

## The Urgency of Public Information Disclosure in the Criminal Justice System

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### Abstract

Information that already belongs to the public should not be hindered by anyone (including the state) if the public needs it. However, there is some information which is not for public consumption (excepted). The establishment of an integrated criminal justice system supported by information technology is absolutely necessary in handling a case in order to create effectiveness and efficiency in handling cases. This type of legal research is a normative legal research, which aims to examine positive legal provisions in this case criminal law as a source of law, using a statutory approach and a conceptual approach that aims to analyze Public Information Disclosure in the Justice System institutions. Criminal Justice (Police, Prosecutors' Office, Judiciary and Penitentiary) which results in a discussion regarding the provisions for Public Information Disclosure in the Criminal Justice System up to the imposition of criminal sanctions if they do not comply with Public Information Disclosure.

**Keywords:** Public Information Disclosure, Criminal Justice System, Criminal Sanctions.

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### Introduction

Indonesia is a constitutional state according to the 1945 Constitution of the Republic of Indonesia, therefore based on the theory of the rule of law or *rechtstaat* (Indonesian Constitutional Court, 2016) or *nomocracy* pioneered by A.V. Dicey and Julius Stahl or what is called a rule of law state is a concept of state administration based on law. Implementation of state and government administration, the government is responsible to the people. As the opinion of David Banisar in his book "freedom of information and access to government records laws around the world" it is said that: "A new era of government transparency has arrived, it is now widely recognized that the culture of secrecy that has been the *modus operandi* of government for centuries is no longer feasible in the global age of informations. Government in the information age must provide information to succeed" (Retnowati, 2002).

The definition of public information can be seen in Article 1 point 2 of law no. 14 of 2008 concerning public information disclosure (*LN* 2008 No 61/*TLN* No 4846, hereinafter referred to as KIP Law) is information that is generated, stored, managed, sent, and/or received by a Public Agency relating to the administration of the state and/or administration of other public bodies in accordance with KIP Law as well as other information related to public interest. However, if it is understood that the intent of this arrangement is that the domain of public information is all information which, when judged by its material content

and/or the place where the information is obtained, is indeed information already in the public domain.

Information that already belongs to the public should not be hindered by anyone (including the state). However, there is some information which is not for public consumption (excepted). This information can be seen in Article 17 of the KIP Law, namely:

1. Public information which, if disclosed to the Public Information Applicant, could hinder the law enforcement process;
2. Public information which, if disclosed to the Public Information Applicant, could interfere with the interests of protecting intellectual property rights and protecting against unfair business competition;
3. Public information which, if disclosed to the Public Information Applicant, could endanger the defense and security of the state;
4. Public information which, when disclosed to the Public Information Applicant, can disclose Indonesia's natural wealth;
5. Public information which, if disclosed to the Public Information Applicant, could be detrimental to national economic resilience;
6. Public information which, if disclosed to the Public Information Applicant, could be detrimental to the interests of foreign relations;
7. Public information which, when disclosed, can reveal the contents of an authentic personal deed and someone's last will or testament;
8. Public information which, if disclosed and provided to a Public Information Applicant, may reveal personal secrets;
9. Memorandums or letters between Public Agencies or Intra Public Agencies which according to their nature are confidential except for decisions of the Information Commission or courts;
10. Information that is prohibited by law.

Criminal Procedure Code which is part of the Criminal Justice System, there are several agencies or bodies that run the system. This term was first coined in the United States by Frank Remington in 1958 which later by Alfred Blumstein in The Commission's Task Force and Technology compiled a Criminal Justice System schematic which stated that the police, prosecutors, courts and penitentiary were no longer independent institutions but each is an important element and is closely related to one another (Atmasasmita, 1996). As Muladi stated that the criminal justice system is a judicial network that uses material criminal law, formal criminal law and criminal law enforcement (Kristian & Tanuwijaya, 1996). The criminal justice system is regulated in the Criminal Procedure Code, because the Criminal Procedure Code contains norms of authority granted by the state to the police, prosecutors, judiciary and correctional institutions. On the other hand, the Criminal Justice System is known as the "law enforcement system" because it contains an understanding that basically what is done by these institutions (law enforcement officials) is a concrete effort to uphold abstract legal rules (Blacks Law Dictionary, 2004), which if all elements When everything is in the criminal justice system, it is synchronized that an integrated criminal justice system will be formed.

The establishment of an integrated criminal justice system supported by information technology is absolutely necessary in handling a case, for this reason a Memorandum of Understanding was issued between the Supreme Court of the Republic of Indonesia, the Coordinating Ministry for Political, Legal and Security Affairs of the Republic of Indonesia, the Indonesian National Police, the Indonesian Attorney General's Office, the Ministry of Law and Human Rights, Indonesian Ministry of Communication and Information, Ministry of National Development Planning (National Development Planning Agency), and National

Crypto Agency Number 1/NK.MA/1/2016; NK-01/MENKO/ POLHUKAM/01/2016; B/6/1/2016; M.HH-03.HM.05.02 of 2016; 96/M. KOMINFO/ HK.03.02/01/2016; NKB 01/M.PPN/01/2016; PERJ.8/SU/KH.02.01/01/2016, Concerning the Development of an Integrated Information Technology-Based Criminal Case Handling Database System.

Following up on the KIP Law, the government also formed an Information Commission. Article 11 paragraph (3) of the KIP Law defines it as an independent institution whose function is to implement the KIP Law and its implementing regulations. The Information Commission then formed Information Commission Regulation Number 1 of 2010 Concerning Public Information Service Standards (*PERKI SPIP*). Furthermore, in response to *PERKI SPIP*, each of these public bodies drafted regulations governing the implementation of information disclosure in each of these public bodies. This arrangement is for further technical elaboration of the implementation of information disclosure in each Public Agency due to differences in the characteristics of duties and functions between one Public Agency and another.

Public Information Disclosure is currently an urgent need to fulfill because of the current phenomenon that the police, prosecutors, courts and penitentiary institutions feel that society is very closed in providing information about the performance of these institutions. Openness of Public Information prevents excessive superiority between agencies in the Criminal Justice System to the public which can lead to arbitrariness in its implementation.

Based on the brief description above, there are 2 (two) very fundamental problem formulations to study and analyze as legal issues, namely:

1. Obligations of public bodies in the criminal justice system in public information disclosure;
2. Criminal sanctions against public agencies in relation to public information disclosure.

There are two research purposes:

1. To review and analyze the obligations of public bodies in the criminal justice system in public information disclosure;
2. To review and analyze criminal sanctions against public bodies in relation to public information disclosure.

## **Materials and Methods**

This type of research is a type of normative legal research, which aims to examine positive legal provisions in this case criminal law as a source of law. Moris L Cohen expressed the opinion of Peter Mahmud Marzuki who stated "Legal Research is the process of finding the law that governs activities in human society" (Marzuki, 2005). Legal research essentially starts from human curiosity expressed in the form of problems or questions, where each of these legal problems and questions requires answers and will gain new knowledge that is considered true. Besides that, this legal research is Doctrinal Research which provides or produces a systematic explanation of the legal norms or rules governing a certain category (Riyadi, 2017).

The problem approach in this legal research uses a statute approach which is carried out by examining the laws and regulations that are related to the legal issues being discussed. This legal research also uses a conceptual approach which according to Peter Mahmud Marzuki is to move on to the views of experts so that researchers need to look for the legal ratio and the ontological basis for the creation of laws and researchers can understand the philosophical content behind the law as well as conclude whether or not there is a clash of philosophies between the laws and the issues at hand (Riyadi, 2017).

The statutory approach (statute approach) as put forward by Philipus M. Hadjon and Tatiek Sri Djatmiati describes that the "statute" approach begins with a constitution in terms

of aspects of legal principles and legal concepts as well as follow-up laws or organic regulations. Furthermore, the conceptual approach is an approach used to obtain scientific clarity and justification based on legal concepts originating from legal principles (Muhjad and Nuswardani, 2012).

## **Results and Discussion (sampai sini)**

### **2.1. Public Information Disclosure in the Indonesian National Police**

The legal basis other than the *KIP* Law, Information Commission Regulation Number 1 of 2010 concerning Public Information Service Standards and Government Regulation Number 61 of 2000 concerning Implementation of the *KIP* Law, within the National Police applies Regulation of the Head of the Republic of Indonesia National Police Number 16 of 2010 concerning Procedures for Public Information Services within the Indonesian National Police, which was later amended by Regulation of the Head of the Indonesian National Police Number 24 of 2011 concerning Amendments to the Regulation of the Head of the Indonesian National Police Number 16 of 200 concerning procedures for public information services within the Indonesian national police.

In general, the above regulations aim to realize the integration of the role of carrying out functions within the Polri Public Relations, *PPID* Mabes Polri and regional units in providing and receiving information needed to create harmonious 2 (two) way communication with interested parties (the public). Based on Article 3 of *Perkap* No 16 of 2010, there are 4 (four) principles that must be implemented including:

1. Easy, fast, accurate, and accurate, namely every activity in the provision of public information services must be carried out on time, presented in full, corrected as needed and easily accessible;
2. Transparency, namely the provision of public information services must be carried out in a clear and open manner;
3. Accountable, namely every activity in providing public information services must be accountable;
4. Proportionality, namely every activity in the provision of public information services must pay attention to the balance between rights and obligations.

Apart from adjusting to the birth of the *KIP* Law, the existence of *PPID* Polri itself is in addition to being in line with *Polri's* Grand Theory, which is to build public trust (*KONTRAS*, 2011). The main reference used to provide information services within *Polri* is the Standard Operating Procedure (SOP) on procedures for information services, which will be used by *PPID* as the main reference in providing information. As stated in the provisions of Article 13 of the *KIP* Law which states that a *PPID* is a position responsible for storing, documenting, providing and or providing information services. *PPID's* own duties are regulated in Article 19 of *Perkap* Number 16 of 2010:

- a. Collect information and data related to *Polri* activities that can be accessed by the public as stated in Article 13, Article 14, and Article 15 in their respective units;
- b. Storing information and data that is the responsibility of each unit;
- c. Documenting the information and data obtained in the form of photographs, recordings and audio visuals;
- d. Providing accurate or ready made information and data materials as needed;
- e. Providing information and data services by periodically sending information and documentation to those carrying the public relations function;
- f. Make an annual recapitulation report regarding information services entered or received and provided by the National Police.

Until now the National Police, in this case the National Police Headquarters, are still using the portal on the website <http://www.polri.go.id> to distribute various information to people who need it, even though if we open the website it is still far from optimal in providing information. This is because if we refer to the provisions of Article 12 of *Perkap* Number 16 of 2010, it states that information that is not an exception includes information about:

- a. List of wanted persons (*DPO*);
- b. Budget plans to be issued in the process of investigating criminal acts;
- c. Letter of notification of progress of investigation results (*SP2HP*);
- d. Financial accountability used in the criminal investigation process;
- e. The results of the criminal investigation process relating to money and goods that have been confiscated;
- f. Other information determined by the leadership of the National Police.

In this regard, the portal <http://www.polri.go.id> does not contain all of the information referred to in Article 12 letter b to letter e of *Perkap* Number 16 of 2010.

## 2.2. Implementation of Public Information Disclosure at the Attorney General's Office of the Republic of Indonesia

The central position of the Indonesian Attorney General's Office in law enforcement in Indonesia is one of the sub systems that are in an orderly and integrated unit, influencing and complementing each other with other sub systems in the criminal justice system to achieve the goals of law enforcement as well as possible, because law and law enforcement is a part of law enforcement factors that cannot be ignored because if ignored it will result in not achieving the expected law enforcement (Rahardjo, 2011). In order to carry out the duties and powers of the Attorney General's Office in a transparent and accountable manner, it is necessary to fulfill the right to information for the public as stipulated in Article 7 paragraph (3) of the *KIP* Law.

This has implications for the Attorney General's Office of the Republic of Indonesia in carrying out its duties and authorities should be based on law. This means that the Attorney General's Office must always side with the law to uphold justice and truth, both repressive in relation to the Integrated Criminal Justice System, as well as preventive in the form of counselling, as well as administration in relation to the actions of the Prosecutor's Office in its efforts to regulate. These law enforcement measures are bound by legal rules, certain procedures and are controlled by law (Effendy, 2005).

The Attorney General's Office of the Republic of Indonesia is one of the public bodies that has established technical regulations regarding the implementation of information disclosure. The Attorney General's Office of the Republic of Indonesia issued the Attorney General's Regulation (*PERJA*) Number: PER-032/A/JA/08/2010 Concerning Public Information Services at the Attorney General's Office of the Republic of Indonesia, besides that it also issued the Indonesian Attorney General's Instruction Number: INS-001/A/JA/06/2011 concerning Standard Operational Procedures for Public Information Services, as well as issuing Decree of Deputy Attorney General of the Republic of Indonesia Number: KEP-133/B/WJA/09/2011 concerning List of Public Information of the Attorney General of the Republic of Indonesia, *PERJA* No: PER-064/A/JA/ 7/2007 concerning the Recruitment of Prospective Civil Servants and Prosecutors for Prosecutors of the Republic of Indonesia, as well as *PERJA* No: PER-069/A/JA/7/2007 concerning Provisions for the Implementation of Oversight of the Attorney General's Office of the Republic of Indonesia.

Similar to what happened in the Police, according to Article 1 number 5 *PERJA* Number: PER-032/A/JA/08/2010 it is stated that the party responsible for storing, documenting, providing and/or providing information services at the Attorney General's Office is an Officer Information and Documentation Manager (*PPID*). Based on *PERJA*

Number: PER-032/A/JA/08/2010, it is regulated that public information service providers are:

1. Attorney General
  - Person in Charge : Deputy Attorney General;
  - Satker in charge : Junior Attorney General & Head of Agency;
  - PPID : Head of Center for Legal Information;
  - Information Officers : All Echelon II Officials;
  - Info desk staff : Puspenkum staff.
2. High Court
  - Person in Charge : Deputy Head of High Prosecutor's Office;
  - PPID : Intelligence Assistant;
  - Information Officers : All Echelon III Officials;
  - Information Officer : All Echelon IV Officials
  - Info Desk Officer : Intelligence Assistant Staff.
3. State Attorney
  - Person in Charge : Head of District Attorney;
  - PPID : Head of Intelligence Section;
  - Information Officers : All Echelon IV Officials;
  - Information Officer : Section and Sub-Division Staff
  - Info Desk Officer : Intelligence Section Staff..

There are several categories of public information at the Attorney General's Office of the Republic of Indonesia that must be provided to the public referring to KIP Law as follows:

- a. Public Information Provided and Announced Periodically
  - Regulated in Article 10 *PERJA* No: PER-032/A/JA/8/2010;
  - Attorney General's Strategic Plan;
  - Summary of Attorney's performance report;
  - The amount or recapitulation of state finances that have been saved;
  - Summary of financial statements;
  - Information on regulations, decisions and/or policies that are binding and/or have an impact on the public;
  - Data on receipt and handling of complaint reports along with the recapitulation of disciplinary punishments;
  - Announcement of the procurement of goods and services in accordance with the relevant laws and regulations;
  - List of people search;
  - Recapitulation of settlement of cases.
- b. Public Information announced immediately
  - Stipulated in Article 11 to Article 13 *PERJA* No: PER-032/A/JA/8/2010;
  - Its relation to the livelihood of the people and public order which is its authority;
- c. Public information that must be available at any time
  - Stipulated in Article 14 *PERJA* No: PER-032/A/JA/2010;
  - List of Public Information;
  - All complete information that must be provided and announced periodically;
  - Treasury or inventory data;
  - Information on the organization, administration, staffing and finances of the Attorney General's Office;
  - The number, type and general description of violations and reports on their actions;

- Letters related to case handling activities.
- d. Public information that is excluded or confidential
  - Regulated in Article 15 to Article 19 *PERJA* No: PER-032/A/JA/8/2010;
  - Information that hinders the process of law enforcement;
  - Disturbing the interests of protecting intellectual property rights and protection from unfair business competition;
  - Endangering national defense and security;
  - Harm the interests of foreign relations; and
  - Other information that must be kept confidential by law.

### 2.3. Implementation of Public Information Disclosure in Judicial Institutions

In the pre reform era, almost all types of information that existed and were managed by the judiciary were closed. Existing information is also difficult to access, especially regarding decisions, judges track records, court service fees, court budgets and so on. The court at that time was considered not aware that the openness of the court was not only seen from trials that were open to the public, but also documents related to the judicial process. The narrowing of the meaning of court openness only to the trial reduces the principle of court openness. The court does not understand the "open court principle" which applies in its entirety, because information regarding this matter is still confidential (Assegaf and Katarina, 2005).

After the publication of *KIP* Law, the Supreme Court responded by renewing regulations related to public information disclosure by issuing a Decree of the Chief Justice of the Supreme Court (*SK KMA*) Number: 1-144/KMA/SK/I/2011. The blueprint for changing the judiciary for 2010-2035 also explains that there are 6 (six) supporting functions, namely: Human Resources Management (HR), Financial Resources Management, Facilities and Infrastructure Management, Technology and Information Management (IT), Judicial Transparency and Oversight Function. Thus the rule of law and clean government and supported by the participation of the community and/or social institutions to carry out the function of controlling the implementation of government and development are supporting factors in the implementation and achievement of bureaucratic reform (Mansyur, 2015).

Various regulations regarding the disclosure of public information in court besides the *KIP* Law, are also regulated in Law Number 25 of 2009 concerning Public Services, Decree of the Chief Justice of the Supreme Court (*SK KMA*) Number: 114/KMA/SK/VIII/2007 concerning Information Disclosure in court, Decree of the Chief Justice of the Supreme Court (*SK KMA*) Number: 1-144/KMA/SK/I/2011, Decree of the Supreme Court (*SK KMA*) Number: 026/KMA/SK/II/2012 Concerning Judicial Service Standards. The discussion on Public Information Disclosure then developed. Not limited to access to openness of court decisions, there are other things that must also be informed. Schedule of trials, flow of proceedings, case fees at each trial, rights of justice seekers in the justice process, mechanisms for complaints of alleged violations by judges and court staff, and so on.

### 2.4. Implementation of Public Information Disclosure in Correctional Institutions

The organization of penitentiary institutions is regulated in various laws and regulations both in Law No. 12 of 1995 concerning penitentiary institutions, Government Regulation Number 32 of 1999 as amended by Government Regulation Number 28 of 2006 concerning Requirements and Procedures for the Implementation of the Rights of Correctional Assisted Citizens, Decree of the Minister of Justice and Human Rights Number M.09-PR.07-10 of 2007 concerning Organization and Work Procedure of the Ministry of Law and Human Rights (now *Kemenkumham* in Indonesian) and Decree of the Minister of Justice Number M.01.PR.07.03 of 1985 concerning Organization and Work Procedure of Correctional Institutions and Rules other technical.

The management of penitentiary institutions and detention centers in Indonesia is one of the functions of the Directorate General of Corrections (*Dirjen Pas*) at the Ministry of Law and Human Rights (*Kemenkumham*). Public information services for the Director General of *Pas* can be accessed electronically on the website [www.ditjenpas.go.id](http://www.ditjenpas.go.id). public information services on this site are a form of implementation of *KIP* Law and Article 2 of Regulation of the Minister of Law and Human Rights No: M.HH-04.IN.04.02 of 2011 concerning Procedures for Management and Service of Public Information at *Kemenkumham*.

Public information contained on [www.ditjenpas.go.id](http://www.ditjenpas.go.id) includes profiles of the Director General of Fittings, Organizational Structure, Laws and Regulations, and Performance Reports (Anggara et al, 2013). The [www.ditjenpas.go.id](http://www.ditjenpas.go.id) site does not provide public information as mandated in the *KIP* Law, namely public information that is announced periodically as stated in the *KIP* Law, including what is not on the site, namely a summary of financial reports, a summary report on access to information public officials, reports on assets of public officials, and a summary of programs or activities that are being carried out. The website [www.ditjenpas.go.id](http://www.ditjenpas.go.id) does not fully comply with the provisions stipulated in the *KIP* Law. In this section there is only information about brief information service procedures, wanted lists, and annual performance reports.

Besides that, the official website is [www.ditjenpas.go.id](http://www.ditjenpas.go.id) . *Dirjan Pas* also announced a public information database through the website [www.smslap.ditjenpas.go.id](http://www.smslap.ditjenpas.go.id) . This site outline has provided detailed information regarding the management of penitentiary institutions and detention centers in Indonesia, including the number of inmates, the number of special inmates, child prisoners, treatment, Correctional Centers (*Bapas*), State Storage for Confiscated Objects (*Rupbasan*), Human Resources. (*SDM*), *Bimkemas Bapas*, Budget and realization, Correctional Data System (*SDP*), Report on land and building area, and report on overstaying of prison capacity (overstaying). It should be noted that the data available on this website is detailed information on each regional office (*Kanwil*) and organizations at the regional level under the Directorate General of Fittings which are updated on a daily, monthly and/or annual basis.

In general, both the [www.ditjenpas.go.id](http://www.ditjenpas.go.id) and [www.smslap.ditjenpas.go.id](http://www.smslap.ditjenpas.go.id) sites do not provide sufficient information regarding the procedure and summary of the fulfillment of the rights of convicts guaranteed in Law Number 12 of 1995 concerning Corrections. including the right to remission, assimilation, parole, leave, and other rights. Regarding the fulfillment of public information, the applicant can submit an application letter electronically (email) to [jasainfopublic@ppid.ditjenpas.go.id](mailto:jasainfopublic@ppid.ditjenpas.go.id) with the subject line of the email in the form of "Request for Public Information", it is proposed that information services be carried out by each work unit, for that each work unit must have a standardized email address. For individual applicants, attach a scan of the Identity Card in the email above. Meanwhile, for Legal Entity applicants, attach a scan of valid Legal Entity Establishment Approval in the email.

## 2.5. Criminal Sanctions Against Public Bodies That Do Not Implement Public Information Disclosure According to UU KIP

The *KIP* Law has Chapter XI regarding criminal sanctions for those who violate the criminal provisions that have been regulated. Article 51 of the *KIP* Law explains that anyone who intentionally uses public information unlawfully shall be subject to imprisonment for a maximum of 1 (one) year and/or a maximum fine of Rp. 5,000,000.- (five million rupiah). This criminal sanction applies to every individual, group of people, legal entity, or public body as referred to in the *KIP* Law.

Furthermore, Article 52 of the *KIP* Law states that a public agency that deliberately does not provide, does not provide and/or does not publish public information in the form of periodic public information, public information that must be announced immediately, public



information that must be available at any time, and / or public information that must be provided on the basis of a request in accordance with the *KIP Law* which can cause harm to other people is subject to imprisonment for a maximum of 1 (one) year and / or a fine of up to Rp. 5,000,000.- (five million rupiah). In his explanation, the criminal imposition of this legal entity can be imposed on legal entities, companies, associations or foundations, those who give orders to commit criminal acts or those who act as leaders in committing criminal acts, and can also be imposed on both.

Article 53 *KIP Law* regulates that any person who intentionally and unlawfully destroys, destroys, and/or loses public information documents in any form of media protected by the state and/or related to public interests shall be punished with imprisonment for a maximum of 2 (two) years and/or a maximum fine of Rp. 10,000,000.- (ten million rupiah).

## **Conclusion**

The conclusions are openness of public information to institutions/agencies in the Criminal Justice System is still far from prime. Various rules that have been stipulated in the Public Information Disclosure Act regarding matters that are required to be implemented in practice are still many that have not been implemented. This is due to technical problems and the budgeted costs are still inadequate, Public bodies or institutions that do not provide information disclosure services may be subject to criminal sanctions as stipulated in *KIP Law*. The main issue is regarding who should be held criminally responsible, in this case the Government of the Republic of Indonesia, not the officials concerned.

The suggestions are there needs to be maintenance on every official website of the Police, Prosecutor's Office, Courts and Correctional Institutions starting from the central level to the regional level so that the public can find out what information is in these public bodies, the imposition of criminal sanctions for public bodies or institutions that do not carry out public information disclosure should only be borne by the Chairperson/Head of said agency or institution personally/individually, this also applies to imprisonment and fines.

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