The Existence of Public Information Commission Related to Public Information Disclosure Principles in Improving Public Services by the State

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Abstract
The free flow of information and ideas is a core part of any thought on democracy and is essential for the successful respect of human rights. It has the potential to cause human rights violations to occur in secret, there is no way to reveal a corrupt and inefficient government, and many other things. Based on this background, this research is based on the formulation of the problem 1) Philosophical Basis of Public Bodies as Public Information Providing Institutions in the Era of Public Information Openness; 2) Existence of the Information Commission as Administrator and Law Enforcer in Public Information Disclosure; 3) Public Entity's Liability Against Disputes Public Information From the Aspects of Administrative Law, Civil Law and Criminal Law. This research is a legal research (legal research). The approach in this research is a statutory, conceptual, and case approach. The conclusions of this study include: Freedom of information is the spirit of democratization that offers freedom, but in this freedom the state can function itself effectively and efficiently without neglecting democratic principles. The effective enactment of the UU KIP in Indonesia starting April 30, 2010 opened a new era of public information disclosure in the country. The enactment of this law is part of the implementation of the spirit of transparency as the fulfillment of citizens' human rights to know public information (right to know) guaranteed by Article 28F of the 1945 Constitution of the Republic of Indonesia.

Keywords: Openness of Public Information; Human Rights; Transparency.

Introduction
The democratic social, national, and state life, freedom of opinion and expression also includes the right to obtain information is a crucial human right needed to uphold justice and truth, promote public welfare, and educate the nation’s life. Information is present in humans all the time, through both printed and electronic media or orally. Information is one of the basic human needs that they need as individuals as community members.
The fulfillment of this human right is regulated in the constitution, namely Article 28F of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945) and 59 Resolution (1) The United Nations General Assembly stated: “Freedom of information is a fundamental human right and a sign of all freedoms which will be the focus of the United Nations”. Based on the provision, it can be understood that information is a form human rights fulfillment that should be fulfilled by the state. This fulfillment is arguably not perfect since many community members are still unaware of their right to obtain information and participate in social and state life.¹

The right to obtain this information is regulated not only in Article 28F of the 1945 Constitution of the Republic of Indonesia (Chapter on Human Rights), but also in Article 19 of the Declaration of Human Rights or also known as the Universal Declaration of Human Rights (UDHR) stating that: “Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers”. As of November 2009, 85 (eighty five) countries already have laws on Freedom of Information.²

The number of regulations related to the right to obtain this information actually shows that this right is one of the rights that every human being has to maintain his existence. This right cannot be reduced or hindered by any body/institution, even the state cannot eliminate one of these rights. This is in accordance with the opinion expressed by John Locke stating that the formation of the political world or state is preceded by the existence of individuals who have natural rights. This state is called State of Nature. This state is State of Liberty instead of State of License.³

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² Dhoho A. Sastro, [et.,al.], Mengenal Undang-Undang Keterbukaan Informasi Publik (LBH Masyarakat dan Yayasan TIFA 2010).[13].

The free flow of information and ideas is a core part of any thinking about democracy and essential for successful respect for human rights. If there is no respect for the right to freedom of expression including the right to seek, receive, and impart information and ideas, then it is impossible to implement the right to vote which has the potential to cause human rights violations to occur in secret, there is no way to disclose corrupt and inefficient government, and many more. The most important think to ensure the application of the doctrine of the free flow of information and ideas is the principle that government bodies hold information not for themselves but on behalf of the public. These bodies hold vast amounts of information and if held in secret, the right to freedom of expression, guaranteed by the constitution, is greatly diminished.

The recognition of the Right to Information which in fact is also a manifestation of Human Rights in Indonesia was initially carried out partially, spread across multiple laws and not yet recognized constitutionally. As a follow-up to Indonesia’s recognition of the right to information as part of human rights, the regulations are governed in the constitution. The provision is put in Article 28F of UUD NRI 1945. Thus, there is no basis that can be used as a basis to refute the theory that the right to information is not part of human rights. On this basis, the country is obliged to provide such guarantees to its citizens through the availability of a more specific legal umbrella governing this matter and other technical provisions. What cannot be forgotten is that the country is obliged to guarantee the availability of public information services to fulfill the public’s need for public information. The provision in UUD NRI 1945 which in fact is staats grund gesetz underlies the legal principle that any public information is open and accessible to every public information user.

The existence of the principle that any public information is open and accessible to every public information user is actually the rationale of UU KIP which also has implications for the regulation of obligations. Public information is open and accessible, with the consequence that public bodies have an obligation to ensure public access to information controlled by public bodies as long as it is not categorized as information excluded/confidential under the Law on the Public Information Disclosure.
If there is a dispute regarding the Public Information Submission between the Public Body and Public Information Applicant and/or Public Information User related to the right to obtain and/or use Public Information based on Regulation of Information Commission Number 1 of 2013 concerning Procedures for Public Information Dispute Settlement which become the Applicant as regulated in Article 1 point 7 of Regulation of Information Commission Number 1 of 2013 and the Respondent is Public Body represented by the Head of the Public Body, PPID Superior, or Official appointed and authorized to make decisions in Information Dispute Settlement at the Information Commission (Vide: Article 1 point 8 Regulation of Information Commission Number 1 of 2013). Based on the description of the background of the problem as described above, this study contains main issues related to the information disclosure principles of public bodies.

**Philosophical Basis of Public Bodies as Public Information Providers in the Era of Public Information Disclosure**

The applicable laws and regulations should always contain the legal norms that public aspires to regarding the direction and purpose of social, national and state life. Laws and regulations covering information disclosure are made to have noble ideals contained as a philosophical foundation adopted by the Indonesian nation. The philosophical basis here is a consideration or reason that can reflect that the laws and regulations must pay attention to the view of life, awareness, and legal ideals which include the spiritual atmosphere and philosophy of the Indonesian nation sourced from Pancasila and the Preamble of UUD NRI 1945.

In the Preamble of UUD NRI 1945, which is the fundamental norm of the state (*staatsfundamentalnorm*)\(^4\) of Indonesia, it can be seen that “Pursuant to which, in order to form a government of the State of Indonesia which shall

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protect the whole people of Indonesia and for the entire homeland of Indonesia, and to advance general prosperity, to develop the nation’s intellectual life, and to contribute to the implementation of world order based on freedom, lasting peace and social justice, therefore”. From the Preamble of UUD NRI 1945 which in fact is the highest legal source of laws and regulations in Indonesia, it can be seen that one of the spirits of the Preamble of UUD NRI 1945 is to create a government that reflects the protection for the public. From this spirit, it can be understood that one of the concretizations of creating a government that provides protection for the public is to create a transparent government. The connectivities between transparent government and creating a system that reflects the protection for the public are:

1. With transparency in government actions, when there is a potential for abuse of authority, the public can take preventive action against that;
2. When there is an abuse of authority, the public can find out about it and take repressive actions, e.g., through lawsuits;
3. From the government’s perspective, when “forced” to do transparency, it will be difficult to abuse authority, thereby reducing the potential for abuse of authority.

The enactment of Law Number 14 of 2008 concerning Information Disclosure, which in fact is the first law that specifically regulates public information disclosure, initially had a background due to reforms in the state government system. Reform also brought some changes in the government system in Indonesia. One of them was marked by the existence of demand for good governance. Regarding the public information disclosure as a manifestation of good governance, it is actually closely related to the administrative law approach through human rights perspective. As described earlier, in the human rights approach, related to the function of administrative law, namely legal protection to the public, which in fact the existence of public information is a legal protection for the public, especially preventive legal protection since through the disclosure of existing information they can find out their rights. By knowing those, it can prevent any violation of the existence of their human rights.
As for public rights, it has juridical consequences for the government as the party burdened with the obligation to provide such information. The information disclosure mentioned includes, for example, information disclosure related to the hearing or meeting disclosure (openbaarheid van vergadering), procedural disclosure (openbaarheid van procedures), and document access disclosure (openbaarheid van register).

Regarding the public information disclosure in the Netherlands, it is formalized in a law, namely Wet Openbaarheid van Bestuur 1991. In this law there is an obligation for the government to provide active and passive information (passieve-en actieve informatieplicht). The passive information obligation is the government’s obligation to provide information when there is a request from citizens (informatie op verzoek), while the active information obligation is the government’s obligation to provide information to citizens on their own initiative (informatie uit eigen beweging). The existence of perspective related to information disclosure as a manifestation of good governance, which in fact is an approach from human rights perspective, should not be used arbitrarily, so there are also regulations related to the use of public information.

The Existence of Information Commission as Organizer and Law Enforcer in Public Information Disclosure

The existence of this information disclosure is considered crucial since it can provide benefits to the state and public. In addition to being related to the fulfillment of basic human rights, this information disclosure is considered to be able to encourage the implementation of an open and accountable government. The implementation of information disclosure is as contained in United Nation Convention Against Corruption (UNCAC), and believed to be the first step in supporting the corruption eradication.

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5 P. de Haan, [et.,al.], Bestuursrechtin De Sociale Rechtsstaat, Deel! (Deventer 1986).[121-122].
7 It should be noted that there are different arrangements between the provisions on public information disclosure and the use of public information.
The central position of The Attorney General’s Office of the Republic of Indonesia in law enforcement in Indonesia as one of the sub-systems in an orderly, integrated, mutually influencing, and complementary unit with other sub-systems in the Criminal Justice System to achieve the goals of law enforcement as well as possible since the law and law enforcement are some of the law enforcement factors that cannot be ignored since if so it will cause the expected law enforcement cannot be achieved. In order to carry out the duties and authorities of the Attorney General’s Office required to be transparent and accountable, it is necessary to carry out the fulfillment of the right to information for the public as regulated in Article 7 paragraph (3) of UU KIP.

This has implications for the Indonesian Attorney General’s Office in carrying out their duties and authorities based on law. This means that the Attorney General’s Office should always side with the law to uphold justice and truth, both repressively in relation to the Integrated Criminal Justice System, preventively in the form of counseling and administration in relation to the actions of the Attorney General’s Office in its efforts to regulate. These law enforcement measures are bound by legal rules, certain procedures and controlled by law.

In an effort to realize legal certainty, legal order, justice, and truth based on law and heeding existing norms, the Indonesian Attorney General’s Office issued the Decree of the Attorney General of the Republic of Indonesia Number: Kep-115/J.A/10/1999 concerning the Organizational Structure and Work Procedure of the Attorney General’s Office of the Republic of Indonesia. The regulation states that counseling or legal information and public relations (PR) should be carried out at the Indonesian Attorney’s Office.

The Attorney General’s Office of the Republic of Indonesia is one of the public bodies that has established technical regulations concerning the implementation of information disclosure. The Indonesian Attorney General’s Office issued the Decree

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9 Marwan Effendy, *Kejaksaan RI, Posisi Dan Fungsinya Dari Perspektif Hukum* (Gramedia Pustaka Utama 2005).[6].

In the pre-reform era, almost all types of information available and managed by the judiciary were closed. The available information was also difficult to access, especially regarding decisions, track records of judges, court service fees, court budgets, and so on. The court at that time was considered to not realize that the court transparency was not only seen from trials open to the public, but also documents related to the judicial process. The narrowing of the meaning of court transparency only at trial reduced the court transparency principle. The court did not understand “open court principle” applicable as a whole since the information regarding this matter was still confidential.\textsuperscript{10} Finally, it can be concluded that there are several reasons that cause difficulties in accessing information in court, which are:

1. Basically, the closure culture is still strong in the judiciary. In such a culture, even open-minded people tend to be afraid to disclose information that should be open to the public;
2. There is an intention by certain officials in court, including judges, to withhold information, either to avoid public scrutiny for their mistakes or negative practices they do, to be able to extort information applicants or for other motives;

\textsuperscript{10} Rifqi S. Assegaf and Josi Katarina, \textit{Membuka Ketertutupan Pengadilan} (Lembaga Kajian dan Advokasi Untuk Independensi Peradilan 2005).[23].
3. There are weaknesses in the laws and regulations that open the interpretation that certain information should not be disclosed to the public.\textsuperscript{11}

In line with this, the importance of transparency is recognized by some judges, especially by the Chairman of the Supreme Court (Bagir Manan). He continuously emphasized the importance of court transparency and asked judges and court officials to uphold transparency. He stressed the importance of transparency and information system since it aimed to build judicial system transparency. In this case, transparency is meaningful not only as a form of public service but also a control system over the judicial system and process. One of the important forms of transparency is the existence of public access to every court verdict or decision, from the point of view of monitoring public access will encourage judges to be careful, quality, and impartial considering that every verdict or decision will become public discourse or scientific observation or public opinion.\textsuperscript{12}

The rapid development of science, information and communication technology and changes in the strategic environment require the bureaucracy and data management of public service institutions to be reformed in order to meet the public needs. As an integrated public institution in the general justice system, the Supreme Court is required to be committed to implementing information disclosure for the public. In response to this, the Supreme Court of the Republic of Indonesia issued the Decree of the Chief Justice of the Supreme Court (SK KMA) Number 114/KMA/SK/VIII/2007 concerning Information Disclosure in court. This indicated that the Supreme Court had thought about providing services to the public regarding information disclosure, this rule was made before UU KIP which obliged every public body to provide information to the public.

After the issuance of UU KIP, the Supreme Court responded by updating the regulations regarding the public information disclosure by issuing the Decree of the Chief Justice of the Supreme Court (SK KMA) Number: 1-144/KMA/SK/I/2011. The blueprint for 2010-2035 judicial amendments also explains that there are 6 (six)

\textsuperscript{11} ibid.
\textsuperscript{12} Bagir Manan, Sistem Peradilan Berwibawa: Suatu Pencarian (Mahkamah Agung RI 2004).[32].
supporting functions, which are: Human Resource Management (HR), Financial Resource Management, Facilities and Infrastructure Management, Information and Technology Management (IT), Judicial Transparency and Supervision Function. Consequently, the law supremacy and clean government supported by the participation of public and/or social institutions to carry out the control function over the implementation of government and development is a supporting factor for the implementation and achievement of bureaucratic reform.\(^{13}\)

Judicial transparency for the Supreme Court is not only the public needs today, but also the needs of all judiciary members. There will be a gradual reinforcement of the judiciary accountability, professionalism, and integrity with the judicial transparency. The Supreme Court as one of the peaks of judicial power and state judiciary has a strategic position in the field of judicial power since in addition to being in charge of 4 (four) judicial environments, it is also management in the administrative, personnel, and financial fields as well as facilities and infrastructure. The “one roof” policy presents responsibilities and challenges since the Supreme Court is required to demonstrate its ability to create a professional, effective, efficient, transparent, and accountable institutional organization.

Various regulations regarding the public information disclosure in court in addition to UU KIP are also regulated in Law Number 25 of 2009 concerning Public Services, the Decree of the Chief Justice of the Supreme Court (SK KMA) Number 114/KMA/SK/VIII/2007 concerning Information Disclosure in court, the Decree of the Chief Justice of the Supreme Court (SK KMA) Number 1-144/KMA/SK/I/2011, the Decree of the Chief Justice of the Supreme Court (SK KMA) Number 026/KMA/SK/II/2012 concerning Judicial Service Standard.

Correctional position as an integral part of the criminal justice system will expand the roles and responsibilities of the directorate general of corrections since previously corrections were only defined as correctional institutions in the last phase

\(^{13}\) Ridwan Mansyur, ‘Keterbukaan Informasi Di Peradilan Dalam Rangka Implementasi Integritas Dan Kepastian Hukum (Information Transparency in The Court in Order to Implement Integrity Implementation and Legal Certainty)’ (2015) IV Jurnal Hukum dan Peradilan.[84].
of the law enforcement process as explained in Article 1 point 1 of Law Number 12 of 1995 concerning Corrections.

This then shifted since it also managed new institutions such as the state detention house institution, the state confiscated house institution, and correctional center that worked from the pre-trial to post-trial stages, where of course these institutions had goals, work power, and organization different from the correctional institution. The public information available at www.ditjenpas.go.id includes the profiles of the Director General of Corrections, Organizational Structure, Legislation, and Performance Reports. The website www.ditjenpas.go.id does not provide public information as mandated in UU KIP, namely other public information announced periodically as mandated in UU KIP, among other things not on the website are summary of financial statements, summary of reports on access to public information, wealth reports for public officials, and summary of the program or activity being carried out. The website www.ditjenpas.go.id does not fully refer to the provisions stipulated in UU KIP. In this section there is only information about brief procedures for information services, a list of wanted people, and annual performance reports.

Additionally, in the official website www.ditjenpas.go.id., the Director General of Corrections also announces public information database through the website www.smslap.ditjenpas.go.id. In general, this website has provided detailed information related to the management of correctional institutions and detention centers in Indonesia, including the number of occupants, number of special inmates, child prisoners, treatment, Correctional Center (Bapas), State Confiscated Objects Storage House (Rupbasan), Human Resources (SDM), Community Guidance of Correctional Center, Budget and Realization, Correctional Data System (SDP), Report on land and building area, and Reports on overstaying in Correctional Institution. It should be noted that the data available on this website are detailed

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information on each regional office (Kanwil) and organizations at the regional level under the Directorate General of Corrections updated daily, monthly, and/or yearly. Broadly speaking, the websites www.ditjenpas.go.id and www.smslap.ditjenpas.go.id do not provide sufficient information regarding the procedure and recapitulation of the fulfillment of prisoners’ rights guaranteed in Law Number 12 of 1995 concerning Corrections, including the remission, assimilation, parole, leave, and other rights.

**Public Body Responsibilities for Public Information Disputes**

Currently, through the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 085/KMA/SK/V/2011 concerning the Establishment of Working Group for Preparation of Supreme Court Regulations concerning Procedures for Settlement of Lawsuits on Decisions of Information Commission at the State Administrative Court and/or District Court, so Supreme Court Regulation Number 2 of 2011 was issued since the decision of the Information Commission is actually not the end of everything, in the sense that it is not a truly final and binding decision. A lawsuit to the court can be regarded as a legal remedy mechanism provided by UU KIP to the disputing parties. Based on Article 47 of UU KIP, a civil lawsuit submitted by the Applicant can be carried out in 2 (two) routes, namely a lawsuit in the General Court (PN) or a lawsuit in the State Administrative Court (PTUN). The difference in the lawsuit route is seen from the status of who is the Defendant. If the Defendant is a State Public Body, then the route provided is through the State Administrative Court (PTUN); on the other hand, if the Defendant is a non-state Public Body, it is through the General Court (PN).

In the event of a decision that has permanent legal force (*inkracht van gewijde*), if the respondent for public information still does not want to provide the information, he may be subjected to criminal sanctions as regulated in Article 52 of KIP.
Conclusions

Freedom of information becomes the spirit of democratization that offers freedom and inherent responsibility. This freedom also gives birth to governability in which the state can function itself effectively and efficiently without compromising the democratic principles. The effective enforcement of UU KIP in Indonesia since April 30, 2010 has opened a new era of public information disclosure in the state. The birth of the law is part of the implementation of the spirit of transparency as a fulfillment of the rights of citizens to know public information guaranteed by Article 28F of the 1945 Constitution of the Republic of Indonesia. However, there are still many public bodies closed and reluctant to disclose their information to the public during the practice. In fact, the experience so far shows that the process of realizing public information disclosure tends to be influenced by the willingness and commitment of the authorities and public information providers.

The Information Commission is contained in Article 1 point 4 in conjunction with Article 23 of UU KIP as independent institution that functions to implement UU KIP and its implementing regulations, stipulate standard technical guidelines for public information services and resolve disputes over public information through mediation and/or adjudication. Information Commission receives, examines, and decides on applications for the settlement of Public Information Disputes through non-litigation Mediation and/or Adjudication submitted by each Public Information Applicant based on the reasons as referred to in the Law. UU KIP mandates that the Information Commission has independence in carrying out its functions. Independence means being free from interference or intervention from other existing state institutions. The Information Commission as State auxiliary body feels the need for this independence in implementing the state ideals in the context of service to the public.
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