

Private Sector Ombudsman and Strengthening Consumers' Access to Justice: The Experience From Yogyakarta¹

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Abstract

After the monetary and political crisis of 1997 and 1998, Indonesia has been viewed by some observers as having entered into a transitional phase from authoritarian rule by a strong state toward a new democratic system of government in which civil societies will play a more prominent role. Democratization process is also accompanied by the rise of a strong civil society, which would together result in more efficient and transparent governments at local levels. This article aims to show the dynamic of democratization process in Indonesia, in which civil societies such as business actors, NGOs (non-government organizations), journalists, scientists, business associations, consumer organizations, etc., play a more apparent role. Focused on the establishment of Private Sector Ombudsman (*Lembaga Ombudsman Swasta*—LOS) and also its role and responsibility, the author examines how LOS has become an alternative option for consumers to strengthen access to justice. In the last three years, LOS has succeeded in handling more than 200 cases and some of them have been the hottest issues. On the one hand, the emergence of LOS shows that civil society in Yogyakarta has played a significant role in implementing business ethics and good governance principles, and on the other hand, LOS has been proven to be the answer for consumers' needs in which consumers' complaints settled quickly, informal, and free of charge.

Keywords

Private Sector Ombudsman (*Lembaga Ombudsman Swasta*—LOS), consumer protection, access to justice

The development of consumer protection grew rapidly in the world since the end of World War II. The concept of human rights also grew thoroughly. Substantive and procedural studies on human rights led to debates that broader concept/definition of human rights allowed us to include consumer rights into that definition. Consumer protection is considered as a part of preserving human's dignity, in particular preserving human's dignity from giant business organizations, monopolies, cartels, and multinational companies. Therefore, teaching human rights, which is accepted broadly, such as emphasis on individual's prosperity, honour, and dignity, can function as a basis

to acknowledge that consumer rights is human rights (Deutch 1995). For example, this teaching development is also apparent in Europe as seen in Jason Kilborn's article entitled *Consumer Debt Relief, Harmonization, and Human Rights*, as cited by Duhl (2009): "... The justice ministers of these member states identified consumer debt as a significant human

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rights concern (because of the negative effect of overindebtedness on human dignity) and asked the Council of Europe to consider harmonized solutions to the problem”.

Also the document UN Guidelines for Consumer Protection² stated that: “... recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power... consumers should have the right to promote just, equitable and sustainable economic and social development”.

Therefore, consumer protection is not mainly considered to develop economical efficiency (although this is an important aspect), but mainly gives attention to social fairness and human rights problems (Harland 1997: 4).

The United Nations Conference on Trade and Development (UNCTAD)³ sees that consumer protection contains three broad categories. First, consumer protection system covers policies, laws, and organizational structures which create consumer protection system. Second, consumer protection in market covers various transactions existed or taken place in the market, information for consumer, products' safety and responsibility, consumers' credit, insurances, and electronic trades. Third, consumer protection and consumer basic needs cover consumer education, steps for the use of resources, food, health care, and sustainable consumptions.

In accordance to the first category, consumer protection demands a state to establish and develop a consumer protection system. This can be made through various policies, laws, and organizations which are needed to support those systems. The Law No. 8 of 1999 on Consumer Protection alone is not sufficient. It needs to be supported by government policies which are in many aspects comprehensive able and strict in order to secure consumers' needs.⁴ Besides, it is a must that strong organization in consumer protection is established and utilized, in order to enable effective consumer protection efforts.

In the second category, consumer protection is

closely related to existing business reality, where unfair business practices are inseparable from consumers' poor position. It is proven that many unfair and corrupt business practices harass consumer rights. It begins since the producers promote the product through various methods and media, until the consumer consumes a product or service. Therefore, it is important that the government interferes the market in order to establish consumer protection.⁵

The third category of consumer protection is closely related to the pillars of economic, social, and cultural rights in human rights. However, it is everyone's right to fulfill their basic needs in order to live as a dignified human, although in minimum standard. Hence, consumer protection also covers steps on protecting even the low-income consumers. So they can fulfill their basic needs, such as food, clothing, housing, education, and health care. This concept of basic needs fulfillment is also related to a nation's resources management. The management should be conducted as fair as possible so the poor, who do not possess access to those resources, will be able to fulfill their basic needs.

In accordance to the previous statements, this paper intends to analyze the establishment of an institution which is named Private Sector Ombudsman (*Lembaga Ombudsman Swasta—LOS*) as an inseparable part with efforts to increase consumer access to its rights fulfillment.⁶ However, LOS is not merely established to protect consumer rights. Seen from its roles, functions, duties, and authorities, LOS is very beneficial to the establishment of better consumer protection, also enforcing existing organizational consumer protection.

Considering that LOS is inseparable from bureaucracy reformation agenda, local autonomy dynamics, public service quality improvement, and consumer access to justice, this paper will be divided into five sections, which covers: (1) Local Autonomy and LOS Establishment; (2) LOS and Public Services Quality Improvement; (3) LOS Establishment and

Dynamics; (4) The Existence of LOS and Consumers' Access to Justice Enforcement; and (5) Obstacles Encountered by LOS.

LOCAL AUTONOMY AND LOS ESTABLISHMENT

After monetary and political crisis in 1997-1998, Indonesia was considered by many experts that it had entered into a transition era, from authoritarian government to democratic government where civilians played a more apparent role. In this case, democratization process is followed with civilization growth which together will produce more efficient and more transparent government in every region (Schulte Nordholt and Samuel 2004: 1).

Nowadays, local government, which has bigger authority than before, takes full responsibility in some important fields, such as education, health care, environment, manpower, public service, and natural resources utilization (Aspinall and Fealy 2003: 4).

There are two reasons behind decentralization which is focused on city or regency. Firstly, law makers argue that democratization will take place by giving authority to city or regency, because local society has bigger local political awareness than provincial or national political awareness. Local autonomy will bring a decision-making phase where society tends to participate and determine local politicians who are considered accountable. Secondly, local autonomy should be seen as the best way to ensure that decentralization will not promote separatism and new nation establishment.⁷

Since the beginning of its establishment, laws which are related to decentralization in Indonesia have aroused controversies. Basically, there are two kinds of critiques: (1) those laws will decrease the government quality; and (2) those laws will destroy the national unity. One thing which is heard the most is that local government and Local Parliament are considered lacking of capability to organize growing responsibility, especially, responsibility in providing

services, economical activities, and grass root democracy. In this view, Local Parliament will be occupied with corruptors (in the new order era) or occupied with freshmen who are incapable/inexperienced in law making and monitoring government actions. The situation in local bureaucracy will be similar. It will lack of means and will be occupied by civil servants that are insufficient and inexperienced. It will also inherit top-down supervision culture which has existed for years. This culture paralyzes the initiative and the probability of public consultation service.⁸ Therefore, those who are skeptical argue that regional autonomy will degrade public service standard in Indonesia (Aspinall and Fealy 2003).

Apart from the controversy on local autonomy, the new local autonomy laws have changed the old paradigm. Nowadays, local government is free to create and modify its organizational structure. This allows local government to respond to region's needs and dynamics more effectively. Public service administration, in accordance to the authority to design and administer, is based on the existing manpower (Ryaas Rasyid 2003). Most of local governments have adapted new laws to their organizational and bureaucracy structure. Some even broadened their organizational structure, while some simplified it. It seems that more time is needed to search the most effective form that is appropriate with the new administration structure.

The advance in local government authorities is intended to repair public service quality in the region.⁹ In the past, for example, local government is prohibited to issue investment permit and to directly contribute to problem solving, such as solving unemployment. Nowadays, local government has the ability to create jobs through investments and industrial policies (Ryaas Rasyid 2003). Meanwhile, society awareness in demanding government accountability seems to increase. This can be seen, for example, through the growth of non-government

organizations (NGOs) which monitor government activities. Some NGOs, such as Government Watch, Parliament Watch, Corruption Watch, Judicial Watch, etc., have emerged in many regions in order to monitor and evaluate local government performance. Mass media also play a significant role in exposing mal-administration cases, distinct from its previous roles. This new development has made transparency and accountability principles become important for local governments in Indonesia.

At the national level, some independent organizations are established, such as: National Commission of Human Rights, Ombudsman of the Republic of Indonesia (ORI), Judicial Commission, Corruption Eradication Commission (KPK), Police Commission, Prosecutor Commission, and many others. The existence of those organizations is meant to control and improve government performance; however, they have, in fact, become a burden for Indonesia's budget.¹⁰

The existence of ORI has encouraged the establishment of local Ombudsman in some regions. This has been started by establishing ORI representative office in Kupang, Yogyakarta-Central Java, and Medan; and this continues to grow until now.¹¹ In the beginning, ORI was established based on Presidential Decree No. 144 of 2000. It has the authority to monitor public services which are conducted by civil servants, state-owned enterprises, and private sectors which acquire finance from government. At the moment, the Presidential Decree is no longer valid since the legalization of Law No. 37 of 2008 on Ombudsman of the Republic of Indonesia.

In the last 10 years, Ombudsman has been introduced in Indonesia as a part of government performance improvement in giving better public services. Furthermore, in accordance with decentralization era, local government is also asked to improve its public services quality by implementing good governance principles.¹² On the other hand, business corporations are also encouraged to

implement good corporate governance¹³ in order to fulfill consumer rights.

Local Ombudsman, therefore, has become a strategic institution in improving public services quality. On the other hand, Local Ombudsman as an independent organization is also encouraged to realize democratic, fair, and clean local government through its duties and authorities.¹⁴

Similar duty can also be found in LOS. The duty is helping society to get better, qualified, professional, and proportional services based on justice, law, and equality principles.¹⁵

Although LOS in Yogyakarta is not the first Local Ombudsman, it is the first Private Ombudsman in Indonesia. Local Ombudsman was also established in Asahan Regency and Pangkalpinang City in Sumatera. It was established to monitor public services which were conducted by civil servant and nation's institution. Unlike other Local Ombudsman, as seen from its name, LOS in Yogyakarta focuses on public services which are given by someone or corporation, whether incorporated or not, whether profit oriented or social oriented, which is established and located or doing business in the region of DIY province (*Daerah Istimewa Yogyakarta/The Special Region of Yogyakarta*).¹⁶

The newest Local Ombudsman is Ombudsman Makassar which is located in South Sulawesi. Unlike other Ombudsman Daerah in Indonesia, Ombudsman Makassar blends public and private problems under one office. It means that Makassar Ombudsman monitors public services which are conducted by local government and private corporation. Makassar Ombudsman initiators argued that they combined both problems because geographically, its responsibilities and authorities were limited in the city of Makassar (it is not too vast).

Although LOS DIY was established with several targets (not merely defending consumers' interest), this paper will focus on the existence of LOS DIY in the context of consumer protection. LOS is believed to

become an alternative institution which is beneficial for consumers.¹⁷

It is a fact that consumers in Indonesia still encounter many problems, as can be found in the developing countries. Consumers' access to justice is still far from ideal because there are no bargaining power, weakness in consumer knowledge, and business power domination. Consumers often are harmed because there are many unfair business practices in various businesses which are related to consumers' safety, products' quality and service, advertisements, etc. However, when redressal is attended, consumers are dissatisfied again because there is no effective consumer redress mechanism.¹⁸ In accordance to this matter, Ramsay (1992, 2006) stated that:

The issue of access to justice has been an important theme in consumer protection. Effective redress institutions may further the objectives of compensation, dispute settlement, behavior modification, and norm development, as well as providing confidence to consumers and business in a market. There has been continuing experimentation with a variety of institutions.¹⁹

LOS is believed that it will become a part of strategic institutional reform in realizing consumer protection. However, it is fully realized that Ombudsman establishment in huge business bureaucracy environment is very distinct from public services in government bureaucracy environment, especially in bearing the effects of mal-administration or authority manipulation related to individuals. As stated by Ramsay (2003): "... Though, the creation of ombudsmen in the 'private' sphere recognizes the fact that large corporate bureaucracies may be no less likely than public bureaucracies to suffer from maladministration or abuses of discretionary power in their relations with individuals".

OMBUDSMAN AND PUBLIC SERVICES QUALITY IMPROVEMENT

Reformation struggle since 1997 and globalization

effects have not only given chances but also given threats for country's economical improvement. The government is expected to understand the importance of improving public services quality. It is necessary to realize to better the condition and steps, not only for national business practitioners but also for the growth of foreign investments. Society prosperity, as a part of economic democratization, will be increased by giving high-quality public services. Public trust to the government will be better. It means that high-quality public services will be more important to be carried out/realized.²⁰

Seen from service perspective, laws on local government, which give broader authorities to local government, seem to be a part of efforts in lowering bureaucracy inferences, which are often experienced, such as long service time and expensive service fee. In the decentralization era, local government has to struggle to be able to organize its various authorities. As a consequence, local government is demanded to be able to provide high-quality public services, satisfy the public, and become more effective and accountable. In other words, the implementation of local autonomy is also as an element to improve public services quality.

Corruption, collusion, and nepotism practices are chronic and threaten democracy principles in Indonesia. As a result, bureaucracy becomes ineffective and inefficient. Furthermore, citizens' expectation in getting better services becomes harder to realize. Besides, law enforcement pillars such as police, prosecutor, and judge are already trapped in a corruptive law enforcement system because of weak internal and external control.²¹

Seen from its organizational pattern, public services are still weak. This can be indicated from public services irresponsiveness, limited information, lack of access, weak coordination, too complicated, and irresponsiveness to complain. Therefore, public expectation to public services in decentralization era tends to become stronger. It is realized that

government credibility is considered from its ability to solve problems in order to provide public services for citizens' satisfaction. Alternative solutions for overcoming those problems are: designing service standard, constructing standard operation procedure, developing users' satisfaction survey, and developing complaint handling system.

In accordance to complaint-handling system, it is a must to realize that complaints are sources of information. Information is important for service providers in order to consistently maintain high-quality services. Therefore, it is necessary to establish an effective complaint-handling system so that the services' quality can be improved. Weakness in control function by internal supervision institutions has inspired the establishment of external supervision institutions which are independent and free from interest, however, they have access and influence to government bureaucracy structure and political institutions. External supervision institutions, such as Ombudsman, have the purpose to establish good governance principles. The function of Ombudsman as an independent external supervision institution is to monitor government institutions' activity in providing public services. Ombudsman is also trusted in playing its role as an effective institution in receiving and handling complaints.²²

Philosophical basis for Ombudsman in Indonesia are:²³ (1) citizens' empowerment through their active participation in monitoring and ensuring government is clean, transparent, free from collusion, corruption, and nepotism; (2) citizens' empowerment is a democratization manifestation in order to prevent power, authority, and position manipulation by government personnels; (3) country gives service and protection to citizens' right, as an effort to manifest justice and prosperity; and (4) the existence of strong desire in society is to form independent non-government institution.

Legal basis for Ombudsman are:²³

(1) Article 2 item 6 of People's Consultative

Assembly Decree No. VIII/MPR/2001 on Corruption, Collusion and Nepotism Eradication and Prevention Policy Recommendation, which establishes policy direction on the eradication of corruption, collusion, and nepotism.

Establishing laws and regulations to prevent corruption cover:

(a) Corruption Eradication Commission;

(b) Witness and Victim Protection;

(c) Organized Crime;

(d) Access to Information Freedom;

(e) Governmental Ethics;

(f) Money Laundry Criminal;

(g) Ombudsman;

(2) Law No. 25 of 2000 on National Development Program (PROPENAS);

(3) Law No. 37 of 2008 on ORI.²⁴

LOS ESTABLISHMENT AND DYNAMICS²⁵

The idea of LOS establishment was initiated by "Gatra Tri Brata" (GTB). GTB is an ethical and sustainable business movement. Its members are more than 10 organizations which consist of NGOs, business practitioners, scientists, business associations, and consumer organizations. The purpose of GTB is to develop an ethical and fair business environment; to give the same opportunity for all parties to achieve economical benefit; and to develop a synergical and effective relationship among business practitioners (GTB Team and Members of LOS 2005).

The idea of LOS establishment was emerged in "Corporate Sector Workshop" which was held by GTB in May 2003. It also included business practitioners and other stakeholders in Yogyakarta. The workshop participants agreed that good governance principles were not apparent in public services and business practices. Conclusions of the workshop were:²³

(1) There was a significant corruption increase at all government levels and positions;

(2) In some cases, local autonomy caused an uncomfortable condition among city and regency government as a result of local government claims, which was exceeding its resource and economy. The impact of this problem was not only at city and regency levels but also at national and international levels;

(3) Control on country's management and administration, both mal-administration and law enforcement actions, was stagnant.

Participants agreed that repair efforts were needed to ensure good governance principles, especially in business sector. By repairing public service in private and business sectors, unfair business practices will decrease and government performance in providing public service for business practitioners will be better.²⁶ Therefore, the idea of establishing an independent institution in order to monitor business practice should be realized. That institution was LOS.

It was admitted that the process of LOS establishment needed strong political acknowledgement from local government and Local Parliament. Thus, the principles of democracy, society participation, justice, local society potential, and others should be realized. It was believed that power centralization would weaken control function. Based on this condition, LOS establishment became urgent.

LOS constituent is business sectors. They are individuals, business practitioners or business associations, and consumers. LOS stakeholders are: local government, local law enforcement institutions (attorney, court, and police), Local Parliament, NGOs, business associations, universities, professionals, and mass media.²⁷

After several meetings and workshops, GTB and DIY Province Government agreed to establish LOS in DIY. Both sides agreed that LOS establishment was strategic for enforcing citizens' participation in monitoring public service and consumer protection from unfair business practices. Thus, on the seminar of June 10, 2004, a memorandum of understanding

(MoU) between DIY Province Governor and GTB was signed.

Status and legal basis of LOS covers:

(1) People's Consultative Assembly Decree No. VIII/MPR/2001 on Corruption, Collusion and Nepotism Eradication and Prevention Policy Recommendation;

(2) Law No. 28 of 1999 on State Implementation of the Clean and Free From Corruption, Collusion, and Nepotism;

(3) Law No. 5 of 1999 on Monopoly Practices and Unfair Businesses Prohibition;

(4) Law No. 8 of 1999 on Consumer Protection;

(5) Law No. 18 of 1999 on Construction Service;

(6) Law No. 22 of 1999 on Local Government (has been replaced by Law No. 32 of 2004);

(7) Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution;

(8) Law No. 25 of 2000 on National Planning Program (Propenas);

(9) Presidential Decree No. 44 of 2000 on National Ombudsman Commission (has been replaced by Law No. 37 of 2008).

Furthermore, LOS vision is to realize public rights protection from bad enterprises and unfair business practices. Its mission is to encourage ethical and good business governance implementation and to develop society contribution in monitoring ethical and sustainable business practices. LOS purposes are:²⁸

(1) Encouraging and implementing clean business practices, which are free from corruption, collusion, nepotism, and power manipulation;

(2) Helping society to obtain public services which are good, qualified, professional and proportional based on justice, legality, and equality principles;

(3) Facilitating and implementing mediation in order to achieve law protection so that society can obtain good, qualified, professional, and proportional services in relationship with business practitioners;

(4) Encouraging ethical and sustainable business practices implementation.

There are several LOS functions in order to protect public interests from unfair business practices:²⁹

(1) Accepting and organizing information and complaints which are related to business aspect;

(2) Becoming a mediator in solving dispute among business practitioners, or between business practitioners and consumers;

(3) Giving recommendation which is based on society's information and complaint.

LOS duties are:³⁰

(1) Designing work program;

(2) Spreading the knowledge on LOS position, duties, and authorities to all citizens in DIY;

(3) Establishing coordination and cooperation with all non-government or public organizations in accordance to realizing clean and ethical business practices;

(4) Handling complaints caused by unfair business practices, or practices against the law and business ethics;

(5) Reporting its performance periodically to the Governor.

LOS authorities are:

(1) Accepting and handling complaints and information from all sides which are related to business practices;

(2) Classifying witnesses and evidences which are related to unfair business practices;

(3) Conducting investigation;

(4) Conveying opinions and designing recommendation.

In general, LOS performance is based on business ethics values which will be used to determine the existence of unfair business practices. Those values are: legal obedience, disclosure and transparency, accountability, responsibility, honesty, fairness, compassion, and independency.³¹

LOS is managed by five commissioners. They were recruited by a committee which was appointed through Governor Decision's Letter. In the beginning, operational LOS was assisted by five assistance and

three administrative staffs. Organizational LOS consists of chairman, vice chairman, head of service, investigation and monitoring, head of research and society empowerment, and head of cooperation department. In accordance to financial source, LOS is supported by DIY Province Local Budget (APBD), donor institutions, and other unrestrictive aids.

Unlike other private or business Ombudsmen in many other countries, LOS financial source is not from business practitioners or corporate.³² This can be understood because LOS was not merely established by business practitioners or business associations. Besides, funding from business practitioners could threaten LOS's independency and reduce society's trust. However, it does not mean that funding from government will not threaten LOS independency. Political influence from the government can happen anytime.³³ Therefore, LOS needs members who really understand and firmly hold Ombudsman's principles.

Furthermore, in accordance to complaints handling and duties and functions management, LOS has to maintain Ombudsman principles: impartial, informal, and confidential.³⁴ On the other hand, LOS has to develop simple procedures in complaints handling. Complaints can be conveyed through telephone, e-mail, letter, or by coming directly to LOS office. As an Ombudsman general principle, there is no charge for every complaint reported.

Basically, every complaint can be researched thoroughly by LOS members, to decide whether the complaint is in LOS authority or not. If it is in LOS authority, LOS will classify and investigate it. Based upon the investigation result, LOS members will hold a meeting to decide LOS perspective on the complaint. The perspective is based on existing business ethics principles. Then, recommendation letter design is arranged. If the problem is not in LOS authority, then LOS will hand it over to another relevant institutions.

As a new institution, LOS takes persuasive and cooperative steps in complaint handling. Every complaint will be followed with clarification step

where LOS invites relevant parties. Those parties' statement will be heard. Furthermore, if both sides (reporter and reported) agree to settle, LOS will offer settlement through mediation in order to find a solution. If both sides agree to choose mediation process, LOS will become the mediator. If both sides come to an agreement, they will be asked to sign a settlement agreement from LOS. After that, LOS monitors and ensures that the settlement agreement is fulfilled.

If there are several complicated/cross-sector complaints, for example related to several government institution policies, LOS will hold a focused group discussion by inviting related institutions in order to examine the problems and find the best solution. In this case, LOS takes position as a "bridge" to overcome differences and lack of coordination among those institutions.

The final result of LOS complaint handling is recommendation letter. LOS members conclude the existence of business ethics violation based on research on the complaint and investigation result. Conclusion is formulated in a recommendation letter which is sent to related parties including government institution. LOS will monitor the realization of the recommendation for three months since it was issued. The purpose of the monitoring is to see the possibility of further actions or interference in implementation.

LOS EXISTENCE AND CONSUMERS' ACCESS TO JUSTICE ENFORCEMENT³⁵

The existence of LOS in DIY province is the result of institution reform in Indonesia (or at least in Yogyakarta region). Its benefit has been felt by many people.³⁶ LOS is an unique institution. Its uniqueness is shown from its purposes and authorities. LOS is not designed to focus only on business practices repair but also to influence changes in government policies which are related to business practices. On the other hand, LOS is also responsible for increasing society

awareness so that they will be more critical and care to unfair business practices. Therefore, in achieving its purposes, LOS also involves government, business practitioners, NGOs, universities, and society.

Unlike other Ombudsmen in another countries (which is more sectoral and specific)³⁷, LOS was established in order to accomodate all business sectors. As a consequence, LOS has to handle various complaints, such as banking, insurance, consumer credit, manpower, education, retail commerce, housing, health care, transportation, telecommunication, tourism, etc. Many problems that emerged from various business sectors have become challenges for LOS members. They have to know and understand regulation and practices which occur. It seems that manpower capacity in managing LOS is a very important aspect.

Unlike its twin Local Ombudsman (*Lembaga Ombudsman Daerah*), which focuses on complaints from civil servants, LOS focuses on complaints handling from private sector or from services by non-government sector. Those included are individual business pratitioners, corporations, even social institutions.³⁸ In reality, unfair business practices can occur in many social events which are held by social institutions. However, based on LOS experience, most complaints come from negative business practices which are held by business practitioners and corporations. It means that complaints often come from consumers who are disadvantaged or injured by business practitioners' actions.

In 2009, LOS handled 46 reports and 40 consultations, the majority of which were related to consumer rights violation in the fields of finance, property, communication and information technology, commerce, education, services, and others (see Figure 1).

Meanwhile, in 2010 LOS handled 59 cases and 78 consultations related to finance, property, communication and information and technology, education, commerce, services, and others (see Figure

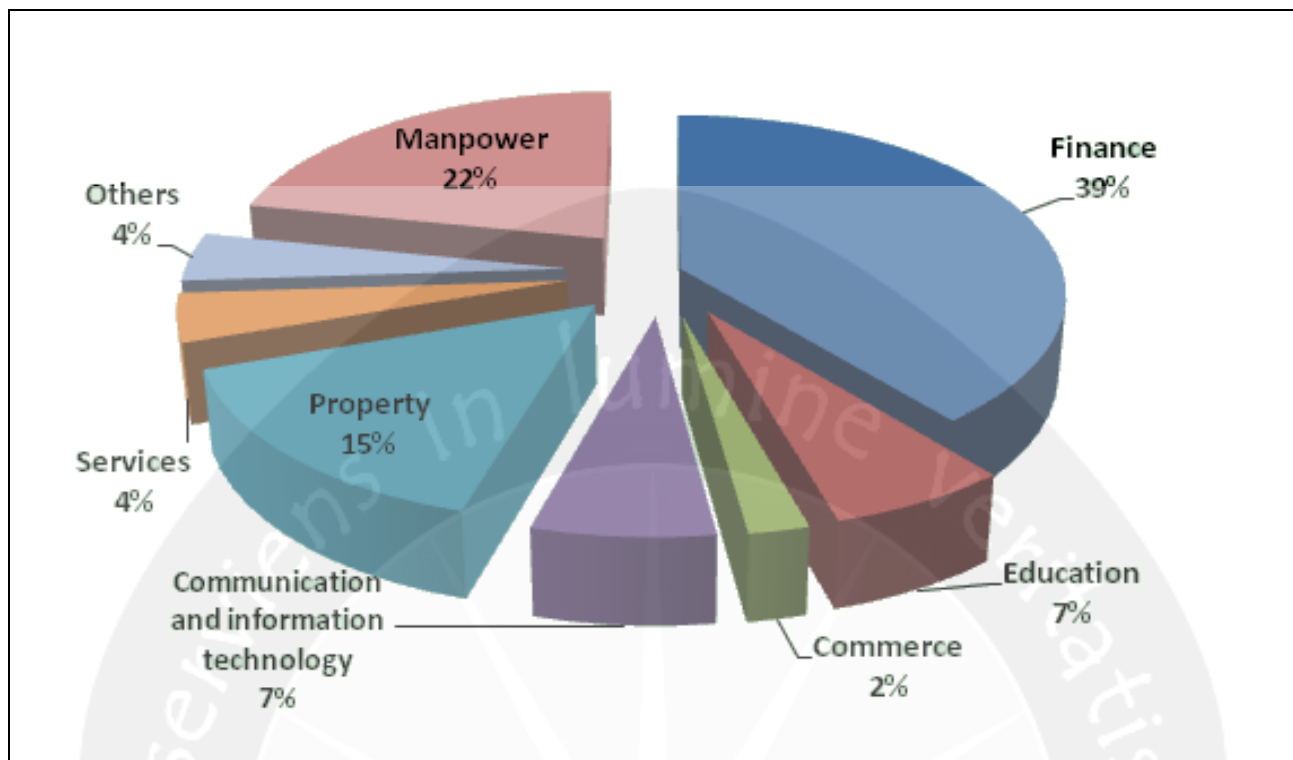


Figure 1. Percentage of Consumer Rights Violation in 2009. Source: A direct interview with one of the members of LOS on February 9, 2012.

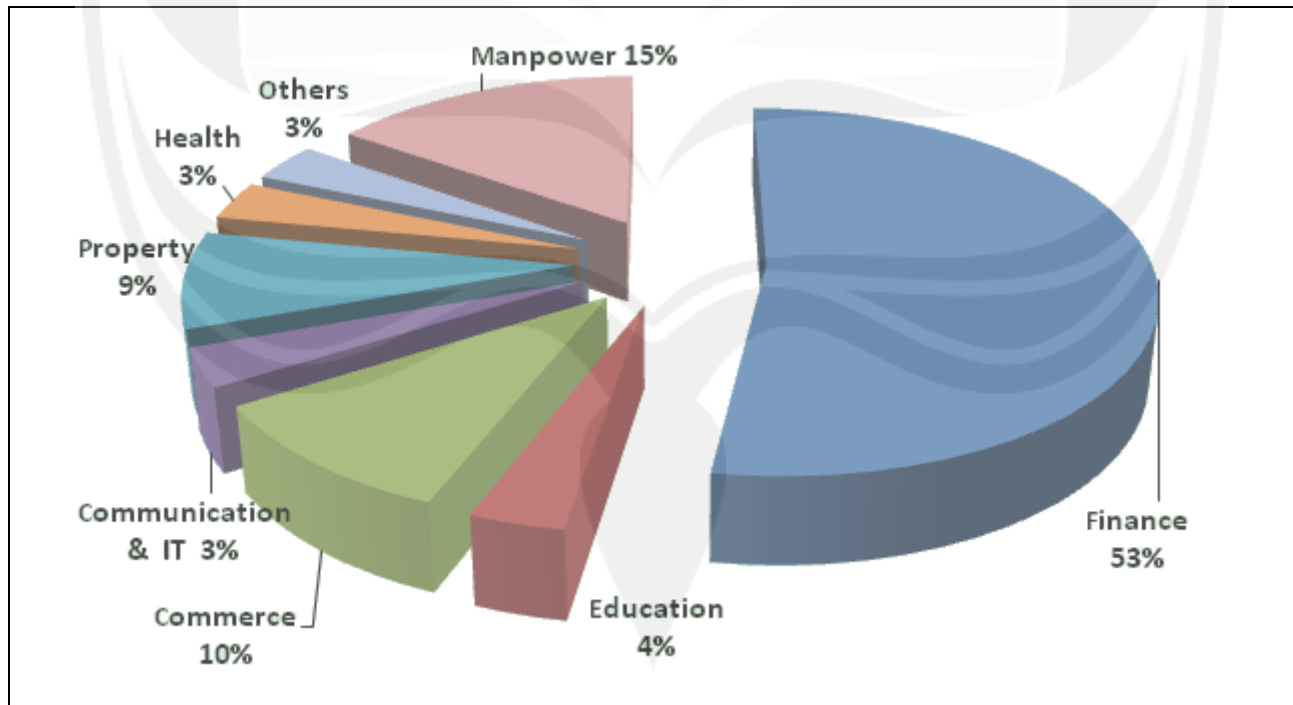


Figure 2. Percentage of Consumer Rights Violation in 2010. Source: A direct interview with one of the members of LOS on February 9, 2012.

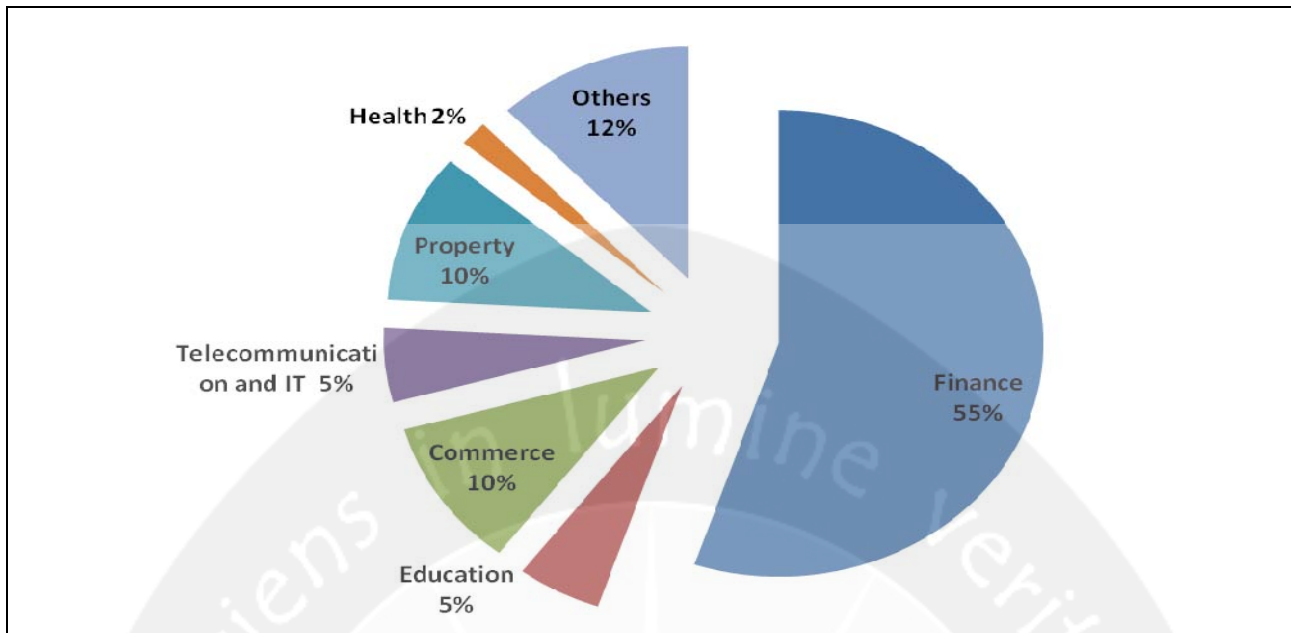


Figure 3. Percentage of Consumer Rights Violation in 2011. Source: A direct interview with one of the members of LOS on February 9, 2012.

2).

In 2011, there were 58 reports related to finance, education, commerce, telecommunication and IT, property, health, and others. It can be seen in Figure 3.

The data showed that unfair business practices occurred in various sectors and resulted in consumers' disadvantage and injury. Most of the complainant believed that LOS independency and authorities could help them obtain their rights. Besides, the simple (informal) procedures and free of charge made them prefer to utilize LOS in order to fight for their rights.³⁹

Hence, LOS had become one of consumer preferences in defending consumers' rights. Although LOS was not identical to Consumer Ombudsman (because LOS also handles dispute among business practitioners and acts to encourage ethical business practices), it has been proven to increase and enforce consumers access to justice.⁴⁰ By evaluating and monitoring business practitioners' behavior and government policies which were related to business

activities, it was apparent that LOS was able to reduce negative effects at the consumer level. One of the examples was that when LOS handled unfair competition among business practitioners, it indirectly affected consumer protection.⁴¹

It is a fact that consumer in Indonesia encountered access to justice problems when they were harmed by business practitioners. Even most of them acted permissively and did not take any actions (Javanese: *Nrimo*).⁴² If they struggle to obtain their rights, they have to struggle very hard since business practitioners' responsibility in giving compensation is still low. Consumers are in the difficult position in obtaining their rights because of their low bargaining power and product knowledge. L'Heureux (1992) stated three problems that were encountered by consumer: Firstly, consumers were not aware that they possessed utilizable legal rights; secondly, many consumers did not know how to formulate their complaints; thirdly, consumers were unwilling to bring their problems to court. If consumers ask legal assistance from advocate or lawyer, they will tend to

cancel it because the fee is not cheap.⁴³ The problem of harmed consumers' unwillingness to take the problems to court is also stated by Gibson (1992), who stated that: "Consumers are clearly reluctant to take legal action in the courts, given the uncertainty of the outcome and the risk that the costs may be disproportionate to the value of the claim".

In Indonesia, the authority of limited consumer organizations often makes its effort in enforcing consumers rights optimum. Consumer organizations do not have legal power to force business practitioners to fulfill their legal duty to consumers. Besides, almost all consumer organizations have limited resources in enforcing consumer rights optimally. The condition is worsened by Indonesian consumer protection policy which is not felt in society.⁴⁴ Consumer Protection Law still becomes "law in the book", because of the weakness in law enforcement. Meanwhile, business permit is very easy to get. Supervision in production process, distribution, and product or service circulation is very weak. Those conditions encourage the development of negative or unfair business practices. In other words, it is very difficult to trust and believe that consumers' rights will be fulfilled by business practitioners, moreover, from those who conduct bad enterprise.

Therefore, ethical and sustainable business movement similar to GTB in Yogyakarta should be developed in other regions. It is believed that multi-stakeholder approach will be more effective in pushing business growth which is ethical and protecting consumers' interest. In this case, business world should be empowered and become a part of or directly participates in consumer protection efforts.

In accordance to that, LOS establishment was a relief and hope for consumers among unfair business practices, consumers organization authority limitation, and weakness in law monitoring and enforcement. LOS is also emerging as a public institution that improves consumer protection. With full awareness of its strategic role, LOS should be able to give benefit

for consumers (especially those who are harmed) and at the same time encourage ethical business realization.

As stated in UN Guidelines for Consumer Protection, consumers in developing countries have weakness in bargaining power, educational level, and economy. In fact, there were many cases which resulted in consumers' disadvantage, but not many consumers wanted to fight for their rights. Consumers often less realize their rights and tend to see their problems as an individual/personal problem. Even if they realize that their rights are guaranteed by laws, they still do not want to fight for their rights. Besides, some disadvantaged consumers do not know where to go to defend their rights (Howells and Wilhelmsson 1997: 259). One of problems that surround consumers is non-existence of effective consumer redress mechanism.⁴⁵

Seeing that there are various weaknesses in formal dispute settlement in court, the development of effective dispute settlement mechanism is very important as one of consumer protections. Formal dispute settlement mechanism in court is proven to be ineffective and inbeneficial for consumers (moreover for consumers with small claims). The reasons are that its procedure is very formal, it takes time, and it needs a lot of money. Therefore, consumers are in intense need of effective redress mechanism which is informal, quick, and inexpensive or even free of charge.⁴⁶

LOS actually has becomes a part of alternative dispute resolution for consumer who has been harmed by businesses. It means that he/she does not need to go to the court to settle his/her dispute. However, it assumes that business actors as defendants have a good faith to resolve their dispute by mediation process held by LOS. Therefore, if LOS succeeds to mediate any parties who have conflicts, it means that LOS can prevent the accumulation of cases in the court. However, if consumer has become a plaintiff in the court, LOS in principle can do nothing. At the most LOS could only become an external supervisor

for judiciary process.

In accordance to dispute settlement mechanism, Consumer Protection Act already appointed Consumer Dispute Settlement Body/*Badan Penyelesaian Sengketa Konsumen* (BPSK) as an alternative to dispute settlement in court. BPSK can be established at the district level and its members consist of government officer, business practitioner, and consumer elements. However, until now BPSK has not shown its role effectively because of its limitations, which are weakness in its authority and limitations of local government resources in supporting BPSK. BPSK's performance is very dependant on local government support. Administratively, the existence of government representatives in BPSK often dominate and this becomes a problem for BPSK in becoming an independent dispute settlement institution.

Learning from Yogyakarta's BPSK experience, it seems that local government has not been serious in enforcing BPSK as an effective dipute settlement institution. Limited resources support and limited manpower capacity become some of BPSK problems. In those conditions, BPSK's performance becomes inoptimum, including its socialisation process in order to be known by society. As a consequence, complaints/disputes which are brought by consumers to BPSK are limited. However, one basic legal problem encountered by BPSK is in fact because of weakness in its legal support, where BPSK's decisions can be appealed in court. It means that consumers' access to justice, to obtain compensation informally, quickly, and cheaply, is not fulfilled. In other words, BPSK cannot be stated as an effective place to settle consumer dispute.

Although LOS does not specifically handle and settle consumers disputes, seen from its duties, functions, and authorities, LOS is proven to be able to enforce consumers' access to justice. LOS strategic position does not lie in its duties to accept and solve reports case by case, but it lies in LOS monitoring

unfair business practices. Through accepted reports, LOS is expected able to protect other consumers' interests which are potentially disadvantaged all the time. From one disadvantaged consumer's complaint to LOS, it is expected that consumers' weakness in position and bargaining power will become equal compared with business practitioners (including corporations). Hence, business practitioners will respect, protect, and fulfill consumer rights.⁴⁷ Furthermore, LOS findings can be a power that reminds business actors to always notice and fulfill consumer rights by improving and developing ethical business for the sake of business sustainability itself.

Experience shows that LOS characteristic in holding on Ombudsman principles, such as independency and impartiality, has become consumers' main consideration to access LOS in defending their rights (in the middle of low society's trust to government institutions performance). Although LOS recommendation is non-legally binding, LOS existence which is based on Governor Regulation, has gained support from society and business practitioners. Moreover, local government's promise, to listen and give attention to every LOS recommendation, has raised society's expectation to LOS. Even every problem is brought to LOS, although some of them are out of LOS authority.⁴⁸

Independence is one of basic principles in managing ombudsman office. There should no other parties that can interfere its performance including government and businesses. Therefore, LOS has to hold this principle without fail and unconditional. By upholding the principle of independent, LOS will be able to maintain its credibility and public confidence will increase. To ensure that, recruitment process of LOS membership is conducted with strict selection to choose proper candidate. By choosing members of LOS who have strong background and commitment, it can be guaranteed that LOS can be free from government and business intervention. Furthermore, members of LOS required carrying out their duties

properly and optimally, especially in conducting negotiations with governments and businesses without compromising its independence. Strong relationship with other civil society and the mass media will be another good strategy for LOS to restrict government and business interference.

It is apparent that LOS existence has raised and enforced consumers' access to justice. Access to justice is closely related to consumer protection issue and attached to UN Guidelines for Consumer Protection, which obliges government to form or develop legal/administrative steps that allow consumers or related organizations to accept redress through formal and informal procedures, which are expeditious, fair, inexpensive, and accesible. This kind of procedure should be specially considered to meet low-income consumers' needs (Ramsay 2003). LOS functions and purposes in handling every report have brought positive effects to public trust. LOS persuasive and cooperative approach has brought postive effects to fair and professional business growth, because in reality, LOS recommendation letter is very helpful in improving business itself. It is expected that negative and unfair business practices can be prevented and reduced through LOS recommedation letter, so consumer interests can be protected.

On the other hand, the positive impacts of complain to LOS can be seen from its recommendation letter which is also sent to related government institution, in order to improve good governance and encourage policy changes in business sector so consumers rights will be more protected. In the end, LOS is expected to be able to become an institution that can reduce and suppress corruptive behaviour in goods and service procurement and government projects tender.⁴⁹

Hence, LOS seems to be a strategic intitution in implementing good governance principles, not only in business matters but also in public services which are organized and responsibled by local government. By

studying every report comprehensively and thoroughly, it can be a turning point for LOS in uncovering problems and finding the best solution. However, it is not simple and easy to make decision that is related to business ethic violation. Based on the ethical business guide book which is compiled by LOS, LOS members are expected to be able to investigate not only legal violation but also ethical business disobedience.

Experience in organizing LOS showed that unfair business practices occasionally ocured because of fault or inappropriateness in government policies. Therefore, LOS not only focuses on complaint handling but also encourages all parties to hold on ethical business principles so that business practices and public services will be better.⁵⁰ If the condition can be realized, consumer protection will be more felt by as much as consumers.

In accordance to consumers' access to justice, the existense of LOS is one of the answers to consumers' needs on effective dispute settlement mechanism. Consumers can easily access to LOS and report their complaints. While LOS can improve business and local government performance. Besides, through LOS, consumers bargaining power against business practitioners can be improved, especially poor consumers.⁵¹ It should be done that LOS can be accessed by people from various social, political, economical, and cultural backgrounds, moreover those who are poor and neglected. Through society empowerment program, LOS encourages consumers to be more critical and care toward unfair business practices around them.⁵² Therefore, LOS existence should be introduced generally in society. So society can understand their function and role well then be able to utilize them optimally, also for those who are neglected.⁵³

By the LOS establishment, it is apparent that institutional reformation in Indonesia is very important, as a part of strategic justice access development. There are three main reasons in

consolidating Indonesian laws and government policies in order to make access to justice as a national strategy which is clear and coherent: institutional reform, justice and poverty, and justice and security.⁵⁴

OBSTACLES ENCOUNTERED BY LOS

Although LOS is designed as an executive Ombudsman, LOS can also be called as an adjudicative institution that is beneficial for consumer protection. As stated by Ramsay (1989), “adjudication has often been a central institution in reforms intended to provide consumer protection, and the adjudicative process is an important model for administrative decision-making”.

Furthermore, Ramsay (1989) wrote that:

The problems of monitoring compliance are particularly acute in relation to decisions with a major redistributive effect between different social groups since the groups who lose out will strongly resist and will attempt to undercut the impact of the decision. Further limitations of adjudication relate to the political authority of adjudicators to make decisions with broad distributive effects.

Although LOS reflects Ombudsman characters which are independent and impartial, LOS is “unavoidable” as an executive Ombudsman. In this case, LOS members encounter major problems in preserving Ombudsman principles and maintaining free from government intervention or influence condition. In reality, administratively LOS operational fund depends on local government budget/*Anggaran Pendapatan dan Belanja Daerah* (APBD). Once, because of APBD approval postponement for several months, LOS did not receive operational fund. Of course the situation affected LOS services. It means that LOS dynamic and performance can be disrupted by local government decision-making process.

Therefore, several parties including Local Parliament are asked to improve LOS’s legal basis from Governor Regulation to Local Regulation (*Peraturan Daerah*). Hence, LOS becomes Parlement

Ombudsman and its authority is broadened and hopefully; its resources support will be more guaranteed.

Other obstacles which are encountered by LOS are: Firstly, LOS authority is limited in its jurisdiction, which is unable to reach business practitioners outside DIY. Existing authority is limited only in DIY region. Although, many business activities in the regional area are organized by local office which does not possess the authority to make decisions, meanwhile the head office is outside DIY. When LOS recommends something to head office, which is outside DIY, there is no guarantee that the recommendation will be followed. It depends on business practitioners’ good will. Secondly, the term Ombudsman still becomes a major problem for most societies in Indonesia to understand its meaning. Many business practitioners, even government officers or civil servants, have not well informed about LOS existence. Even some of them still see LOS as a NGO. It indicates that LOS existence should always be informed intensively to society. Thirdly, LOS often encounters difficulty to decide whether business practitioner should be responsible or not. It is a fact that technology utilization and integrated market can be confusing in deciding who should be responsible when business activity is harming consumer interest. In the situation, Goldring (1998b: 4) argued that: “Today, it is rare for physical goods (except, possibly, unprocessed foods) to have been produced entirely within a single nation-state. Many services, especially financial and information services, use technologies and communications that make use of facilities in many nations, but themselves have no physical location”.

Lastly, some business practitioners and corporations consider LOS as their threat. Some of them even keep their distance, resistant, and act defensively against LOS. They are unsure with LOS independency. Moreover, they think that the problems occurred are their internal problems with consumers.

Hence, they refuse LOS interference.

From those obstacles, it is shown that access to consumer justice improvement through LOS needs to be enforced and developed. LOS acceptance as an independent institution, whether from government institution or business practitioners, still needs more time to be tested and proven through its services, duties, and authorities implementation. Ombudsman institutional development in local area needs to be carried on.

This Ombudsman institutional development is getting promising with the existence of Constitutional Court/*Mahkamah Konstitusi* (MK) on August 23, 2011, which granted judicial review, especially on provision Article 46 (1) and (2) Law No. 37 of 2008 which ban the use of Ombudsman term beside ORI; it means that Ombudsman cannot be monopolized by ORI. The decision is considered correct and coherent with regional autonomy spirit and appropriate with the need of justice access improvement in every region. This decision can also be set as a momentum to develop and establish more specific private sector Ombudsman, whether executive, parliament, or industrial/professional Ombudsman. The most important thing is that every Ombudsman Office has to be managed based on universal or international ombudsmanship principles. In this condition, ORI can act as a “goalkeeper”, counselor, and supervisor of existing Ombudsman. Later if needed, National Ombudsman Association needs to be established to develop and monitor ombudsmanship principles. To realize it, amendment of the Law No. 37 of 2008 is the next important agenda.

Finally, LOS performance is mainly measured by the increase of amount of complaints. It means that LOS has reached public trust in resolving their problems. It also means that the existence of LOS has been well-known by citizens. Besides, LOS performance must be seen by the effectivity of its recommendation letter. If much more recommendation letters are responded positively by business actors and

government officers, it shows that LOS performance is quite well. Based upon those measures, it seems that the performance of LOS still needs to be enhanced continuously. The amount of complaints in the last three years does not show that LOS has been well-known by society. It was needed strategic programs to promote public participation by expressing their problems related to unfair business practices. Public awareness to get involved in developing better business practices must be encouraged.

Therefore, it could not be stated that LOS has reached its goals. Members of LOS have to strive for increasing their performance. Some of them are: developing strategic cooperation with other parties such as university, mass media and other local ombudsmen; increasing effective communication with government officers and business actors; and designing capacity building programs for all the staffs. For the latter, LOS can ask support from the ORI. By doing that, hopefully LOS will be more useful for many people in Yogyakarta region.

CONCLUSIONS

The background and main reason, which became the basis of LOS existence and its duty, had made LOS a unique institution. It was proven that LOS existence was the result of citizens's active participation which was later supported by government. The emergence of LOS also showed that citizens in Yogyakarta had played a significant role in implementing business ethics and good governance principles in Indonesia.

From consumer protection point of view, LOS had been proven to be the answer for consumers' needs, which was the existence of an institution that processed complaints quickly, free of charge, and informal. Although LOS was not merely defending and enforcing consumer rights, it was apparent that LOS functions were in line with consumers' access to justice.

On the other hand, as a new monitoring institution in Indonesia, LOS capacity and authority need to be enforced. Fundamental empowerment is concerning its legal basis and commissioners' capacity. In this case, problems, which are encountered by consumers in every region, call for the existence of an institution that is accessible by consumers.

Finally, it is appropriate that this best practice from Yogyakarta is developed in other regions, in order to repair existing business practices, protect consumers' interests, encourage good governance realization, and even suppress or eradicate corruption practice in Indonesia.

Notes

1. This paper came from the author's experience as an ex-member of Yogyakarta's LOS. By analyzing LOS's roles in enforcing consumers' access to justice, this paper also intends to show dynamics of LOS development in Yogyakarta, Indonesia, in its corruption elimination effort through private sector's public service improvement. Through efforts of LOS, which has independent, impartial, and non-discriminative characteristics, public services by government institutions and business practitioners are expected to fulfill civilians' rights, so that consumers' access to justice will be better.
2. Practical effect of UN Guidelines depends mainly on the consumer protection. The main function of UN Guidelines is to help member nations in providing a framework for consumer protection policy so it can be developed and evaluated. See Harland (1997: 5).
3. Retrieved from <http://www.uvm.edu/~jfarley/st%20lucia/lectures/consumerprotection.ppt>.
4. Related to this matter, Wilhelmsson (1997: 225) stated that: "Consumer Law cannot, however, remove all such injustice without, at the same time, removing the market mechanism. Consumer law as a mechanism against market-based structural injustice is therefore, by necessity, insufficient".
5. Goldring (1998a: 3) stated that government intervention to market was very important: "Legal rules and controls are one method which can be used by the state, in the interest of the public as consumers, to attempt, even if in very small ways, to reduce the inequalities that exist in 'real life'. The power of the state, expressed through government rule-making and regulatory power, is a counter-force to the power of business".
6. Ombudsman came from ancient Swedish *umbuðsmann* and *umbuds man*, which meant representative and non-gender specific. It was used firstly in Sweden and since 1552 it was also used in other Scandinavian countries such as Iceland: "*umboðsmaður*", Norway: "*ombudsman*", and Denmark: "*ombudsmand*". In modern use, the term of "Ombudsman" was used since 1809 through Swedish Parliamentary Ombudsman, which maintained and protected civilians' rights through independent government performance monitoring institution establishment. Therefore, Ombudsmen are usually individuals, who are appointed by government or parliament, who are given duties to represent public interests and investigate every report from society. In the process, Ombudsman can be made and intended to protect civilians' rights from corporate/industry/private, newspapers/printed media, universities, and NGOs' interests. Nowadays, Ombudsman has become one of important pillars in democracy system and modern legal country. More than 130 countries in the world possess Ombudsman with various names, even more than 50 countries attach it in their constitution. See Sujata (2005: 16).
7. Based on this view, separate sentiment was historically focused on provincial level, especially in a province where one or two dominant ethnic groups exist. See Aspinall and Fealy (2003).
8. Seen from human resource issue, Muhamad (2003: 5-6) stated that its main weakness was related to professionalism, competency, empathy, and ethic.
9. Seen from its operation, public service still has weaknesses: irresponsive, uninformative, not easily accessible, lack of coordination, bureaucratize, lack of empathy in receiving society's complaints/suggestions/aspirations and inefficient. See Muhamad (2003).
10. At the moment, there are 88 non-structural government institutions, besides 34 ministries. That amount does not include 28 non-permanent ministerial institutions, teams, and task forces established by President to respond to certain problems.
11. Besides Medan (for North Sumatra and Aceh), Yogyakarta (for DIY and Central Java), and Kupang (for East and West Nusa Tenggara Provinces), at the moment ORI has several representative offices in North Sulawesi-Gorontalo, West Java, East Java, and South Kalimantan. Retrieved from <http://www.ombudsman.go.id>.
12. The main key to understand good governance is by comprehending its principles. From those principles government performance measuring points can be achieved. Good or bad in a government can be valued if it has come to all good governance principles. Those principles cover: society's participation, law supremacy enforcement,

transparency, care to stake holders, consensus oriented, equality, effectivity and efficiency, accountability, and strategic visions. See National Committee on Governance, retrieved August 30, 2010, from <http://www.governance-indonesia.com>.

13. Good governance issue has become an important discussion in supporting business repairment and economical growth after the crisis era. At the same time, among suspicions on how Indonesia's economy collapsed, this terminology also emerged as corporate organizers and public organizations spirit to build organizations' performance after the economical crisis. In the process, good governance was more recognized as good corporate governance, for business sectors, public organizations, and government bureaucracy. At the moment, more parties agreed that good corporate governance implementation is unavoidable and becomes one of important conditions for business and economy existence. Multilateral institutions, such as World Bank, Organization for Economic Cooperation and Development (OECD), The Basel Committee on Banking Supervision (The Bank for International Settlement/BIS which is located in Basel, Swiss), all give guidance in good corporate governance implementation. These institutions argue that advancement in good corporate governance implementation will help monetary crisis affect countries. It will help them rebuild industrial and organizational competitiveness, rebuild investors' trust, and promote sustainable economical growth. The same thing will take place if it is applied in other business organizations. See Emye (2007).
14. See Article 4 Law No. 37 of 2008.
15. See Article 5 DIY Governor Regulation No. 22 of 2008.
16. See Article 1 DIY Governor Regulation No. 22 of 2008.
17. In this matter, Ferran stated that: "In the sphere of straightforward consumer disputes where the amounts involved are relatively small and/or where the complainant lacks the resources to go to court, ombudsman schemes are promoted as being particularly appropriate". James also stated that: "Ombudsman schemes are increasingly being seen as having the capacity to function as real alternatives to courts and tribunals and as an established part of our civil justice machinery". Scott and Black also stated that: "Ombudsman schemes are widely viewed as being a cheaper, speedier and less formal dispute resolution mechanism than the courts." See Ferran (2002).
18. "Availability of effective consumer redress" is a concept that is written and become the target of UN Guideline for Consumer Protection in 1985. In this matter, UN government members have to establish or take legal or administrative steps which make consumer or organization able to get redress through formal and informal procedure which is quick, fair, cheap, and accessible. The procedure has to be taken specifically by considering low-income consumers. Furthermore, government has to encourage every business practitioners to settle consumer dispute fairly, quickly, and informally. Also establishing facultative mechanism includes informational service and informal complaint conveyment, which will able to help consumers. Besides, redress possibility information and other dispute settlement procedures should be made accessible.
19. Ramsay (1992) also stated that institution problem has often be discussed, in accordance to private and public relative role enforcement and self-regulation role in industrial world and other "soft-law" forms.
20. The tendency of society's increasing role and demand in many social aspects is very apparent in the decentralization era. In public service aspect, it can be seen through society's demand in high quality public services. This will encourage government to perform many services improvement. The pressure will also encourage government to increase its commitment standard, which is based on society's aspiration, by giving attention to government in its public services. Communication which happens between society (as users) and government (as provider) will encourage sustainable services improvement. In a decentralization context, public services will be more responsive if local autonomy can encourage functional decentralization. See Muhamad (2003: 9-10).
21. Systemic weaknesses in Indonesian legal system have become general knowledge. Those weaknesses include non-independency, endemic corruption, low human resource improvement, weak administration, and low accountability. Administration, budgeting, and management which are related to formal law system structure have contributed to those weaknesses. They are: low personnel's quality and low law skills; high corruption level where justice is considered as for sale (justice mafia); recruitment, budgeting, and human resource structure have created a corruptible incentive structure; weak internal management and the existence of meritocracy in legal system; and political intervention vulnerability. See World Bank (2004).
22. Appropriate to classic Ombudsman characteristics, which was explained by American Ombudsman experts Dean M. Gotttehrer and Michael Hostina, Commission has to be impartial, independent, fair, credible, and confidential. See Sujata and Surachman (2003: 153).
23. See Proceeding "Seminar and MoU Assignment of Establishing LOD and LOS in DIY", 2004.
24. ORI is a state institution which has public service monitoring authority. Public services, which are operated by state or government, include those which are operated by state-owned enterprises, local government-owned

- enterprises, and state-owned corporations, also private and individual corporations which are appointed to operate certain public services, in which most or all of their finance is from State's Budget Revenue and Expenditure and/or Local Budget Revenue and Expenditure. See Article 1 Law No. 37 of 2008.
25. LOS establishment cannot be separated from program which is supported by UNDP in order to improve access to justice in developing countries. The program intends to improve legislation, improve legal awareness, develop legal aid for the poor, train judges, and arrange alternative dispute settlement. Access to justice is a main point of UNDP mandate to reduce poverty and enforce democratic government governance. In a broader justice reform context, UNDP gives special support to fair system establishment for the poor and disadvantaged. Furthermore, it is appropriate to UNDP strong commitment in Millennium Development Goals—MDGs' Declaration and Fulfillment. The poor and disadvantaged empowerment is intended to help them from injustice and strengthen formal and informal structure relationship. See UNDP (2004: 3).
 26. One obstacle in good governance implementation is unfair business practices. Therefore, LOS establishment is very strategic in providing civilians' rights against unfair business practices. See Proceeding "Seminar and MoU Assignment of Establishing LOD and LOS in DIY", 2004.
 27. From the consumer perspective, Ramsay (1989: 83) stated that: "The recognition that both markets and government might fail to provide adequate consumer protection has led to interest in a 'third force' in consumer protection, that of public-interest groups".
 28. See Article 5 Governor Regulation No. 22 of 2008.
 29. See Article 6 Governor Regulation No. 22 of 2008.
 30. See Article 7 Governor Regulation No. 22 of 2008.
 31. Historically, business ethics values used by LOS were compiled through researches, focused group discussion, and seminar. Then the results were compiled into a business ethics guidebook, which was used to value/evaluate cases that were handled by LOS.
 32. For example, in England, LOS was funded by industries or professionals which surrounded their existence. However, as BIOA (British and Irish Ombudsman Association) members, they have to possess a system that shows their procedure and decision-making independency. Retrieved from http://www.adrnw.org.uk/go/SubSection_15.html.
 33. Political influence which was felt by LOS occurred in February 2008, when LOS handled a report about collapsed houses, which was caused by 2006 earthquake in Bantul, and rebuilt aid implementation problem. The fund was given by several donor countries which incorporated in a consortium which was called "Java Reconstruction Fund (JRF)". The monitoring was conducted based on several complaints from aid receiver candidates. In verification and data collection stages, LOS conducted a survey related to the report. Finally, it was concluded that 40% of the aid were not appropriate. In accordance with the authority, LOS told the survey result to related parties and published the result in mass media. As the consequence of LOS finding, there was a rumor in Bantul society that LOS research result would affect the next aid. This resulted in thousands of people demonstration mobilization to LOS office. They protested the research result and demanded LOS to cancel it. Because LOS members were not willing to cancel the research result, the emotional crowd devastated LOS office. It was the biggest political interference, friction and effect, which was felt by LOS since its establishment in 2005. The problem was brought to the court, and after three years, three defendants (all of them are Bantul Regency personnel) were acquitted at Yogyakarta State Court. It can be concluded that efforts in establishing good governance were not without risk. In this regard, establishing good governance requires government apparatus' political will, as well as society awareness.
 34. As a comparison, ethical principles provided by the International Ombudsman Association are: independence, neutrality and impartiality, confidentiality, and informality. Retrieved from <http://www.ombudsassociation.org/about-us/code-ethics>.
 35. Access to justice is a broad concept. It refers to methods where someone can obtain information and legal aid to settle a dispute. Access to justice also covers access to court procedure to obtain legal aid and extra-legal mechanism to end conflict. Access to justice is often seen as something which is problematic: certain procedures do not exist and inaccessible to someone because of resources' limitation. See Barendrecht and The Study Group Access to Justice (2006). Meanwhile, UNDP formulates access to justice as someone's ability in finding and accepting remedy through formal or informal justice institutions which are appropriate to human rights' standard. See UNDP (2005).
 36. It has become a part of UNDP effective reformation related to access to justice which requires integrated approaches which cover: rights protection, especially for the poor and disadvantaged; capacity enforcement to obtain aid through formal and informal mechanism; organizational capacity improvement in giving aid related to adjudication, due process, enforcement mechanism (police and prisoners), and civilians' efforts in fostering accountability. See UNDP (2004).
 37. For example, in Victoria of Australia there is Energy and Water Ombudsman; in England there are Financial Ombudsman Services, Housing Ombudsman, and Pensions

- Ombudsman; in Argentine there is Insurance Ombudsman of Argentina; there is Children's Ombudsman in Michigan, USA; there is Ombudsman for Injured Workers, in Oregon, USA; in Norway there is The Norwegian Consumer Ombudsman; in Greece there is The Greek Consumer Ombudsman; etc. It shows that Ombudsman has developed rapidly. Retrieved from http://asianombudsman.com/index.php?option=com_content&view=article&id=232:specialty-ombudsman-private-sector-ombudsmen-&catid=125:links&Itemid=189.
38. Based on DIY Governor Regulation No. 22 of 2008, LOS possesses not only business institution monitoring authority but also social institution monitoring authority. It means that LOS is able to accept complaints from civilian who knows the existence of unfair business practices, although it is not profit-oriented.
 39. There are several reasons which make Ombudsman develop in many countries. First, related to expense, Ombudsman is a valuable mechanism in settling dispute. Ombudsman is free to be accessed by consumers. Besides, Ombudsman operational methods are considered popular; two of them are informal and flexible. Ombudsman is not attached to the norm of proof as in the court; and it strives to settlement through negotiation or conciliation. Ombudsman is intended to be accessible and user-friendly. Advantage for its user is that there is no risk; and also they will not lose their money by reporting their problem to Ombudsman. See Seneviratne (2000).
 40. This is in line with the efforts of broadening the effect of UN Guidelines for Consumer Protection; in order to strengthen access to justice, governments are encouraged to develop new forms of small claims tribunal, Alternative Dispute Resolution (ADR) system, Ombudsman scheme, class action, and multiple litigations. See Smith (1997: 19).
 41. Competition policy is also oriented to consumer interest. As a comparison, the 22nd competition policy report, which was published by European Business Competition Commission in 2002, stated that: one of European competition policy's main goals was promoting consumers' interests, which was guaranteeing consumers' benefit and prosperity as a result from European economy. Ex-commissioner for business competition policy, Mario Monti, often stated that commissioner's role in implementing business competition policy was by maintaining consumers' interests. The Director General, Philip Lowe, in his speech in May 2004 in London, stated that: "good consumers and business competition policies have similar goals that are helping market work well for consumers and fair business practitioners, which treat consumers well". In several occasions, Kroes, a business competition commissioner, stated that: "The consumer is at the heart of competition enforcement... the potential harm to consumers is at the heart of what we do". See Parret (2009: 23).
 42. The condition happens generally, not only in Indonesia. In many occasions, consumers are harmed but they rarely fight for compensation. There are many reasons behind consumers' unwillingness to take action or legal action. Although, Consumer Protection Laws in every country has acknowledged consumers' rights. Legal process related to consumer dispute in court only represents small amount from those in reality. See L'Heureux (1992).
 43. Even in America, access to justice for consumers is constrained by high lawyer fee. There is no solution which solves the problem. Many approaches should be tried. Their success and failure can be more considered from political and structural factors than substantive laws steps. There are nine approaches that can be done: reducing lawyer fee by increasing competition in legal aid assistance; adding the amount of compensation; contingent fees; dividing lawyer fee through class action; legal aid from government institution for low-income consumers; legal aid for general civilians by government institutions; simplifying procedure to decrease the need of lawyer; arbitration; and mediation. See Maggs (1990).
 44. Relate to UNCTAD, consumer protection system is not enough by just establishing consumer regulations and laws, but also by considering how those regulations appropriate to UN Guidelines for Consumer Protection. Those regulations are implemented through policies, effective institutional and structural consumer protection developments, optimizing government institutions, consumer protection institution, business/professional and consumer association, and creating effective compensation mechanism.
 45. In UN, general principles guidance on consumer protection states that "the legitimate needs which the guidelines are intended to meet inter alia: availability of effective consumer redress". UN Guidance also demands its government members to "encourage all business institutions to settle consumer dispute fair, quickly, and through informal procedure and facultative mechanism establishment, including consultation service and informal complaint procedure, which able to help consumer" (UN, 2003).
 46. LOS existence can be considered as an effort to create better social order and improve system and legal certainty, also promote and protect human rights. This is in line with World Bank effort in optimizing non-state justice role in Indonesia. It is stated that: "A well-functioning justice system is essential for maintaining social order, establishing legal certainty on which economic growth is dependent and

for promoting and protecting human rights. And yet, the Indonesian state is not currently capable of delivering justice, particularly for the poor. Citizens perceive the justice sector to be slow, corrupt and distant. The government itself acknowledges systemic weaknesses. Legal and judicial reform efforts to address them have been strong on diagnostics but slow on genuine progress” (World Bank 2008: 3).

47. In this case, Goldring (1998a) argued that: “This power relationship often causes consumers to feel awed and intimidated when they wish to obtain recourse against a supplier or manufacturer from whom they have acquired something which does not meet their expectations. The obstacles facing them are immense”.
48. Experience showed that several reports to LOS are outside LOS authority, such as: inheritance right violation, land dispute, and even unsatisfied court decision.
49. There are many violations in goods and services procurement. As a comparison, Corruption Eradication Commission’s cases in 2010 show that 70% of them are corruption suspicion which are related to goods and services procurement. Retrieved from <http://www.kpk.go.id/modules/news/article.php?storyid=1593>. Also among unfair business competition cases in KPPU (Commission for the Supervision of Business Competition), 80% are related to procurement. Retrieved from <http://radarlampung.co.id/read/metro-bisnis/33318-80-persen-kasus-masuk-ke-kppu-terkait-tender>.
50. Business ethics criticize irresponsible business practices before business ignorance becomes disaster and violations are not merely ethics violation but a criminal act that can be charged by positive laws. The purpose of ethics as applied ethics is to give humane basis to business institutions that are labeled negative, before it is too late and other disasters emerge continuously. See Pieris and Wiryawan (2007: 14).
51. Seen from Law No. 8 of 1999 perspective, there is no specific comprehension related to low-income consumer. But the term of low-income consumer cannot only be categorized based on economy aspect, but also knowledge, awareness, education, and ability to protect itself as consumers.
53. Related to consumers’ strategic role, De Cock Buning et al. (2001) stated that: “it is clear that consumer has significant role to information society development, as one of elements that guiding and catalyzing its development. However, at the same time, the communication and business practices improvement possibility has raised government attention to consumer protection (for example, in new marketing techniques, individual freedom, payments, access to infrastructures, services, and logistics)”.
53. LOS should not be an elite institution that just serves

middle class. LOS existence, duties, roles, and functions should be socialized continuously to all levels in society, especially those who are far from legal aid.

54. (1) Institutional reform: in this case, institutional reform needs respond to society’s demand. National strategy will encourage public demand channel for justice which responds Indonesians’ needs, including formal and informal justice institutions; (2) justice and poverty: in this case, access to justice improvement will complete government efforts in lowering poverty and empowering society; (3) justice and security: it is related to effective improvement of trust in justice system, which can reduce conflicts and improve human safety guarantee. Retrieved from <http://www.siteresources.worldbank.org/INTJUSFORPOOR/Resources/A2JFrameworkEnglish.pdf>.

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