

## The Position Of Advocates As Law Enforcers In Accessing Public Information

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### ABSTRACT:

**Introduction:** This study aims to explain whether the causes of the Public Agency do not provide and / or publish public information which is their obligation in accordance with Law No. 14 of 2008 concerning Public Information Openness.

**Research Methods:** This study used a type of juridical-normative research or also known as doctrinal legal research, which is an approach carried out by examining library materials to find out or see the regulations and literature relating to the problems to be studied by researchers.

**Discussion:** Advocates as law enforcers according to Article 5 paragraph (1) of Law Number 18 of 2003 concerning Advocates stated that "Advocates having the status of law enforcers, free and independent guaranteed by laws and regulations", the position of advocates is equivalent or equivalent to other law enforcement officers (Police, Prosecutors, Judges).

**Conclusion:** The research results from the position of lawyers as law enforcers Article 5 paragraph (1) of Law Number 18 Year 2004 concerning Advocates in obtaining information relating to assisting their clients who are in conflict with the law must be provided by every public agencies in dispute to facilitate the process the judiciary being pursued or running in view of the fact that Advocates are also one of the inseparable legal instruments, in the field implementation, it has not yet achieved the expectation or effectiveness of information disclosure needed by advocates even though they have requested information according to Law Number 14 of 2008 concerning Information Openness to the relevant public services, because of the existence of Article 95 paragraph (1) The Regulation of the Minister of Finance No. 27 / PMK.06 / 2016 Regarding the Bidding Implementation Instructions for Advocate Auction is not included to be able to request the auction minutes become a strong reason for public agencies, in terms of tackling the problem required revisions or appropriate policies for advocates for the proper running of the judicial and justice process.

**KEYWORDS:** Public Information; Advocate; Law enforcers

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### I. INTRODUCTION

The lives in a state and nation are not slipped away from problems that arise in people's lives even though they have inherited rights since birth, in particular that is the right to obtain information relating to the life of the community itself when it is in conflict with the law even though the rules have been formed and are feasible to run properly.

The Freedom to obtain public information is a right inherent in humans in the state or often mostly known as a free and independent human rights contained in humans, these rights are guaranteed by the State because humans are creatures that develop, socialize and think, both in terms of the constitutional law of the State of Indonesia protect the existence of Human Rights.<sup>1</sup>

The guarantee basis for the right to obtain information has been arranged so well by the State of Indonesia in the second amendment to the 1945 Constitution of the Republic of Indonesia (1945 Constitution) Article 28F which stated as: "everyone to communicate and obtain information to develop personal and social, as well as the right to seek, obtain, possess and store information using all types of available channels. "

The government must be a public servant to be a provider of information in order to fulfill public rights, public information disclosure is indeed an important thing that is very important in delivering information from the government to the public, every community has the right to know everything about

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<sup>1</sup> Rhoda E, Howard, *Human Rights Exploration under the pretext of Cultural Relativism*, Nugraha Katjasungkana, Pustaka Utama Grafiti, Jakarta, 2000 p. 124.

government. In the second part of Article 3 of Law No. 14 of 2008 concerning Openness of Public Information, the Law aims to:

- a. "Guarantee the right of citizens to know the plans for making public policies, and the process of making public decisions, as well as the reasons for making public decisions.
- b. Encourage community participation in the process of making public policy.
- c. Increase the active role of the community in the process of public policy making and good management of public bodies.
- d. Realize a good state administration, that is transparent, effective and efficient, accountable and can be accounted for.
- e. Knowing the reasons for public policies that affect the lives of many people.
- f. Develop science and educate the life of the nation, and / or
- g. Improve information management and services within the public body to produce quality information services.

A good government is a government that welcomes strong disclosure of information which means and infrastructure can be accessed by the public and can optimize the monitoring of public interests that are an important characteristic of a democratic country so that the performance of public services runs well to be accessed by people who are interested in the information and can be accounted for.<sup>2</sup>

The implementation of law in society is very dependent on the legal awareness of a society because humans are the object of law. But besides depending on legal awareness, the community also depends and is very much determined by the implementation of law enforcement by law enforcement officers. Therefore, there are many legal regulations that cannot be implemented properly because law enforcement officers lack understanding in carrying out their duties and responsibilities.<sup>3</sup>

Pursuant to Article 52 of Law Number 14 of 2018 concerning Public Information Openness states that " Public Agencies that deliberately do not provide, do not provide, and / or do not publish public information in the form of public information on a regular basis, public information that must be publicly announced, 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 this Law, and resulting in a loss for others subject to a maximum imprisonment of 1 (one) year and / or a fine of up to 5,000,000.00 Idr (five million rupiah) ".

As a result of these criminal acts in the form of losses for others is very contrary to the General Principles of Government Especially. The Principle of Acting Carefully requires that Public Officials always act with caution so as not to cause harm to citizens. According to the principle, Public Officials are expected to be able to prevent as little as possible harm to society that might arise from their actions.<sup>4</sup> This was stated also in Decision of the Constitutional Court No. 014 / PUU-IV / 2006 dated 30 November 2006 page 57 point 4 which states "Whereas the provisions of Article 5 paragraph (1) of the Advocate Law which gives an advocate status as law enforcers who have an equal position with other law enforcement agencies in upholding law and justice. . ". Thus, the right to information is not only a human right but a constitutional right of the people of Indonesia. The essence of this recognition is that the right to information is actually a right inherent in every human being both as a citizen and as a person. At present the openness of government administration has become a need for openness that cannot be ignored anymore. Implementation of government should be able to create public trust in government, this trust can arise because the government is able to meet the information needed by the community.

Based on the description above, the writer is interested to figure out how the position of lawyers as law enforcers in obtaining information in accordance with Article 5 paragraph (1) of Law Number 18 of 2004 concerning Advocates is related to Law Number 14 of 2008 concerning Openness of Public Information that is contrary to mandate of Article 95 paragraph (1) Minister of Finance Regulation No. 27 / PMK.06 / 20016 Regarding the Bidding Implementation Guidelines.

## **II. RESEARCH METHODS**

The research method is a very important factor in determining the success of a research that is a scientific effort involving work problems to understand the object that will be the target of science to be studied.<sup>5</sup> This study uses a type of juridical-normative research method, namely legal research that focuses on

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<sup>2</sup>N.G.B. Mandica-Nur, *Guide to Public Information Openness (PIO) for Managing and Providing Information Officers in Public Agencies* (IRDI dan USAID, First Edition, 2009), p. 7.

<sup>3</sup> Abdurrahman, *Various Problems in Law Enforcement Practices in Indonesia*, Bandung, 1980, p. 14.

<sup>4</sup> S.F. Marbun, Moh. Mahfud M.D., *Principles of State Administrative Law*, Yogyakarta, 1987, p. 62.

<sup>5</sup>Husen Sayuti, *Introduction to Research Methods*, Pajar Agung, Jakarta, 1980, p. 32.

the study or on the results of data management which is assisted with theories, principles, and legal rules obtained from library studies.<sup>6</sup> As well as examining the books, journals, and legislation. The data sources in this study include the following:

1. Primary legal materials, including applicable and related legislation in this study, including:
  - a. The 1945 Constitution of the Republic of Indonesia.
  - b. Law Number 14 of 2018 concerning Openness of Public Information, State Gazette of the Republic of Indonesia Number 61 of 2008, Supplement to the State Gazette of the Republic of Indonesia Number 4846.
  - c. Law Number 18 of 2003 concerning Advocates, State Gazette of the Republic of Indonesia of 2003 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 4288.
  - d. Minister of Finance Regulation No. 27 / PMK.06 / 2016 Regarding the Bidding Implementation Guidelines.
  - e. Constitutional Court Decision No. 014 / PUU-IV / 2006 dated November 30, 2006.

Secondary legal material, including a variety of research and writings of experts relating to the literature of books, papers, journals and research results that are closely related to solving the problem to be examined.

2. Tertiary legal material, covering various legal materials that have the properties as a complementary primary and secondary legal materials such as legal dictionaries, language dictionaries, articles in newspapers / newspapers, magazines and other related materials obtained through internet sites.

### III. DISCUSSION

#### **The Imposition of Sanctions on Public Agencies That Do Not Provide Public Information According to Law Number 14 of 2008 concerning Public Information Openness.**

The Law of Public Information Openness was passed on April 30, 2008, which consists of 64 articles but, however, could only be enforced on May 1, 2010, far from other active laws after being passed, it took two years to see the readiness of the public agencies to can serve public information. The rules of public information aim to meet the interests of the community.<sup>7</sup>

Pursuant to Article 52 of Law Number 14 of 2018 concerning Public Information Openness states that " Public Agencies that deliberately do not provide, do not provide, and / or do not publish public information in the form of public information on a regular basis, public information that must be publicly announced, 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 this Law, and resulting in a loss for others subject to a maximum imprisonment of 1 (one) year and / or a fine of up to 5,000,000.00 Idr (five million rupiah) ".

Elucidation of Article 52 of Law No. 14 of 2008 concerning Openness of Public Information, which states that those liable to criminal sanctions against criminal acts committed by corporations are imposed on:

- a. Legal entity, corporation, association or foundation;
- b. Those who give orders to commit a crime or who act as leaders in committing a crime; or
- c. Both of them.

Law enforcers must understand how the mechanism of legal regulation so that it runs in accordance with the regulations in carrying out the implementation of its duties and responsibilities so that in the community will be able to understand legal awareness and the implementation of good law enforcement,<sup>8</sup> the level of legal awareness value is in the legal function running in balance between law enforcement and the community to create legal awareness.<sup>9</sup> Public officials who are negligent or intentionally do not provide information that causes harm to other parties, whereas according to the Prudential Principle, public officials should prevent losses to those concerned in terms of information services.

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<sup>6</sup>BambangWoluyo, *Legal Research in Practice*, SinarGrafik, Jakarta, 2010, p. 13.

<sup>7</sup>The purpose of establishing the rules for information disclosure is found in the second part of Article 3 of Law Number 14 Year 2008 Regarding Public Information Openness which is stated: (a) Guarantee the right of citizens to know the plans for making public policies, and the process of making public decisions, and the reasons for making a decision public; (b) Encouraging community participation in the process of making public policies; (c) Increasing the active role of the community in the process of public policy making and good management of public bodies; (d) Achieve good governance of the State, which is transparent, effective and efficient, accountable and accountable. (e) Knowing the reasons for public policies that affect the lives of many people; (f) Developing knowledge and educating the life of the nation, and / or (g) Improving the management and service of information within the public body to produce quality information services.

<sup>8</sup>Abdurrahman, *Loc.cit*

<sup>9</sup> Soerjono Soekanto, *Legal Awareness and Legal Compliance*, Raja Grafindo Persada, Jakarta, 2002, p. 215.

Openness of public information among Advocates is minimal with the closed gap to get information, data and other documents. In Article 1 of Law No. 18 of 2003 concerning Advocates, which states that Advocates are people who work in providing legal services, both inside and outside the court, who meet the requirements based on the provisions of this law. Legal services are services provided by lawyers in the form of providing legal consultation, legal assistance, exercising power, representing, assisting, defending, and carrying out other legal actions in the interests of the client's law. So it is strengthened in Article 5 paragraph (1) of the Advocate Law explaining that Advocates are law enforcement.

But the fact is that Advocates in carrying out their duties to help their clients in the judicial proceedings get obstacles and obstacles. In accordance with the mandate of Article 17 of Law Number 18 Year 2003, advocates cannot obtain or obtain information, data, and tender documents. Protection of the right to information is an important feature of a democratic rule of law.

Even though the advocate has sent a request for information to be refused to provide information because it is not authorized to obtain the information intended to the Advocate as requested by the Advocate. Based on the mandate of Article 95 paragraph (1) Regulation of the Minister of Finance No. 27 / PMK.06 / 2016 Regarding Bidding Implementation Guidelines containing: "In the framework of the interests of the judicial process, a copy of Minutes of Auction Minutes and / or documents attached to Minutes of Auction Minutes may be given to investigators, public prosecutors or judges, with the approval of the Head KPKNL for Class I Auction Officers or Superintendent Supervision for Class II Auction Officers ".

Requests for public information can be done by anyone, whether they see, know and get copies in accordance with applicable laws and regulations, if in obtaining information that fails or is not provided by a public body, the applicant can file a lawsuit in court, anything that raises the rules rules that have force that is forcing, that is if violated will get strict and real sanctions.<sup>10</sup>

The rules in the case of filing a court are contained in Article 47 of Law Number 14 Year 2008 concerning Openness of Public Information which is stated: "the filing of a lawsuit is carried out through the State administrative court if the sued person is a state public agency, and the filing of the lawsuit is done through a district court if the being sued is a public agency besides the State Public Agencies. Whereas the rules relating to criminal prosecution under this Law constitute offense of complaint and are filed through a general court that is regulated in Article 57 of Law Number 14 Year 2008 Regarding Public Information Openness.

From the explanation above, advocates and in accordance with the laws and regulations should be able to obtain information that has been requested in accordance with applicable mechanisms, so that we can understand that the public body has violated the laws and regulations both the law on public information disclosure and the law on advocates so that it can be said that the public body has fulfilled the criminal element and can be reported to the authorities, generally in force in Indonesia is a civil law system based on a doctrine that the government will always do good to citizens according to the information requesters who need attention from the government,<sup>11</sup> there are three elements that need to be considered in law enforcement, namely legal certainty, expediency and justice.<sup>12</sup>

## IV. CONCLUSION

### A. Conclusion

The openness of public information is an important asset of a State in welcoming the progress of the nation and state in fulfilling the rights of every applicant for information that has been guaranteed by the 1945 Constitution of the Republic of Indonesia (1945 Constitution of Indonesia) Article 28F, the Law on Public Information Openness passed on April 30, 2008, which consists of 64 articles, but only came into effect two years after it was ratified, the importance of public information disclosure, namely guaranteeing citizens' rights to know public policy making plans, encouraging community participation, increasing the active role of the community, realizing a good state administration, knowing the reasons for public policy, developing knowledge and educating the nation's life in accordance with the Article 3 of Law Number 14 of 2008 concerning Openness of Public Information regarding criminal threats contained in Article 52 of Law Number 14 of 2018 which is for public agencies that do not require whether or not providing public information that has been requested in accordance with the laws and regulations is subject to a maximum imprisonment of 1 (one) year and / or a maximum fine of 5,000,000.00 Idr (five million rupiah).

### B. Suggestion

It is recommended that the Government be able to revise or revoke Article 95 paragraph (1) of the Minister of Finance Regulation No. 27 / PMK.06 / 2016 Regarding Bidding Implementation Guidelines which

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<sup>10</sup>Yulies Tina Masriani, *Introduction to Indonesian Law*. Sinar Grafika, Jakarta, 2004, p. 13.

<sup>11</sup>Luhut M.P Pangaribuan, *Criminal Procedure Law*, Djembatan, Jakarta, 2008, p. 1.

<sup>12</sup>Sudikno Mertokusumo, *An Introduction to Law*, Liberti, Yogyakarta, 2003, p. 145.

are very detrimental to the advocates in carrying out their duties in assisting their clients to complete the proceedings at the trial, because these regulations contradict the higher rules above, namely Law Number 14 of 2008 concerning Openness of Public Information and Law No. 18 of 2004 concerning Advocates.

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