in accordance with applicable regulations. This research will discuss about how to fulfill the rights of health services through the oversight function of the Ombudsman and what constraints on autonomy.

## 2. MATERIALS AND METHOD

This research is a doctrinal legal research by using the statutory approach and conceptual approach. As a complement, also used socio-legal approach that examines the law as a social phenomenon that is related to the role that can be or are being carried out by the Ombudsman in the administration of health services in the local autonomy. Data obtained through literature studies and interviews with informants then analyzed qualitatively by describing the data generated from the study in the form of normative explanation systematically by comparing with empirical data.

## 3. RESULTS AND DISCUSSION

### 3.1 The fulfillment of the right to health services through the function of supervision of the Ombudsman in the region

Fulfillment of all the rights of the economic and social culture, including the health field into a task and the obligation of the State. In the Constitution and Law No. 39 of 1999 on Human Rights had set the same way in article 71 that the Government is responsible and obligated to respect, protect, promote, and uphold the human rights that are provided for in this Act, other legislation, and the international law of human rights received by the Republic of Indonesia. Article 72 the Government responsibility and Obligations as stipulated in article 71, covers the implementation of effective measures in the field of legal, political, economic, social, cultural, defense, State security and other fields.

The right to health services is one of entitlement to welfare. The rights of economic, social and cultural human rights are related to material well-being, social and cultural. Setting the types of rights to economic, social and culture was first regulated in article 16, 22 to article 29 the universal declaration of human rights, and further set forth in the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and Indonesia has ratified the ICESCR 1966 with Act No. 11 of 2005. The rights which belong to the category of rights in the economic, social and cultural, including:

1. The right to work
2. Getting the right training program
3. The right to get the comfort and good working conditions
4. The right to form trade unions the right to enjoy social security, including social insurance
5. The right to enjoy protection during and after childbirth
6. The right to a decent standard of living, including food, clothing, and housing

7. The right to be free from hunger
8. The right to enjoy physical and mental health standards are high
9. The right to education, including primary education free of charge
10. The right to participate in cultural life, enjoy the benefits of scientific progress and its application.

In article 2 paragraph 1 of the Covenant on economic, social and culture stated:

*"Each country participating Covenant pledging to take measures, either by itself or through the assistance and international cooperation, especially economic and technical assistance, up to a maximum of existing resources, with a view to achieving the full realization of the rights was gradually recognized in the Covenant by all appropriate means, including the making of legislative measures."*

Based on the foregoing shows that the State is responsible for not only must actively take action (state obligation to do something) but also require the State to take specific action to protect the rights (state obligation not to do something) for its citizens.

With regard to the fulfillment of the right to public services, the Government involved in developing services function along with the emergence of savvy or philosophical views about the country. This was disclosed by Prawirohardjo which stated that since the performance of the ideals of the welfare State, the Government increasingly intensive intervention to instructions of societal forces, with the goal that every citizen can be guaranteed minimum life assurance. Therefore, the initial function gradually from a Government that is both repressive (police and Court), then grew with other functions that serve.<sup>[1]</sup> The Basic tasks of modern government in State law, according to M. Ryaas Rasyid. Substantially is service to the community, in other words, he was not held to serve itself, but to serve the community as well as to create the conditions that enable every community members develop skills and creativity in order to achieve the common goal. To carry out the required public organizations and public management. A public organization as an element of public administration is a container for carrying out the tasks of public administration. Public organization set up to provide service to the public/citizens.<sup>[2]</sup>

RyassRasyid<sup>[3]</sup> stated that henceforth, government bureaucracy has at least three (3) basic tasks:

1. to provide a public service to the community as providing routine services, licensing, document creation, protection, maintenance of public facilities, health maintenance, and the provision of security guarantees for the population.
2. do the empowerment of the community to achieve a better life, as do tutoring, mentoring, consulting, providing capital and business facilities, as well as implement the right to education.
3. organizing the construction of such a society in the midst of building the infrastructure of transportation, telecommunications, trade and so on

Health plays an important role in increasing degrees of life of the community, so that all countries, including

Indonesia should attempt to organize health services as well as possible. This means that any health care effort that held alone or together in an organization to maintain funds promote health, prevent and treat disease, and restore the health of an individual, group, or community.<sup>[4]</sup> Vincent Gesperz<sup>[5]</sup>, points out that the quality of service, including the Observance of time of service, the accuracy of the service, politeness and hospitality in providing services, the responsibility, the ease of getting a service. The right to health is not the right means for each person to be healthy, or the Government must provide a means for expensive health services outside of his Government. But further demanded that the Government and public officials can create different policies and work plans leading to inaccessibility and available means of health care for all in the possibility of time as soon as possible.<sup>[6]</sup> This means efforts to realize the right to health should be developed continuously. In addition, health development should pay attention to the various principles that provide the health development and implemented through health efforts such as:

1. The humanitarian Principles based on the divinity of the one true God;
2. The basic benefit;
3. The principle of joint ventures and family;
4. The principle of just and equitable;
5. The principle of livelihood the balance;
6. The principle of confidence in his own ability and strength.

Arrangements regarding legal certainty for public service delivery in the health sector by the state has been set nationally in both regulations that are *regelung* or *beschikking*. Devolution of government power by the government to autonomous regions to set up and administer governmental affairs in the system of the Republic of Indonesia is then referred to as a decentralized. Mardiasmo said that supervision is one of the pillars supporting the success of the regional administration, especially in the era of autonomy whose activities include:<sup>[7]</sup>

- 1 Supervision refers to the actions or activities carried out against laws and policies that are run by local governments;
- 2 The controls are carried out to ensure the implementation of the system and local government policies;
- 3 The examination of budget performance budget.

Based on the above opinion can be concluded that the local government is indispensable for supervision to ensure the fulfillment of the rights of society, including in the field of health as a right and guarantee these fundamental rights are not violated or even eliminated. This supervision must be done internally performed based on bureaucratic structures and functional, namely by institutions regulated in the bureaucracy itself and also externally by competent authorities to conduct surveillance for monitoring the quality and ensure the independence of supervision.

Further that in an effort to guidance and supervision, government and regional governments can take

administrative actions for violations of applicable regulations in the form of:

1. Reprimand;
2. Written warning; and / or
3. Fines and license revocation

Based on the nature of administrative action, the Government and the local government can take one of the actions that can be taken, or combine them all at once. The presence of institutions concerned in the supervision of public services including health field as an object of oversight is needed to fill this void one of which is an institution of the Ombudsman. In the explanation of Law No. 37 of 2008 on the Ombudsman stated that the internal controls by the government itself in its implementation did not meet society's expectations both in terms of objectivity and accountability. So that the existence of the Ombudsman is indispensable as an external watchdog agency based legislation has the authority to oversee the implementation of public service organized by the organizers of state and government including those organized by the State-Owned Enterprises, Regional-Owned Enterprises, and the State-Owned Legal Entity as well as private entities or individuals who were given the task of organizing certain public services which some or all funded from the budget of revenues and expenditures and/or budgetary revenue and expenditure.

Based on the Public Service Act, the State is obliged to organize the public service as something that has been attached to the organizers of State and government institutions, enterprises, public enterprises, the State-Owned Enterprises, Regional-Owned Enterprises and private entities or individuals who were given the task of carrying out the mission of the State or consent. In Article 5 in conjunction with Article 10 paragraph (2) of Government Regulation No. 96 Year 2012 on the Implementation of the Public Service Act, public service includes the service on public goods such as passenger ships to the public, even subsidized fuel and electricity nonindustrial. Public services such as insurance, legal services, and transport services and administrative services such as the manufacture of birth certificates to death certificates, land certificates, driver's license, decision or determination regarding licenses, tariffs, increase or decrease in rank, class, Hajj, termination of employment and etc. conducted by government agencies and other organizers agencies. This shows how a widespread sense of public service and of course has implications for the extent of the supervision object Ombudsman institution.

The purpose of the establishment of the Ombudsman institution under Law No. 37 of 2008 mentioned in Article 4, namely to:

1. realizing the democratic state of law, equitable, and prosperous;
2. encourage the implementation of state and government are effective and efficient, honest, open, clean, and free from corruption, collusion, and nepotism;



3. improve the quality of state services in all areas so that every citizen and resident of obtaining justice, security, and prosperity are getting better;
4. help create and increase efforts to eradicate and prevent maladministration practices, discrimination, collusion, corruption, and nepotism;
5. improve the national legal culture, legal consciousness of society, and the rule of law that core truth and justice.

In conjunction with the implementation of public services including the health sector, it is possible once the occurrence of acts of maladministration by service providers is detrimental to society as a recipient of the service both immaterial and material and very rarely can be proven. Maladministration in question is the behavior or act against the law, beyond the authority, use authority for any purpose other than the purpose of the authority, including negligence or neglect of legal obligations in the implementation of public service performed by the Operator of State and government are causing material loss and / or immaterial for society and the individual.<sup>[8]</sup>

In Article 35 paragraph (3) of the Public Service stated that the external supervision of public service performed through public scrutiny in the form of reports or complaints, oversight by the Ombudsman and oversight by Parliament and Council. So based on this provision, the Ombudsman became one of the agencies that is authorized to supervise the implementation of public services including public services in the health sector both at central and regional levels. In Article 6 of Law No. 37 Year 2008 stated that the Ombudsman to monitor the implementation of public service held by the Operator of State and government at both central and local levels, including those organized by the State-Owned Enterprises, Regional-Owned Enterprises and State Owned Legal Entity as well as private entities or individuals are given the task of organizing certain public services..

Ombudsman based on Article 7 are given the following tasks:

1. receive reports of alleged maladministration in the implementation of public services;
2. the examination substance Statements;
3. the follow up report included in the scope of authority of the Ombudsman;
4. carry out an investigation on its own initiative against the alleged maladministration in the implementation of public services;
5. coordination and cooperation with state agencies or other government agencies as well as community organizations and individuals;
6. building networks;
7. take steps to prevent maladministration in the implementation of public services; and
8. perform other duties assigned by law.

In order to carry out the functions and duties referred to in Article 6 and Article 7 of the Ombudsman is authorized to:

1. asking for information orally and / or in writing of the Reporting, Party, or other relevant parties regarding the report submitted to the Ombudsman;
2. examine decisions, correspondence, or other documents that exist in the Reporting Party or to get to the truth of a report;
3. ask for clarification and / or a copy or photocopy of the documents required from any agencies for examination of reports from agencies Reported;
4. The summoning of the Rapporteur, Party, and other parties associated with the report;
5. The completed reports through mediation and conciliation at the request of the parties;
6. make a recommendation regarding the completion of the report, including the recommendation to pay compensation and / or rehabilitation of the injured party;
7. in the public interest to announce the findings, conclusions, and recommendations.

In addition to the authority as described above, the Ombudsman is also authorized to submit suggestions to the President, the head of the region, or the leadership of the other State Officials to repair and improve the organization and / or public service procedures and submit suggestions to the Board of Representatives and / or the President, Council representatives and / or the head of the region in order to laws and other legislation in order to prevent the held change maladministration.

In the effort to fulfill the right to health care in the area, supervision of the Ombudsman plays an important role in the application of the principles of good public service. Therefore, the establishment of Ombudsman representatives in each area is highly relevant to efforts to fulfill the right to health care. The establishment of the Ombudsman representative in the area has been clearly stipulated in the Law No. 37 of 2008 Article 5 that the Ombudsman can establish Ombudsman representative in the province and / or district / city. It is also stated in the Law No. 25 of 2009 on Public Service in Article 46 paragraph (3) which confirms that the Ombudsman is required to establish a representative in the area that is hierarchical to support the tasks and functions of the ombudsman dalam public service activities and in paragraph (4) stated that the establishment of ombudsman representatives in the region as referred to in paragraph (3) made no later than 3 (three) years since this law was enacted, which means that today after more than a limit on the necessity of its formation in the region, representatives of the Ombudsman is also supposed to have been there in every area. Representatives of Ombudsman establishment aim to provide convenience for people to access the services of the Ombudsman in order to improve the efficiency and effectiveness of supervision to realize the improvement of the quality of public services are good.<sup>[9]</sup>

### **3.2 Barriers Ombudsman In Implementing Supervision Function in the Field of Health in Region**

The application of the concept of local autonomy brings hope of renewal at the same time local independence in carrying out the functions of government in order to accelerate the realization of prosperity which is marked by the fulfillment of the right to public services by local governments well. Public services in the health sector with a range of problems at the center of public attention today as the recipient of the service and did have the right to health services that are guaranteed by the constitution, so that through the efforts of good supervision is expected to be the implementation of the process of public services in both the health sector in accordance with the applicable.

The existence of the institution of Ombudsman oversight is evidence of how the protection and fulfillment of the right to public services not only through the efforts of repressive but shifts the paradigm on how to make the supervision of the Ombudsman as a preventive effort in breaking down and at the same time solving the problems of public service that is sometimes detrimental to society. Establishment of Ombudsman oversight is motivated by the conditions of public service that is far from the principles of good public service and the lot of abuse of authority despite the internal supervision by a body set up within the government itself. However, internal monitoring carried out by the government itself in its implementation did not meet the expectations of society, both in terms of objectivity and accountability. From the above condition, in 2000, the President seeks to realize the implementation of the reform of state and government by establishing the National Ombudsman Commission through Presidential Decree No. 44 of 2000. The National Ombudsman Commission aims to help create and develop conditions conducive to carrying out the eradication of corruption, collusion, nepotism and improve the protection of the rights of the public to obtain public services, justice, and prosperity.<sup>[10]</sup> Nevertheless, the position of a national ombudsman commission weak at that time requires the further developments to establish a law on ombudsman order to further optimize the functions, duties, and authority of the national ombudsman commission Indonesia and a clearer legal basis and strong. This is also in line with the mandate of the People's Consultative Assembly Decree No. VII/MPR/2001 on Policy Direction Recommendations Eradication and Prevention of Corruption, Collusion and Nepotism is one of them ordered the establishment of the Ombudsman by law. Therefore, subsequently issued Law No. 37 of 2008 on the Ombudsman of the Republic of Indonesia current.

In connection with the implementation of the Ombudsman function in overseeing the implementation of public services including health, there are the problems and obstacles. Barriers in question come from internal and external. The internal resistance of which related to the statutory provisions relating to pelaksanaan Ombudsman function itself, the binding force of legal products issued in the form

of recommendations were only morally binding (binding morally), the execution of which is given to the government agency itself, the position of Ombudsman in the state system which does not yet support their work in the eyes of society and especially in the presence of government itself as the executive of authority (executive power) and resource and source of funds Ombudsman. In addition, external constraints are also faced by the Ombudsman of them from government officials / agencies that became the object of scrutiny and the public in general who do not understand the essence of the establishment of the Ombudsman and did not want to run every recommendation the Ombudsman.

From the experience of the Ombudsman to function in overseeing the implementation of public services, internal barriers to be the most crucial in carrying out the functions of this institution. Various studies indicate that the arrangement formation of the Ombudsman at first in the form of very weak Decree to be the cornerstone of an external oversight agencies and the so-called self-contained on a mission to reform the bureaucracy to the provisions in the legislation even though it still has not substantively support the existence of the Ombudsman as an institution that is supposed can be taken into account. Obstacles faced by the Ombudsman in the execution of their duties in general lies in the constituent regulation. In an effort supervision of public service providers in the health sector mainly held by private entities / individuals who are not using state budget and/or regional government budget when referring to Law No. 37 of 2008 not be the supervisory authority of the Ombudsman. In Article 1 paragraph 1 that the Ombudsman is a state institution that has the authority to oversee the implementation of public service organized by the organizers of state and government including those organized by the State-Owned Enterprises, Regional-Owned Enterprises and State Owned Legal Entity as well as private entities or individuals who given the task of organizing certain public services which some or all funded from the budget of revenues and expenditures and / or budgetary revenue and expenditure. So if these provisions are used certainly can not reach out and receive public complaints on maladministration made by private entities / individuals..

To answer this question, then you should be able to look at the provisions stipulated in Law No. 25 of 2009. The elucidation of Article 46 Paragraph (1) stated that the obligation Ombudsman referred to in Law No. 37 of 2008 also includes the fields of public service performed by a corporation whose financing is not sourced from the budget of revenues and expenditures of state and / or local government budgets or business entities founding capital partially or entirely derived from the State assets and / or regional assets separated, but its availability became mission countries specified in the legislation. And hold a complaint is set in Article 45 paragraph (3) that the complaint against the organizers in the form of corporate and independent institutions referred to in

Article 5 (3) c, subsection (4) c, and paragraph (7) b addressed to officials responsible for government agencies that provide mission or assignment.

Regarding the provision that such expansion authors found no meaning to a private entity/corporation as the implementation of public services in Law 25 2009, of course, this is the widespread consequences of the object of supervision which is the responsibility of the Ombudsman. Because this law is newer than the Law 27 of 2008, then this view can be justified as well as answering questions about how researchers at the beginning of supervision of private entities / individuals who do not use at all funds from the State Budget and Budgets in the public service to the community. With this provision had also been given an extension of legal protection for the public in the event of maladministration which do public service providers are included in the field of health care organized by the private individual entities / individuals through the efforts of a complaint to the Ombudsman. So it can be said that in practice the completion of the report of the Ombudsman is sometimes considered that the act of maladministration that occurred in private bodies / individuals in the above is not the authority of the Ombudsman has got clarity into Law No. 25 of 2009. Therefore, this authority has been associated barriers can be overcome with a broad meaning on public service providers as an object of the Ombudsman.

Furthermore, barriers faced by the Ombudsman in performing its functions in general are that the Ombudsman only Brazilians are an institution that the product merely morally binding law, unlike the courts are legally binding so that execution given to government agencies that received the complaint is returned to the government officials themselves up finally back again to the consciousness of the concerned officials. However, that moral character possessed binding Ombudsman is an attempt to prevent maladministration and should not be viewed as a weakness/obstacle, but an advantage or a new way to prevent and cope with the occurrence of acts of maladministration as a forerunner of corruption, collusion and nepotism.

Further that the position of the Ombudsman in the constitutional system that do not support their work in the eyes of society and especially in the presence of government itself as the holder of executive power to make the Ombudsman only underestimated although it has been based on the provisions of such laws. This has implications for the legal product in the form of recommendations or advice given to government officials have not received a positive response. Related to resource and source of funds the ombudsman, based on interviews with assistant Ombudsman Representative Lampung,<sup>[11]</sup> obtained an explanation that the human resources are limited to only five people with different educational backgrounds vary, to handle the number of cases reported by the public is certainly not easy especially not all legal education or at least have the capability of advocacy is needed in dealing with cases necessary

capabilities in the inspection, monitoring, mediation and adjudication. Not to mention the high workload and activity own motion that must be done to respond to the symptoms tend to be colored governance practices of maladministration so demanding Ombudsman worked hard to deal with not only the character case by case but also systemic. The absence of the special care of the administrative secretariat reports that led to the handling of the report seems slow and has not made pemerinksaan or investigation activities are scheduled on a regular basis the object of supervision.

With regard to sources of funding, barriers faced not lack of sufficient funds from the central budget to support the work of the Ombudsman representative in the region but in the use of funds. Until now, the absorption of funds is still not optimal for the operational activities of the Ombudsman in the area. It is influenced by the activities carried out so far is not to use the huge costs and the handling properties casuistic reports can still be coped with without spending substantial funds anyway. In addition, external constraints are also faced by the Ombudsman of them from government officials / agencies that became the object of scrutiny and the public in general who do not understand the essence of the establishment of the Ombudsman and did not want to run every recommendation the Ombudsman. From various studies previously conducted until this very day is still the same that government officials are still many who do not understand that the Ombudsman is a partner of the government in an effort to build a culture of good public service. The resulting recommendations have not been regarded as an evaluation in order to improve the quality of public services so that in the end the Ombudsman with its recommendations still regarded as a paper tiger. Awareness of public officials who are expected not show significant changes in service delivery to the public. Similarly, the public, that the presence of the Ombudsman is still regarded as an advocate or a party that defends the interests of society, but further that the Ombudsman is neutral and not take sides with one party both government officials and the public. Misconceptions are then made gait Ombudsman has not been fully optimized.

#### **4. CONCLUSION**

The right to health care for every citizen of the State of Indonesia is a fundamental right guaranteed by the constitution, so that must be met as the obligations of the state in efforts to implement human rights norms to respect, to protect and to fulfil and should comply with the principles, among others, the availability of health services, accessibility, acceptability and quality. In the context of regional autonomy, decentralization in the health sector to the region has given local authorities to take part in organizing public services in health, though in practice, there are still many areas which have not been optimized in the run due to differences in financial capability and implications for the implementation of public service which is not in

accordance with the standards which is determined. So that the existence of the regulatory agencies, Ombudsman to be important in guarding the optimization of public services in the health sector in the region.

As an institution that carry out oversight of the public service, in the implementation of Ombudsman faces several obstacles, both internal and external. The internal resistance of which related to the provisions of the legislation which the binding force of a legal product that is issued in the form of recommendations were only morally binding, execution granted to government agencies alone, the position of the Ombudsman in the constitutional system that do not support their work in the eyes of society and especially in the presence of government himself as the holder of executive of power and resources and sources of funding of the Ombudsman. In addition, external constraints are also faced by the Ombudsman of them from government officials / agencies that became the object of scrutiny and the public in general who do not understand the essence of the establishment of the Ombudsman and did not want to run any recommendations by the Ombudsman as well as possible.

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