

## **State Secrets in the Perspective of Public Transparency (Study of the journalism code of ethics)**

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### **ABSTRACT**

Good governance is a government that is transparent, open, and participatory. Includes the whole process of managing public resources since the process of decision making, implementation, and evaluation. The benefits of freedom of information are not only to create a government that is clean, efficient and able to prevent corruption, but also to improve the quality of public participation in the process of making public policies, and supervising their implementation. The main problem raised in this study is how to state secrets from the perspective of public transparency. study of Undang-Undang No. 40 the year 1999 concerning the press and the journalistic Code of Ethics and the obstacles in trying to obtain information.

**Keywords:** Journalism ; Ethics Code ; Good Governance; State Secret

### **INTRODUCTION**

The right to information is not only a human right but also a constitutional right of the people of Indonesia. These three concepts are interrelated with one another because all forms of derivatives of democratic governance are indeed intended to guarantee human rights. If the power of the state is connected with freedom of information, freedom of information is one of the tools for the public to control every step and policy taken by officials, which influences their lives. At this point, a correlation between freedom of information and the discourse of democratization will be found. If it is assumed that state power comes from the people, then the implementation of that power must always be accountable to the people at all times.

On the other hand, democracy also means that people do not see the authorities as perfect, which is always on the side of the people. Instead, people need to always 'suspect', criticize, and control every policy taken by the authorities. Good governance requires openness as one of its foundations. The right to information is very important because the more open the administration of the state to be monitored by the public, the more responsible for its implementation (Febrianingsih, 2012). Open government is transparent, open and participatory government administration. The public's right to obtain information is thus an important prerequisite for realizing open government.

Information that is prohibited from the opening is information that is prohibited from being opened to the public (must be kept confidential);

1. Information that is state confidential (articles 112-113 of the Criminal Code) and confidential office (articles 322 of the Criminal Code);
2. Manuscripts made and accepted by state institutions and government bodies in any form and style in the context of implementing a confidential government (article 1 - 11 of Law Number 7 of 1971 concerning archives);

3. Information about the deposits or finances of the Depositing Customer (article 40 of Act Number 10 of 1998 concerning Banking);
4. Information sent and/or received by telecommunications service customers through telecommunications networks (Article 42 (1) of Law Number 36 of 1999 concerning Telecommunications);
5. Information relating to production methods, processing methods, sales methods or other information in the field of technology and/or business that has economic value and is not known by the public (Article 2 of Law Number 30 of 2000 concerning Trade Secrets).

In accordance with the problems that the authors have stated above, this study aims to find out how the state secret in the perspectives of public transparency according to Study of Undang-Undang Number 40 the Year 1999 concerning the press and journalistic ethics code), and then to analyze the obstacles as efforts to obtain state secrets in the perspective of public transparency.

## **METHOD**

The type and nature of the research is normative legal communication research. The purpose of normative legal communication research is to examine literature or secondary data and is supported by empirical research. Normative research is research conducted by examining mere library materials or materials / secondary data. This research is legal communication research, and the approach (approach) used in this paper there are three approaches, Campbell (1996) says, that one approach alone is not sufficient to analyze many cases. The approach used is:

- a. Statutory Approach is a *conditio sine qua non* for someone in studying normative legal communication. According to Peter (2006), the benefit of using the legislation approach is to look for logical ratios and the ontological basis for the birth of legislation.
- b. Historical approach, which is an approach that is carried out by examining, analyzing the history of the state administration especially the phases of constitutional enactment that have been in force.
- c. Comparative Approach, this approach is used to trace the existence of State Secrets in the perspective of public transparency associated with Law Number 40 of 1999. concerning the press and journalistic ethics code.

## **DISCUSSION**

According UNESCO (In Kawantama, 2004), the Indonesian government, with its authority, states that all policy making and decision making processes are state secrets. This thought was held for a long time, especially during the New Order era, where the community, which in fact was the giver of the government's mandate to manage the country, did not get a chance to know what the government was doing and what were the reasons for taking a particular policy.

### **Statutory Approach**

In Indonesia, the provisions on confidentiality (state secrets or trade secrets) have been widely regulated in statutory regulations, including:

1. Criminal Code (Criminal Law Code), states;
  - a. Article 112 regarding newspapers, or information that must be kept secret due to state interests (imprisonment for up to 20 years),
  - b. Article 124 regarding military secrets (15 years imprisonment),
  - c. Article 322 regarding the secret of office (imprisonment for up to nine months or a maximum fine of Rp. 9,000.00),
  - d. Article 323 regarding company secrets,
  - e. Article 398 regarding personal secrets opened to blackmail someone (criminal sanctions for up to 4 years),
  - f. Article 430-434 concerning the confidentiality of correspondence through the post office or confidentiality via public telephone (imprisonment for 2 years and 8 months),
2. Law Number 7 of 1971 concerning Archives  
Article 1 in conjunction with Article 11 of Law Number 7 of 1971 concerning Archives states that regarding texts prepared and accepted by state institutions and government bodies in any form and style in the context of implementing confidential government (Article 1 jo Article 11 of the Law Law Number 7 of 1971 concerning Archives).
3. Law Number 10 of 1998 concerning banking  
Article 40 of Act Number 10 of 1998 concerning banking states regarding the secrecy of deposits or the financial condition of the depositing customer
4. Law Number 36 of 1999 concerning Telecommunications;  
Article 42 (1) Law Number 36 the Year 1999 concerning Telecommunications states that regarding the confidentiality of information sent and/or received by telecommunications service customers through telecommunications networks
5. Law Number 30 of 2000 concerning Trade Secrets  
Article 2 of Law Number 30 of 2000 concerning Trade Secrets states that secrets regarding production methods, processing methods, sales methods, or other information in the fields of technology and/or business that have economic value and are not known by the public.  
Article 19 of the International Covenant on Civil and Political Rights states that the right to freedom of expression ... and information ... may ... be subject to certain restrictions, but these shall only be as provided by law and are necessary: a) for the respect of the rights or reputation of others; b) for the protection of national security or of public order or of public health and morals. This article implicitly recognizes the existence of secrecy. Even though humans are basically free to express and access information, there are still signs that must be obeyed not to violate personal confidentiality, national security, and moral values. Thus, it cannot be denied that confidentiality is needed for certain matters. There are things that when opened will actually harm personal interests, both as individuals and nationals. For example, medical history, assets owned by someone in a bank, the state of a country's combat base, war strategy documents, and so on. The problem is often personal confidentiality, state security, and moral values differ from one person to another.

Especially with regard to the issue of confidentiality under the pretext of state security, the possibility of an interpretation bias arises.

The secrecy regime in the matter of state security raises a dichotomy. A bad secret on one side and a good secret on the other side. (Aftergood: 1996). The bad secret is defined as the confidentiality of things that actually do not need to be kept secret. This type of confidentiality is usually used to protect the interests and political ambitions of a party. Meanwhile, a good secret is a type of confidentiality that is indeed needed to ensure national security and defense.

However, it is recognized that every human right has limitations, except for those rights which are classified as non-derogable rights. At least the limits are the human rights of others, and in the context of social and state life, the limits are social order and security. This limitation is contained in Article 28J Paragraph (2) of the 1945 Constitution which states that in exercising their rights and freedoms, every person is obliged to submit to the limitations of the law with the sole purpose of ensuring the recognition and respect for the rights and freedoms of person others and for me.

### **Historical Approach**

There are several reasons why journalists who in the early 1980s were no longer used in Indonesia. The first reason is that the public is developing rhetoric that has been discussed on the European plains, especially in Germany; while communication is also a development of rhetoric but it is happening in the United States. The second reason is that Indonesians who have sought independence since what science has studied and researched mass media activities such as the press, radio, and film that have been operating since colonial times, turned out to be the first publications introduced by Indonesian experts (Effendy, 1990).

### **October 31, 2000**

In the House of Representatives Commission I meeting with the State Code Institute (LSN), the Head of the State Code Board BO Hutagalung proposed a Draft Law on State Secrecy to the House Commission I, which was expected to regulate which information was state secrets and which were not. The commission I of the House of Representatives requested that the Draft Bill be discussed together with the Draft Bill on the Rights of Citizens to Get Information so that it does not conflict with democratic values (Kompas "Draft Bill on Freedom of Information versus the Draft Bill on State Draft) March 14, 2002).

### **February 23, 2001**

The Plenary Meeting of the House of Representatives formed a Working Committee (Panja) to draft a Bill on Freedom of Information. (Kompas "Draft Freedom of Information Act versus Draft State Secrecy Act" March 14, 2002),

### **April 9-11 2001**

Members of the House of Representatives' Working Committee who drafted the Draft Bill on Freedom of Information to the Public carried out socialization and sought input from various regions, including universities.

### **March 16 And 23 2001**

The Working Committee on the Draft Bill on Freedom of Information that Obtains Public Information collects information from Non-Governmental Organizations, Gajah Mada University, and other universities to perfect the draft.

**August 8, 2001**

During his visit to Kompas in the context of the socialization of the Draft Bill on Freedom to Obtain Public Information, Mas Achmad Santosa from the Coalition for Freedom of Information said that the government is currently handing over the Draft Bill on State Secrets to the House of Representatives. State secrets must be part of the Freedom of Information Bill. The public's right to information must not be limited in advance by the Draft Law on State Confidentiality (Kompas "Utilization of Information by the Public May Be Unlimited" 4 August 2001).

**August 24, 2001**

In a discussion on the Draft Bill on Freedom to Get Public Information and State Secrets, Deputy III of the State Code Institute Wihardiyono Reksosiswoyo stated that the draft of the State Secrets Bill was made because there were no laws governing the issue of state secrets.

**February 19, 2002**

In a closed working meeting between the Head of the State Sandi Institute BO Hutagalung and the Commission I of the House of Representatives, the State Sandi Institute stated that the draft Bill on State Secrets had been processed for a long time and had been socialized to the campus community, NGOs and experts

**March 11, 2002**

In the Plenary Session of the House of Representatives, representatives of the Legislative Body (Legislative Body) of the House of Representatives.

**March 13, 2002**

Deputy Chair of the Legislative Body of the House of Representatives Tumbu Saraswati said that she had not yet received the draft bill on State Secrets.

**March 18, 2002**

In a meeting with the press at the Jakarta Legal Aid Foundation (YLBHI) office, the Coalition for Freedom of Information indicated that there was a desire by the government to protect perpetrators of corruption and human rights crimes by submitting a State Secrets, Bill.

**March 20, 2002**

In the DPR Plenary Session, the Freedom of Information Bill was responded by the faction.

**February 17, 2003**

In the Commission I Hearing Meeting with Nachrowi Ramli from the State Code Institute, it was revealed that many state secrets, especially regarding the government's diplomacy strategy with foreign parties, leaked because existing departments, including intelligence, had not yet optimized coding techniques.

a special committee can be formed immediately. With the inclusion of the Draft Law on State Confidentiality, it is hoped that the discussion will be in line with the discussion on the Draft Law on Freedom of Public Information (Kompas "Many Leaks of State Secrets" 18 February 2003)

**February 18, 2003**

In a working meeting with the Special Committee on the Antiterrorism Bill, the Head of the State Intelligence Agency AM Hendropriyono proposed that the discussion of the Bill on the

Eradication of Terrorism Crimes (the Anti-Terrorism Bill) be integrated with the Bill. Draft Bill on Freedom of Public Information, Draft Bill 18 February 2003 In the DPR Plenary Session chaired by the Deputy Speaker of the Parliament Soetardjo Soerjogoeritno,

**February 19, 2003**

Agus Sudibyo, the Coalition Lobbying Team Coordinator for Freedom to Get Information.

**February 28, 2003**

In the discussion "Draft Freedom of Information, State Freedom and State Confidentiality" was held by the Press Council and the Asia Foundation in Jakarta.

**March 14, 2003**

The Bill on Combating Terrorism and the Intelligence Bill will damage the meaning of the Bill on Freedom of Public Information.

**March 6, 2003**

The House of Representatives held its first Public Hearing Meeting with the Freedom of Information Coalition (Kompas "State Secret Issues that are Expected to Only Be Sub-Parts of the Freedom of Information Act" March 1, 2003).

**April 1, 2003**

Communities can demand the same thing so that data is not misused by the government now or in the future (Kompas "No Need for a Separate Law on State Secrecy" 4 April 2003),

**April 17, 2004**

In a discussion at the Office of the Jakarta Legal Aid Institute (LBH), the Coalition for Freedom of Information proposed that there was only one law governing the disclosure of information and state secrecy.

**May 20, 2003**

The State Intelligence Agency also proposes to abolish the word "mandatory" in article 12 paragraph (1) which reads "public bodies are required to provide public information at any time.

**October 27, 2004**

It was explained that the intended state secrets were various documents which could not have been known to the public before their time

**November 2, 2004**

In a press conference at the National Law Commission, the Coalition for Freedom of Information urged the Yudhoyono government to immediately take concrete steps to issue a presidential mandate to accelerate the ratification of the Bill on Freedom of Information

**November 4, 2004**

In a joint meeting and opening ceremony with the press, Minister of Communication and Information Sofyan Djalil said that the definition and classification of so-called state secrets will be confirmed in the Freedom of Information Bill on obtaining public information.

**November 10, 2004**

discussions about the Bill on Freedom of Information and Public Information will be combined with the Bill on State Confidentiality and the Intelligence Bill.

**November 25, 2004**

states that the DPR and the government must create transparent and participatory mechanisms in the discussion process of the Public Information Freedom Bill.

**December 15, 2004**

In a discussion on State Secrets and Freedom of Information organized by UNESCO and the Coalition for Freedom of Information,

**January 28, 2005**

regarding the prohibition of the Ministry of Home Affairs to open state secrets will be counterproductive to the government's determination to eradicate

**February 11, 2005**

Other than unclear definitions, there is no limit to who has the authority to ensure the confidentiality of information.

**Comparative Approach,**

At a practical level, the public still has difficulty accessing official institutions. Problematic public officials are still free to make confidential claims on the information they have. Government institutions are still closing themselves from the press investigation and investigation process of various cases. At the regulatory level, various policies or government policy plans directly or indirectly try to re-attribute public bodies and officials to impose various forms of confidentiality classification of information on behalf of "office secrets", "inter-agency secrets", "internal public agency secrets", and "state secret".

in common sense, there is always information that must still be limited from public access when the information contains the possibility of consequences that lead to the disruption of public order, religious sentiment. Therefore, so that the regulation of confidentiality does not cause excesses as is feared, the Draft Law on State Secrecy still opens opportunities for access to information even if the information is classified. However, the access must be for the sake of more urgent interest, in this case for example in the interests

Of Investigation.

In a democratic framework, national security can no longer be understood solely as state security, but must also include human security and societal security. The concept of local aspirations mixed with foreign infiltration can no longer be a threat. Every expression of disapproval and criticism cannot be used as a consumption security issue and approached with a security approach. So that security matters that were previously monopolized by the state, have become public affairs (public goods).

Actually, there is only one law that regulates information disclosure as well as state secrecy. If the two things are regulated in a different Law, it is feared that overlapping and confusion will occur in its implementation. There is no need for a separate law governing or regarding state secrecy. Matters relating to state secrecy are sufficiently regulated in the Law on Freedom of Public Information.

## CONCLUSION

Based on the discussion in the previous chapter, it can be concluded that:

Along with state secrets is public information which for a certain time cannot be delivered to the public because it can pose a threat to national security. Naturally, state secrets are exceptions and limitations of the right to information that has been recognized as a human right.

Based on the conclusions it is recommended as follows:

Since state secrets are an exempt part of the right to information, then state secret arrangements must also be part of the regulation of the right to information. It should be that in a democratic and transparent era, state secrets are no longer used as obstacles for the government or obstacles for the public who want to obtain information relating to the public interest.

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