

The Public Information Disclosure Act: The Indonesian Experience

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Indonesia has come a long way. From an authoritarian regime to a democratic state; from a centralized system to a decentralized system; and from the oppressive Anti-Subversion Law of 1963 to the Public Information Disclosure Act of 2008. For 32 years we were under the authoritarian rule of one man, President Soeharto. Since Soeharto fell from power in 1998, we have had four Presidents with the 5th, President Joko Widodo, sworn in only two months ago.

For the past 16 years, we have strived to build a democracy and create a new history. It has been challenging and may not even become any easier but we are at the cusp of a new era. President JokoWi, as he is popularly known, represents a true break from the past being a leader not from the traditional elites; with a leadership style which is personable, firm but relaxed; and a management style which emphasizes participation, transparency and accountability. These qualities are what has brought him this far. His success as a mayor of Surakarta with a population of half a million and to Governor of Jakarta, the tumultuous capital of Indonesia with its 10 million plus people, was due to his down-to-earth, problem-solving approach.

President JokoWi understands the importance of public information disclosure. Both as Mayor of Surakarta and Governor of Jakarta, for example, he displayed his local government budget for public scrutiny. Unfortunately, not all in government are as forth right as he is and the Disclosure of Public Information Law of 2008 has been put in place to ensure that JokoWi's openness and willingness to be held accountable would become the norm, not the exception.

The Beginnings

Civil society organizations had been advocating for the right to information since the Soeharto era, towards the end of the 1980s. This was a time when the Anti Subversion Law No.11/PNPS/1963 was still in force and allowed no space for questioning, criticizing, much less undermining, the State's authority. Instead it allowed for abuse of power and corruption.

In 1988, WALHI, an NGO for environmental protection, filed a civil law suit against a private company dealing in pulp and paper manufacturing, its four related government ministries and the governor of North Sumatra, for damaging the environment. The law suit contained an item for the right to information. Although that particular item was ignored by the court, the activists resolved to include a clause on the right to information in the revision of the 1982 law for environmental protection.

In 2000 The Indonesian Center for Environmental Law produced a preliminary draft law on the right to information which was further refined in collaboration with the Coalition for Freedom of Information, a coalition of 38 CSOs. The draft stressed 10 principles on what the Law should uphold or be:

1. an umbrella law or one which harmonizes all laws and regulations related to it
2. guarantees the right to know, right to inspect, right to obtain the copy, right to be informed and right to disseminate
3. public information is a right for all and requests do not need a reason
4. maximum access, limited exemption
5. horizontal access as important as vertical access
6. access to information should be affordable, fast, complete, accurate, credible and timely
7. public institutions must have an information management system and provide good public service
8. disputes must be quickly, competently, independently settled and affordable, either on a consensual basis or through adjudication
9. obstruction to information can be taken to court
10. in line with decentralization, local governments need to have the authority to issue policy based on a more progressive interpretation of the above principles.

Despite the active advocacy and the fact that the amended 1945 State Constitution of 2000 guaranteed the right to information, the draft was not taken up by President Megawati's government. In 2001, however, the Consultative Assembly, Indonesia's supreme legislative body, promulgated Decree VII/MPR/2001 which provided recommendations on tackling corruption, collusion and nepotism. One of the recommendations was freedom of access to information, along with the creation of an anti-corruption commission, witness and victims protection, dealing with organized crime, government ethics, money laundering and the ombudsman. It was not until four years later that the government under President Soesilo Bambang Yudhoyono took the matter up for further deliberation, albeit it at the same time as deliberating the draft laws on state secrets and intelligence.

There were several issues of contention. The government wanted clarification on exempted information prior to having the law on freedom of access to information. It was also concerned about its impact on personal rights, the unity of the state and the like. The need for a commission was questioned because some felt that disputes could be settled by the Ombudsman. It also felt that it needed 5 years of preparation time before the law could be in

force. Eventually a compromise was reached and on April 30th, 2008, Law no. 14/2008 on Public Information Disclosure was enacted, effective May 1st, 2010, giving the government two years to prepare the system, infrastructure and human resources.

The Public Information Disclosure Act

According to the global RTI Rating which measures legal provisions, Indonesia's Public Information Disclosure Act scored the maximum points in terms of right to access. It also scores high in terms of scope and appeals. Improvements still need to be made, however, in the areas of requesting procedures, exceptions, sanctions, and promotional measures. Indonesia ranks in 28th position with a score of 101 out of a maximum 150.

The major weaknesses highlighted by the RTI Rating are the non-legally enforceable decisions of the Information Commissioners and the fact that information can be classified by other laws besides the PIDA. According to Muhammad Taufiq from the National Institute of Public Administration, the implementation of the Act can be hampered by its incompatibility with the Indonesian penal code and other regulations, particularly the laws on defamation and the Information and Electronic Transactions Law

The Law acknowledges that:

- information is a basic need of every person to develop their personality as well as their social environment, and is a significant part of the national security;
- the right to obtain information is a human right and transparency of public information is a significant characteristic of a democratic state that holds the sovereignty of the people in high esteem, to materialize good state management;
- transparency of public information is a facility to optimize public supervision on the organizing of the state and other public agencies and everything that affects the interest of the public;
- public information management is an effort to develop an informative society.

The objectives of the law are to:

- secure the right of the citizens to know the plan to make public policies, public policy programs, and the process to make public decisions, as well as the rationale behind a public decision.
- encourage the participation of society in the decision making process of a public policy;
- increase the active role of the people in making public policies and to manage the Public Agencies properly;

- achieve good public governance, ie. transparent, effective and efficient, accountable and responsible.
- know the rationale of a public policy that affects the lives of the people;
- develop sciences and to sharpen the mind of the nation; and/or
- enhance the information management and service at Public Agency circles, so as to produce good quality information service

It explains the rights of the individual to obtain Public Information; to see and to know about Public Information; to attend public meetings that are open to the public in order to obtain Public Information; to get a copy of the Public Information by requesting it; and to disseminate Public Information. Each request for information has to include the reason for the request and if the applicant is obstructed from obtaining the information or fails to get the information, the applicant has the right to appeal or file a suit in court.

The public agency, however, has the right to refuse to provide classified information which is not in accordance with the provision and regulations of the laws. Such information is information that may jeopardize the state or obstruct justice; is related to protection of business from unhealthy business competition, of personal rights; and not within its authority or as yet undocumented. What constitutes a 'public agency' are executive, legislative, judicative and other agencies whose function and main duties are related to the organizing of the state, where part or all of its funds originate from the state budget and/or the regional budget. This would therefore include SOEs, local government-owned companies and political parties. NGOs who are either partly or fully funded by the state budget and/or the regional budget, by public contributions and/or by overseas funding are also considered public agencies.

In providing public information properly and efficiently, a public agency must establish and develop an information and documentation system so that the information is accessible. The information has to be accurate and truthful and can be provided using both electronic or non-electronic media. There are three classifications of mandatory information:

1. periodic information of an agency's activities, performance, and financials
2. Information which must be immediately provided if it endangers lives and disturbs public order
3. Information which is available at all times, such as information on government projects, expenditures and third party agreements.

Crucial to the implementation of the Law is the role of the Central Commission, an independent institution, which has the responsibility to implement the Law, to provide the standard technical directives of public information services and to settle public information disputes by mediation and/or non-litigation adjudication law. Such commissions are to be established at the provincial level and, if necessary, at the district/municipality levels too. The Central

Information Commission answers to the President and has to report to Parliament whereas the regional commissions are responsible to the local government heads and parliament.

Progress to date

The Law has impacted positively on the approach towards disclosure of public information in several aspects: the focus of public institutions, certainty of service, certainty of implementation, legal certainty and service accountability.

ASPECT	PRE PID ACT	POST PID ACT
The focus of public institutions	Identification of information which can be disclosed (positive list)	Identification of information which are exempted with limited exceptions (negative list)
Certainty of service	No standard procedures nor time limit for providing information	Standard procedures and time limit
Certainty of Implementation	No assigned executor in public institutions to manage information and provide the service	Assigned executor, namely the PPID (
Legal certainty	No sanctions for those preventing public from getting information	Sanctions for those who prevent public from getting information and for those misusing information
Service accountability	No complaint handling mechanism and for disputes	Complaint handling mechanism and for disputes within the public institution itself or through the Commission of Information and courts

Source: Dessy Eko Prayitno, "Jalan (Masih) Panjang Mewujudkan Keterbukaan Informasi Publik di Indonesia" *Melawan Korupsi*. TII, 2014

During the first phase of the Law’s implementation (2009-2013, the Commission had to manage public expectations while at the same time deal with the government’s reluctance to share power and the bureaucrats’ discomfort with the principles of transparency and accountability. During this period CSOs were very involved in helping to draft guidelines, regulations, create a strategic plan and disseminate information. Their concern was to ensure that the Central Commission maintained its independence, credibility and transparency and that the foundations for the Law’s implementation were laid.

A review by the Freedom of Information Network Indonesia shows that all state ministries and a majority of provinces had already assigned dedicated Information and Data Management Officers. Other government institutions, however, had not. In total, only 30.59% of the 693 public agencies had complied. This data does not include non-state bodies such as political parties and NGOs. Nor does it reflect the substance of the work such as whether these institutions have SOPs in place, the quality of information provided etc.

	PUBLIC INSTITUTION	NUMBER	WITH PPID	%
1	Ministries	34	34	100
2	Other government institutions	129	36	27.9
3	Provinces	33	21	63.64
4	Mayorality	399	88	22.06
5	Cities	98	33	33.67
	TOTAL	693	212	30.59

Source: FOINI, Catatan Masyarakat Sipil atas Kinerja KIP 2009-2013

Only a small number of these information and data management officers are effective due to lack of capacity and of resources. Not only must they understand the Law and its related regulations, they need to have the skills to manage information and to provide it for the public in an easily understood manner. The Centre for Law & Democracy recently issued guidelines for public agencies on how to implement the law and how to fulfill its obligations. These guidelines were created given the fact that 71% of appeals to the Central Information Commission are due to procedural irregularities which is a reflection of weakness in implementation. A Guide on Applying Exceptions has also been made which offers step-by-step instructions on how to determine exceptions.

From the demand side, the Act has been beneficial to CSOs as they are mostly the ones requesting information. For anti-corruption activists, the public information act has been very useful in advocating for budget transparency, illicit wealth, political financing and the like. Out of the 818 disputes taken to the Information Commission, 71% were submitted by CSOs, 25% by individuals and 4% by communities. Most of these disputes (64%) have been resolved through various means; 2% were taken to court while the remaining are still in process.

The slow progress in the wider and deeper implementation of the Law is partly due to the limited administrative capacity of public agencies. As pointed out by Muhammad Taufiq, from the National Institute of Public Administration, information disclosure needs good information systems supported by infrastructure and facilities as well as competent human resources and sufficient budgets. The Information Commission itself needs to be strengthened. Although the commission is meant to be an independent institution, the administrative support, finance and management of the information committee is provided by a secretariat operated by the government. The secretary in charge of the secretariat is also an appointee of the Minister of Communications and Information, albeit someone proposed by the Commission. In order to be effective, it needs to be given greater budget autonomy and less dependence on the government for the staffing of the Secretariat. The criteria and selection process of Commissioners also needs to be continuously improved.

The Next Phase

Based on the assessment of the current state of affairs, much work still needs to be done in disseminating information regarding the Law to ensure that the public is aware of and understands the importance of the Law. Demand for information needs to be created. At the same time, public institutions need to be given technical assistance so that they are able to implement the Law. To ensure this happens, the Information Commission, as a state auxiliary organ, must also be strengthened, supported and monitored. This requires collaborative engagement between government institutions, CSOs, as well as communities. Under its Community Access to Information program, PATTIRO, for example, has created community centers which put pressure on public agencies, such as state schools, to improve their delivery of public services by being transparent and giving access to their information. Another example is TI Indonesia's work with the state power company, PLN, in improving its transparency by being more responsive to customers' need for information.

Indonesia continues to grapple with corruption. In a few days' time the CPI will be announced and I doubt that Indonesia has made significant progress. In 2013, among the countries in Southeast Asia we fared only better than the CLMV countries. The Public Information Disclosure Act is an important weapon in the fight against corruption. This Act is also relevant to our efforts to create a bureaucracy which is more effective, efficient, transparent and accountable. Lastly, as one of the initiators of the Open Government Partnership access to

information is a prerequisite for the success of this initiative. In short, our citizens stand to gain in the successful implementation of the Public Information Disclosure Act.

Thank you.

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Law No. 14/2008 on Public Information Disclosure