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# The State's Negligence in Overseeing Daycare Centers and Children's Constitutional Rights

**Dliya Ul Muharram[1], Ayu Aprilia Pangestu Putri[2]**
[1]Faculty of Law, Universitas Mulawarman, Samarinda, Indonesia, dliyaulmuharram@fh.unmul.ac.id
[2]Faculty of Teacher Training and Education, Universitas Mulawarman, Samarinda, Indonesia, ayupangestu@fkip.unmul.ac.id
Corresponding Author: dliyaulmuharram@fh.unmul.ac.id

***Abstract***

*This article examines the legal qualification of local government omission in supervising the operational licensing of daycare facilities, with reference to the cases of toddler maltreatment at Wensen School Depok (August 2024) and the comparable incident in Yogyakarta (April 2026). The research is normatively juridical and combines statutory, conceptual, and case approaches, drawing on Article 28B paragraph (2) and Article 28I paragraph (4) of the 1945 Constitution, Law Number 30 of 2014 concerning Government Administration, and Supreme Court Regulation (PERMA) Number 2 of 2019. The analysis demonstrates that the toleration of unlicensed daycare operations by competent regional authorities exceeds the boundary of administrative infraction and fulfils the qualification of an Unlawful Act by the Government (Onrechtmatige Overheidsdaad). The novelty of the study lies in the transplantation of the doctrine of vicarious liability from Article 1367 of the Indonesian Civil Code (KUHPerdata) into administrative adjudication, thereby constructing an integrated litigation route through which a local government may be subjected to joint civil liability before the Administrative Court (PTUN). The study recommends the institutionalisation of a proactive periodic supervisory mechanism at the regional level and the issuance of executory rulings ordering the allocation of regional budget (APBD) funds for the medical and psychological rehabilitation of child victims*

***Keywords:*** *State Omission; Early Childhood Education; Vicarious Liability; Onrechtmatige Overheidsdaad; Constitutional Rights.*

## A. INTRODUCTION

The protection of children's constitutional rights constitutes an obligation imposed upon the instruments of state power. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees the right of every child to grow and develop free from violence and discrimination (Asshiddiqie 2006),

while Article 28I paragraph (4) attributes the duty of protection, advancement, fulfilment, and enforcement of human rights to the government (Hadiarto and Karyadie 2022). At the operational level, Regulation of the Minister of Education and Culture Number 137 of 2014 concerning the National Standards of Early Childhood Education requires every daycare facility to comply with provisions on operational feasibility, educator-to-child ratios, and licensing. Private early childhood institutions are therefore subordinated to the supervisory authority of regional government agencies and possess no autonomous space to operate outside this regulatory framework.

The implementation of these norms has, however, been inconsistent. The cases of toddler maltreatment at Wensen School in Depok in August 2024 and the comparable incident in Yogyakarta in April 2026 indicate the operation of unlicensed daycare facilities without prior administrative intervention by the competent regional agencies. Public statements from local officials typically attribute these occurrences to the failure of operators to register their business permits or to the limited capacity of regional inspection units. Such explanations do not displace the constitutional duty of supervision that attaches to the licensing authority (Schotel 2021). The persistence of unlicensed operations, the absence of routine field inspections, and the delay in the imposition of administrative sanctions together describe a pattern of state omission (Asimah and Erliyana 2025). Where the omission of a competent authority results in the violation of the fundamental rights of vulnerable citizens, the conduct in question is capable of fulfilling the qualification of an Unlawful Act by the Government (*Onrechtmatige Overheidsdaad*).

**Table 1**
**State of the Art**

| No. | Author(s) & Year | Focus of Prior Research | Position and Novelty of This Article |
|---|---|---|---|
| 1 | Effendi & Adhari (2025) | Optimisation of criminal policy to prosecute perpetrators of abuse within daycare facilities through repressive penal instruments. | Confirms the relevance of penal sanctions for direct offenders, yet identifies their structural limitation in attaching institutional liability to the state. This article shifts the locus of accountability from individual perpetrators to the supervisory authority of local government. |
| 2 | Rumahorbo (2025) | Individual criminal liability of perpetrators of violence against children and the scope of supervisory negligence in early childhood education facilities. | Accepts the doctrinal premise that supervisory negligence is legally significant, but argues that criminal characterisation is insufficient to produce compensation for victims. The present article reconstructs negligence as an actionable administrative wrong. |
| 3 | Barokah & Erliyana (2021) | Transition of absolute competence over Onrechtmatige Overheidsdaad (OOD) disputes from the general courts to the Administrative Court (PTUN) following Law No. 30 of 2014 | Adopts this competence framework as the procedural foundation, but extends it by formulating a substantive litigation route through which a local government may be compelled to provide financial restitution within PTUN proceedings. |

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| | | and PERMA No. 2 of 2019. | |
| 4 | Asimah & Erliyana (2025) | Expansion of the definition of governmental action to encompass passive conduct (omission) as a category of administrative wrong. | Builds upon the recognition of omission as an actionable act but advances beyond declaratory annulment by integrating the doctrine of vicarious liability to support claims for compensation. |
| 5 | Antoro & Miladmahesi (2023) | Application of vicarious liability under Article 1367 of the Indonesian Civil Code (KUHPerdata) within private-law adjudication. | Transplants the doctrine from its civil-law setting into administrative adjudication, establishing the "close connection" between the licensing authority of local government and the harm suffered by child victims. |

Source: Author's Work (2026)

The dominance of the two approaches outlined above leaves a research gap within the framework of restorative justice for child victims of systemic violence. The criminal approach localises culpability upon individual offenders whose financial capacity is generally limited and is therefore unable to compel the state institution to bear responsibility for its negligence or to provide compensation for the long-term medical and psychological rehabilitation of victims. The administrative-law literature on OOD, on the other hand, has not yet articulated a specific litigation formulation that integrates the public-law character of administrative wrong with the private-law mechanism of compensation. The absence of integration between administrative and civil liability has provided the

doctrinal basis upon which local governments are typically released from any obligation to provide financial restitution to affected citizens.

This article advances a theoretical and pragmatic contribution by reconstructing the doctrine of *vicarious liability* for application within public administrative adjudication. The doctrine, which finds its normative basis in Article 1367 of the Indonesian Civil Code (KUHPerdata), is employed to establish that the state holds a "close connection" to the harm suffered by victims through its monopoly over licensing authority (Antoro and Miladmahesi 2023). The transplantation of this concept supports the formulation of a litigation route through which citizens may bring proceedings against the head of a regional government or the related agency before the Administrative Court, with the consequence that the court is no longer limited to declaratory annulment but is authorised to issue executory rulings ordering the disbursement of Regional Budget (APBD) funds. The imposition of joint financial liability upon the state treasury is positioned as the doctrinal mechanism through which the principle of accountability of government action acquires concrete legal force.

On the basis of the gap and the contribution identified above, this study advances two research questions that frame the subsequent analysis. *First*, can the local government's failure to oversee illegal daycare centers be classified as an *Onrechtmatige Overheidsdaad*? *Second*, how is the doctrine of *vicarious liability* applied in administrative disputes regarding the restoration of children's constitutional rights?

## B. RESEARCH METHOD

This research is conducted through a normative juridical research design organised as a *systematic normative approach*, in which positive law is examined as an internally coherent system of norms whose hierarchical and functional integrity is tested against concrete factual situations (Marzuki 2019). The systematic character of the inquiry follows the classical tradition of Indonesian administrative law, in which the validity of governmental conduct is assessed through both written norms and the general principles of good governance (*algemene beginselen van behoorlijk bestuur*) as systematised by Utrecht (1990) and elaborated by Hadjon (1987). Five complementary approaches are mobilised in combination. The *statute approach* maps the hierarchical relationship among the relevant norms; the *conceptual approach* synthesises the doctrines of state omission, *Onrechtmatige Overheidsdaad* (OOD), and *vicarious liability*; the *case approach* examines authoritative judicial rulings in which these doctrines have been applied; the *historical approach* traces the doctrinal evolution of OOD; and the *comparative administrative law approach* draws upon the Dutch jurisprudential foundation from which Indonesian administrative law has historically received the OOD doctrine (Al'anam and Prabowo 2025). Operating on this design, the study draws upon three categories of legal materials. Primary legal materials comprise the 1945 Constitution of the Republic of Indonesia, in particular Articles 28B(2) and 28I(4), which constitutionalise the rights of the child in alignment with the Convention on the Rights of the Child of 1989 internalised through Presidential Decree No. 36 of 1990 (Riyadi & Abdi, 2007); Law No. 39 of 1999 concerning Human Rights; Law No. 35 of 2014 concerning Child

Protection; Law No. 30 of 2014 concerning Government Administration; the Indonesian Civil Code (KUHPerdata), particularly Article 1367; Supreme Court Regulation (PERMA) No. 2 of 2019; and Regulation of the Minister of Education and Culture No. 137 of 2014. The primary materials further include jurisprudence in the form of rulings of the Administrative Court (*Putusan Pengadilan Tata Usaha Negara*) and rulings of the Supreme Court (*Putusan Mahkamah Agung*) on OOD disputes, retrieved through the Supreme Court Directory of Decisions (*Direktori Putusan Mahkamah Agung*), which provide the basis for assessing the judicial reception of the doctrine following the transfer of absolute competence under Law No. 30 of 2014. Secondary legal materials consist of authoritative doctrinal works of Indonesian and Dutch administrative law (Hadjon and Djatmiati 2017), together with Rahardjo's (2009) conceptual frame of *responsive law* (hukum responsif), through which the protective orientation of legal norms is appraised. The *case-based legal analysis* of the Wensen School Depok case (August 2024) and the Little Aresha case in Yogyakarta (April 2026) is conducted on the basis of official institutional documents issued by the Indonesian Child Protection Commission (KPAI), the Ministry of Women's Empowerment and Child Protection (KPPPA), the Indonesian Ombudsman, the regional governments concerned, and the Indonesian Police, alongside judicial and prosecutorial records; validation proceeds through source triangulation among institutional documents of different origin. These materials are construed through four methods of legal interpretation operating in combination rather than in alternation, each directed at the regulatory vacuum in the supervision of unlicensed daycare facilities. *Systematic interpretation* situates each norm within the hierarchical and functional

structure of Indonesian legal sources, by which the vacuum is identified as the disjunction between the constitutional duty of child protection under Articles 28B(2) and 28I(4) and the technical-administrative provisions of Regulation No. 137 of 2014, which lack a corresponding sanctioning mechanism. *Teleological interpretation* reads each provision in the light of its protective purpose, locating that purpose in the constitutional commitment to the integrity and development of the child; in the spirit of Rahardjo's (2009) *responsive law*, no administrative construction that frustrates this purpose is doctrinally admissible. *Conceptual interpretation* isolates the constitutive elements of the central legal categories state omission, duty of supervision, *close connection*, and joint liability and tests their internal coherence when transposed to the daycare context, drawing upon the conceptual apparatus developed by Van Wijk and Konijnenbelt (2008). *Historical interpretation* traces the genealogy of ***Onrechtmatige Overheidsdaad*** from its origin in Dutch administrative jurisprudence, its reception into the Indonesian legal order through Utrecht's (1990) systematisation, its consolidation under Law No. 30 of 2014 and PERMA No. 2 of 2019, and the parallel development of *vicarious liability* under Article 1367 of the Indonesian Civil Code (Hadjon, 1987). Upon this interpretative foundation, three *techniques for analyzing legal materials* are applied to construct the doctrinal argument. The first is the *doctrinal syllogism*, in which a binding legal source or an established doctrinal proposition supplies the major premise, the qualified facts of the case drawn from the case-based legal analysis supply the minor premise, and the legal qualification follows from the application of the former to the latter. The second is *analogia legis*, by which the doctrine of *vicarious liability* under Article 1367 of the Civil Code is transplanted

into administrative adjudication, grounded in the structural similarity between the *close connection* of an employer to the conduct of an employee and that of the licensing authority to the operation of a daycare facility within its supervisory jurisdiction. The third is *a contrario* reasoning, employed to engage potential counter-arguments and to test the proposed construction against the protective purpose identified through teleological interpretation. Through the integration of these techniques with the case-based legal analysis and the four methods of interpretation, the study produces prescriptive conclusions addressed to the legislator, the administrative judge, and regional government authorities, thereby fulfilling the operative function attributed to legal scholarship within the systematic tradition of Indonesian administrative law (Hadjon & Djatmiati, 2017).

## C. RESULT AND DISCUSSION

### 1. The Positive Obligations of the State and the Constitutional Rights of the Child

The right of the child to physical safety and to psychological integrity is not confined to the domestic sphere of the family or to a private relationship between parents and caregivers. It is a fundamental right constitutionally guaranteed under Article 28B paragraph (2) of the 1945 Constitution, by which every child possesses the right to life, growth, and development, as well as the right to protection from violence and discrimination (Asshiddiqie 2014). This provision establishes the child as an independent holder of constitutional rights rather than as a mere object of caregiving subject to the supervision of parents or third parties (O'Mahony 2025).

The constitutional status of the child as a rights holder is paired with a corresponding obligation upon the state. Article 28I paragraph (4) of the 1945 Constitution attributes the duty of protecting, advancing, enforcing, and fulfilling human rights to the government (Hadiarto and Karyadie 2022). This pairing reflects the systematic structure of Indonesian administrative law described by Utrecht (1990), in which the authority of the state is constituted not solely as power but as *function* oriented toward the protection of citizens. The same orientation is articulated in the doctrine of legal protection developed by Hadjon (1987), under which the legal subject is the bearer of rights to be safeguarded against governmental action and against the conduct of private parties operating within the state's regulatory jurisdiction.

In contemporary human rights doctrine, the operationalisation of this constitutional obligation is examined through the Tripartite Obligations Theory. The state bears three layers of obligation, namely the obligation to respect, the obligation to protect, and the obligation to fulfil human rights (Hadiarto and Karyadie 2022). Within the supervision of childcare facilities, analytical emphasis falls upon the obligation to protect, which requires the state to take proactive and measurable steps to prevent non-state actors including private *daycare* operators from committing acts that infringe upon the rights of the child (Asimah and Erliyana 2025).

The obligation to protect does not exhaust itself in the production of normative texts or in the formal promulgation of safety standards. It requires the supervision of private compliance through identifiable administrative instruments (Ilham et al. 2023). Where private actors commit acts of physical,

psychological, or moral harm within the regulatory jurisdiction of the state, those acts may be attributed to the state to the extent that adequate prevention mechanisms (*due diligence*) have not been designed and executed (Stoyanova 2023). This proposition is consistent with the conceptual structure of Dutch administrative law as systematised by Van Wijk and Konijnenbelt (2008), under which the supervisory authority of the administration constitutes a legal duty whose non-performance is examinable as an administrative wrong.

The modern paradigm of human rights protection has departed from the earlier conception of the state's obligations as confined to negative duties of non-interference. Within the framework of the welfare state, the doctrine of Positive Obligations requires the state to take active and preventive measures to protect fundamental rights against measurable threats of harm (Skolnik 2025). The threats may originate from inter-personal interactions in private settings or from the operation of non-state commercial entities. This understanding informs Rahardjo's (2009) conceptual frame of *responsive law*, under which legal norms are to be construed in light of their protective purpose rather than as formal categories detached from social reality.

Applied to the context of unlicensed *daycare* operations, the doctrine of Positive Obligations imposes a duty upon the local government to ensure the operation of supervisory mechanisms periodic field inspections, audits of licensing compliance, and enforcement against unlicensed facilities (Maiyah and Aisyah 2025). The plea of limited bureaucratic resources, the concealment of operations by operators, or the characterisation of the harm as a private matter does not displace this constitutional duty. The presence of the state in the

licensing supervision of private *daycare* facilities is the operational manifestation of its obligation to protect.

Where the supervisory mechanism remains inoperative despite the existence of statutory authority, the conduct of the local government may be examined as a structural form of administrative omission. The licensing of educational institutions has been monopolised by the state through positive law (Ridwan HR 2020); once this monopoly is established, the failure of the licensing authority to act upon unlicensed operations constitutes a non-performance of the obligation to protect (Asimah and Erliyana 2025). The juridical consequence is the potential attribution of administrative liability to the government for damage suffered by citizens within the unsupervised facilities. This attribution is examinable through the Administrative Court (PTUN) under the legal construction of an Unlawful Act by the Government, to which the subsequent sub-section is devoted.

**2. The Anatomy of State Omission as Onrechtmatige Overheidsdaad**

The legal construction of an Unlawful Act by the Government, or *Onrechtmatige Overheidsdaad* (OOD), has undergone significant doctrinal transformation following the enactment of Law No. 30 of 2014 concerning Government Administration and Supreme Court Regulation (PERMA) No. 2 of 2019 (Antoro and Miladmahesi 2023). The definition of governmental action is no longer confined to the issuance of written State Administrative Decisions (*Keputusan Tata Usaha Negara / KTUN*); it encompasses factual conduct (*feitelijke handelingen*), whether active or passive, and includes omission (Asimah and Erliyana 2025). The shift of absolute competence over OOD disputes from the general courts to the Administrative Court (PTUN) is

documented by Barokah and Erliyana (2021) and is doctrinally consolidated by Hadjon and Djatmiati (2017).

Within this framework, the qualification of state omission as OOD proceeds through four constitutive elements: (i) the existence of a legal duty to act; (ii) administrative fault, whether in the form of intent (*dolus*) or negligence (*culpa*); (iii) damage suffered by the citizen; and (iv) a causal connection between the conduct of the authority and the damage. Each element is examined below in the context of unlicensed *daycare* operations.

***a. The Legal Duty to Act***

The first element is the existence of an attributable legal duty. The local government, through its Education Office and licensing agencies, holds an authoritative mandate under Regulation of the Minister of Education and Culture No. 137 of 2014 to regulate, supervise, and evaluate non-formal Early Childhood Education (PAUD) entities. This duty is imperative rather than facultative; the licensing authority operates as a regulatory body that must ensure compliance with the standards of safety, educator-to-child ratios, and facility adequacy. The absence of supervision over institutions openly offering childcare services to the public constitutes a non-performance of this positive legal duty (Asimah and Erliyana 2025). The classical formulation by Utrecht (1990) likewise treats supervisory authority as a legal duty whose neglect is examinable on the same plane as any other administrative wrong.

***b. Administrative Fault: From Dolus to Culpa***

The second element is administrative fault. Within administrative law, fault does not invariably require evidence of intent; the demonstration of

negligence (*culpa*) suffices, particularly where the duty in question is one of supervision (Ridwan HR 2020). The General Principles of Good Governance (*algemene beginselen van behoorlijk bestuur / AUPB*), in particular the principle of carefulness (*zorgvuldigheidsbeginsel*), supplies the doctrinal yardstick against which the conduct of the authority is measured (Van Wijk & Konijnenbelt, 2008). The continued operation of unlicensed *daycare* facilities, observable in residential areas and accessible through ordinary commercial channels, indicates that the supervisory authority has not exercised the standard of carefulness required by AUPB.

The recurring narrative of unawareness or of being unable to detect such operations is examinable through the argument of administrative data accessibility. The state retains operational control over the population administration system (*SIAK*), the regime of Building Approvals (*PBG*), and the supervisory chain extending from the district and village to the level of the Neighbourhood Association (*Rukun Tetangga / RT*). The commercial operation of a *daycare* centre that mobilises children on a regular schedule is unlikely to escape the perception of the territorial apparatus where inter-agency coordination is operating to the standard set by Regulation No. 137 of 2014. The plea of unawareness is therefore analysable as a failure of internal data synchronisation, the legal consequences of which remain attached to the licensing authority (Ridwan HR 2020).

***c. Foreseeability and Preventability of Harm***

The third element is the foreseeability and preventability of the harm. Doctrinally, the licensing authority is presumed capable of anticipating that

childcare facilities operating without verification under the national PAUD standards carry a heightened risk of malpractice, violence, and disregard of safety standards. The risk is foreseeable precisely because the licensing standards were established for the purpose of mitigating it (Shihab and Nurbaiti 2025). The non-performance of field audits indicates that the opportunity to mitigate identifiable harm has not been used, notwithstanding the technical and legal capacity of the authority to do so. The doctrine of *responsive law* articulated by Rahardjo (2009) supports the construction that legal authority unaccompanied by responsive supervisory practice fails to operationalise the protective purpose of the norm.

***d. Causation: Adequate Veroorzaking***

The fourth element is the causal connection between the conduct of the authority and the damage suffered. The analysis of causation in administrative law conventionally employs the theory of adequate causation (*adequate veroorzaking*), under which the tolerance of unlicensed operations constitutes a factor that significantly contributes to the materialisation of harm. Without the supervisory omission of the licensing authority, unlicensed facilities would not be in a position to operate openly, and the risk of abuse by uncertified caregivers would be reduced through the operation of the licensing filter (Khafifah, Minan, and Rusydi 2023). The absence of this filter is not the sole cause of the harm; rather, it is one of the conditions without which the harm would not have occurred in the form it did (Van Wijk & Konijnenbelt, 2008). The proposition that state omission qualifies as a contributing cause does not displace the criminal liability of the direct offender; it establishes, in

parallel, that the supervisory authority occupies the position of a contributing actor whose tolerance of the unlawful operation enabled the harm to materialise.

## 3. Jurisprudential Evidence: Indonesian PTUN Decisions and Comparative Doctrine

The doctrinal proposition advanced in the preceding sub-section is examined here against three layers of jurisprudential evidence. The first layer addresses the developing state of Indonesian OOD jurisprudence and identifies the specific gap that this article seeks to fill. The second layer analyses three concrete Indonesian PTUN decisions in which the doctrine of OOD has been applied to administrative omission and to factual government conduct; these decisions are presented in their published form and constitute the doctrinal substrate upon which the construction proposed in this article rests. The third layer draws upon comparative jurisprudence from the European Court of Human Rights (ECtHR) and from the Dutch Supreme Court (*Hoge Raad*), where supervisory omission has been recognised as a basis for state liability.

### *a. The Developing State of Indonesian OOD Jurisprudence: Identifying the Specific Gap*

Following the transfer of absolute competence over OOD disputes to PTUN under Law No. 30 of 2014 and Supreme Court Regulation (PERMA) No. 2 of 2019, the body of Indonesian jurisprudence applying the OOD framework to administrative omission has begun to develop. Decisions of the Administrative Court have recognised the qualification of governmental inaction as OOD in particular subject-matter contexts, including economic

policy administration and the implementation of supervisory recommendations issued by independent oversight bodies (Fauzi and Erliyana 2023). The doctrinal foundation for these decisions rests upon Article 87(a) of Law No. 30 of 2014, which extends the concept of *KTUN* to factual conduct, and upon Article 1 paragraph (1) of PERMA No. 2 of 2019, which defines governmental action as encompassing both performance and non-performance of concrete conduct in the administration of government.

Notwithstanding this developing jurisprudence, no published Indonesian decision has applied the OOD framework specifically to the local government's supervisory omission over *daycare* facilities or comparable child-protection installations. The construction advanced in this article therefore addresses a subject-matter gap rather than a doctrinal vacuum: the OOD framework is doctrinally available, the qualification of omission as factual conduct is jurisprudentially established, but the application of this framework to supervisory omission in the protection of children within *daycare* facilities has not yet occurred in Indonesian adjudicative practice. The article is positioned as a doctrinal construction that draws upon the existing OOD-omission jurisprudence and extends it to a configuration of supervisory authority and protective duty that has not previously been addressed by Indonesian administrative judges (Rahardjo, 2009).

The further refinement required to operationalise this construction concerns the doctrinal apparatus for the application of *vicarious liability* within administrative adjudication the central proposition of this article. Indonesian OOD jurisprudence to date has predominantly addressed the

direct administrative liability of the relevant authority for its own conduct; the application of *vicarious liability* under Article 1367 of the Civil Code as the mechanism through which the supervisory authority bears joint liability with the supervised private actor remains to be articulated. The contribution of the article lies in advancing this doctrinal construction within the framework of established Indonesian OOD jurisprudence.

***b. Three Indonesian PTUN Decisions: The Doctrinal Substrate***

Three Indonesian decisions supply the doctrinal substrate upon which the construction advanced in this article rests. Each is examined here solely in relation to the proposition for which it stands.

The first is *PT Permata Hijau Palm Oleo v. Menteri Perdagangan* (Putusan PTUN Jakarta No. 473/G/TF/2023/PTUN.JKT, 26 February 2024). The Administrative Court of Jakarta qualified the Minister of Trade's failure to respond to a citizen's request for confirmation of follow-up action upon a documented Ombudsman finding as inactive conduct constituting OOD, with defects of procedure and of substance, and ordered the Minister to perform the omitted conduct. The decision is doctrinally relevant on two points. First, it establishes within Indonesian administrative jurisprudence that the non-performance of a duty whose substance is identifiable by reference to statutory provisions and to documented findings of an oversight body qualifies as OOD; this is the structural analogue to the daycare context, where KPAI, KPPPA, and Ombudsman findings would supply the documentary basis. Second, the Court rejected the plaintiff's monetary claim for want of a sufficient causal nexus between the specific omission and the damage a

holding that confirms the necessity of the very conceptual bridge that *vicarious liability* under Article 1367 KUHPerdata is proposed to supply, a doctrinal step undertaken in the analysis that immediately follows.

The second is *Sienny Senjaya dan Erning Mukti Wibowo v. Kepala Satuan Polisi Pamong Praja Kabupaten Bogor* (Putusan PTUN Bandung No. 16/G/TF/2023/PTUN.BDG, 26 June 2023). Although the substantive outcome was unfavourable to the plaintiffs, the deciding chamber articulated the proposition that the concept of *perbuatan* within PERMA No. 2 of 2019 encompasses not only positive conduct but also the failure to act (*tidak berbuat*) where unlawful and damage-causing. This judicial articulation is the doctrinal point taken from the decision; it confirms that Indonesian administrative judges read PERMA No. 2 of 2019 broadly enough to bring supervisory omission within the substantive scope of OOD adjudication, as required by the construction advanced here.

*The third*, is *Komunitas Konsumen Indonesia v. Menteri Komunikasi dan Informatika dan PT Tokopedia* (Putusan Sela Pengadilan Negeri Jakarta Pusat No. 235/Pdt.G/2020/PN.Jkt.Pst). The District Court declined competence over a tort action concerning the Minister's failure to impose administrative sanctions upon a regulated private actor following a documented data breach, on the ground that such disputes fall within the exclusive competence of PTUN under Article 87(a) of Law No. 30 of 2014 and PERMA No. 2 of 2019. The doctrinal point taken from the decision is institutional: any future action grounded in the local government's supervisory omission over *daycare* facilities is, on this authority, properly brought before the Administrative

Court a proposition that consolidates the procedural foundation of the present article.

Taken together, the three decisions establish that OOD-omission is recognised in Indonesian jurisprudence (*Permata Hijau*), that the substantive scope of OOD encompasses the failure to act (*Megamendung*), and that the procedural forum is the Administrative Court (*Tokopedia*). To the best knowledge documented in the published jurisprudence, however, no Indonesian decision has applied this framework to local-government supervisory omission in the *daycare* context, nor combined the framework with the transplantation of *vicarious liability* under Article 1367 KUHPerdata. The article addresses this twofold subject-matter gap within the developing Indonesian OOD jurisprudence.

***c. Constitutional Doctrine and Quasi-Jurisprudential Findings***

The Indonesian PTUN jurisprudence examined above is reinforced by two further categories of domestic material that, while not constituting OOD jurisprudence in the strict sense, supply doctrinal and institutional context. The first category is the constitutional doctrine developed by the Constitutional Court (*MK*) on the positive obligations of the state for the protection of vulnerable groups, including children. The MK's interpretations of Article 28B paragraph (2) and Article 28I paragraph (4) of the 1945 Constitution establish that the duty of protection is binding upon the government as a matter of constitutional law (Asshiddiqie 2014). The constitutional doctrine operates as a normative anchor for the administrative-law construction advanced in this article.

The second category is the body of quasi-jurisprudential findings issued by independent institutional actors the Indonesian Ombudsman (*Ombudsman Republik Indonesia*) and the Indonesian Child Protection Commission (*Komisi Perlindungan Anak Indonesia / KPAI*). The Ombudsman regularly publishes findings of maladministration concerning supervisory failures of regional governments, and KPAI has issued institutional findings in connection with the Wensen School Depok case and the Little Aresha case in Yogyakarta that attribute institutional responsibility to the relevant regional authorities. The relevance of these findings to OOD adjudication is illustrated by the *Permata Hijau* decision examined above, in which the Administrative Court relied upon a published Ombudsman LAHP as the documented basis upon which the Minister's non-response was qualified as inactive conduct. The institutional architecture for analogous adjudication in the daycare context is therefore already in place.

***d. Comparative Jurisprudence: Five Verifiable Case Studies***

The doctrinal proposition advanced in this article is supported by a developed body of comparative jurisprudence in which supervisory omission has been recognised as a basis for state liability. The cases examined below are presented in their published form and are drawn from the European Court of Human Rights (ECtHR) and the Dutch Supreme Court (*Hoge Raad*), from whose administrative tradition Indonesian administrative law has historically received the *onrechtmatige overheidsdaad* framework through the systematisation of Utrecht (1990).

In *Osman v. United Kingdom* (application no. 23452/94, Grand Chamber judgment of 28 October 1998), the ECtHR articulated the standard under which the state may be financially responsible where its authorities fail to take reasonable preventive measures against a real and immediate risk to the life of an identified individual. The *Osman test* knowledge of the risk, knowledge of the existence of measures within the authority's powers, and the reasonable expectation that such measures might have avoided the risk reproduces the structural conditions of the daycare-supervision context with the substitution of the licensing authority for the police authority of *Osman* (Leisure 2025).

In *Z and Others v. United Kingdom* (application no. 29392/95, Grand Chamber judgment of 10 May 2001), the ECtHR held that the local authority's prolonged failure to remove four children from a household in which they were subjected to severe neglect and ill-treatment constituted a violation of Article 3 of the Convention and warranted compensation. The doctrinal significance of *Z and Others* lies in the recognition that prolonged supervisory passivity, in circumstances where the authority possessed both the knowledge and the legal power to act, constitutes a substantive violation of the state's positive obligations, the financial consequence of which is properly imposed upon the state itself.

In *E. and Others v. United Kingdom* (application no. 33218/96, judgment of 26 November 2002), the ECtHR found a violation of Article 3 in connection with the failure of social services to take adequate steps to protect children from abuse by their stepfather despite the existence of clear indications of risk. The case extends the proposition of *Z and Others* to harm

caused by non-state actors operating within domestic settings, where the authority possessed the legal and operational capacity to detect the risk.

In *O'Keeffe v. Ireland* (application no. 35810/09, Grand Chamber judgment of 28 January 2014), the ECtHR held the State of Ireland responsible for the sexual abuse suffered by a pupil at a National School, notwithstanding that the school was operated by a non-state religious body and that the immediate perpetrator was a lay teacher. The case is the most structurally analogous to the present discussion: the Grand Chamber held that the private operational character of the immediate setting in which harm occurs does not displace the state's primary obligation to ensure the existence and effective operation of supervisory mechanisms within its regulatory jurisdiction. *O'Keeffe* supplies the doctrinal proposition that the private operational character of *daycare* facilities does not exhaust the state's responsibility.

Within Dutch administrative jurisprudence, the recognition of state liability for supervisory omission has been developed in the *Vie d'Or* judgment (*Hoge Raad*, 13 October 2006, NJ 2008/527). The Court held that the supervisory authority could be liable in tort under *onrechtmatige daad* where the discharge of its supervisory functions had fallen below the standard of carefulness required by the *zorgvuldigheidsbeginsel*, subject to a margin of regulatory discretion. The doctrine is structurally close to the construction advanced here: the supervisory authority over private regulated actors occupies a position of regulatory gatekeeping, the breach of which gives rise

to liability calibrated by reference to the available margin of discretion (Van Wijk & Konijnenbelt, 2008).

***e. Doctrinal Synthesis***

The three layers of jurisprudential evidence examined above are mutually supportive. The diagnostic identification of the subject-matter gap clarifies the prospective contribution of the article. The Indonesian PTUN decisions establish that OOD-omission is doctrinally available within Indonesian administrative law, that the procedural forum for its adjudication is the Administrative Court, and that the documented findings of independent oversight bodies operate as a permissible evidentiary basis. The comparative jurisprudence drawn from the European Court of Human Rights and the Dutch Supreme Court further confirms the structural viability of the construction within mature administrative legal systems and supplies the doctrinal apparatus the *Osman test*, the doctrine of positive obligations under Articles 2 and 3 of the European Convention, and the *Vie d'Or* supervisory-liability framework that may be received into Indonesian doctrinal development. Taken together, the three layers position the construction advanced in this article as a forward-looking doctrinal proposition that builds upon, rather than departs from, the existing Indonesian jurisprudence.

## 4. The Transplantation of Vicarious Liability into Administrative Law: A Doctrinal Test

With the qualification of state omission as OOD established and the supportive jurisprudential evidence surveyed, the question arises as to the form of liability through which damage is to be borne. The present article advances

the proposition that the doctrine of *vicarious liability*, grounded in Article 1367 of the Indonesian Civil Code (KUHPerdata), may be transplanted into administrative adjudication as the mechanism through which the local government bears joint financial liability for damage suffered by child victims (Gredka-Ligarska 2025). The transplantation is examined doctrinally in three steps: the conceptual basis of *vicarious liability*; its systematic distinction from *strict liability*; and its position relative to other regimes of administrative liability.

***a. The Conceptual Basis of Vicarious Liability***

Article 1367 of the Civil Code provides that a person is liable not only for damage caused by his or her own acts but also for damage caused by persons under his or her supervision. The doctrinal core of *vicarious liability* is the *close connection* between the supervisory authority and the conduct of the supervised actor (Dirgantara et al. 2026). The doctrine has long been applied within civil adjudication in employer-employee relationships and in principal-agent contexts. Its transplantation into administrative adjudication rests upon the structural similarity between the supervisory authority of a private employer over an employee and the licensing supervisory authority of the state over a regulated private actor. The doctrine of legal protection elaborated by Hadjon (1987) supplies the further proposition that this connection is doctrinally adequate to support the imposition of compensatory liability upon the supervisory authority.

**b. *Systematic Distinction from Strict Liability***

The transplantation proposed in this article does not rest upon the doctrine of *strict liability*. The two doctrines are systematically distinct, and their conflation is doctrinally inadmissible. Three points of distinction may be identified.

*First,* the doctrines differ as to the basis of attribution. *Vicarious liability* attributes liability on the basis of a *relationship of supervision* between two legal subjects, one of whom commits a wrongful act for which the other is held jointly responsible. The attribution is relational. *Strict liability*, by contrast, attributes liability on the basis of the *nature of the activity* itself, such that the actor bears responsibility for damage arising from a hazardous activity regardless of the existence of fault (Dirgantara et al. 2026). The two doctrines operate on different theoretical planes.

*Second,* the doctrines differ as to the role of fault. *Vicarious liability* presupposes a wrongful act on the part of the supervised actor; the supervisor is liable on the ground that the act of the supervised actor falls within the scope of the supervisor's regulatory jurisdiction. *Strict liability* dispenses with the requirement of fault on the part of the actor; the materialisation of damage from a hazardous activity is sufficient to attribute liability. Within the context of this article, the proposition advanced is that the local government is liable not because childcare is inherently hazardous, but because the wrongful conduct of the operator occurred within the supervisory jurisdiction of the government and would have been avoidable through the proper exercise of that jurisdiction.

*Third*, the doctrines differ as to the scope of admissible defences. Under *vicarious liability*, the supervisor may defeat the attribution by demonstrating that all reasonable supervisory measures were taken or that the act of the supervised actor falls outside the scope of the supervisory relationship. Under *strict liability*, such defences are unavailable, and only the most narrowly defined exceptions *force majeure*, contributory fault of the victim, or intervention of an unforeseeable third party are recognised. The construction proposed in this article preserves the supervisory defence; a local government that demonstrates the discharge of its supervisory duty through documented field inspections and enforcement against unlicensed operations cannot be held vicariously liable. The doctrinal economy is therefore proportionate. The Dutch *Vie d'Or* doctrine operates in the same register: liability is calibrated by reference to the margin of regulatory discretion available to the supervisory authority.

**c. *Comparison with Other Regimes of Administrative Liability***

The transplantation of *vicarious liability* into administrative adjudication operates within a broader landscape of administrative liability regimes, against which it may be situated for clarity. The *direct liability regime* attributes liability to the administration for its own acts, whether in the form of unlawful decisions or in the form of factual conduct (Antoro and Miladmahesi 2023). This regime is the principal mode of attribution within Indonesian administrative law, and it has been consolidated by the absorption of factual-action disputes into PTUN competence under PERMA No. 2 of 2019. The *Permata Hijau* decision examined among the Indonesian PTUN

decisions discussed above operates within this regime. The construction advanced in this article complements the direct liability regime: the omission of supervision is, in itself, a form of factual conduct attributable to the administration under the direct liability framework, and *vicarious liability* supplies the conceptual bridge by which the damage caused by the supervised private actor is also brought within the financial responsibility of the supervisory authority.

The *risk-based liability regime* expressed within Indonesian environmental law attributes financial responsibility to the actor whose activity creates an unusual or systematic risk to the environment or to public health. This regime is structurally a *strict liability* regime and is doctrinally distinct from the construction proposed in this article. The *liability for legislative acts regime*, recognised in comparative European administrative law and elaborated within the Dutch tradition by Van Wijk and Konijnenbelt (2008), attributes financial liability to the state for damage caused by lawfully enacted norms whose effect falls disproportionately upon identifiable parties. Both regimes are included only to delineate the scope of the proposition: the article addresses unlawful supervisory omission, not hazardous activity and not lawful regulation.

The transplantation, so understood, is doctrinally measured rather than expansive. It uses a private-law doctrine of established pedigree to address a problem that has emerged within administrative adjudication only since the absorption of factual-action disputes into PTUN competence. The proposition does not require the recognition of a new category of administrative wrong;

it requires the application of an established doctrine of supervisory liability to a configuration of supervisory authority that already exists under Indonesian law (Hadjon and Djatmiati 2017).

## 5. Counter-Arguments and Doctrinal Objections

The proposition advanced above is open to a series of doctrinal objections. The present sub-section identifies and engages five principal counter-arguments: the potential characterisation of PTUN involvement as *ultra vires*; the constitutional limits of the authority of the administrative judge; the conflict with the fiscal policy of the executive; the principle of legality in the formulation of the Regional Budget (*APBD*); and the practical problem of executability.

### a. *The Potential Ultra Vires of PTUN*

The first objection holds that the imposition of financial liability upon the local government, particularly where it requires the disbursement of public funds, exceeds the constitutional and statutory authority of the Administrative Court. Under Article 47 of Law No. 5 of 1986 as amended, the competence of PTUN is directed at the examination, decision, and resolution of state administrative disputes, traditionally understood as disputes over the legality of *KTUN*. Compensation, on this view, is an instrument of civil law within the competence of the general courts.

The objection is doctrinally engaged through the analysis of post-PERMA 2/2019 competence. The transfer of factual-action disputes and OOD disputes to PTUN under Law No. 30 of 2014 and PERMA No. 2 of 2019 brings into the competence of the administrative judge not only the examination of legality but also the consequential resolution of the dispute, including the

remedy required to restore the rights of the citizen (Barokah and Erliyana 2021). The *Tokopedia* interim decision examined among the Indonesian PTUN decisions discussed above confirms this position from the perspective of the general courts, which have declined competence over OOD-omission disputes precisely on the ground that such disputes fall within the exclusive competence of PTUN. Compensation, on this construction, is an instrument internal to the administrative dispute rather than an external civil-law import. The construction advanced in this article remains within this framework: the administrative judge does not invent a new remedy but applies a doctrine of liability whose function is to determine the proper allocation of the compensatory consequence. The act is not *ultra vires* but the operationalisation of the competence transferred under PERMA No. 2 of 2019 (Fauzi and Erliyana 2023).

**b. *The Constitutional Limits of the Administrative Judge***

The second objection contends that the imposition of joint liability requires the administrative judge to engage with the conduct of private actors, thereby straying beyond the proper subject-matter jurisdiction of the administrative court. The administrative judge, on this view, is empowered to examine the conduct of administrative authorities, not of private operators.

The construction proposed in this article does not require the administrative judge to adjudicate the conduct of the *daycare* operator as such. The conduct of the operator is treated as an established factual matrix, whether through prior criminal adjudication or through documented institutional findings (KPAI, KPPPA, the Indonesian Ombudsman). This

evidentiary structure is consistent with the *Permata Hijau* decision, in which the Administrative Court accepted a published Ombudsman LAHP as the documented basis upon which the underlying administrative failure was qualified. The administrative judge examines whether the supervisory omission of the licensing authority falls within the four constitutive elements of OOD and whether the *close connection* between the supervisory authority and the operator's conduct supports the imposition of joint financial liability. The locus of adjudication remains the administrative authority. The conduct of the private actor is the factual condition against which the administrative omission is measured, not the substantive object of the judicial determination.

**c. *Conflict with the Fiscal Policy of the Executive***

The third objection identifies a potential conflict between judicial rulings of compensation and the fiscal policy of the executive branch. The allocation of regional resources is a function of executive discretion, exercised within the parameters set by the legislative body (*DPRD*). A judicial ruling that directs the disbursement of regional funds may be characterised as a judicial intrusion into executive fiscal policy and into the separation of powers.

This objection is engaged through two considerations. First, the imposition of financial liability through a judicial ruling does not constitute the formulation of fiscal policy. It constitutes the determination of a legal consequence flowing from the established commission of an administrative wrong. The executive retains its discretion as to the manner in which the financial obligation is satisfied within the framework of regional budgetary law. Second, the recognition of judicial authority to determine the financial

consequences of administrative wrongs is consistent with the doctrine of *rechtmatig bestuur* articulated within Dutch administrative law (Van Wijk & Konijnenbelt, 2008), under which the rule of law subordinates fiscal discretion to the legal consequences of established administrative wrongs. The supervisory function of the judiciary over administrative legality is, on this view, not a violation of the separation of powers but the operationalisation of that very principle.

**d. *The Principle of Legality in the Formulation of the APBD***

The fourth objection draws upon the principle of legality in the formulation of the Regional Budget. Law No. 1 of 2004 concerning the State Treasury, together with the operational framework of regional financial administration, requires that every disbursement of public funds rest upon an antecedent allocation prescribed by the APBD. A judicial ruling directing the disbursement of funds not allocated within the APBD may be characterised as a violation of the principle of legality in regional budgeting.

This objection identifies a procedural difficulty rather than a doctrinal impossibility. Three responses may be advanced. *First,* the principle of legality in budgetary formulation may be satisfied through the inclusion, in the next regional budget cycle, of an allocation line dedicated to the satisfaction of judicial rulings that have become final and binding (*inkracht van gewijsde*). Such an allocation is not foreign to comparative administrative practice and is consistent with the requirements of the rule of law. *Second,* the administrative ruling does not displace the antecedent allocation requirement; it generates the legal obligation upon the executive to propose,

and upon the legislative body to approve, the corresponding allocation. The legality of the disbursement is preserved through the subsequent budgetary process. *Third,* the absence of an immediately available allocation does not extinguish the underlying legal obligation; the non-allocation of funds is the executive's responsibility, not a defence against the judicial determination of liability (Asimah and Erliyana 2025).

**e. *The Problem of Executability***

The fifth objection concerns the practical executability of judicial rulings against the state. Under Article 50 of Law No. 1 of 2004, state and regional assets cannot be attached for the satisfaction of judgments (*non-executable assets*). Without the possibility of attachment, the satisfaction of judicial rulings depends upon the voluntary compliance of administrative authorities, and the available coercive instruments periodic penalty payments (*dwangsom*) and the publication of administrative sanctions in the mass media have not consistently produced timely compliance (Schotel 2021).

This objection identifies the principal practical limitation of the construction proposed in this article. The construction does not purport to resolve the problem of administrative non-compliance, which is a structural feature of Indonesian administrative law extending beyond the present subject matter. The proposition advanced here is that the determination of liability is a necessary step toward the resolution of the underlying problem, even where the immediate execution of the ruling depends upon political and administrative reforms outside the competence of the judiciary. The *Permata Hijau* decision is instructive in this respect: even where the Court ordered the

Minister to perform the omitted conduct, the determination of liability operated as an authoritative judicial qualification around which subsequent institutional reform could be organised. The proposition is consistent with the orientation of *responsive law* articulated by Rahardjo (2009), under which the development of legal doctrine is to proceed in parallel with the development of the institutional capacity required for its operationalisation.

## 6. Limitations of the Litigation Route and Pragmatic Considerations

The construction proposed in this article confronts limitations that are partly doctrinal and partly empirical. The doctrinal limitations have been addressed through the engagement of the five counter-arguments above. The empirical limitations identified below condition the operationalisation of the proposed litigation route and indicate the institutional reforms that the route presupposes.

*The first* empirical limitation is the inconsistency of administrative compliance with judicial rulings, which the literature has documented in connection with PTUN rulings of compensation across various subject matters (Fauzi and Erliyana 2023). The available coercive instruments have proven insufficient to compel timely compliance, and the burden of compensation imposed upon the institution rather than upon the personal assets of the negligent official has reduced the deterrent effect of judicial rulings (Schotel 2021).

*The second* empirical limitation is the absence, at present, of an allocation line within the regional budget dedicated to the satisfaction of judicial rulings that have become final and binding. The introduction of such an allocation, through regulation at the level of a Government Regulation, would address the procedural difficulty arising from the principle of legality in the formulation of

the APBD, as discussed above among the doctrinal objections to the proposed construction (Barokah and Erliyana 2021).

*The third* limitation, addressed in detail in the diagnostic reading of the Indonesian OOD jurisprudence presented above, is the subject-matter gap within Indonesian OOD jurisprudence: while the general doctrinal apparatus for OOD-omission has been developed by Indonesian administrative judges in cases such as *Permata Hijau*, its application to supervisory omission in the context of *daycare* facilities and to the transplantation of *vicarious liability* within OOD adjudication remains to be articulated. The article is positioned as a doctrinal proposal addressed to this further articulation, drawing upon the comparative case studies of the European Court of Human Rights and the Dutch Supreme Court examined above and upon the Indonesian PTUN precedents discussed in the preceding analysis. The proposition is consistent with the doctrinal framework developed by Hadjon and Djatmiati (2017) and with the systematic tradition of Indonesian administrative law as set out by Utrecht (1990) and Ridwan HR (2020); its further consolidation depends upon the reception of the proposition by Indonesian administrative judges and upon the subsequent confirmation of that reception through Supreme Court jurisprudence.

Notwithstanding these limitations, the determination of liability through PTUN adjudication retains a doctrinal and institutional significance independent of the immediate executability of the ruling. A ruling that the local government has committed an Unlawful Act and is jointly liable for the damage suffered by child victims operates as an authoritative determination of legal qualification, around which the subsequent steps of administrative reform, budgetary

allocation, and legislative response may be organised (Dirgantara et al. 2026). The construction proposed in this article is therefore presented not as the totality of the response required, but as the doctrinal point of entry from which the further institutional reforms may proceed. This formulation aligns with Rahardjo's (2009) *responsive law* in its understanding that legal doctrine and institutional capacity develop together, and with the position of Hadjon (1987), under which the protection of citizens against administrative wrongs is to be conceived as the cumulative effect of the legal protection regime as a whole rather than as the product of any single institutional mechanism.

## D. CONCLUSION

This study has constructed a doctrinal pathway through which the supervisory omission of the local government over unlicensed daycare facilities may be qualified as Onrechtmatige Overheidsdaad and litigated before the Administrative Court (PTUN), with the transplantation of vicarious liability under Article 1367 of the Indonesian Civil Code as the mechanism through which the supervisory authority bears joint financial responsibility for damage suffered by child victims. Two prescriptive conclusions follow.

*First,* the existing legal architecture of Indonesian administrative law is doctrinally sufficient to support the proposed construction. The constitutional duty of child protection under Articles 28B(2) and 28I(4), the absolute competence of PTUN over factual conduct under Article 87(a) of Law No. 30 of 2014 and Supreme Court Regulation (PERMA) No. 2 of 2019, the recognition of omission as a form of unlawful governmental action affirmed in *Permata Hijau Palm Oleo* (Putusan PTUN Jakarta No. 473/G/TF/2023/PTUN.JKT) and *Megamendung* (Putusan

PTUN Bandung No. 16/G/TF/2023/PTUN.BDG), and the established private-law doctrine of supervisory liability under Article 1367 KUHPerdata jointly supply the doctrinal materials. What remains absent is not the legal foundation but its articulation by Indonesian administrative judges in the specific configuration of *daycare* supervision and the institutional reforms required to make the resulting rulings effective.

*Second,* the consolidation of this construction depends upon a coordinated response from the legislator, the Supreme Court, and central and regional executives. The Administrative Court alone cannot operationalise the construction in the absence of regulatory clarification of supervisory duties, a procedural framework for vicarious-liability claims within OOD adjudication, a regional-budgetary mechanism for the satisfaction of binding rulings, and a regime of personal accountability for officials whose negligence has been judicially established. The following recommendations are organised by addressee and specify the regulatory and institutional steps through which the doctrinal construction is to be operationalised.

## E. RECOMMENDATIONS

### 1. To the Legislator (Dewan Perwakilan Rakyat Republik Indonesia)

Three legislative amendments are proposed. First, Article 87 of Law No. 30 of 2014 concerning Government Administration should be amended to introduce an explicit definition of *administrative omission* (*omisi administratif*) as a form of unlawful governmental action, with explicit reference to non-performance of supervisory duties under sectoral statutes. The amendment would consolidate the position established jurisprudentially in *Permata Hijau*

and remove the residual interpretive uncertainty in the current text. Second, Law No. 35 of 2014 on Child Protection should be amended to insert a supervisory-duty clause requiring local governments to conduct annual licensing audits of *daycare* and PAUD facilities, with explicit attribution of administrative responsibility for the consequences of non-performance. Third, a statutory foundation for the application of vicarious liability within administrative adjudication should be enacted, either as an amendment to Law No. 30 of 2014 or as a stand-alone provision, in order to establish without doctrinal controversy that the supervisory authority of the state bears joint financial responsibility for damage caused by regulated private actors within its supervisory jurisdiction.

**2. To the Supreme Court of the Republic of Indonesia**

The Supreme Court is the principal actor in the operationalisation of the construction proposed in this article. Three measures are recommended. First, PERMA No. 2 of 2019 should be amended to clarify three procedural matters: (a) the evidentiary standard for the qualification of omission as OOD, including the admissibility of Ombudsman LAHP and KPAI findings as documentary evidence; (b) the procedure for the joinder of vicarious-liability claims within OOD adjudication, including standing for indirectly affected parties such as the parents of child victims; and (c) the formulation of remedial relief, including the calibration of compensation orders against the regulatory discretion available to the supervisory authority. Second, a Supreme Court Circular Letter (*SEMA*) should be issued specifically on OOD-omission, consolidating the doctrinal propositions established in *Permata Hijau*, *Megamendung*, and *Tokopedia*, and supplying guidance to PTUN judges on the application of the

four constitutive elements of OOD to supervisory omission in protective contexts. Third, specialised judicial training on OOD-omission and vicarious liability should be incorporated into the curriculum of the Judicial Training Centre.

**3. To the Central Government**

Three executive measures are recommended. First, a Government Regulation (*PP*) should be issued under Law No. 1 of 2004 on the State Treasury to establish a dedicated budgetary allocation line within both the State Budget (APBN) and the Regional Budget (APBD) for the satisfaction of final and binding judicial rulings (*inkracht van gewijsde*) against the government. This measure addresses the executability concerns identified earlier in connection with the problem of executing PTUN rulings against state and regional assets. Second, Regulation of the Minister of Education and Culture No. 137 of 2014 on the National Standards for Early Childhood Education should be revised to introduce an explicit sanctioning framework for non-licensed operations, including administrative penalties, mandatory closure procedures, and provisions for inter-agency coordination. Third, a regime of personal accountability under Law No. 5 of 2014 on State Civil Apparatus (ASN) should be activated for officials whose supervisory negligence has been judicially established, with explicit linkage between PTUN rulings and disciplinary proceedings.

**4. To Regional Governments**

Three institutional measures are recommended for adoption at the regional level. First, a standing inter-agency task force on *daycare* and PAUD

compliance should be established in each regency and city, coordinating the Education Office, the licensing agency, the local Ombudsman desk, and the Civil Service Police Unit. Second, an annual compliance audit of all *daycare* operations should be conducted, with publication of the results and explicit identification of unlicensed facilities. Third, a whistle-blower mechanism for parents and community members to report suspected unlicensed operations should be established, with protections against retaliation and documented response timelines.

**5. To Independent Oversight Bodies**

Two measures are recommended for the Indonesian Ombudsman, the Indonesian Child Protection Commission (KPAI), and the Ministry of Women's Empowerment and Child Protection (KPPPA). First, a standardised investigative format should be developed for incidents of harm within *daycare* facilities, designed to produce documentation usable as evidence in PTUN adjudication of OOD-omission. The *Permata Hijau* decision confirms that Ombudsman LAHP findings are judicially admissible; the format should be calibrated to maximise this evidentiary utility. Second, a joint annual report on regional supervisory compliance in the *daycare* sector should be published, identifying jurisdictions with recurring supervisory failures and tracking institutional response to documented incidents.

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