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Research Paper

Philosophical and Historical Dimensions of Public Interest Disclosure as aRight to Information

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ABSTRACT: *The aims of this research are to reviews thephilosophical and historical dimensions of public interest disclosure as a right to information in Indonesia. The type of this research was a normative research with legal, historical, and conceptual approach. Research is conducted qualitatively with library research within primary and secondary legal sources.The outcomes of the research indicate that the public interest disclosure has a close relationship with the values of Pancasila as basic norm. Despite having a strong philosophical foundation to be applied in the administration of state and government, but based on historical tracking of the constitution in force from time to time show that the assertion of the right to information in the constitution requires a long process to make it happen as a constitutional rights.*

Keywords:*Constitutional Right,Good Governance,Human Rights, Public Interest,Right to Information*

I. INTRODUCTION

Right to information or right to know as an autonomous rights stated in the United Nations (UN) General Assembly Resolution 59 (1), December 14, 1946:*Freedom of information is a fundamental human rights and is the touchstones of all the freedoms to which the United Nations is consecrated.*[2]Although some of the early laws guaranteeing a right to access information held by public bodies were called freedom of information laws, it is clear from the context that, as used in the Resolution, the term referred in general to the free fl ow of information in society rather than the more specifi c idea of a right to access information held by public bodies.

However, until November 1989 only 13 countries have national laws and provide assurance to the citizens to access information held by government agencies. The country is Sweden in 1766, Colombia in 1888, Finland in 1951, USA in 1966, Denmark in 1970, Norway in 1970, France in 1978, the Netherlands in 1978, Australia in 1982, Canada in 1982, New Zealand in 1982, Greece in 1986, and Austria in 1987.3

The right to access information in its development has become a measure of democracy in a country. In the middle of 2008, recorded about 65 countries in the world that has had legislation that establishes a mechanism for the public request and receive information held by government.4 Recent data released by the Open Society Justice Initiative on September 25, 2013, shows a very significant development, in which about 95 countries have national laws on access to information. Some countries even put and guarantee the right to

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[2]Source: Kontras and Yayasan Tifa, *Panduan Mengenal Hak Atas Informasi Publik dan Pemolisian*, Jakarta, 2011, page. 15.

[3]Sandra Coliver, *The Right to Information and the Increasing Scope of Bodies Covered by National Laws Since 1989, Available at:*www.right2info.org. Accessed January 4, 2015.

[4]Helen Darbishire and Thomas Carson, *Transparency & Silence: Sebuah Survei Undang-Undang Akses Informasi dan Prakteknya di 14 Negara*, (Translated in Indonesian by Marianus Kleden and Mohammad Hamid), Yayasan Tifa, Jakarta, 2008, page. xxi.

information explicitly in the constitution. Here is an excerpt articles of the Constitution a number of countries which regulates the right to information:[5]

South Africa
Article 32(1) of the South African Constitution provides, in part: Everyone has the right of access to: 1) any information held by the State; and 2) any information that is held by another person and that is required for the exercise or protection of any rights.

Norway
Article 100 of the Constitution of Norway provides, in part:
Everyone has a right of access to the documents of the State and of the municipal administration and a right to be present at sittings of the courts and elected assemblies … It is a duty of the State authorities to facilitate an open and enlightened public dialogue.

Bulgaria
Article 41 (2) of the Constitution of Bulgaria provides:
Citizens shall be entitled to obtain information from State bodies and agencies on any matter of legitimate interest to them which is not a State or official secret and does not affect the rights of others.

Philippines
Article 3 (7) of the Constitution of the Philippines provides:
The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Brazil
Article 33 of the Constitution of Brazil provides:
All persons are entitled to receive from government agencies information of private interest to such persons or of collective or general interest which shall be provided within the period established by law, subject to liability, with the exception of information whose secrecy is vital to the security of society and of the state.

The importance of the right to information or the right to know is an increasingly constant refrain in the mouths of development practitioners, civil society, academics, the media and even governments. The guarantee of right to information in Indonesia has been mentioned in Article 28F of the Constitution of the Republic of Indonesia which stated that:

> *Everyone shall be entitled to communicate and obtain information to develop their personality and social setting, and to find, obtain, have, keep, process, and give information with any means of channel available.*

This constitutional guarantee is further elaborated in Law No. 14 of 2008 concerning Public Interest Disclosure. The birth of Freedom of Information Law to be the beginning of the presence of a climate of openness in the governance process. Applicability of Freedom of Information Law imposes a duty on the government and other public bodies to open access to public information.

The freedom of Information Law as a legal product born through a long process that involves the struggle of a group of civil society who are members of the Civil Society Coalition for Freedom of Information. Regime and the bureaucratic culture that during the new order is closed into its own obstacles to deliver a product legislation that would reverse the opacity is a disclosure practices. As a result, the draft law submitted to the parliament since August 2000 requires a long time to be ratified and enforced.

Related how far the Freedom of Information Law to be effective in its application, can not be separated from the philosophical-historical dimensions approach. A philosophical dimension, as affirmed Hans Kelsen and Hans Nawiasky that on every country there is always a basic values or the values of the highest philosophical believed to be the source of all sources of noble values in the respective state life.6From a

[5]Source: Usaid, Internews, and AMDEP, *Media Law and Policy Program, Center for Global Communications Studies Annenberg University of Pennsylvania*, 2012, page. 31-32.

[6]Anshori Ilyas, *Berbagai Konsep tentang Hukum sebagai Suatu Sistem*, Jurnal Ilmu Hukum Amanna Gappa, 18(2), June 2010, page. 213

historical dimension, according to Himawan Estu Bagijo7 to understand the intent and purpose of various laws, which can not be released in the history of its formation. Based on Bagijo's view, a comprehensive and fundamental understanding of the freedom of information as a constitutional rights.

II. IDENTIFICATION OF THE ISSUE

The issue to be discussed in this paper is "How does the philosophical and historical dimensions of public interest disclosure find its legitimacy within the law enforcement concept as a right to information?"

III. METHOD OF RESEARCH

The type of research used in this paper is normative research, reviewing the public interest disclosure from the philosophical and historical dimensions, with the aim of constructing a new concept which is ideal to be applied in Indonesia. According to Peter Mahmud Marzuki[8] legal research (normative) is a process to find the rule of law, principles of law, and the legal doctrines in order to answer the legal issues.

The data being used include secondary data consisting of primary law materials in the form of laws and regulations, tertiary law materials in the form of reference books, opinion of experts, and the outcomes of previous research, as well as tertiary law materials in the form of language dictionaries, scientific law dictionary, and Black's Law Dictionary.

The analysis method applied in this paper starts with the abstraction of primary law materials, secondary law materials and tertiary law materials, leading to an understanding of the essence of the right to information as well as human rightsapproach, followed by systematization and synchronization, and finally, drawing conclusions based on the deductive syllogism reasoning method to construct a new concept.

IV. RESULTS AND DISCUSSION

The Philosophical Dimension of Public Interest Disclosure

Like a tree, the history of the development of a healthy nation can't be uprooted from the land and its historical roots, socio-cultural ecosystem, a system of meaning (signification), and its own world view. Pancasila as the state or country philosophical foundation (*filosofische grondslag*) formulated by the founding parents of Indonesiato actualization of Pancasila values in order to sustain the survival and prosperity of the nation.[9]

As an ideology, Pancasila a guideline and reference us in carrying out activities in any field, so that its nature must be open, flexible and versatile and are not covered, which will make it stiff out of date. The idea of Pancasila as an ideology openly began to develop since 1985. but his spirit has grown since the Pancasila itself designated as the base state. Pancasila has been qualified as an open ideology. Referred to as an open ideology, that can adapt without changing their basic values. This does not mean that the basic values of Pancasila can be changed with another base value to negating the Pancasila or national identity of Indonesia.

According Sudjito,[10] Pancasila as an ideology openly implies that the basic values of Pancasila that can be developed in accordance with the dynamics of the Indonesian people and the demands of the times creatively with respect to the level of need and the development of the Indonesian people themselves.

Practically, national ideology is required of all countries as a basis for running the government system. Indonesian proper use open ideology because Indonesia adopted a democratic government. In a democratic system of government, everyone is free to argue[11] as well as receive and access to public information. Open ideology belongs to all the people who sourced and rooted in the ideals and philosophy of life of the nation. Open ideology developed in accordance with the development of the intelligence community and national life.[12] Beside from that, Pancasila is a form of the country's goals in forming the life of the country as a nation. Pancasila become the main focus to create peace and harmony.

Based on the description above illustrated that the principle of open ideology is actually not a new idea in Indonesia. The founding parents of the nation that acts setting up Indonesia as an independent state was

[7]Himawan Estu Bagijo, *Hukum sebagai Produk Sejarah*, Jurnal Perspektif 25(2) *April 2010*, page. 171.

[8]Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2005, page. 35.

[9]Yudi Latif, *Keluar dari Krisis Demokrasi*, Political speeches in the event of Thanksgiving and Book Launch A Decade BAKUMSU Association (Bantuan Hukum & Advokasi Rakyat Sumut); *"Kratos Minus Demos, Demokrasi Indonesia, Catatan dari Bawah"*, Medan May 21, 2012.

[10]Sudjito, *Membangun Sistem Hukum Nasional Berdasarkan Ideologi Pancasila*, in Prosiding Congress Pancasila VI, Pusat Studi Pancasila Universitas Gadjah Mada dan Universitas Pattimura Ambon, 2014, page, 34.

[11]Jazim Hamidi and Mustafa Lutfi, *Civic Education: Antara Realitas Politik dan Implementasi Hukumnya*, Gramedia, Jakarta, 2010, page. 62.

[12]Pandji Setijo, *Pendidikan Pancasila Perspektif Sejarah Perjuangan Bangsa*, Grasindo, Jakarta, page. 90.

already implementing the spirit of openness. The principle of openness has a wedge with the principle of consultation in formulating a common goal. The process of deliberation that is not based on the spirit of openness of the parties will not bring results.

The idea of "deliberative democracy" based on the principles of Pancasila is the conscious effort of the founding parents to create what is called "Putnam" making democracy work, or what is called Saward "rooted" (to take root), in the context of Indonesian. In the words of Soekarno, the first Presiden of Indonesia which stated: "*Democracy that we run is democracy in Indonesia, bringing Indonesia's own personality. If you can not think that way, we'll not be able to organize what became the mandate of the people suffering from it*."[13]

Furthermore, the idea of democracy as it precedes what was later referred to as the model of deliberative democracy which was introduced by Joseph M. Bassette and also has parallels with the concept of "social democracy". Policy decisions that put the primacy of discussion and deliberation with the strength of arguments based on the forces of consensus (wisdom), the above decisions based on voting is understood the essence of deliberative democracy. Proponents of deliberative democracy argue that deliberation improve the quality and acceptability of collective decision.[14]

According Harjono, openness or transparency of motives is one of the principles which underlie any use of the authority of the state to the public in a democratic country and state law. The principle of openness and transparency in this context aligned with the principle of participation in decision-making; principle of responsibility for all risks arising; guarantee of certainty; and equal treatment.[15]

Public disclosure is the entrance to the participation or public participation in the governance process control in order to realize good governance. Citing Lothar Gündling, Koesnadi[16] said that participation is fundamental to democratize decision-making. The role and help the state and its institutions carry out tasks in a way that is more acceptable and effective.

Similarly, Saldi Isra[17] said as an evolving concept in the modern political system, participation is a space for people to conduct negotiations in the process of policy formulation, especially the direct impact on people's lives. From the perspective of communication, government ignores public opinion will be difficult to gain public sympathy. The government is deliberately defy public opinion will not get the support and can not integrate with the public.[18]

However, only restrictions which are set out in law are legitimate. This reflects the idea that only the legislature should have the power to restrict a fundamental right like freedom of expression. Openness as well as an instrument to safeguard democracy so as not to slip on freedom without order and certainty. According to Aminuddin Ilmar,[19] as a preventive way, the application of the principle of democracy of the governance at least be accompanied by the principle of accountability (government accountability) and the principle of openness of government (*operbaarheidsbeginsel*).

Thus, it appears that the principle of sovereignty of the people who run the wisdom as the essence of deliberative democracy emphasizes participatory approach all elements of society in achieving consensus. On the other hand, the openness of government or public open access to public information is an important prerequisite for participation. Government at once will increase the value and effectiveness of public participation in the governance process.

According to author, so it can be concluded that the public disclosure and deliberative democracy as a translation of the values of Pancasila is the relationship / association is causal. Public interest disclosure is a prerequisite and a tool for public participation, while participation is a translation of the sovereignty of the people which is the core deliberative democracy. Thus, the nature of the openness of public information is a condition in which the governance process is run in a transparent and participatory in the sense that the actually (real).

The Historical Dimension of Public Interest Disclosure

[13]Yudi Latif, *Negara Paripurna: Historisitas, Rasionalitas, dan Aktualitas Pancasila*, Gramedia, Jakarta, 2011, page. 475.

[14]*Ibid.*, page. 459.

[15]Harjono, *Konstitusi sebagai Rumah Bangsa*, Sekjendand Kepaniteraan Mahkamah Konstitusi Republik Indonesia, Jakarta, 2008, page. 371-372.

[16]Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan*, Gadjah Mada University Press, Yogyakarta, 2006, page. 114-115.

[17]Saldi Isra, *Pergeseran Fungsi Legislasi: Menguatnya Model Legislasi Parlementer dalam Sistem Presidensial Indonesia*, Rajawali Pers, Jakarta, 2010, page. 282.

[18]Andi Alimuddin Unde, *Televisi dan Masyarakat Pluralistik*, Prenada, Jakarta, 2014, page. 114.

[19]Aminuddin Ilmar, *Hukum Tata Pemerintahan*, Identitas Universitas Hasanuddin, Makassar, 2013, page. 74.

The right to information as part of human rights hasn't set in Indonesian Constitution before alteration (amendemen). In drafting the 1945 Constitution, there is a very sharp differences between the regulation of human rights do not want included in the Constitution and the calls for human rights stipulated in the Constitution. The first is kinship approach who supported by Sukarno and Supomo while the second approach is inclusion of human rights who supported by Moh. Hatta and M. Yamin in a speech at a session of Investigation Agency Preparation for Independence (BPUPK), July 15, 1945.[20]

The right to information along with another rights, then adopted as part of constitutional rights in the second alteration (amendemen) of the Constitution. The discussion of human rights carried out in conjunction with the discussion of citizens, residents, and religion do "*Panita Ad Hoc I*" Agency Workers (re: BP) MPR. The deliberations of the committee formulated into a draft amendment to the Constitution. As a mandate by Article 28F of the Constitution, the Parliament along with the Government drafted a law that became known as the Freedom of Information Law. Efforts to regulate the freedom of information not only to experience the dynamics of the process of drafting in National Legislation Program (re: Prolegnas).

As noted, numerous international bodies with responsibility for promoting and protecting human rights have authoritatively recognised the fundamental human right to access information held by public bodies, as well as the need for effective legislation to secure respect for that right in practice. These include in Law Number 14 Year 2008 concerning Public Interest Disclosure. Against some of crucial points above, happen tough discussions and spawned the things that are compromised and agreed to be the contents of Freedom of Information Law, namely:

a) The titleof Legal Drafting

House of Representatives (parliament) proposed a title of Legal Drafting concerning the Freedom of Accessing Public Information, while the Government submitted a title of Legal Drafting concerning the Right of Citizens to Obtain Information. The word of "freedom" in the title of the proposed by House of Representatives considered too liberal, while the right to information as the title proposed by the government considered its set in the constitution. To accommodate the views of both parties, it was agreed to be "Freedom of Information Law".

b) Focus and Scope of Public Agency

The discussion about focus and scope of public agency also had different views between the Government and House of Representatives. Parliament calls for state-owned enterprises and enterprises categorized as public bodies subject to the consequences of being bound by the Freedom of Information Law. The government argues that the State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD) should be subject to the regime of private law which can't be equated with public bodies in general. Precisely Government proposed that Non-Governmental Organizations (NGOs) and community organizations are categorized as public bodies for obtaining funds from the community but do not have a system of monitoring and supervision mechanisms.

Against this point both side has agreed that public bodies are the executive, legislative, judicial, and other body functions and duties related to the conduct of the state anyway. This category is based on the basic formation. Another category that is used is the funding source used is a part or all of the funds from the State Budget, Regional Budget, community contributions and/or outside of the state. Under this category, the state, enterprises, and non-governmental organizations that are bound to be the subject of Freedom of Information Law

c) The Formation of "Information Commission"

The government sees the existence of the Information Commission is not too important as the practice in other countries, such as in the United States which is precisely not recognize the existence of the Information Commission. Subsequent developments, the Government approved the establishment of the Information Commission. The debate that arises then is the issue of whether or not to affirm the position of Information Commission as an independent institution. Parliament wants that the Commission to be set up information is self-contained and independent institutions, while the government wants as a body under the Government.

The results of discussion has agreed that the Information Commission will be established to be independent in accordance with the proposal of the House of Representatives. Understanding self-based explanation of Article 23 Freedom of Information Law is independent in carrying out its duties and powers and

[20]Constitutional Court of the Republik of Indonesia.*Naskah Komperehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Latar Belakang, Proses, dan Hasil Pembahasan 1999-2002, Buku VIII Warga Negara dan Penduduk, Hak Asasi Manusia dan Agama*, Revision edition, Setjen dan Kepaniteraan Mahkamah Konstitusi R.I., Jakarta, 2010, (in Indonesian), page. 27-29.

functions included in the Public Information Dispute decided on the basis of this law, fairness, public interest and the interests of the Republic of Indonesia.

d) The Minimization of Government Regulation

The factions of political party in the House of Representatives held that the law will be established, as possible of the provisions that will be regulated by government regulation. If there are technical things that are not allowed to be set directly in the law then submitted to the Commission regulations setting information will be established and not by Government Regulation. Instead the Government argues that the Government Regulation is still required by the argument where government regulation will be the basis of relevant legal authority and budget spending state funds for operating expenses of the Central Information Commission or the Provincial Information Commission. Legally Government Regulation organized in a hierarchy of legislation and into the implementing legislation that will become a reference in the preparation of technical guidelines.

As a compromise measure was agreed that government regulation will be minimized to the things that are very important and are not allowed to be set directly in legislation or through regulatory commission information. In a Freedom of Information Law, there are only two chapters are ordered formation of PP, namely Article 20 paragraph (2) of the period exceptions and Article 58 concerning procedures for the payment of compensation by the state public body.

e) The Timing of Act

The Government requested the suspension time for 5 (five) years to enact legislation after it is passed. Instead Parliament requested that the law is passed along with the date of approval. Finally, it was agreed that the Freedom of Information Law applies two years after it was enacted. Government and all factions in the House of Representatives agreed on this, except the National Awakening Faction who filed objections records (*minderheidnota*) because the law does not directly apply.

V. CONCLUSION

Based on results and discussion above, author concluded that Public Interest Disclosure as a right to information earlier applied in Western countries but the values and principles of openness is not new principle in Indonesia. Pancasila as the state or country philosophical foundation (*filosofische gronslag*) is an open ideology and openly formulated. The idea of deliberative democracy as the fourth principle of Pancasila also have a slice with the principles of openness in formulating common interests through participation and citizen control of the state officer.

The right to public information as expressly provided in the Constitution. In the ever-existing constitution, the right to information has not been regulated separately and execution is only associated with freedom of speech and freedom of expression. The assertion of the right to public information fully and comprehensively in the Indonesian legal system is marked by the birth of the Freedom of Information Law.

Public interest disclosure is a prerequisite and a tool for public participation, while participation is a translation of the sovereignty of the people which is the core deliberative democracy. The values of openness of Pancasila as the state should animate the entire statutory rules to be established. Public disclosure as an instrument of control and participation in a democratic country should be internalized in the process of administratition state and government.

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