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Institutional Relations of the Ombudsman with the House of Representatives of the Republic of Indonesia: Instrumental Design and Governance

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Abstract. The Ombudsman of the Republic of Indonesia (*Ombudsman Republik Indonesia*/ORI) is an institution that has the authority to supervise public services by state administrators, the government, including every person and legal entity assigned the task of administering certain public services whose financing is from the State Budget (*Anggaran Pendapatan dan Belanja Negara*/APBN) and Regional Budget (*Anggaran Pendapatan dan Belanja Daerah*/APBD). However, in carrying out its duties, ORI has the potential to face independence and accountability challenges from the House of Representatives (*Dewan Perwakilan Rakyat*/DPR), which carries out the functions of legislation, budgeting, and supervision. These three functions of the DPR are related to the existence of ORI in carrying out its duties. This paper discusses the position, function, and institutional relationship between ORI and the DPR. The method used is a qualitative approach, with a library study data collection technique and data analysis techniques through qualitative analytical descriptive techniques. Based on the assessment through Instrumental Institutional design and governance, actual autonomy in exercising its mandate from the Westminster Foundation for Democracy (WFD), there are several low independence and accountability assessments, namely: (1) sufficiency of financial resources for performing its functions; (2) extent of autonomy to generate its own financial revenues; (3) security and stability of budget during past three years; and (4) stability of staff and extent of staff turn-over. In the future, ORI must improve several low scores of independence and accountability with its institutional relations to the DPR.

Keywords: Ombudsman, DPR, Independence, Accountability

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Abstrak. *Ombudsman Republik Indonesia (ORI) merupakan lembaga yang berwenang mengawasi pelayanan publik yang dilakukan oleh penyelenggara negara, pemerintah, termasuk setiap orang dan badan hukum yang diberi tugas menyelenggarakan pelayanan publik tertentu yang pembiayaannya bersumber dari Anggaran Pendapatan dan Belanja Negara (APBN) dan Anggaran Pendapatan dan Belanja Daerah (APBD). Namun dalam menjalankan tugasnya, ORI berpotensi menghadapi tantangan independensi dan akuntabilitas dari Dewan Perwakilan Rakyat (DPR) yang menjalankan fungsi legislasi, penganggaran, dan pengawasan. Ketiga fungsi DPR tersebut terkait dengan keberadaan ORI dalam menjalankan tugasnya. Tulisan ini membahas tentang kedudukan, fungsi, dan hubungan kelembagaan antara ORI dan DPR. Metode yang digunakan adalah pendekatan kualitatif, dengan teknik pengumpulan data studi pustaka dan teknik analisis data melalui teknik deskriptif analitis kualitatif. Berdasarkan penilaian melalui Instrumental Institutional design and governance, otonomi aktual dalam menjalankan mandatnya dari Westminster Foundation for Democracy (WFD), terdapat beberapa penilaian independensi dan akuntabilitas yang rendah, yaitu: (1) kecukupan sumber daya keuangan untuk menjalankan fungsinya; (2) tingkat otonomi untuk menghasilkan pendapatan keuangannya sendiri; (3) keamanan dan stabilitas anggaran selama tiga tahun terakhir; dan (4) stabilitas staf dan tingkat pergantian staf. Ke depan, ORI harus memperbaiki beberapa skor independensi dan akuntabilitas yang rendah dengan hubungan kelembagaannya dengan DPR.*

Kata kunci: *Ombudsman, DPR, Independensi, akuntabilitas*

1. Introduction

The amendments to the constitution (1999-2002) after the reform era in Indonesia, in fact had an impact on shifting the formulation of the spirit of state administrators in a more democratic direction, prioritizing the rule of law, maximum empowerment of the people, respect for human rights and regional autonomy. Adjustment of the state institutional structure is a necessity as a condition for shifting the formulation regarding the spirit of post-reform state administration which textually has been normalized in the 1945 Constitution of the Republic of Indonesia (1945 Constitution). Institutional arrangements are not only focused on the main building of power of government institutions in a broad sense (executive, legislative and judicial), but the institutions or commissions formed as executors and supporting government tasks (state auxiliary).

The Ombudsman of the Republic of Indonesia (ORI) as one of the institutions formed after the reform era normatively has a framework that is in line with the spirit of state administration (democratic, prioritizing the rule of law, maximum empowerment of the people, respect for human rights and regional autonomy). ORI's function is to ensure that in the form of supervision, the implementation of public services is in accordance with the principles of the rule of law and the principles of good administration (good administrative services).[1] The public services in question are public services organized by State Administrators and government both at the central and regional levels, including those held by State-Owned Enterprises (SOEs), Regional-Owned Enterprises (ROEs), and State-Owned Legal Entities as well as government agencies. Private sector or individuals who are given the task of administering certain public services.

It is important to understand that one of the benchmarking implementations of guaranteeing the constitutional rights of citizenship regulated in the 1945 Constitution is to place an important role in the aspect of public service. Conceptually public service can be interpreted as a real form of interaction and dialectic between the government and citizens within the framework of a state. If public services are not optimal and tend to be unable to provide legal certainty to citizens, then the logical consequence is a fragile interaction and dialectic between the government and citizens. The urgency of the purpose of the Ombudsman's

[1] Law No. 37 of 2008, LN No. 138 of 2008, article 1 paragraph (1).

existence is as an effort to improve the quality of public services to the community, so that it is appropriate to state about ORI's institutional independence in carrying out its supervisory duties on state administration institutions.

The debate by legal experts regarding the issue of the independence of state auxiliary agencies deserves to be pointed out, in particular regarding the possibility of confusion in the constitutional structure and the inconsistency of the functions of the state administrative authority inherent in these institutions.[2] In the institutional context of ORI, this opportunity is seen as significant for analyzing the legal basis and operationalization of the institution (the use of the budget and the system of recruitment and development of human resources). In connection with the substance of the function of the authority of the ORI state administration, it is also relevant to analyze inter-institutional relations in the constitutional structure of the Republic of Indonesia so that it can provide clarity on the flow of thought on the formulation of the spirit of state administrators in a more democratic direction, prioritizing the rule of law, maximizing the empowerment of the people, respecting human rights. human rights (HAM), and regional autonomy. This paper will also explore the theoretical level regarding state auxiliary agencies that are relevant to the ORI institutional model in contextually building the nation and state of the Republic of Indonesia.

The concept of separation of state powers is not a new thing that jurists argue about, history proves the idea of rejecting the absolute concentration of power in one individual or one body, in essence it is done to create guarantees for the rights of citizens from tyrannical power, although there are variations in thought, the advanced forms of The concept of separation of powers is of course based on the contextual dimensions of each legal expert. Thoughts regarding the concept of separation of powers according to Rahman can be studied during Aristotle's time with the identification of writings from Polybius and Cicero to the modern era of Jean Bodin and John Locke, but the clearest interpretations and statements are as put forward by Montesquieu.[3]

[2] Hendra Nurtjahjo. "Lembaga, Badan, Dan Komisi Negara Independen (State Auxiliary Agencies) Di Indonesia: TinJauan Hukum Tata Negara." *Jurnal Hukum & Pembangunan* 35, no. 3 (2005): 275-287.

[3] Mohammad Ryan Bakry. Kedaulatan Rakyat dan Dialektika Bernegara Dalam Konteks Keindonesiaan. *SUPREMASI Jurnal Hukum* 1, no. 1 (2018): 61–71.

The line of thought put forward by Montesquieu was based on the rejection of King Louis XIV's very famous statement, namely 'L'etatc'estmoi' (I am the state). Montesquieu argues that "when legislative power is united with executive power in a single person or in a single body of the magistracy, there can be no liberty*".*[4] The concentration of power in one individual ruler or one magistracy will result in the loss of individual independence and result in a form of tyranny. Madison in Federalis is more substantive in criticizing the tyranny of absolutism in terms of the pattern of power selection, namely: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny".

The logical consequences that can be stated from the absolutism of power according to Rahman are divided into three variations:[5] First, regarding the centralization of law-making and law-implementing authority in one power, the argument is that "wherever the right of making and enforcing the law is vested in the same man or the same body man, there can be no public liberty"; Second, regarding the centralization of judicial authority and law-making in one power, the argument is that "the life and liberty of individuals would be exposed to arbitrary control"; Third, regarding the centralization of judicial authority and law implementation, the argument is that "the judge might behave with violence and oppression."

Hendra Nurtjahjo in Nuriyanto Ahmad Daim argues that there are five conclusions from the theory of separation of power, namely:

> *"… (1) the three functions of power that are sublimated into these three organs of power are the main functions (primary/main functions) that should exist; (2) the main functions of power in the state may not be in one magistracy but must be separated by one institution that only carries out the power of one main function; (3) the three separate institutions are in an equal position and have the same level of authority (authority) that is equally important and equally strong; (4) the three institutions with main functions that are deliberately separated are intended to create a moderate government; (5) this moderate government is a resultant intended to guarantee the existence of freedom or the rights of citizens".*

[4] Ibnu Sina Chandranegara. Architecture of Indonesia's Checks and Balances. *Constitutional Review* 2, no. 2 (2017): 270.

[5] Tej Bahadur Singh. "Principle of Separation of Powers and Concentration of Authority." *Institute's Journal* 1 (1996): 1-11.

The development of a modern legal democracy has fundamentally affected the adjustment of the theoretical dimensions of the separation of powers. The paradigm of state functions begins to touch various aspects of citizens' lives in the sense of fulfilling constitutional rights which are increasingly complex and require real and just protection. The basis of the argument that is generally built believes that the division of the three main structures of power (legislative, executive and judicial) in a comprehensive manner has not been able to touch the rapid development of a modern legal democratic state. Griffith and Street provided arguments

> *This wide distribution of the power to make rules and to decide disputes and the imprecision which attaches to the use of the words "legislative," "administrative" and "judicial" make unreal any argument which asserts that the constitution is built on the separation of these powers in different hands. There are, it is true, three groups of authorities in this country which are called the Parlement, the Executive and the Judiciary. There are other authorities which do not fall easily under one or other of these groups*

Meny and Knapp in Ahmad Basarah argue that there is a trend towards the idea of the fourth power in the form of state auxiliary agencies, namely "Regulatory and monitoring bodies are a new type of autonomous administration which has been most widely developed in the United States (where it is sometimes referred to as the 'headless fourth branch' of the government). It takes the form of what is generally known as Independent Regulatory Commissions."[6]

Hendra Nurtjahjo further explained regarding state auxiliary agencies, that the further implementation of state objectives that have been determined as governmental functions, structurally the characteristics of state auxiliary agencies can be coordinative, their functions can be multiple (for example one institution can hold two to three functions at once) and the degree of independence varies (although ideally one should have independence for the effectiveness of carrying out their duties).[7]

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[6] Ahmad Basarah. "Kajian Teoritis Terhadap Auxiliary State's". *Jurnal Masalah-Masalah Hukum* 43, no. 1 (2014): 1–8.

[7] Hendra Nurtjahjo. "Lembaga, Badan, Dan Komisi Negara Independen (State Auxiliary Agencies) Di Indonesia: TinJauan Hukum Tata Negara." *Jurnal Hukum & Pembangunan* 35, no. 3 (2005): 275-287.

MacIver in The Web of Government states the fundamental substance of government functions:[8]

> *what, in other words, are the essential ways in which all governments must carry on their work? Since a government does not act on its own behalf or in its own right but always in the name of the state, since also its primary task is the maintenance of a general order within society, it must act according to established rules or laws." Furthermore, it is interesting to point out that according to Leyland and Woods there is a shift in the function of government from the red light theory paradigm (put forward the basic political thought of the 19th century laizer-faire or minimal state), towards the green light theory paradigm (thinking that focuses on a positive perspective on democracy social status of the state). The rationale is as follows:*[9] *The expansion of state has given rise to the centralisation of powers in some areas, e.g., central government, the civil service, agencies (e.g. Prison Agency; Benefits Agency), quasi-government bodiesl and the broad territorial diffusion of power… In sum, power that is exercised by public bodies has greatly expanded; accordingly, the mechanisms for accountability has assumed a new importance, particulary since 1960's*

The line of thought put forward by Leyland and Woods is in line with the idea of the development of state auxiliary agencies, in the sense that it is not only focused on the power-sharing structure, but also a critical way of thinking about how the function of government can be maximized and touches on the side of benefit as a form of constitutional right of every citizen. Based on this, this paper will examine the:

1. What is the position, function and institutional relations between ORI and other state institutions?
2. What is the assessment of the independence and accountability of ORI in relation to other state institutions?

The purpose of this writing is to find out and analyze the position and function and institutional relations between ORI and the DPR RI as well as ideas for increasing their effectiveness. The approach in this research is a qualitative approach. The data collection method is using library techniques or literature

[8] Christopher Pierson. *States and the International Order*. London: Routledge, 2005.

[9] Martín Alessandro, Mariano Lafuente, and Carlos Santiso, "The Role of the Center of Government," *Technical Note*, no. 581 (2013): 1–73.

studies. The data analysis technique in this writing is through technical analysis of qualitative descriptive data.

3. Discussion

3.1. Construction of the Legal Basis of the Ombudsman of the Republic of Indonesia

The Ombudsman in Indonesia as a state institution whose function is to oversee the implementation of public services both held by state administrators and government including those held by SOEs, ROEs, and legal entities, as well as private bodies or individuals who are tasked with administering certain public services whose funds are part or all sourced from state revenue and expenditure budget and/or regional revenue and expenditure budget.[10] The basic considerations for forming (ORI) are to create good, clean and efficient government in order to increase welfare and create justice and legal certainty for all citizens as referred to in the 1945 Constitution of the Republic of Indonesia in the form of supervision of services carried out by administrators.

ORI's oversight function is part of the mandate for constitutional amendments during the reform era which focused on the establishment of an effective and efficient, honest, clean, open and free state administration and government apparatus free from corruption, collusion and nepotism based on the concept of a democratic rule of law state. Decree of the People's Consultative Assembly Number VIII/MPR/2001 concerning Policy Direction Recommendations for the Eradication and Prevention of Corruption, Collusion and Nepotism (MPR TAP No. VIII/MPR/2001), one of which orders the establishment of an Ombudsman by law, for good governance and efforts to improve public services and law enforcement, it is necessary to have an external supervisory agency that is able to effectively control the duties of state administrators and government.[11]

Legally normative, Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (UU No. 37 of 2008)[12] is the basis for the establishment of the ORI institution. Furthermore Article 20 and Article 21 of the 1945

[10] Law no. 37 of 2008, LN No. 138 of 2008

[11] Law No. 37 of 2008, LN No. 138 of 2008

[12] Law no. 37 of 2008, LN No. 138 of 2008

Constitution of the Republic of Indonesia, Law Number 28 of 1999 concerning State Organizers who are Clean and Free of Corruption, Collusion and Nepotism,[13] Law Number 32 of 2004 concerning Regional Government[14] be the basis considering the formation of Law no. 37 of 2008.

ORI's institutional status is regulated in Article 2 of Law no. 37 of 2008 which states that: "The Ombudsman is a state institution that is independent and does not have an organic relationship with other state institutions and government agencies, and in carrying out its duties and authority it is free from the interference of other powers". Implications of the concept of "independence" Article 2 of Law no. 37 of 2008 related to: First, the implementation of the ORI function regulated in Article 6 of Law no. 37 of 2008 which states.

> *"The Ombudsman function oversees the implementation of public services organized by State Administrators and government both at the central and regional levels, including those held by State-Owned Enterprises, Regional-Owned Enterprises, and State-Owned Legal Entities as well as private bodies or individuals who are assigned the task of administering certain public services."*

Second, the implementation of ORI's duties as regulated in Article 7 of Law no. 37 of 2008 that the Ombudsman is on duty:

a. receive reports on allegations of maladministration in the administration of public services;
b. to examine the substance of the Report;
c. follow up on Reports that fall within the scope of the Ombudsman's authority;
d. carry out an investigation on its own initiative against allegations of maladministration in the administration of public services;
e. coordinating and cooperating with state agencies or other government agencies as well as social institutions and individuals;
f. building a network;
g. make efforts to prevent maladministration in the administration of public services; and
h. perform other tasks provided by law.

[13] Law no. 28 of 1999, LN No. 75 of 1999, TLN No. 3851.

[14] Law no. 32 of 2004, LN No. 125 of 2004, TLN No. 4437

Further provisions regarding the determination, requirements of the Assistant Ombudsman ranking are regulated by Ombudsman Regulation No. 5 of 2010 concerning Terms and Procedures for Appointment and Dismissal as well as Duties and Responsibilities of Assistant Ombudsman. Article 2 states that the requirements to become an ombudsman are citizens of the Republic of Indonesia, aged at least 22 years and a maximum of 35 years., education at least bachelor's degree or equivalent, honest and with integrity, never been sentenced to a crime based on a court decision that has permanent legal force, for committing a crime punishable by 5 (five) years or more, never committed a disgraceful act, willing to not concurrently holding government positions, a member of a political party, an advocate and other professions, and passed the probationary period and orientation for the Assistant Ombudsman candidate.

The career path of the Assistant Ombudsman is regulated separately in the Ombudsman Regulation of the Republic of Indonesia Number 12 of 2012 concerning Determination, Requirements, and the Development and Determination of the Ombudsman Career Path of the Republic of Indonesia (Ombudsman Regulation No. 12 of 2012). Career development for Ombudsman Assistants is carried out through education and training, increased work experience, transfers and promotions according to the goals and objectives of the organization. The career development of the Ombudsman Assistant is carried out in a fair and open manner for each employee based on the competence, achievements and performance of the employee concerned.

According to Article 6 of Ombudsman Regulation No. 12 of 2012, Candidates for Assistant Ombudsman must pass academic potential tests, competency measurements and reference checks, and interviews and integrity tracing. Furthermore, Article 7 of Ombudsman Regulation No. 12 of 2012 stipulates that Candidates for Assistant Ombudsman who pass a trial period and exams to be appointed to the position of Primary Assistant. Primary Assistants have a maximum tenure of 8 (eight) years since being appointed for the first time, after which they can occupy the position of Junior Assistants with the requirement that they meet the required credit scores, attend educational and training stages, meet the required performance assessments, meet the minimum grades required and passed the leveling test, as well as other special requirements in accordance with the laws and regulations.

Article 9 paragraph (2) Ombudsman Regulation No. 12 of 2012 that the term of office for Junior Assistants is 8 (eight) years since they were first appointed. Furthermore, Article

10 and Article 11 require Junior Assistants to have the ability to at least communicate, analyze public reports/complaints about public services and their relation to the duties, functions and authorities of ORI, solve problems, cooperate, attend education and training in the field of handling reports, and/or prevention, and/or supervision which is carried out no later than 45 (forty five) days as a requirement for appointment as Middle Assistant.

Article 13 paragraph (2) stipulates that the position of Middle Assistant is 8 (eight) years from the time he was first appointed and is required to attend education and training in the field of reporting, and/or prevention, and/or supervision which is carried out for a maximum of 60 (sixty) days as well as passing the competency exam by appointment by the Plenary Meeting of Ombudsman Members. Article 19 Ombudsman Regulation No. 12 of 2012 stipulates that the requirements for being appointed as Main Assistant for Main Assistant are at least formulating policies, making decisions, media and negotiations as well as attending training in the field of handling reports, and/or prevention, and/or supervision which is carried out for a maximum of 90 (ninety) days. Furthermore, the Main Assistant can be appointed by the Chair of the Ombudsman after obtaining approval at the plenary meeting of Ombudsman members to become the field leader whose function and task is to coordinate substance.

In cases based on needs, the Chairperson of the Ombudsman in Article 22 of Ombudsman Regulation No. 12 of 2012 through a Plenary Meeting of Ombudsman Members can appoint non-career Assistants to be placed at the Main Assistant position level with a term of 5 (five) years and can be extended for 5 (five) years. Article 23 Ombudsman Regulation No. 12 of 2012 stipulates that the mechanism for appointing non-career assistants is carried out through an open offer to the public, conducting exams.

Assistant career development is carried out by all members of the Ombudsman as regulated in Article 25 of Ombudsman Regulation No. 12 of 2012 includes coaching in the framework of daily substance, increasing assistant competence, increasing motivation and ethics as well as facilitating the implementation of duties in office. The calculation of the level promotion value is regulated in Article 27, namely the minimum cumulative number of credit points that must be fulfilled at most by each Assistant to be appointed to a position with a value of a. a minimum of 80% (eighty percent) of the credit score comes from the main element; and Second, a maximum of 20% (twenty percent) of the credit score comes from supporting elements.

Assessment and determination of credit numbers based on Article 31 Ombudsman Regulation No. 12 of 2012 is carried out by proposing a List of Proposed Credit Score Ratings (DUPAK) to appraisers according to hierarchy every 2 (two) years with consideration being carried out 3 (three) months prior to the promotion period in question. According to Article 32 of Ombudsman Regulation No. 12 of 2012 that the chairman of the Ombudsman forms an Assessment Team consisting of 1 (one) chairman and secretary and 5 (five) members assisted by 1 (one) ex officio secretariat who is in charge of conducting assessments and determining credit scores.

Civil servants within the ORI Secretariat General according to Article 5 PP No. 64 of 2012 consists of civil servants appointed by the Secretary General and civil servants who are employed or seconded. According to the Regulation of the President of the Republic of Indonesia Number 20 of 2009 concerning the Secretariat General of the Ombudsman of the Republic of Indonesia in carrying out the tasks referred to in Article 2 the functions carried out by the Secretary General and Civil Servants who are employed or seconded are: First, organizing coordination, synchronization and administrative integration of activities and follow-up of ORI; Second, administrative services in preparing ORI work plans and programs; Third, administrative services in cooperation with ORI with related government agencies and non-governmental organizations both domestically and abroad; Fourth, data collection, processing and presentation services as well as preparation of ORI activity reports.

> *Article 11 PP No. 64 of 2012 concerning Provisions regarding the career development of civil servants and civil servants who are employed or seconded are carried out in accordance with the provisions of laws and regulations in the field of staffing,[15] namely Law Number 8 of 1974 concerning Personnel Principles as amended by Law Number 43 of 1999 concerning Amendments to Law Number 8 of 1974 concerning Personnel Principals.*

Ranks within the ORI Secretariat General are regulated according to the Presidential Regulation of the Republic of Indonesia Number 20 of 2009 concerning the Secretariat General of the Ombudsman of the Republic of Indonesia (Perpres No. 20 of 2009) Article 9 which consists of Secretary General being an echelon Ia structural position, Bureau Head being an echelon IIa

[15] Government Regulation no. 64 of 2012, LN No. 146 of 2012

structural position , Head of Section is a structural position of echelon IIIa and Head of Subdivision is a structural position of echelon IVa. Article 10 Presidential Decree No. 20 of 2009 stipulates that the Secretary General is appointed and dismissed by the President at the suggestion of the Chairman of the Ombudsman of the Republic of Indonesia. Furthermore, Heads of Bureaus, Heads of Sections and Heads of Subdivisions are appointed and dismissed by the Secretary General.

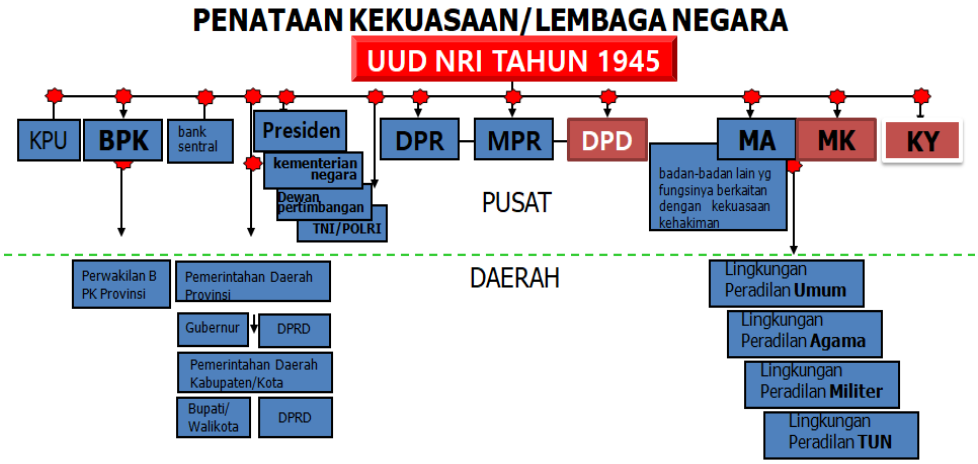
3.2. Institutional Relations of the Ombudsman of the Republic of Indonesia and the People's Representative Council of the Republic of Indonesia

The institutional implications of the 1999-2002 constitutional change created a new constitutional structure for the Republic of Indonesia. The substance of the change is regarding: First, the transfer of the notion of "MPR supremacy" to "constitutional" supremacy; Second, strengthening checks and balances between branches of state power; Third, direct election of the President and Vice President; Fourth, limitation of the President's Power; Fifth, empowerment of representative institutions of the People's Representative Council (DPR); Fifth, the establishment of a new representative institution, the Regional Representative Council (DPD); Sixth, Establishment of institutions to exercise the powers of new judges of the Constitutional Court (MK) and institutions with the scope of duties and authorities related to the judicial powers of the Judicial Commission (KY); Sixth, the establishment of state auxiliary agencies and state auxiliary agencies. The structure of state powers/institutions after the amendments to the 1999-2002 Constitution is shown in Figure 1.

The establishment of State Auxiliary Agencies such as Commissions, Agencies and other State Institutions essentially carry out their duties and functions based on the legal normative basis and purpose of their formation. Referring to the opinion put forward by Hendra Nurtjahjo that several state institutions and commissions are the implementation of a check and balance function or external control that is "a posteriori" (after), on government decisions or actions, except for the Financial and Development Supervisory Agency (BPKP) which functions as internal supervisors, the Inspectorate General (Irjen) at the Central Government level and the Regional Supervisory Agency (Bawasda) at the Regional level.[16]

[16] Adhar Hakim. "Fungsi Dan Peran Ombudsman Republik Indonesia Perwakilan Nusa Tenggara Barat Dalam Mendorong Kepatuhan Pemerintah Daerah Terhadap Undang-Undang

Furthermore, based on Law no. 37 of 2008 and Law no. 25 of 2009, ORI as an independent state institution legally normatively has the authority to oversee Ministries and state institutions, as well as the private sector and individuals in the event that the implementation of public services indicates maladministration.



Source: Socialization Material of the Four Pillars of the MPR RI

Figure 1. Arrangement of Power / State Institutions After the Amendment to the 1945 Constitution (1999-2002)

It should be pointed out that the internal control carried out by the government itself in its implementation does not meet the expectations of society, both in terms of objectivity and accountability. From the conditions above, in 2000, the President attempted to realize reforms in the administration of the state and government by establishing the National Ombudsman Commission (KON) through Presidential Decree Number 44 of 2000 (KEPPRES No. 44 of 2000). KON aims to help create and develop conducive conditions in terms of carrying out the eradication of corruption, collusion, nepotism and increasing the protection of people's rights to obtain public services, justice and prosperity.

In the elucidation of Law no. 37 of 2008 explained that before there was a KON, public service complaints were only submitted to the agency that was reported and the handling was often carried out by the official who was reported

Nomor 25 Tahun 2009 Tentang Pelayanan Publik." *Jurnal IUS Kajian Hukum dan Keadilan* 3, no. 1 (2015).

so that the public did not receive adequate protection. In addition, to resolve complaints from public servants, so far this has been done by filing lawsuits through the courts. Settlement through the court requires quite a long time and costs a lot[17]. Based on this background, a separate institution is needed, namely ORI which is a state institution which in carrying out its duties and authorities is free from interference from other powers to be able to handle public service complaints easily and free of charge. Comparison of Position and Authority between KON and ORI is described by Hendra Nurtjahjo as follows:[18]

Table 1. Comparison of the National Ombudsman Commission and the Ombudsman of the Republic of Indonesia

SUBSTANSI	KON	ORI
Legal basis	Republic of Indonesia Presidential Decree No. 44 of 2000	Law No. 37 of 2008
Institution Status	Non-Ministry Government Institutions (LPNK/LPND) (executive Agency/in coordination with the State Secretariat	State Institutions (Independent/Independent)
Monitoring Object	Administration of the State and Government	Administration of the State and Government, including BUMN, ROEs, and legal entities, private bodies and individuals who are tasked with administering certain public services with the budget partially or wholly sourced from state and regional budget
Authority (Legal Power)	Does not regulate the authority to summon the reported party, as well as to review public service organizations/procedures, laws and other regulations in the context of preventing maladministration	Authorized to summon the reported party (even forced summons/subpoena power) Authorized to carry out investigations without prior notification to public service providers Authorized to give advice to the President, Regional Heads or other Agency Leaders for the improvement

[17] Law No. 37 of 2008, LN No. 138 of 2008.

[18] Hendra Nurtjahjo. *Fungsi dan Kedudukan Ombudsman dalam Sistem Ketatanegaraan Indonesia*. Jakarta: Universitas Indonesia (Doctoral Dissertation), 2016.

		and improvement of the organization and/or public service procedures Has the authority to give advice to the DPR, DPRD, regional heads regarding laws or other regulations Authorized as an adjudicator who resolves public service disputes
Immunity (Legal immunity)	Unregulated	In the context of carrying out its duties and authorities, ORI cannot be arrested, detained, prosecuted or sued in court (immunity).
Recommendation Legal Status	Not set Facultative/non-binding norms (not legally binding)	The Reported Party and the Reported's Superiors are required to carry out the OIR recommendations Imperative / Binding Norms Agencies that violate it can be recommended administrative sanctions in accordance with the law
Criminal provisions	Unregulated	2 (two) Years' Prison or a Maximum Fine of Rp. 1 billion for those who obstruct the ORI inspection or obstruct the Ombudsmanship task
Organization structure	Arrangement of the Sub-Commission for Clarification, Monitoring and Examination, Counseling and Education, as well as the Special Sub-Commission	Regulated limited to the division of leadership roles (Chairman, Waka, and Members), Assistants, and the Secretary General
Secretariat General	Unregulated	Stipulated in a Presidential Regulation Existence of the Secretary General and the Secretary General's Office (PNS)
Representative office	Unregulated	ORI representatives can be formed at the Provincial, Regency/City levels (according to the Public Service Act representative offices are required/must be formed)
Budget	Regulated through the budget of the State Secretariat, originating from the state budget	Allocated directly from state budget (self-regulated independently)
Partners in the Legislature	Commission III DPR RI (included in the category of law enforcement agencies)	Commission II DPR RI (included in the category of supervision of the state apparatus

It is important to analyze comprehensively regarding the institutional relations of ORI with other state institutional arrangements, one of which is the People's

Representative Council of the Republic of Indonesia (DPR RI). The function of the DPR RI as a people's representative institution based on the 1945 Constitution Article 20A paragraph (1) is a legislative function, a budgetary function, and a supervisory function. The phrase "supervision function" is further regulated in Article 72 letter d of the Law of the Republic of Indonesia Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council[19] (UU No. 17 of 2014) that this function "supervises the implementation of laws, the state budget and government policies".

It is interesting to state that based on Article 6 of Law no. 31 of 2008 which regulates the function of ORI that "The Ombudsman has the function of overseeing the implementation of public services carried out by State Organizers and the government ...". There is the same role regarding "supervision", the difference is legally normative DPR RI focuses on implementing laws, state budget and government policies, while ORI focuses on public services by state administrators and government. According to Hendra Nurtjahjo "... although in carrying out their duties, functions, authorities and responsibilities they must report their work to the DPR, the position and character of the Ombudsman as an independent state institution is not affected. Even on the other hand the Ombudsman can examine the administration of the DPR if there are complaints from the public stating that maladministration has occurred."[20]

Maladministration itself when referring to Article 7 of Law no. 37 of 2018 is the scope of work of the ORI institution, namely:

> *The Ombudsman is in charge of: a. receive reports on allegations of maladministration in the administration of public services; b. to examine the substance of the Report; c. follow up on Reports that fall within the scope of the Ombudsman's authority; d. carry out an investigation on its own initiative against allegations of maladministration in the administration of public services; e. coordinating and cooperating with state agencies or other government agencies as well as social institutions and individuals; f. building a network; g. make efforts to prevent maladministration in the administration of public services; and h. perform other tasks provided by law".*

[19] Law No. 14 of 2014, LN No. 182 of 2014.

[20] Hendra Nurtjahjo. *Op.Cit.,*

In general, actually provisions regarding maladministration already exist and are scattered in a large number of laws and regulations made by the government and the DPR. Legislative provisions which contain various forms of maladministration, especially those governing actions, behavior, policy-making, and events that violate administrative law and ethics committed by state and government administrators, civil servants, administrators of private-owned companies and the government, including individuals who assist government provides public services. The provisions regarding the form of maladministration are indeed not explicitly stated as maladministration, but are rather related to deviations from the main tasks and institutional functions that are the organizers of public services.

One of the legal normative at the statutory level that can be used as a basis for indications of maladministration is Law Number 30 of 2014 concerning Government Administration (UU No. 30 of 2014). It is important to convey that the issuance of Law no. 30 of 2014 is that in order to improve the quality of government administration, government agencies and/or officials in exercising their authority must refer to the general principles of good governance and based on the provisions of laws and regulations. Furthermore, to solve problems in government administration, arrangements regarding government administration are expected to be a solution in providing legal protection, both for citizens and government officials.

UU no. 30 of 2014 is in line with Article 1 paragraph (3) of the 1945 Constitution that "Indonesia is a state based on law, therefore a legal basis is needed to base decisions and/or actions of government officials to meet the legal needs of society in administering government. The logical consequence is Law no. 30 of 2014 can be ORI benchmarking in terms of determining maladministration regarding irregularities or actions of state administration officials that are inconsistent with legality, protection of human rights and the General Principles of Good Governance (AUPB). This is in line with Article 5 of Law no. 30 of 2014 that "Implementation of Government Administration based on: a. legality principle; b. the principle of protection of human rights; and c. AUPB"

The scope of Government Administration arrangements is regulated in Article 4 of Law no. 30 of 2014 which includes all activities: a. Government bodies and/or officials who carry out government functions within the scope of the executive branch; b. Government bodies and/or officials who carry out government functions within the scope of the judiciary; c. Government bodies and/or officials

who carry out government functions within the scope of the legislative body; and D. Other Government Agencies and/or Officials who carry out government functions as stated in the 1945 Constitution and/or laws. When compared with Law no. 37 of 2008 that "The Ombudsman has the function of overseeing the implementation of public services carried out by State Administrators and government both at the central and regional levels...",[21] then the phrase "by State Administrators" can be integrated with the scope of application of Law no. 30 of 2014 mentioned above, namely the executive, legislative and judicial powers that carry out government functions.

In line with this line of thinking, conceptually it must be understood that the function of government as stipulated in Article 4 of Law no. 30 of 2014 is essentially a public function within the scope of the state, so that the public service function cannot be separated from the institutional function of the DPR RI. UU no. 17 of 2014 Article 72 letter g states that the task of the DPR RI is to absorb, collect, accommodate and follow up on people's aspirations. The phrase "following up on the aspirations of the people" can be interpreted as a process through normative legal procedures. Referring to the common thread of MacIver's understanding, it can be said that the main task of the DPR RI is to protect and defend the interests of the community (not in the sense of acting solely on the institutional interests of the DPR RI) which is based on law. The logical consequence is the emergence of a dialectic between the community and the DPR RI within the framework of the state law.

In the context of ORI's institutional oversight function, the line of thought put forward by Leyland and Woods[22] is in line with the idea of developing a state auxiliary agency for a modern legal democratic state, in the sense that it is not only focused on the power-sharing structure, but also a critical way of thinking about how the accountability of public service functions is carried out by the DPR RI[23]can maximize and touch the side of benefit as a form of guaranteeing the constitutional rights of every citizen.

Intersection of Authority regarding the supervision of ORI with the authority to supervise Commissions, Agencies and other State Institutions based on the main

[21] Law No. 37 of 2008, LN No. 138 of 2008, Article 6.

[22] B. G. Peters and J. Pierre. "The three action levels of governance: Re-framing the policy process beyond the stages model." *Handbook of public policy* (2006): 13-30.

[23] Hendra Nurtjahjo. *Op.Cit.,*

tasks of the institution or commission as delegated by law is also worthy of being stated as follows:[24]

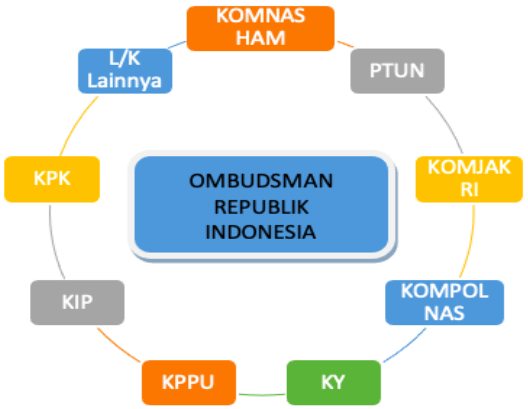


Figure 2. Intersection of the Authority of the Ombudsman with the Oversight Authority of other Institutions/Commissions

Figure 2 shows the oversight function carried out by the Ombudsman and other institutions/commissions based on the authority determined by laws and regulations. Ideas can be put forward when referring to Law no. 37 of 2008 that "The Ombudsman has the function of overseeing the implementation of public services carried out by State Administrators and government both at the central and regional levels...",[25] then the phrase "by State Administrators" can also be integrated with the scope of application of Law no. 30 of 2014 mentioned above, namely the executive, legislative and judicial powers which carry out government functions including the supervisory function. Conceptually, it must also be understood that the oversight function is a public function within the scope of the state, so that the function of public service cannot be separated from the oversight function. The logical consequence is that ORI can also carry out its oversight function over other supervisory institutions as a realization of State Administrators and government both at the central and regional levels, because the paradigm of state function begins to touch various aspects of citizens' lives in the sense of

[24] *Ibid.*

[25] Law No. 37 of 2008, LN No. 138 of 2008, Article 6.

fulfilling constitutional rights which are increasingly complex and require real protection and fair.

4. Conclusion

Based on the results of the study, it can be concluded that ORI as one of the institutions formed after the reform era normatively has a framework that is in line with the spirit of state administration (democratic, prioritizing the rule of law, maximum empowerment of the people, respect for human rights and regional autonomy). The function of ORI is to ensure in the form of supervision that the implementation of public services is carried out by State-Owned Enterprises, Regional-Owned Enterprises, and State-Owned Legal Entities as well as private bodies or individuals who are assigned the task of administering certain public services in accordance with the principles of the rule of law and the principles of good administration. (good administration service).

ORI with institutional status as an independent state institution, legally normative ORI has the authority to oversee Ministries and institutions, as well as the private sector and individuals in terms of the implementation of public services where there is an indication of maladministration. Furthermore, the phrase "by State Administrators" can also be integrated with the scope of application of Law no. 30 of 2014, namely executive, legislative and judicial powers that carry out government functions.

Conceptually it can be understood that the oversight function is a public function within the scope of the state, ORI can also carry out its oversight function over the DPR RI and other supervisory institutions (as the realization of state administrators and government both at the central and regional government). The legal status of the recommendation for the implementation of the ORI oversight function for the Reported Party and the Reported Superior must carry out the ORI recommendation with an Imperative/Binding Norm for institutions that violate it can be recommended for administrative sanctions according to legislation, because the paradigm of state function begins to touch various aspects of citizens' lives in the sense of fulfilling constitutional rights which are increasingly complex and require real and just protection.

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