

# Public Services, Ombudsman, And State Law-Democracy: Political and Organizational Analysis

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**Abstract.** The establishment of the Ombudsman with Law No. 37 of 2008 and Law No. 25 of 2009 on Public Services are important for Indonesia as a legal-democracy state. The regulation on the organizational dimensions in the law is inadequate. With normative juridical methods and literature, it is clear that the Ombudsman as an independent state institution does not have organic relations with state institutions, but is politically less than optimal in carrying out its functions. Its role is very strategic, in supervising the implementation of public services, and in accordance with one of its objectives, namely realizing a democratic, just, and prosperous legal state. The establishment of an Ombudsman representative at the provincial and/or district/city level according to Article 5 paragraph (2) and Article 43 paragraph (1) of Law Number 37 of 2008 is not imperative. However, according to Article 46 paragraph (3) of Law Number 25 of 2009, the Ombudsman is obliged to form representatives in the regions to support their duties and functions in public services. Politically, not mentioning the nine members of the Ombudsman as state officials has the potential to reduce the weight of their institutions as state institutions. It is necessary to improve the regulation of several organizational dimensions for institutional strengthening within the framework of a legal-democracy state.

**Keywords:** legal-democracy state, public service, Ombudsman, politics, organization.

## 1 Introduction

As the owner of sovereignty in a democratic state, the people have the right to get the best service from the state with regard to their various needs. In the position as a legal state, the various rights of the people in various fields of life are also listed in the state constitution as part of human rights which are recognized and guaranteed to exist and their implementation. Entering the reformation era in 1998, Indonesia entered a new phase as a legal state as well as a democratic state

to provide the best service to the people. *This is because one of the basic tasks of the state is to serve the people.*

The issuance of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (ORI) [1] which was followed by the issuance of Law Number 25 of 2009 concerning Public Services [2] is a breath of fresh air to ensure the public's right to obtain services from the government. With this, there is a formal mechanism guaranteed by law for the people to submit their complaints as parties who must receive services from the government. ORI is at the forefront of ensuring that *the government can provide the best service to the people as the owner of sovereignty.* In this regard, it is very likely that there will be deviations from the meaning of this service for the public interest due to maladministration.

ORI has a very strategic position and role to ensure that there is no maladministration in the management of public services. Public services according to Article 1 point 1 of Law Number 25 of 2009 are activities or series of activities in the context of fulfilling service needs in accordance with laws and regulations for every citizen and resident of goods, services, and/or administrative services provided by public service providers. Maladministration according to Article 1 point 3 of Law Number 37 of 2008 is behavior or acts against the law, exceeding authority, using authority for purposes other than those for which the authority is intended, including negligence or neglect of legal obligations in the management of public services carried out by state and government officials which causes material and/or immaterial losses to the community and individuals.

The controversy over the report and request for ORI recommendations to the KPK and several other institutions regarding the issue of the National Insight Test (TWK) for KPK employees is one example that shows the political sensitivity of the implementation of ORI's functions, duties and authorities. On the other hand, the clarity and completeness of the regulation of various organizational aspects in the two laws will also contribute greatly to the smooth implementation of supervision over the implementation of these public services.

This study aims to analyze public services, ORI and legal state-democracy associated with relevant political and organizational concepts or theories. The analysis was carried out on Law Number 37 of 2008 and Number 25 of 2009.

## **2 Literature Review**

### **2.1 Organization**

The discussion about the election management bodies will not be separated from the academic discussion about the organization. According to Robbins, the organization is a consciously coordinated social entity, with a relatively identifiable boundary, that functions on a relatively continuous basis to achieve a common goal or set of goals [3]. Narayanan and Nath [4] define it as an arena where human beings come together to perform complex tasks so as to fulfill common goal(s). Organizations are referred to by Pfiffner and Presthus as the *arrangement of people and their respective tasks into useful interrelationships. The organization is shown by the skills and responsibility of each person for the coordination and coherence of goals with supervision* [5].

Theoretically, the organizational dimension according to Daft consists of a structural dimension and a contextual dimension. According to him, the structural dimensions provide labels

to describe the internal characteristics of an organization. They create a basis for measuring and comparing organizations. It was further stated that the structural dimensions consist of specialization, hierarchy of authority, professionalism, and personnel ratios. Furthermore, it is stated that contextual dimensions characterize the whole organization. Among them are size and goals. They describe the organizational setting that influences the structural dimensions [6].

Each structural dimension is explained by Daft [6] that specialization is the degree to which organizational tasks are subdivided into separate jobs. The hierarchy of authority describes who reports to whom and the span of control for each manager. Professionalism is the level of formal education and training of employees. Professionalism is considered high when employees require long periods of training to hold jobs in the organization. Personnel ratios refer to the deployment of people to various functions and departments [6]. Next, he explained the contextual dimensions, among others, that Size is the organization's magnitude as reflected in the number of people in the organization. Goals are often written down as an enduring statement of company intent. The environment includes all elements outside the boundary of the organization (1992:13-14). *In Daft's opinion, an analysis of the organization as a whole can be done by understanding these various dimensions of the organization.*

In human life, there will be various types of organizations. Talcot Parsons as quoted by Narayanan and Nath mentions that there are four types of organizations, namely production organizations, political organizations, integrative organizations, and pattern maintenance organizations [4]. With regard to its functions, duties, authorities and obligations, ORI can be classified as a political organization. This is because of the presence of ORI to ensure that the public interest is served by public service providers in accordance with service standards, which are basically part of the purpose of living together as a nation.

## **2.2 Politic and Public Service**

Rodee et al. argues that the understanding of the Greeks about politics can be said to be very broad. The word derived from their own language is interpreted as a city state (polis), and Aristotle was the first to introduce the word politics through his observation of "humans who are basically political animals" [7]. Politics is the *media that connects the interests of the state with the people* in the framework of the process of making and implementing binding decisions regarding the common good of the people who live in a certain area [8].

Political science is the study of politics or politics or politics. Politics is the pursuit of a good life. In Indonesia, we remember the saying *gemah ripah loh jinawi*. The Greeks, especially Plato and Aristotle, called it *en dam onia* or the good life [9]. Politics is the making of decisions by public means, in contrast to the making of personal decisions privately by individuals and the making of economic decisions in response to such impersonal forces as money, market conditions, and resource scarcities. ...it is primarily concerned with government, that is, with the direction and self-direction of large communities of people [10].

Public service is the provision of services or serving the needs of people or the community and/or other organizations that have an interest in the organization, in accordance with the basic rules and procedures determined and aimed at providing satisfaction to service recipients [11]. In the New Public Services paradigm as stated by Denhardt and R.B. Denhardt, public administrators

must serve rather than control and serve citizens, not customers. The strategy that needs to be pursued in facing the global era is improving the quality of public services [12]. In the modern state concept, public officials work to provide professional services to the community. Government is formed as a multi-process system that aims to meet and protect the community's needs for public services [13].

Public services must always be carried out by the government in its position as the bearer of state power, in accordance with the expectations and demands of citizens. Obtaining public services organized by the government must be seen as a citizen's right which should be based on legal norms that clearly regulate it [14]. The quality of public services is a crucial thing that cannot be negotiable. People as customers need fast and accurate service along with technological developments so that convoluted, slow and inefficient bureaucratic procedures must be abandoned [15].

### **2.3 Democratic State and Legal State**

The discussion on the rights of the people to receive services from the government cannot be separated from the discussion about a democratic state and the legal state. According to Henry B. Mayo, in his book *An Introduction to Democratic Theory*, that democracy is based on several values, the manifestation of which is very dependent on the historical development and political culture of each country, including ensuring the upholding of justice. To implement democratic values, according to Budiardjo, several institutions need to be organized, including a free judicial system to guarantee human rights and maintain justice [9].

According to Michael, there are several elements of democracy, namely recognition of rights for individuals, consent of the people, accountability of decision makers to the people, representation, and formal processes to demarcate and limit the role of decision makers [16], and several characteristics of government. Democratic ones include the protection of individuals and property---the assumption that individuals have rights and freedoms, which include as a minimum the own property and the right to contest government decisions [16].

Within the minimum limits, the legal state is identical to a state with a constitution or a state that makes the constitution the rules of the game for state life, government, and society [17]. It was further stated that a legal state that is based on a democratic system can be called a democratic rule of law (*demokratische rechstaat*) [17]. In relation to ORI and the legal state, Batalli stated that The Ombudsman institution *its role is very essential for ensuring the sustainability and quality of the state in accordance with the provisions of the constitution*. The Ombudsman concept has demonstrated its strength through its application in an enormous variety of situation in the dimension of democracy and the rule of law and its economic development [18].

## **3 Research Methods**

In accordance with the level of research explanation, this is a descriptive research. One type of descriptive research is library and documentary research [19]. This type of research is basically a combination of normative juridical research and literature study. According to Marzuki, it is classified as legal research [20], or normative legal research or library law which is carried out by

examining library materials or secondary data [21]. Literature research or literature study is a series of activities related to the method of collecting library data, reading and recording and processing research materials [22].

Research is conducted on information that is documented in the form of regulations so that it is commonly known as document analysis research or content analysis. The state regulatory documents that are *main concern* of the research are Law Number 37 of 2008 [1] and Law Number 25 of 2009 [2]. In addition, a review of several sources in the form of books and journal articles related to public services and the role of ORI was carried out.

## **4 Results And Discussion**

### **4.1 Organizational Analysis**

The purpose of ORI is stated in Article 4 of Law Number 37 of 2008 [1] one of which is to create a democratic, just and prosperous legal state. For every organization, the existence of goals to be achieved is very important, as stated by Silalahi that organizational goals as one of the main characteristics of administration is something that is desired to be achieved through organizational collaboration activities [23]. Organizations exists for a purpose. An organization and its members are trying to achieve an end or mission [6].

ORI in addition to having the function as mentioned in Article 2, namely supervising the implementation of public services, also has eight types of tasks as stated in Article 7, one of which is to receive reports on allegations of maladministration in the management of public services. In addition, it also has nine types of authority as referred to in Article 8, one of which is to ask for information orally and/or in writing from the reporter, the reported party or other related parties regarding the report submitted to ORI. The regulation of the functions, duties and authorities of an institution as well as further internal arrangements for each member is very important for the realization of an orderly organization because it is related to the specialization of one of the structural dimensions of the organization. Specialization according to Robbins refers to the particular grouping of activities performed by an individual [3].

Authority is one of the general principles of organization and administration which is also related to accountability, as stated by Henry Fayol which was emphasized by Robbins that managers need to be able to give orders. Authority gives them this right. Along with authority, however, goes responsibility. Wherever authority exercised, responsibility arises. To be effective, a manager's authority must equal his or her responsibility [3]. Authority according to Article 1 point 5 of Law Number 30 of 2014 concerning Government Administration [24] is the right owned by government agencies and/or officials or other state administrators to make decisions and/or actions in the administration of government.

In addition to regulations regarding functions, duties, and authorities, Law Number 37 of 2008 also stipulates the obligations that ORI fulfills, among others as stated in Article 29 paragraph (1). It is stated that ORI in examining reports must be guided by the principles of being independent, non-discriminatory, impartial, and free of charge. In addition to Article 29 paragraph (2) that ORI is obligated to listen to and consider the opinions of the parties as well as make it easier for the

reporter to submit his/her explanation. Another important obligation is stated in Article 30 paragraph (1) that ORI in conducting an examination is obliged to maintain confidentiality, except in the public interest. This public interest as stated in the explanation of this law is the interest of the nation and state and/or the interests of the wider community. Other ORI obligations are listed among others in Article 44 and Article 46 of Law Number 25 Year 2009 relating to complaint services and the settlement of public complaints.

The regulation of professionalism as one of the dimensions of the organization can be seen in Article 19 letter d of Law Number 37 of 2008 concerning educational requirements to be appointed as a member of ORI. It is explicitly stated that the requirements are law graduates or other field graduates who have expertise and experience of at least 15 years in the field of law and government related to the implementation of public services. This is very important because the provision of education, expertise and experience of ORI members will also determine the success in carrying out their duties, functions and authorities as state institutions. This clarity is the same as that contained in the requirements to become members of state institutions or other non-structural institutions such as the Corruption Eradication Commission (KPK) as regulated in Article 29 letter d of Law Number 30 of 2002 concerning the Corruption Eradication Commission [25], and the State Civil Apparatus Commission (KASN) in Article 38 paragraph (2) letter g Law Number 5 of 2014 concerning State Civil Apparatus [26].

The number of members is nine, consisting of one as Chairman concurrently a member, a Deputy Chairman concurrently a member, and seven members, as referred to in Article 11 paragraph (1) of Law Number 37 of 2008. Confirmation of the number of members is important as one aspect from the contextual dimensions of the organization, namely the organization's ratio or organizational size as Robbins calls the total number of employees [3]. In addition, it is regulated in Article 12 regarding assistants appointed to assist the implementation of ORI's duties and authorities, as well as Article 13 concerning secretariat employees led by the Secretary General.

With regard to the position of the Chairperson of ORI, there is no regulation regarding his duties and authorities, because what is regulated is only the functions, duties, and authorities of ORI as referred to in Article 6, Article 7, and Article 8. This is inconsistent with the provisions of Article 11 paragraph (2) which states that in the event the Chairperson of ORI is absent, the Deputy Chairperson of ORI shall carry out the duties and authorities of the Chairperson of ORI. This affirmation is important because there is a difference between the duties and authorities attached to an ORI Chair and the duties and authorities attached to the ORI institutionally.

The existence of ORI assistants as regulated in Article 12, as well as secretariat apparatus as regulated in Article 13 of Law Number 37 of 2008 is very strategic for organizational performance. This is because it relates to the role of these two elements as the operating core and the support staff of the ORI organization. Henry Mintzberg as quoted by Robbins suggests that the operating core as employees who perform the basic work related to the production of products and services. The support staff as people who fill the staff unit, who provide indirect support services for the organization [27]. This is in line with Siagian's opinion about the existence of two groups of employees, namely those whose main task is to carry out activities that are translating main tasks into activities, and those whose duties are to carry out supporting activities for the smooth running of the wheels and organizational mechanisms [28].

The existence of ORI's obligation to submit periodic and annual reports to the DPR and the President as stated in Article 42 paragraphs (1) and (2) is a very important provision for the

realization of a credible, responsible and accountable organizational posture. The explanation of the article states that the report is a form of ORI's accountability to the DPR and the President, which can be used as material for the DPR and the President to take policies in building better public services. The responsibility attached to the organization, in addition to duties and authorities, is one of the general principles of administration as stated by Henry Fayol.

The existence of ORI Representatives in the regions as regulated in Article 43 paragraph (1) of Law Number 37 of 2008 and Article 46 paragraph (3) of Law Number 25 of 2009 emphasizes the importance of the supervisory function of public services, because of the very wide range of regions that must be monitored. Likewise, the organizational relationship between ORI and ORI Representatives in the regions which is hierarchical as mentioned in the two articles in the two laws shows important organizational dimensions, namely hierarchy of authority and centralization.

## 4.2 Political Analysis

Based on its institutional characteristics, ORI belongs to the type of organization that Talcot Parsons calls a political organization. He stated that political organization is *related to his duty to ensure that the community members can achieve their goals* [4]. In accordance with its duties, functions, authorities and obligations, ORI must be able to ensure that the public can enjoy the public services provided by the government. Supervision of the effective implementation of public services will accelerate the achievement of *the will of the state as the will of the people as stated in the constitution*, including justice, welfare and prosperity.

According to Maryam, public services by the government bureaucracy are still full of problems, such as long-winded procedures, uncertainty of time and price, which makes it difficult for people to get reasonable services [29]. Politically, of course this will result in a decline in the reputation and credibility of the government in the view of the public.

The level of reputation and credibility of ORI in the eyes of the public cannot be separated from its responsiveness and performance in articulating the public interest in the form of the implementation of public services as expected. In a broader context as a state institution, its position and role cannot be separated from the role of the government in interacting with the changing society. Ranson and John Stewart suggested that government *basically have diverse roles when interacting with society*. They can be conceptualized as a sustaining role, a maintenance role, a responsive role, and a developmental role. In order to fulfill those roles in a changing society, government has itself to respond to change. In the responsive role, government is not concerned to bring out change but to react to it [30].

Organizations will always be in an interactive relationship with their environment. According to Ali, the organization is not absolute isolation because it is dynamic, with the understanding in it that ideas, ideas and concepts grow and develop in the form of theoretical, practical, innovative and experimental. Aspects that are always assessed by the community towards the existence of the organization include leadership related to community aspirations and concrete evidence of putting the interests of the community first [31]. In a more macro context, ORI is an integral part of the implementation of public administration in which there are administrators who must always be responsive to changes in society. In the view of Rosenbloom et al, public administrators of the future will have to be at ease with complexity, law, technological advances, and flexibility. Public

administrators will be personally responsible for their actions. They will have to be comfortable with change, often rapid change [32].

The term "independent" as stated in Article 2 of Law Number 37 of 2008 which is attached to ORI as a state institution that functions to oversee the implementation of public services, is very important. This is because the supervisory function, which is seen by some as a fault-finding activity, which is attached to this institution will be very sensitive when it interacts with other state institutions. It is a challenge for ORI members to prove that this institution is very strong, which cannot be intervened by any political power or state institution. This is explicitly stated in another phrase in Article 2 that this institution does not have an organic relationship with state institutions and other government agencies, and in carrying out its duties and authorities it is free from interference from other powers. As stated in the explanation, it means that this organic relationship is a structural or hierarchical relationship with state institutions or other institutions.

The independence of ORI is a big gamble in the political context because as a result of the democratization that has taken place over the last 20 years, it has required itself to appear in a transparent and accountable atmosphere. It is a challenge for all 9 members of ORI to prove that this institution is not an accessory of a democratic state and legal state. In relation to government administration, the independence of ORI is related to the general principles of good governance, including the principles of impartiality and openness, as stated in Article 10 paragraph (1) of Law Number 30 of 2004 concerning Government Administration [24].

In the Elucidation of Article 10 paragraph (1), it is stated that the principle of impartiality is the principle that requires government agencies or/officials to determine and/or make decisions and/or actions by taking into account the interests of the parties as a whole and not discriminatory. The principle of openness is a principle that serves the community to gain access and obtain correct, honest and non-discriminatory information in the administration of government while still paying attention to the protection of personal rights, groups, and state secrets. This is in line with several principles that ORI must implement in carrying out its duties and authorities as stated in Article 3 of Law Number 37 of 2008, including the principles of non-discrimination, impartiality and openness.

The supervisory function carried out by ORI in the relation with a democracy, democratization and legal state has a large political constellation, because the people will continue to demand their rights to better public services. The current public administration paradigm is no longer the administration of the public, but has shifted to administration for the public. The people are no longer just parties regulated by the government, but as parties who must get something in the form of public services as their rights. According to Dwiyanto, the desired bureaucratic figure as a public servant is one who cares, excels, transforms, is professional, has integrity, has a new vision, and is an agent of democratic governance [33]. In this regard, the political challenge of ORI to further strengthen its role as a supervisor of public services will also be great.

Politically, there is often the impression that ORI has to deal with enormous institutional constraints when conducting supervision. The problems faced according to Hasjimzoem [34] are related to the good faith of the institution receiving the ORI recommendation as a follow-up and the legal force of the recommendation given [34]. Another aspect that politically has the potential to reduce its weight as a state institution is that ORI Members are not referred to as state officials, even though it is clearly stated in Article 1 point 1 and Article 2 of Law Number 37 of 2008 and Article 1 number 13 of Law Number 25 of 2009 that ORI is a state agency. This is different, for example,



with the KPK which in Article 3 is referred to as a state institution and its five members in Article 21 paragraph (3) are referred to as state officials.

This is related to the principles that ORI must adhere to in carrying out its duties and authorities as stated in Article 3 of Law Number 37 of 2008 namely the principles of decency, justice, non-discrimination, impartiality, accountability, balance, openness, and confidentiality. This is also related to the serious challenges that ORI must face in carrying out its obligations, especially with regard to the principles of being independent, non-discriminatory and impartial in the examination of reports, among others as referred to in Article 29 paragraph (1). This challenge is more obvious and seems political when the reported party is a state institution with a strong position based on the law and with strong credibility in public. Some of the obstacles faced by ORI, according to Pratiwie, are the resistance of the state apparatus and conflicts of authority with other state institutions [35].

Regulations regarding the possibility of conflicts of interest as members of ORI, especially those related to the political context are regulated in Law Number 37 of 2008. Article 19 letter j states that the requirements to be appointed as Chairperson, Deputy Chairperson and members of ORI are not members of political parties. One of the prohibitions for the Chairperson, Deputy Chairperson and members of ORI as referred to in Article 20 letter e is concurrently serving as an administrator of a political party. However, this provision still contains weaknesses because it means that candidates who are only members of political parties, not as administrators of political parties, are still allowed to hold positions as stipulated in Article 11 paragraph (1). This is because members of a political party are not necessarily the administrators of the political party concerned.

It is also a challenge for the leadership of this institution to introduce this institution, which was previously known as the National Ombudsman Commission (KON), to the public, so that it can be politically and sociologically rooted. This is evident, among other things, from the results of the ORI survey on the 2019 Maladministration Perception Index which showed that 65.38% of respondents did not know the meaning of the word ombudsman (Republika, Co.id, Jakarta, 27 February 2020). This is in line with Asmara's research that the empirical weaknesses of ORI include the lack of socialization of ORI as institution, ineffectiveness of ORI recommendation, and the lack of independence and impartiality [36].

## **5 Conclusion**

In a democratic and legal state, the people have the right to get better services from the government. ORI whose existence is regulated in Law Number 37 of 2008 and Number 25 of 2009 can play a dominant function in ensuring the realization of public services provided by the government. There are arrangements for various organizational dimensions in Law Number 37 of 2008, including the hierarchy of authority, organizational tasks, organizational size, authority and responsibility, professionalism, specialization, and centralization. Politically, there are big challenges in its position as a state institution to carry out its functions, duties, authorities and obligations in accordance with the provisions. There are several arrangements for organizational dimensions and political contexts contained in Law Number 37 of 2008 that need to be completed or refined.

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