

論 文

The Nexus between Public Information Disclosure and Democratization: The Case of Indonesia

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I. Introduction

Indonesian transition to democracy gained its momentum in 1998 following the end of Soeharto regime that has been in power for 32 years. From 1966 to 1998, which was known as *New Order* (or “Orde Baru”) era, Suharto undertook his authoritarian rule by controlling almost every dimension of social and political life, including controlling the flow of information, restraining to freedom of press and freedom of speech, and limiting to freedom of assembly. The practice was very common in many authoritarian regimes that monopolize (and sometime manipulate) information in terms of production, access, and distribution.

When the transition to democracy started, the main focus of democratization was to establish a free and fair election, followed by many structural adjustments in many areas, including economic sectors, bureaucracy and law enforcement, judicial power independence, strengthening the role of parliament and civil society, and decentralization. The other critical aspect which was also successfully implemented was to revoke the role of military in day to day political matters. In society level, the end of Suharto has overcome political and freedom *euphoria*. President B.J. Habibie, the successor of Suharto, promoted freedom by scrapping Law number 11 Year 1966 about Press, and at the same time enacting new Law number 40 Year 1999. The old law had been considered as authoritarian tools to control freedom of press and freedom of speech. The new Law gave more freedom for people to utilize press and mass media to express their opinion and ideas. This new law had revoked government’s role in controlling the flows of information through press and mass media.

Freedom of expression could not be adopted without freedom of information.

One of precondition to establish and consolidate democracy in a transitional country is to provide higher public access to information. However, the willingness to enable social and political environment to enhance public access to information has not been considered as a main priority in most democratization process, including in Indonesia. It took about 10 years after 1998 reformation before a new law related to freedom of information (which focused on public information disclosure) was enacted. The bill had actually been submitted to parliament in 2001. Due to high debate which sometime led to political tension between the parliament and the executive agency, the deliberation process had taken about 8 years before it was passed in 2008 by the name Public Information Disclosure (PID) Law. This was noted as the longest legislation process until that time (VivaNews 2008). The main implication of this new Law is: every public agency must disclose all information available which is considered as public information.

With regard to democratization process, political reform through public information disclosure faces much more constraints in its implementation. Many implementing agencies had ignored to provide instruments as stipulated in the law. For example, after 5 years since the law went into force, only 47.55% of the total public agency has established a special unit called: Information and Documentation Management Officer (*“Pejabat Pengelola Informasi dan Dokumentasi”* or PPID) which was authorized by this PID Law (Directorate of Public Communication 2014).

This article tries to elaborate the implementation of Indonesian PID Law in the context of democracy consolidation. The focus of analysis is placed on the reluctance of public agency to comply with the rule as stipulated in the law, which has a potential to diminish public trust. Such situation leads to endanger the process of consolidation of this young democracy. This article employs the combination of public opinion survey, secondary data analysis, and case study through descriptive qualitative approach.

By exploring the PID Law legislation process and analyzing the case of information dispute between an Indonesian NGO with police headquarters, this article intends to explain the main factors which tend to hamper the implementation of freedom of information, particularly public information disclosure after the 2008 PID Law was adopted.

II. Information Disclosures and Democratization

International Covenant on Civil and Political Right (ICCPR) adopted in 1966 had been accepted as an international norm to adopt freedom of information. Together with *International Covenant on Economic, Social and Cultural Rights* (ICESCR) which was also adopted in 1966, and *Universal Declaration of Human Rights* which was adopted in 1948, ICCPR has been recognized as *International Bill of Human Rights*, which had been ratified by 167 of UN members (United Nations 2014). In the current global circumstances, these three documents (with its annexes and additional protocols) has become a framework for promoting human rights around the world.

Although the global norm of freedom of information has been recognized for more than 40 years, the implementation is still short of expectation, especially when it is related to the information produced and controlled by government. Some established democracies have provided appropriate laws and procedures for public information disclosure, but the debate over the limit of freedom still occurred. Also, the limits of secrecy in running the government are still debatable. For instance, when Julian Assange revealed bunch of secret cables between US Embassies around the world and the State Secretary, still public discourse arises about the minimum limit of public information secrecy versus the maximum disclosure policy as part of “people’s right to know” (Leigh and Harding 2011).

On the other hand, for some transitional countries, the discourse of public information disclosure still focus on how important the information freedom and openness to promote democracy. The main constraint of democratization through transformation (as categorized by Diamond and Linz and Stephan) is the existence of old actors who still tried to take part in the new system. These actors have a strong mindset that handling public information is one of power resource to maximize their political control over civilian aspiration. They still consider society as “collection of people who don’t need to know anything”.

In modern world, global shifting to democratization started in the 1970s and was recognized by Huntington as “the third wave of democratization. It was started by the transition of Portugal in 1974, followed by many countries around the world, from Greece to Spain, Philippines, South Korea, Taiwan,

Chechnya, Poland, Hungary, and even to Benin, Nigeria, Malawi and some African countries (Huntington 1991). However, democratization had been coming late to reach Indonesia. Until the end 1997, many analysts still believed that Indonesia was likely to become the convenient place for the operation of authoritarian regimes for a long time more (Uhlin 1997).

The Asian economic crisis in 1997 had contributed to the rising of movement to shift the regime. The failure of the regime to take solution in order to respond to economic crisis has caused the diversion of crisis to enter the political arena. Actually, before the Asian economic crisis in 1997, Indonesia had been in the phase of pre-transition. That is why, during the transition, it had been easier to adopt new democratic mechanism. It was only about one and half year after the resignation of Suharto, Indonesia had become an electoral democracy (Bunte and Ufen 2009).

In order to explain the transition to democracy, including what has occurred in Indonesia, most scholars agree to utilize *actor-oriented approach*, as can be found in the work of O'Donnell and Schmitter (1986), Przeworski (1986 and 1992), and Huntington (1993). Their theories utilize the concept of procedural democracy as introduced by Robert Dahl as “poliarchy”. In this context, democracy is understood as a collective system of governance which requires at least three conditions, namely: (1) free, fair, and meaningful election to decide every effective position in government; (2) high level inclusive political participation in every selection process of leader and policy; (3) freedom of assembly and freedom to establish association without meaningful barriers (Dahl 1971, 3-20).

These theorists focus on strategy, belief, and elite calculations that lead transition process in critical period. They believe that objective conditions such as economic growth and power of state have direct connection with democratization, but such conditions could not fully explain why democratization succeeded in one point, and sometimes failed in the other point (Kim 1997). According to these theorists, it is necessary to evaluate the strategic choices of actors under circumstances of those conditions and also the interactions between them to explain why democratization succeeded and failed.

In the democratization framework, the terms such as freedom of expression, freedom of information, freedom of association, and free media have been accepted as important part to promoting transparency and accountability. The

focus of these terms is to provide a well-informed society. Alexander Meikle John, one of the prominent philosophers who initiated the ideas of freedom mentioned that: if democracy is understood as government by the people, so the precondition is “informed electorate” (Meiklejohn 1961). To assure that voters have sufficient and appropriate knowledge, so there should not be any burden in the flow of information and ideas.

It has been accepted in political science that there is a reciprocal connection between freedom of information and democracy. On one hand, freedom of information has a positive impact on the promotion of democracy, and vice versa. And the more democratic a political system becomes, the more opportunity is available for people to access information. But, such kind of relationship should not be understood in isolation to one another. Scholars of democratic politics typically do not explore the possibilities of information serving as a motive force or an independent variable. For most researchers, information at best constitutes context rather than a cause, a factor that remain on the sidelines (Bimber 2003, 12).

Some studies imply that freedom of information has played a strategic role in democratic system. For this reason, as an inherent element to democratic consolidation, it is necessary to promote enabling environment to promote access to public information together with establishing minimum democratic instruments (such as free and fair election, freedom of expression, freedom of assembly, enhancing rule of law, adopting decentralization in local government, empowering civil society, and political party reform). As increasing public access to public information will significantly promote transparency and accountability of governance, this had been accepted as main pillar of democratic system [*see* (Gingras 2012)].

There are several reasons to explain the importance of public information disclosure to promote democratic consolidation. Firstly, one of the characteristics of authoritarian regime is controlling the circulation of information. The main assumption is that less public knows about the intention of government’s policies, the easiest the ruling government manipulates public opinion and creates public perception. Secondly, by controlling public information, government officers have wider opportunity to misuse their power, including directing public rights for the elites’ benefit. Public have no intention about what is truly happened “behind the screen” in every public decision making process.

Openness of public information requires availability of the trustworthy information. There is also another danger when public agencies distributes false information, both politically and economically (Morris dan Shin 2002, 1532). Access to public information that is suspicious in its truthfulness will direct political and economic actors to lay on private information or information provided by non-state institutions. For this reason, Morris and Shin noted that when agents have no personal or private information – so the only source of information they have is public information – then greater precision of public information will increases social welfare. However, if actors have access to private information, it is not frequently true that greater precision of public information is desirable. To a certain extent, increased precision of public information could have negative impact to welfare (Morris dan Shin 2002, 1522).

Free access of public information can have impact to minimize corruption in public offices, caused by the lack of transparency and accountability. Politicians and public officials are accountable for their behavior in office, so that they know that public watches everything they do. When the merit system works, they know that they can be removed from office if they misbehave. Then they have an incentive not to misuse their office for private gain. Democratic system is then fundamental in keeping politicians in check. Just as important, however, is transparency. The adoption of freedom of information law has not directly affected the declining corruption rate (Costa 2012). Nevertheless, reducing corruption by adopting freedom of information law has a persistent impact. Study has proven that the greater access to information, the lower the corruption level will be (DiRienzo, et al. 2007).

III. The Enactment of Public Information Disclosure Law

Mendel described a guidance to prepare a strong and adaptable information law, which should cover 9 features, i.e. (1) maximum disclosure; (2) obligation to publish; (3) promotion of open government; (4) limited scope of exception; (5) process to facilitate access; (6) costs; (7) open meetings; (8) disclosure takes precedence; (9) protection to whistleblower (Mendel 2003, 25-36). Every country usually tries to adopt these principles in every information law they provides, but some difference can be identified, especially in its implementation.

In order to enforce the information laws, there are three distinct models

adopted, namely by court and by particular agency (such as information commission). Another model is to mix the enforcement by information commission and backed up by court. The United States' Freedom of Information Act which was originally passed in 1996 and had been amended four times adopts "by court enforcement" model. It means any disputes regarding the law will be brought to the court for final decision. UK's Freedom of Information Acts (FOIA), which was enacted in 2000, adopts the "by information commission" model. While Canada's Access to Information Laws (ATIA), which was passed in 1982, adopts the mix model (Holsen 2007). After several years of deliberation, Indonesian PID Law ended with adopting the Canadian model for enforcement mechanism, which is to mix the establishment of a particular agency (named Information Commission) and backed up by general court.

The initiation of Indonesian PID Law was started by prolonged debate, both among politicians, and between the parliament and the government (the executive body). The reluctance of politicians and public officers to move out from the "comfort zone" of monopolized public information could be the reason that explains the long process. Also, it had been very difficult to discharge the "culture of secrecy" from most of politicians and government officers. Some experts, including Banisar, identified that secrecy in government affairs lead to misuse of authority, affected bad governance, and contributed to the increasing of corruption (Banisar 2007).

There were several issues that ignited the debate, ranging from the term of the law, the definition of public agency, the establishment of Information Commission, and sanction (VivaNews 2008). Government rejected the term "*Freedom of Obtaining Public Information Law*" as proposed by the parliament, because the word "freedom" had a liberal nuance. Government suggested using the name: "*Citizen Rights to Obtain Information Law*" which also rejected by the parliament, because it sounded to regulate citizen rather than a public agencies. Finally, both sides agree to use the term "disclosure" which is considered as neutral term.

In the debate about definition of public agency, again difference occurred about the status of state owned enterprises. The parliament demanded that it should be considered as public agency, since it uses public funds and, to some extent, public authority in its operation. But government argued that too much control of state owned enterprise could reduce its competitiveness. As a

compromise, state owned enterprise was excluded from the definition of public agency but specific article dedicated to regulate it.

Indonesian PID Law brings the mission to increase public access to information produced by government bodies, institution, and agencies in every administrative level. The aims of the law are stipulated as follows:¹

- (1) To assure citizen rights to know the plan, the program, and the process of public policy decision making, including its justification.
- (2) To promote citizen's participation in public policy decision making.
- (3) To enhance people engagement in public policy making and good public agencies governance;
- (4) To adopt good government implementation: transparency, effectiveness, efficiency, accountability, and responsibility.
- (5) To know the reason of public policy that affects to the lives of many people.
- (6) To promote the development of science and educate the nation.
- (7) To enhance service and management of public information within public agencies in order to produce better quality information service.

These objectives imply the commitment to achieve open and responsive governance through the application of open information at public agencies. The law also mentions about the category of information which one could choose to disclose or not. There are three kinds of public information which should be considered as accessible to public, namely: (1) regular information that should be provided regularly at least every 6 months, and should be disseminated using available user-friendly tools; (2) information that should be announced immediately, because of its importance to public safety (for instance: information about the identified upcoming natural disaster, or information about epidemics); and (3) information that should be ready at any time and should be released to public by request, including policies and decision making processes.²

With regard to non-disclosure information, PID Law stated that public agencies are allowed to reject any request to these five categories of information, namely: (1) information which could jeopardize national security, including threat to national sovereignty, unity and safety of the nations; (2) information to protect business from unfair practices; (3) information related to personal rights; (4) information related to professional secrecy; (5) information which has not controlled or documented by public agency.³

IV. The Implementation of PID Law

In order to measure public perception regarding implementation of PID Law, the author conducted an online survey involving 61 well-informed selected respondents, from 17 of 34 Indonesian provinces, including 2 respondents living abroad. The survey was held on August 5-20, 2014 using a questionnaire as interview guidance. The respondent backgrounds are university professor, teacher, and researcher (39%), public servant (23%), business sector and entrepreneur (12%), journalist and NGO activist (10%), university student and private company staff (each 7%), and others (3%). They are well educated, updated to information, and depend on information, especially public information, in their daily activities (98%). The selection of respondent was based on their role in society (qualitative approach) rather than as individual perception (quantitative approach). Because the respondents are well-informed category of society, they should be seen as opinion leader in certain level.

The interview attempted to map respondents' opinion about freedom of information and public information issues, including: current situation of freedom of information, the implementation of public information disclosure, and information dispute between ICW and police headquarter which the present author takes as case study in this article. From initial opinion exercise, a majority of the respondent understand about the public information issues even though they have not been reached by government campaign regarding the law,

Table 1

Comparison to Public Knowledge and Public Information Disclosure (PID) Law, and Perception about the Intensity of Freedom of Information Campaign (N=61)

Knowledge about the existence of PID Law	%	%	Campaign about PID Law by Government
Know very much about it	19.7%	4.9%	Very high intensity
Know, but not too detail	44.3%	11.5%	Quite intensive, mainstream media
Know, but don't understand	9.8%	57.4%	Less intensive, very rare
Not know at all	26.2%	26.2%	Never heard of any campaign about it

Source: Primary data, survey conducted on August 1-20, 2014. (Question No. 13 and 17).

as indicated in the table table 1.

In general, 73.8% of respondent said that they know (with different level of knowledge) that PID Law came into force while there are about 26.2% of total respondents do not have any knowledge about the law. The respondent recognize that their knowledge about the law came from different sources other than government efforts (through public campaign), as the above data figured out that 57.4% of respondent assumed that public campaign had been very rare and 26.2% of respondent said they had never heard about it.

In fact, the budget allocation to support Information Commission operation in general, particularly to support public awareness, is very limited. In 2013, total budget allocated for “educating public and rising awareness to public information issues” has been IDR 1,783,065,000 (approximately US\$ 187,000), and decreased to IDR 1,376,200,000 (approximately US\$ 145,000) in 2014, to cover many activities including public dialogue, mass media advertising, media gathering, publication of newsletter, printing and publication of handbooks and pocket manual, and many more.⁴

The impact is, even though a majority of respondents know about the law but their knowledge about keys aspect of the law related to support access to public information, relatively lower. The table below indicates such a situation.

The public is expected to be aware of all three variables mentioned above (the PPID, the Information Commission, and information dispute procedures),

Table 2
The knowledge of PID Law and mechanisms followed as consequences of the law (N=61)

Respondent Opinion	The Existence of PPID^{*)}	Function of Information Commission	Procedure of information dispute
Know very much	13.1%	6.6%	8.2%
Know, but not detail	22.95%	31.1%	19.7%
Less knowledge	22.95%	21.3%	21.3%
Not know at all	41.0%	41.0%	50.8%

Source: Primary data, survey conducted on August 1-20, 2014. (Question No. 14, 15 and 16).

^{*)} PPID = *Pejabat Pengelola Informatika dan Dokumentasi* (Information and Documentation Management Officer)

because of its importance to encourage citizen access. The formal procedure to obtain public information is by sending a request to a particular PPID which should exist in every public agency. The PPID must respond to the request, either granted or rejected, not exceeding 10 days. If the request is rejected, the requestor can submit a “letter of objection” with additional explanation to the head of public agency, and should be responded within no more than 30 days after the letter is received. If the head of public agency still decides that such information is not available for disclosure, within 14 days the requestor can file a lawsuit to Information Commission as “information dispute case”.⁵

Upon receiving information dispute case, within 14 days Information Commission must finalize the initial analysis to the legal standing of the case, and decide whether the case is appropriate to judge or not. When the Information Commission concluded that the case is available, the process should be started in no more than 21 days. There are two steps of finding the solution, namely: the mediation process and the adjudication hearing. The mediation should be finalized in no more than 14 days, and the adjudication hearing must be finalized after 40 days.⁶

In total, it may take 153 working days (about 7.5 months) for maximum overall procedure to request public information, including the deliberation of information dispute in the Information Commission. If information dispute through general court is included, the process might take 1 year. That is why some public agencies tend to “buy time” during the process, impacted to the increasing of the number of information dispute cases handled by Information Commission. The entry point of this overall procedure is the existence of PPID in every public agency because this is where the process of requesting public information should be started.

Unfortunately, data showed that public agencies compliance to establish PPID, especially in local government, was relatively low. As figured in the table below, up to May 2014 there were 330 PPID out of 694 public agencies or only 47.55% of total public agency has been appointed to PPID.

There are three factors to explain the low compliance of local government in implementing the PPID. *First*, it is caused by decentralization policy. Since the policy was adopted in 1999, local government had been very independent to national government. National ministry had very loose relations with local government, except for Ministry of Home Affairs and Ministry of Finance.

Table 3
Recapitulation of Information and Documentation Management Officer
(Pejabat Pengelola Informasi dan Dokumentasi or PPID) in the Government Bodies

No.	Agencies	Amount	Have appointed PPID	%
1.	Ministry	34	34	100%
2.	State Agency / Ministry Level Agency / LNS / LPP ^{*)}	129	41	31.78%
3.	Provincial Government	34	29	85.29%
4.	Municipalities	399	167	41.85%
5.	Cities	98	59	60.20%
Total		694	330	47.55%

Source: Directorate of Public Communication, Ministry of Communication and Information Republic of Indonesia, May 26, 2014

Note: ^{*)} LNS = *Lembaga Non Struktural* (Non-Structural Agencies);
LPP = *Lembaga Penyiaran Publik* (Public Broadcasting Agency)

Secondly, the PPID is non-echelon position, which means has no impact to personnel bureaucracy career. Government staffs consider position as PPID more like soft “punishment” rather than sidestep to promotion. *Thirdly*, establishment of PPID mostly depends on the political attitude of incumbent head of municipalities (*Bupati*) or Mayor. While the head of local government is currently chosen through direct election, the importance of political approach either through civil society and media or politicians who are sitting in local parliament become necessary to encourage the establishment of PPID.

National public agencies, particularly ministries, comply with public information disclosure policy adaptively. Besides, following the requirement to establish the PPID, they are also more responsive to answer public request, as can be seen in the data from 7 ministries below.

The author requested data using the mechanism of public information disclosure. Although all 34 national ministries have established specific units for handling public request to designated information, only 7 ministries responded to the author’s request through online procedure. Actually, all 34 ministries declare the mechanism to request data clearly through their websites, but they still need the presence of requestor in their office. They can send the

Table 4
Ministries' Response to Public Information Request in 2011-2013

Ministry	2011				2012				2013			
	Total Request	Granted ^o	Rejected	Average (days)	Total Request	Granted ^o	Rejected	Average (days)	Total Request	Granted ^o	Rejected	Average (days)
Finance	71	60	11	11	200	184	16	2.74	52	30	21	5.3
Industry	157	152	5	8	5451	5450	1	3.425	1904	1904	0	2.1
Agriculture	46	43	3	14.4	194	191	3	2.55	177	146	31	- ^{a)}
Public Works	50	41	1	7.8	137	133	4	4.6	189	134	45	3.5
Education and Culture	162	149	13	1.25 ^{c)}	346	335	11	2.3 ^{b)}	- ^{a)}	- ^{a)}	- ^{a)}	- ^{a)}
Social Affairs	- ^{a)}	- ^{a)}	- ^{a)}	- ^{a)}	- ^{a)}	- ^{a)}	- ^{a)}	- ^{a)}	68	48	20	5.8
Information and Communication	723	713	10	- ^{d)}	511	502	9	- ^{d)}	345	329	16	- ^{d)}

Source: Data compilation from individual ministries, 2014.

^{o)} Including partially granted

^{a)} No data

^{b)} Actually 55 hours and 8 minutes

^{c)} Actually 30 hours and 31 minutes ^{d)} Data provided in total hours, need to recalculate

data through mail or e-mail, but the request should be applied by paper. Considering that offices of all national ministries are situated in the capital city of Jakarta, and many people reside in remote area (for example, it takes about 5 hours by plane to reach Jakarta from Papua) this policy should be considered to be enhanced.

The time to process the public request and the number of granted request indicate the commitment of public agencies to be more transparent and responsive. Over the course of time, many ministries improved their information openness policy. For example, in 2011 Ministry of Public Works need about 7.8 days in average to process the information request, but in 2012 it improves to 4.5 days, and become 3.5 days in 2013. In the case of information request, some ministries show significant increase in 2012 (one year after the PID Laws was enacted), which indicates that public concern to this new policy has increased significantly.

Despite the local government reluctance, public opinion looks more optimistic that there has been a positive impact of the PID Law. Public agency starts to become more open and transparent by adjusting their information

handling mechanism to be more accessible. And yet, only 6.6% of respondents agree that PID Law has very significant impact to the running of public agencies. It indicates that the adoption of the law should be followed by high commitment and consistency among public agency staffs.

Table 5
Public Perception on the Impact of PID Law to the Public Agencies Openness
(N=61)

Perception on the Impact of PID Law to Openness	Percentage
Very significant impact, public agencies become more open, transparent, and accountable	6.6%
Has impact, public agencies start to adjust with the PID Law requirement	39.3%
Less impact, some public agencies (particularly local government level) is reluctant to open the information	32.8%
Almost no impact, public agencies still restrict to open information	16.4%
No opinion	4.9%

Source: Primary data, survey conducted on August 1-19, 2014. (Question No. 18).

The successfulness of PID law implementation requires the existence of proactive citizens to claim their rights to know, and at the strong political will of public agency to fulfill people's right. Due to the increase of information flows promoted by the increasing use of telecommunication equipment such as cellphone and internet, Indonesian people become easy to access information. As a consequence, they become more aware of ways to claim their rights. But on the other side, some government agencies, particularly government officers still lack political will to act transparently. The next part of this article attempts to describe an information dispute between a well-known Indonesian NGO named Indonesian Corruption Watch (ICW) versus Police headquarters (hereinafter referred to as ICW and Police HQ) which lead to a deadlock situation.

V. Case Study: Information Disputes between Indonesian NGO and National Police Headquarters

Indonesia adopted a new Anti-Money Laundering Law in 2002. One of its follow up was the establishment of an independent agency called *Indonesian Financial Transaction Reports and Analysis Center* or INTRAC (Indonesian: PPATK or *Pusat Pelaporan dan Analisis Transaksi Keuangan*). The main duty of INTRAC is to monitor the inter-banking financial flows in order to detect the utilization of banking system for money laundering. INTRAC sends report analysis to the law enforcement agencies only, with “secret” status.

In July 2005, there was rumor that INTRAC detected 15 police officers holding suspicious bank account with financial activities beyond their financial profiling. It was most probably that the owners were involved in illicit transaction (Indonesian Corruption Watch 2005). The rumors triggered public debate about the clash of interest and the capability of Police HQ to maintain independencies when its high rank officers were accused of crime. Because the status of the report was “classified”, no public access available to know the truth. In late June 2010, TEMPO News Magazine courageously published a special edition heading: “Overweight Piggybank Account of Police Officer”. Quoting anonymous sources, the magazine mentioned that 23 police officers holding the *suspicious* bank account. The source also confirmed that INTRAC had detected it since 2005 and had sent the report to police headquarter but no further follow up (Tempo Online 2010).⁷

Tempo exposed 6 of them, just to show the huge amount their financial transaction, as describe in the table below.

All copies of this TEMPO edition “disappeared” from vendors and newsstands in the day of issuance. Many media reported that several people (some of them wearing police uniform) had waiting in front of kiosk and newsstand in the early morning and bought all copies before they were sold to public (Detik News 2010). Although the official statement of Police HQ in the afternoon had denied instructing such activities (Republika 2010), public started to point out that Police HQ tried to prevent public access to this critical information. In the following day, instead of responding to the public question regarding the issue, police headquarters threatened to sue TEMPO (The Jakarta Post 2010).

Table 6

Six police officers who were suspected to be involved in unusual financial transactions

Name and Position	Accused	Comment
Mathius Salempang (rank: Inspector General) <i>Head of East Kalimantan Provincial Police</i>	Owned bank account amounted to IDR 2,088,000,000 (about US\$ 220,000), but unclear source of money. On July 29, 2005, the account was closed. He moved the money to another bank account with no clear identity of the owner. Two days later, the money was moved to his personal bank Time Deposit.	"I just know it from you", Gen. Salempang told reporter on June 24, 2010.
Sylvanus Yulian Wenas (rank: Inspector General) <i>Head of Police Mobile Brigade (an elite unit)</i>	On July 25, 2005 and August 9, 2005, the money amounted of IDR 10,007,939,259 (about US\$ 1,050,000) detected had been transferred from his personal bank account to someone who claimed to be the executive director of a private company.	"The money does not belong to me", Gen. Wenas on June 24, 2010.
Budi Gunawan (rank: Inspector General) <i>Head of Internal Affairs Unit</i>	His financial activities detected had been beyond his salary profile. Together with his son, they opened bank accounts, put IDR 29 billion (about US\$ 3 millions) and IDR 25 billion (about US\$ 2.6 million) in.	"The news is absolutely not true", Gen. Gunawan on June 25, 2010.
Badrodin Haiti (rank: Inspector General) <i>Head of Police Division to Laws Fostering</i>	An unidentified third party bought a life insurance for him, amounted to IDR 1.1 billion (about US\$ 115,000). He withdrew IDR 700 million (about US\$ 74,000). There was also incoming transfer to his account every month regularly from unidentified source.	"That is the authority of director of criminal investigation to explain", Gen. Haiti on June 24, 2010.
Susno Duadji (rank: Commissioner General) <i>Former Head of Criminal Investigation Division</i>	Received money transferred to his bank account from an advocate and also from a businessman. Total amount was IDR 3.97 billion (about US\$ 418,000).	"We haven't talked about that suspicious transaction", Gen. Duadji lawyer said on June 24, 2010
Bambang Suparno (rank: Inspector General) <i>Instructor at the Police High Officers Training Center</i>	During January 2006 to August 2007, he received money transferred to his bank account amounted to IDR 11.4 billion (about US\$ 1.2 million). He withdrew IDR 3 billion (about US\$ 315,000) in November 2006.	"No problem with those transactions. It was occurred on my Aceh tour of duty", Gen. Suparno said on June 24, 2010.

Source: Tempo Online, <http://www.tempo.co/read/news/2010/06/29/063259301/Inilah-Polisi-yang-Disebut-Memiliki-Rekening-Gendut> (accessed on July 25, 2014)

Police inspector general is the third highest ranking officer in the police agency, marked with 2 stars (of maximum 4 stars). As a comparison, in 2013 the highest base salary for police inspector general was IDR 4,725,000 (about US\$ 500) per month. If the officers held additional position (for example commanding a unit or leading a task force) the monthly salary could reach about IDR 15 to IDR 20 million (about US\$ 1,600 to US\$ 2,100).

Request for Information and Disputes

Public voices demanding Police HQ to explain the issue were rising up. However, Police HQ alleged that TEMPO had violated the Press Laws and secrecy of information principles which is also protected by the laws. The Indonesian Corruption Watch (ICW) said that by accusing TEMPO with those laws means that Police HQ admitted the truth of the information reported. Otherwise, ICW argued, if the information was wrong, police should have used *defamation crime* to TEMPO. By that interpretation, ICW concluded that TEMPO had reported a true story. ICW filed corruption case to Indonesian Anti-Corruption Commission to investigate the police officers as mentioned by TEMPO for money laundering, misused of authority, and corruption (Info Korupsi 2010).

Police HQ admitted that INTRAC reports was existing, but it could not be opened to public due to classified status. In order to satisfy public demand, Police HQ decided to investigate 23 officers as mentioned in the report. On July 23, 2010, police declared that (Hukum Online 2013):

- 17 bank accounts were clean (no indication of crime).
- 2 bank accounts were suspected possible misuse for money laundering and the appeals were sent to criminal investigation.
- 2 others accounts were waiting for further clearance.
- 1 account temporarily unable to examine, the owner was running for local election.
- 1 other account decided unable to clarify, the owner had passed away.

This announcement was questionable because of no clear information regarding the owner of the account, and public had no access to find out how the investigation was conducted. It was difficult to accept that Police HQ will seriously investigate their high ranking officers, especially when those officers hold influential position in the agency. On August 2, 2010 ICW requested Police

HQ to reveal the identity of the 17 officers who had been clarified as “clean”. The PPID of Police HQ replied to ICW on August 4, 2010 that they were not allowed by the law to open the information. ICW sent the second request directly to Head of National Police Agency with additional argumentation. Unfortunately, there was no response until 2 months passed.

ICW had followed the mechanism to obtain information. First, they sent request. When the agency rejected to grant it, then ICW sent the second request with additional explanation. After waiting for several days without proper response, on October 21, 2010 ICW filed an information dispute lawsuit to Central Information Commission. The adjudication hearing in the commission started on December 1, 2010 (Viva News Online 2010).

Both ICW and Police HQ tested argumentations to support their standpoint. Police HQ based their refusal to disclose the information on the “principles of exemption” as stated in PID Laws. Article 17 point h number (3) of Chapter V stated that public information should be exempted to disclose if it *contains personal secret, including: personal financial statement, asset, income, and bank account*. Police also used Article 6 verse (3) point c, which stated: “*public agency could not release the public information if the information is related to personal rights*”⁸. Also, another article of Anti-Money Laundering Law stated that public officer including INTRAC staffs, investigators, public attorney, judges, or every party who hold the documents related to anti-money laundering laws are obliged to keep the content of the documents confidentiality, except for law enforcement process.⁹

On the contrary, ICW argued that both of those articles of PID Laws could not be applied if the person holds position as public officer. Article 18 verses (2) of PID Laws stated that this exemption might be dismissed if: “*...the disclosure is related to personal position in public offices*”.¹⁰ Adrianus Meliala (a well-known crime scientist in Indonesia) who invited to be heard as expert, agreed to this opinion.¹¹ Regarding to classified status of INTRAC report, ICW argued that Police HQ had held the investigation and had announced the 17’s account as “clean”. It meant releasing the information would not endanger any investigations, because the investigation was over.

After deliberating rules and expert opinions, on February 8, 2011 Information Commission gave a verdict as follows:¹²

- (1) Admit ICW’s entire request to this case.

- (2) Information regarding details of bank account owned by 17 police officers who had been stated as “clean” by the police headquarter on July 23, 2010 was open and non-restricted.
- (3) Calls off the decision of police headquarter that rejected the request of ICW (on August 4, 2010).
- (4) Instructing police headquarter to release the information to ICW by no more than 17 working days after the verdict.

The Information Commission’s verdict considered as a big move in the politics of public information disclosure in Indonesia. Before, some individual who held position in public agency could defend their secrecy using the “*exemption principle*” in the PID Laws. This case has shown that for some extent, there was a possibility to implement the principle called: “*exemption over exemption*”.

Lack of Political Will

Unfortunately, Police HQ did not agree with the verdict. On March 1, 2011, police appealed to The State Administrative Court. But during the hearing process, complex issues related to the authority of The Court to judge the case arose. PID Laws stated that if the disputing parties do not agree with Information Commission verdict, they can appeal to Administrative Court. On the other hand, the laws about Administrative Court stated that its authority is limited to judge the dispute between *individual* versus *state or public institutions*. In this case, one public institution (police headquarter) challenged another public institution (Information Commission) decision, which was beyond The Court’s authority.

After several hearing, Police HQ unilaterally argued that Administrative Court did not have enough legal authority to judge the dispute. Hence, on June 7, 2010, Police HQ decided to withdraw from the hearing, and cancel the appeal. But at the same time, they still had no intention to release the information to ICW. Police HQ kept on standing opinion that if the information requested was released, Police HQ had violated the law regarding the protection of individual rights.

Implication of the Case

This case showed that there are at least three critical issues in order to

implement the public information disclosure in Indonesia. *First*, full discretion of public information holder still plays important role in disclosing the information. There is no mechanism to force any public agencies to open their information even though the legal decision has decided so. *Second*, the conflicts among regulations require interpretation, which is sometimes confusing. From legal perspective, information issues might be related to many areas, some of them are Criminal Code, Banking Law, and Intelligence Law. *Thirdly*, Information Commission has the authority to make a decision but without executive power to force it.

In practice, there are three possible types of public agency obedience to the verdict of Information Commission, namely: (1) obey the verdict; (2) contest the verdict by appealing to State Administrative Court; and (3) disobey the verdict. Most of the conflicting parties obeyed the verdict, but some public agencies had tried to challenge the verdict.¹³ Police HQ refusal is the only case noted so far.

The Police HQ refusal to open the information requested by ICW backed by a court decision had brought negative impact on the politics of information freedom in Indonesia, and also has tend to diminish public trust to police agency. On one hand, other public agencies could also sometimes decided to keep their critical information undisclosed, simply just overruled the Information Commission decision or even court decision. On the other hand, this refusal also tends to worsen public image about Police HQ which is assumed to cover something wrong in their office. For the last few years, Indonesian Anti-Corruption Commission assessed police agency as one of top state agency with very low integrity (Kompas 2009).

VI. Analysis: Disclosing Information, Consolidating Democracy

It has been very common in many transitional countries that bureaucracy sometimes become an obstacle in the transition process. It is because they had been enjoying many preferences during the authoritarian regimes, and they wanted to protect these privileges. That could be one argument to explain why the drafting of PID Law in 2001 was started by parliament initiatives, not through executive drafting.¹⁴ The 1999 general election resulted in the emergence of new and fresh politicians with idealistic views on democracy. In the 1999-2004, House of Representatives enacted a series of progressive laws.

It includes: Law Number 26/2000 about Human Rights Court, Law Number 15/2002 about Prevention of Money Laundering Crime, Law Number 30/2002 about Establishment of Anti-Corruption Commission, and Law Number 24/2003 about Constitutional Court, just to mention some of them.¹⁵

After the PID Law entered into force in 2010, the politics and governance landscape had changed ever since. In the beginning, many public agencies found it difficult to comply with the law. Most of public agency rejected public request to disclose “critical” information, such as financial report, budget plan, tender, or annual planning documents. Public started to utilize the legal procedure. After Information Commission instructed to grant most of the public request, then public agencies started to adjust to new culture of freedom of information.

According to Central Information Commission data, in 2010 they had filed 76 information dispute cases. In 2011, the numbers of dispute had been increasing significantly to 419 cases, increased by 450% (Central Information Commission 2014). Such trend implied that more people recognize the new procedure, while at the same time most of public agencies were still restrictive. Subsequently, in the following years the number of cases slightly reduced to 323 cases (in 2012) and 365 cases (in 2013). It may be argued that consistency to fulfill public request to particular public information has impacted on the installation of new culture of openness, transparency, and accountability in many level of public agencies. State apparatus as well as public bureaucrats become more familiar with delivering information, uplift secrecy, and reduced monopoly over public information.

The critical challenge in this implementation of freedom of information, particularly to public information openness, is the political will of particular public agency. In many public agencies, there are sometimes “politics in works” operate. The problem will become more serious when it occurred in “strong agencies”, such as police agency as explained in the case study. The absence of institutional framework to control any agencies could jeopardize the whole building of democratic consolidation.

As a result, the construction of democratization building in Indonesia is still questionable for the long term. Although many formal procedures have been established to secure the work of democracy, without opening the window for public to involve will reduce public trust. In the case mentioned above, public

expected that those officers should be in question for their future career. On the contrary, many of them enjoy bright career promotion within police agency tour of duty. For instance, General Badrodin Haiti, who had been suspected in TEMPO report before, was promoted as Vice Chairman of National Police Agency on February 2014 (Tempo Online 2014). This is the second highest position in the whole Indonesian Police structure.

VII. Conclusion

Indonesian effort to adopt wider access to freedom of information has passed through a long and winding road. Following the transition from authoritarian regime to democracy in 1998, the freedom of information approach started by enabling the political environment by adopting the new law directly related to public information disclosure. The serpentine debate during the legislation process had taken about 8 year, noted as the longest process in Indonesian law making deliberation until 2010 when the law finally enacted.

As basic foundation to create a more adaptive social and political environment to promote freedom of information, the enactment of the law requires enforcement as important next stages. In Indonesia process of democracy consolidation faces more complex situation to enforce the PID law, ranging from the dissemination to the reluctance of particular agency to obey. There is a specific institution to empower the implementation of the law, namely Information Commission. Unfortunately, this commission provided with much authority lacks executive power to enforce its decision. The analysis in this article shows that public agencies are suggested to obey the mechanism to disclose any public information under their control, but there has been no clear mechanism to enforce them to obey it. This situation tends to weaken the consolidation process of democracy. People may lose their trust in the ability of government in taking appropriate action to coordinate different agencies.

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End Notes:

- 1 See Indonesian Public Information Disclosure Law can be downloaded from website of Office of Cabinet Secretariat: http://sipuu.setkab.go.id/buka_puu.php?id_puu=16132&file=UU%2014%20Tahun%202008.pdf. Article 3 describe about the mission statement of the law.
- 2 See Chapter IV of Indonesian Public Information Disclosure Law.
- 3 See Article 6 of Indonesian Public Information Disclosure Law.
- 4 See the Annual Report, Annual Budget Plan, Annual Plan and Program of Central Information Commission, can be accessed through: <http://www.komisiinformasi.go.id/category/view/laporan>
- 5 See Central Information Commission Regulation Number 1, year 2010 regarding to: Standard of Procedure (SOP) of Public Information, <http://www.komisiinformasi.go.id/regulasi/view/peraturan-komisi-informasi-no-1-tahun-2010>
- 6 See Central Information Commission Regulation Number 2, year 2010 regarding to: Procedure of Information Dispute Case, <http://www.komisiinformasi.go.id/regulasi/view/peraturan-komisi-informasi-nomor-2-tahun-2010>
- 7 In 2012, INTRAC explained that they regularly submitted report to police about many suspicious transactions, including those involving high officers in police agency. During 2003 until 2011, there were about 1.800 suspicious accounts. In 2012, it reached 83,435 accounts. See <http://www.rmol.co/read/2012/01/17/52196/Polri-Tetap-Ogah-Ungkapkan-Rekening-Gendut-Jenderal->
- 8 See Indonesian Public Information Disclosure law, *op. cit.*
- 9 See Indonesian Anti-Money Laundering Act, Law Number 15 year 2002 (had been amended with Laws Number 25 year 2003), Article 10A. The document can be downloaded from official website of Indonesian Cabinet Secretariat: http://sipuu.setkab.go.id/buka_puu.php?id_puu=7313&file=UU0252003.pdf
- 10 See, Indonesian Public Information Disclosure Law, *op. cit.*
- 11 For the explanation of AdrianusMeliala, see the verdict Number 002/X/KIP-PS-A/2010 on the case of Police Headquarter versus Indonesian Corruption Watch; the document can be downloaded from Central Information Commission Official Website at: http://www.komisiinformasi.go.id/daftarputusan/download/file/Putusan_ICW-Polri1.pdf
- 12 See, *Ibid.*
- 13 The Indonesian Supreme Court had issued decree Number 2 year 2011 granted authority to the administrative court to handle dispute.
- 14 In Indonesian legislation system, there are two sources of drafting the bill to become law. First, the executive drafting (in which related the government agency prepare the proposal to the parliament), and second one is the parliament initiatives (in which the house of representative prepare the proposal by particular mechanism).
- 15 Complete collection of official copy of Indonesians laws and regulations can be accessed through Ministry of Laws, Regulations, and Human Rights at: <http://ditjenpp.kemenkumham.go.id/kerja/lntabel.php>

Abstract

The Nexus between Public Information Disclosure and Democratization: The Case of Indonesia

Ishaq RAHMAN

Indonesia has adopted the Public Information Disclosure (PID) Law in 2008, which intends to promote higher public access to any information produced by public agency. This article attempts to explore the current status of its implementation, challenges, and how much it has contributed to the development of democracy consolidation. The author conducted qualitative descriptive analysis to several data, including secondary data, case study, and public opinion survey targeted to well-informed respondents. PID Law has faced many obstacles since its inception during legislation process to its implementation. Government agencies as well state apparatus need to shift their mindset from culture of secrecy to the new norm of openness. On one hand, public demand to adopt more transparency and accountability in governance has risen up. But on the other hand, some public agencies officers attempted to cover critical information that is considered to endanger the institutions.

Keywords:

public information disclosure, democratization, freedom of information