

THE LEGAL ENFORCEMENT OF THE OMBUDSMAN IN THAILAND

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Thesis
entitled
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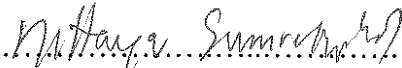
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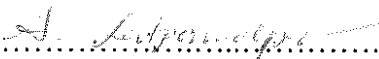
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ABSTRACT

A mixed method research was applied to this research. The quantitative approach was to analyze the legal enforcement to investigate the state power and to recognize the problems and limitations of the legal enforcement imposed by the Thai ombudsman. Its 400 samples were from the Attorney Bureau, the Investigation Bureau, the Intake and Early Resolution Bureau, and the Legal Bureau, which were involved with the ombudsman's legal enforcement. Its data collection was through questionnaire. The second part was a qualitative approach in order to recognize the problems and limitations of legal enforcement imposed by the Thai ombudsman and its efficiency of the legal enforcement. The 10 key informants were equipped with knowledge, specialization and experiences of legal enforcement from variety of interdisciplinary professionals. Results showed that problems and limitations of the legal enforcement were imposing the state agencies to clarify facts and to demand them to follow opinions or recommendations of the ombudsman. It was accorded with the findings in the qualitative research that problems and limitations were at high levels. In addition, the causes were also from its internal administration, the complexity of the complaints, the irrelevancy of laws and the limitations of its legal enforcement. The researcher recommended that there should be amendments of the Organic Acts on Ombudsman and laws related for their consistency. Also, broader investigation should be enacted for empowerment in the ombudsman. The ombudsman's works should be in team and aggressive approach such as site visits to commonly solve problems with all network parties and propaganda of the ombudsman's power and duties should be used. This included publicizing the ombudsman's achievement and reports of non-cooperation for the state agencies without fails. Besides imposing social sanctions on agencies of non-cooperating with the ombudsman's works, law enforcement should be imposed on the state agencies and officers who resist the Organic Act with rigidity. In addition, the administrative measures should be enforced and enacted in the legal punishment exercised by ombudsman. Such measures should be efficient in the legal enforcement of the ombudsman in order to deter dissents and would help the missions of the ombudsman to achieve better results in protecting the rights, liberty and public interests.

KEY WORDS: LEGAL ENFORCEMENT/ OMBUDSMAN

205 pages

การบังคับใช้อำนาจของผู้ตรวจการแผ่นดินในประเทศไทย

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บทคัดย่อ

การวิจัยครั้งนี้เป็นการวิจัยแบบผสมผสาน (Mix method) ส่วนแรกเป็นการวิจัยเชิงปริมาณ (Quantitative Research) เพื่อวิเคราะห์สภาพการบังคับใช้อำนาจในการตรวจสอบการใช้อำนาจรัฐ และเพื่อทราบถึงปัญหาและอุปสรรคการใช้อำนาจของผู้ตรวจการแผ่นดินในประเทศไทย กลุ่มตัวอย่าง ได้แก่ กลุ่มงานนิติการ กลุ่มงานสอบสวน กลุ่มงานรับเรื่องราวร้องทุกข์ และกลุ่มงานกฎหมาย ซึ่งเป็นบุคคลที่ปฏิบัติงานอยู่ในองค์กร ที่เกี่ยวข้องกับการใช้อำนาจของผู้ตรวจการแผ่นดิน จำนวนทั้งสิ้น 400 คน เก็บข้อมูลทั้งหมดด้วยวิธีการใช้แบบสอบถาม ส่วนที่สองเป็นการวิจัยเชิงคุณภาพ (Qualitative Research) เพื่อทราบถึงปัญหาและอุปสรรคการบังคับใช้อำนาจของผู้ตรวจการแผ่นดินในประเทศไทย และเพื่อทราบถึงแนวทางการบังคับใช้อำนาจของผู้ตรวจการแผ่นดิน ที่มีประสิทธิภาพ กลุ่มตัวอย่างเป็นการคัดเลือกมีความรู้ ความเชี่ยวชาญและมีประสบการณ์เกี่ยวกับการใช้อำนาจรัฐ โดยแบ่งกระจายกลุ่มตัวอย่างตามลักษณะวิชาชีพที่หลากหลาย จำนวนทั้งสิ้น 10 คน ผลการศึกษานี้พบว่าปัญหาการบังคับให้หน่วยงานชี้แจงข้อเท็จจริงและการให้หน่วยงานปฏิบัติตามความเห็นหรือข้อเสนอแนะเป็นปัญหาที่สำคัญของผู้ตรวจการแผ่นดินในประเทศไทย สอดคล้องกับการศึกษาวิจัยเชิงปริมาณที่พบว่า กลุ่มตัวอย่างได้แสดงความคิดเห็นเกี่ยวกับปัญหาและอุปสรรคของหน่วยงานต่อการปฏิบัติตามข้อเสนอแนะของผู้ตรวจการแผ่นดินในระดับมาก นอกจากนี้สาเหตุการบังคับใช้อำนาจของผู้ตรวจการแผ่นดินยังเกิดจากปัจจัยอื่น อาทิ ปัญหาการจัดระบบการบริหารภายใน ของสำนักงานผู้ตรวจการแผ่นดิน ปัญหาความยุ่งยากซับซ้อนของเรื่องร้องเรียน และปัญหาความไม่สอดคล้องกันของกฎหมายและข้อจำกัดอำนาจของผู้ตรวจการแผ่นดินในประเทศไทย ซึ่งผู้วิจัยมีข้อเสนอแนะว่าควรมีการแก้ไขเพิ่มเติมพระราชบัญญัติประกอบรัฐธรรมนูญว่าด้วยผู้ตรวจการแผ่นดินและกฎหมายที่เกี่ยวข้องให้มีความสอดคล้องกันและควรบัญญัติกฎหมายให้อำนาจการตรวจสอบกับผู้ตรวจการแผ่นดินในประเทศไทยที่กว้างขึ้น นอกเหนือจากแนวทางการใช้มาตรการทางสังคม (Social Sanction) ลงโทษกับหน่วยงาน ที่ไม่ให้ความร่วมมือต่อการปฏิบัติงานของผู้ตรวจการแผ่นดินแล้ว ควรมีการนำมาตรการทางกฎหมาย (Law Enforcement) มาใช้บังคับกับหน่วยงานและเจ้าหน้าที่ซึ่งกระทำการฝ่าฝืนต่อพระราชบัญญัติประกอบรัฐธรรมนูญว่าด้วยผู้ตรวจการแผ่นดินอย่างเคร่งครัดและควรมีการนำมาตรการทางบริหารมาบัญญัติไว้เป็นบทลงโทษในกฎหมายของผู้ตรวจการแผ่นดินในประเทศไทย มาตรการเหล่านี้ น่าจะทำให้การบังคับใช้อำนาจของผู้ตรวจการแผ่นดินเกิดประสิทธิภาพในการข่มขู่ยับยั้งต่อผู้ที่ละเมิดต่อกฎหมายของผู้ตรวจการแผ่นดินและทำให้การดำเนินการติดตามที่ผู้ตรวจการแผ่นดิน ได้รับมอบหมายเกิดสัมฤทธิ์ผลในการคุ้มครองสิทธิเสรีภาพและผลประโยชน์ของประชาชน ได้มากยิ่งขึ้น

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CHAPTER I

INTRODUCTION

1.1 The Legal Enforcement of the Ombudsman in Thailand

The concept of the Ombudsman has been implemented to be as a mechanism to inspect the state power enforcement and to control the work of the administration in Thailand. It began in Sweden. At first, the ombudsman organization was appointed by the legislature under the principle of power division seeing that each power enforcement organization was subject to controllability and accountability. It was to balance and counter each power. In addition, the state power enforcement should be taken under the principle of legitimacy founded on liberal state of democracy governing the country under the rule of law. The principle was any administrative acts required empowerment by law and its enforcement had to be legitimate even though the administrative discretion was subject to the empowered legal frame. Whereby, these concepts allowed the government to see the benefits and necessity of having an ombudsman organization and there was an enactment to establish a “parliamentary ombudsman”. Its power and duties were stipulated in the Constitution of the Kingdom of Thailand B.E. 2540 (1997) Section 6: Parliament Part 7: The Parliamentary Ombudsman.

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) has pursued the spirit of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) aiming at having a mechanism to protect the civil rights and there was a government agency to align the power of the state while being independent to inspect the public sector enforced by the ombudsman. An enactment then amended from the “Parliamentary Ombudsman” to “Ombudsman”, and stipulated to have three ombudsmen. The single term of office was six years. Its roles and duties were thus multiple. Besides its major power and duties-the power of inspections and investigation by complaints, it is more empowered to inspect and take action on ethics of the political positioned persons and the government agents, the power to pursue,

evaluate and recommend in following the Constitution including the considerations to amend the constitution whenever it was necessary. In addition, the ombudsman may recommend the Constitutional court or the Administrative Court, had the purviews were met with the problems of the constitutional legitimacy. In addition, the ombudsman was empowered to examine and investigate without any complaints, had the action damaged people at large or to protect public interest (Roypim Therawong, 2014).

The concept of the ombudsman works in Thailand in the past was to solve the civic troubles with the principle of peaceful way through compromise, reconciliation and coordination to seek remedial cooperation from the related public sector and the related private sector and common complaints. Whereby, the Organic Act on Ombudsmen, B.E.2552 (2009) Section 33 has stipulated a mechanism on power enforcement of the ombudsman by empowering it to submit the matter to the Prime Minister, Ministers or regulators of the government agencies, the state enterprises, and the local agencies to take action of command as deserved. In the case of the civil agencies, the state agencies, the enterprise and the local agencies failed their cooperation to explain the fact about the complaint or not taking any actions as noticed or recommendations. In Section 43(2), it was enacted that the ombudsman was empowered to publicize the state performances or the agencies failing cooperation or not taking action as noticed or recommendation in its annual reports in order to submit to the Cabinet, the parliament and the senate in every March of every year. This was under the empowerment of section 43(2) of the Act complementary to the Organic Act on Ombudsmen, B.E.2552 (2009)

Today, the works of the ombudsman in Thailand are facing the problems of its power enforcement especially the cooperation from the agencies to explain facts and to follow its recommendation, which delay inspections and the solutions of the civic troubles or are not efficiently solved, as they are deserved. They are witnessed in the performance reports of the Fiscal Budget 2013, which there are 4,921 cases accepted for examinations. There are 1,503 cases of continuous examination following the previous fiscal budget. In the Fiscal Budget 2014, there were 4,735 complaints included with the 2,088 cases during process from the previous fiscal budget. Most causes are from the agencies fail to declare facts for the ombudsman to acknowledge.

They are helpless for the ombudsman to interrogate, examine and finalize the cases within the reasonable period.

The pursuance of the agency performance report by power enforcement of the ombudsman under the Section 30 of the Organic Act on Ombudsmen, B.E. 2552 (2009) Fiscal Budget 2015 (from October 1, 2014 - September 30, 2015), it is found that there are 2,237 complaints. They have been delivered to the state agencies, state enterprises and the local agencies to report their performances but just only 96 cases have been returned (30.18%) but 222 cases (69.82%) have not been returned as shown in the Figure 1.1 below.

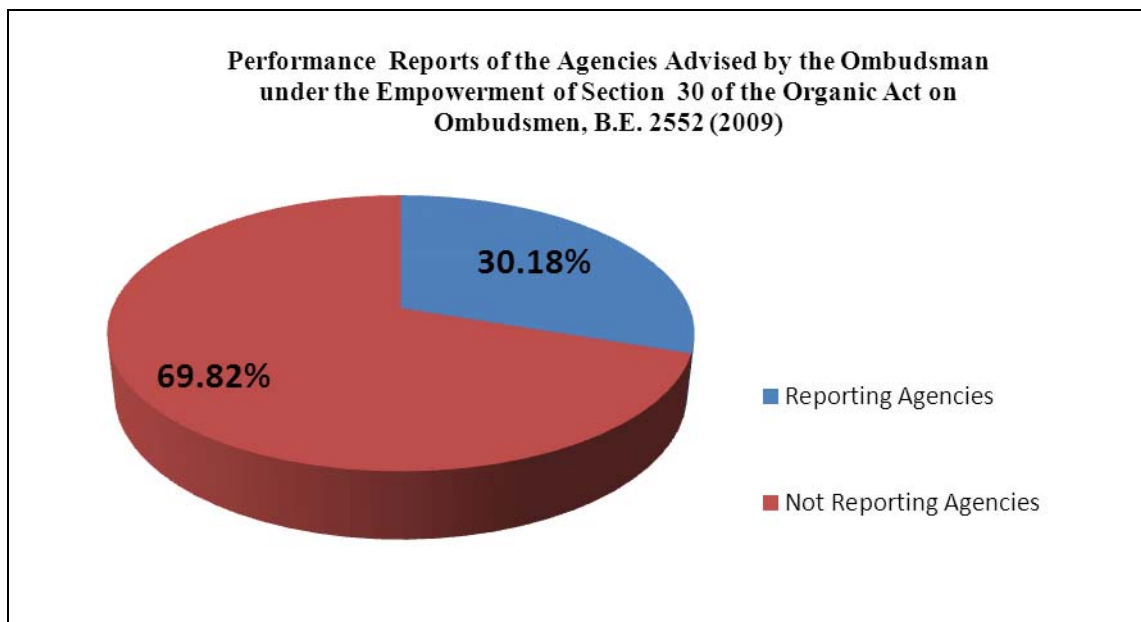


Figure 1.1 Performance reports of the agencies advised by the ombudsman under the empowerment of Section 30 of the Organic Act on Ombudsmen, B.E.2552 (2009).

Source: Policy and Planning Bureau, Office of the Ombudsman, 2015

The above data show that there are more state agencies, state enterprises and local agencies not reporting their performance than otherwise to the ombudsman.

Under the empowerment of Section 32 of the Organic Act on Ombudsmen, B.E.2552 (2009), it is found that there are 1,061 complaints finalized, 460 complaints to be pursued and 601 complaints yet to be pursued as shown in Table 1.1

Table 1.1 Complaints Finalized under Section 32 of the Organic Act on Ombudsmen, B.E.2552 (2009).

Offices	Finalization under Section 32			
	Reporting within the system (1)	Actual Actions		
		No. (2)	Pursued (3)	Yet to be Pursued (4)
Legal Bureau	65	23	8	15
Intake and Early Investigator	129	125	64	61
Investigation Bureau 1	287	264	81	183
Investigation Bureau 2	371	358	127	-
Investigation Bureau 3	259	192	111	81
Ethical and Special Investigation Bureau	196	99	69	
No Responsible Persons (responsibility shift, resignation, retirement)	234	-	-	-
TOTAL	1,541	1,061	460	601

Sources: Summary of the complained finalized under Section 32 - complaints finalized under the Organic Act on Ombudsmen, B.E.2552 (2009), and complaints finalized under Section 30 of the Organic Act on Ombudsmen, B.E.2542 (1999) of the Ethical and Special Investigation: Office of the Ombudsman, 2015.

Besides the problems of complaints entering the process of the ombudsman, parts are found that they are not under its authority and they demand it to end the examination or unable to accept some complaints because they are subject to the limitations of laws. Also, complaints of inspecting some state agents violating and not complying with ethics standards under the code of ethics, in practice, it is found that when the ombudsman submit the complaints to the related agencies for considerations and check facts under the code of ethics, some agencies fail to solve the problems or take disciplinary punishment against the offenders. This raise questions among people whether the ombudsman fosters justice or not because it does not take action of interrogation or check facts as in the complaints related to the ethics of the ones who have directly been complained about.

To leverage efficiency of the ombudsman in solving the troubles of people with speed and fairness while being to enable it to completely protect the civic rights,

it demands the researcher to study the factors creating the problems and the limitations hindering and disabling its power enforcement to check the exercise of the state power or to lame the efficiency of the ombudsman in power enforcement. The purposes are to further enhance its roles and authority with efficiency.

1.2 Research Objectives

1.2.1 To study the status of power enforcement on inspecting the state power by the ombudsman in Thailand

1.2.2 To study problems and limitations of power enforcement on inspecting the state power by the ombudsman in Thailand

1.2.3 To study approaches in stipulating efficient roles and authorities of the ombudsman in power enforcement with efficient inspection over the state power

1.3 Scope of the Study

This research is focused on the process and approaches in exercising power to inspect complaints of the ombudsman in foreign countries and the organization with similar characteristics with Thailand. It is to be as data to complement the analysis and synthesis with the in-depth interview of the erudite and the specialists on ombudsman including data collected from the agencies exercising power to inspect the exercises of the state power similar to the ombudsman. This is to find approaches for power enforcement of the ombudsman for greater constructive efficiency.

1.4 Research Methodology

The method selected in this study is a mixed approach of quantitative and qualitative research.

1.4.1 Qualitative Research

a). Documentary research was explored through analyzing data, Thai and foreign documents on laws, laws text books, books, journals, articles, annual reports of the ombudsman, other related documents and using information technology to surf data related to the ombudsman. They led to analysis and synthesis the responses of the authorities and the state agencies those were complained upon at the ombudsman at the stage of clarification and calling for documents, which were delayed and the state agencies, which disregard the orders or the recommendations of the ombudsman. This included data gained from documentary researches and constructively summarized for useful applications to complement the data collected from in-depth interview and data collected from respondents. This was to find the approaches better supporting the efficient roles and authority of the ombudsman in Thailand.

b) In-depth Interview was conducted with experts and the specialists from interdisciplinary professional who were erudite, with experiences and specialization related to the roles, authority and exercise of power to check the public sector. They were 10 key informants from university lecturers, members of the National Legislative Council, judges of the Administrative Court, ombudsman, and the experienced person acting as the Secretary to the Office of the Ombudsman.

1.4.2 Quantitative Deductive Research

Questionnaire has been formulated from synopsis and processing information from the documentary research to stipulate the inquiries in order to be conducted with five personnel working on the power enforcement of the ombudsman. They were personnel from the Office of Civil Service Commission, the Office of the National Counter Corruption Commission, the Office of the Attorney General, the Ministry of Interior, and Damrongdhama Center of the Ministry of Interior.

1.5 Definition of the Terms

Ombudsman is referred to individuals appointed by His Majesty the King as being advised by the Senate and are selected by the Nomination Committee and being the persons of highly respected by public and equipped with knowledge.

Power of the Ombudsman is referred to the exercise of powers under the Organic Act on Ombudsmen, B.E.2552 (2009) . These are powers are 1) the power of inspection and search for fact as in the complaints. 2) It is the power to submit the Constitutional court or the Administrative Court for adjudication. 3) It is the power to inspect organizations by the Constitution and the justice organizations. 4) It is the power to inspect and to take action on ethics of the political positioned persons and the state agents. 5) It is the power to pursue, evaluate and prepare recommendation to follow the Constitution. In addition 6), it is the power to examine and to interrogate without any complaints, had they been found the actions damage people at large or to protect the public interest.

The State Agent is referred to government officer, government personnel, government employee or an individual in the government agency, the state agency, the state enterprise, the local agency and the government officer by law of the local administration.

Inspection of the State Power is referred to inquiries, inspect, and review the performances of the agency under supervision of the state, the state enterprise, and the local government agency to take action by power and duty of the purview with rightness, transparency and fairness under the principle of good governance.

1.6 Expected Benefits

1.6.1 To learn about the status of the power enforcement in inspecting the state power exercised by the ombudsman in Thailand

1.6.2 To learn about the problems and limitations of the legal enforcement in inspecting the state power exercised by the ombudsman in Thailand

1.6.3 To gain the approaches to enhance the efficiency of the legal enforcement exercised by the ombudsman in Thailand

1.6.4 To gain recommendations for the authority in examining the approaches of the legal enforcement by the ombudsman for greater constructive efficiency

CHAPTER II

LITERATURE REVIEWS

In the study of “The Legal Enforcement of the Ombudsman in Thailand”, the researcher has reviewed concepts, principles, theories, documents, related researches, the ombudsman journals, and the annual ombudsman reports to be as guides for the research and to be the foundation of conceptual framework and the issues for the investigation. The issues were:

1. The concepts of human rights and constitutionalism
2. The concepts and the theories of monitoring the exercise of the state power
3. The concepts and the theories of the related criminology
4. The concepts and the models of establishing the ombudsman organization
5. The ombudsman in abroad and the ombudsman in Thailand
6. Related researches

2.1 The Concepts of Human Rights and Constitutionalism

2.1.1 The Concept of Human Rights

The concept of human rights is founded on the natural law with the major principle that the human rights is the rights and liberty which all human own by nature or called natural rights as being born a human regardless the person’s domicile, social class, ethnicity, sex, age, skin, language, belief, and politics. All can exercise their right by nature with equitability and equality reasoned that an individual is a human and by general principle, the human rights are the prior rights before the birth of the “state”. Therefore, having the human rights is not the state enactment for each individual but the endorsement of rights inherited with humans enacted such as liberty of body and liberty in religious belief and so on.

Banjerd Singhaneti (2012) reports in his investigation on “Inspection of the Constitutional Legitimacy of the Statutory Provisions Affecting Human Rights” that the conventional concept of human rights is not the real legal rights but more inclined to be a philosophy. By reason, it is just an acceptance that an individual should own some rights in being born human. As such, various countries attempt to enforce such natural rights are the rights by law by adopting the concept of the human rights to enacted in the legal documents and enforced internationally in the form of such as treaties or enforced by law such as endorsement in the constitution and so on.

Thailand is another member of the United Nation Universal Declaration of Human Rights (UDHR). The UN General Assembly has passed a resolution and declared in December 1, 1948 as a warranty of the human rights protection by the state through the enactment of the human rights in the constitutional law, which is the supreme law of the country. It has to endorse and protect the individual rights and liberty as in the Constitution of the Kingdom of Thailand B.E.2550 (2007) (terminated by the NCPO: the National Council for Peace and Order-The Announcement No.11) Section 10. It enacts about the human rights related to perceiving of information and complaints in Section 56 to Section 62. For example, there are rights to receive information or public news under the control of the government agency, the state agency, the state enterprise and the local agencies. There are rights to receive information, explanation, and reasons from the government agency, the state agency, the state enterprise and the local agencies before permits to take action with any projects or any, which may affect the quality of environment, health, quality of life or other stakes about oneself and the local agencies against oneself or the local communities. At the meantime, there are rights of expression before the related agencies for complementary considerations in such acts. This includes allowing the state to organize a public opinion if such the matter is related to planning social, economic, political and cultural development, expropriation, city plan, zoning go land use and rules, which may affect the major public interest. This is also includes the public rights to sue the government offices, the state agencies , the state enterprises, the local agencies and other state organizations, which are juristic persons in order to take responsibility for their acts or avoidance to act and so on.

2.1.2 Constitutionalism

It is a popular principle at present especially in the countries, which give importance to protecting the rights and liberty of their people. They are mostly found in the democratic countries. Kriangkrai Jaroenthanawat (2012) mentions in his book about the basic principle of public laws that the principle of the constitutionalism in enforcing the written constitution as a tool is to limit the administrative power or the state power while protecting the rights and liberty of the governed or people including the inspection of the state power. As such, the limit or the inspection of the state power is to protect the rights and liberty of people. The state cannot exercise its power arbitrarily. Meaning, the state must exercise its power within the frame of the constitution and the law and it will not affect the rights and liberty of people. Had the acts of the state violated the constitution and laws, which affected people; they then hold their rights to take lawsuit for the state to compensate the damages as well as to also demand punishment on the organization or the state agents who have committed offenses.

2.2 The Concepts and the Theories of Monitoring the Exercise of the State Power

The administration is an organization exercising the state power by law. At present, there are many models with state organization exercising the state power. They are not restricted only with the regular officers positioned in various government offices within the line of command or supervision under the Prime Minister but they include the independent government organizations and the organizations or the personnel under their supervisions empowered them to take action under the government policies. To justify the actions taken by the state agencies under the scope of laws and for the justice to people in societies, the state needs to monitor the exercise of the administrative power. The related concepts are as below.

2.2.1 Liberal Democratic Regime:

The state is the receptacle of the sovereign power or the state power and it is unleashed from the political history of administration in Europe during the end of

the 16th Century. This concept is aimed to separate “the empire power” from the individual power of the ruling class at that time. At present, it is a modern-state conditioned as a juristic person. The state being the juristic person or the suppositional individual by law, the state then needs to have “personnel” or the “juristic body” under the duty as the organizations exercising the state power (Angkul Wattanaroong, 2016).

The Montesquieu-based Separation di Pouvoirs in France has written in the book titled “The Intent of Laws” by adopting the idea of John Locke about the separation of the sovereign power for balance of the state power advocating that anyone empowered always incline to exercise illegitimate power. To prevent it, is therefore demanding to systematize the administration by given a power holder to counter balance or to impose veto to the over-exercising of power of the others. As such, monitoring the illicit exercise of the state power demands Separation di Pouvoirs, and checks and balances among the power holders at the equilibrium level, all the time.

With this theoretical principle, it unleashes the concept of power separation in the organizations, which exercise the state power, i.e. 1) the Legislative empowered on enactment for enforcement, and 2) the Administrative empowered to demand the enforcement of laws enacted. There are two types of exercising administrative power, which are the government and the administration. The government exercises its power through policy while the administrative exercises its power through administration. 3) The Judicial Power - it imposes discretion over the disputes among people or between people and the state authorities bound to the statutory provisions given the court to exercise this judicial power. As such, the Separation di Pouvoirs of these three organizations should be divided for check and balances against each other (Siriya Promrajyos, 2010).

2.2.2 Liberal Democratic State

This concept involves two major principles founding the organization of the liberal democratic state. They are 1) das demokratische Prinzip and 2) des Rechteetaats Prinzip. Their essences in each country are similar but some different details under the government model or administration. For example, democracy in the presidential system would have some differences from the parliamentary system.

Alternatively, the legal state in a country with written constitution would have different complaints from the country with non-written constitution (Banjerd Singhaneti, 2004).

The Democracy

Its principle has been developed through ages in the history of administration. A democratic administration is then referred to self-administration of those who are under the administration. By the other way, it is referred to having a government an organization by the constitution voted by people or by their consent. It is said that democracy is an administration where people are both administrators and the administrated, which is based on liberty and equality. The democratic essence is therefore divided into Volkssouveraenitaet, Freiheitliche Demokratie, Mehrheitsprinzip and representation principle (.http://www.digi.library.tu.ac.th/thesis/la/0799/07CHAPTER_2.pdf, 2 June 2016).

The Legal State

The Legal State is either or “Etat de Droit” in French or “Rechtsstaat” in German (Manit Hoomba, 2011). Its fundamental concept is the restriction in exercising the state power by the administrative personnel. This is to prevent them from arbitrarily exercising their state power. It demands the state administration to use its power when there is evident enactment and in general, the power can be exercised over such cases and under the scope of law empowered. The concept of legal state is developed to limit the state power or the administration into the border of laws. The main aim of stipulating the state to govern under law is to endorse and to protect the basic rights and liberty of people not enacted except there are statutory provisions of empowerment. It flows with the administrative principle of “No Law, No Power.” As state adhered to the legal state is demanded to confer rights to the victims who have been violated by the state authorities. Victims can claim it to their immediate supervisors of the transgressors or taking lawsuit at the judicial organization in order to check the legitimacy of the administrative acts. The protection of rights and liberty for people is then would be truly effectual (Udom Ratamarit, 2002).

2.2.3 The Concept of Monitoring the Administration Legitimacy

The necessity to retain the legal state in the liberal democratic state is crucial to found the protection of rights and liberty of people because the needs and the complexity of society are surging where the administrative activities are rising too. The administrative activities organized could affect or damage people. The real protection of rights and liberty for people would be active when the monitoring system over the legitimacy of the administrative activities is active (Nanthawat Paramanant, 2014). In principle, the modern state monitors the administrative legal acts through the administrative legitimacy and good governance.

The Administrative Legitimacy

It is “All the administrative acts must be lawful.” It is the *état de droit* and must be strictly adhered to. Its main objective is to protect the rights and liberty of people from the acts of the French administration. The principle of the administrative legitimacy is the “coercion” for the administration to take actions under the scope of laws empowered to them. These “laws” are not just the Acts enacted by the parliament but including the entire system of laws, which the administration has to adhere to and strictly abides. They begin with the constitution, the international laws, the laws enacted by the Legislative and the administrative rules, which France counts as the “Source” of the administrative power.

The principle of legitimacy in the administrative acts is “No Law No Power”. It means that the administrative performances must abide in the given power by law otherwise impossible to take any actions. Laws are therefore the source and the limitations of exercising the administrative power (Nanthawat Paramanant, 2014).

Good Governance

It is a good administration or the civil state mechanism. “Good Governance” is viral in both public sector and private sector. It first rose in 1989 in the World Bank Reports on the “Sub- Sahara; From Crisis to Sustainable Growth” (Narumon Tabjoomphol, 1998). It displayed the significance of good governance in stipulating the state power in maximizing the resources for economy. The spirit of good governance is pointed to solve and rehabilitate economic problems. Later, the United Nations Development Programme (UNDP) has adopted and analyze this concept

for developing other aspects focusing the develop humans in societies in order to enabling them in peaceful co-existence.

Good Governance is not a principle of law but public administration or bureaucratic administration to integrate benefits of all parties in societies. It is based on the secure base, which the majority in a society accepts. The modern state prioritizes to create good governance but it does not mean that any democratic countries will automatically have good governance. Had a state demanded to mechanize the national administration balance among all parties in society especially between the state and its public; the state power must then be honest, transparent and accountable. As such, it demands to have inspection organization to monitor the state power in order to prevent over-exercising of power among the state authorities (Linda C. Relf, 2004)

Good governance has been significantly adopted in seriously enacting the Thai constitutional laws since the Constitution of the Kingdom B.E. 2540 (1997) until the Cabinet by its meeting in April 24, 2013 resolutely approved the four principles along with ten sub-principles of good governance proposed by the Office of Public Sector Development, i.e.

1) New Public Management

1.1 Efficiency - it is referred to economize public resource uses, worth investment and maximum benefits en masse. As such, it is demanded to reduce red tape and shortcut the time to facilitate and to reduce expenses including terminating obsolete and unnecessary missions.

1.2 Effectiveness - it is referred to strategically visioning the job to meet the needs of all people and all stakeholders, achieving the objectives of the missions, clearly targeting the jobs and meet the levels of social expectations while systematizing and standardizing jobs.

1.3 Responsiveness - it is referred to working the official jobs demands efficient services, finishes jobs on time, creates confidence and trust, and is responsive to expectations and needs of the recipients while appropriately sharing the diverse and different interests.

2) Democratic Value containing

2.1 Accountability - it is referred to working the official jobs demands responses and clarification if suspicion has arisen. It includes systematizing the reports of progression and achievement by targets announced before the public for the benefits of inspection, advantages given and preparing the amendment system or alleviating problems and any arisen impacts.

2.2 Transparency - it is referred to working the official jobs demands honesty, direct and exposing necessary information and trusted by people without fail including systematizing to easily access data.

2.3 Rule of Law - it is referred to working the official jobs demands exercising of legal power, strictly following obligations with fairness, free from discrimination and being conscious to the rights and liberty of people and the stakeholders.

2.4 Equity – it is referred to working the official jobs demands equally servicing without discrimination between female and male, origin, race, language, sex, age, physical condition, health, individual status, economic and social status, belief, education and others. It is necessary to be aware of equal opportunity to access public services of the individual groups among the social disadvantages.

3) Participatory State containing

3.1 Participation - it is referred to working the official jobs demands hearing the public opinion and allowing people's participation to perceive, learn, understand, expressing perspectives and proposing problems and issues related while participating in inspecting performances.

3.2 Decentralization - it is referred to working the official jobs demands empowerment and appropriate decentralization of responsibility in decisionmaking and working actions for all levels of personnel.

4) Administrative Responsibility containing

The dutiful responsibility must be moral, fair and meeting the social expectation and adhering to the values of ethical principle for those political positions and the authority (Plernta Tanransan, Office of the Senate Secretary-<http://www.click.senate.go.th/?p=-3772>: June 3, 2016).

2.2.4 The concept of the monitoring model on exercising state power

Inspecting the state power is to check the controlled organization with various models and relying on what criteria to be used such as considering the controlled duration before or after exercising power or to use the control criteria under the internal administrative organization and to control the exercise of the state power by the external organization outside the administration department.

In this study, it needs to consider the monitoring model of the administrative department by considering the control organization by dividing into 1) control and internal audit, and 2) control and external audit, i.e.

1) Control and Internal Audit

The internal control by the administrative department is another measure to control the administrative department by having the internal organization controlling the administrative department itself. Such nature of control is the control by claiming to the internal administration and the method by the nature of semi-dispute. As such, the action is taken by the administrative department itself (Amorn Jansomboon, 1970) such as control-command, and control over individual.

Prof. Georges Vedel and Pierre Delvolve the French public law professors find that command power is the power the commanders impose on subordinates such as the minister imposes the power over all the officers in his / her ministry. The commanding power is the 'le pouvoir inconditionne' (unconditional power). However, his power must not coerce or generate illegitimacy. The immediate supervisors hold the rights to order their subordinates to reasonably act and always hold the 'le pouvoir de re'former (amended power) or termination power over the command of the subordinates except there are laws, rules or obligations enacted otherwise (Yongyuth Anukul, 1990).

2) Control and External Audit

It is another measure to control the administrative department by allowing the external organization to participate in controlling the works of the administrative department because self-control might fail in efficiency. Therefore, allowing the external organization to share controlling the administrative department. It is convincing that the work of the administrative department can, by any ways, be inspected. It is a mechanism in the inspection in order to build confidence about

the rights and liberty of people. The external audit is characterized by three natures, i.e. political control and inspection, the constitutional-based inspection and judicial inspections.

A. Political Monitoring

It is a way to treat error in the government jobs because by principle, the legislation is empowered with first, the legislation duty of enactment and monitoring the administrative jobs as a government and as an administration to abide in the policy declared before the parliament and by law. Second, the role and the authority of the legislation on monitoring and auditing the exercise of government power but they differ by country and rely on each regime. For example, the parliamentary system might demand for a session on vote of no confidence or censure, the appointment of investigative commission and parliamentary questions and so on.

However, the political monitor and inspection meet many limitations. They are witnessed in many parliamentary sessions that the administration controls the majority votes. In other case, such as the opposition party raises contradiction or proposes specific issues interested to only its party in the debate session in order to create instability against the government. This deserves political monitor and inspection as of policy inspection or monitoring the critical issues only (Sa-ngad Pattawee, 2008).

B. Judicial Monitoring

Worrapot Wisaroodpitch (2001) observes that in the system of administrative monitoring, the judicial monitoring can be the best guarantee for people with following supports.

1. The court or the judicial organization is independent in working and with warranty of its dependence to judge any cases without subjections to any influences.

2. If any citizens justifiably call for lawsuit, the court must fulfill its duty of tribunal and cannot reject it. Then, it becomes the guarantee for the citizen, if “misery” or “trouble” of citizens exists, it will be ameliorated within the reasonable time. This warranty cannot be found in other systems of monitoring.

3. The court trial is transparent and allows public to attend while allowing both litigated parties to present witnesses for full cross-examination.

4. The court always provides reasons with judgment, which guarantees for people that the trial will not be by arbitration.

C. Monitoring by Special Organization

It is separated from the political and judicial monitoring. It is well known as the Ombudsman in Sweden and the Prokuratura in Russia (Phokin Pholkul, 1981). Such an organization in Thailand is liberal to monitor the acts of the administration to be taken with justification. This is to guarantee in protecting the rights, liberty and interests of the people, e.g. the Ombudsman of the Kingdom, the Human Rights Commission, the National anti-corruption Commission (NACC) and so on (Nanthawat Borramanant, 2013).

2.3 The Concepts and the Theories of the Related Criminology

2.3.1. The Natural Law

By principle, it believes that social is wild, rivaling and chaos-maker because all exploit their full rights and liberty and each rights and liberty are unequal.

The strong then earns more than the weak. Therefore, all in society have avoided this situation by endorsing social contract and empowered individuals or individual groups to administrate people in society in order to bring peace and happiness the foundation of the social contract concept. Its concept is humans and society cannot be separated and the humans assemble by nature. With the rise of violating the rights, humans thus agree to assemble as a society and unleash social contract. Each one is willing to sacrifice rights and liberty of mutual control upon the violation of rights becomes law enforcement. The sacrifice of rights and liberty are not all but some and it is for common peace and happiness of society.

With the above theory, it sparks the return of the rights and liberty for people and leads to establishing a monitoring organization over the works of the administration. For example, the Ombudsman has been established by the as the central organization monitoring the power of the government agencies to follow the laws and to prevent them in arbitrarily exercising their power, which may affect the rights and liberty of the people.

2.3.2 The Classic School

Cesare Boneana, Marchese de Beccaria (1738-1794) establishes the Classic School under the philosophical principle of human nature that humans control their own behaviors and use their reasons and knowledge to analyze anticipated advantages and disadvantages before taking any actions. Therefore, it demands laws to control reasoning and human knowledge to avoid criminal behaviors. Later in early 1960s, the concept of the classic school has been improved into the criminological theories in the dimension of prevention or deterrence, i.e. the social defense theory and the economic theory (Masters & Robertson, 1990 ; Akers, 1994).

Jeremy Bentham (1748-1832), a British criminologist in the Classic School continues to coordinate the concept of Beccaria and emerges the philosophical concept of “Law and Punishment”. He sees that laws are enacted to create and support the individual happiness in society. Good laws must be able to prevent evils in societies. Bentham proposes four (4) objectives of punishment, i.e. 1) to prevent violation of laws. 2) If prevention fails, laws must force criminal to commit petty or non-criminal offense. 3) It is to prevent criminals to commit over-assaults and 4) it is to prevent crimes in the direction to minimize government spending. Bentham proposes to enact laws, which common people sense that if committing any offenses, they would meet miseries rather than pleasures. He believes that punishing offenders is aimed at preventing the persons to violate laws.

2.3.3 The Social Defense Theory

It is based on the Classic School’s concept under the hypothesis of the punishment efficiency in law that “violence, speed and certainty of punishment are the key in crime prevention” (Zimring and Hawkins, 1973). This theory believes that criminals will not offend if laws are enforced, arrestment fear, rigid law enforcement with severe legal punishment. They can narrow the opportunity for offenders to offend.

2.3.4 The Deterrence Theory

It is based on the Classic School's concept under the hypothesis of the punishment efficiency in law that "violence, speed and certainty of punishment are the key in crime prevention". This criminological theory is aimed to explain the result or law influences in governing people in society rather than explaining the roots of criminal behaviors. This theory believes that humans are always aware of the results of their actions before they behave. Therefore, we can prevent individuals to offend if there were effective and appropriate laws, which means there must be rigid rate of punishment, speedy punishment and critically risky to arrestment. It is seen that this theory is founded on law enactment and it becomes the philosophical principle in justice administration in many countries (Pornchai Khantee, 2010).

Criminologists propose the principle of deterrence theory into two models. First, it is called the "General Deterrence" - the influence of laws and the justice administration bringing fears and discouraging people to commit crimes. As such, it is the fears of arrestment, conviction and severe punishment. If there are no laws and justice administration, common people would choose to commit crimes. Send, another model is the "Specific Deterrence" - the influence of laws and the justice administration allowing the ever convicted would not commit crimes because they fear being punished again (Pursley, 1991).

2.3.5 The Law Enforcement Theory

It is an important tool to organize the social order to own integrity, promote law to play the key role in organizing organizational order being the private sectors involving people and private organizations which the law stipulate their roles as the law enforcers and law abiders as the public sector organizations. As such, the laws drafted for enforcement are demanded to indicate the structure of laws to be sued as the norm, and the behaviors of the social members. If any violation of the social norms is risen, the laws must stipulate the procedures or the steps of suppression or prevention and remedies. The law enforcement plays the key role of controlling crimes endangering societies.

2.3.6 The Containment Theory

Water C. Reckless, an American criminologist forms the Containment Theory explaining that there are two (2) system of control mechanism: the inner control system and the outer control system. The Inner Control System involves self- control, positive thinking, strong conscious mind, owning consciousness, tolerance, responsibility, and having destination. The Outer Control System means the social factors framing individuals to behave, having morals as the wall of protection, social condition providing contentment, having appropriate activities, and opportunities of acceptance. It is believed if both systems were strong; they could prevent offense (Annop Choobamroong; Unisa Lerttomasakul, 2012).

Light Jr. & Keller (1975) mention about control strategies that informal control and values can cultivate individuals to spend their lives as others have expected even if it is the undesirable way of life. All these things are fears of dispel from the group, mockery/derision, verbal and physical coercion, other negative social control, and other positive social control.

Jutarat Uea-amnuay (2008) writes in his book of social sciences and crimes that the verbal manipulation, and propaganda by using speeches and technique or media for propaganda. For example, radio, television, newspapers, and internet at present are the managerial strategies of social control and to control behavior of individual to believe or to have attitude and values with what have been stipulated.

2.4 The Concepts and the Models of Establishing the Ombudsman Organization

2.4.1 The Concept of Establishing the Ombudsman Organization

The concept of having the parliamentary Ombudsman is to protect human rights and to support justice for people. The administrative process has been found for over 200 years in Sweden in 1809 and in the Scandinavian nation group, i.e. Norway and Denmark and called the “Ombudsman” which came from the Swedish: “Representative” or “The Authorized Inspector”. In England, it is called the

“Parliamentary Commissioner for Administration”, which has similar authority. Personnel or the organization inspecting the administration jobs in order to fend miseries of people for the king in those days. This organization has well been successful and gradually developed. The main duty of the parliamentary Ombudsman in general is examining the complaints or problems from people affected by the government administration and summarizes in report to be forwarded for solutions to the related administration agencies and to the parliament. The report might also be proposed to public. Such proposals might persuade public idea at large, which might lead widespread criticism and encourage persons involved to further solve the problems (Pichet Soontornpipit, 2004).

In the aftermath, the concept of the parliamentary Ombudsman has been gradually more accepted and viral around every continent. Various nations have adopted the concept of the parliamentary Ombudsman to be investigated and to be as the guide to establish it in their own countries and appropriately to improve it in order to meet the situations of each country. It is expected that it will be the tool to prevent over illegally exercising the power of the administration. It could also be the balance of the administration power within itself (Nantiya Thongkhanarak 2004).

2.4.2 The Evolution of the Administration Inspection by the Ombudsman

The Ombudsman was first born in Sweden in 1713 with the objectives to be the representative to the king in monitoring and inspecting the works of the state agents. The King of Sweden at that time was King Charles the Twelfth who has sought political asylum to Turkey. His Majesty has appointed representative called “The Supreme Ombudsman” to inspect the state agents who committed offenses. It was found that the agents have unjustified exercised their power; the Ombudsman was authorized to inquiries and to take lawsuit and report to the King later for acknowledgement. Later in 1809, there was an appointment of the Ombudsman by the parliament to act for the King. At first, the thought to exploit the power of the Ombudsman to investigate the state power was not viral because at that time, the parliament was seen having the supreme power in administrating the nation and people under the administrative power held just the rights and duties assigned by the state only.

After WW II, the state had more missions and roles to recover its country to return to normalcy and to prepare public services. The state has changed its role into the “Welfare State” and it needed many state agencies to meet these new missions. These allowed the exercise of state power to easily affect the rights and liberty of people. The state needed to find a control process not to allow the bureaucrat and the state personnel to illegally or improperly use their power. The establishment of the Ombudsman had changed its model from before. It was not only its role and its authority to inspect its legitimacy but it includes the roles of the Ombudsman to protect the rights and liberty of people from illegal exercising the state power in all cases.

The group of nations just being changed into democracy had established the Ombudsman as part of the democratic administration. The Ombudsman helped support the development of the administration of the Kingdom. It brought transparency in the administrative system and helped the administration and the officers who had to be more responsible for societies (Peter Vedel Kessing, 2005). It could be said that the Ombudsman is part of the building good governance for society. It is a symbol for a country having democracy. With the changes of the basic thought, they result the Ombudsman having more duties. For the one side, it monitors the exercise of the state power while the other side, it promotes democracy and monitors the administration of the Kingdom to abide in good governance while also fighting corruption and protecting human rights (Mary Seneviratne, 2000). The Ombudsman becomes an organization to control the acts of the administration and it becomes very popular.

2.4.3 The Types of the Ombudsman

J.O.Kuye and U.Kakumba (2008) divide the Ombudsman organization by its power sources of its establishment. It is divided into two types, i.e. 1) the Ombudsman from the Legislation, and 2) the Executive Ombudsman or the Quasi-Ombudsman. They say that where the source of the Ombudsman is, it requires considering whether the parliamentary power or the government power is stronger so that the Ombudsman can efficiently monitor. The strength of the parliament or the government can be considered from its government system and its regime.

The relationship between the Ombudsman source and the its status

1) The Parliamentary Ombudsman

The Ombudsman appointed by the Legislation or the Parliamentary Ombudsman is the traditional model of the Swedish Ombudsman and the model is popular. Many countries have adopted the parliamentary ombudsman such as UK, Germany, Netherlands, New Zealand, Poland and Australia and so on.

The Legislation Ombudsman or the Parliamentary Ombudsman is assigned to “surveillance” the work of the administration through receiving the complaints of people who are troubled by the works of the officers from the administration. It has to investigate facts and report to the related administrative agencies for solving the problems. The Ombudsman is characterized as the parliamentary representative and linking to people who are the owners of the sovereign power and exercise their power through representative: the parliamentary members. The Ombudsman is legitimate as the representative of the legislation to control and monitor the administration. By its missions, the parliamentary Ombudsman has similar missions as the parliamentary members.

2) The Executive Ombudsman or the Quasi-Ombudsman

The ombudsman organization has been established by the administration such the government or the head of the state under the advice of the government and called “the administrative ombudsman”. It has been established under the principle of monitoring under the administration. The examples of the ombudsman have been established by the administration of the countries such as France, Japan and China.

The organization controlling the French administration has got a concept to establish Parliamentary Ombudsman of Sweden and the Parliamentary Commissioner for Administration : PCA) of England to explore the prototype of establishing the Mediateur organization to act as the “middleman” who would compromise the conflict between the state and the private body under the principle of liberty. The civic organization can easily access but in informal way. It comes from the concept of the “supportive” organization of the Administrative Court, which control the administrative division. The “mediateur” will be the middleman to solve problems through compromise and raise the defects to the Administrative Court for improvement so that its control system would be more efficient (Siriya Phromrajyos, 2010).

2.4.4 Power exercise of the ombudsman

The power exercise of the ombudsman begins from the process of instituting an organization. In the beginning, the establishment of the ombudsman organization has been instituted to represent the monarch and later represent the legislation or the administration. Its work is to receive the complaints from people who are in misery or being unfairly treated by the defects or the inefficiency of the administration under the division of power. It is the monitor the administration under the principle of the power division in order to balance the power between the legislation and the administration under the judiciary organization to judge, when conflict arises between both parties.

Marc Hertogh (1998) attributes monitoring of exercising power of the administration into two natures, i.e. repressive control and reflexive control.

The repressive control

It is the overt power exercise by opportunity given to the litigant parties to take lawsuit under the proceedings clearly stipulated. The judgment is in the controlled condition, which both litigants have to abide. It is the model of power exercises of the judiciary organization.

The reflexive control

It is characterized as monitoring, which the ombudsman holds a duty of a coordinator to the complaints of both litigants through compromising method by persuading the administrative agencies or individuals related to practicing the right way when both parties can agree upon. The ombudsman characterized of introductory monitoring is the classical ombudsman who has no commanding power or adjuring. However, there is the mechanism to demand the administration to follow the instruction or the recommend the ombudsman - preparing reports to propose to the parliament and to be disseminated to people in order to exercise political power and public opinion (social sanction) to pressure the administration.

The advisory monitoring is the authority and the major mission of the traditional ombudsman. The aftermath of WWII, the government intervenes and plays the roles to develop every sector. Many activities are organized aiming at the national economy at the wider range in order to adopt technologies and to create modernity to meet the global economy. Empowering the state affects people and leads to grow between the state and people. With this causes, many countries have adopted this

concept of the Swedish ombudsman the prototype and applied with their companies. It is to help fulfill the major mission to appropriately solve the inappropriate and unfair problems into appropriateness and top efficiency in exercising power of the state administrative agents.

At present, the new rising ombudsman organization especially in the countries just developing their administration into the liberal democracy has been stipulating its more roles and authority. Besides, the authority to receive complaints to address the misery of people only, as such the ombudsman is characterized and called “The Hybrid Ombudsman.” The applied ombudsman would stipulate its own roles and authority by situations of each country, where the ombudsman is needed to monitor and to enable it to exercise the restrictive monitoring power besides exercising the monitoring and advisory power. However, exerting restrictive power by the ombudsman is little but restricted, e.g. owning the investigative power and disciplinary punishment or owning the power to take lawsuit on the constitutional laws at the Constitutional Court and so on.

2.4.5 The Model of Establishing the Ombudsman Organization

At present, 200 countries have established their ombudsman organizations. The name and the power-exercised model of each country are different by their objectives. Establishing an ombudsman organization is dependent upon the government policy and the involved companies such as the national regime, economy, social and politics on what model they want the ombudsman to process. The ombudsman organization is flexibly modeled. The study of the ombudsman’s authority and the power exertion of the ombudsman in each country would identify which model of the ombudsman organization matches to be adapted for their benefits as being the organization to efficiently monitor the government sectors.

Peter Vedel Kessing, Supa divide the ombudsman into three models, i.e.

1) The Court-like Model

This model processes and work with the similar step as the court. The opinion or the recommendation of the ombudsman analogous to the verdict and the government agencies have to follow the discretion of the ombudsman if not the ombudsman will

forward the discretion to the parliament to continue following-up. In addition, the ombudsman still owns its power to inspect the performance of the government agencies and the state authorities by themselves (own - initiative project). If it is seen such action taken would be fruitful to the people at large and it happens not over a year.

The country demanding the ombudsman to be empowered as the court model will become the country without the Administrative Court. Therefore, the ombudsman is demanded to replace the Administrative Court such as Denmark, Norway, Iceland and Greenland.

2) The Prosecutor-disciplinary Model

This is a traditional ombudsman model in Sweden and established to represent the King to monitor the performances of the government agencies and the state authorities to be legitimate without violating the people's rights and liberty. If the state agents breach their duties, which are against the criminal law, the ombudsman is empowered to sue the officers and the state authorities to court. The ombudsman is also empowered to propose opinion on disciplinary punishment on the government agents. Words have been spread that the sacredness of the Swedish ombudsman lies on the proceeding (Amorn Jansomboon, 2006) including the Swedish justice administrative system and the criminal punishment. At present, on the other hand, the Swedish ombudsman alleviates its role in suing the state authorities but replaces with recommendation or advices.

3) The Mediation Model

This model plays as the middleman and compromise the conflict between the people and the state through negotiation for the win-win solution. Therefore, the legal proceedings of the ombudsman will not use strict law but use the principle of fairness in general and good governance to solve the problem. This model of ombudsman is the French mediator and the parliamentary ombudsman in England.

The roles of the ombudsman

The works of the ombudsman in various countries own different models, which rely on the stipulation of the ombudsman's roles in each country by dividing in to four models, i.e.

(1) Ombudsman as a protector of the citizens' rights

WWII allowed seriously violation of human rights within one's land and led to widely devastating lives and human dignity. It included attempts to devastate many communities with excuses of different races and religion. At the end of WWII, UN(United Nations) has been established by 40 countries and endorsed the Charter of the United Nations on October 24, 1955. One of the UN aims is "to achieve the collaboration among nations in promoting and supporting to gain human rights and basic liberty for all human beings regardless races, gender, language and religious." Many principles have been adopted to their constitutions (<http://www.investigation.inst.police.go.th>) in order to guarantee their people that laws and power exercises in public and private administration within the country and will not violate the human rights.

Linda C. Reif (2001) states that the trend of violating individuals' human rights is the most critical in Europe, Australia and other countries colonized by those countries. Some countries have established the National Human Right Institution or NHRI. Some countries demand the ombudsman to protect the human rights within their countries called "Human Right Ombudsman" for example, Portugal, West Germany, Spain and others. In addition, the developing countries especially the countries on the point to transit its regime to democracy likely stipulates the roles and the authority of the ombudsman focusing on human rights. Besides, the roles and authority of the ombudsman in monitoring the illegitimate administration of the land allow the human right concept to be exploited as the major principle in the international level of the ombudsman and the government units. In the regional sectors, to institute the ombudsman from democracy is connected to the rule of law, which the government sectors might apply into the government administration with innocence and fairness to people in order to build confidence to the works of government sector.

(2) Role of the ombudsman in combating corruption

Corruption is the critical issue to almost every country around the world because of the great impacts of economy, social and politics. Many governments attempt to issue legal and social measures to prevent and control corruption especially anti-corruption against the state agents. Most countries provide Anti-corruption Commission, particularly establishing the court to examine corruption and some

countries stipulate the roles and authorities of the ombudsman playing the important role of anti- corruption. Most find that countries with problems of deep corruptions will demand the ombudsman to prevent and counter corruption for example, Philippines, South Korea, Macao, some states of India, Namibia, Uganda, Trinidad and Tobago and others.

For example, the ombudsman is demanded to prevent corruption such as the ombudsman of Philippines; the constitution of Philippines demands the ombudsman office to work as the “Protector of People” under the Republic Act No.6770 or called the Ombudsman Act of 1989. Five missions have been demanded from the Philippines ombudsman, i.e.1) assisting people, 2) preventing corruption, 3) investigating complaints, 4) taking lawsuits, and 5) examining the administrative cases. The Ombudsman Act of 1989 of the Philippines demands the ombudsman to order punishment in some cases such as the libellant case with the public prosecutor to prosecute them in the Sandiganbayan court, a special court for corruption. In addition, the ombudsman is empowered to control the bureaucratic disciplines, the state agents, the administrative proceeding and the measures of punishment upon the agents who violate laws, e.g. job suspension or layoff. Exercising the power of the Pilipino ombudsman natured with deterring corruption and misconducts of the government agents or the state authorities in Thailand would be so efficient (Nongnuch Nowwarat, 2008).

The Korean ombudsman has been established to protect people from the unfair administration of the government sectors while protecting the benefits of people. In April 1994, Korea has appointed the official parliamentary ombudsman in the form of Non-governmental organization to anti corruption or Anti-corruption and Civil Right Commission (ACRC) with three missions. Those are 1) the investigative mission and taking action on complaints, 2) the mission of anti-corruption demanding countering corruption, monitoring the legal loophole to create corruption and recommending legal amendments in order to create collaboration between the state and the private. This is to counter, pursue and inspect corruption and to receive the report of the government’s agent corruption or the alleged agents and inspectable. That is by submitting the report to the original affiliation, which is complained and must be investigated to find fact. If the government agency reveals; ACRC might submit the

report to the Supreme Court to examine. 3) The mission of one-stop service is that the people can use the complaint process and plead to examine the matter in the same one-stop service (Raksagecha Chaechai, 2008).

The ombudsman in the special zone of Macao is an audit organization playing three roles and missions of anti-corruption. First, it is to prevent and suppress corruption and dishonesty with the High Commissioner against Corruption and Administrative Illegality: ACCCIA). It has been established on March 15, 1992 liberally suppress corruption. Second, the mission of the ombudsman is to examine complaints about the misbehavior of the government agents creating unfairness to people. Third, it is the role to organize fair and transparent election (Office of the Ombudsman, 2009).

(3) The Ombudsman role in good governance

The “Good Governance” is a United Nations Development Programme or UNDP, which its concept has been analyzed and applied with other areas such as stipulating the mechanism of the government sector in maximizing the resources focusing on developing humans in societies in order to enable them to co-exist peacefully (Oraphin Sopchokechai, 2004).

Japan International cooperation Assistance (1995) defines good governance as a common development demanding the government to participate under idealism or concepts leading to self-reliance development.

For Thailand, “Good governance” emerged during the economic recession and the “Tom-Yum - Koong Crisis” and in 1999, the Cabinet approved the national agenda to improve “good governance” in 1999 and enforced in August 11, 1999 that all government parties have to follow and to report its performance and the Cabinet and the Parliament (Bongkos Suthas Na Ayudhya, 2013).

The aims of the concept about the ombudsmen worldwide are to fulfill their duties in monitoring the works of the administrative department to abide in law and to create fairness and to protect the rights and liberty of people for happiness in their societies. The good governance is then accepted and many countries enact this concept in the authority of the ombudsman. For example, they are the authority to check ethics and disciplines of the state agents and the enactment of the authority to pursue and to check the exercises of state power whether they have abode within

the code of ethics in their agencies or not. For example, they are seeking gains in their official position, malpractices of budgeting expenses, misbehaving in doing duties, which violates laws and civil servants disciplines. If the ombudsman finds that the government agencies misuse their power and do not follow the code of ethics; the ombudsman own duties to report to their responsible agencies to further take action. The ombudsmen in some countries own power of interrogation and punishment. For example, the Philippines enacts its ombudsmen to play roles and are empowered to control and disciplinary corrections with the civil servants and state agents, who come from election excepted its congress members, judges and impeached civil servants who misbehave or violate the code of ethics, e.g. administrative interrogation, job suspension and lay off and so on.

Anti-Corruption and Civil Rights Commission or ACRC Republic of Korea enacted the code of ethics for its state agents in February 2003 to be the guides and enacted all the state agencies to prepare their won code of ethics as well as to adhere to them. There are NGO to counter corruption under ACRC to pursue and investigate the practices of their code of ethics among the state agents (Raksagecha Chaechai, 2008).

(4) The Roles of Specialized Ombudsman

Some countries enacted the roles of their ombudsmen to remedy the miseries complained in various areas beside the power to monitor and check the legitimacy of working among the administrative agents. This is the traditional concept of the Swedish ombudsman. Enacting the specialized ombudsman to control the administration is to focus on systematically solving critical problems of its own country and for the efficiency to solve specific problems. Such monitoring is not only the ombudsmen must have specialized qualification or experiences related to the inspection power against specific matters but also the ombudsmen have to request cooperation from specialists or the agencies from government sectors and the private sectors to remedy the miseries arisen. As of the countries using various ombudsman system are mostly found that there are the provincial and regional ombudsman offices besides their establishment of the central ombudsman.

The countries enacting the ombudsman to play the roles and to exercise the power to monitor specific areas, are such as Australia where many levels of ombudsmen are established in the central offices and at the level of provincial government in every state allocated with the specialized ombudsmen such as the taxation ombudsman, the defense force ombudsman, the immigration ombudsman. It is also extended into the private ombudsman in such as the banks and the postal industry ombudsman and so on (Bhiriya Siripopunkull, 2008).

New South Wales Ombudsman in Australia is the state ombudsman. The Parliamentary Ombudsman Act of Australia empowered it to investigate the performance of the state agents in New South Wales on negligence to perform duties by law or to act or not to act with regards to execute administration of the executive. Besides Section 15, it is enacted that the parliamentary ombudsman is empowered as the Royal Commission to facilitate the ombudsman to issue warrant against any individuals for testimony before the parliamentary ombudsman. It is also empowered to examine various complaints, i.e. complaints against police, or to take action on telecommunication interception empowered to it. However, there is limitation that it cannot report details in any actions taken against the interception in its annual report or any reports presented to the parliament or its complaints examination of the witness protection under the Witness Protection Act 1995, or examining the complaints of disclosing information under the Freedom of Information Act 1989 (FOI Act). It includes the power to complain about child and youth welfare or called “Ombudsman Amendment” under the endorsement of Child Protection and Community Services Act. The parliamentary ombudsman can take action to probe truth about the illegal and unfair child and youth labors among the government and the private sectors. Ombudsman can recommend to amend rules, laws and to advise for long-term amendments (Parliamentary Ombudsman, 2007).

The Greek Ombudsman has been instituted in 1997 under the Law 2477 dated April 17, 1997 enacting it as a independent administrative authority to be the middle man of compromising conflicts between public agencies and common people. It is focused on related laws in order to protect the right of its citizens and to counter the illegitimate exercises of administrative power. The Greek Ombudsman is authorized to investigate the complaints about the avoidance of exercising duties of the

administrative actions or to investigate the actions of the state or the public services violating personal rights or damaging the legal rights of the individuals or the juristic persons.

The Law No. 2477 Section 1 is enacted to have another four Deputy Ombudsmen classified by four missions of human rights, health and social welfare, quality of life and state-citizen relation. Under the law of instituting the Greek Ombudsman, it has enacted to protect the ombudsmen and the deputy ombudsmen not to be responsible for admit guilty or subject under lawsuit because of their opinions given by their power and duty excepted the case of libel damaging others or characterized as the incrimination (Sunisa Itthichaiyo, 2004).

The Pakistani Federal Ombudsman or the Wafaqi Mohasib is and NGO established under the law of The Office of Wafaqi Mohtasib (Ombudsman) Order playing the roles and authority to remedy and alleviate the administrative offenses of the agencies established or control by the Federal Government (Nongnuch Tanin; Pitaksin Siwaruj, 2010). In the establishment of the ombudsman, besides the national level or the federal ombudsman; there are another 11 ombudsmen empowered to establish the ombudsman at the national level, the state levels and the special ombudsmen such as Federal Tax Ombudsman : FTO, Federal Insurance Ombudsman and the Federal Banking Ombudsman (Nongnuch Tanin; Knokkwan Anantakool and Kris Kanabsak, 2014).

2.5 Ombudsman in abroad and the Ombudsman in Thailand

2.5.1 Ombudsman in abroad

At present, many countries deploy ombudsman and /or parliamentary ombudsman to help people on their rights. This research presents case studies about structuring the organization, its role and its authority exercising its power of democratic administration in the prototype ombudsman in the parliament worldwide and the prototype of the Thai ombudsman. They are the Swedish parliamentary ombudsman, the British parliamentary ombudsman, the Danish parliamentary ombudsman, the Canadian parliamentary ombudsman of Toronto and of Ontario, and

the Philippines parliamentary ombudsman. The studies are divided into two parts, i.e. the background of the ombudsman to understand the national context and to study their roles in these countries for the benefits of applying them as guides to further develop the power exercises of the ombudsman in Thailand.

2.5.2 The Swedish parliamentary ombudsman

The Riksdagens Ombudsman or called Justice Ombudsman (JO) has been established in 1713 under the royal initiatives of His Majesty Charles the Twelve of Sweden to be instituted for inspecting, directing, monitoring, and enforcing laws of the Lords and the bureaucrats. After the end of the absolute monarchy, there was a constitutional draft with the establishment of its parliamentary ombudsman in 1809 with the objectives that its Riksdag can audit the duties and the enforcement of citizen, military and court laws with fairness. The Riksdagens Ombudsman has been instituted by its constitution and laws related to the Riksdagens Ombudsman under the Act with Instruction for the Parliamentary Ombudsmen and Administrative Directive for the Secretariat of the Parliamentary Ombudsmen.

The structure and the organization establishment of the Riksdagens Ombudsman

The Riksdagens Ombudsman is selected by the parliament under the Committee on the Constitution enacted in the Risdag Act with four members. One is the president responsible for general administration of the office, the central administration and supporting the work of the Riksdagens Ombudsman enacted in the constitution with 4 year terms of office. However, they could be reselected. Each Riksdagens Ombudsman is directly responsible for the parliamentary assignments and independent from the government supervision but impeachable by the parliament in the case of no confidence.

The roles and authorities of the Riksdagens Ombudsman

1) Inspecting the administrative works, the central and the local bureaucrats, and individuals taking actions affecting the public interest and military personnel (ranked from military master sergeant, navy leading seaman, and air force senior aircraftman) to check the Cabinet, the members of parliament, the members of

the local administrative organizations, the minister of justice and the Swedish central bank governor

2) Being empowered to check the administrative work to abide in laws and must not affect the rights and freedom of people

3) Taking action to punish bureaucrats or the officers who fail to abide by laws such as warning, disciplinary action and lawsuit, i.e. warning is through notice announcement in newspapers or submitting reports to the parliament.

4) Advising how to punish bureaucrat offenders if improper and incorrect punishment were found

5) Pursuing the justice work to be by laws, fair and appropriate proceeding by case and appropriate time spent in the proceedings and holding rights to attend in every proceeding, observing the misbehavior litigant parties or witness, interfering the incorrect judgment and submitting for court adjudication in the case of errors in working among the members of the Supreme Court or the Supreme Administrative Court and the criminal proceeding

6) Pursuing and evaluating the works of the government agencies if improvements are necessary and might propose the government and the related agencies to amend laws, rules and obligations (Yupaporn RomThaisong, 2000; Thippawan Kijsumurt and Bhiriya Siripopunkull, 2005; Pramote Chotimongkol, 2001; Phiromporn Khampinta, 2003; Chalath Jongsuebphan et al., 2004; Panya Udchachon, 2005).

2.5.3 The British Parliamentary Ombudsman

The British Parliamentary Ombudsman has been first established in April 1967 under the Parliamentary Commissioner Act 1967 with the official name of “Parliamentary Commissioner for Administration”. However, most people call “Parliamentary Ombudsman” modeled by Sweden and begun from the Labor Party, which was the government in 1964.

The structure and the organization establishment of the British Parliamentary Ombudsman

UK enacts one parliamentary ombudsman through recruitment method selected by the Lower House and proposes to Her Majesty of England advised by the

Lower House members. The parliamentary ombudsman must not be the Lower House members, independent, non-political party member and righteous. The parliamentary ombudsman will be in the position until 65 years of age but there is no term of office. However, the ombudsman is subject to impeachment if misbehaving under the parliamentary resolution. The parliamentary ombudsman is the non-government organization and not the government agent.

The roles and authorities of the British Parliamentary Ombudsman

The British Parliamentary Ombudsman is empowered to monitor the works or work avoidance and their work errors of the federal government or the central government and the government agencies such as ministries, ministerial affairs, departments, ministers, government agents, state employees and state agents. The British Parliamentary Ombudsman will investigate the complaints from people through the parliament. The one who is complained has to cooperate and any retaliation or being without reason to legal defense; he/she is subject to guilty similarly to the violating the court power. The British parliamentary ombudsman has no power to check the court, police and the local administration organization (Yupaporn Romthaisong, 2000; Pramote Chotimongkol, 2002; Chalat Jongsuebphan et al., 2004 and Nattha Muljinda, 2004).

2.5.4 The Danish Parliamentary Ombudsman

The concept of establishing the Danish parliamentary ombudsman began in 1946 instituted by the constitutional commission and reported the establishment in 1953 through employing the parliamentary ombudsman system. IT affected the constitution dated June 5, 1953. The Article 55 enacted the parliament to appoint one or two individuals to inspect military arm force and civilians. In addition, There was an Act in 1954 called the “Act No.230 of 11th June on the Ombudsman”. Later, an Office of the Parliamentary Ombudsman was established in the parliamentary office in Copenhagen on April 1, 1955.

The structure and the organization establishment of the Danish Parliamentary Ombudsman

The parliamentary ombudsman office is located in Copenhagen and another two office, i.e. the parliamentary ombudsman of Greenland and the Pharaoh.

Both institutions are structured and similarly working like the Danish parliamentary ombudsman but mainly adhere to the local law called the Home Rule (Kreingkrai Cheinpradit, 2011).

There is a member of the Danish parliamentary ombudsman. The recruitment, selection and appointment are from the parliament after the general election. The enactment is the ombudsman must be the law graduate and not the Member of Parliament. The Danish parliamentary ombudsman can be re-elected and is able to work until 70 years of age.

The roles and authorities of the Danish Parliamentary Ombudsman are:

1) Inspecting the works, the avoidance of works and unlawful working of the bureaucrats, the central agencies, military, the local administration organization and the churches but cannot investigate the doctrines of the church and the courts.

2) Raising the affairs for examination by itself without complaints about the cases useful for public in common and must not exceed a year.

3) Preparing reports and advices about the defects and errors found from working, which are unfair to people and reported to the agencies involved. The advice of the parliamentary ombudsman is equivalent to the verdict if the agencies fail to follow and the parliament will pursue them by itself (Thippawan Kijsumurt and Bhiriya Siripopunkull, 2005).

2.5.6 The Canadian Ombudsman of Toronto and Ontario

The structure and the organization establishment of the Canadian Ombudsman

The establishment was on 1975 with its head quarter in Toronto and another five branches in Thunder Bay, Sudbury, London, Ottawa, and Saulte Ste. Marie. There are only 80 ombudsmen in Ontario.

The Ontario ombudsman is a non-government agency of legislation selected by the Ontario parliament and appointed by the Lieutenant Governor Council through selection and unanimous resolution of the parliament. Its duty is to make the government transparent and to pass the efficient inspection. Its authority is enacted in the Ombudsman Act with a 5 year term and is able to extend its term of office without restrictions if being selected but the ombudsmen must not older than 65 years of age.

The roles and authorities of the Canadian Ombudsman at Ontario are:

1) The investigation on working or avoidance of working of the state agents affecting the damages to complainers; the discretion of the ombudsman cannot re-investigation. However, the Canadian ombudsman cannot investigate the central agents, private companies, individuals, police, physician, lawyer, the court judgment, court, the Cabinet's resolution, employees' insurance, official pension fund, refuse collection, and the enforcement under the municipality.

2) If the Canadian ombudsman in Ontario finds that the action has been committed as in the complaint raised by the ombudsman corrections and the no action has been taken as proposed; the ombudsman at Ontario will report to the higher immediate supervisor until the top supervisor. The ombudsman can report to the parliament and announce for people at large on laws having not been followed or failed to follow its advice.

3) In the case of the Canadian ombudsman finds what matters and deserves investigation by itself, it may not be necessary to have any complainers (Yupaporn Romthaisong, 2000; Pramote Chotimongkol, 2002; Nongnuj Nowwarat; Natchunart Pibulsombuti and Preeyatip Devakula, 2005).

2.5.7 The Philippines Ombudsman

The Philippines is another member of the Asian Ombudsman Association playing the roles of examining the state power with austerity and covering the works at large beginning from corruption, legal counseling for people and taking lawsuit against the criminal offenders.

The current prototype is first taken from the permanent commission during the reform regime and the Article 21 of the Royal Decree was announced on June 23, 1898 chaired by the Deputy President and examining all the criminal appeal under the judgment of the local council. Such the cases involve the actions taken by the Ministerial level, the provincial level and the local level. In 1969, there was the Republic Act No 6028 enacting that an office of people counseling has to be established playing the roles and similarly authorized as the office first established - investigating truth and preparing report to be submitted to the congress and the President. However, not all Articles of the Act have been enforced, President Marcos thus established

an office of the ombudsman to receive complaints and to investigate truth in 1970 (Kreingkrai Cheinpradit, 2011).

The structure and the organization establishment of the Philippines Ombudsman

The Philippines Constitution 1987 enacts the ombudsman as the mechanism to study the legal issues, procedures, processes and approaches of official action taken by the government agents including playing the roles of facilitating services for people who pursue and monitor the works of the government agents and the state employees in general affairs and special mission. This is to strengthen and to immunize the office of the ombudsman from the political influence and the external oppression.

The Philippines Constitution enacts the office of ombudsman to be independent administration of budget and is free from monitoring from any agencies. The ombudsman is the highest administrator of the office and has 7 year term of office. The term of office ends only with impeachment. In addition, it is also enacted that the ombudsman and its deputy are also to hold the positions as the members of Constitutional Committee through appointment and unnecessary endorsed by the Congress.

The congress later enacted the Ombudsman Act of 1989 or the Republic Act No. 6770 on November 17, 1989 on its authority and structure. The Congress attempted to recruit ombudsmen who could dedicate to work with efficiency and scoping the authority to prevent the ombudsman being subject to as “paper tiger” (Office of Ombudsman, 2008). In order to meet the constitutional assignment, the ombudsman establishes many major regional ombudsmen in the country having the deputy ombudsmen to chair each branch office, i.e. Luzon, Visayas Mindanas and special agencies. They have to receive the complaints and military in the lawsuit, and they will be pursued by the Office of the Special Prosecutor. The constitution enacts the ombudsman model, its structure and is independent while enables it to appoint the government agents and the personnel under the civil law.

The roles and authorities of the Philippines Ombudsman are:

Being the guardian of people, the office of Philippines ombudsman plays the roles and is empowered as follows:

1) It is to investigate the truth about the irregularities and inefficiencies arisen in the state sectors. The ombudsman can exercise its special power enacted by law not only to preliminarily investigate the complaints but also to examine and order the agencies related to collect evidences to investigate truth. The ombudsman is empowered to order government agents related who have taken an oath and to issue warrant and to testify themselves during the investigation process or testifying truth. Ombudsman is empowered to sentence in the libel cases and to protect witnesses in the critical cases. In addition, the ombudsman is the only power apart from the justice court empowered to audit the properties of the individual under investigation.

2) It is to take lawsuit and it is empowered to interfere with the administrative approach with the government agents or the state personnel who illegally behave and are subject to criminal lawsuit, civil cases and administrative cases before the proceedings. The ombudsman will have the Special Prosecutor to undertake the proceedings in the special court or the Sandiganbayan, which is empowered to undertake the criminal and civil proceedings of corruption and graft and other offenses committed by the government agents and the state employees in the government agencies or agencies under their supervision (Nongnuj Nowwarat, 2008).

3) In the administrative inquest, the Philippines ombudsman is empowered to control the disciplines of the bureaucrat and the state agents through the election process and appointment by the Congress members. The government agents can be impeached and the ombudsman can open the administrative inquest and the take punishment measures upon the bureaucrats and the state officers, who commit offenses such as either job suspension or layoff.

4) In helping people under the purviews, the ombudsman may order the bureaucrats and the state officers to help people. With these roles, the previous roles of the ombudsman have been coordinated and pursued by the Philippines ombudsman. The recent ombudsman's performances are to remedy 120 complaints of people (Office of Ombudsman, 2008).

5) Corruption prevention - the Philippines ombudsman is empowered to supervise education and to apply the methods of alleviating factors and opportunities to commit corruption and to motivate people to be aware the ill effects of corruption and turning to cooperation in eradicating it.

6) Raising the impacts against people for inquest without petition (Office of Ombudsman, 2014)

2.5.8 The Thai Ombudsman

Thailand is a democratic country under the parliamentary system governed by the parliamentary supremacy. The legislation institution is the source of the administration and controls the administrative power not to have unnecessary impacts over the rights and liberty of people through various measures, such as proposing the drafting Act, screening laws to be proposed to the administration, raising the question for general parliamentary debate, impeachment and appointing ad-hoc committee and so on. Such action taken might not be able to remedy all the troubles of people and cover all issues, especially their grievance and miseries affected by the administration regardless the purviews or practice or libeling on duties damaging people. All these become the concept to establish the parliamentary ombudsman of Thailand. Scholars and politicians have been raised for consideration expecting that it will be a mechanism, which will play the key role in protecting the rights of people affected by the action of the administration. In addition, it is the mechanism highly flexible to help the misery of people or those who are unfairly treated (Weerasak Saengarnphan and Chalinee Thanandngan, 2003).

In 1995, Thailand began to thrust the enactment of the parliamentary ombudsman in the Constitution of the Kingdom by amending the Constitution B.E. 2534 (1991) No. 5 B.E. 2538 (1995) under Section 162 Bi. It also enacts "His Majesty the King appoints more than five parliamentary ombudsmen by the resolution of the parliament and enacts the Speaker of Parliament to countersign the Royal Command to appoint the parliament ombudsman. It includes enacting the qualifications, criteria, protocol of appointment, impeachment and authority..." However, there is no statutory provision of time to take action during the implementation of the Constitution; there is no appointment of the parliamentary ombudsman (Sangad Pattawee, 2008).

During the promulgation the of the Constitutional Law of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), it was enforced by targeting to establish the organization to inspect and control the working of the administration

under the legitimate principles. There is the enactment of authority and an ombudsman organization under the supervision of the Legislative called “the Parliamentary Ombudsman” enacted in the Section 6 of the Parliament Part 7, the Parliament Ombudsman in Section 196 to Section 198. It includes the enactment of the Organic Act on The Parliamentary Ombudsmen, B.E.2542 (1999) to endorse the parliament ombudsman. Later, there was the political reform. The draft committee of the Organic Act on Ombudsmen, B.E.2552 (2009) was aware of expediency to take action on inspection and to maintain justice for people without pressure from the Legislative and the Administration. There is an enactment to empower the ombudsman as the independent organization under the constitutional power and changing the name into the “parliamentary ombudsman” into the “ombudsman” and enacting the Organic Act on Ombudsmen, B.E.2552 (2009). This is to endorse the missions of the ombudsmen through increasing their roles and authority such as power, inspecting ethics of the political personnel and the state officers, the pursuing power and evaluating the performance of the constitutional organizations, and the power of inquest the state power without complaints and so on.

The structure and the organization establishment of the Thai Ombudsman

In 2016, Thailand is under the political reform but the National Council for Peace and Order (NCPO) has enabled the NGOs and the ombudsman to continue fulfilling their missions by their powers. It demands the ombudsmen to thrust their mission according to the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and the Organic Act on Ombudsmen, B.E.2552 (2009), which enacts the ongoing roles and authority of the ombudsmen.

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) has been promulgated in August 24, 2007, Section 242 enacting three ombudsmen appointed by His Majesty the King under the advice of the Senate Council and selected and respected by people. The ombudsmen must be equipped with knowledge and experiences of administration on public, state enterprise, or the public activities of common interest with evident honesty. The selected ombudsmen can organize meeting and select one of the ombudsmen to chair the ombudsman organization and report to the Speaker of the Senate and the Speaker countersigns the Royal Command to

appoint the chairperson of the ombudsmen, the ombudsman members having in the position for six years for once since His Majesty has appointed.

The Recruitment of the Ombudsman

In the past, the recruitment must be subject to the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and the Organic act on the Parliamentary Ombudsmen, B.E.2542 (1999). There must be 31 committee members containing the representative of political parties or the political group with 19 members of parliament (MPs). The selection has to have the number according to or relative to the proportion of the MPs or the political group having its member as the MPs. The presidents of the public universities select among themselves four members, four representatives from the Attorney - Generals and four representatives from the Supreme Court.

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) has amended the recruitment member into seven persons, containing the Chief Justice, the Chairman of the Constitution Court, the Chairman of the Supreme Administrative Court, Speaker of the House of Representative, and the Leader of the Opposition Party in the House of Representative. Individuals in the general meeting of the Supreme Court select a person and the later two recruitment committee members must not be the judges and not being the recruitment members of any constitutional organization at the same time.

The critical change of recruitment and the selection of the ombudsmen is the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and the Organic Act on the parliamentary Ombudsmen, B.E. 2542 (1999). They enact the recruitment committee to select who deserve to be the ombudsmen at three times in number of the vacant parliament ombudsmen and propose to the House of Representative to select through secret votes and leave just only two times the number of the vacant parliament ombudsmen. This time they will be proposed to the Senate with the number of equal to the vacant parliament ombudsmen. The Senate will conduct secret votes only once and the selected one must have the top score and more than half of the number of the senate members. If the selection fails, the recruitment process has to start again. It could be concluded that selecting the ombudsmen under the provisions of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The recruitment has to pass through three procedures while the Constitution of the Kingdom of Thailand

B.E.2550 (2007) allows to select the ombudsmen to pass just a council (Office of Ombudsman, 2012).

Office of Ombudsman

The Constitution of the Kingdom of Thailand B.E. 2550 (2007) Section 242 the last paragraph enacts to establish the Office of Ombudsman to be an independent organization in administrating personnel, budget and other actions taken by law, which enacts **structuring and staffing in the Office of Ombudsman**

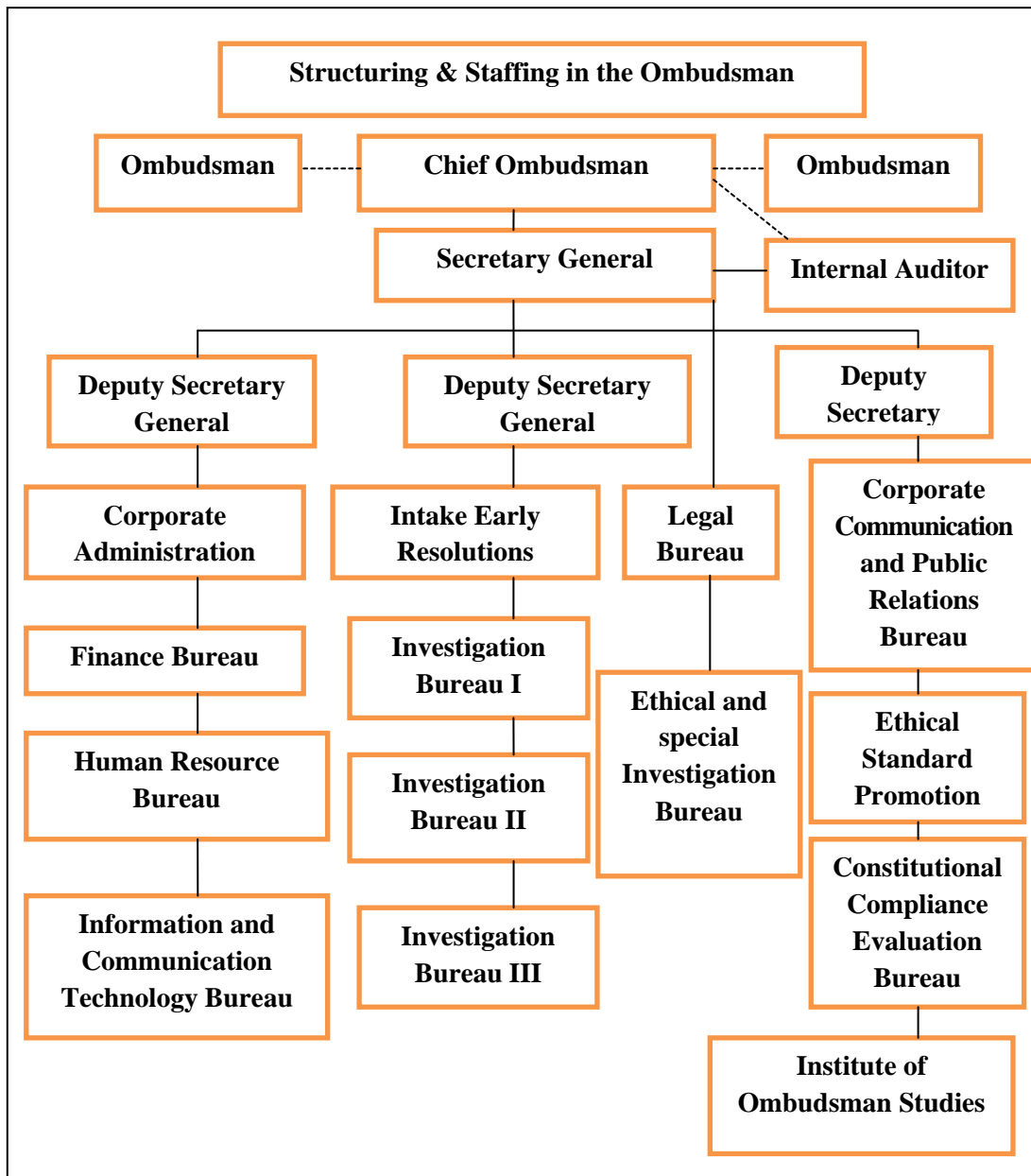


Figure 2.1 Structuring and staffing in the Office of Ombudsman

Source : Data of Human Resource Bureau : Office of Ombudsman, February 25, 2015

Table 2.1 Staffing and Permanent Employees

Agencies	Staffing	Current Staffs	Vacancy
<u>Employees</u>			
Secretary General	1	1	0
Deputy Secretary General	3	1	2
Expert	2	1	1
Corporate Administration Bureau	19	18	1
Finance Bureau	9	8	1
Human Resource Bureau	9	9	0
Policy and Planning Bureau	9	8	1
Corporate Communication and PR Bureau	14	13	1
IT and Communication Bureau	13	12	1
Legal Bureau	9	8	1
Investigation Bureau 1	20	20	0
Investigation Bureau 2	20	20	0
Investigation Bureau 3	20	20	0
Ethics Standards Promotion Bureau	17	17	0
Constitutional Compliance Evaluation Bureau	12	11	1
Institute of Ombudsman Studies	20	15	5
Internal Auditor	2	2	0
Intake and Early Resolution Bureau	17	17	0
Ethical and Special Investigation Bureau	16	15	1
TOTAL EMPLOYEES	232	216	16
Drivers	14	14	0
Office Staffs	4	4	0
TOTAL PERMANENT EMPLOYEES	18	18	0

Source : Data of Human Resource Bureau : Office of Ombudsman, February 25, 2015

The roles and authorities of the Thai Ombudsman:

The roles of the Thai Ombudsman

Enacting the roles and authority of the ombudsman in each country are differently characterized by objectives and the goal of establishing the ombudsman organization. In Thailand, the roles and authority of the ombudsman are divided into three characters, i.e.

1. To protect and to secure the rights and liberty of people, which are the vital roles of the parliamentary ombudsmen in every country in order to prevent the exercise of the state power or the government agents who breach the rights and liberty of people endorsed by the Constitution

2. To inspect the exercise of the state power or the government agents complying with law and the public administration under the principles of good governance for the growth of the country economically and socially

3. To remedy or to solve the trouble of people to earn fairness in the work of the organization or the government agents because the ombudsman's procedures are simple and without expenses including to mitigate the burden of the court in the trial (Phimol Thammaphitakphong, 2013)

The authorities of the Thai Ombudsman

The Kingdom Constitution B.E.2550 (2007) and the Organic Act on Ombudsmen B.E.2552 (2009) enacts the authorities of the ombudsman classified by exercising its ombudsman as below.

1) The authority to pursue and monitor the works of the organization /the state agencies

- 1.1. The authority to conduct inquest for truth in the case of complaints misbehaving against law or over exercise of power by the local law or (b) the case of practice or negligence causing damages to the complainers or people with unfairness regardless whether the practices are legible of the government agents, the state employees or the government employees, the state agencies or the state enterprises or the local agencies, which create damages against the complainers or people with unfairness regardless legality or illegality by duties.

1.2 The authority to inspect and inquest to from truth in the case of negligence to duty and doing duty illegitimately of the organization by Constitution and the justice organization

1.3 The authority to propose the constitutional court or the administrative court when any provisions become problematic regarding the constitutional legitimacy or the matters of rules, obligations, regulations, orders or any actions of the government agents, the state employees or the government employees, the state agencies or the state enterprise or the local agencies having the problems related to the constitutional legitimacy or law

1.4 The authority to raise the matters for examination and inquest without complainers in the case the ombudsmen find that there was law violation or over exercises of legal power or malpracticing duties of the government agents, the state employees or the government employees, the state agencies or the state enterprise or the local agencies or negligence to duty and doing duty illegitimately of the organization by Constitution and the justice organization as the impacts affecting the damages over people or to protect the common good

1.5 The authority to investigate the ethics of the political position persons and the state authority by the constitutional provisions

1.6 The authority to evaluate and to prepare proposal in adhering to the Constitution including to propose the matters for consideration in order to amend the Constitution in the case of necessity.

2) Power of Sanctions

2.1 Power of suggestion

2.1.1 The case the ombudsman inspects and investigate the truth and finds that there is offense. The ombudsman is empowered to propose recommendation to the agencies involved for corrections and the ombudsman is non-binding or the legal enforcement for taking action.

2.1.2 The ombudsman is empowered to recommend the government agencies to take action, to improve and to amend law, regulations, the Cabinet resolution in the case that the ombudsman finds that laws, rules, regulations or any Cabinet resolutions creating unfairness or inequality by law or discrimination or outdated affairs. And if the agencies fail to follow the

recommendation within the permissive time; the ombudsman is empowered to propose to the organization for reforming laws and constitutions for further action and reports to the Cabinet or the parliament for acknowledgement in the case of contingency.

2.1.3 The ombudsman is empowered to recommend to prepare or to improve the code of ethics among the political position persons , the government agents or the state personnel in each type.

2.2 The power to allow the agencies to clarify truth and send evidence for the ombudsman's consideration

To achieve the ombudsman's missions by the spirit of the Kingdom Constitution and the Organic Act on Ombudsmen B.E.2552 (2009) is to empower the ombudsman to coordinate various government agencies, the state agents or the state enterprise or the local agencies. The ombudsman has to sent letter of clarification or materials, documents, evidence or other evidences related for the ombudsman's consideration to complement their investigation or for the chief of the government agencies, prosecutors, interrogators or any individuals who testify or submitting materials, documents , evidence or other evidences related for examination and to report the actions taken for the ombudsman's acknowledgement.

2.3 The power to execute the mission of the ombudsman

2.3.1 The power of site visit to inspect where complaints arisen

2.3.2 It is to regulating related to exercise the power of the ombudsman such as regulating to enact criteria to receive complaints for consideration and the regulations of inquest. It is to regulating to enact criteria and methods to take action against ethics of the political position persons and the government agents. In addition, it is to regulating criteria on paying allowances and transportation fees of witnesses and functioning of the agents or any regulations to follow the Constitutional Act on Ombudsman in order to achieve its target.

2.3.3 It is to prepare summary of report with opinion and recommendation in improving the government agencies, the state agencies or the state enterprise or the local agencies related for acknowledgement or further consideration. It includes power to report outputs of inspection and performances along with observation submitted to the Prime Minister and the

parliament in particular in the case of contingency or the annual report and announced in the Royal Gazette and to be disclosed to public.

2.4 The power to send matters to the agencies related for solving the problem

2.4.1 The ombudsmen could propose with comments to the constitutional court or the administrative court for discretion in the case that the ombudsmen find that the statutory provisions, rules, obligations or any actions of the state authority meet the problems of constitutional and legal legitimacy.

2.4.2 In the case, the ombudsman rejects investigation because of not being involved with legitimate power. However, the ombudsman can forward the matter to the government agencies or the state agencies or the state enterprise or the local agencies related for further action by appropriation.

2.4.3 In the case the ombudsman has checked and found that the political position persons seriously offended against the ethical code; the ombudsmen is empowered to report to the National Anti-Corruption Commission (NACC) for consideration and taking action and it is seen as the cause that individual would have been impeached as enacted in the Constitution.

In the case of complaints that the government agents violate or fail to follow the ethics standards according to the ethical code; the ombudsman is empower to report the matters to the responsible supervisor, who enforces the ethical code. However, if the ombudsman finds that it is the violation or failure to seriously follow the ethical standards or reasonably doubt that the action taken by the responsible person is unfair; the ombudsman is empower to investigate and to disclose the consequence of the public inquest.

The scope on exercising power of the Thai ombudsman

Section 28 and Section 29 of the Organic Act on Ombudsmen, B.E.2552 (2009) enact the scope of ombudsman's empowerment. In Section 28 enacts the nature of complaint that the Thai ombudsman cannot exercise its power to investigate the power exercised by the government agencies or the state agencies, i.e.

1. In the case of complaint being the policy, which the Cabinet has announced before the parliament excepted the implement of the policy might violate the law or over exercising power or avoidance of exercises and fail to follow

the duties of the government agents, staff or employees of the government agencies or the state agencies, the state enterprise, or the local agencies, which mechanize troubles to people unfairly or the ethics of the political position persons and the state agencies under the constitutional provisions.

2. The matter of the proceeding in the court or the matter of the verdicts or the rigid order

3. The non-complained matters of taking action or libel or over-exercises of power under the laws of the government agents or the state staffs or government employees, the state agencies or the state enterprise or the local agencies or the matters related to the government agents or the state staff but personal affairs but not the official errands by legal authority or the matter of disputes among the private affairs including the ethical issues of the political position persons and the state agents according to the constitutional provisions

4. The matters of human resource administration or the disciplinary punishment on government agents or their employees, the state agencies or the state enterprises or the local agencies except the ethical issues of the political position persons and the state agents according to the constitutional provisions

5. The matters of the complainers fail to follow the claimant methods such as anonymous and not specifying address, not specifying reason on complaints with fact or unreasonable claimant demeanor, impolite wording and without signature of the claimants and herewith the claimants can be anonymous and can conceal their addresses.

The Section 29, of the Organic Act on Ombudsmen, B.E.2552 (2009) enacts the character of complaints, which the ombudsman might reject or end to consider are:

1. Corruption and misbehavior in government setting
2. The claimants are not the stakeholders and investigation is useless for the common good.
3. The issues the claimants are beyond the deadline of two years counted on the date knowing or permissively to know the causes of claim and further investigation is useless for the common good.

4. The complaints and the unfair matters have been treated and compensated and further investigation is useless for the common good.

5. The matters the claimants fail to appear for their testimony or fail without reasonable causes to follow the advice of the ombudsman within the deadline.

6. The case of claimants was dead without heirs and further investigation is useless for the common good.

7. The matter the ombudsman has ever concluded the investigative results except evidences or facts have newly been appeared and might change the investigative results.

The inspection process and the investigation of the Thai ombudsman

The process and protocol of inspection and investigation could be divided into three steps, i.e. 1) fact inspection procedures, 2) fact investigation and search procedures, and 3) the ruling procedures.

1) The fact inspection procedures

It is the exercise of power to preliminary inspect and to conduct ruling. When the Office of Ombudsman receives complaints; its investigators of the inspection office will primarily check and screen the complaints whether the complaints are under the authority of ombudsman or not.

If any complaints were found not under the authority of the ombudsman such as the anonymous complaints or complaints without specifying the roots driving to erroneous complaints or inappropriate demeanor or human resource mismanagement or disciplinary punishment of the government agents or lawsuits or verdict or rigid court orders and others. The investigators of the inspection office check the complaints and conclude the fact with opinion to report to the ombudsman for judgment to decline accepting the complaint or to end investigation the complaint.

2) The fact investigation and search procedures

The issues the ombudsman accept for investigation and by principle the issues have to be by its authority according to the Organic Act on Ombudsmen, B.E.2552 (2009) Section 13 which enacts for example complaint of non-compliance to the law or over exercising power or to request for inquest

negligence to duties of the government agents and so on. The investigators take action to seek truth according to the complaints in order to complement them for the investigation of the ombudsman, without delay.

The complaint the ombudsman accept for investigation and the ombudsman is empowered as follows:

1. Demanding the government agencies, the state agencies or the local agencies to clarify facts or opinion in their working or submitting materials, documents, evidences to other evidences related to complement investigation of the ombudsman.

2. The ombudsman is empowered to request chiefs of agencies or the authority of the prosecutors , investigators, or any persons to clarify truth or to testify or submitting materials, documents, evidences or evidences related to complement investigation of the ombudsman.

3. The ombudsman is empowered to plead the court to deliver materials, documents, evidences or evidences related to complement investigation of the ombudsman.

4. The ombudsman is empowered to inspect the place of complaint by informing the owners to know in advance within the reasonable time.

As such, the ombudsman is not responsible both civilly and criminally because a person who acts by authority with honesty according to the Organic act on Ombudsmen, B.E.2552 (2009) and fulfill duties by missions enacted in the law that the ombudsman is the officers under the Criminal Code.

3) The ruling procedures, i.e.

- 3.1. The decision to accept or not to accept, if any matter found, the government agents or the state agents were innocent or over exercised power unfairly; the ombudsman were empowered to end the complaints and reported to the petitioners with reasons and explanation. However, petitioners still have opportunities to object the ruling of the ombudsman. If there were information or new fact; the ombudsman were ready to open ruling again.

- 3.2. Exercising power to propose opinion or recommendation to the government agencies, and

3.3. Exercising power to submit petition to government agencies related for action taken

3. Legal of Enforcement

The Organic Act on Ombudsmen, B.E.2552 (2009), Section 7 enacts punishment in Sections 45 - 47 for the chiefs of agencies or the agents who violate and fail to clarify fact before the ombudsman, prosecutors, investigators and individual whom the ombudsman requests clarification or testimony, materials, documents, evidences and evidences related to complement its judgment. If fail, they would meet imprisonment for not more than six months or fine not more than ten thousand Baht or both found in Section 46. It is enacted that the anyone retaliating or impeding the duty of the ombudsman in inspecting the site of complaint is subject to imprisonment for not more than a year or fine not more than twenty thousand Baht or both. The same Section enacts that the person disclosing statements, facts or information by adhering to the Organic act on Ombudsmen is subject to imprisonment for not more than six months or fine not more than twenty thousand Baht or both. As such, it is to gain efficiency from the ombudsman's provisions in their enforcement in order to meet the spirit of the Kingdom Constitution.

However, the law of the ombudsman in Thailand does not mention the punishment against the chiefs of the agencies or the state agents who fail to follow the advice or recommendation of the ombudsman. The advice of the Thai ombudsman has no power of non-binding or legal enforcement to the operational agencies.

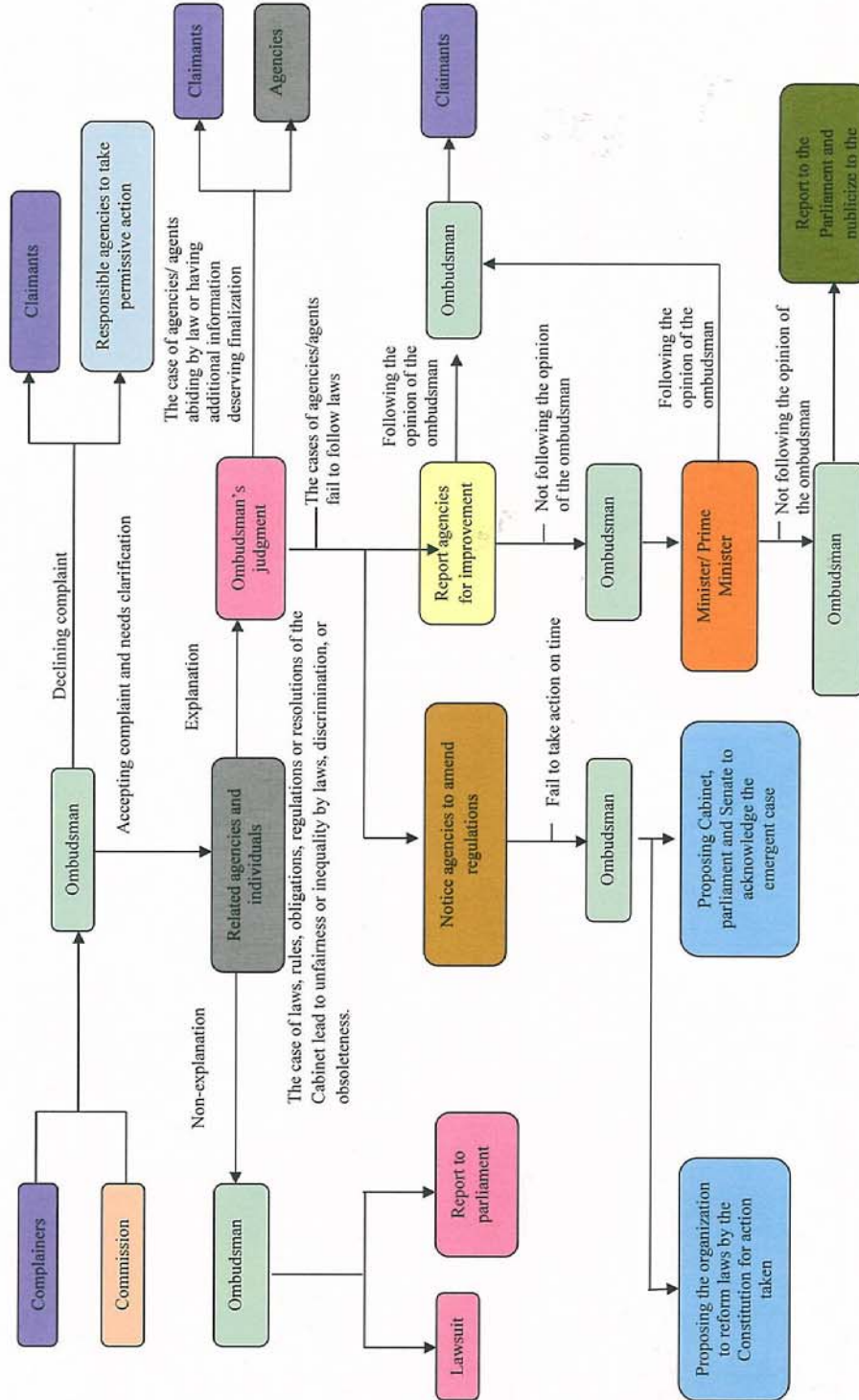


Figure 2.2 Map of Ombudsman's complaint handling procedure
Source: Ombudsman Annual Report 2014

2.5. Execution of the Thai ombudsman

During the establishment phase of the Thai ombudsman, the problem of people's perception about the roles and the authority of the ombudsman are critical because it is the new organization. To enact its roles and authority are unlikely evident in associate with the channel for petition to the ombudsman becomes the obstacles in filing the petition for people. Also, the headquarter is located only in Bangkok and there are no branches in the region.

In 2009, when the Organic Act on Ombudsmen B.E.2552 (2009) has been announced; there is an enactment on number, qualification, recruitment, term of office, position, scope of authority and execution. They allow the roles and authority of the ombudsman become clearer. Its missions are divided into four areas, i.e. 1) inspection and search for truth, 2) inspection of organizations under constitution and justice administration organization, 3) inspection and execution on ethics of the political position persons and the state agents, and 4) pursuance to evaluate and to preparing recommendation in following the constitution.

1) Inspection and Search for Truth

The primary mission of establishing the ombudsman organization is the inspection and the search for truth according to the complaints. Since establishing the parliamentary ombudsman organization in 1997 until 2007; the statistics of execution about complaints showed that complaints were rising. In 2000, the complaints were 184 cases while there were 728 cases in 2001. In 2002, the complaints were 1,336 cases, while in 2003, there were 2,283 cases. In 2004, the complaints were 2,260 cases, while in 2005, there were 2,702 cases. In 2006, the complaints were 5,202 cases, while in 2007; there were 22,194 cases (Office of Ombudsman, www.ombudsman.go.th). It shows that the ombudsman being an organization trusted by people becomes the resort for solving problems and alleviates troubles of people.

At present, the execution of investigation by the ombudsman in Thailand is increased with many channels but there are many complaints are not within the scope of the authority or the criteria of complaints enacted by law. It was witnessed in the complaint statistics in the year 2013 when there were 4,737 executions in association with people complained to the ombudsman just 3,420 cases. 2,778 miseries have been treated,

not in the scope of complaint or falsely claimed other claimants and 119 claims have been withdrawn (The Institute of Ombudsman for Studies : Office of Ombudsman, 2013).

The execution statistics on investigation and the search for truth of the ombudsmen during 2000-2015 are shown the table 2.1 below:

Table 2.2 The execution statistics on investigation and the search for truth of the ombudsmen during 2000-2015

Fiscal Year	Leftover from Last Year	Input during the Year	Total
2000	-	184	184
2001	109	728	837
2002	450	1,336	1,786
2003	1,124	2,283	3,407
2004	1,822	2,260	4,082
2005	1,023	2,702	3,725
2006	1,389	5,202	6,591
2007	2,965	2,194	5,159
2008	1,893	1,885	3,778
2009	980	2,018	2,998
2010	1,155	2,138	3,293
2011	1,447	2,139	3,586
2012	1,274	2,283	3,557
2013	1,503	3,418	4,921
2014	2,088	2,647	4,735
2015	1,904	2,906	4,810
Total	21,126	55,608	55,608

Source: Data of Policy and Planning Bureau: Office of Ombudsman , March 2, 2015

The statistics above show that the power execution of the ombudsman to recently inspect the works of organizations or the government agencies. In addition, there are problems about the perception on roles and authority of

the ombudsman. There is also the problem about the procedures in the search for truth from the complaints. It turns the budget of every fiscal year when complaints are left over and the ombudsman yet to be investigated and treated within the short period of time.

A cause comes from the agencies related fail to send the letter to clarify truth or to provide advice to work for investigation of the ombudsman without following the Section 15 of the Organic Act on the Ombudsmen B.E. 2552 (2009). For example, the inspection and the search for truth of the ombudsman in the Fiscal Year 2014 and it is found that there are 4,735 complaints on the process. 2,647 cases or 44.21 % have been admitted during the fiscal year. 2,088 cases or 55.79% are left over. The fiscal year 2014 and petition of 2015 shows that there are 4,810 cases on process while 2,906 cases or 60.42% have been admitted during the fiscal year while 1,904 or 39.58% have been left over and transferred to the Fiscal Year 2015.

In the Fiscal Year 2015, there were 318 complaints (14.21%) sent by the ombudsman to the government agencies, the state agencies, state enterprises and the local agencies for taking action under the power of Section 30 of the Organic Act on the Ombudsmen B.E. 2552 (2009). But there were only 86 cases (30.18%) have been returned and left behind another 222 cases (92.82%) (Intake and Early Resolution Bureau: Office of Ombudsman , 2015).

Compliance with judgment and recommendation of the ombudsman

Since 2000 - 2014, the ombudsman has prepared reports, summarized facts and finalize 1,541 cases under Section 32 and provided opinion and recommended for improvement or recommendation for the government agencies, the state agencies, state enterprises and the local agencies related to amend laws, rules and the Cabinet resolution (Complaint Statistics in the Automatic Intake System: March 2, 2015). 1,530 cases were opinions or recommendations for improving their executions and 11 cases were recommended for laws amendments. The complaints on lands have been recommended for improvements by the ombudsman most followed by complaints on the local agencies, and complaints on other public administration. The last ones were the complaints on police, respectively (IT System: Office of Ombudsman, March 2, 2015).

Compliance with the judgment and recommendation of the ombudsman is divided into two cases, i.e. 1) compliance with the judgment, observation and recommendation of the ombudsman by the government agencies, and 2) failure of compliance with the judgment, observation and recommendation of the ombudsman.

The examples of compliance with the judgment, observation and recommendation of the ombudsman by the government agencies

Case no I : Complaints of fees charged on ID card and ID card's extension upon expiry date

Facts in the Complaint

This complaint arose when a claimant approached a District Office to extend his expiry ID card and to petition for his son's ID card. The officer charged him 60 Bat for the extension and 40 Bath for his son's ID card. When the petitioner paid the fees but no bills have been given. Such practice raised his suspicion on transparency on pays to the Royal Treasury. The petitioner raised complaints to the ombudsman to investigate the officer's practice.

The Execution of the Ombudsman

The ombudsman assigned agents to coordinate with the petitioner and the responsible agencies about ID card procedures. Normally, the receipt was affixed with the petition but each day there were large amount number of ID card petitioners. To expedite the ID-card procedure, the agents did not tear the affixed receipts to return to the petitioners. When inspection has been made with many agencies under supervision of Department of Local Administration, it was found that such practices have been customized as in the district office where complaints were petitioned. It deemed that the practices were not complied with the Regulation of Treasury Disbursement, Reserve and Delivery B.E. 2551 (2008). Later, the petitioner has withdrawn his petition, which the ombudsman was powerless to further judge the petition.

However, the ombudsman examines and finds that the issue has affected the common good. If the government agencies had improved their official execution to serve people; then it would be to improve official executions to achieve effectiveness with transparency and to prevent any repetitive complaints in future. The

ombudsman has emphasized to the Department of Local Administration to execute power and duties by regulations and to reiterate agencies under the Department of Local Administration to strictly comply with the suggestion.

Compliance with recommendation of the agency

The Department of Local Administration sends the circulation to all governors and the Permanent Secretary of Bangkok on rehearsing the execution of collecting fees and fines in preparing ID card in order to prevent complaints about collecting fees and fines as it has happened. The conclusion is the districts, zones, municipalities and Pattaya City to apparently announce the fees of issuing each new ID card. At the meantime, the receipts of fees and fines must be issued and torn them to every recipient as evidence. In addition, the district-chief officer, the zone directors, the municipality permanent secretaries, and the chief of the Office of Pattaya Permanent Secretary to control, supervise, monitor and reiterate the personnel to execute ID card with responsibility, circumspection and caution by complying with laws, regulation and the letters of order related with rigidity. If misconduct has been found or over charge of fees and fines; the personnel would undergo disciplinary action (Office of Ombudsman, 2013).

Case no II: Complaint on industrial factory emitting pollution and troubling community

Facts in the complaint

The ombudsman received complaints from people who have been harmed by bad smell and black smoke from a factory manufacturing asphaltic concrete located near communities affecting people in the area. It brings problems of health and they have to encounter with air and sound pollution from trucks running in and out all the time including dangers from transportation routes. They raise the complaint of the miseries to the ombudsman.

The Execution of the Ombudsman

After receiving the complaint, the ombudsman checked the information in-depth and realized that the complaint have been raised for the third time. The first complaint was the factory was yet approved for operation. The second time, the ombudsman recommended the Office of the Provincial Factory to notice the factory to improve the deodorizing and toxic fumigating system from burning fuel and

to control dust and noise. The Office of the Provincial Factory complied with the recommendation but when the factory reopened by production round; the claimants still met the same problem. The trouble was raised to the ombudsman that the Sub-district Local Administration and the Office of the Provincial Factory libeled their duties, which led to unfairly damaging the petitioners.

The facts from clarification of the province in association with site visit of the ombudsman staffs to conclude whether the factory has submitted for license of factorial enterprise to produce asphaltic concrete, which the Office of the Provincial Factory was ill-located because it was located near communities and there were protests from these communities. In addition, the Sub-district Local Administration disproved building factories. The Department of Industrial Factory also disproved the factorial enterprise. Later, the enterpriser has appealed the order of the Ministry of Industry, which judged the appeal and approved the license under the condition that the enterpriser had to specially execute as enacted in the license, “must have and use the system of eliminating dust, scrubber and smell from the production process with adequate size and efficiency and not creating any troubles or dangers against workers and neighboring residents.” However, the fact appeared that the Office of the Provincial Factory received complaints of dust, toxic fumes and smell from the factory for four times and thrice complained to the ombudsman. Even today, the factory stops its enterprise but temporarily because it operates timely by purchasing order. When a complaint has been raised, the Office of the Provincial Factory inspected and ordered the enterpriser to improve the factory. It has to temporarily stop operation. When it operates, it troubles people with dust and bad smell in the communities near the factory. Though, it has improved according to order but it fails on its adequate efficiency to control the troubles or dangers upon the neighboring residents.

With this case, the ombudsman reported to the Ministry of Industry and recommended the Minister that its conditional license has to be revised whether its location is appropriate or not because the location area is adjoining many communities and many residences for people. This includes the enterprisers breaching the conditions in the license and troubling people around the factory and it is necessary to find approaches to address these troubles.

Compliance with recommendation of the ombudsman

The Ministry of Industry reported the progress of its compliance with the recommendation of the ombudsman and declared that it had revised the license under the Factory Act B.E.2535 (1992) and pleaded cooperation with the Office of the Provincial Factory to check the factory. It appeared that at that moment the factory temporarily stopped its operation because of there was no production order. As such, whenever there were operations, the authority would be requested to recheck the factory. And if it was found that the production process, the pollution treatment and the pollution preventive measures were unable to permanently treat the pollution by theory but rather endlessly endangering the nearby residents; it would enforce the Section 39 of the Factory Act B.E.2535 (1992) to stop or to close down the factory, which would revoke the license in order to further permanently end the troubles (Office of Ombudsman, 2013).

The example of complaint on the problems of cooperation from agencies to clarify facts and complying with the recommendation of the Ombudsman

Case no I: The complaint against Transport Co. Ltd. on petrol arrears debts but failing to repay the juristic person

acts in the complaint

Claimants petition that they were damaged by the Transport Co. Ltd without paying the arrears debts for 2 years by its fuelling in the gas stations of the petitioners at around five millions Bath. Later the company has checked and found that the Transport Co. Ltd still did not repay its arrears debt for four years. The company called for debt collection by the miss-repaid amount. The Transport Co. Ltd accepted the case for consideration and reported to the petitioners on the real arrears debts but the rights of claims the petitioners has been expired, then the repayment was impossible.

The Execution of the Ombudsman

The ombudsman called for meeting with the Permanent Secretary of the Ministry of the Transportation and Communications and the acting Managing Director of the Transport Co. Ltd. concluded that the Transport Co. Ltd. accepted the debt and was ready to repay the arrears debt. However, there was no

channel to repay in association with the Ombudsman had clear opinion that the debt was expired. If the Transport Co. Ltd., paid the debt, there would be problems in the audit of the ombudsman later. Thence, the Transport co. Ltd., proposed the petitioner to take lawsuit in order to be the excuse for the Transport Co. Ltd. to pay the debt. The transport Co. Ltd., admitted that it will not raise any defense and accepted every consideration.

The ombudsman later appeared at the Civil Court to be the witness in the case. The petitioner claimed that the witness (representative for the Office of Ombudsman) has primarily reconciled. With the court ruling, it was found that The Transport Co. Ltd has liability to the A Company Limited Partnership for five million but exercising its rights exceeded the deadline, which turned the case being precluded by prescription and the court acquitted the case.

The ombudsman had the opinion that the petitioner had to find evidence of its annual balance sheet and the income tax (Income Tax Form 50) as evidence to confirm the amount of the debt the Transport co. Lt., was arrears. When the A Company Limited Partnership received the evidence and submitted to the Transport co., Ltd., in order to check the amount of the arrears debt and to finalize the matter; it was recommended of the Transport Co. Ltd. to repay the petitioner with the amount of five million Baht. This was to maintain the appearance and the image of the organization and the prescription should not be raised as the excuse to decline repayment for the petitioner even if it was the real debt.

Pursuing the compliance with the judgment of the ombudsman, the fact revealed that the Transport Co. Ltd., discussed with the ombudsman and concluded that the Transport Co. Ltd., could not comply with the recommendation of the ombudsman because the payer of the petrol had to take responsibility in violating both criminal laws and civil laws.

The ombudsman examined the fact and found that if the state enterprise failed to comply with opinion or the recommendation of the ombudsman with the considerable time. The ombudsman might further submit the issue to the Prime Minister or the Minister who controlled or supervised the state enterprise (Office of the Ombudsman, 2012).

Compliance with recommendation of the agency

At present, this case the Transport Co. Ltd did not pay debt to the petitioner.

Case no II: Complaint of selecting the vessel design for the supporting fleet not complying with the related announcement and regulations

Facts in the complaint

The ombudsman received complaint to investigate facts in the case of the selection committee on the vessel design for the supporting fleet upon non-compliance with the related announcement and regulations.

The Execution of the Ombudsman

The ombudsman examined fact and law related and found that by the announcement of the selection committee on the vessel design for the supporting fleet has enacted the specification by a need of Naval Staff Command. It announced, “the propulsion control must be the product with the similar branded products with the main engine except not possible to find but it is possible when the manufacturer of the main engine has introduced”. The statement of “enable to use control system of the branded product introduced by the manufacturer of the main engine” was the specification, which might complicate, distort and require interpretation over it. However, when the Company M submitted the document to Company C (Thailand) but just informed that the company was just the agent of the engine Brand C only. There was no essence to prove that the Company C (USA) recommended or introduced the branded products in associated with the specification is unclear. It made the Company C had to find the certificate to guarantee the branded product to present to the Navy for many times beyond deadline to submit bidding for many months. It showed that the selection of the support fleet design was unfair competition and might serve benefits of some companies. It unfairly damaged the petitioner. The ombudsman exercised the power of Section 32 of the Organic Act on Ombudsmen B.E.2552 (2009) and proposed the Naval Commander to revise the selection of the supporting fleet for further fairness.

Compliance with recommendation of the agency

The ombudsman received the report to be confirmed from the Navy that it has revised to procure the vessel of the support fleet seeing that the selection of the design was legal and by rules and regulation and compliance with

the official execution. The ombudsman has examined the report and found that the agency did not comply with the opinion or the recommendation of the ombudsman. It employed the Section 32 of the Organic Act on Ombudsmen B.E.2552 (2009) to forward the issue to the Ministry of Defense for further order by reasonable cause.

However, there were some complaints the ombudsman has judged and recommended to the agencies related. To employ the power of the Section 32 of the Organic Act on Ombudsmen B.E.2552 (2009) ; but there was no consistent pursuance about the compliance of the ombudsman's judgment and recommendation and there were no reports about them.

The example of complaint about the clarification on the progress of the compliance with the recommendation of the ombudsman by the related agencies

Case no I: Complaint against the state agencies' non-compliance to address factories creating pollution

Facts in the complaint

The petitioner pleaded the ombudsman to investigate the case of the state agencies' non-compliance to address the used-lubricant refined factory. The operation emitted bad smell to disturb people living around it and did not systematically dispose remnants as enacted in laws, which critically troubled people in the area.

The Execution of the Ombudsman

The ombudsman investigated according to the petition and coordinated with the agencies under complaints and the agencies related. It concluded that the troubles had ever been complained to the Prime Minister. The petitioner requested to move out the caused factory. The governor at that time ordered to form a committee to persistently co-investigate in order to end the petition. The agencies involved checked the factory and ordered the enterpriser to solve the treatment system on smell and gas from boiling the used lubricant with adequate efficiency. The factory later reported to the agencies of its complete treatments. The investigation committee visited and investigated the factory and found that the smell of the gas was so much milder. The investigation committee recommended the enterpriser to design the continuous plans and to provide medical check-up for its workers and requested

the cooperation from the Department of Industrial Factory to contingently investigate its air quality.

Office of Ombudsman coordinated with the private company to dispose the remnants from the used-lubricants. The Office was reported that the factory sent the remnants for checking but yet to pay for the checking fees. The result was not unfolded and there was no contact from the factory again. In March 2016, the factory was burnt down and agencies involved have investigated with order for closedown until there was reinforcement of the factory.

Later, the co-investigation committee visited and investigated the factory again and found that upon operation and there were strong stench and filling the soil ditch where remnants were disposed around the factory but the stain waste leaked to the soil surface. Some overflowed to outside the factory and the representative of the factory reported that it was contacting the private company to transport the waste for disposal.

The ombudsman examined various problems arisen and might come from the enterpriser did not comply with the conditions affixed in the license. The ombudsman pleaded the province to form a working committee to investigate and to supervise the factory improvement and to rigidly take legal action with it. This included a request to the factory to report the progress in solving the problem to the governor every month.

Compliance with recommendation of the agency

There were no reports of follow-up results and the progress from the agencies (Office of Ombudsman, 2008).

Case no II: Complaint on libel on non-compliance of the district-chief officer in a province on failure to recall money from the village chiefs who cheated from the deposited bank account of the project to alleviate poverty B.E.2545 (2002). Until today, no actions are taken.

Facts in the complaint

Villagers in a village presented a complaint petition against the Village Fund Committee in the case of the poverty solving project management, which was breaching the managerial regulations and its expenses. The agencies involved has investigated the accounting system and fact; and they were found that the money has

lost from the account at the amount 112,820.16 Baht. The chairperson of committee agreed to repay what has been lost by depositing in the account of the project. To this matter, The District A has alerted before deadline verbally and in written. However, it is found that the chairperson did not take any actions as the petitioners who were the villagers. Six years have already passed and no actions were taken, so then they petitioned to the Office of Ombudsman.

The Execution of the Ombudsman

Office of Ombudsman received the clarification from the province and concluded that the province investigated and the lost money of 112,820.16 Baht. The chairperson repaid the loan for 200-500 Baht a month but it was not charged in the account and was willing to repay what has all lost from the account. When the amount was all repaid and calls for meeting of villagers and the province has noticed the district to additionally investigate in some issues.

Later, the province reported the investigation that chief of Sub-district A has truly violated regulation and waived repayment for the lost amount. When the account of the project in the Bank for Agriculture and Agricultural Cooperatives has been checked, it was found that the village chief deposited twice with the amount of 10,000 Baht each. In the case of corruption or misconduct; the district would speedily investigate and further propose opinion to the province.

In the case of the action committed by the village chief and the district officer were seriously destructive to the government and to the people. The ombudsman exercised its power through Section 30 of the Act on Ombudsmen B.E. 2552 (2009) and the province decided to impose legal disciplinary action. The regulations related strictly including to supervise and to order the district of Sirindhon District to speed the criminal lawsuit and disciplinary action against the Village Chief A according to appropriateness, as it deserved and with speed.

As such, the ombudsman requested the province to clarify fact and send evidences to complement the judgment on the petition in order to speedily solve their troubles.

Compliance with recommendation of the agency

There were no follow-up results on compliance or the recommendation of the ombudsman.

2) The mission of investigating organizations under the Constitution and the organizations of the justice administration

The Constitution of the Kingdom of Thailand B.E.2550 (2007) Section 244 (1)(c) and the Organic Act on Ombudsmen B.E.2552 (2009) Section 13 (1)(c) and 13 (3) Section 35 enacted to empowered the ombudsman to investigate a libel or violating laws in the constitutional organization and justice administration organizations. As such, it excluded the adjudication of the court and Section 13 the last paragraph in the Act of imposing investigative power of the ombudsman to take action when there was a petition excepted it was the case that the ombudsman found that such action damage people at large or to protect the public benefits. Then, the ombudsman might consider and investigate the matter without petition.

The constitutional organizations were the Election Commission, the National Counter Corruption Commission, the Auditor Board, the Corporate Attorney, the National Human Rights Committee and the National Economic and Social Advisory Council (Thammawat Anutrariyakul, Office of Ombudsman, 2008:63).

The Justice Administration Organization is referred to a legal organization empower in the proceedings : the Organic Act on The Parliamentary Ombudsmen, B.E.2542 (1999) ; the Establishment of Juvenile and Family Court and Juvenile and Family Procedure Act B.E.2534 (1991); The Establishment of the Tax Court and Judicial Tax Act B.E.2534 (1991); the Establishment of the Intellectual Property and International Trade Court and the Intellectual Property Litigation and International Trade Act B.E. 2539 (1996); the Statute of the Court Martial Act B.E. 2498 (1955) ; Establishment of Administrative Court and the Organic Act on The Parliamentary Ombudsmen, B.E.2542 (1999) ; the Establishment of Labor Court The Ruling Labor 2522 (1979); the Criminal Procedural Code; the Civil Procedural Code; Terms of the Constitutional Court of Procedure of the Constitutional Court Act B.E. 2546 (2003), excepted the court organizations on the adjudication (Thammawat Anutrariyakul, Office of Ombudsman, 2008).

The example of the complaint to investigate the justice administration organization and the constructional organization

Case no I: Delayed action taken on warrant of release

Facts in the complaint

The petitioner has been sentenced with imprisonment in the offense of gang robbery and against the Firearms Act on civil punishment of seventeen years and three months of imprisonment. When the Exoneration Decree B.E.2550 (2007) has been promulgated, the petitioner claimed at the provincial court for review the new punishment and the court granted ten years and six months of imprisonment. Later there was a promulgation of The Royal Pardon Decree B.E.2553 (2010), the petitioner has claimed again at the provincial court through the central prison for review of new punishment with warrant of release but nothing was progressed. Counting on the duration of imprisonment from the date of the royal pardon to the petition date, the petitioner has been imprisoned for more than four months. Therefore, the petitioner pleaded the ombudsman to coordinate with the agency and to pursue the warrant of release.

The Execution of the Ombudsman

The ombudsman coordinated with central prison and recognized that the Departments of Corrections: Office of Attorney-General and the court have discussed to find an approach in compliance with the Royal Pardon Decree. There was consensus at the organizational level but some prosecutors had some different opinion, which led to the practical problems. At this point, the ombudsman examined and found that the claims of the petition came from the consideration of the provincial prosecutor and was not empowered to sign under the Royal Pardon Decree. It brought the practical problem to the central prison to comply with the decree for the prisoner who deemed the rights. Thence, the prisoner had to be subject to imprisonment first during the discussion with the Department of Corrections. When the department has responded to the central prison, it was concluded that to investigate the prisoners granted of the Royal Pardon was the duty of the committee who examined the grantees by Section 14 of the Royal Pardon Decree. The committee members were also included the provincial prosecutors. With the case of the petitioner who had been imprisoned in the same prison ever since, the provincial persecutor was

legitimate in the investigation. Upon being reported on the practical approach, the provincial prosecutor had signed and the provincial court then issued the warrant of imprisonment when the case had been finalized. The petitioner was then sentenced on imprisonment of five years nine months and two days. To count the term until the warrant; the petitioner has covered his imprisonment sentence; therefore, the central prison released the petitioner on the same day of the court warrant has been issued. To prevent such mishaps in future, the ombudsman recommended to the Attorney- General to reiterate every provincial prosecutor to strictly comply with every Royal Pardon Decree.

Case no II: Pleading the ombudsman to investigate fact about the provincial court declining to return the bail for the petitioner

Facts in the complaint

Mt. A the father of the petitioner who was expelled by Mrs. B from the disputed land. The petitioner placed the title deed as the bail to guarantee any damages and as the fees to replace the court order during the Supreme Court ruling in mitigating the case. Upon finalization, Mr. A and associates were sentenced with expulsion from the disputed land and recompensed the Plaintiff (Mrs. B). Later, the petitioner brought the money to court to repay the damages against the plaintiff by the verdict and pleaded to withdraw his bail from the court but the court declined because the defendant did not complete the entire court verdict. The defendant later submit his written argument to the court that the defendant and his associates removed residences and moved out from the disputed land while pleading to withdraw his bail. The court demanded the petitioner to report to the plaintiff for her signature that removal has been truly completed. The petitioner never failed in the presence at the plaintiff's home but none was found, therefore, the defendant took photo of the removal to report to the court. The petitioner viewed that he has fulfilled the court verdict still his bail has not been returned because the court's public relation announced that the bail would be returned within 10 minutes and if it exceed 30 minutes; it was necessary to inform the authority. Therefore, the petitioner has come to file his claims with the ombudsman.

The Execution of the Ombudsman

The ombudsman pleaded the provincial court to clarify the fact and deliver documents involved for consideration. The provincial court, later, clarified that the reasons that the court did not return the bail to the petitioner because the court did not order for the return of the bail. The authority had to strictly comply with the court's order. The board at the public relation counter stating "the bal will be returned within 10 minutes" only in the case of the court has approved the return of the bail. Therefore, the authority could not return the bail in associated with the petitioner misused the Petition Form by using the Plaint Form and the petition form was not complete and without signature. The authority viewed that the petitioner arrived to hear the court's verdict; therefore, it was not yet submitted to the court and awaiting for the petitioner to contact so that the authority could inform the petitioner for corrections. Many days passed and none appeared for contact; the court authority reported the court and there was an order to the plaintiff and the defendant to make an appointment for further common agreement. Upon this , the ombudsman called the petitioner and knew that the petitioner had already received his bail (Office of Ombudsman, 2011).

3. The missions of investigation and the take action on ethics against the political position persons and the state authorities

3.1 The meaning of "Ethics"

Joseph Mendola (2004) defines that ethic is abstract and complicated because it involved virtues, rightness-wrongness, behavior and misbehavior, vales, social expectation and even though the majority agrees in some ethical principles but upon practices or implementation in a specific situation, there are always different views. Ethics contains at least three parts, i.e. intention, action and aftermath that will specify which is good or bad deed, right or wrong deed. Some thinkers decide right deed by intention and it is difficult to pinpoint because the actor only knows his/her intention. Some groups decide on behavior, which is more obvious or as it appears. Some groups decide rightness or wrongness from the consequences upon people and societies. However, difficulties to discreet the rightness of the political behavior and the state authorities demand to consider the overview of their behaviors with information from all three parts (intention, action and aftermath).

The political positioned persons and the state authorities are expected from social that they must maintain their unblemished ethics. By reason, blemishes lead to mistrust of the people and societies. Ethics is the corner stone for politicians and the state authorities.

3.2 Ethics with the political position persons and the state authorities

John Uhr (1998) defines that political ethics, and values will be obvious when the pro-democrat is opened to public. It is a common standard to prevent actions against the political ethics. Public disclosure bridges media and people with the elected persons. The political ethics issues allow the voters to know the behavior of whom the voters voted for them to the position. Uhr adds his opinions that the levels of ethics, which politicians and the state authorities adhered with, are different. It is not only the ethical responsibility of the elected state authorities, which is differed by the different political system, but even within the same political system; it is still differed. Differences rely on power, roles and status adorned by the state.

W.G. Hayden (1998) comments that anyone who steps to the leading position as the leader requires responsibility to set himself/herself beyond common ethical standard adhered by common community. Therefore, the political positioned persons and the state authorities who are prestigious and offer themselves to serve the country must be the persons who are prompt to significantly sacrifice tier privacy and personal gains for the common gains.

In Thailand, the Office of Civil Service Commission has prepared the codes of ethics and the ethics for the civil servants. The objectives found in the preface that “to allow the civil servants to be aware and fair to their duties, to their maintain honors and dignity in order to deserve trust and confidence from people while adhering to be the good role model deserving being the civil servants under His Majesty who is the supreme role model for ethics.” (Office of Ombudsman, 2012)

Ethics of politicians and the state authorities are indispensable to guarantee their duties doing for the common good through devotion over one's interest or their intimated persons. Ethics is the personal code of conduct

even it is in written but it will not cover every detail. It relies on the integrity of the positioned persons to strictly post themselves appropriately and taking precaution not to damage the duty execution in their position (Prof. Dr. Pratchaya Wesaratch, 2012).

3.3 The missions of investigation and the execution against the ethics of the political position persons and the state authorities

They are divided as below:

3.3.1 The affairs of investigating the ethics of the political position persons and the state authorities

The Organic Act on Ombudsmen B.E. 2552 (2009) Section 1 Article 13 (2)Section 2 enacts on complaint and investigation to find facts, and Section 4 Article 37-39 endorse the legal mission to investigate the complaint about ethics of the political positioned persons and the state authorities. To comply with the mission of the ombudsman in investigating as such, it is achievable by taking action under the constitutional provisions.

The examples of complaints about the ethics of the political position persons and the state authorities

Case no I: MPs inserting card votes for others

Facts in the complaint

The parliament used card votes for other in the parliamentary meeting in the resolution of the constitutional amendments. The petitioner claimed that it was the mal practices.

The Execution of the Ombudsman

The ombudsman investigated with contingency because such mal practices affected the trust in parliamentary system of Thailand. It defamed honors and was the bad example in being the members of the parliament (MPs) who represented people. In the same matter, the Constitutional Court adjudicated the votes of the MPs deserved as against the Constitution of the Kingdom B.E.2550 (2007) and the regulations of the House of Representative Meeting B.E.2551 (2008).

The ombudsman examined from evidences, and video records of the meeting and found that MPs have inserted vote cards substituted other MPs. It is evident that such deed is deemed malpractice severely violating or non-complying with ethical standard under the Regulations of the Code of Ethics of the Members of Parliament B.E.2553 (2010) . The ombudsman reported the adjudication and reported to the National Anti-Corruption Commission to further take action by its power and duty (Office of Ombudsman, 2014).

CASE II: The University lectures using ill-manners

Facts in the complaint

A complaint was against a university where its students petitioned to the ombudsman to investigate the ethics of a university lecturer who posted statements in facebook of a discipline where the petitioner was studying, which was characterized reprimanding with impolite words shameful and defamed the petitioner. The petitioner saw that such behavior was improper because the lecturer earned more maturity, ethical and teaching professional than other disciplines. The petitioner complained to the ombudsman to investigate such malpractices.

The Execution of the Ombudsman

The ombudsman conducted preliminary investigation and found that it was true as in the petition and requested the university to take action according to the code of ethics. The university formed a committee to investigate and took action according to the code of ethics by issuing a warning letter to the lecturer and demand both parties to reconcile and ended the dispute. Such impolite wording was not serious but it violated the code of ethics. The ombudsman speedily coordinated both parties and pleaded the responsible persons to speedily take action by the code of conduct. After the action taken, the petitioner was satisfied with the affairs (Office of Ombudsman, 2014).

3.3.2 The mission to take action with the ethics of the political positioned persons and the state authorities

The Organic Act on Ombudsmen B.E. 2552 (2009) enacted the action of ethics for the political positioned persons

or the state authorities in each type by enacting the power and duty of the ombudsman in Section 4 Article 36 in the Act.

To meet and to drive the achievement to the practical mission of ethics into constructiveness, the ombudsman ordered the educational commission to set criteria and the practices about the ethics of the political positioned persons and the state authorities. The commission passed the resolution for the state agencies had to complete their own code of ethics within August 23, 2008 (Office of Ombudsman, 2008). Its missions on taking action upon the ethics of the political positioned persons have been divided into three things, i.e.

1. Recommend or advise in preparing or improving the code of ethics of the political positioned persons and the state authorities
In the Fiscal Budget 2014, the ombudsman pursued and educated the evaluation on code of ethics in various agencies. It affected the agencies equipped with more knowledge and understanding of the code of ethics and enabled to finish the code of ethics. As of the political positioned persons, they have prepared the entire code of ethics at 92.81% and on process was at 7.19% . the state authorities have prepared the entire code of ethics at 94.93% and on process was just only 50.7% (Office of Ombudsman, 2014).

2. Encourage the political positioned persons, bureaucrats and state authorities with ethical integrity

The missions to enhance the ethical integrity of the political positioned persons, bureaucrats and state authorities, was one of the duty the ombudsman to consistently taking action in long-term. The preliminary action of the ombudsman was to coordinate with the network agencies equipped with experiences in taking action with ethics, i.e. Office of Civil Servant Commission on Individual Ethics Level; and Office of the Public Sector Development Commission on Organizational Ethics Level. At present, the ombudsman has developed the network for cooperation with agencies supervising the ethics of the political positioned persons in the national level, the local level, bureaucrat or the state authorities e.g. teachers, military, police, state enterprise employees and so on (Nalinpun Waisuebkao, 2008).

The compliance with the mission to encourage the political positioned person, bureaucrats and the state authorities of the recent ombudsman has developed the model to promote the cultivation and to enhance integrity with such individuals in various models. It included indicators and constructive evaluation, for example, the Fiscal Budget 2014, many projects and activities were organized such as the Ethic Promotion Week, the New Local Organization Attentive to Ethics, Driving National Honesty Development Plan, Ethics Operation Training, “Environmental Sustainability and Conservation”, and including the project of promoting ethics in cooperated with the party network, e.g. Royal Assistance, Ethical Schools, Ethics of Educational funds, and so on.

3. Reports of violating code of ethics

The Constitution of the Kingdom B.E.2550 (2007) and the Organic Act on Ombudsmen B.E.2552 (2009) Section 4 Article 36 (3) enacted the ombudsman had the duty to report the violation of the code of ethics for the responsible persons to mandate the compliance with the code of ethics. In each case, the ombudsman enacted the approaches for fairness as below.

A. In the case of complaint about the political positioned persons have violated or not complying with ethics standard according to the code of ethics. If after investigation, and the fact appeared that such deeds of the political positioned persons violated or did not comply with ethics standard according to the code of ethics. The ombudsman has to report the parliament, the Cabinet or the local council related by each case. However, if there were serious offense; the ombudsman would report the National Anti-Corruption Commission to take action and it would become the cause for impeachment.

B. Procedure of the complaint about the state authorities violated or did not comply with ethics standard according to the code of ethics; the ombudsman would send the reports to the responsible persons to further mandate the compliance with the code of ethics.

Upon the ombudsman finding that the violation and the non-compliance with the ethics standards became the seriousness and reasonably believed that the action was unfair; the ombudsman would publicly investigate and could expose the results of the public investigation. To endorse the

mission, the ombudsman improved its internal structure by dividing the responsibility of ethics into two parts, i.e. Instigation of Ethics and Special Affairs and Ethics Promotions for clarity in the action taken on ethics (Office of Ombudsman, 2013).

The investigation of the ethics code since the instituting the Office of Ethical Standards Promotion, the Office of Ombudsman received 81 complaints about the political positioned persons, bureaucrats or the state authorities or non-compliance with ethical standards according to the code of ethics. 17 complaints have not been treated. 37 cases were under examination. 25 cases deserved to be ended. 2 cases have been withdrawn. Most complaint issue was misconduct such as adultery (Office of Ombudsman, 2012).

4. The mission of evaluation follow-up and preparation to comply with the Constitution

The Constitution of the Kingdom B.E.2550 (2007), Article 244(3) and the Organic Act on Ombudsmen B.E. 2552 (2009) Section 1 Article 13(3) and Section 5, Article 40 - 42 empowered the ombudsman to pursue the Constitution and enacted the state agencies to draft laws or measures in order to comply with the Constitution. The missions of evaluation follow-up could be divided as below.

1) The mission of performance follow-up by the Constitution

The ombudsman coordinated to the state agencies under supervision of the Administration and independent from the Administration to seek collaboration in reporting the performance in amending or drafting laws and taking other actions enacted by the constitutional provisions. This was to collect the performance according to the Constitution by each agency and to analyze whether the enactment covered and was consistent to the spirit of the Constitution.

2) The mission of evaluating the compliance with the Constitution

The ombudsman prepared criteria and methods in the evaluation follow-up of the compliance with the Constitution in order to pursue the performance evaluation on the Constitution of the government agencies, the state agencies, the state enterprise or the local agencies. All issues have been collected

according to the Constitution, which enacted them to evaluate their performance and adopt the evaluation to be the recommendation for related agencies in compliance with the spirit of the Constitution.

2.6 Related Researches and Articles

Kreingkrai Cheinpradit (2008) studies “The Roles of Ombudsman” at present that the Swedish ombudsman and the Philippines ombudsman play their roles and exercise their power to investigate the government sector. They are obviously stronger than any ombudsmen in other democratic countries. The Philippines laws empower its ombudsman to order all the state authorities to help people, as they deserved. The ombudsman was empowered to investigate common duties and specific mission of the bureaucrats by law. It was also empowered to take action on administration, to examine the administrative cases, to take criminal lawsuit in court, to impose disciplinary punishment and to investigate the administrative case or to impose punishment on offending bureaucrats or the offending state authorities such as job suspension or layoff and so on.

Phichet Soontornpipit (2003) writes an article of the Institute of Phra Pokklao that the limitations of law turned the Thai ombudsman disable to investigate the public sectors. It played the role to investigate the work of the state agencies in terms of remarkable deterrence alike the Swedish ombudsman and the Philippines ombudsman.

Bhiriya Siripopunkull (2007) , in the journal of the ombudsman, writes the ombudsman appointed by the legislation or the parliament was empowered just as the terms of the parliament only but could not impose power beyond the legislative power. The parliamentary ombudsman had the status of just opinion-giver or the recommendation in working only. The ombudsman was powerless to enforce or to order the state authorities to take action in mitigating damages or complying to its opinion and its recommendation directly. After fact investigation, the ombudsman reported to the chiefs of the agencies or the related agencies to recognize the consequences, consideration results and recommendation of the ombudsman but they were just the moral persuasion.

Nongnuch Tanin and Pithaksin Siwaruj (2010) reported the educational excursion during the 11th General Meeting of the Asian Ombudsman Association (AOA). The discussion topic was “Role Promotion of Ombudsman to Reconcile and to End Dispute”. The recent Thai Chief Ombudsman proposed the concept of prioritizing reconciliation of dispute to end problem peacefully, which fit the Thai societies because the Thais loved peace and easily to forgive and forget. This approach allowed the ombudsman to gain cooperation in solving problems from the state agencies. It was corresponded to the concept of Mr. Lee Kweong-sang, the permanent committee member of the Anti-Corruption and Civil Rights Commission (ACRC) who commented that reconciliation was useful and many cases were successful in Korea to help people by the ombudsman. Korea allowed people to complain through online system and the method of Alternative Dispute Resolution (ADR) as alternative to end dispute. It was different from the concepts of Mr. William Paul Angrick II the President of the International Ombudsman Institute who declined to support the reconciliation of the ombudsman. Such approach became the major duty for the ombudsman to investigate the complaint about misconduct of the state authorities. It was corresponded with the concept of Ma.Merciditas N. Gutierrez, the Philippines ombudsman who viewed that though reconciliation is a process to solve problem, mitigated time, and cost while enabling to keep relationship of the ombudsman and the government sector. However, the reconciliation should not be used with the criminal case or the accusation against the state agents. During this meeting, Mr. Andre Marin the ombudsman from Toronto: Canada proposed to improve or reform the work of the ombudsman in order to create good governance in the public administration. As such, the investigation of the ombudsman required a teamwork called “Special Ombudsman Response Team” (SORT)” to investigate the system of major affairs and impacts to people. Results would be exposed to public, which might drive people for involvement and lead to improvement or work reform of the government sector into good governance.

Chalerm Sak Jantim (2008) wrote in a personal academic document, the top managerial curriculum of the justice administration about the power and duty of the Thai ombudsman. The ombudsman had major duty to investigate the trouble unfair to people and to investigate appropriateness in the performance of the state agencies.

This was to recommend for improvement in working without power to order or to command agencies or agents to comply with as if it was the verdict or the command of the immediate supervisor in the administration. The consideration of the ombudsman was not for finding fault or to punish the authorities but focusing on problem solving and to improve working by reason, accuracy with fairness. The ombudsman was the middleman through using reconciliation or compromise to mitigate red tapes and to best satisfy all parties through win-win solution.

Yuphaporn Romthaisong (2000) studied Problems and Limitations of the Parliamentary Ombudsman. She concluded that its roles, power, and duty were adequate for execution though it was empowered just to recommend the agencies related for improvement and to comprise the petitioner and the offending agents. The parliament ombudsman was empowered to mandate agencies or the authorities or individuals related to cooperate in investigating complaints. It was also empowered to report the parliament, Prime Minister, ministers involved and empowered to conduct press-release to people. They were the mechanisms demanding the complained to improve by the recommendations of the parliamentary ombudsman.

Suthiphong Owasidhi (2000) studied the Legal Problem about the Parliamentary Ombudsman in Thailand according to the Constitution of the Kingdom B.E.2540 (1997). He commented that empowering the ombudsman just to report to the parliament or people for the administration agencies or the state agencies to comply with its recommendation. It was a control method of the ombudsman characterized as powerlessness, which was the weakness in the control system under the Thai ombudsman. Compared with the successful countries to institute the parliament ombudsman as in Sweden, it empowered the roles, power and duty of the parliamentary ombudsman to legally impose punishment such as warning, disciplinary measures, and lawsuit. As such, the warning could be made by announcement in newspaper or report to the parliament or advice about the method of punishment over the offended state authorities upon finding that the punishment on the agencies was improper. It included the Swedish ombudsman was empowered to involved with the lawsuit in the Court of First Instance. If the litigant parties or witnesses had been improperly treated, but it had to be after the court's ruling. Also, there was power to interfere the verdict, which might affect the accused by misjudgment was released or compensated.

Siriya Prommarajyos (2010) studied “Problems, Status and Authority of Ombudsman by the Constitution of the Kingdom.” She found that many interviewees disagreed with the execution of the ombudsman in forms of compromise. A Magsaysay-award and renown lawyer an interviewee commented, “The power and duty of the ombudsman must be obvious on exercising its power and the procedure of investigation while the ombudsman should have an authority of enforcement in order to make people fear.” Similarly, an interviewee from the Judicial Development Institute disagreed with appointment of the ombudsman as the conciliator empowered equivalent to the National Anti-Corruption Commission. Its power was characterized with the power of inquiries, investigating corruption of the bureaucrats or the state authorities and the power to adjudge guilty and submitted it into the justice administration. How would the interrogators and the prosecutors investigate because the National Anti-corruption Commission had no right? At the meantime, the power exercised by the ombudsman upon decision and sending opinion to the agencies for improvement. However, to what extent the agencies or their immediate supervisors would comply with the recommendation of the ombudsman was relying on the agencies themselves.

Natchunart Pibulsombuti and Noppakow Sriwattanapong (2004: www.ombo.nsw.gov.au) in the Ombudsman journal contended that in structuring and organizing the New South Wales ombudsman, Australia, it formed general team investigation to be responsible for intake and early prosecution against all public agencies. In addition, there were also the police team and a team to investigate child and youth. Assistant Ombudsman would chair each team for supervision. Most affairs were critical and needed extensive experience s because they were diverse problems.

Bhiriya Siripopunkull (2008) wrote” Travel to the 10th General Meeting of the Asian Ombudsman Association (AOA). He advocated that Australia instituted many levels of ombudsman both in the ferderal government and in every state where specialist ombudsmen were appointed such as the Taxation Ombudsman, the Defense Force Ombudsman and even the Immigration Ombudsman. It was more advance even having private ombudsman such as in the bank and the Postal Industry Ombudsman.

Nongnuch Tanin, Kanokkwan Anantakool and Kris Khanabsak (2014) briefed the annual report of the 16th General Meeting of the Asian Ombudsman Association (AOA) in the Journal of Ombudsman Thailand – the Organizational Model of the Ombudsman in Asia. They found that Pakistan enacted The Office of Wafaqi Moohtasib (Ombudsman) Order to play to roles and was empowered to remedy and mitigate miseries arisen from administrative offenses of the government agencies or agencies controlled by the government. Moreover, Pakistan also instituted the Federal Ombudsman and another 11 ombudsman agencies empowered to handle missions at the national levels and the state levels. Their missions were such as FTO (Federal Tax Ombudsman), the Federal Insurance Ombudsman and the Bank Ombudsman and so on.

Suddhiphong Owasidhi (2000) advocated in his master thesis of laws at Ramkhamhaeng University that France appointed La Me'diateur to strengthen the weakness of the administration such as to investigate the cases of the administrative court which were delayed. This included investigating some difficult case to bring to lawsuits and some cases, which were beyond the power of the administrative court. "La Me'diateur" organized imitated the Swedish ombudsman and the UK ombudsman and just adapted to meet the French regime. However, the state parliament judged that it is the administrative organization because it was appointed by the Cabinet with budgets from the Prime Ministerial part and approved by the parliament. Therefore, any acts of "La Me'diateur" might be prosecuted in the administrative court.

Hardy, Howe & Cooney (2013) studied the proceeding of the Victoria ombudsman: Australia and found that the proceeding was a new measure to end labor disputes. Therefore, an ombudsman organization in Victoria was an organization under supervision of the government. It exercised its investigative power and took action to end labor disputes under the name called "the Fair Work Ombudsman (FWO)". The studies revealed its expansion of lawsuit was mostly involved with incomplete payment. In general, FWO appeared to be successful to enforce the private sector to take responsibility for its offenses and agreed to provide compensations. It included punishment against the indicted. It was counted as increasing efficiency to suppress offenses through law enforcement by focusing the private groups to take responsibility. It complied with the FWO policy and the enforcement pyramid model.

The former president of FWO observed that the lawsuit of the ombudsman should be taken with specific groups. The law and its enforcement demanded information for its enforcement. Narrow targeting such as the private large group or the significant targeting was preferable because lawsuits by FWO were not targeted, which rose the high number of lawsuit and it was the indicator to measure the efficiency of suppression and the better compliance with laws. However, the channel most popularly used by FWO was civil lawsuit for compensation and it was successful to end labor disputes. Nevertheless, FWO should alleviate damages through other means too, such as restraining order or parole order. There were objections that lawsuit for criminal punishment or temporal removing license and the court interdicts and lawsuits through the enforcement pyramid model might not always be the best efficiency. The works of the FWO should be able to demand restraining order by itself for its efficiency to deter lawbreaking and to mitigate litigant parties on their damages. FWO would be an organization, which maintained legal justification, accountability, and vigor since the enactment of the Fair Work Act (FWO Act), Tactics of the enforcement and persuasion allowed broader law enforcement and FWO was empowered to demand more administrative sanctions. It opted for the inefficient lawsuit with high cost (http://sydney.edu.au/law/slr/slr_35/sites/default/files/papers/SSRN-id2041024.pdf).

Nongnuj Nowwarar (2008) wrote in the Journal of Ombudsman Thailand about the power exercises in the Philippines ombudsman that the Republic Act No.6770 Article 13 and its Constitution 1987 Section 12 Article 11 enacted the ombudsman and its assistants must investigate fact without delay. The complaints must be involved with the works of the officers or the state authorities regardless of departments, sections, organizations under supervision of the state agencies or the state offices empowered on supervision. It included the authority to demand admit guilty of all the administrative cases, civil cases and criminal cases complemented with evidences or obvious witnesses under the objectives to promote efficient public service, and to prevent the ombudsman subject to be “paper tiger”.

Siriya Promrajyos (2010) studied “Status and Authority of the Ombudsman under the Constitution of the Kingdom.” she commented that the causes that the Thai ombudsman failed its performance about “Solving system problem” not because there

were no laws empowered but the ombudsman attempted so hard to restrict its organization to be just as a mediator only without interfering the execution of the administration though it was empowered to pursue and investigate the execution of the administration. Its important power distinguished it from other inquest organization but it did not attempt to exercise them. This led to the problems of the Thai governance had not been solved. It was witnessed through complaints about the execution of the same agencies with repetitive complaints in every year. In addition, the ombudsman restricted itself to be the mediator to handle disputes of people to be the main concept for investigating the state power exercises; it disabled the ombudsman to solve the problems of system. Therefore, it played only the role to solve individual problems but disabled to prevent the administrative misuses of power, which was the real cause of the problems.

Bhiriya Siripopunkull (2014) translated the work of Prof. Dr. Najmul Abedin in Austin Peay State University, Tennessee: USA about the work of the ombudsman in the developing democratic countries of the Caribbean Group in the common Wealth. Justice Edoe the recent ombudsman of Trinidad and Tobago the Second observed that problems and limitations of the ombudsman were the red-tape of the state agencies to clarify necessary information and to comply with the recommendations from the ombudsman to solve the problems. It included the agencies had no information or had information but could not explain the necessity for the investigation of the ombudsman. It weakened and restricted the ombudsman's works. At the same time, Hunter Francois, former Deputy Prime Minister of Saint Lucia commented that the objectives or the targets of the ombudsman were damaged by the parliamentary disregards to examine (general) reports and (special) reports proposed by the ombudsman. The legislative law of the Parliamentary Commission (Ombudsman) had loophole about preparing reports presented to parliament but there were no conditions to bind the parliament to take any actions with the proposed reports of the ombudsman. The parliamentary absence of attention wasted the efforts dedicated by the ombudsman even societies expected the constitutional provisions had set principles of public complaints to be fairly and effectively treated.

CHAPTER III

RESEARCH METHODOLOGY

This research was aimed to study the status of power enforcement, the problems and limitations of power enforcement on inspecting the state power by the ombudsman in Thailand and to study approaches in stipulating roles and authorities of the ombudsman in power enforcement with efficient inspection over the state power. The researcher has explored documents, textbooks and related researches to be used as guides in the study. A mixed method of quantitative research through questionnaire and qualitative research through interview form has been applied as the tools for data collection in order to propose data useful to the policy in exercising the power of inspection by the ombudsman in Thailand.

3.1 Population and Samples

3.1.1 Quantitative Research

The population was from the legal affairs, interrogation, complaints reception and law related to the exercise of power by the ombudsman. The samples were selected through purposive sampling. There were five agencies involved with the exercises of the inspection power by the ombudsman. They were the Office of Civil Service Commission, the Office of the National Counter Corruption Commission, the Office of the Attorney General, the Ministry of Interior and the Damrongdhama Centers (around the country).

The Sample Group

The number of the sample group was based on Taro Yamane (1967).

$$N = \frac{z^2}{4E^2}$$

Whereas, E was valued as error at 0.05 level or 5%.

Therefore the number of samples was:

$$N = \frac{1.96^2}{4(0.05)^2} = 384.5$$

Therefore, the samples must not be less than 385 persons. In this study, the researcher had 400 samples for greater validity.

The sampling was by quota sampling method given the number of the quota for the data collection spread throughout the agencies as below.

1. There were 30 samples from the Office of Civil Service Commission.
2. There were 100 samples from the Office of the National Counter Corruption Commission.
3. There were 50 samples from the Office of the Attorney General.
4. There were 70 samples from the Ministry of Interior.
5. There were 150 samples from the Damrongdhama Centers (around the country).

The data collection from the samples has been spread into each agency by accidental sampling to cover the total number of the 400 samples for greater validity and more information collected.

3.1.2 Qualitative Research

The targeted population was the experts, scholars who were equipped with knowledge, experience and specialization with the organization of the ombudsman in exercising their inspection power over the exercises of state power.

The Sample Group

In this sampling, the researcher had the intention to collect diversified information. Therefore, these 10 key informants were from interdisciplinary professions under the following conditions and numbers as below.

1. Two experts were from higher education institutions and were equipped with knowledge and experience of laws or public administration.

2. Two experts ever been the members of the National Legislative Council and were equipped with knowledge and specialized in the inspection system over the exercises of the state power.

3. Two experts were from the Administrative Court and ever positioned as the judges in the Court and with experience to inquest the administration cases.

4. Two experts were from the Office of the Ombudsman positioned or ever been positioned as the ombudsman.

5. Two experts were with specialization and experience in the position of Secretary to the Office of the Ombudsman.

3.2 Research Instruments

3.2.1 Quantitative Research

The tool was the questionnaire developed from literature reviews and formulated in the type of Check List and Complete Item under the questions of the perceptive problems about the ombudsman's roles and authority in exercising its inspection power over the roles and authority of the ombudsman in exercising the inspection power and their limitations of exercising the inspection power over the exercising the state power. The questions had been structured by being based on the conceptual framework and the research objectives. They were divided into four (4) parts as below.

Part I : Personal data containing sex, age, education, subordination, position, and duration of work

Part II : The power enforcement was divided into two sections, i.e.

Section I: Actions taken by the ombudsman on inspection

Section II: Actions taken by the ombudsman on performance
pursuance

Part III : Limitations in compliance with the ombudsman's recommendations

The nature of the question is based on Likert's scale by scoring the level of opinion with the following criteria.

Levels of Opinion

Level 1	= Least disagree
Level 2	= Little disagree
Level 3	= Moderately agree
Level 4	= Strongly agree
Level 5	= Most strongly agree

Levels of Opinion

1.00-1.80	= Agree
1.81-2.60	= Little agree
2.61-3.40	= Moderately agree
3.41-4.20	= Strongly agree
4.21-5.00	= Most strongly agree

(Sangtien Youthao, 2014)

Part IV: Other Opinions: the open-ended questions

3.3 Qualitative Research

The researcher has exploited the open-ended questions structured to be the research instrument and in-depth interview, which was divided into five (5) parts, i.e.

Part I: General information of the key informants

Part II: The roles of the ombudsman in inspecting the public sector agencies

Part III: Actions taken by the ombudsman

Part IV: Recommendations of measures or the approaches of the efficient power enforcing of the ombudsman

Part V: Others

3.4 Validation of the Instruments

3.4.1 The Content Validity - after developing the instruments, the researcher has submitted the questionnaire to the thesis advisor and the experts to check and improve it for clarity, precision and congruency with the content. After corrections, the researcher has improved the questionnaire requesting three (3) experts to examine its accuracy by the research content. The value of IOC has been set over 0.5 for each item in order to validate for the data collection. Any items earned lower than 0.5, they have to be improved.

3.4.2 The quality analysis of the instrument

The instrument has been analyzed on its reliability regarding the perceptive problems of exercising the inspection power of the ombudsman including the problems and limitations in taking action advised or recommended by the ombudsman by being based on Alpha Coefficient of Cronbach (Sin Phanphinit, 1996 and 1991) with the following formula.

$$\alpha = \frac{n[1 - \sum s_i^2]}{n - 1(S_1^2)}$$

Whereas α = the value of reliability of the questionnaire

n = the number of items

S_i^2 = the total variance of the score of each item

S_1^2 = The variance of all items

The value of α - Cronbach has to be higher than 0.8 from the tryout conducted with the 30 non-selected respondents from the data collection and all were calculated for their scores.

3.3.3 The Qualitative Research has employed the interview form.

3.5 Data Collections

3.5.1 Quantitative Research

1) The researcher pleaded recommendation letters for data collection with the Faculty of Social Sciences and Humanity to be submitted to the Office of Civil Service Commission, the Office of the National Counter Corruption Commission,

the Office of the Attorney General, the Ministry of Interior and the Damrongdhama Centers (around the country).

2) The stipulations and appointments on dates, times and places have been scheduled and the questionnaire sets were delivered by the researcher to the Office of Civil Service Commission, the Office of the National Counter Corruption Commission, the Office of the Attorney General, the Ministry of Interior. As of the Damrongdhama Centers (around the country), the researcher has delivered the questionnaire sets with the network through the personnel working in the Center requesting to complete the questionnaire within 2-3 weeks.

3) All the 400 sets of question were collected by the researcher itself for further data analysis.

3.5.2 Qualitative Research

The in-depth interview was conducted with the quota method with the 10 key informants with the following procedures.

1) The researcher pleaded recommendation letters for data collection with the Faculty of Social Sciences and Humanity to the interdisciplinary experts who were equipped with knowledge and experience with the organization of the ombudsman.

2) The stipulations and appointments on dates, times and places have been scheduled to conduct the in-depth interview by the researcher itself with the key informants according to the qualitative method. Each has been interviewed for 45 minutes.

3) In collecting data through interviewing the 10 key informants which were equipped with knowledge and experiences of the ombudsman organization, it was to propose the findings of the power enforcement recommended by key informants and to project the efficiently-structured roles and authority of the ombudsman.

3.6 Data Analysis

3.6.1 Quantitative Research

The researcher has processed and analyzed the quantitative data through checking their completeness, ordering and grouping. Later, they were encoded and analyzed by applying SPSS. The statistical applications were percentage, means, and standard deviation.

3.6.2 Qualitative Research

The technique of analyzing the qualitative was through the descriptive approach by using the content analysis method.

CHAPTER IV

RESULTS

This research was aimed to study the status of power enforcement, the problems and limitations of power enforcement on inspecting the state power by the Thai ombudsman in Thailand, which would further lead to stipulating roles and authorities of the Thai ombudsman in power enforcement with efficient inspection over the state power.

The 400 populations were targeted from five agencies involved with the exercises of the inspection power by the Thai ombudsman. They were the Office of Civil Service Commission, the Office of the National Counter Corruption Commission, the Office of the Attorney General, the Ministry of Interior and the Damrongdhama Centers. The 10 key in-depth interviewees, as in the qualitative research, were from interdisciplinary professions equipped with knowledge and experiences about the role and power enforcement of the Thai ombudsman or inspection authority over the state power. They were lecturers from higher education institutions, the members of the National Legislative Council, the Administrative Court and ever positioned as the judges in the Court and the ex-secretaries of the Office of the Thai ombudsman. Both data of the quantitative research and the qualitative research were analyzed and presented as below.

4.1. Results of the Quantitative Analyses

Their presentations were divided as follows:

4.1.1 General information of the samples

4.1.2 The conditions of legal enforcement of the Thai ombudsman

4.1.3 Problems and limitations to follow the recommendations of the Thai ombudsman

4.2 Results of the Qualitative Analyses

The researcher has conducted in-depth interviews for data collection along with questions responding the research objective, i.e.

4.2.1 The conditions of legal enforcement, problems and limitations in inspecting the state agencies conducted by the Thai ombudsman

4.2.2 The efficient approach of the legal enforcement of the Thai ombudsman in Thailand

4.1 Results of the Quantitative Analyses

4.1.1 General information of the samples

The general information of the samples contained sex, education, affiliation, position and tenure

Table 4.1 The samples' general information

General Information	Freq. (n=400)	percentage (100.0)
1. Sex		
Female	223	55.80
Male	177	44.20
2. Age		
Younger than 30 years	129	32.30
31 - 40 years	168	42.00
41-50 years	69	17.20
51 - 60 years	34	8.50
31 - 40 years (the largest group)	168	42.00
3. Educational Levels		
Bachelor degree /equivalent	270	67.5
Master degree /equivalent	130	32.5

Table 4.1 The samples' general information (cont.)

General Information	Freq. (n=400)	percentage (100.0)
4. Original affiliation		
Central affiliation	149	37.30
Regional affiliation	157	39.20
Local affiliation	4	0.50
5. Position		
Lawyer	104	26.00
Lawyer practitioners	37	9.20
Lawyer experts	41	10.30
Lawyer specialists	14	3.50
Others	204	51.00
6. Tenures		
Less than 1-3 years	115	29.30
More than 3-6 years	75	18.60
More than 6-9 years	74	18.50
More than 9-12 years	134	33.10
More than 12 years	2	0.50

From Table 4.1., the general information displayed that most were male at 223 persons or 55.8% while females were 177 persons or 44.2%. Their average age was 31-40 years with 168 persons or 42.0% followed by those who were younger than 30 years with 129 persons or 32.3% . 69 persons or 17.2% were 41-50 years. The smallest group was 51-60 years with 34 persons or 8.5%. Majority earned bachelor degree or equivalent with 270 persons or 67.5% followed by master degree or equivalent with 130 persons at 32.5%. Majority worked in the region with 157 persons or 39.20% followed by the central affiliation with 149 persons or 37.3% and least affiliation was just 4 persons or 0.5%. 104 persons or 26.0% were lawyers. 14 persons or 3.5% were the lawyer specialists. 204 persons or 51.0% were in other positions. 134 personnel or 33.1% worked for more than 9-10 years. 115 personnel or

29.3% worked for 1-3 years. 75 personnel or 18.6% worked for 3-6 years and 2 personnel or 0.50 % worked over 12 years.

4.1.2 The conditions of legal enforcement of the Thai ombudsman

This part illustrated the values of the level on opinion of the samples related to the legal enforcement of the Thai ombudsman. They were divided into 1) inspections of the state agencies, and 2) enforcement of follow up. The values of opinions were illustrated as below:

4.21-5.00	= Most highly agreed
3.41-4.20	= highly agreed
2.61-3.40	= moderately agreed
1.81-2.60	= little agreed
1.00-1.80	= agreed

Table 4.2 Opinion levels of the samples related to legal enforcement of the Thai ombudsman

Inspection of the state agencies				
S.No	Descriptions	Means	S.D.	Levels
1	Site visits or meeting for discussion with the state agencies allows the Thai ombudsman easily solve the problems	4.13	0.96	High
2	Submission of the disciplinary complaints about the officials or local officials by the Thai ombudsman so as the state agencies involved is appropriate.	3.71	0.98	High
3	Empowering the Thai ombudsman to take action on ethics of the political positioning persons and the state officials by the constitutional provisions is appropriate.	3.67	1.00	High

Table 4.2 Opinion levels of the samples related to legal enforcement of the Thai ombudsman (cont.)

Inspection of the state agencies				
S.No	Descriptions	Means	S.D.	Levels
4	The Thai ombudsman plays the critical roles in exercising power to propose the matters with recommendation to the Constitutional Court or the Administrative Court.	3.65	1.01	High
5	The Thai ombudsman should be the inspectors to pursue disciplinary complaints against the officials, government employees and the local officials.	3.59	2.32	High
6	Discretions of the Thai ombudsman are fair and justified.	3.51	0.95	High
7	The course of legal enforcement of the Thai ombudsman through pleading cooperation from the state agencies in solving problems and complaints is more appropriate than enforcement such as taking action on disciplinary punishment.	3.44	0.93	Moderate
8	To what level, do you agree with the recommendation of the Thai ombudsman?	3.43	0.90	Moderate
9	It is simple to follow the recommendation of the Thai ombudsman,	3.38	0.85	Moderate
10	Enforcing inspection of the Thai ombudsman is not overlapping the inspections of other state agencies.	3.02	1.02	Moderate
Total		3.05	.420	Moderate

From Table 4.2 above, it revealed that the samples moderately agreed with roles of the Thai ombudsman involving the power of inspection ($\bar{X} = 3.05$, $SD. = .420$). The leading compliance was the site visits or meeting for discussion with the state agencies allowed the Thai ombudsman solve the problems ($\bar{X} = 4.13$, $SD. = 0.96$). The second was Submission of the disciplinary complaints about the officials or local officials by the Thai ombudsman so as the state agencies involved is appropriate ($\bar{X} = 3.71$, $SD. = 0.98$). The third was empowering the Thai ombudsman to take action on ethics of the political positioning persons and the state officials by the constitutional provisions were appropriate ($\bar{X} = 3.67$, $SD. = 1.00$). Followed by, the Thai ombudsman plays the critical roles in exercising power to propose the matters with recommendation to the Constitutional Court or the Administrative Court ($\bar{X} = 3.65$, $SD. = 1.01$). The Thai ombudsman should be the inspectors to pursue disciplinary complaints against the officials, government employees and the local officials ($\bar{X} = 3.59$, $SD. = 2.32$). And the discretions of the Thai ombudsman are fair and justified ($\bar{X} = 3.51$, $SD. = 0.95$), respectively.

The studies also disclosed that there were moderate agree with The course of legal enforcement of the Thai ombudsman through pleading cooperation from the state agencies in solving problems and complaints is more appropriate than enforcement such as taking action on disciplinary punishment ($\bar{X} = 3.44$, $SD. = 0.93$). Followed by, to what level, do you agree with the recommendation of the Thai ombudsman? ($\bar{X} = 3.43$, $SD. = 0.90$). It is simple to follow the recommendation of the Thai ombudsman ($\bar{X} = 3.38$, $SD. = 2.85$). Finally, enforcing inspection of the Thai ombudsman is not overlapping the inspections of other state agencies ($\bar{X} = 3.02$, $SD. = 1.02$).

Table 4.3 Opinion levels of the samples related to the condition of legal enforcement among the Thai ombudsman

Performance follow-ups				
S.No	Descriptions	Means	S.D.	Levels
1	To what level is the Thai ombudsman strict in accelerating the state agencies to clarify facts in the case of having complaints?	3.47	0.93	High
2	Pleading the state agencies to clarify facts before the Thai ombudsman has been informed on deadline.	3.43	0.93	High
3	The Thai ombudsman assigns the officials to coordinate the complaints with the complainers and the state agencies involved.	3.31	1.00	Moderate
4	The Thai ombudsman has noticed the state agencies to clarify facts more than twice.	3.30	0.99	Moderate
5	To what level do state agencies decline to follow the recommendations of the Thai ombudsman and the Thai ombudsman reports to the Ministers or their top immediate supervisors for commanding the agencies to clarify facts.	3.06	1.02	Moderate
	Total	3.31	0.970	Moderate

From Table 4.3, the studies revealed that there was moderate agreement with the performance followup of the Thai ombudsman ($\bar{X} = 3.31$, $SD. = .970$). The high agreement was the level the Thai ombudsman is strict in accelerating the state agencies to clarify facts in the case of having complaints ($\bar{X} = 3.47$, $SD. = .930$). Followed by, pleading the state agencies to clarify facts before the Thai ombudsman has been informed on deadline ($\bar{X} = 3.43$, $SD. = .920$). What samples had moderate agreement were the Thai ombudsman assigns the officials to coordinate the complaints with the complainers and the state agencies involved ($\bar{X} = 3.31$, $SD. = 1.000$).

Followed by the Thai ombudsman has noticed the state agencies to clarify facts more than twice ($\bar{X} = 3.30$, $SD. = .990$). Finally, it was the level the state agencies decline to follow the recommendations of the Thai ombudsman and the Thai ombudsman reports to the Ministers or their top immediate supervisors for commanding the agencies to clarify facts ($\bar{X} = 3.06$, $SD. = 1.020$).

4.1.3 Problems and limitations to follow the recommendations of the Thai ombudsman

Table 4.4 Problems and limitations to follow the recommendations of the Thai ombudsman

S.No.	Descriptions	\bar{X}	SD.	Levels
1	It is necessary to exploit many sectors or spend time to solve the problem.	3.80	0.89	High
2	The problem involves with the legal limitations.	3.58	0.96	High
3	It is the problem of complexity about solving the problem.	3.55	0.88	High
4	The problem involves with the inadequate state budget for solving problems.	3.55	0.95	High
5	It is the problems of coordination shortage with the state agencies responsible for solving problems	3.51	0.90	High
6	It is the problem of absence in followup for solving problems under the recommendation of the Thai ombudsman.	3.50	0.94	High
7	It is the problem of the personnel lacking integrity to solve problems for the common good.	3.49	0.99	High

Table 4.4 Problems and limitations to follow the recommendations of the Thai ombudsman (cont.)

S.No.	Descriptions	\bar{X}	SD.	Levels
8	It is the matter that the state agencies cannot follow the recommendation if the Thai ombudsman; if action taken, they would be subject to the civil charge or the criminal charge or the disciplinary charges.	3.35	0.97	Moderate
9	The matter is beyond their authorities of the coordination agencies.	3.33	0.95	Moderate
10	The problem is beyond deadline for solving.	3.29	0.92	Moderate
	Total	3.50	0.934	High

From Table 4.4, it showed that there was high level of the problems and limitations to follow the recommendations of the Thai ombudsman ($\bar{X}=3.50$, SD. = .934).

The leading high level of opinion was It is necessary to exploit many sectors or spend time to solve the problem ($\bar{X}= 3.80$, SD. = .890). Followed by, the problem involves with the legal limitations ($\bar{X}= 3.58$, SD. = .960). It is the problem of complexity about solving the problem ($\bar{X}= 3.55$, SD. = .880). The problem involves with the inadequate state budget for solving problems ($\bar{X}= 3.55$, SD. = .950). It is the problems of coordination shortage with the state agencies responsible for solving problems ($\bar{X} 3.51$, SD. = .900). It is the problem of absence in follow up for solving problems under the recommendation of the Thai ombudsman ($\bar{X}= 3.50$, SD. = .940). And, it is the problem of the personnel lacking integrity to solve problems for the common good ($\bar{X}= 3.49$, SD. = .990), respectively. The moderate agreement of the problems and limitations to follow the recommendations of the Thai ombudsman were it is the matter that the state agencies cannot follow the recommendation if the Thai ombudsman; if action taken, they would be subject to the civil charge or the criminal

charge or the disciplinary charges ($\bar{X} = 3.35$, $SD. = .970$). Followed by the matter is beyond their authorities of the coordination agencies ($\bar{X} = 3.33$, $SD. = .950$). And, the problem is beyond deadline for solving. ($\bar{X} = 3.29$, $SD. = .920$).

4.2 Results of the Qualitative Analyses

The researcher has conducted in-depth interviews for data collection along with questions responding the research objective, i.e.

4.2.1 The conditions of legal enforcement, problems and limitations in inspecting the state agencies conducted by the Thai ombudsman

4.2.2 The efficient approach of the legal enforcement of the Thai ombudsman in Thailand

This research was part of finding on the legal enforcement of the Thai ombudsman under the Organic Act on Ombudsmen B.E. 2552 (2009). The researcher has divided her studies by the nature of its enforcement, i.e. 1) exercising its power of inspection and seeking fact by complaints, 2) exercising its power of inspection and seeking fact without complaints, 3) exercising power of inspection and taking action against the ethics of the political positioned persons and the state agents. 4) Exercising its power of follow up and evaluation, providing recommendations to abide in the Constitution and Amendments where necessity is needed, and 5) Exercising its power to propose the constitutional court or the Administrative court.

1. Exercising its power of inspection and seeking fact by complaints

This part was divided into two parts, i.e.

Part I: the power of inspection and seeking facts

Part II: the legal enforcement on state agencies to follow the Thai ombudsman's opinions or recommendations.

Part 1: The power of inspection and seeking facts

The Organic Act on Ombudsmen B.E. 2552 (2009) empowered the Thai ombudsman to inspect and to seek facts by complaints and declining to abide by law or to take action beyond authorization of the officials, the state personnel or the employees of the government agencies, the state agencies, the state enterprises and the local agencies. This included the complaints on the breach of duty or the illegal acts taken by the constitutional organization and the criminal justice organization, which excluded the court trials.

The condition the legal enforcement over inspection and seeking facts

The results showed that the empowerment of inspection and seeking facts served the objectives of establishing the Office of the Thai ombudsman under the Constitution of the Kingdom. It was stipulated that the Thai ombudsman was the non-government organization holding duties to check and balance the exercising power of the Legislative, and the Administration. The interviewees accorded that in the past the legal enforcement for inspection and seeking facts by complaints under the power of the Thai ombudsman was dependable on reliefs and solving miseries for people to a certain level.

Many interviewees observed that currently, the power of inspection met some restriction by law such as the power to inspect the court organization and the power to inspect organizations or other agencies not enacted in the Organic Act on Ombudsmen B.E.2552 (2009). It drove people or the troubled ones without resort and they looked they did not deserve justice from the criminal justice administration and the state agencies. This included the laws about the Thai ombudsman failed to enforce the state agencies to take action or not to take action. It was the barrier that delayed the works of the Thai ombudsman.

Problems and limitations of legal enforcement on inspection and seeking facts

In this researcher, the interviewees provide opinion on problems and limitations of legal enforcement on inspection and seeking facts of the Thai ombudsman in Thailand and they were divided as follows:

1. The power restriction of the Thai ombudsman

1.1. The legal limitations on inspecting the court and the justice administration organization

The interviewees still found the power restriction of the Thai ombudsman to inspect the court because if any cases have been tried in the court or already judged or with absolute order; the Thai ombudsman may decline to accept the petition or end the examination under the Article 28(2) of the Organic Act on Ombudsmen B.E.2552 (2009). It failed the Thai ombudsman to protect the rights and liberty of people as in the constitutional provisions. This was corresponded with an interview conducted with an Thai ombudsman that:

“...Opportunities should be permitted for the Thai ombudsman to provide opinions on the court trials since in the past it has no opportunity to inspect the court if the complaints deserve being a trial in court or already judged or with absolute order. The Section 28(2) of the Organic Act on Ombudsmen B.E.2552 (2009) immediately terminates the power of the Thai ombudsman regardless the natures of complaint. It fails the Thai ombudsman to relieve and solve the problems of the complainers...”

Thai ombudsman: October 29, 2015

1.2 The problems of the legal restriction to enforce inspection with other organization or the state agencies

The Section 4 of the Organic Act on Ombudsmen B.E.2552 (2009) defined individuals or the state agencies under the inspection of the Thai ombudsman as follows:

Government agency" means Ministry, Sub-Ministry, Department or government agency named otherwise but having equal status to Ministry, Sub-Ministry or Department;

“State agency" means any agency other than government agency, State enterprise or local government organization;

"State enterprise" means State enterprise under the law on budgetary procedure;

"Local government organization" means local government organization under the law on State administration;

"Person holding political position" means a person holding political position under the law on counter corruption;

"State official" means a government official, official, employee or a person working for a government agency, State agency, State enterprise or local government organization and a competent official under the law on regional administration;

"Officer" means an official, employee or a person appointed by the Ombudsmen to perform any duties under this Organic Act.

The results showed that some interviewees found the Organic Act on Ombudsmen B.E.2552 (2009) had some limitation in exercising the Thai ombudsman's power to inspect organization or other state agencies left out from this Organic Act. It fully failed the missions of protecting rights and liberty of people. An example from interviewing the Secretary of the Office of the Thai ombudsman, who commented:

“...Some complaints are irrelevant to exercising the Thai ombudsman's power for inspection and it cannot enforce inspection because of the legal limitations, such as the complaints against the Office of the National Broadcasting and Telecommunications Commission, the University Council, variety of committees, the Tambol Chief, the Village chief and the state enterprises and so on...”

Secretary of the Office of the Thai ombudsman: December 21, 2015

2.The problem of legal enforcement for seeking facts

Section 15 of the Organic Act on Ombudsmen B.E. 2552 (2009) empowered the Thai ombudsman to order the government agencies, the state agencies, the state enterprises or the local government organizations to clarify fact in written or to provide recommendation on working or to deliver documents, evidences or other evidences involved to complement the examination of the Thai

ombudsman. It also empowered the Thai ombudsman to inspect the location of complaint or to regulate rules, criteria and methods of receiving complaints and the rules of investigating facts including other regulations and criteria for the benefits of the Thai ombudsman's works as in the enactment. In addition, in Section 45, it enacted punishment for the agencies or the offenders failing to clarify facts or impeding the works of the Thai ombudsman or the disclosers of information, which were gained by fact-findings. These were aimed at the work achievement of the Thai ombudsman.

This research found that roots of problems and limitations of legal enforcement for fact-findings of the Thai ombudsman came from:

1) Laxity of legal enforcement of the Thai ombudsman

Many interviewees found that the problems and limitations of its legal enforcement came from the agencies are fearless to the Thai ombudsman's laws. Some agencies understood that the Thai ombudsman had no authority to enforce punishment. It led to the agencies might take action or might not follow the opinions or the recommendations of the Thai ombudsman. All these considerably delayed inspecting complaints and inspections including fact-findings. Examples from an Thai ombudsman and university lecturers were as below.

“...The agencies are today fearless to the legal enforcement of the Thai ombudsman is because the Thai ombudsman never impose punishment or absolute order with any agencies of the government sector but it is just requesting for cooperation which seem appropriate..”

An Thai ombudsman: November 3, 2015

“...the serious cause comes from the agencies speculates the Thai ombudsman as a tiger paper since there is no rigid legal enforcement against any agencies and the Thai ombudsman cannot directly prosecute them...”

A university lecturer: October 13, 2015

“...the criminal punishment under Section 45 of the Organic Act on Ombudsmen [B.E.2552 (2009)] is appropriate and the Thai ombudsman should impose some punishment to intimidate the agencies...”

A university lecturer: October 9, 2015

2) The legal gap of the Thai ombudsman

The Organic Act on Ombudsmen B.E.2552 (2009), Section 21 enacted no person shall disclose any statement, fact or information obtained from an implementation under this Organic Act. Though Section 47 enacted imprisonment for not more than six years or fine not more than ten thousand Baht or both for the disclosers found by the Thai ombudsman; yet this Organic Act cannot assure the agencies to be subject to lawsuit by the complainants. All these affected the agencies' cooperation in clarification facts. An example from a judge of the Administrative Court was as below.

“...laxity of confidence on the Thai ombudsman to really protect agents is sometimes coming from the agencies fear the charge of lawsuit on the Information Act. That is, when the agencies submit the documents to the Thai ombudsman, they may be complained or countercharged by the person involved. This is an element that the agencies decline to follow the opinions or the recommendation of the Thai ombudsman...”

a judge of the Administrative Court: December 3, 2015

3) The problems of database on complaints and the linkage to the IT database

The research found that some interviewees saw the Office of the Thai ombudsman did not systematically take action and develop full IT on complaints, their categorization, and their adjudications. They delayed their investigations and examination of facts and failed to solve the systematic problems as an interviewee commented, “...*the internal administration of the Thai ombudsman itself could have been the critical problem of efficiency such as no categorization of*

the complaints with complexity and non-complexity and defects of the IT database storages...” (Interviews of October 13, 2015).

4) The Problems of the Human Resources

The research found that many interviewees relatively commented that its human resources were critical problems, which delayed their inspections. For examples, there were laxity of personnel equipped with skills, knowledge and understanding of specialization, reallocation, of the responsible persons, where cooperation failed including laxity of integrity to solve the common problems within an organization and the state agencies as in the following evidenced interviews:\

“...factors delaying the complaints are mostly from three elements. First, the officers fail to complete within deadline. Second, officers fail to follow-up what demand agencies to clarify and their responses. Third, what have been reported but they are not taken any actions...”

Secretary of the Office of the Thai ombudsman: December 21, 2015

“...some complaints need time to solve the problems, which might meet reallocation of many officers. The new officers do not know how to coordinate with the Thai ombudsman and it delayed the problems or the bosses do not want to clarify since it has to re-begin. This includes many complaints to many agencies, which might create boredom to take action on the complaints...”

A university lecturer: October 9, 2015

Part II: Legal enforcement to demand agencies to follow opinions or recommendation

This part involved the explanation of the results in exercising power over agencies to follow the recommendation of the Thai ombudsman. This was the legal enforcement of post adjudication under the Sections of 32 -34 in the Organic Act on Ombudsmen B.E. 2552 (2009) enacting:

1) The power to recommend amendments on laws and solving problems

Section 32 of the Organic Act on Ombudsmen B.E.2552 (2009) enacted. At the completion of consideration and inquiry on any complaint, the Ombudsmen shall prepare and submit the report summarizing the fact together with its giving opinion and recommendation for the revision thereof to the related government agency, State agency, State enterprise or local government organization for information or implementation. And I Paragraph 2, it enacted “in the case where the Ombudsmen is of opinion that the law, by-law, rule, regulation or resolution of the Cabinet as such induces unfairness or inequality before the law or being the ground of discrimination or outdated. The Ombudsmen shall recommend the government agency, State agency, State enterprise or local government organization to further revise or amend such law, by-law, rule, regulation or resolution of the Cabinet.”

2) The power to propose an organization to amend laws or reports to the Prime Minister, ministers or the organizational regulators to reasonably impose orders

The last paragraph of Section 32 enacted, “Wherewith, the Ombudsmen recommends the agency under paragraph two to revise or amend the law, by-law, rule and regulation, if such agency fails to proceed with that recommendation within a reasonable period; the Ombudsmen shall inform the law reform organization under the Constitution for further proceedings and shall urgently report that matter to the Cabinet, the House of Representatives and the Senate for information as contingency.” Also, in Section 33, it enacted, “...Wherewith, a government official, official or employee of a government agency, State agency, State enterprise or local government organization fails to comply with the opinion or recommendation of the Ombudsmen on any matter within a reasonable period; the Ombudsmen shall

inform the Prime Minister, Minister or the person controlling or supervising such government agency, State agency, State enterprise or local government organization so as to have necessary order thereon and to report their implementation to the Ombudsmen forthwith.”

3) The power to report the Cabinet, the House of Representatives and the Senate for information as contingency

Section 33 enacted, “ In the case where a government official, official or employee of a government agency, State agency, State enterprise or local government organization fails to comply with the opinion or recommendation of the Ombudsmen on any matter within a reasonable period, and the matter is critical to public welfare or en mass; the Ombudsmen shall inform the Cabinet, the House of Representatives and the Senate for information as contingency. Any matters seen suspicious on corruption or misconducts or reasonable crime or disciplinary misconduct; the Thai ombudsman is empowered to inform agencies responsible for investigation and their immediate supervisors for legal action.”

This research found roots of failure to comply with the opinion and recommendation of the Thai ombudsman commented by interviewees as below.

1) Conditions of enforcing legal punishment

Due to the Organic Act on Ombudsmen B.E.2552 (2009) did not enact punishment in the case the agencies and their chiefs failed to solve the problems as recommended by the Thai ombudsman; the Thai ombudsman laws were not in condition to impose punishment against the dissents, who failed to comply with the Thai ombudsman’s recommendations.

2) Failure to report non-compliance with the Thai ombudsman’s recommendations to the Cabinet, the House of Representatives and the Senate for information

3) Officers involved

Laxity of coordination or transfer, reallocations of position and laxity of integrity to solve the common problems among the officers

4) The database system of complaints and the IT database linkage

The IT system was inefficient such as the systems of alert, follow up, compliance to the Thai ombudsman's recommendation after adjudication and the links of the database to other agencies and so on.

The efficient approaches in structuring and legal enforcement of the Thai ombudsman in Thailand

The approaches in structuring

Qualifications of the Thai ombudsman

All the interviewees in this research relatively commented that the qualifications of the Thai ombudsman under the Constitution of the Kingdom and the Organic Act on Ombudsmen B.E. 2552 (2009) were appropriate and reasoned that:

First, the critical qualifications of the Thai ombudsman besides being erudite with experiences on the affairs of the ministries, sub-ministries, and departments; they must be impartial. Stipulating the Thai ombudsman's qualification by the Organic Act on Ombudsmen B.E.2552 (2009) not being the member of the parliament, the senate, the person holding political position, the local government administrator or the member of the local government administration and the member of any political parties, a judge of the Constitutional Court, a judge of the Administrative Court, the member of election committee, the member of the National Anticorruption Commission, the member of Auditor General or the member of the National Human Rights. The objectives of the provision are required the Thai ombudsman to be impartial, non-inclination in the works of the Thai ombudsman.

Second, the to-be Thai ombudsman must never have blemish records and legal offender because they have the mission to inspect righteousness of exercising the state power and checking ethics of others. Enacting the Thai ombudsman's qualification in the Constitution of the Kingdom and the Organic Act on Ombudsmen B.E.2552 (2009) that they must not be sentenced on imprisonment even the case is yet to be finalized or reprieved except being the negligent act, petty penalty or libel and never be subject to judgment or impeachment from the member of parliament or senate under the Constitution. Such provisions were to screen the Thai ombudsman's qualification and accepted by the Thai societies.

Numbers of the Thai ombudsman

The interviewees in this research relatively commented that indicating only three ombudsmen as appropriate reasoning that it was not necessary to form a committee because it slowed the process. The Thai ombudsman by reason was an alternative to relieved and solving the miseries of the pole and it was not a court. Its administration should be expedite and accurate.

The approaches to enhance efficiency in legal enforcement of the Thai ombudsman

The interviewees commented and recommended how enhance efficiency in legal enforcement of the Thai ombudsman as follows:

1. Laws must broaden the scope of the Thai ombudsman's power, i.e.,

1.1 Enacting the Thai ombudsman to inspect the office affairs of the court, and must not overlap the trials, such as, inspecting the procedures and the compliance to the criteria of the court hearings

Some interviewees in this research found that legal enforcement on inspecting the court by the Thai ombudsman currently met provisional limitations because the Organic Act on Ombudsmen B.E.2552 (2009), Section 28 (2) enacted being the matter that having been filed to the Court or the matter that the Court has final judgment or order thereon; the Thai ombudsman was empowered to reject the matter for examination or to end examination. It disabled the Thai ombudsman to really protect the rights and liberty of people.

An interviewee being a university lecturer supported to add more roles and authority for the Thai ombudsman that they should impose legal enforcement to inspect the court office affairs. By reason, it was not the inspection of the court hearing but it had to be in the form of academic approach, as proposed below:

“...the approach to inspect the court should be academic and in the form of researches and there must be an enactment to endorse the Thai ombudsman to conduct researches in the matter found problematic with complaints against the court or the NGO. The Thai ombudsman must be empowered to call for documents, evidences involved or discussion with the court administration. This is to find common conclusions and common recommendations for the benefits of complementing the studies, analyses and researches. They are the academic process, which is not the analysis or the study of the court hearing, which interferes the judicial power. Also, it enables the conclusion and recommendation to be used in law amendments. However, the research proposal should be backed by the government to allocate budgets and expose the paradigm for the benefit in improving the Thai justice administration...”

A university lecturer: October 13, 2015

1.2 The Thai ombudsman should be empowered to prevalently inspect organizations or all agencies so that they can fully fulfill their mission in protecting rights and liberty of people.

Some interviewees in this research commented that legal enforcement to inspect the state power exercises by the Thai ombudsman was met with limitations in inspecting other organization or other state agencies and they were not indicated in the Organic Act on Ombudsmen B.E.2552 (2009). Examples were found with interviewing the Secretary of the Office of Ombudsman, saying:

“...Some complaints are irrelevant to exercising the Thai ombudsman’s power for inspection and it cannot enforce inspection because of the legal limitations, such as the complaints against the Office of the National Broadcasting and Telecommunications Commission, the University Council, variety of committees, the Tambol Chief, the Village chief and the state enterprises and so on...”

Secretary of the Office of the Ombudsman: December 21, 2015

1.3 Temporal protection power should be granted to the Thai ombudsman

The interviewees in this research commented that the investigative power should be added to the ombudsman that they could temporarily restrain damages arisen during the complaint was in the hand of the ombudsman especially, dangerously impacts against the complainants or the public. In the past, even the complaint was under examination of the ombudsman but they could not prevent damages against the complainants and leaving the time to heal their damages. A member of the Legislative Council as an interviewee worded that empowering the ombudsman for temporal protection during its examination was the legal enforcement of investigation, which was not the punishment power. It would then be useful to people. He said,

“...Restraining temporal damages are not punishing the dissents or the offenders. In future, it is possible that the ombudsman will have this power. However, laws must be amended to add this power in order to empower the ombudsman to restrain more damages during their incomplete examination or investigation. Nevertheless, the legal enforcement to restrain temporal damages should have clear deadline...”

A member of the Legislative Council: January 22, 2016

“...The ombudsman can exercise this power through the Administrative Court since the stakeholders hold rights to take lawsuit or can plead temporal protection from the Administrative Court...”

A member of the Legislative Council: November 19, 2015

“...Adding power of delay or temporal termination should be granted to the ombudsman against the proceeding case, which might create impacts or damages on the complainants. For example, there is a dispute on land of the complainant and is not in the government area as referred. When the ombudsman has received complaints and during examination, there must be power for the ombudsman to issue order to restrain the government agency

to remove establishments of the complainant until the agency investigate and report facts to the ombudsman. It speeds the agency to clarify facts and the complainant is reasonably protected

However, empowering the ombudsman for temporal restraint should have deadline for such as 30 days or 90 days and so on. If it exceeds the deadline and the agency fails to report facts; the ombudsman can still impose legal enforcement speedy clarification of fact. If the agency complained ends its investigation but disagrees with the adjudication but the ombudsman cannot enforce the agency any longer...”

Ex-Secretary of the Office of the Ombudsman: October 14, 2015

2. Stipulating punishment measures against agencies and the dissents of the Organic Act

The results showed that all interviewees relatively agreed that the approach of the Thai ombudsman currently employed opinions or recommendation to the agencies so that they would solve problems. Also, social sanctions were imposed such as reports to clarify the parliament and exposure to public in various forms such as in newspaper, and TV as the appropriate media. However, some interviewees found that in the case the agencies failed to cooperate with the missions of the ombudsman - failure to clarify facts and failure to follow opinion or recommendation proposed by the ombudsman without reasonable causes; there should be legal measures imposed upon the agencies or the dissent of the ombudsman laws. This would enable the ombudsman legal enforcement efficient. Interviewees proposed the ombudsman legal enforcement into two ways, i.e. 1) social sanction approach and 2) legal measures approach.

1) The social sanction approach

Most interviewees agreed with the social sanction approach that it was appropriate in the work of the ombudsman. The interviewees supporting this approach found that the ombudsman should not have the power to impose either civil or criminal penalty with the agencies not complying with their opinions or recommendations. The Organic Act on Ombudsman B.E.2552 (2009), Section 33 enacted the ombudsman to report what the agencies failed to comply with

their opinions or recommendations to the Prime Minister, Ministers or the regulators of the agencies for further command. This included the cases, which the ombudsman reasonably suspected to be corrupted or officially mal-practiced or reasonably been crime or reasonable been disciplinary misbehavior. The ombudsman were empowered to report the agencies responsible for investigation or their immediate supervisors to further undertake lawsuits under Section 34 of the Organic Act on Ombudsman B.E.2552 (2009). In addition, the ombudsman were authorized to prepare annual report submitted to the Cabinet, the Parliament and the Senate for information about non-compliance with Section 15 of the government agencies, the state agencies, the state enterprises, the local government administration, the state officers under the Section 43 of the Organic Act on Ombudsmen B.E.2552 (2009). These thoughts were accorded with the following interviewees.

“...The causes the ombudsman never impose measures as in Section 45 of the Organic Act on Ombudsmen [B.E. 2552 (2009)] because the ombudsman legal enforcement is mostly about inspecting the administration. It is then necessary required cooperation in clarifying facts from the administration. If the legal enforcement system until taking lawsuit with the state agencies, the lawsuits would take long time...”

Secretary of the Office of the Ombudsman: December 21, 2015

“...The ombudsman organization today employs compromise approach, which is appropriate because the ombudsman is neither the court nor the administration but a non-government organization. It should not involve with the civil cases but never allows the complainants lose their deserved rights. In case, the ombudsman judges that the agencies are wrong, the ombudsman can exercise its rights to take lawsuit at the Administrative Court according to Section 9 of the Administrative Court Establishment and the administrative proceedings or publicizing reports to the Parliament or Public...”

A university lecturer: October 13, 2015

By this approach, the interviewees added that the ombudsman should rely on cooperation of mass media and public while emphasizing network approach with various sectors such as the local, radio station, TV, and newspaper to launch public relation to campaign the ombudsman performance. This included reports in the case the agencies failed to comply with the Organic Act on Ombudsmen B.E.2552 (2009) would be announced to public for information. It was counted a social sanction imposed on individuals or agencies, which committed offensive acts. This would turn the work of the ombudsman more efficient. By reason, the agencies should instill their own images. It included having the spirit of bureaucrats, personnel and employees of the state agencies, of the state enterprises, and of the local government administration. These would speed the agencies to clarify facts and to comply with the ombudsman's opinions or the recommendations. Such recommendations were accorded with an interview of the university lecturer and the member of National Legislative Council:

“...the ombudsman should use mass media for the benefits of public relation for information such as newspaper or TV in order to pressure agencies to take action in solving problems. Some agencies feels to lose their images, they will speedily investigate and clarify the ombudsman...”

A university lecturer: October 9, 2015

“...Publishing in media and directing public by the ombudsman until public agree with what the ombudsman directs as right, taking serious action and announces its restricted power. When public agree that the opinion of the ombudsman is right, it counts exercising power to direct public to distinguish some mal-practices in some societies. This is the exercise of social power rather than the law enforcement. For example, education, and the corruption investigation on the rice subsidy scheme, which the ombudsman takes action and publishes in media directing public to point out what is right and appropriate approach. The ombudsman should employ the nature of directing societies pairing with its works.

A member of the Legislative Council: November 19, 2015

2) Legal measure approach

All interviewees accorded that it was right to have punishment enacted in **Part 7** of the Organic Act on Ombudsmen B.E.2552 (2009) because it turned the ombudsman legal enforcement sacred and respected amid those who violated the ombudsman laws. It was accorded with the interviews of the member of the National Legislative Council saying:

“...the ombudsman should be strong and decisive and should never think as ‘*Scratch my back and I will scratch yours*’ (water relies on boats while tiger relies on woods). If seeing legal enforcement inefficient; in future, if the ombudsman displays before public that they investigate according to the spirit of the Constitution and if there are problems about the provisions; the ombudsman can plead amendments...”

A member of the Legislative Council: January 22, 2016

Similarly, many interviewees agreed with aggressive legal enforcement against dissents to the ombudsman laws particularly those who ever had, many times, been noticed to comply with the opinion or the recommendation or clarifying facts. The agencies disregarding and failing to take action and to really turn the ombudsman legal enforcement efficient; the legal measures were proposed as follows:

A. The civil and criminal lawsuits

The civil and criminal lawsuits were imposed on dissents against the Organic Act on Ombudsmen B.E.2552 (2009) according to the severe punishment enacted. It was accorded with the interview statements of the all interviewees who agreed with the ombudsman laws empowering the Thai ombudsman to impose punishment against dissents against the Organic Act on Ombudsmen B.E. 2552 (2009). However, the inefficiency of the ombudsman legal enforcement came from the laws were never seriously enforced:

“...Though punishment has been increased but the ombudsman never seriously impose on agencies; they then disrespect the ombudsman since it is not empowered to order as in the judicial power...”

A judge of the Administrative Court: December 3, 2015

“...Though the Organic Act on Ombudsman B.E.2552 (2009), section 45 empowers the punishment but it is never found any ombudsman enforce it even though the punishment is appropriate. It should be kept that all agencies involved must respect and provide cooperation with the work of the ombudsman...”

A member of the National Legislative Council: November 19, 215

B. Disciplinary punishment

This research, many interviewees propose amendments though enacting disciplinary punishment on the dissents against the Organic Act on Ombudsman. The interviewees proposed models and approaches to enact diverse punishment of the ombudsman. A Thai ombudsman recommended that the legal provisions should be enacted the letter of request to the agencies to report facts alike the court summon . Any agencies or any officers resist such as failing to clarify facts to the ombudsman within deadline, it is counted as ignorance and lawbreaking or the officers committed mal-practices and are subject to disciplinary punishment. It was accorded with interviewees:

“...In future, if any state agencies fail again to comply with the ombudsman; it should be solved by disciplinary punishment through demanding to clarify in written and enforce as if a court summon and with 90-day deadline. Any dissents are subject to offense and legal punishment...”

An Ombudsman: October 29, and November 3, 2015

“...In the case that the ombudsman has recommended and the agencies have to return report within 60 days. And, if the agencies take action or do not take action; they must report about the progress with reasons. The agencies have not reported back and can be extended for 30 days. If no action has not been taken, such act of the chief is counted disciplinary misdeed. This will more intimidate the agencies because in the past some agencies have not cooperated and silenced because no laws indicate the punishment and coercing them...”

Secretary of the Office of the Ombudsman: December 21, 2015

In addition, Secretary of the Office of the Ombudsman added that enactment should empower the ombudsman to point out the ground of disciplinary misbehavior and to impose administrative fines with dissents of the Organic Act on Ombudsman through amending laws. The enactment was to empower the ombudsman to point out the root of disciplinary misbehavior against the chiefs or the officers who offended the Organic Act on Ombudsman. For example, failure to report facts of the agencies or their chiefs and failures to take action as the ombudsman's opinion by deadline unreasonably; it was allowed their regulators to decide disciplinary punishment. The punishment considerations must be complied with the disciplinary punishment of the agencies. For example, the ombudsman twice noticed but the agencies ignored to clarify facts within deadline; they were subject to disciplinary punishment, such as, imposing probation, and warning the chiefs who disregarded to clarify facts to the ombudsman. In the case, the ombudsman has twice noticed the agencies and no action had been taken; the agencies must deduct salary or reduce salary of those officers involved. There was also enactment to endorse the ombudsman to file petition to the Administrative Court; if the ombudsman found that any immediate supervisors of any agencies declined to impose disciplinary punishment with dissents since it was the administrative order.

In addition, enactment to empower the ombudsman to impose fine-punishment measure through salary or wage deduction or calling the dissents of the Organic Act on Ombudsmen to pay fines. The rules were enacted such as First Stage Fine would be charged not be more than a month; the Second Stage Fine

should be charged not more than two months and so on. The interviewees of fine in the administrative punishment reasoned that comparing to the Office of the Ombudsman and the Office of the Auditor General, it was found that both were NGO by the Constitution similarly authorized to investigate the state agencies. However the ombudsman legal enforcement besides having the Auditor General as Committee and empowered to take responsibility to audit the state agencies but also establishing another committee to be responsible for consideration and to stipulate administrative punishment against the dissent agencies against monetary control under the Organic Act on The Parliamentary Ombudsmen B.E.2542 (1999). In corporate with, the foreign ombudsman such as in Australia, they were empowered to command police to take action and report back. If failing to comply with the ombudsman command, it was the lawbreaking and the ombudsman is empowered to impose fine-punishment. Therefore, if the ombudsman had efficient legal enforcement and to gain respects its exercising of power; it was necessary to enact provisions to endorse the establishment of the ombudsman committee to consider the administrative-fine punishment against the dissent of the Organic Act on Ombudsmen because the ombudsman and the ombudsman committee order to impose fine. Both measures were useful to the agencies to be conscious of clarifying and disclosing data for the ombudsman in order to solve the miseries of people and public. And if the ombudsman imposed the fine measures against the agencies which failed to take action, the ombudsman could still impose Section 45 of the Organic Act on The Parliamentary Ombudsmen B.E.2542 (1999), another way too.

C. Charges and trial at the Administrative Court

Results of an interview conducted with a university lecturer seeing that the agencies failed to solve problems as recommended by the ombudsman; it was found that there was offense committed. The ombudsman had two exits. First, the ombudsman could impose trial in the Administrative Court against those disregarding their duties. Second, the ombudsman should report to the Senate and disclosure to public in various forms such as newspaper and TV to vilify the non-cooperation to solve the problems of the agencies, which speed them to comply (interview on October 9 and 13, 2015).

D. Recommending enacting Summon Order

A member of the National Legislative Council recommended that if the ombudsman found any laws were outdated or hindering their work, they could propose to the Council for amendment. For example, in the case of issuing letter requesting the agencies to clarify fact but cooperation failed, the ombudsman might command for documents from any individuals or call individuals or the agency chiefs to testify the facts on the matter the ombudsman investigated. It is similar to the Act Orders of the Standing Committee of the House of Representatives and the Senate B.E.2554 (2011), which accorded with the information given by an interviewee from the National Legislation Council:

“...many agencies require punishment enactment to ease working such as the parliament enacts the Act Orders of the Standing Committee of the House of Representatives and the Senate...”

A member of National Legislative Council, November 19, 2015

The member of National Legislative Council proposed steps of investigating the exercising the state power by the Thai ombudsman as follows:

Step I: inviting the agencies for clarification and primary coordination

Step II: if the agencies dissented or declined clarification, the second letter of request for clarification must be issued with warning in the summon warrant that if the agencies still dissent, such dissent was an offense and deserve criminal under the Organic Act on The Parliamentary Ombudsmen B.E.2542 (1999). The ombudsman might assign the Legal Department or the Litigation Division of the Ombudsman to file lawsuit to illustrate the serious legal enforcement of the ombudsman.

Step III: if the agencies still dissented and did not appear for testimony or clarification; the ombudsman should increase legal measure solution such as the Organic Act on The Parliamentary Ombudsmen B.E.2542 (1999) .

There might also be the Act on Administration Procedures or empowerment of investigation to the ombudsman and so on.

3. Improving the ombudsman investigation process

In this research, many interviewees recommended that to more justify the ombudsman adjudication and for the precaution and expedition in investigation of facts, investigation procedures and fact-findings, investigating and examining complaints; the ombudsman should have counselors or assistants. They must be specialists to provide consultations of investigation and adjudication where complaints were. This thought was accorded with an interview with the Secretary of the Office of the Ombudsman saying:

“...the works of the ombudsman must consider deadline and at present, if there are necessities to examine any matters; the ombudsman can form a committee to examine the complaints but the flexibility may run short. By reason, some complaints demand expedition but some demand in-depth examination and precautions. As such, the ombudsman can occasionally call for specialists...”

Secretary of the Office of the Ombudsman: December 21, 2015

A member of the National Legislation Council interviewed, “to justify the result of the ombudsman adjudication and respected by public; re-integration of working model should applied on investigation and fact-findings. Counselor team should be formed to provide consultation in the form of “ Sub-committee” which will not be the examination of the same team of the ombudsman while providing recommendations to structure personnel to efficiently fulfill duties of inspection and fact-finding. The proposals were as below.

1. Separate the power of ruling the complaints by specialization, experience and appropriateness

2. An ombudsman supervises three sub-committees and it is called “the Sub-committee to take action on...” having an ombudsman to chair the sub-committee and each sub-committee contained ten members.

2.1. External specialist must be invited such as judges, prosecutors, police, military armforce, and civil servant personnel as counselors and provide recommendations.

2.2. A chief of investigation who was erudite and specialized in investigation, top executive in the Office of Ombudsman who sought facts, inspected and analyzed complaints while recommending solutions.

2.3. Investigator 2-3 who were the investigation officers equipped with knowledge, experiences and specialist on investigation. The operational officers and the middle management should act as the secretary and deputy secretary of the teamwork playing duties of coordination with the complaints and the agencies involved. This included participating in seeking facts, checking and analyzing complaints while recommending solutions.

An informant from the National Legislative Council added that it needed to structure the sub-committee of the ombudsman to meet various affairs such as the sub-committee on economy, the sub-committee on environment and the sub-committee on education and so on. He added:

“...Though at present, the ombudsman appoints specialized consultants to provide legal consultation but it is inadequate and most were the state officers. If a sub-committee is formed to analyze and synopsise; the ruling of the ombudsman would be efficient and clearer in working. In addition, remuneration for the sub-committee members and the experts are paid by meeting allowances and occasionally, which unlikely being the large sum and the ombudsman can regulate as the internal rules...”

A member of National Legislative Council, November 19, 2015

4. Improving the letter of request on clarifying facts

Interviewees recommended that In order to allow the ombudsman legal enforcement inhibit dissents against the ombudsman provisions; it should have deadline and punishment in the letter requesting the agencies to clarify fact for information. An example of the recommendation from the Secretary of the Office of the Ombudsman saying:

“... to solve non-cooperative act of the agencies, the ombudsman has to re-regulate its rules for just the agencies but its internal administration of the complaints. For example, it needs to indicate the return of the clarification within 30 days, to inform the resolution of the Cabinet on cooperation by attaching the Cabinet resolution with the letter of request for clarification rather than driving the agencies to search what the resolution means?. Or in the case that the agencies have not yet forward their clarification within 30 days ; the ombudsman should forward the second notice letter referring to Section 15 (2) with punishment, Section 45 of the Organic Act on The Parliamentary Ombudsmen B.E. 2542 (1999) for information. This is to encourage the agencies to be more enthusiastic to forward clarification. At present, the ombudsman administration is waiting for the agencies to delay forwarding their clarification for many times first and delivers many warning...”

Secretary of the Office of the Ombudsman: December 21, 2015

5. The IT system of the ombudsman should be updated

Some interviewees in this research commented that the Office of the Ombudsman did not fully take action and update its IT system as well as its complaint database has not systematically been stored the similar complaints and their results of its ruling. Its electronic system should install alert system and follow up system to the agencies, the failure to meet deadline, the dissent against advices or recommendations for information. It accorded with an interview with a university lecturer saying:

“...The IT system to store database if the Office should link with other agencies’ database or it electronic system should install alert program and follow up system of the agencies’ performance and deadline, the dissent against advices or recommendation within deadline to inform the ombudsman...”

A university lecturer: October 13, 2015

6. Aggressive approaches should be taken

Interviewees recommended enhancing efficiencies in inspecting and finding fact of the Thai ombudsman that to expedite the inspection and fact-finding to the ombudsman with accuracy and efficiency; the investigation was not just demanding the agencies to report only but here should be other approaches such as organizing meeting among the agencies or site visits to find fact, and so on (Secretary of the Office of the Ombudsman: December 21, 2015)

In addition, the ombudsman power of investigation and fact findings could be efficient through borrowing power from other agencies to join the process of investigation and fact findings. It accorded with the concept of a member of National Legislative Council saying:

“...With some cases the ombudsman has sought power from other agencies such as collaborating with the Ministry of Justice, DSI, the National Police Bureau, the Office of Antihuman Trafficking in term of MOU through coordinating with various agencies. However, it does not mean the MOU-agencies will not be investigated by the ombudsman but the ombudsman must take aggressive approaches...”

a member of National Legislative Council: November 19, 2015

2) Exercising legal enforcement for investigation and fact finding without any complaints filed

Section 13 Last Paragraph of the Organic Act on Ombudsmen B.E.2552 (2009) empowered the Thai ombudsman to raise impacts damaging public en masse or necessity to protect public good for investigations and solving the matters without any complainants.

All interviewees in this research accorded that this provision was very appropriate because the ombudsman organization was established to be an NGO with duties to ameliorate and to relieve miseries of people.

A member of National Legislative Council recommended an approach to develop its role in legal enforcement saying, “...this provision is useful for both the ombudsman organization itself and for people.

The ombudsman should demonstrate for public that it was potential to raise impacts damaging public en masse to ameliorate and to relieve miseries of people. Yet, in the past, its roles to address these matters is unlikely...” (a member of National Legislative Council: January 22, 2016).

3) Exercising legal enforcement to investigate and take action on ethics against the person holding political positions and the state officers

Section 13(2) of the Organic Act on Ombudsmen B.E.2552 (2009) empowered the ombudsman to take action and investigate to find facts in the case of complaints against the persons holding the political positions and the state officers under the Constitution of the Kingdom.

The research showed that all interviewees relatively provided data of the ombudsman legal enforcement to take action and investigate complaints against the ethics of the persons holding political position and the state officers. They agreed that imposing legal enforcement to investigate ethics was difficult because it was intangible. Currently, the ombudsman employed investigating ethics of the officers through forwarding the complaints to the agencies directly authorized investigation, which was appropriate. By reasons, the ethical foundation of each agency was different. Therefore, personnel in the agencies were better erudite their own ethical standards than other agencies, which was resulted in considering which behavior was profane behavior and which one was not profane. For example, if it was a complaint against a politician, the Constitution enacted that any political positioned officers were subject to the realm of serious disciplinary misbehavior; they were subject to impeachment. It accorded with an interview with an ombudsman, saying:

“...in the case of the state officers offended, it must be distinguish whether the behavior is severe or not. Punishment would be light or severe by its nature. And , if any military armforces offended, they will meet five levels of punishment, i.e. 1)detention, 2) chained, 3) imprisonment, 4) probation and 5) penalty....”

An ombudsman: October 29, 2015

About the problems and limitations of exercising the legal enforcement against the ethics of the persons holding political positions and the state officers, the interviewers informed that the missions of the ombudsman to collect the ethics code of the agencies declining to cooperate within some agencies delayed this mission. On the contrary, the problems and limitations in investigating the ethics of the persons holding political positions and the state officers were, first, the ambiguity of the ethic codes, especially the political ethic codes. Second, it was the budget to drive the mission in promoting the ethics of the political bureaucrats and the state officers in order to organize projects, activities, training and volunteering camps and so on. In addition, an interviewer observed that there were errors in Organic Act on Ombudsmen B.E.2552 (2009) because it did not enact that if any agencies failed to punish dissent against the ethic codes; how the ombudsman was empower to legally punish the agencies (Interviewed on October 13, 2015).

The interviewees of this research advised how to enhance efficiency in exercising the legal enforcement to investigate and take action on the ethics of the persons holding political positions and the state officers as follows:

A. The ombudsman must take action on follow up and speeding the agencies to complete their ethic codes. Reasoning, the Constitution of the Kingdom demanded the ombudsman to be the important organization to provide advices or recommendation in preparing the ethical standards or to improve the ethic codes of the persons holding political positions and the state officers, especially to speed the completion of the constructive ethic codes of the persons holding political positions.

B. The ombudsman should completely control and supervise the ethic codes of the agencies and examine their clarity for enabling the implementation. For example, the ethic codes the ethic codes should mention the nature of profane behavior and the non-profane behavior, which deserved punishment for the dissents.

C. The ombudsman should create integrity of morals and ethics within the persons holding political positions paired with the state officers. This accorded with an interviewee saying:

“...In practice, there must be clear ethic codes and the ombudsman must take action in cultivating the integrity of ethics among the persons holding political positions paired with the state officers. This will achieve in preventing and controlling behavioral dissent against the ethics of the government officers, the state officers and various state agencies...”

Ex-Secretary of the Office of the Ombudsman: October 14, 2015

D. The ombudsman should seek measures of punishment against any agencies or dissents of the ethic codes in the case of finding that the investigation of the agencies was unfair. For example, there was no investigation on disciplinary breaking or failure to take disciplinary punishment against the dissents. An interviewee proposed that the ombudsman should organize press releases for public to be informed or to report to their immediate supervisors or the administration or the parliament for information. This was to pressure them to further command their agencies. However, if it were found that the parliament paid no attention to the report; the ombudsman should appoint a NGO-commission to take action on investigation (Interview on October 17, 2015).

4) Exercising the legal enforcement to follow up, evaluate and prepare recommendations for following the Constitution including the considerations in amending the Constitution if it were necessary

Section 13(3) of the Organic Act on Ombudsmen B.E.2552 (2009) empower the ombudsman to follow up, evaluate and prepare recommendations for following the Constitution including the considerations in amending the Constitution if it were necessary.

The research found that all interviewees provided relative information regarding the conditions of the ombudsman legal enforcement that the Constitution of the Kingdom never empowered the ombudsman to undertake the duties to follow follow up, evaluate and prepare recommendations for following the Constitution including the considerations in amending the Constitution of the Kingdom BE 2540 (1997) if it were necessary. Reasoning, the Draft Committee at that time agreed that part of the ombudsman power was the matter related to proposals to the Constitutional Court or the Administrative Court for adjudication. Such duty

should be relative and none organization was found appropriate. It was then enacted to empower these duties to the ombudsman. It was the start of establishing the Thai ombudsman organization and found that the ombudsman could drive the matter to a certain levels but unlikely progress.

About the problems and limitations in exercising the ombudsman legal enforcement to follow up, evaluate and prepare recommendations for following the Constitution, interviewees relatively provided information that this was the new mission for the ombudsman. It demanded the erudite officers to analyze and evaluate the consequences. Currently, the Thai ombudsman ran short of personnel and budgets to support its missions from the government. It accorded with an interview with an Ex-Secretary of the Office of the Ombudsman, saying:

“...the power to recommend and to amend the Constitution is counted a new thing demanding for evaluating the performance of the agencies and there must be erudite officers to analyze and evaluate the consequences. In addition, the ombudsman runs short of the budget...”

an Ex-Secretary of the Office of the Ombudsman: October 14, 2015

5) Exercising legal enforcement to propose the matters to the Constitutional Court or the Administrative Court

Section 14 of the Organic Act on Ombudsmen B.E.2552 (2009) empowered the Thai ombudsman to forward the matters to the Constitutional Court or the Administrative Court if it found the statutory provisions met the problems of legitimacy with the Constitution or law.

The research showed that all interviewees agreed the condition of legal enforcement of the Thai ombudsman to forward the matters to the Constitutional Court or the Administrative Court. Such empowerment optimized a channel for people to employ their rights in the justice administration. By reasons, the ombudsman was the closest organization to people. Majority of the interviewees commented that in the past, the legal enforcement to forward the matters to the Constitutional Court or the Administrative Court had met legal limitations. AS such, many complaints submitted to the ombudsman for judgment and they could not be

forwarded to the Constitutional Court or the Administrative Court. However, an interviewee commented, "...Whatever the result of the court ruling be is not a critical issue in the ombudsman legal enforcement, which the Constitutional Court or the Administrative Court needs not to rule as in the opinion of the ombudsman. The ruling is just an opinion. In the aftermath, it is the duty of the court to further judge by its authority enacted in law..." (An Ombudsman, October 29, 2015).

The problems and limitations of the ombudsman's legal enforcement to forward the matters to the Constitutional Court or the Administrative Court came also from the complainants did not know about the power of the ombudsman and the right way to complain. Thus, it created irrelevancy with the statutory provisions and the ombudsman could then not be able to fully enforce its authority enacted in this statutory provision. An ex-secretary of the Ombudsman mentioned about the problem in the Thai ombudsman legal enforcement as follows:

"...The complaints forwarded to the Constitutional Court or the Administrative Court for ruling meet legal limitations because the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E.2542 (1999), Section 14 enacts that the opinion of the ombudsman is similar to a litigator filling a common case. Such opinion of the ombudsman should be in the Supreme Court ruling and should be paid importance that the opinion is not similar to a litigator filling a common case. As such, when the ombudsman forwards the case to the Administrative Court, it appears as if a litigator. The ombudsman has then to ensue the case as a litigator filling a common case and meets limitations, lawsuit on jurisdiction and has to defend and begin the case at the Court of First Instance because the law does not facilitate the ombudsman's works..."

an Ex-Secretary of the Office of the Ombudsman: October 14, 2015

Similarly, the interviews from a judge from the Administrative Court and a member of the National Legislative Council were:

“...the channel to forward the case to the Constitutional Court or the Administrative Court is narrow and the Constitutional Court rejects for ruling rather than otherwise. It is different from forwarding to the Administrative Court for ruling the administrative acts or the state officers who disciplinarily misbehave or violate laws. The victims can file lawsuit at the Administrative Court. Had the case demanded rights to file the case at the Constitutional Court; few people would file the lawsuit about illegitimate rules and law at the level of the Act, which needs the ombudsman legal enforcement...”

a judge of the Administrative Court: December 3, 2015

“...Forwarding the case to the Constitutional Court and the Administrative Court is fruitful to a certain level but the problem is this legal enforcement meets the limitation that there must be complainant. It can restrain the ombudsman’s works. The ombudsman should be empowered to directly submit the case to the court...”

a member of the National Legislative Council: January 22, 2016

The interviewees in this research gave opinions and approaches to enhance the efficiency of exercising legal enforcement to submit the case to the Constitutional Court and the Administrative Court as below.

A. There should be amendments of the Administrative Court Procedure, Section 14 empowering the ombudsman to file the lawsuit before the Administrative Court through special channel in order to facilitate the ombudsman legal enforcement.

B. There should be amendments and broadening the ombudsman legal enforcement of investigation because currently, the power to submit the case to the Constitutional Court and the Administrative Court had been restricted by law. For example, there were complaints about the function taken by the Office of the National Broadcasting and Telecommunications Commission, the University Council, variety of committees, the Tambol Chief, the Village chief and the state enterprises, which the ombudsman could not submit them to the Constitutional

Court or the Administrative Court for rulings. The Secretary of the Ombudsman and a member of the National Legislative Council relatively provided information that:

“...Some cases are the complaints against individuals, which were irrelevant to the ombudsman legal enforcement for investigation because of the legal limitation. For example, there are the complaints against the Office of the National Broadcasting and Telecommunications Commission, the University Council, variety of committees, the Tambol Chief, the Village chief and the state enterprises and so on. It is necessary to amend law to empower the ombudsman to broader investigate the state agencies....”

Secretary of the Office of the Ombudsman: December 21, 2015

“...Empowering the ombudsman to submit the case to the Constitutional Court or the Administrative Court under Section 14 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) is not prevailing but needed amendment to enable the ombudsman to directly submit every case else there will be problems of the legal enforcement as such. For example, the ombudsman submits the case pleading the Administrative Court to rule the bidding of 3G but the Court declines because the ombudsman has no power to submit the case upon being and NGO...”

a judge of the Administrative Court: October 17, 2015

C. The ombudsman should be empowered to directly forward cases to the Constitutional Court or the Administrative Court. It was corresponded with the idea of a members of the National Legislative Council saying that in the past the ombudsman’s power to forward the cases to the Constitutional Court or the Administrative Court required complainants. It restricted the ombudsman legal enforcement.

“...The Section 14 of the Organic Act on Ombudsmen B.E.2552 (2009) with the limitations that there must be damages or complainants at first and then the ombudsman will impose its legal enforcement under Section 14 to forward the cases to the Constitutional Court or the Administrative Court. By personal opinion, the ombudsman should raise any issues for ruling and exercise the legal enforcement of Section 14 better by itself...”

a member of the National Legislative Council: January 22, 2016

CHAPTER V

DISCUSSIONS

This research has employed a mixed research and in Chapter 5, the researcher adopt the results of the quantitative research and the qualitative research for analyzing the legal enforcement, problems and limitations of investigating the exercises of the state power imposed by the Thai ombudsman including the approaches to enhance the efficiency of the ombudsman legal enforcement. The researcher has divided the discussion by the five nature of the ombudsman legal enforcement. They are 1) the ombudsman legal enforcement of investigation and fact-finding by complaints, 2) the legal enforcement of investigation and fact-finding by the ombudsman either on the common good or to protect the public interest, 3) the ombudsman legal enforcement of investigation and taking action on the ethics of the persons holding political positions and the state officers, 4) The legal enforcement to follow up, evaluation and preparing recommendation to adhere to the Constitution of the Kingdom including points worth considering the constitutional amendments found necessity, and 5) the legal enforcement to submit cases to the Constitutional Court or the Administrative Court.

5.1 The Ombudsman Legal Enforcement of Investigation and Fact-finding by Complaints

It is found in this research that the problems and limitations of the Thai ombudsman's legal enforcement are 1) the scope of the ombudsman legal enforcement, 2) the ombudsman legal enforcement, 3) the ombudsman internal administration and 4) the personnel.

1) The problems on the scope of the ombudsman legal enforcement

Many interviewees commented that the ombudsman legal enforcement meets legal limitations to investigate the court organization and the organizations not enacted in the Organic Act on Ombudsmen B.E.2552 (2009).

The interviewees recommend two approaches with the ombudsman legal enforcement to investigate the court organizations.

First, the interviewees agree with enacting the ombudsman authority under Section 28(2) of the Organic Act on Ombudsmen B.E.2552(2009) that it is appropriate. The ombudsman should be allowed to investigate the court organizations because Thailand has the Office of the Judicial Commission and the Administrative Court Commission, which directly investigate the judges.

Second, the interviewees find that the provisions of Section 28(2) of the Organic Act on Ombudsmen B.E.2552 (2009) enacts that any trials in court or the judgment or the decisive order of the court should not be accepted by the ombudsman for examination or ceased examination. It is to restrict the ombudsman legal enforcement of investigation and leads to the rights and liberty of people are not protected from the ombudsman. The interviewees, who agree with this concept, commented that the court organizations are the organizations, which control and investigate the act of the administration differing to the cases that the court is subject to legitimacy investigation itself. The non-government organization should undertake the duty to investigate the court about its delayed trials or its office affairs not related to the judicature.

A university lecturer in this research recommends that amendments should be made in laws to empower the ombudsman to investigate the office affairs, which does not overlapped with the judicature where people can rely on the justice administration. A model has been proposed that the ombudsman legal enforcement of fact-findings as in the common complaints but the enactment should enable the ombudsman to conduct academic studies, exploration and conducting researches. With the issue if the ombudsman finds that there is problem with the complaint against the court and enacts that the ombudsman can all for documents, and other evidences related or enabling to call for meeting to discuss with the court. The common conclusions and recommendations are useful to complement the studies, analysis and

researches, which are the academic process and they are not the analyses or the studies related to the judicature. Otherwise, it will infringe the judicial power. When the conclusions and solutions are gained, the ombudsman can propose the senate for the amendment process. However, in projecting the studies the government has to back up with budgets to the ombudsman and to be opened to the paradigm for the benefit in improving the Thai justice administration.

At this point, the researcher views that Thailand has liberal democratic regime under the rule of law adhering to legitimacy with the principle that the administrative acts must be empowered by law and the legal enforcement must be the legitimate act and the principle of legitimacy. It includes also the administrative discretion must be subject to the empowerment by law rather than discretion at will. This is to prevent exercising discretion to infringe the rights and liberty of people. In addition, the good administration of the state sector is subject to good governance - people should either directly or indirectly involve. The exercises of the state power should be with honesty, transparency and fairness, enabling to create confidence and faith in the justice administration among people. As such, it counts to efficiently and effectively exercise the estate power under good governance, which is the state administrative principles integrating the common goods for every sector in societies. Establishing the ombudsman organization in Thailand is aiming at it to be the special non-government organization for control and investigation by the Constitution. It is not only playing the critical roles of investigating the exercises of the state power but also protecting the rights and liberty of the people. In exercising the ombudsman legal enforcement in Thailand to investigate the court organizations, in the past, it was found that if any complaints has been presented to the court or during judicature including the case was passed its judgment or under decisive order; the Organic Act on Ombudsmen B.E.2552 (2009), Section 28 (2) would immediately cease the ombudsman investigation. The ombudsman, by this case, cannot longer conduct fact-finding or cannot protect the rights and liberty of people through justice administration. If comparing with the Swedish ombudsman, where Sweden is a democratic country and administrates the dual court system - separation of the Administrative Court from the Justice Court as in Thailand and Thailand employs the Swedish-based ombudsman and specifies its roles and authority but it is found that the Swedish ombudsman is enacted to be and external

examiner of the administration. It is a special organization to examine court performance on adhering to the laws while examining the appropriate period of proceeding of every court without meddling the judicatures of the judicial party. Therefore, if the Thai ombudsman would have such power, it would have been the investigative mechanism to better create confidence about the rights, liberty and benefits of people with regards to the justice administration more than the current legal enforcement of the present Thai ombudsman.

Some interviewees in this research mention about the Thai ombudsman legal enforcement that it still has the problems of investigating organizations or other state agencies not enacted the ombudsman legal enforcement of investigation in the Organic Act pm Ombudsmen B.E.2552 (2009). For example, it is found in the complaints against the Office of the National Broadcasting and Telecommunications Commission, the University Council, variety of committees, the Tambol Chief, the Village chief and the state enterprises and so on. The interviewees recommend amendments to empower the ombudsman to investigate agencies for broader aspect. This includes the empowerment for the ombudsman to temporally restrain the damages during the complaints are under the ombudsman's examination, particularly with the complaints affecting the serious trouble of the victims and public. The researcher agrees with the members of the National Legislative Council that empowering the ombudsman to demand temporal protection during its examination is the empowerment of investigation but not the punishment power, which could likely be useful for people. Increasing the ombudsman power on temporal protection has been added by an interviewee that there should be enactment for deadline to temporally cease damages by the ombudsman, such as within 60 days or 90 days, and so on. If it were exceeded the deadline and the agencies failed to report facts; the ombudsman might enforce to speed the fact-reports. However, if the state agencies being complained but disagree with the judgment of the ombudsman; the ombudsman cannot enforce them again because they have taken investigation and completely reported facts by legal duty.

2. The problems of the ombudsman legal enforcement

It is divided into first the problems of the legal enforcement of investigation and fact-findings and second, the problems of the legal enforcement on the agencies to follow the opinions or the recommendation of the Thai ombudsman.

This research finds that the interviewees commented about Section 15 of the Organic Act on Ombudsmen B.E.2552 (2009) empowering the ombudsman to order the government agencies, the state agencies, the state enterprises and the local government administration to report facts or to comment on working or to submit materials, documents, evidences or other evidences related in order to complement the ombudsman's examinations. The ombudsman is also empowered to inspect the sites where complaints are or to regulate rules, criteria and the method to accept complaints, the fact-finding procedures and other rules and criteria for the uses in working under the enactment. In addition, Section 45 enacts punishment upon any agencies or dissents who fail to report fact or resist the working of the ombudsman or anyone who discloses information, which the ombudsman gained from fact-finding. In order to achieve its missions, the interviewees expose opinions into two approaches, i.e.

First, the interviewees agree with rigid punishment upon agencies or dissents who fail to report facts to the ombudsman.

The supports of this concept agree that, the punishment of imprisonment for not more than six months or fine not more than ten thousand Baht is reasonable but it must be enacted in the Organic Act on Ombudsmen to deter dissents against the ombudsman laws. The critical problem of declining cooperation among agencies on reporting facts to the ombudsman while delaying the ruling and underachieving to solve problems by the mission come from the efficiency in the ombudsman legal enforcement. By reasons, in the past, the punishments under Section 45 of the Organic Act on Ombudsmen B.E.2552 (2009) have never been imposed by the ombudsman with dissent agencies. The university lecturers add that even though the ombudsman reports the senate of the dissent in some agencies but no senators raise the problems to be solved and see it as insignificant.

Similarly, in the studies of Prof. Dr. Najmul Abedin at Austin Pea University: Tennessee, USA on the works of the ombudsman in the democratic developing countries in the Caribbean and in the Common Wealth. The ex-Deputy

Prime Minister of St. Lucia views that the House of Representatives destroy the objectives or the aims of the Office of the Ombudsman, because it ignores (common) reports and (classified) reports submitted by the ombudsman. The statutory provisions on the Parliament Commission (the ombudsman) have loopholes on the matters to be prepared for the parliament but there are no conditions enacted to bind the parliament to take action with what the ombudsman has reported. Also, the carelessness of the parliament voids the efforts dedicated of the ombudsman. Societies are expecting the Organic Act regulates the principles so that their complaints shall be solved with fairness and with efficiency.

The supporters of this concept also agree that rigidly imposing law enforcement can deter dissent against the ombudsman laws. It is corresponded with the criminological theories of the Classic School and the concept of Law and Punishment believing that by nature, humans control their own behaviors and humans apply reasons and knowledge to analyze pros and cons before any actions taken. It is then necessary to enact laws to control human reasoning and human knowledge to avoid criminal behaviors. Enactment is to build and to support individual happiness in societies. Good laws must be able to prevent vices arisen in societies.

Second, the interviewees find that applying social sanction is worthwhile for the Thai ombudsman. The Organic Act on Ombudsmen B.E.2552 (2009) has covered all enforcements imposed by the ombudsman. For example, Section 32 empowers the ombudsman to provide opinion and recommendations for improvement sent to the agencies involved in the case its investigation finds the agencies deserve solving those problems. It also empowers the ombudsman to propose the agencies to amend laws, rules, obligations and regulations. If the agencies fail to follow its recommendation, the ombudsman can propose the organization for law reforms under the Constitution. This includes the dissent officers or agencies who failed to follow its opinion or recommendation. If the cases are critical and emergent to the common good or to the people at large, the ombudsman can report to the Prime Minister, the parliament and the senate. The ombudsman can disclose the cases to public for information under the empowerment of Section 33 of the Organic Act on Ombudsmen B.E.2552 (2009). Therefore, the supporters of this concept view that the problems of the ombudsman legal enforcement do not come from legal error but the Thai

ombudsman practices, which fail to considerably clarify to the parliament about the problems. In addition, the ombudsman inadequately applies social sanction to spur work efficiency.

The supporters of this concept recommend the approaches to enhance the efficiency of the ombudsman legal enforcement on fact-finding that the ombudsman must deploy media as its tool to direct societies until people agree with what directed is right and serious. In addition, it has to announce its restricted power so that societies will agree with opinion of the ombudsman that it is righteous. For example, conducting press releases for public agreement that misbehaviors in societies and illegal behavior are profane, this brings shame to dissents of societies and laws and they would return to follow code of conducts.

It is corresponded with the Control Strategies advocated by Light Jr. and Keller (1975) who claim that informal control and values would gradually cultivate individuals to spend their lives by the expatiations of others even it is not their appeal way of life. These control strategies are such as fear of expulsion from the group, mockery, verbal and physical control. The negative social controls are such as verbal and physical controls added with many positive social controls. Similarly, Jutharat Uer-amnuay (2008) writes in her sociological and criminological texts that tactics like verbal manipulation, propaganda through technique and media-based wording in radio, TV, printed matters and internet are the control strategies and social controls in order to control human behaviors to believe and to divert attitudes and values according to what have been designed.

This research recommends various approaches to enhance the efficiency of the Thai ombudsman legal enforcement about its investigation and fact-findings and various ways to apply legal measures with the agencies or dissents against the ombudsman laws as below:

a) Imposing the civil and criminal measures with dissents against the Organic Act on Ombudsmen B.E.2552 (2009) counting that any agencies failing to report facts within deadline are the dissent of the court summon warrant. The chiefs of the dissent agencies and the dissent officers are wrong and are subject to the punishment enacted the Organic Act on Ombudsmen B.E.2552 (2009).

b) Applying other administrative measures paired with the civil and criminal measures enacted in Sections 45-47 of the Organic Act on Ombudsmen B.E.2552 (2009).

The approaches to enforce the measures of disciplinary punishment and administrative fines

To turn the Thai ombudsman legal enforcement efficient in threatening and restraining dissents against the ombudsman provisions; an interviewee views that there should be statutory provisions empowering the ombudsman to identify the disciplinary offense and impose the administrative punishment with the dissents against the Organic Act on Ombudsmen B.E.2552 (2009). For example, with the case the ombudsman has sent notices twice still the agencies are deaf to report facts within deadline without reasonable cause; it is claimed that the negligent chiefs of the agencies and the negligent officers are subject to offense and punishment, probation, warning or salary cut. It is the duty of the regulators of the agencies to supervise and to take action about the disciplinary punishment enacted in the agencies. This includes the enactment to empower the ombudsman to plead the Administrative Court, if the ombudsman finds that the immediate supervisors of the agencies fail impose disciplinary punishment with the dissents.

In the administrative punishment, the advocator proposes that it is possible for the Thai ombudsman because currently the Organic Act on Ombudsmen B.E.2552 (2009), Section 15(8) or in other laws has already empowered ombudsman to regulate or to issue any practices. The ombudsman may appoint the Ombudsman Committee to examine administrative fine through salary or wage cut or summoning dissent against the Organic Act on Ombudsmen B.E.2552 (2009) to pay and what have been regulated must be clear. For example, The First Step Fine is subject to not more than a monthly salary and The Second Step Fine is subject to not more than two-month salary, and so on. It is similar with the legal enforcement of the State Audit Commission established by the regulation of the State Audit Commission on Budget and Finance Discipline B.E.2544 (2001) under the Office of the Auditor General. It is an NGO by the Constitution responsible for investigation alike the ombudsman. Today the State Audit Commission has been formed to be responsible for examination and imposing administrative punishment upon the dissent officers against the measures of controlling

the state finance under the Organic Act on The Parliamentary Ombudsmen B.E.2542 (1999). Such measure of fines turns the laws of the Office of Auditor General threatening and restraining the office dissents. In addition, the Australian laws empower the ombudsman to command the Police Bureau to take action and to report to the ombudsman. Had the Police Bureau failed to comply, it broke the law and the ombudsman is empowered to impose fines upon the police bureau.

Other supportive measures

This research also gains other supportive measures gains the dissent of the Organic Act on Ombudsmen B.E.2552 (2009) that the ombudsman can enact laws alike an Order Act to call for individual documents, or to call individuals or to call the chiefs of agencies to testify in the case the ombudsman is investigating. It is similar to the Act Orders of the Standing Committee of the House of Representatives and the Senate B.E. 2554 (2011) with three procedures, i.e.

- 1) Primarily, allowing the ombudsman to invite agencies for clarification
- 2) If dissenting or declining clarification, the second letter requesting the agencies to clarify with warning if they dissented, the dissents become offense and are subject to punishment under Section 15 (2) of the Organic Act on Ombudsmen B.E.2552 (2009). The ombudsman can assign its legal office to rigidly file lawsuit with the dissents.
- 3) If the agencies were still dissent, the ombudsman should amend the legal measures. For example, the Organic Act on Ombudsmen B.E.2552 (2009) might enact administrative procedures or empower the ombudsman on investigation against dissents.

However, many interviewees view that enhancing the efficiency of the ombudsman investigation and fact-finding is not meant just increasing the enforcement power over the agencies for clarification only; the ombudsman should have other approaches liable to the investigation and fact-finding such as invitation for meeting, visiting sites, making use of other agencies' power in co-investigation and facts-findings. These could be in terms of MOU for cooperation among agencies including improving the ombudsman internal administration, too.

From studying the approaches to impose measures of the ombudsman legal enforcement on investigation and fact-finding, it can be figured out as in Figure 5.1, i.e.

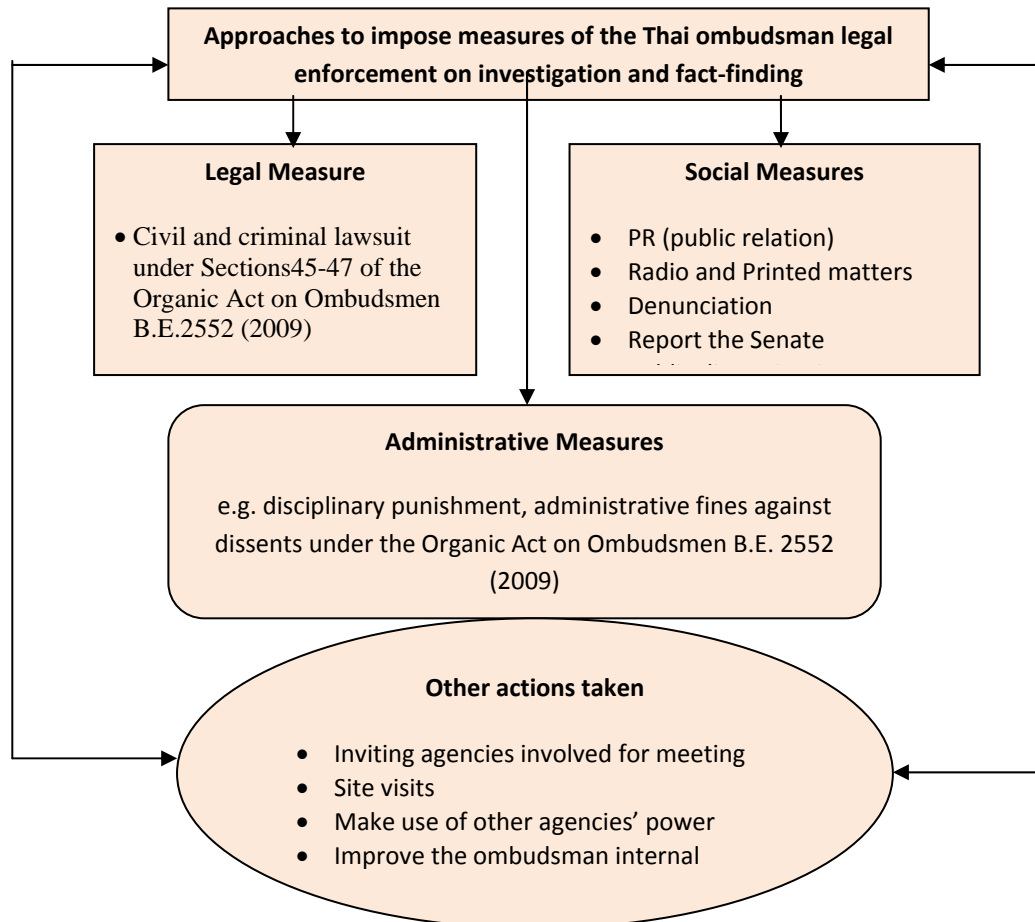


Figure 5.1: Approaches to impose measures of the Thai ombudsman legal enforcement on investigation and fact-finding

The ombudsman legal enforcement on following opinions or recommendation is the ombudsman’s power after reporting its adjudication to the agencies. It is enacted in Sections 32-34 under the Organic Act on Ombudsmen B.E.2552 (2009) as below.

1) Power to recommend agencies to solve problem and to amend laws

Section 32 of the Organic Act on Ombudsmen B.E.2552 (2009) enact, “At the completion of consideration and inquiry on any complaint, the Ombudsmen shall prepare and submit the report summarizing the fact together with its giving opinion and recommendation for the revision thereof to the related government agency, State agency, State enterprise or local government organization for

information or implementation.” And in the second paragraph, it enacts “In the case where the Ombudsmen is of opinion that despite an act the law, by-law, rule, regulation or resolution of the Cabinet, induce unfairness or inequality before the law or being the ground of discrimination or out of date, the Ombudsmen shall recommend related government agency, state agency, state enterprise or local government organization to cause revision or amendment to such law, by-law, rule, regulation or resolution of the Cabinet.”

2) The power to propose the legal reform organization or report to the Prime Minister, Ministers or the agency regulators for reasonably command

Section 32 Last Paragraph, enacts “In the case where the Ombudsmen recommends the agency under paragraph two to revise or amend the law, by-law, rule and regulation, if such agency fails to proceed with that recommendation within a reasonable period, the Ombudsmen shall inform the law reform organization under the Constitution for further proceedings and shall urgently report that matter.”

3) The power to report the Cabinet, Parliament and Senate upon emergency

Section 33, Last Paragraph, enacts “ In the case the agencies fails to comply with such opinion or recommendation without reasonable ground and that matter is important or relating to public interest or the public at large, the Ombudsmen shall urgently submit the report on such matter to the Council of Ministers, the House of Representatives and the Senate, as the case of emergency. Also, any cases reasonably found as corruption or misbehaviors in bureaucracy or criminal offense or disciplinary offense; the ombudsman is empowered to report the agencies authorized for investigation for action taken while their immediate supervisors must further take lawsuit.”

This research finds that problems and limitation of not complying with the recommendation from the ombudsman come from 1) the condition of legal punishment because the Organic Act on Ombudsmen B.E.2552 (2009) does not enact punishment in the cases of the agencies or their chiefs fail to solve the problems as proposed by the ombudsman. The ombudsman laws are them helpless to impose punishment upon the dissents. 2) This study also finds that in practices the ombudsman fails to report to the Cabinet, the Parliament and the Senate to recognize that the agencies considerably fail to comply with the recommendations of the ombudsman and sometime even if

reported, it is nugatory for the Senate to any action but just an annual report paper of performance of the ombudsman. 3) The officers involved lack their continuous coordination which might come from transfer, position reallocation of the personnel and their absent integrity for the common good, which make them negligent to solve the complaints. 4) The technological system is inefficient such as absence of alert system to inform the unsolved problems or no records of follow-up, what to comply with the ombudsman recommendation after the ombudsman adjudication and no linkage of database with other agencies and so on.

This research finds that most Thai societies disagree with increasing the ombudsman power to directly impose legal punishment because Thailand employs the dual court system. When disputes arise between people and the state agencies; it is the power of the Administrative Court to handle judicature. If the ombudsman is empowered to investigate and punish by itself, it will be analogous. Had amendment for the ombudsman to undertake lawsuits; the national budget would be lost in hiring the personnel to take lawsuit. In addition, the ombudsman meets risks of being sued to court from the state agencies too; if they find that the lawsuits are illegitimate.

It is accorded with the opinions of most interviewees who agree that the ombudsman should not have power to enforce civil and criminal punishment against dissents of non-compliance to the ombudsman recommendations. By reason, the Organic Act on Ombudsmen B.E.2552 (2009) enacts the solutions in the case of dissents against the ombudsman recommendation such as in Section 33 the Ombudsmen shall inform the Prime Minister, Minister or the agency regulators for consideration and command. Or in case the Ombudsmen is of opinion that there is a reasonable ground to suspect of corruption in official service or there is a criminal or disciplinary well-grounded, the Ombudsmen shall inform the agency having the power to investigate such matter and the superior of a government official, official or employee of related, as in Section 34.

This research has recommended the solutions in cases the agencies do not comply with the ombudsman recommendation that it should seek collaboration from mass media and public emphasizing networking with various sectors such as the local, radio station, TV, and newspapers to conduct public relation in order to disseminate the ombudsman performance and report about dissents against the Organic Act on

Ombudsmen B.E.2552 (2009) for information. This is a social sanction with individual dissent or dissent agencies. It can enhance the efficiency of the ombudsman performance because the agencies have to instill their images, the spirit of social services among the state officers, personnel and state employees or the state enterprise employees or the local government agencies. It will speed them to clarify facts and adhere to the ombudsman recommendations more.

Some interviewees comment that in the case, the agencies report facts but they may disagree with the opinion of the ombudsman in solving the problems. However, the agencies must report to the ombudsman to their reasons of non-compliance with the opinions or recommendations within deadline of 60 days or 90 days. If the agencies decline to comply with the opinions or recommendations and decline to report to the ombudsman even there are two notices; as such, it is necessary to impose punishment and disciplinary measures upon the agencies, their chiefs and officers negligent to fulfill their duties. This includes the empowerment to take lawsuits at the Administrative Court against the state officers who are negligent to solve the problems to be subject to punishment similarly to the case the agencies decline to report facts to the ombudsman.

3.The problems of internal administration of the ombudsman

This research finds another critical problems and limitations of internal administration within the Office of the Ombudsman on legal enforcement of the ombudsman on investigations, which are the investigation process and fact-finding and the IT database system.

A. The problems on the investigation process of the ombudsman

The research finds that the interviewees see that structuring to have three ombudsmen, which is appropriate because it is expedite in working. The ombudsman is not the court organization and its works should be flexible. All interviewees agree that the Thai ombudsman should not have a structure of an adjudication committee for complaints because it will delay the work. However, many interviewees recommend that for better justified adjudication, prudence and expedition regarding its investigation on fact-findings. The process of investigating complaints should be characterized as teamwork with consultants or assistants who are specialists for consultation and adjudication. A member of the National Legislative Council agrees

with this concept by visioning and recommending that currently, the Thai ombudsman has appointed specialized consultants for legal advices and opinions but inadequate and most are the state officers. Had it been in the form of sub-committee for analysis and adjudication synopsis, the adjudication of the Thai ombudsman would have been more efficient with clearer working system. In addition, the expertise subcommittee's remunerations would be in the form of each or occasional meeting attendance fees, which are unlikely large amount whereas the ombudsman could issue it as an internal regulation.

The member of the National Legislation Council recommends the efficient procedure and the process of investigation and fact-finding. The first step should classify power of adjudication about the complaints by specialization, experience and appropriateness. The second step is to impose an ombudsman supervise three subcommittees of various affairs given the ombudsman to chair the subcommittees. A subcommittee accommodates 10 members, i.e. 1) an external specialist such as judge, prosecutor, police, military armforce or civil service officer to provide consultation and recommendation. 2) It needs an investigation chief equipped with knowledge, experiences and expertise as the top executive of investigation in the ombudsman organization responsible for fact-finding and analyzing complaints while recommending solutions. 3) It needs another 2-3 investigation officers equipped with knowledge, experience and expertise on investigation positioned as operational officers of middle level executives and responsible for being a secretary or assistant secretary of the teamwork to coordinate with the complaints and the agencies involved. This includes participation in fact-finding, checking, analyzing complaints and recommending solutions. The model of the Thai ombudsman's efficient investigation and fact-finding is proposed as below.

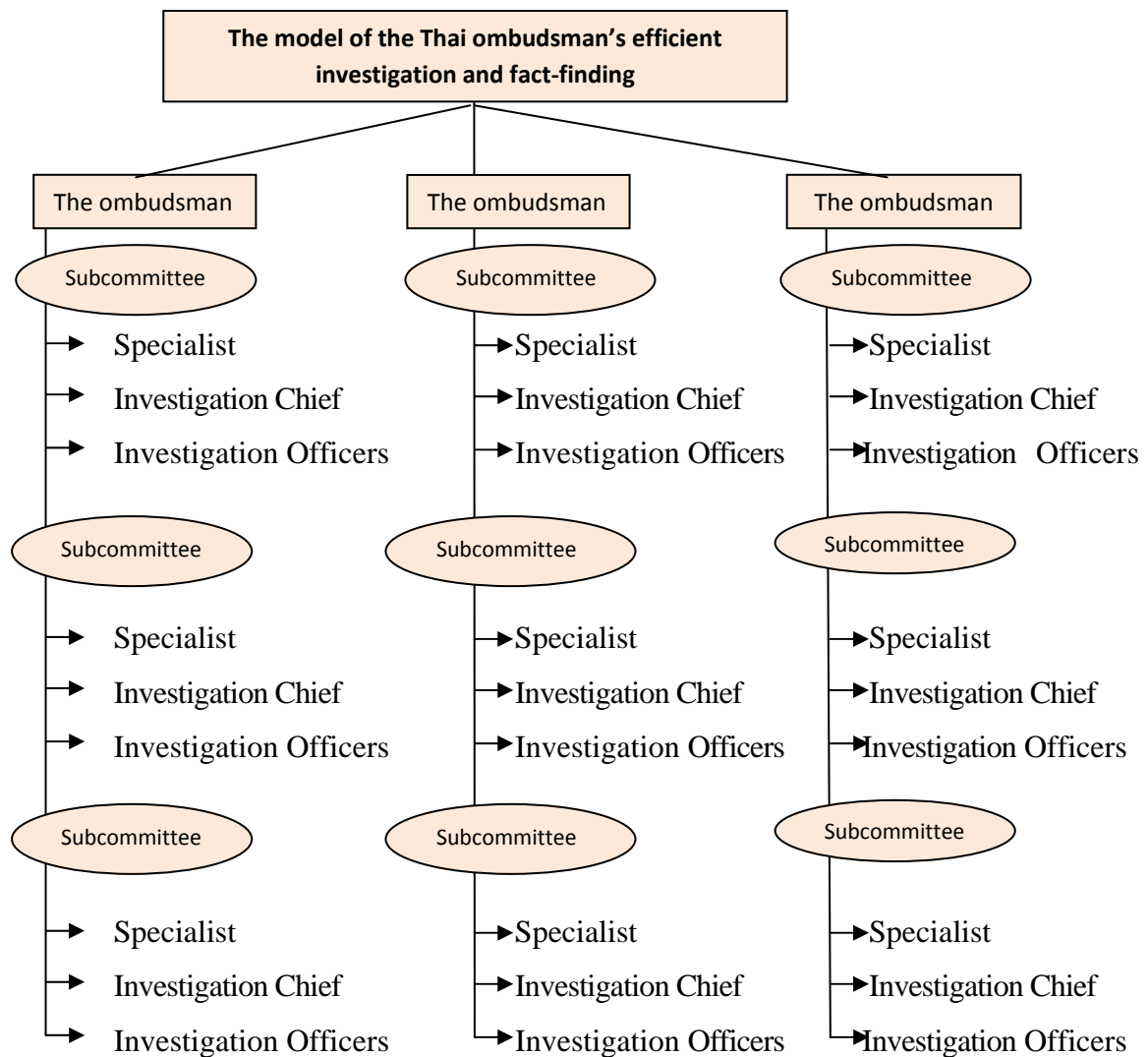


Figure 5.2 The model of the Thai ombudsman's efficient investigation and fact-finding

Such above proposal of the ombudsman model is similar to the imposing the role of the specialized ombudsman in many countries. Similarly, the studies of Natchunart Pibulsumbuti and Noppakow Sriwattanapong (2004) on structuring and organizing the New South Wales Parliamentary Ombudsman : Australia, which provide the General Team responsible for investigations on complaints of all public agencies. In addition, there are teams to probe the police affairs, and children and youth. Each team provides the Assistant Ombudsman as the supervisor. Most works deal with critical issues and demand high experienced officers because the works are multiple. Significantly, the Ombudsman Act on the New South Wales Parliament,

Section 21 empowers the parliamentary ombudsman to hire specialists during the investigation.

This research is accorded with the studies of Sunisa Ittichaiyo (2004) and writes about the Greek ombudsman published in the Thai Ombudsman Journal that the Law No. 2477 enacts the Greek Ombudsman as an NGO to be the middleman to compromise conflicts between public agencies and common people. Section 1 of this Act enacts to accommodate four Deputy Ombudsmen classified by missions, i.e. human rights, health and social welfare, quality of life and state-citizen relation. The law of establishing the Greek Ombudsman imposes the ombudsman and assistant ombudsman's protection and is not responsible for admit guilty or lawsuit. By reason, the opinion given is to fulfill duty by empowerment except the case of libel damaging others or malignment or vilification.

B. The problems of IT database system

This research finds that the interviewees comment the Office of Ombudsman does not take action and fully develop its IT system. There is no systematic collection of similar complaints and the adjudications, which delay the investigation and fact-finding and disable to solve the systematic problems.

The interviewees recommend that the ombudsman's IT database and system should be categorized on the complaints with complexity and non-complexity. The researcher agrees that systematizing IT system to categorize the complex matters from the non-complex matters. It would be very useful to manage investigation for the responsible officers. By reasons, the ombudsman's investigation officers can coordinate with the agencies or to speedily investigate the non-complex matters within short time. At the same time, classification of the complex complaints allows the investigators to know the similar course for practices on the similar matter and the adjudication of the ombudsman will be in the same direction.

The interviewees further recommend that IT system of the Office of Ombudsman should be updated and possible to link the complaints to the government agencies, the state agencies, the state enterprises, the central government administration and the local government administration, which are subject to the ombudsman investigation. This is useful for the ombudsman legal enforcement. The IT system should have an alert system for the cases that the agencies are yet to

report or failing to comply with the ombudsman opinion or recommendations. There should be also be the key-in system to pursue the performance which will help improve the complaint management system of the Thai ombudsman and the ombudsman investigations are then achievable without too delay.

4. The problems of personnel

The research finds that many interviewees agree that it is critical with personnel, which delays the ombudsman investigation process for example shortage of personnel with skills, specialized erudition, transfer, and re-allocation of the personnel responsible for the cases. It leads to absence of consistent coordination. The Secretary of the Office of the Ombudsman says there are three causes delaying the adjudication: first, the personnel in charge do not meet the deadline. Second, the personnel in charge do not pursue the cases demanding reports and the agencies delay their report. Third, the reports of the agencies gain no reaction by the personnel in charge.

The research views that the ombudsman and the chief of every government agencies should co-cultivate and create integrity of good governance, spirit of social services among the government officers focusing on common good rather than selfishness. These will reduce disregarded problems of the common goods among the government officers.

5.2 The Ombudsman Legal Enforcement of Investigation and Fact - finding by the Ombudsman either on the Common Good or to Protect the Public Interest

The enactment to empower the ombudsman to raise the impacts on the common good or to protect the public interest is aimed to demand the ombudsman as an organization, which extremely protect rights and liberty of people. It is accorded with the work of Mary Senviratne (2002) saying that the ombudsman is part of good governance creation for societies. It symbolizes the democracy of a country but the concept is diverted, which multiplies the ombudsman's duties. Besdie4s controlling and investigating the state-power exercises, the ombudsman has to back democracy to control the national administration adhering to good governance. This includes

the duties to protect the rights and liberty of humans too. It is accorded with the research that the ombudsman legal enforcement by these statutory provisions are worth because the remedy and relief of the people become the main targets of the ombudsman's mission in Thailand.

This research recommends the approaches to enhance the efficiency of the ombudsman legal enforcement for investigation and fact-finding without any complaints. They must be the cases of impacts either against the common good or to protect the public interest. Moreover, the ombudsman should display its potential roles in legal enforcement on investigation, fact-finding and solutions to address the rising social ills. For example, the ombudsman raises for examining the matters attracting mass media or the public impacts or protecting public interest as well as addressing the problems without any complaints and so on. However, such legal enforcement demand the ombudsman's leadership and courage to decide the adjudication and fearless to impacts from the agencies involved.

It is accorded with the report of the excursion and discussions on the government affairs between the Thai ombudsman and the Victoria State ombudsman in Australia. There is a systematic review that to impose any matters or issues worth raising for examination and investigating facts, they are considering on severity and urgency of the problems, direct or indirect impacts, number of people and amount of damaging money, other agencies impacted, and any agencies upper handing and investigating the matters than the ombudsman. The criteria of raising the issues in the Victoria State Ombudsman draw attraction if the Thai ombudsman adopt for implementation. In addition, in the excursion to the Victoria State, the Thai ombudsman also finds a systematic investigation but requires many resources. Some ombudsman offices meet the problem of resignation or inadequate officers for investigation, conflict among agencies or the individual losers or the de-imaged persons and the complexity of the complaints. For example, there are transactions of money of assets, shortages of data and so on. The ombudsman has to launch press release information and fact after the systematic investigation for transparency of its investigations (Office of the Ombudsman, 2008).

It is similar with the Ontario ombudsman in Canada, who has ever propose law reforms to create good governance in the state administration in the 11th Asian General Congress of the Ombudsman that there is an establishment of “Special Ombudsman Response Team (SORT)” for systematic investigation of critical issues and impacting people at large, which finalized in public dissemination. Such approach is to drive people participation leading to improvements or work reforms of state to good governance (Office of the Ombudsman, 2008).

5.3 The Ombudsman Legal Enforcement of Investigation and Taking Action on the Ethics of the Persons Holding Political Positions and the State Officers

Thailand is a country targeting the ombudsman to be an organization playing the roles of promoting good governance. Therefore, an enactment empowers the ombudsman to investigate and take action on ethics. These are 1) recommending or advising the preparation or the amendment the ethics code of the persons holding political positions, government officers, and each type of the state officers. 2) It is to promote integrity among the persons holding political positions, government officers, and each type of the state officers. 3) It is to prepare reports of non-compliance against the ethics code so that commanding persons impose to follow the ethics code. As to the cases of the offenders are the persons holding political positions, the Constitution of the Kingdom B.E.2550 (2007) and the Organic Act on Ombudsmen B.E.2552 (2009) empower the ombudsman to report to the parliament, the Cabinet, or the local council involved. In the case the ombudsman finds that the persons holding political positions gravely offend, the ombudsman is empowered to forward the issues to the National Anti-corruption Commission (NACC) for taking action. It becomes also the cause that there will be the reason to impeach the persons holding political positions, too. In addition, Section 39 of the Organic Act on Ombudsmen B.E.2552 (2009) enacts “...If there is a reasonable ground to believe that the proceedings conducted by the responsible person may be unfair, the Ombudsmen may conduct inquiry and disclose the result thereof to the public....”

It could be said that the Thai Laws empower the ombudsman to enforce social sanction rather than law enforcement.

Comparing with imposing roles and authority of the Thai ombudsman, this is similar in any countries under democratic regime. For example, the Pilipino laws empower the ombudsman to play roles and authority in controlling and imposing disciplinary punishment against the government officers and the state officers by election and by appointment except the Congressional members, judges and the government officers who are impeachable because of misbehavior and infringe the ethics code. For example, what have been imposed is to take actions on administrative investigation, order of job suspension or fired. In Korea, the Office of Anti-Corruption and Civil Rights Commission (ACRC) Republic of Korea has been established and prepared the ethics code of the state officers to be as guidelines for the state officers' ethics. The Office imposes any government agencies must prepare its own ethics code adhering to the master ethics code. There an independent committee of anti-corruption within the ACRC to follow up and investigate the ethics code of the state officers. The researcher finds that empowerment of such agencies can be compared with the empowerment of the Civil Service Commission (Thailand). Under such reason, the constitutional drafters might not empower the investigation power and taking action of disciplinary punishment to the ombudsman because they may overlap with the empowerment of the Civil Service Commission (Thailand). Therefore, the Constitution of the Kingdom empowers the ombudsman just to forward the complaints to where they will directly investigated and empowers the social sanction to the ombudsman but there is no legal enforcement with the non-compliers or fallers of the ethics code standards.

The research finds that the investigation and the action taken on ethics of the Thai ombudsman are new because their empowerment has been enforced under the Organic Act of the Constitution of the Kingdom B.E.2550 (2007). It counts hardship because it is intangible. The research further finds that the investigation of the ethics code among the state officers unlikely meets problems because they have their own ethics. However, with the Thai ombudsman legal enforcement, the investigation and action taken with ethics of the persons holding political positions meets the problems of the ethics clarity whether which behaviors denote malpractice and non-malpractices. The

mechanism is helpless to full enforcement in practice. In addition, there is no any ethics code tangibly enforced by any political parties in Thailand.

All interviewees in this research agree that empowering the ombudsman to check ethics of the state officers through forwarding the complaints to the agencies directly empowered on investigation, which is more worth and also enacted in the Organic Act on Ombudsmen B.E.2552 (2009) rather than the ombudsman taking action by itself. Reasons are each agency has different ethic code standards and the agencies being complained know well on what truly happen and they accommodate the personnel erudite for disciplinary investigation and punish individuals in their own agencies.

This research recommends the approach to enhance efficiency of the Thai ombudsman legal enforcement on investigation and action taken with ethics as below.

A. Disciplinary and legal punishment should be enacted upon the dissent agencies and individuals failing to comply with ethics code. It boosts the efficiency of the ombudsman legal enforcement on investigating ethics. Reasons are the Organic Act on Ombudsmen BE.2552 (2009), Section 37 enacts, "...If it appears, upon the completion of consideration and inquiry under paragraph one, that a person holding political position violates or fails to comply with the ethical standard under the code of ethics, the Ombudsmen shall report the parliament, Cabinet or related local council, as the case may be, so as to make enforcement of the code of ethics. If such conduct is serious offense and the action taken by the responsible persons would be unfair, the Ombudsman can open inquiries and disclose to public..." Such empowerment is similar to empowering the ombudsman to enforce social sanction but there is no effect on law enforcement. With such result, many agencies are fearless and they take action to investigate ethics but never impose punishment any government dissent officers, personnel or any employees in the government agencies, the state agencies, the state enterprises or in the local government agencies including disregarding to report the performance adhering to the ethics code to the ombudsman. As such, people distrust to gain fairness in the ombudsman legal enforcement and suspect on what bases the ombudsman is not the middleman to investigate and impose disciplinary punishment against the agencies in order to maintain justice to people and societies. It is accorded with the Deterrence Theory speculating that the efficiency of the legal enforcement, "severity, speed, and certainty of punishment"

is the main principle of preventing wrongdoing. It thus fears individuals upon being subject to lawsuit and legal punishment.

B. Checking ethics standards of the agencies must be more rigid in order to enforce the ethics code evident and tangibly efficient especially the ethics code of the persons holding political positions where there are ambiguities in imposing any behaviors are malpractices and not malpractices.

C. The mission of promoting morals and ethics should be undertaken and paired with the legal enforcement thus to check the malpractices or the dissents against the ethics code misbehaved by the government officers or the state officers alike suppressing the dissents of the ethics code. This helps the ombudsman legal enforcement on investigation and action taken with the persons holding political positions and the state officers with true efficiency and tangible achievability.

The researcher further views that the ombudsman empowerment of investigation and action taken about ethics; the ombudsman should employ legal enforcement to be paired with promoting ethics among agencies and organization exercising the state power. Ways to work out as such will promote the efficiency of the ombudsman legal enforcement, the roles of investigation, the protection of human rights and promoting good governance.

5.4 The Legal Enforcement to Follow up, Evaluation and Preparing Recommendation to Adhere to the Constitution of the Kingdom Including Points Worth Considering the Constitutional Amendments Found Necessity

The constitution is the highest law of Thailand intertwined with the rights and liberty of people in the country. No laws are incompatible or opposing to its statutory provisions. As such, the Constitution of the Kingdom B.E.2550 (2007) recognizes to establish a central organization to represent people in driving their involvement to express political opinions and to design policies in administrating the country and for the benefit to perfectly protect the rights and liberty of people accorded with the human right theory.

The constitutional drafting committee of the Constitution of the Kingdom B.E.2550 (2007) agree that the ombudsman is an agency representing people in protecting their rights, liberty and interests. It is also an organization, which the Constitution of the Kingdom imposes roles and authorities that any statutory provisions are problematically related to the legitimacy of the Constitution or laws; the ombudsman is empowered to propose the matters to the Constitutional Court and the Administrative Court. The ombudsman is therefore worth to this duty and is the intermediary organization responsible to take action, follow up, evaluate and prepare proposals adhering to the Constitution as well as its amendments.

The research finds that today the ombudsman exercises its legal enforcement to follow up, evaluate and prepare recommendations in adhering to the Constitution including the constitutional amendments to a certain level but few. The problems and limitations of exercising its legal enforcement comes from the shortage of personnel equipped with erudition, experiences, analytical evaluation and budgets to hire or seek consultation from the specialists to analytically evaluates the performances. In addition, the Thai ombudsman runs short of budgets and personnel in its Office to oversee these issues.

This research recommends about the legal enforcement on follow up, evaluation and preparation of the proposal on adhering to Constitution that the ombudsman should impose coordination and make use of other agencies, which have direct power of pursuance and analytical evaluation to help its mission. It can help the ombudsman achieve its missions imposed in the spirit of the Constitution of the Kingdom to be the responsible agency about this subject matter. In addition, the government should be conscious of the problems on collaboration among its agencies to elucidate and report their real performance to the ombudsman because if they fail, the ombudsman cannot resume its missions. In this study, the interviewees recommend that the Constitution and its statutory provisions on ombudsman should be amended on the punishment part against the dissent agencies or the dissents who fail to clarify facts or fail to cooperate with this mission so that the ombudsman laws will be efficient in its enforcement and achievable on its missions. Adequate budgets to supports its missions should also be provided.

5.5 The Legal Enforcement to Submit Cases to the Constitutional Court or the Administrative Court

Exercising rights in the justice administration is the basic rights by the human rights theory where the Constitution of the Kingdom B.E.2550 (2007) Group 3 Part 4 endorses and protect in Section 40(1), which enacts "...an individual holds rights in the justice administration by having the rights to conveniently, speedily and prevailedly access...". In Section 40 (2), it enacts, "...an individual holds rights in the justice administration, basic rights in the proceeding which has at least a basic warranty on the consideration..." In Section 40(8) on the civil case, it enacts an individual hold the rights to gain appropriate legal assistance from the state. Also, the Constitution of the Kingdom enacts the protection of the people's rights and liberty, the rights to be protected from the state malpractices and personal rights to investigate the actions taken by the state under the human right principle. These are the rights individuals in a country have been protected according to its Constitution. To these causes, the constitutional drafting committee of Thailand enacts to establish a non-governmental organization (NGO) under the Constitution to fulfill the duty in investigating the exercises of the state power within the legal frame and to maintain justice for people who might meet damages or unfairness yielded by the power plays of the state agencies or their officers. The NGOs under the Constitution of the Kingdom B.E. 2550 (2007) are the Office of the Election Commission, the Office of Anti-Corruption Commission, the Office of the Attorney General, the Office of Auditor General, the Office of the Human Rights Commission, Office of the Ombudsman, and the National Economic and Social Advisory Council (which has now been dissolved by the National Reforms Commission). It is accorded with the writings of Udom Ratammarit (2002), "...the state adhering to the rule of law must confer rights for people abused by the acts of the state officers on rights and liberty to be legitimately complain to their immediate supervisors or raise lawsuit to the judiciary organization for investigation their legitimacy on their administrative acts. It turns the protection of the rights and liberty of people truly yielded.

It is possible to say that the spirit of the Constitution empowering the ombudsman to forward problems of the constitutional legitimacy or legal legitimacy to the Constitutional Court or the Administrative Court. By reasons, the people needs the state agencies to be reliable for assistance of consultation and enabling people to

equally use their rights in the justice administration. Similarly, this research finds that the Organic Act of the Constitution of the Kingdom empowers the ombudsman to forward the cases to the Constitutional Court or the Administrative Court, which is the good alternative that people are possible to use their rights in the justice administration, prevailedly. Rationally, the ombudsman is an agency closest to people and helps people who have no knowledge and do not know the procedures using their right in the justice administration are able to seek consultation or assistance from the ombudsman in order to use the rights to attempt lawsuits or charges for the people who are in trouble.

This research finds that the problems and limitations of legal enforcement to forward the cases to the Constitutional Court or the Administrative Court of the Thai ombudsman are the restraints of law, the ambiguity of the ombudsman's adjudication, cowardice in decisionmaking of the ombudsman, errors of writing complaints, and actions taken by the complainants. All these problems disable the ombudsman to fully take action or its legal enforcement on taking actions.

This research recommends on the Thai ombudsman legal enforcement on forwarding the cases to the Constitutional Court or the Administrative Court as follows:

A. There should be additional enactment to empower the ombudsman to forward the cases to the Constitutional Court or the Administrative Court by itself without any complainants in order to display to public the potential of legal enforcement of investigating the state power plays. It enhances the confidence in the ombudsman works and its role in protecting the rights and liberty of the people.

B. There should be additional enactment to empower the ombudsman to investigate the government agencies in broader scope such as the power to investigate the Office of the National Broadcasting and Telecommunications Commission, the University Council, variety of committees, the Tambol Chief, the Village chief and the state enterprises and so on. This is to allow the ombudsman to forward the cases to the Constitutional Court or the Administrative Court without being subject to the limits of the ombudsman legal enforcement. It enables the ombudsman to be the state agency reliable for people to gain fairness in using their rights in the justice administration under the principle of the human rights and it accords with the statutory provisions of the Constitution of the Kingdom.

C. There should be additional amendments of the Act on administrative proceeding, on ombudsman, and related laws to be consistent about the ombudsman legal enforcement to forward the cases to the Constitutional Court or the Administrative Court. It then enables the ombudsman to be the state agency reliable for people using their rights in the justice administration, facilitation and fairness meeting the spirit of the Constitution of the Kingdom.

This research similarly finds that at present the ombudsman legal enforcement to forward the cases to the Constitutional Court or the Administrative Court is not in the statutory provisions in order to likely facilitate this action. By reason, the ombudsman is an organization imposed its authority under the Organic Act. Therefore the ombudsman legal enforcement should be beyond the law of the substantive laws and the procedural laws. However, in practice, it is found that the ombudsman legal enforcement especially in to forward the cases to the Administrative Court is similar to the lawsuit of damages in the common cases. Sometimes, there are limitations about the jurisdiction, which delays lawsuits. It is necessary them to amend the statutory provisions, the laws of the administrative procedures and the Organic Act on ombudsmen for their consistency. It is necessary to empower the ombudsman to take lawsuit under special channels that the procedures to use the people's rights on justice administration through the ombudsman will be convenient and expedite while being different from lawsuits charged by victims under the common substantive laws. Otherwise, using rights of lawsuit by people or by representative of people through the ombudsman will not be different especially to file lawsuit at the Administrative Court where the victims are possible to file lawsuits by themselves. The officers who can enact laws should raise the following observations for review in order to further study and amend laws.

D. The role of investigating before the public should be added. The ombudsman courage of decisionmaking and the clarity of its adjudication can create confidence to the work procedures of the ombudsman before the public. In addition, the ombudsman should have consultants and erudites of laws for assistance in recommending approaches and decisionmaking. It will be justified the ombudsman adjudication.

E. Media should be used for public relations on the ombudsman performances related to forwarding the cases to the Constitutional Court or the Administrative Court through the ombudsman in order to spark confidence among public in the ombudsman

works that it can be an organization very reliable in using rights in the justice administration. It includes public relation for public about the roles, authority of the ombudsman, procedures, criteria and ways to write complaints in order to prevent filing complaints restricted under the scope of the ombudsman authority enacted by laws.

CHAPTER VI

CONCLUSIONS AND RECOMMENDATIONS

Currently, the ombudsman organizations have been established in more than 200 countries. The names and models of each ombudsman legal enforcement in each country are different but similar in objectives, which are relying on the state policy and other context involved, i.e. regime, economy, social and politics of the country on how the country requires the ombudsman to take action. The ombudsman roles are imposed to protect human rights and anti-corruption and so on.

Thailand has its monarchic democracy and uses the principle of dividing its sovereignty to be the principle of its administration and enacts the Constitution is the ultimate laws of the country seriously considering the rights, liberty and benefits of its people. In the past, the organization investigating the state power play by the administration was to control and check by the internal agencies acted by the Inspector under the power enacted in the regulations of the Office of the Prime Minister on Government Inspection B.E.2548 (2003). The inspectors from the Office of the Prime Minister are divided into the Inspectors of the Ministries and the Inspectors of the Departments. After the enactment of the Constitution of the Kingdom B.E.2540 (1997), there are many establishments of organizations to check organization either being the judiciary organization and not judiciary organizations. The ombudsman organization at first has been imposed to investigate the parliamentary system under democracy. Meaning, the parliament has supremacy and the Legislative Council the source and the regulator of the Administration. By principle, the Legislation employs this mechanism to investigate and follow up the administrative works to adhere to laws and rules with justice and transparency. The ombudsman is under the supervision of the parliament. At present, the Temporal Constitution B.E.2557 (2014) enacts the ombudsman to be the non-government organization (NGO) by the Constitution. It is subject to the Administration working as the external examiners to control the administrative works under the empowerment of the Organic Act on Ombudsmen

B.E.2552 (2009) expecting the administrative agencies and agencies of all sectors to collaborate in solving the miseries of people.

In this research, the researcher divides the studies in to the Thai ombudsman legal enforcement under the Organic Act on the Ombudsman. The legal enforcement is also divided into 1) the legal enforcement on investigation and fact-finding with complainants, 2) the legal enforcement on investigation and fact-finding with complainants, 3) the legal enforcement on investigation and taking action on ethics of the persons holding political positions and the state officers, 4) the legal enforcement on follow up, evaluation and recommendation how to adhere to the Constitution and considering on the constitutional amendments if necessary, 5) the legal enforcement to forward the cases to the Constitutional Court or the Administrative court, 6) to study problems and limitations of the Thai ombudsman legal enforcement and 7) to study approaches to enhance the efficiency of the Thai ombudsman legal enforcement and how to efficiently pursue the Thai ombudsman missions.

6.1 Conclusions

The works of the Thai ombudsman in the past has been modeled in mediation to cease disputes between the government sectors and the people through seeking cooperation from the agencies playing the state power to report facts and requesting them to follow the ombudsman opinions or the recommendations. Though Section 15 of the Organic Act on Ombudsmen B.E.2552 (2009) empowers it to demand the government agencies, the state agencies, the state enterprises and the local government agencies to clarify fact or opinion on working or to submit materials, documents, evidences or other evidences related for the benefit of seeking facts of the ombudsman. Also, it enacts punishment for the dissents but it is found that the ombudsman still encounters the problems of non-compliance of the agencies endlessly. It delays the ombudsman works and sometimes disables to remedy and solve problem within short time. This research finds that the punishment and its severity enacted in the Organic Act on Ombudsmen B.E.2552 (2009) are appropriate. Most interviewees find that the cause of non-compliance with the ombudsman laws is the ombudsman is strict with its legal enforcement leading to inefficient deterrence on

dissents. It is also found that no ombudsman imposes the Organic Act on Ombudsmen B.E.2552 (2009) to punish dissents and likely reports to the parliament for information on the problems of non-compliance. Sometimes, upon the parliament has acknowledge and demanded the agencies to solve problems but here are no serious follow-ups. The remedies of the ombudsman for people are likely unachievable as targeted. It is accorded with this qualitative research part that the values of the opinion from the interviewees on problems and limitation in complying with the ombudsman recommendation is high. It shows that the law enforcement of Thailand is still inefficient for deterrence the dissented agencies against the Organic Act on Ombudsmen B.E.2552 (2009). The agencies thus disrespect the ombudsman punishment.

Recommendations in this research on the approaches to promote the ombudsman legal enforcement on investigation and fact-finding should have enforced punishment against the dissents of law enforcement rigidly. In addition, other punishment measures such as enacting the dissent against the Organic Act on Ombudsmen B.E.2552 (2009) is subject to disciplinary offense and legal punishment or regulating to establish the ombudsman committee to consider administrative punishment or enacting laws to call documents from individuals or to call individuals or the chiefs of the agencies to testify facts about the case under examination by the ombudsman. Any dissents are subject to offense or deserve punishment by law as in the Act Orders the Parliamentary and Senate commissions B.E.2554 (2011) to be paired with social sanction, such as public relation, public dissemination about the dissented agencies and on-cooperative to the ombudsman works and reports to the parliament and so on.

A group of samples comments on the Thai ombudsman legal enforcement that the Organic Act on Ombudsmen B.E.2552 (2009) encounters the problems of the ombudsman legal enforcement on investigating the court organization. They find that Section 28(2) imposes what cases are subject to lawsuit in the court or the cases the court passes judgment or rigid order the ombudsman should not accept or cease the examination. Examining this Section is to cut the ombudsman legal enforcement, which disables the ombudsman to find fact or disables to protect the rights, liberty and the benefits of the people through the justice administration. This includes the complaints about the performance of the Office of the National

Broadcasting and Telecommunications Commission, the University Council, variety of committees, the Tambol Chief, the Village chief and the state enterprises and other government agencies not enacted in the Organic Act on Ombudsmen B.E.2552 (2009). The Thai ombudsman is disabled to investigate and remedy the miseries of people. The empowered persons drafting the laws should amend by empowering the ombudsman to investigate other agencies for broader scope. The interviewees also find that there should be empowerment for the ombudsman to deter temporal damages during the complaints are examined, especially the complaints, which may lead to the serious damages on the complainants and on the public.

The study finds that other factors creating problems and limitations of the Thai ombudsman legal enforcement are the ombudsman investigation process and its adjudication, which are unclear. The researcher agrees with the interviewees on such issues that the investigation process of the ombudsman should be in a team and there should be consultants equipped with specialized erudition to provide consultation on the investigations and adjudications about the complaints. This is to justify the ombudsman adjudications more including prudence and expedition in investigating facts. The researcher additionally comments on the Thai ombudsman's investigation process that some information from some the interviewees is sometimes the informants fear to the impacts to their rights and might be taken into lawsuit from the dissents involved. The researcher finds that today the ombudsman has no protective law for either witnesses or whistleblowers who convey message for the benefits of fact-finding. The problems are the obstacles for the ombudsman to collect important information from the agencies or clues reported about the reality. If the comparative studies of the Office of the National Anti-Corruption Commission (NACC) an NGO by the Constitution of the Kingdom on the exercises its similar legal enforcement with the ombudsman; it will find that the NACC is not only paid importance to key information but also paid importance in protecting the informants or the whistleblowers and their intimate persons. It enacts the Regulation of the NACC on Protecting and Assisting Witnesses B.E. 2554 (2011) to endorse this legal enforcement. This makes fact-findings of the NACC reliable and in-depth fact-finding. In addition, there is countersign between the NACC and the Royal Police Bureau to protect witnesses adhering to the principles of the Procedural Code enacted to protect

witnesses and the whistleblowers, who can file petition to the agencies involved, such as the NACC, the royal police Bureau, the Department of Rights and Liberty Protection, and DSI, for protection. These protective measures encourage the whistleblowers and these key informant witnesses are courageous to provide real fact, which so much helps the fact-findings of the NACC. Similarly, the Queensland Ombudsman realizes that whistleblowers are at risk to assaults or vengeance later. It enacts in the Whistleblowers Protection Act 1994 to protect the whistleblowers. With the above reasons, the researcher finds that if the Thai ombudsman employs the purview of the witness and the whistleblower protection to be enacted in the Organic Act on the Ombudsman or to regulate in the rules of the Ombudsman on protecting witnesses and whistleblowers, it will better be advantageous in developing the Thai ombudsman. It will also build trust from the people on the ombudsman adjudication. In addition, to prevent the fraud witnesses given and it might damage the rights and liberty or benefits of others; it is also necessary to enact punishment to prevent the corrupted rights of the fake whistleblowers.

Besides, the problems and limitations of the ombudsman legal enforcement, this research finds that the database system of complaints does not classify groups and directions of the adjudications while the Office of the Ombudsman runs short of the specialized erudites. In addition, the personnel transfer, reallocation and passiveness become greater problems and limitations for investigation and fact-finding.

The Thai ombudsman legal enforcement on other aspects are found in this research that in the investigation and taking action on ethics of the persons holding political positions are unclear with the ethics code of politicians with regards to classifying the nature of severe and not-severe misbehaviors. It disables the ombudsman to fully enforce its practices. In addition, there is no tangible enforcement of ethics code in any political parties in Thailand. The interviewees agree that the action taken by the ombudsman on investigating the ethics is just forward the cases to the agencies directly authorized for the investigation and it deserves appropriation. The complained agencies by rationale know well about the fact and accommodate erudite personnel to take disciplinary investigation and punishment within their own agencies. However, the researcher observes and adds that the ombudsman has no legal enforcement of punishment with any agencies negligent to punish the wrongdoers.

Such defect lames the ombudsman legal enforcement. If efficient legal enforcement is demanded upon the ombudsman in investigating the ethics of politicians and the state officers, and upon finding the state officers offend and the agency chiefs are negligent to impose punishment on their inferiors; there should be additional amendments in part of the ombudsman to empower the ombudsman to take lawsuit with the chiefs negligent to the Administrative Court on charge of negligence to impose disciplinary punishment against the wrongdoers. Practically, the ombudsman should impose the measure of social sanction in terms of directing social such as deploying media to denounce the dissent agencies on the ethics code standards. This is to attract social to agree with what the ombudsman has directed is right and the negligence to impose wrongdoers of the agency chiefs resist the laws and the social ethical norms. Such measures can counter the dissent acts against the purview of the ombudsman.

In the study of the legal enforcement on follow up, evaluation and recommendation to comply with the Constitution of the Kingdom and the constitutional amendments, it is found that there is shortage of personnel equipped with knowledge and experiences of analytical evaluation and budgets backed by the government to hire erudite consultants for analytical evaluation. Actions taken by the Thai ombudsman legal enforcement on proposing cases to the Constitutional Court and the Administrative Court are found that there are problems of legal restrictions, the ambiguity of the ombudsman adjudication, and cowardice of decisionmaking, shortage of erudition in filing complaints or method of filing complaints among the complainants. They disable the ombudsman to take action on investigation or fully address the problems.

6.2 Recommendation from the Research

6.2.1 Approaches to structure the Thai ombudsman's roles and authority

This study shows that the structure of the ombudsman's works should be clearer because it is enacted by the Constitution as an organization to investigate the state power plays and not a court organization. Its legal enforcement on investigation and fact-finding should be flexible and expedite for potential in properly solving

problems and enabled to be the real last resort in maintaining justice for people. It is accorded with recommendations from the interviewees that in investigating complaints, the ombudsman should be aware of the complexity of the different complaints. The process of investigating complaints should be classified in groups of difficulties and simplicity for the benefits of its adjudication. For example, if complaints were complex, the investigation process should be in team with the consultants or assistants equipped with erudition and specialization so that the adjudication will be more accurate and accountable.

In addition its IT system should be improved and link them with other agencies involved. Adjudications should be stored for similar direction and for solving the future complaints. This study also finds that the ombudsman should take aggressive approaches to display the public more than in the past, e.g. raising the cases affecting public at large and of the people or the cases devastating social for investigation and solving the miseries for people. This is to display people the potentials of the ombudsman. Moreover, the ombudsman should find the other supportive approaches to fulfill its missions. Examples are site visits for problems solving with the complainants and the agencies involved, organizing the ombudsman meet the local, disseminating media to answer complaints through radio, TV, and annual reports. Other examples are public relations on knowledge and understanding the ombudsman's roles and authority, and organizing projects to promote morals and ethics for the government officers, state employees, university students and common people in various styles. All these affect the understanding of people in exercising their rights to file complaints to the ombudsman in the correct ways and make the missions of the ombudsman efficient and effective with better tangibility.

6.2.2 Approaches for the Thai ombudsman's legal enforcement

The research reveals that the Thai ombudsman legal enforcement should have the direction of imposing social sanction - using TV, radio, printed matters and organizing discussion seminars on the working issues of the ombudsman and so on. It is necessary to report the parliament about the disregard of the agencies to denounce them to societies on their misbehaviors against the ombudsman's laws. Also, it needs public critiques. All these are tactics of informal social control paired with law

enforcement-rigid enforcement on punishment under the Organic Act on the Ombudsman. Moreover, there are additional opinions that the managerial and the administration measures should be enforce to punish the dissents through the amendments of the Organic Act on Ombudsmen B.E.2552 (2009). It is necessary to enacting the letter for clarifying facts of the ombudsman is analogous to the court summon warrant and any dissents are subject to disciplinary punishment or enacting the Act Orders to call for document from any individuals or to call individuals or any agencies to testify their facts in the matters examined by the ombudsman. For example, the Act Orders the Parliamentary and Senate commissions B.E.2554 (2011) enacts the punishment for the dissents. Also, it is possible to enact the purview of the ombudsman establishing a committee to consider the administrative punishment to endorse the legal enforcement on fines against the dissent officers. As for the case to enforce the agencies, disregarding to punish the wrongdoers violating the ethics code; there should be enactment to endorse the power of the ombudsman to file lawsuit at the Administrative Court against the chiefs of the agencies who disregard solving the problems or not punishing their subordinates. The interviewees support these measures and view that they are useful to deter the government agencies and their officers to violate the purview of the ombudsman and to prevent their recidivisms. This is to strengthen the ombudsman's law enforcement with efficiency in order to deter more dissents. It helps the ombudsman's missions achievable as targeted in the Constitution of the Kingdom: the ombudsman is an organization empowered to investigate the state power play and an organization of the last resort for people in maintaining justice.

The researcher agrees with imposing the disciplinary measures and legal measures to enforce the power of the Thai ombudsman paired with the measures of social sanction. They can deter dissent officers who disregard the ombudsman laws. The recommendations to enact law in order to endorse the power of the ombudsman in filing lawsuits at the Administrative Court against the agency chiefs disregarding to solve the problems or disregarding to punish their subordinates found dissenting the ethics code; the researcher agrees, there should be enactment with clarity of the procedures and the method to file lawsuit for the ombudsman. This is to make the ombudsman's legal enforcement practical. For example, it is to empower the ombudsman to forward the cases to the Office of Attorney General to consider and

take lawsuit and the prosecutor may decline to take lawsuit in the case that the evidences are inadequate or it may be by other necessity. In addition, the researcher finds that by practices, the investigation of the ombudsman should clearly indicate deadline and provisions empowering punishment for the agencies to acknowledge in the letter of requesting clarifications of facts and the letter of demand issued by the ombudsman. By reasons, at present the letter of requesting clarification and the letter of demand indicate just deadline for clarification. However, the researcher additionally comments that there should be measures of punishment with any agencies or organizations playing the state powers disregarding to comply with the actions of the ombudsman. For example, it is necessary to have additional amendment in the Organic Act on Ombudsmen B.E.2552 (2009) empowering the ombudsman to forward the cases and opinions to the Prime Minister, Senate and parliament to consider budget cut with the agencies disregarding to testify facts or fail to comply with the recommendation of the ombudsman without reasons within the deadline. For example, a case the ombudsman issues three letters of demand for clarifying facts but the agency disregards. To such case, there should be an enactment to empower the ombudsman to forward opinion to the Cabinet, the parliament and senate to consider budget cut for the following fiscal year with the agency. By reason, the agency violating the National Government Organization Act demanded by the Office of the Prime Minister as guides for the government officers and personnel to administrate the mother land to adhere to by the principle of good governance. If any administrative power players failed to comply, their budget will be cut. In addition, if the agencies are still disregarding and failing to cooperate with the ombudsman, they will face social sanctions such as disseminating the dissents to public how they mismanage their affairs.

The researcher thus concludes the approaches of the Thai ombudsman legal enforcement as in Figure 6.1, below.

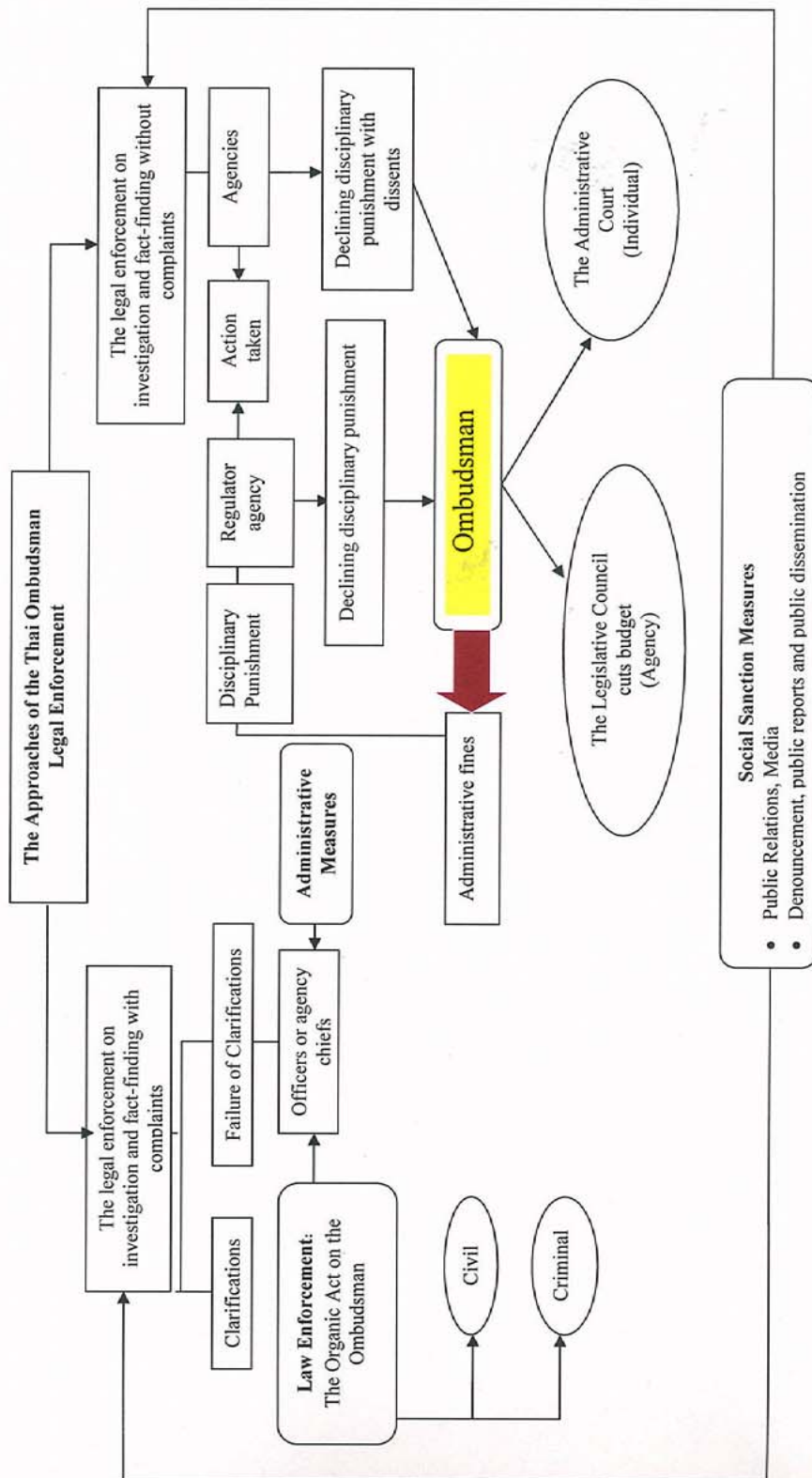


Figure 6.1: The approaches of the Thai ombudsman legal enforcement

6.2.3 Approaches to promote efficiency of the Thai ombudsman legal enforcement

6.2.3.1 Approaches to promote policy efficiency

1) There should be additional amendment with the Organic Act on Ombudsmen B.E.2552 (2009) be broader empowering the ombudsman on investigating the agencies with state power plays and the power to halt temporal damages during the complaints being examined especially the complaints gravely affect victims and public. For example, the ombudsman demands to temporally halt the affairs upon finding that they gravely trouble victims and public for 30 days or 90 days. If exceeding these deadlines, and the agencies still disregard; the ombudsman may enforce for speed reports of the facts.

2) There should be additional amendment with the Organic Act on Ombudsmen B.E.2552 (2009) enacting disciplinary punishment for the officers or the agency chiefs who fail to report facts to the ombudsman or fail to comply with the recommendation of the ombudsman without reasonable causes within deadline. The regulators must impose disciplinary punishment on the dissent officers or the agency chiefs by rules of disciplinary punishment such as probation, warning, salary cut and salary deduction. If the immediate supervisors of the agency do not impose disciplinary punishment measures on the dissents, the ombudsman is empowered to file complaints to the Administrative Court for considering further administrative punishment.

3) An Act should be enacted for establishing an ombudsman committee to consider administrative fines against the dissent officers or the agency chiefs who disregard to report facts to the ombudsman or fail to comply with the recommendation of the ombudsman without reasonable causes within deadlines. Section 15(8) empowers the ombudsman to regulate or taking other actions enacted in the Organic Act on Ombudsmen B.E.2552 (2009) or in other laws. Nevertheless, enacting to impose administrative fines should be consistent with the Organic Act on Ombudsmen B.E.2552 (2009).

However, the researcher finds that upon imposing administrative fines is the administrative command and id there are evidences that the officers object

or oppose the punishment command and having evidence to prove guilty; the committee may be able exempt administrative punishment.

4) There should be additional amendment with the Organic Act on Ombudsmen B.E.2552 (2009) empowering the ombudsman to file lawsuit at the Administrative Court against the agency chiefs who disregard the recommendations of the ombudsman. In the case of disregard to impose disciplinary punishment on the officers checked and found violating ethics code without reporting reasonable causes to the ombudsman within deadlines. This includes enacting criteria and procedures to submit the cases to the Office of Attorney General to consider and to take lawsuits at the Administrative Court.

5) There should be the punishment on the agencies or organizations with state power plays but disregard the action taken by the ombudsman. For example, the additional amendment in the Organic Act on Ombudsmen B.E.2552 (2009) empowers the ombudsman to submit the cases with opinions to the Prime Minister, senate, and the parliament to cut budgets of the agencies disregarding to report facts to the ombudsman or fail to comply with its recommendation without reasonable causes within deadlines. This is counted the agencies violate the Regulations of National Government Organization Act including additionally enacting that if the authorized personnel in the administration do not cut budget and the agencies still disregard to cooperate with the ombudsman; the ombudsman is empowered to disseminate the cases to public for information.

6) There should be consistently additional amendment with the Organic Act on Ombudsmen B.E.2552 (2009) and the laws involved on the ombudsman's legal enforcement. That is able to forward the cases to the Constitutional Court or the Administrative Court by allowing people to use their rights to file lawsuit before the Constitutional Court or the Administrative Court through the ombudsman with special channels. For example, it is unrestricted of the jurisdiction or exempted court fees in lawsuit. This is to facilitate the actions taken by the ombudsman and to allow people to optimize the channels for equal and fair assistance in the justice administration from the state agencies.

7) There should be legally additional amendment for the ombudsman to file the lawsuit to the Constitutional Court or the Administrative Court by itself without any complainants so that the ombudsman can broader protect and guard the rights for the people.

8) Aggressive approaches should be taken by the ombudsman in various styles, such as, organizing site visits at the agencies involved, public relation on the role and authority of the ombudsman, to disseminate its achievement through exhibitions, activities and training and so on.

9) The government should allocate additional budget for the ombudsman especially the necessary budgets to operate follow up, evaluation and preparing recommendation in adhering to the Constitution and the missions to promote morals and ethics.

6.2.3.2 Approaches to promote working efficiency

1) The structure of teamwork for investigation in the ombudsman should be systematized in the form of subcommittee containing consultants, executive investigators, senior investigators and operational investigators. This is to allow the adjudication of the ombudsman more evident and reliable before public. This includes inviting representatives of the agencies involved to attend meeting on the possibility to solve the problems under the opinion and recommendation of the ombudsman so that the solutions are truly fruitful. In addition, the ombudsman should coordinate for cooperation with other agencies to be its network in order to provide information useful to be evidences or to making use of other empowerment. For example, there are DSI, the Royal Police Bureau, and the Office of the Auditor General to participate in investigating and fact-finding, which allows the work of the ombudsman efficient and better achievable.

2) The mission of promoting morals and ethics should be organized and paired with investigating the malpractices or violating the ethics code among the government officers or the state personnel but in the form of deterrence. In addition, the action taken on ethics by the ombudsman must be rigid with the investigation of the ethics code with every agency with clarity and truly enforced by practices.

3) The IT system in the Office of the Ombudsman should store data and similar direction of the adjudication for future judgments. The IT system should be updated and linkable to other agencies regarding complaints for the benefit of coordination and follow up. In addition, the IT system should have automatic result displays to find the data of non-reports from the agencies. However, even though the IT system in the Office provide many channels for follow up after the adjudication but the researcher views that to fill in data for follow up of the officers in each cases would be delayed and add more procedures to the investigators. Therefore, a division for serious follow up complaints should be established so that the process of investigation of the ombudsman can solve the troubles of the people with better speed and with better efficiency.

6.3 Recommendations for further Studies

In this research, there are many interested points in increasing the power of the ombudsman to directly impose temporal protection command. Such empowerment is not empowering punishment but the power should be exercised to protect the rights and liberty of the troubling people while their complaints are investigated and solved by the ombudsman. However, increasing power of temporal protection command for the ombudsman requires enactment to endorse this legal enforcement. It is also necessary to enact the nature of complaints empowering the ombudsman to impose temporal protection command as well as the proper deadline of the empowerment on the temporal damages prevention command, which needs further studies.

Another issue needed studies is the enactment to empower the ombudsman to investigate the internal organization of the justice administration. It should allow just the investigation in terms of the office affairs such as legitimacy of the procedures, the time spent in trial, which do not affect the tribunal. By reason, in the past the ombudsman has no opportunity to investigate the court works regardless complaints. The ombudsman is also restricted by laws and disabled to exercise its rights in the justice administration for people and cannot solve their rising troubles.

The last issue needed study is the enactment to impose the action taken by the officers or the agency chiefs who disregard to report facts or fail to follow the recommendation of the ombudsman without reasonable causes within deadline. This is counted an offense and deserves disciplinary punishment. Also, it needs enactment to empower the ombudsman to submit the cases to the Office of Attorney General for taking lawsuit before the Administrative Court against the agency chiefs who disregard imposing disciplinary punishing their dissent subordinates against the ethics code.

The researcher finds that imposing the authority for the ombudsman above enables the ombudsman to run the mission of protecting rights and liberty of the people while solving their troubles with more efficiency and effectiveness. All this interested issues should have been the matters that the law enactors should take into considerations for future studies.

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APPENDICES

APPENDIX A
QUESTIONNAIRE ABOUT IN THE LEGAL ENFORCEMENT
OF THE OMBUDSMAN IN THAILAND

Questionnaire about the legal enforcement of the ombudsman in Thailand

Part I: General Background

1.1. Gender 1) Male 2) Female

1.2. Age

() younger than 30 years old () 31-40 years old

() 41-50 years old () 51-60 years old

1.3. Education

1) Bachelor degree

2) Master degree

3) Doctor degree

1.4. Supervisory Office

() Central government () regional government

() Local government () non-government organization

() Public organization

1.5. Work Position.....

1.6. Tenure..... years..... Months

Part II: Opinions of the Ombudsman Legal Enforcement

- Levels of opinion Level 1 = least agree
- Level 2 = little agree
- Level 3 = moderately agree
- Level 4 = much agree
- Level 5 = Most agree

No.	Topic Questions	Levels of Opinion				
		5	4	3	2	1
Part I: Actions taken by the Ombudsman to investigate the government agencies						
1.	Site visits or meeting for discussion with the state agencies allows the Thai ombudsman easily solve the problems					
2.	The Thai ombudsman plays the critical roles in exercising power to propose the matters with recommendation to the Constitutional Court or the Administrative Court.					
3.	Empowering the Thai ombudsman to take action on ethics of the political positioning persons and the state officials by the constitutional provisions is appropriate.					
4.	Submission of the disciplinary complaints about the officials or local officials by the Thai ombudsman so as the state agencies involved is appropriate.					
5.	The Thai ombudsman should be the inspectors to pursue disciplinary complaints against the officials, government employees and the local officials.					
6.	Discretions of the Thai ombudsman are fair and justified.					
7.	The course of legal enforcement of the Thai ombudsman through pleading cooperation from the state agencies in solving problems and complaints is more appropriate than enforcement such as taking action on disciplinary punishment.					
8.	It is simple to follow the recommendation of the Thai ombudsman,					
9.	To what level, do you agree with the recommendation of the Thai ombudsman?					
10.	Enforcing inspection of the Thai ombudsman is not overlapping the inspections of other state agencies.					

No	Questions	Levels of Opinion				
		5	4	3	2	1
Part II: Actions taken by the ombudsman on follow up						
1.	The Thai ombudsman assigns the officials to coordinate the complaints with the complainers and the state agencies involved.					
2.	To what level is the Thai ombudsman strict in accelerating the state agencies to clarify facts in the case of having complaints?					
3.	Pleading the state agencies to clarify facts before the Thai ombudsman has been informed on deadline.					
4.	The Thai ombudsman has noticed the state agencies to clarify facts more than twice.					
5.	To what level do state agencies decline to follow the recommendations of the Thai ombudsman and the Thai ombudsman reports to the Ministers or their top immediate supervisors for commanding the agencies to clarify facts?					

Part III: Problems and limitations in complying with the recommendation of the ombudsman

5 = most, 4= much, 3 = moderate, 2 = little, and 1 = least

No.	Questions	Levels of evaluating the tense of the problems				
		5	4	3	2	1
Problems and limitations in complying with the recommendation of the ombudsman						
1.	It is the problem of complexity about solving the problem.					
2.	It is the problems of coordination shortage with the state agencies responsible for solving problems					
3.	The problem involves with the inadequate state budget for solving problems.					
4.	It is the problem of the personnel lacking integrity to solve problems for the common good.					
5.	The problem involves with the legal limitations.					
6.	It is the problem of absence in followup for solving problems under the recommendation of the Thai ombudsman.					
7.	The problem is beyond deadline for solving.					
8.	It is necessary to exploit many sectors or spend time to solve the problem.					
9.	It is the matter that the state agencies cannot follow the recommendation if the Thai ombudsman; if action taken, they would be subject to the civil charge or the criminal charge or the disciplinary charges.					
10.	The matter is beyond their authorities of the coordination agencies.					

Part IV: Other opinions

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APPENDIX B
INTERVIEW ABOUT THE LEGAL ENFORCEMENT
OF THE OMBUDSMAN IN THAILAND

Part I: General information of the key informants

Part II: What are the roles of the ombudsman in investigating the state agencies?

Part III: What are your opinions on the action taken by the ombudsman as below?

3.1. The nature of complaints at the operation unit complying with the ombudsman adjudication by applying the observations or the recommendation.

3.2. Problematic factors of cooperation from the agencies related to clarifying facts and complying with the recommendation of the ombudsman.

3.3. Nature of complaints without reporting the progress of the compliance with the recommendation of the ombudsman for the agencies involved.

Part IV: What are the efficient measures or approaches of the ombudsman legal enforcement?

Part V: others if any

APPENDIX C
ORGANIC ACT ON OMBUDSMEN, B.E. 2552 (2009)

BHUMIBOL ADULYADEJ, REX.
Given on the 10th Day of July B.E. 2552;
Being the 64th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that: Whereas it is expedient to have an Organic Act on Ombudsmen;

This Act contains certain provisions in relation to the restriction of right and liberty of person, in respect of which section 29 in conjunction with section 31, section 33, section 35, section 36, section 45, section 56, section 59 and section 62 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Organic Act is called the "Organic Act on Ombudsmen, B.E. 2552".

Section 2. This Organic Act shall come into force as from the day following the date of its publication in the Government Gazette. 1

Section 3. The followings shall be repealed:

- (1) Organic Act on Parliamentary Ombudsmen, B.E. 2542;
- (2) Announcement of the Council for Democratic Reform under Constitutional Monarchy No. 14, dated 21st September B.E. 2549.

Section 4. In this Organic Act:

"Government agency" means Ministry, Sub-Ministry, Department or government agency named otherwise but having equal status to Ministry, Sub-Ministry or Department;

"State agency" means any agency other than government agency, State enterprise or local government organization;

"State enterprise" means State enterprise under the law on budgetary procedure;

"Local government organization" means local government organisation under the law on State administration;

"Person holding political position" means a person holding political position under the law on counter corruption;

"State official" means a government official, official, employee or a person working for a government agency, State agency, State enterprise or local government organization and a competent official under the law on regional administration;

"Officer" means an official, employee or a person appointed by the Ombudsmen to perform any duty under this Organic Act.

Section 5. The President of the Ombudsmen shall have charge and control of the execution of this Organic Act and shall, with collective approval of the Ombudsmen, have the power to issue Regulation or Notification for the execution of this Organic Act.

Such Regulation or Notification shall come into force upon its publication in the Government Gazette.

CHAPTER I

Ombudsman

Section 6. The Ombudsmen under this Organic Act shall have its composition, selection, election, approval and term of office as prescribed by the Constitution.

The Secretariat of the Senate shall be secretariat unit for the execution under paragraph one.

Section 7. The Ombudsman shall be a person recognized and respected by the public, with knowledge and experience in the administration of State affairs, enterprises or other activities of common interests of the public and with apparent integrity.

Section 8. The Ombudsman shall have qualifications and shall not be under any of the prohibitions as follows:

- (1) being of Thai nationality by birth;

- (2) being of not less than forty five years of age on the application date;
- (3) having graduated with not lower than a Bachelor degree or its equivalent;
- (4) not having been the Ombudsman or Parliamentary Ombudsman;
- (5) not being a disfranchised person;
- (6) not being a member of the House of Representatives, member of the Senate, Political official, local administrator or member of local assembly;
- (7) not being or having been a member of political party or person holding any other position of political party within three years prior to the application date;
- (8) not being a judge of the Constitutional Court, judge of the Administrative Court, Election commissioner, National Counter Corruption Commissioner, State Audit Commissioner or National Human Rights Commissioner;
- (9) not being bankrupt or dishonest bankrupt;
- (10) not having been sentenced by a judgment to a term of imprisonment irrespective of whether the case becomes final or the sentence has been suspended, except for an offence committed through negligence, a petty offence or defamation and such case has not become final or the sentence has been suspended;
- (11) not having been expelled, dismissed or removed from official agency, State agency, State enterprise or local government organization on the ground of serious violation of discipline;
- (12) not having been vacated from office of a member of the House of Representatives or member of the Senate upon any decision or resolution under the Constitution;
- (13) not having been removed from office under the Constitution; (14) not being a narcotics addict;
- (14) not having been ordered by a judgment or an order of the Court that his assets shall vest in the State on the ground of unusual wealth or an unusual increase of assets.

Section 9. Apart from vacating office at the end of the term, the Ombudsman vacates office upon:

- (1) death;
- (2) being seventy years of age;

- (3) resignation;
- (4) being disqualified or being under any of the prohibitions under section 8;
- (5) having been sentenced by a judgment to a term of imprisonment irrespective of whether the case becomes final or the sentence has been suspended, except for an offence committed through negligence, a petty offence or defamation and such case has not become final or the sentence has been suspended;
- (6) having been ordered by a judgment or an order of the Court that his assets shall vest in the State on the ground of unusual wealth or an unusual increase of assets;
- (7) being under any of the prohibitions under section 207 (1), (2), (3) and (4) of the Constitution;
- (8) being removed from office by the resolution of the Senate.

Section 10. In the case where the President of the Ombudsmen or the Ombudsman vacates office, the selection and election therefore shall be completed in accordance with the provisions of the Constitution.

The President of the Ombudsmen or the Ombudsman who vacates office at the end of the term shall remain in office to continue his duties until the new President of the Ombudsmen or Ombudsman has been appointed.

Section 11. In the case where the Ombudsman vacates office before term, the existing Ombudsmen shall continue their duties.

If there are two Ombudsmen left, the senior Ombudsman shall be Acting President of the Ombudsmen until the new President of the Ombudsmen has been appointed.

Section 12. In the performance of duties of the Ombudsmen, the President of the Ombudsmen and the Ombudsmen shall jointly meet to divide their responsibilities with a view to enable each Ombudsman to perform his duties independently and to be accountable for his entrusted responsibilities in accordance with the rule and procedure as jointly determined by the President of the Ombudsmen and the Ombudsmen, except the case under paragraph three.

At the meeting under paragraph one, the President of the Ombudsmen shall preside over the meeting. If the President of the Ombudsmen is unable to present at the meeting, the senior Ombudsman shall preside over the meeting.

In the performance of duties of the Ombudsmen under section 14, section 15 (5), (6), (7) and (8), section 24 paragraph three, section 25 paragraph two, section 32 paragraph two, section 33 paragraph two and paragraph three, section 37 paragraph two, section 39, section 41, section 42 and section 43 or under other laws, the Ombudsmen shall jointly meet and agree. If there is two Ombudsmen left, the existing Ombudsmen shall continue joint meeting and giving approval.

Section 13. The Ombudsmen shall have the powers and duties as follows: (1) to consider and inquire into the complaint for fact-finding in the following cases; (a) failure to perform in compliance with the law or performance Beyond powers and duties as prescribed by law of a government official, official or employee of a government agency, State agency, State enterprise or local government organization; (b) performance of or commission to perform duties of a government official, official or employee of a government agency, State agency, State enterprise or local government organization, which unjustly causes injuries to the complainant or the public whether such act is lawful or not; (c) investigating any omission to perform duties or unlawful performance of duties of the Constitutional organization or agency in the administration of justice, except the trial and adjudication of the Court; (d) other cases as prescribed by law; (2) to conduct the proceeding in relation to ethics of a person holding political position and State official under section 279 paragraph three and section 280; (3) to monitor, evaluate and prepare recommendations on the compliance with the Constitution including consideration for amendment of the Constitution as deemed necessary; (4) to report the result of its investigation and performance together with recommendation to the Council of Ministers, the House of Representatives and the Senate annually. Such report shall be published in the Government Gazette and disclosed to the public. In exercising of powers and duties under (1) (a), (b) and (c), the Ombudsmen shall proceed where there is a complaint thereon, provided that the Ombudsmen is of opinion that such act causes injuries to the public or it is necessary to protect public interests and, in such case, the Ombudsmen may consider and conduct investigation irrespective of a complaint.

Section 14. The Ombudsmen may submit a case to the Constitutional Court or Administrative Court in the following cases:

(1) if the provisions of any law beg the question of constitutionality, the case together with its opinion thereon shall be submitted to the Constitutional Court for consideration;

(2) if any rule, order or action of any person under section 13 (1) (a) begs the question of constitutionality or legality, the case together with its opinion thereon shall be submitted to the Administrative Court for consideration.

Section 15. In the performance of duties under this Organic Act, the Ombudsmen shall have the powers:

(1) to request a government agency, State agency, State enterprise or local government organization to give, in writing, statement of fact or opinion in concerning with its performance or to submit any related object, document, proof or evidence for consideration;

(2) to request the superior or officer of the agency under (1), public prosecutor, inquiry official or any person to give statement of fact in writing or orally or to submit any related object, document, proof or evidence for consideration;

(3) to request the Court to submit any related object, document, proof or evidence for consideration;

(4) to examine any place related to the complaint, but the owner or a person having possessory right thereof shall be informed in advance as necessary;

(5) to issue regulation determining rule and procedure on receiving of complaint for consideration and the regulation on inquiry;

(6) to issue regulation determining rule and procedure for the conduct of proceedings in relation to ethics of a person holding political position and State official under section 37 and section 39;

(7) to issue regulation determining rule on expenditure, allowance and travel expense of oral evidence and the performance of duty of the officer;

(8) to issue any regulation or carrying out any other duty which is prescribed by this Organic Act or other laws to be duty of the Ombudsmen.

Section 16. In exercising of powers of the Ombudsmen under section 15, regard shall be had to its impact to security of State, public safety or international relation.

In the case where the Ombudsmen is unable to inquire into fact in any matter, such matter shall be ceased and the Ombudsmen shall report the Council of Ministers, the House of Representatives and the Senate for information without delay.

Section 17. The report under section 32 and section 33 shall be made in summary without any detail which may disclose confidential information of any person or agency unnecessarily.

Section 18. The Ombudsman shall not be liable to both civil and criminal liabilities if he exercises the powers and duties under this Organic Act in good faith.

Section 19. A person who gives statement or submits any object, document, proof or evidence in concerning with the matter under this Organic Act to the Ombudsmen or officer entrusted in writing by the Ombudsmen or a person preparing and disseminating the report of the Ombudsmen under section 32, section 33 and section 43 shall not be liable to civil, criminal or disciplinary if he discloses information or submits any object, document, proof or evidence or prepares or discloses the report, as the case may be, in good faith.

Section 20. In the performance of duties under this Organic Act, the Ombudsman and officer shall be the competent official under the Penal Code.

Section 21. No person shall disclose any statement, fact or information obtained from an implementation under this Organic Act, provided that he has been entrusted by the Ombudsmen or it is the performance on his official duty or it is beneficial to an examination or inquiry or it has to be reported under his powers and duties or it has to be done in accordance with the provisions of this Organic Act.

Section 22. Salary, position allowance and other benefits of the President of the Ombudsmen and the Ombudsman shall be in accordance with the law on such matter.

CHAPTER II

Complaint and Inquiry

Part 1

Complaint

Section 23. Any person, group of persons and community shall have the right to make a complaint to the Ombudsmen in accordance with the provisions of this Organic Act.

The making of complaint under this Organic Act shall not prejudice to the rights of the complainant under other laws.

Section 24. A complaint may be made to the Ombudsmen in writing, orally or by other means.

In case of a written complaint, it shall have at least the following compositions:

- (1) name and address of the complainant;
- (2) cause of complaint together with statement of fact or circumstance in relation to the matter under complaint;
- (3) polite language;
- (4) signature of the complainant.

The rule and procedure for the making of oral and other complaints shall be in accordance with the regulation as prescribed by the President of the Ombudsmen.

Section 25. The complainant may submit the complaint to the Ombudsmen via the Office of the Ombudsmen in person, by post, by hand or by other means.

The rule and procedure on submission of complaint by other means under paragraph one shall be in accordance with the regulation as prescribed by the President of the Ombudsmen.

Section 26. In the case where the Committee of the House of Representatives or the Senate conducts inquiry or consideration on any matter and it is of opinion that such matter is subjected to the powers and duties of the Ombudsmen under this Organic Act, such Committee may submit that matter to the Ombudsmen for

consideration and the Ombudsmen shall submit its preliminary report on the result thereof to such Committee.

Section 27. After having received the matter from the Committee under section 26, the Ombudsmen shall have the power to continue its consideration on that matter despite such Committee vacates office en masse.

Part 2

Inquiry

Section 28. The complaint decided by the Ombudsmen of having the following characteristics shall be rejected or ceased:

(1) being policy of the Council of Ministers as stated to the National Assembly, except where the implementation in accordance with such policy being the matter under section 13 (1) or (2);

(2) being the matter that having been filed to the Court or the matter that the Court has final judgment or order thereon;

(3) not being the matters under section 13 (1) and (2);

(4) being the matter relating to personnel administration or disciplinary action of government official, official or employee of a government agency, State agency, State enterprise or local government organization, except the matter under section 13 (2);

(5) the complainant fails to comply with section 24.

Section 29. The Ombudsmen may reject or cease the complaint related to:

(1) corruption in official service;

(2) the matter in which the complainant is not an interested person and the consideration thereon is not beneficial to the public;

(3) the matter submitted after the lapse of two years as from the date the complainant knows or ought to know the cause of the complaint and the consideration thereon is not beneficial to the public;

(4) the matter in which the appropriate remedy or compensation for grief or unfairness of the complainant has been given and the consideration thereon is not beneficial to the public;

(5) the matter in which the complainant fails to give oral statement or present evidence or fails to do any act as requested writing by the Ombudsmen within specified period and without reasonable grounds;

(6) the matter in which the complainant has deceased without heir to continue the complaint and the consideration thereon is not beneficial to the public;

(7) the matter in which the Ombudsmen has had conclusion, except where the new evidence or fact has been found and the consideration result may be changed on account thereof.

Section 30. In case of the complaint that is having been rejected under section 28 and the complaint that may be rejected under section 29, the Ombudsmen may submit such complaint to related government agency, State agency, State enterprise or local government organisation for their appropriate proceedings.

Section 31. The Ombudsmen shall, upon the complaint under this Organic Act, finish its consideration without delay and shall enable the complainant, government official, official or employee of related government agency, State agency, State enterprise or local government organisation to give statement and present evidence in relation to their statement as appropriate.

An order of the Ombudsmen rejecting or ceasing any complaint together with supporting reason thereof shall be informed to the complainant and may, for the performance of official service, be sent to related agency for its information.

The supporting reason under paragraph two shall clarify in details of fact and related law. In case of an order ceasing consideration of a complaint on the ground that an act of the government official, official or employee of the government agency, State agency, State enterprise or local government organisation is not subjected to section 13 (1) (a) (b) or (c) or section 13 (2), the detailed reason why such act is lawful and fair shall also be clarified to the complainant.

Section 32. At the completion of consideration and inquiry on any complaint, the Ombudsmen shall prepare and submit the report summarizing the fact together with its giving opinion and recommendation for the revision thereof to the related government agency, State agency, State enterprise or local government organization for information or implementation.

In the case where the Ombudsmen is of opinion that despite an act of a government official, official or employee of a government agency, State agency, State enterprise or local government organization is compliant with the law, by-law, rule, regulation or resolution of the Council of Ministers, but such the law, by-law, rule, regulation or resolution of the Council of Ministers induces unfairness or inequality before the law or being the ground of discrimination or out of date, the Ombudsmen shall recommend related government agency, State agency, State enterprise or local government organization to cause revision or amendment to such law, by-law, rule, regulation or resolution of the Council of Ministers. If the recommendation relates to the resolution of the Council of Ministers, the report shall also be submitted to the Council of Ministers for information.

In the case where the Ombudsmen recommends the agency under paragraph two to revise or amend the law, by-law, rule and regulation, if such agency fails to proceed with that recommendation within a reasonable period, the Ombudsmen shall inform the law reform organization under the Constitution for further proceedings and shall urgently report that matter to the Council of Ministers, the House of Representatives and the Senate for information.

Section 33. In the case where a government official, official or employee of a government agency, State agency, State enterprise or local government organization fails to comply with the opinion or recommendation of the Ombudsmen on any matter within a reasonable period, the Ombudsmen shall inform the Prime Minister, Minister or the person controlling or supervising such government agency, State agency, State enterprise or local government organization so as to have necessary order thereon and to report their implementation to the Ombudsmen forthwith.

After having conducted the proceedings under paragraph one for a reasonable period but the government official, official or employee of the government agency, State agency, State enterprise or local government organization fails to comply with such opinion or recommendation without reasonable ground and that matter is important or relating to public interest or the public at large, the Ombudsmen shall urgently submit the report on such matter to the Council of Ministers, the House of Representatives and the Senate. Such report shall be disclosed to the public in accordance with the procedure as determined by the President of the Ombudsmen.

Section 34. In any matter, if the Ombudsmen is of opinion that there is a reasonable ground to suspect of corruption in official service or there is a criminal or disciplinary well-grounded, the Ombudsmen shall inform the agency having the power to investigate such matter and the superior of a government official, official or employee of related government agency, State agency, State enterprise or local government organization for information and further legal proceedings.

The agency having the power to investigate the matter and the superior under paragraph one shall report their implementation to the Ombudsmen every three months.

CHAPTER III

Inquiry for Constitutional Organs and Judicial Process Organs

Section 35. If the constitutional organs and judicial process organs omit their duties or perform their duties illegally under section 13 (1) (c), the provisions of Chapter II Complaint and Inquiry shall apply mutatis mutandis.

CHAPTER IV

Ethics of a Person Holding Political Position and State Official

Section 36. In conducting the proceedings in relation to ethics of a person holding political position and State official, the Ombudsmen shall have the powers and duties as follows:

(1) to give advice or recommendation for the making of ethical standard or improving the code of ethics of each kind of persons holding political positions and State officials;

(2) to enhance ethical consciousness of a person holding political position and State official;

(3) to report any conduct which is in violation of the code of ethics so as to make the person responsible for the enforcement of the code of ethics to make enforcement thereof.

For the execution of this Chapter, a government agency, State agency, State enterprise and local government organization shall submitted their established code of ethics to the Office of the Ombudsmen within sixty days as from the establishment date thereof.

Section 37. If there is a complaint that a person holding political position violates or fails to comply with the ethical standard under the code of ethics, the Ombudsmen shall consider and inquire into fact. In this regard, the provisions of Chapter II Complaint and Inquiry shall apply mutatis mutandis. If it appears, upon the completion of consideration and inquiry under paragraph one, that a person holding political position violates or fails to comply with the ethical standard under the code of ethics, the Ombudsmen shall report the National Assembly, Council of Ministers or related local assembly, as the case may be, so as to make enforcement of the code of ethics. If such conduct is serious offense, the Ombudsmen shall submit such matter to the National Counter Corruption Commission for consideration. In this case, such conduct is deemed to be a cause for removal from office under the Constitution.

Section 38. If there is a complaint that a State official violates or fails to comply with the ethical standard under the code of ethics, the Ombudsmen shall submit such matter to the person responsible for the enforcement of the code of ethics to make enforcement thereof.

Section 39. If the Ombudsmen is of opinion that any violation or failure to comply with the ethical standard is serious or there is a reasonable ground to believe that the proceedings conducted by the responsible person may be unfair, the Ombudsmen may conduct inquiry and disclose the result thereof to the public.

An inquiry and the disclosure of the result thereof to the public under paragraph one shall be in accordance with the regulation as determined by the President of the Ombudsmen which having standard or having security of not lower than the standard or security under section 31.

CHAPTER V

Monitor, Evaluation and Recommendation on an Implementation of the Constitution

Section 40. The Ombudsmen may, in monitoring and evaluating an implementation of the Constitution, request a government agency, State agency, State enterprise or local government organisation to give statement and report on their performance for consideration.

If it appears, after monitoring and evaluating an implementation of the Constitution, to the Ombudsmen that any agency fails to comply with the Constitution in any matter, the Ombudsmen shall prepare and submit the recommendation for an implementation of the Constitution to the person who controls or supervises such government agency, State agency, State enterprise or local government organisation in order to have an order as necessary for each case and such agency shall report its performance to the Ombudsmen for information.

Section 41. The Ombudsmen shall conduct evaluation on an implementation of the Constitution of all government agencies, State agencies, State enterprises or local government organisations annually in accordance with the evaluation rule as determined by the President of the Ombudsmen.

The Ombudsmen shall report the evaluation result to the Council of Ministers, the House of the Representatives and the Senate for information under section 43.

Section 42. In conducting evaluation on an implementation of the Constitution, if the Ombudsmen is of opinion that amendment to the Constitution has to be considered, the President of the Ombudsmen shall, with collective approval of the Ombudsmen, propose the Council of Ministers, the House of the Representatives and the Senate for further proceedings as necessary.

CHAPTER VI

Annual Report

Section 43. The Ombudsmen shall submit its annual report to the Council of Ministers, the House of the Representatives and the Senate within March of each year and one Ombudsman shall state the annual report to the House of Representatives and the Senate himself. Such report shall have at least the following information:

(1) results of inquiries on all matters together with the advises or recommendations given to the government agencies, State agencies, State enterprises or local government organizations;

(2) implementation of the government agencies, State agencies, State enterprises or local government organizations or State officials done or undone in response of the advises or recommendations of the Ombudsmen;

(3) failures to comply with section 15 of the government agencies, State agencies, State enterprises or local government organizations or State officials;

(4) violation of or failure to comply with ethical standard of a person holding political position and government official;

(5) results of monitoring, evaluation and recommendation on an implementation of the Constitution;

(6) hurdles in the execution of duties of the Ombudsmen.

The annual report under paragraph one shall be published in the Government Gazette and shall be disclosed to the public in accordance with the procedure as determined by the president of the Ombudsmen. In determining of this procedure, the President of the Ombudsmen shall determine the measures that may be accessed by the handicapped and old age person.

The Ombudsmen may, if it deems appropriate, make a report on any specific matter to the Council of Ministers, the House of Representatives or the Senate for information if it deems that such matter is urgent or beneficial to the administration of State's affairs.

Section 44. The provisions of section 17 shall apply to the making of report under section 43.

CHAPTER VII

Penalties

Section 45. Whoever violates or fails to comply with section 15 (2) shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht or to both.

Section 46. Whoever fights with or obstructs the carrying out of duties under section 15 (4) shall be liable to imprisonment for a term of not exceeding one year or to a fine of not exceeding twenty thousand Baht or to both.

Section 45. Whoever fails to comply with section 21 shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht or to both.

Transitory Provisions

Section 46. Any act related to the complaint submitted to the Parliamentary Ombudsmen under the Organic Act on Parliamentary Ombudsmen, B.E. 2542

which has been done or has not yet completed shall be deemed to be an implementation under this Organic Act.

Section 47. All laws, rules, regulations, notifications or orders enacted or issued under the provisions of the Organic Act on Parliamentary Ombudsmen, B.E. 2542 shall be continued in force in so far as they are not contrary to or inconsistent with this Organic Act until the enactment or issuance of the laws, rules, regulations, notifications or orders under this Organic Act.

Section 50. The Ombudsmen holding office on the promulgation date of this Organic Act shall be the Ombudsmen under the provisions of this Organic Act and shall be in office until the expiration of the term of office. In this regard, the term of office shall begin on the date the appointment has been made by the King.

Section 51. The Office of the Parliamentary Ombudsmen under the Organic Act on Parliamentary Ombudsmen, B.E. 2542 shall be deemed as the Office of the Ombudsmen temporarily until the law on office of the ombudsmen comes into force.

Countersigned by:

Abhisit Vejjajiva

Prime Minister

Remark:- The reasons for the promulgation of this Organic Act is whereas section 138 of the Constitution of the Kingdom of Thailand requiring the issuance of the Organic Act on Ombudsmen and section 242 establishing the Ombudsmen and requiring the qualifications and prohibitions of the Ombudsmen to be in accordance with the Organic Act on Ombudsmen, it is therefore necessary to issue this Organic Act for the compliance with the provisions of the Constitution.

BIOGRAPHY

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