

THE INDEPENDENCE OF THE INFORMATION COMMISSION AS A QUASI-JUDICIAL INSTITUTION IN THE INDONESIAN STATE CONSTITUTION

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Abstract

The Information Commission plays a strategic role in ensuring the implementation of the right to public information while exercising quasi-judicial authority to resolve public information disputes through mediation and non-litigation adjudication. Despite being legally recognized as an independent institution under Law Number 14 of 2008 concerning Public Information Disclosure, questions remain regarding the extent of its institutional independence within Indonesia's constitutional system. This study aims to analyze the independence of the Information Commission as a quasi-judicial institution and to identify the legal and institutional challenges affecting its impartiality. The research employs a normative juridical method using statutory, conceptual, and doctrinal approaches by examining constitutional provisions, legislation, legal doctrines, and relevant literature. The findings indicate that although the Information Commission possesses adjudicative authority requiring impartiality and independence, its institutional autonomy has not been fully realized due to administrative and secretarial dependence on the executive, potential conflicts of interest, and governance arrangements that may undermine public confidence. These conditions weaken the effective implementation of its quasi-judicial functions. The study concludes that strengthening the Information Commission's independence requires not only regulatory reform but also improvements in institutional governance, organizational capacity, accountability mechanisms, and administrative autonomy. Such reforms are essential to reinforce legal certainty, safeguard objective dispute resolution, and enhance public trust in the constitutional protection of the right to information.

Keywords: accountability, Information Commission, institutional independence, public information disclosure, quasi-judicial institution.

INTRODUCTION

One of the characteristics of a state based on the rule of law, known in English as the rule of law or in Dutch and German as *rechtsstaat*, is the limitation of power in the exercise of state power. This limitation is implemented through law, which later became the basic idea of modern constitutionalism (Asshidqie, 2024). The idea of limiting power was considered absolutely necessary, because previously all state power functions were centralized and concentrated in the hands of one person, namely in the hands of the king or queen who led the country from generation to generation (Asshidqie, 2024). Efforts to limit this power did not stop with the emergence of a movement to separate the power of the king from that of the clergy and church leaders. Efforts to limit power were also carried out by implementing patterns of limitation within the internal management of state power itself, namely by differentiating and separating state power into several different functions (Asshidqie, 2024). Following the amendments to the 1945 Constitution, the concept of supreme sovereignty was changed and returned to the people, based on the constitution. Likewise, the status of state institutions changed to a position of equality and balance, based on the concept of checks and balances (Yusdiansyah, 2010).

This step began with political reform in 1998, followed by constitutional reform (the 1945 Constitution) from 1999 to 2002. Indonesia has made significant changes in the state administration. One phenomenon accompanying the transition to democracy is the emergence of independent state institutions and state commissions (Alamsyah & Huda, 2013). In general, the definition of the term independent state commission (Independent Regulatory Agencies) is a state organ (state organs) that is ideally independent and therefore outside the executive, legislative, and judicial branches of power, but actually has a mixed function of all three. In the language of Funk and Seamon, independent commissions often have quasi-legislative, executive, and quasi-judicial powers (Tutik & Gunadi, 2003).

One of the state institutions in Indonesia that can be categorized as an independent state institution is the Information Commission, the basis for its formation of which is regulated in Law Number 14 of 2008 concerning Public Information Disclosure. Regarding the authority of the Information Commission, one of which is to resolve public information disputes that occur between public bodies (state apparatus) and public information users through mediation and/or non-litigation adjudication by providing a final and binding decision (final and binding) as a court decision that is "*inkracht*", this makes the Information Commission also be called an independent state institution that has quasi-judicial powers (Asshiddiqie, 2006).

Van Vollenhoven in his book "*Omtrek Van Het Administratief Recht*" divides the powers/functions of government into four which are known as the *catur praja* theory, namely (Rakhmat, 2014):

- a. The governing function (*bestuur*). In a modern state, the *bestuur* function has a very broad scope, not limited to the implementation of laws. The government interferes extensively in the affairs of society, including economic, socio-cultural, and political matters.
- b. The police function (*politie*) is a preventive supervisory function, namely, enforcing the residents of a region to comply with the law and implementing preventive measures to maintain order in society.
- c. The judicial function (*justitie*) is a repressive supervisory function, meaning this function implements concrete actions so that disputes can be resolved based on legal regulations in the most just manner (Sari, 2023).

The authority of the *wilāyah al-maẓhālim* is to decide on various forms of injustice committed by state officials, nobles (sultans), wealthy people, and the caliph's family. In this case, the *wilāyah al-maẓhālim* also has the authority to try the caliph for various deviations he committed in running the government (Alwan et al., 2022). For example, the caliph's deviations from Islamic law, deviations from the mutually agreed social contract, and various other deviations that could harm the rights and interests of his subjects (Sari, 2023). Positioning the Information Commission as a quasi-judicial institution based on its authority, while still being part of the executive branch, requires further examination. This is because in exercising its authority, one of which is to resolve public information disputes, the Information Commission will position the executive branch as the party being sued and tried, even though the executive branch itself is the parent of the Information Commission's powers (Faisal & Ogli, 2025).

Based on the issues surrounding the independence of independent institutions mentioned above, it is clear that the independence of independent state institutions remains weak because the independence they adhere to is only partial, limited to their duties, functions, and authority. Institutional independence should also encompass internal and external variables. Internal variables include budgets, member selection and appointment, staffing, accountability, and so on. External variables include working relationship mechanisms with other institutions, the legal basis for their establishment, and so on (Absori et al., 2020). This is intended to ensure that the independence of an independent institution can be truly manifested. The Information Commission should also possess this same quality. Based on the above description, the author is interested in conducting a study entitled "The Independence of the Information Commission as a Quasi-Judicial Institution in the Indonesian Constitutional System." Based on this background, the research question is formulated as follows: How independent is the Information Commission in carrying out its functions as a quasi-judicial institution?

METHOD

The method used in this research is the normative juridical research method. (Dimiyati & Wardiono, 2004; Wibowo et al., 2023). Normative juridical refers to legal norms contained in statutory regulations and court decisions as well as legal norms that exist in society (Ali, 2016). In this research, the author will analyze the positive legal norms related to the position, authority, and independence of the Information Commission as a quasi-judicial institution, as well as an explanation of the contents of this research (Ilmar, 2014). This research uses a prescriptive research type, namely research that aims to obtain suggestions regarding what should be done to overcome certain problems (Soekanto, 2012). In other words, this type of research is intended to answer the legal issues raised, accompanied by recommendations or suggestions for finding new norms or completing the norms being researched so that they are even better in the future (Mokat, 2023).

The method used is normative legal research, also called doctrinal legal research (Budiono et al., 2023). In this type of legal research, law is often conceptualized as what is written in statutory regulations (law in books) (Asshiddiqie, 2010) or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate (Amiruddin & Asikin, 2006). The data analysis technique or method used is a qualitative approach to primary data and secondary data (Ali, 2016). In this study, the author analyzed data including laws and regulations, documents, library books and other literature related to the position of the authority and independence

of the Information Commission as a quasi-judicial institution which is then connected with other data obtained by the author so that the data can be collected and arranged systematically and can be described and a conclusion can be produced (Retnowati, 2012).

RESULTS

In the reform era, the development of societal dynamics has become a momentum for the state to perfect its governance system, which is expected to be effective and efficient in addressing and anticipating the shift from an authoritarian regime to a democratic one. The broad scope of the state's duties to realize public welfare sometimes cannot be fully accommodated by conventional institutions within a state, often giving rise to several perspectives containing citizen demands that are nothing more than the pretext of justice. One current trend is to encourage giving citizens a greater role in the administration of state government. All of this is aimed at realizing a system of checks and balances in the administration of state government, which is actualized institutionally and adjusted to the areas of state power (Asmarani, 2019).

One very important phenomenon after the amendment to the 1945 Constitution of the Republic of Indonesia was the spread of independent state institutions in the Indonesian state system (Mochtar, 2016, 2021). An independent state institution, established by law to carry out certain functions in a neutral, professional manner and free from political intervention. Etymologically, the word "independence" is an English word meaning "free" or "liberal." Furthermore, "independence" can also be interpreted as a self-sufficient quality, meaning not dependent on others (Aurelia, 2024).

These independent state institutions are often referred to as quasi-state organs because even though they are not constitutional institutions in the narrow sense or explicitly mentioned in the 1945 Constitution, their roles and functions are very important in modern state practice, one of which is the Information Commission (Maskur, 2025). The concept of the independence of the Information Commission is expressly regulated in Article 23 of Law Number 14 of 2008 concerning Public Information Disclosure, which states that the Information Commission is an independent institution that functions to implement the Law on Public Information Disclosure and its implementing regulations, determine technical guidelines for public information service standards, and resolve public information disputes through mediation and/or non-litigation adjudication (Asshidique, 2007).

The Information Commission's position as an independent institution also demonstrates that it not only carries out administrative functions in supporting the implementation of public information disclosure, but also has the character of a quasi-judicial institution authorized to examine, mediate, adjudicate, and decide on public information disputes outside the judicial environment. This authority demands strong independence, both in the decision-making process and in the implementation of the institution's functions as a whole (Umam, 2024). Therefore, the independence of the Information Commission must be understood as a prerequisite for guaranteeing the objectivity and credibility of every decision made, as well as an instrument for maintaining public trust in the public information dispute resolution mechanism organized by the Information Commission (Effendi, 2023).

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The regulation of the Information Commission's independence is the most determining aspect in the effectiveness of the implementation of its functions. This can be seen from the scope of the Information Commission's independence, which not only carries out administrative functions related to public information disclosure, but also carries out quasi-judicial functions through the resolution of information disputes. The dominance of this quasi-judicial function demands a higher level of independence than administrative institutions because every decision produced by the Information Commission has direct implications for the protection of citizens' rights to public information. Conceptually, a quasi-judicial institution is an institution that is not part of the judicial power as referred to in Article 24 of the 1945 Constitution of the Republic of Indonesia, but is authorized by law by attribution to carry out functions that resemble judicial functions. These characteristics are evident in the Information Commission's authority to receive dispute requests, summon parties, examine evidence, conduct trials, apply legal provisions, and issue binding decisions that can be appealed to the court. This shows that even though it

is not included or not derived directly from the judicial power, the Information Commission is still obliged to apply and follow the basic principles of fair trial, such as independence, impartiality, equality of arms, and due process of law. Thatcher analyzed the phenomenon of Independent Regulatory Agencies (IRAs) in the UK, France, Germany, and Italy, concluding that there are three most important aspects of IRAs: their independence from elected officials, their relationship with other administrative institutions (regulates), and their decision-making process. Thatcher then explained that the independence of IRAs in practice can be seen from five indicators (Majelis Permusyawaratan Rakyat Republik Indonesia, 2017):

The normative basis for the functional independence of the Information Commission is expressly stated in Article 23 of Law Number 14 of 2008 concerning Public Information Disclosure, which states that the Information Commission is an independent institution that functions to implement the Law on Public Information Disclosure, establish technical guidelines for public information service standards, and resolve public information disputes through mediation and/or non-litigation adjudication. This provision concretely demonstrates that the independent nature is not only inherent in the institutional position of the Information Commission, but must also be reflected in the implementation of its public information dispute resolution function (Negara, 2022).

Normatively, the Information Commission's authority to examine disputes is regulated in Articles 37 to 47 of the Law on Public Information Disclosure, which grants the Information Commission the authority to receive, examine, mediate, adjudicate through non-litigation adjudication, and decide on public information disputes. These regulations are then further elaborated and detailed in Regulation of the Information Commission of the Republic of Indonesia Number 1 of 2013 concerning Procedures for Resolving Public Information Disputes, which regulates the stages of application registration, initial examination, examination of the main points of the dispute, evidence gathering, panel deliberation, and the pronouncement of the verdict. All of these stages demonstrate that the Information Commission carries out functions that have a character similar to a judicial institution, although institutionally it is not included in the judicial authority as referred to in Article 24 of the 1945 Constitution of the Republic of Indonesia.

In addition to the authority to resolve public information disputes, the Information Commission also has the authority to determine the status of information, which is a form of attributive authority granted directly by Law Number 14 of 2008 concerning Public Information Disclosure to the Information Commission. This authority cannot be transferred or influenced by other institutions, because it is part of the function of resolving public information disputes, which is the absolute competence of the Information Commission before the parties file an objection to the court. Therefore, a public body cannot unilaterally declare that information is exempted information without opening up space for testing by the Information Commission. In the event of a dispute, the final assessment regarding whether or not information can be provided to the information applicant rests with the Information Commission panel based on the results of the trial examination.

In exercising its authority to test information, the Information Commission must not only assess the existence of a legal basis for information exemptions, but must also examine whether such exemptions truly meet the elements of the consequence test as stipulated in Article 19 of the Law on Public Information Disclosure. The consequence test is an assessment of whether the disclosure of information could actually have detrimental consequences for interests protected by law. Therefore, information exemptions cannot be based solely on subjective considerations of public bodies, but must be proven through clear legal arguments and accountable facts.

Structural independence, namely institutional independence where the structure of an organization can be described in a diagram that is completely separate from other organizations (Asmarani, 2019). This institutional independence can be interpreted as a form of independence related to the position of the organization (Furqon, 2020), institutional structure and governance, as well as ensuring that an institution can carry out its authority, duties, and functions without being in a hierarchical relationship or being linked to other branches of state power that could potentially affect its independence. In the context of the Information Commission, institutional independence is an important foundation for ensuring that the institution is able to carry out its authority, duties, and functions both in overseeing and regulating the disclosure of public information and resolving public information disputes objectively, impartially, and free from the influence of any interested party. Institutional independence is a prerequisite for functional independence, personnel independence, and independence in decision-making to be realized effectively and optimally (Suhendar, 2010).

CONCLUSION

Based on the description in the discussion above, it can be concluded that the independence of the Information Commission as a quasi-judicial institution is not yet fully guaranteed, because there are still institutional problems

such as administrative and secretarial dependence, the potential for conflicts of interest and public perception of the independence of the Information Commission which can affect public trust in the integrity and objectivity of the institution, so that strengthening the independence of the Information Commission still needs to be directed not only through improving regulations, but also through institutional governance reform, increasing organizational capacity, and strengthening accountability while still respecting the independence of the institution as an implementer of quasi-judicial functions.

In light of the conclusions outlined above, the following recommendations are offered:

1. Recommendations to Lawmakers (Government and House of Representatives):

- a. Improve legal norms by revising the Law on Public Information Disclosure to strengthen the guarantee of the Information Commission's independence as a quasi-judicial institution. These improvements are primarily aimed at establishing clearer regulations regarding the boundaries of administrative relations with the government, the position of the secretariat, the coordination mechanism between the Central Information Commission and Regional Information Commissions, and a clear separation between administrative accountability and the independence of the public information dispute resolution function. Thus, regulations regarding the Information Commission not only guarantee independence normatively but also provide certainty in its implementation.
- b. The mechanism for filling positions in the Information Commission needs to increasingly prioritize the principles of a merit system, transparency, and public participation. The formation of the Selection Team should be complemented by more measurable indicators regarding the integrity, independence, competence, and track record of prospective commissioners. Furthermore, the selection process should provide greater opportunity for the public to provide input on prospective members as part of efforts to strengthen the legitimacy and independence of Information Commission personnel.

2. Recommendations for the Information Commission

- a. The Central Information Commission needs to strengthen its coordination, harmonization, and guidance functions for Provincial and Regency/City Information Commissions by developing more comprehensive national guidelines.
- b. Regulations regarding the Information Commission secretariat need to be evaluated to ensure that the administrative support provided by the government does not create a perception of institutional dependency. Strengthening the secretariat's autonomy, both in terms of administration, human resource management, and operational support, needs to be considered while still taking into account the efficiency of government administration and state financial capacity. The goal is to maintain a balance between the need for administrative support and ensuring the institutional independence of the Information Commission.
- c. An accountability mechanism needs to be formulated that clearly distinguishes between administrative accountability and the independence of quasi-judicial functions. The Information Commission's accountability to the government should be limited to organizational, financial, and administrative aspects, while the implementation of its public information dispute resolution function must remain free from influence from any party. Clearer regulations regarding these boundaries will strengthen legal certainty and maintain public trust in the Information Commission.

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