
The Urgency Of The State Secrets Bill From A Human Rights Perspective

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ABSTRACT

The Draft State Bill Law has been a topic of discussion since the early reform era. However, this draft law often generates polemics among the press and democracy activists because it is considered to reverse the pace of reform that has been fought for. In the end, the House of Representatives decided to include this State Secrets Bill in the National Legislation Program (Prolegnas). This bill will be a legal regime for state secrets which will be a guideline for all State Institutions in matters of state secrecy which includes documents, objects, property and so on. This bill is also being pushed on the grounds that currently Indonesia does not have definite regulations regarding the protection and safeguarding of state secrets. Thus, it is hoped that this bill will be a breath of fresh air for the protection of state secrets in order to ward off threats to state defense and security. However, this bill faces challenges in being able to balance the public's right to access information and openness as stipulated in Article 28F of the 1945 Constitution of the Republic of Indonesia.

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INTRODUCTION

Study of "State Secrets" or state secret It seems that not much has been done in this country. A search on Google Scholar on November 14, 2023, yielded 147 results for publications related to "state secrets Indonesia." Of these, 63% focus on legal aspects and the right to information, 27% discuss the management of state secrets, and 10% address other issues related to state secrets. While leading Indonesian academic journals like the Journal of Law and Society and the Journal of Political Science have published some articles on state secrets, the number remains relatively small. This indicates that research on state secrets in Indonesia requires further encouragement and development.

State secrets themselves are information, objects and/or activities that are officially determined and need to be kept secret in order to receive protection through confidentiality mechanisms. Protection of State Secrets itself is part of the defense and security of a country. Because if State Secrets are not protected, they have the potential to threaten the stability or continuity of a country. State secrets themselves are very varied in form, ranging from National Examination documents or School Examinations to conversations or communications between the President of the Republic of Indonesia and outside parties, which are one form of State Secret.



The secret state legal regime is often perceived as an opposing regime and is rejected in the administration of a modern democratic state. This arises because of a very broad interpretation of democracy and democratic government itself in the administration of a modern state that is transparent, accountable and dynamic. Democracy is often interpreted only from the perspective of a very liberal approach where the state is only possible as a 'night watchman' (future state) from a 'public' house.

The State Secrets Bill (RUU) is one of the bills that is a priority for discussion based on the National Legislation Program (Prolegnas) document, contained in the Decree of the House of Representatives (DPR) Republic of Indonesia No. 01/DPR-RI/III/2019-2024. Discussion on This bill is intended to look at developments discourse and a number of changes to the formulation of articles. The explanation of the State Secrets Bill even in the very first paragraph quotes the article guaranteeing human rights in the 1945 Constitution. In the explanation, it states: (Rancangan Undang-Undang Tentang Rahasia Negara Draf Kementerian Hukum Dan Hak Asasi Manusia, n.d.)

"The 1945 Constitution of the Republic of Indonesia in article 28F, mandates that every person has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, own, store, process and convey information using all types of channels available".

By using human rights knowledge and practice, the restrictions imposed - in this case by the State Secrets Law - can be formulated in an appropriate manner does not contradict, contradict or even negate the guarantee of rights in article 28F. Therefore, it is unreasonable not to provide an opportunity for human rights discourse to take place in the debate regarding the substance and material of this bill. On the other hand, statements by officials who only make economic and political arguments while ignoring human rights arguments are basically contrary to the spirit and breath that underlies and animates the process of drafting State Secrets legislation.

With regard to the legal regime of state secrets, countries that adhere to socialist, communist and non-democratic systems tend to expand the categorization of state secrets. This closed nature and tendency to hide information makes this country a country police state where the state tries desperately to hide information from its people. The categorization of State Secrets can even include the brutal handling of protests by state officials. This aims to criminalize people who dare to reveal or investigate the state's black pages.

In contrast, western countries and countries that adhere to liberal democratic systems tend to provide more access for the public. In the United States for example, Freedom of Information Act and Government Secrecy Reform Act requires the government to disclose all confidential documents that have exceeded 30 years or are no longer considered sensitive. However, the state can still make a discretion not to disclose a State Secret to the public for certain reasons. Moreover, a superpower like the United States often "interferes" in other countries' affairs, where US State Secrets not only impact the US itself but also other countries. This freedom is based on the understanding that access to confidential state information is a form of civil and political rights as stated in International Covenant on Civil and Political Rights (ICCPR).

Indonesia, as a democratic legal state and basing itself on the state ideology of Pancasila, of course also needs this legal regime as a modern state administration tool that seeks to balance public rights and state (government) rights. Of course, the specific formation of the Law on State Secrets cannot be said to be completely 'new'. There are many provisions which touch on state secrecy in various



forms. The widespread and unclear (unclear) regulations regarding state secrecy have resulted in a high level of urgency to immediately implement this legal regime as part of national legal reform. Especially if it is linked to the issuance of a law that specifically regulates transparency and issues.

METHOD

Methods play an important role in achieving a goal, including methods in research. The research method in question is a way of carrying out research (which includes activities of searching, recording, formulating, analyzing and compiling reports) based on scientific facts or symptoms. The method used in compiling this article is as follows:

From the background and problem formulation described above, this type of research falls into the category of normative legal research, because normative research mainly uses library materials as a source of research data. or also known as (Library research), the method used to collect data from various literature. This research is descriptive analysis, meaning that this research includes the scope of research that describes, examines, explains precisely and analyzes the laws and regulations related to this research (Marzuki, 2008). This thesis research uses a qualitative approach, in this qualitative research the analysis of the dynamics of the relationships between phenomena observed uses scientific logic. Qualitative research is an approach that produces descriptive data in the form of written or spoken words from people and observed behavior that is not expressed in variables or hypotheses. Qualitative research because the data needed and used is information that does not need to be quantified.

RESULTS AND DISCUSSION

Indonesia as a democratic country, in accordance with the demands of Reform, requires that the government be managed transparently and openly. A modern democratic country is required to open access to information as widely as possible for the public interest. This departs from the understanding of human rights which guarantees freedom to obtain information and the right to disseminate information. This right to information has significance for the formation of good governance in a transparent and accountable democratic government climate (open government). This open government character is a characteristic of governments that reject authoritarianism and totalitarian regimes, as opposed to democratic governments. Freedom of information for the public is also believed to be able to restore corrupt and collusive cultural conditions to become cleaner, more transparent and accountable (Ashiddiqie, 1994).

Conflict Between State Secrets and Openness of Public Information

In such a democratic view of freedom of information, the legal regime of state secrets is a scourge that prevents the public from taking part in controlling the government through access to information which they have as a human right. The existence or presence of a state secret legal regime becomes irrelevant to be placed on an equal footing with the legal regime freedom of information. Thus, supporters of the right to freedom of information, driven by non-governmental organizations (NGOs), want this state secrets legal regime to be subordinate to the legal regime for freedom of public information. This thinking is based on the assumption that a democratic government should not keep information secret from its own people who are in the position of state owners.



Furthermore, the assumption of liberal democracy is that the state is only a tool for the public to carry out its interests towards prosperity and justice. Supporters of the secret state regime are considered to want to develop the state's attitude police state which is authoritarian and undemocratic. Meanwhile, supporters of the freedom of information regime are seen as wanting to weaken the role of the state government which is basically also enshrined in the public interest (the people or citizens). Here then a classic political phenomenon emerges, the State confronting society, and 'state secrets' confronting 'freedom of public information', as well as the general notion of 'authoritarianism' versus 'democratization'. This simplification has apparently created a confrontational position that is not conducive to the formation of good (adequate) law and is expected to become the basis for legal certainty for the long term.

Indonesia itself has experienced the bitterness of government closure during the Old Order and New Order regimes in power. The people are powerless to demand accountability and responsibility from the government in power. Thus, the government runs without real control from the community, thus perpetuating Corruption, Collusion and Nepotism which then destroys the government itself. This kind of closure ultimately encourages the people to demand that the government be open and not keep secrets from its own people. Access to information is the essence of monitoring the running of government.

We can see this from Indonesia's CPI score, which has shown a gradual increase over the past decade. In 2022, Indonesia scored 38 points, placing it in the "dubious" category. However, this is a positive trend compared to the score in the 20s (highly corrupt) during the Suharto era (New Order regime) which was known for its lack of transparency (Robison, 2018). Several studies suggest a correlation between access to information and successful anti-corruption initiatives in Indonesia. For example, a 2019 study by the Centre for Anti-Corruption Studies (MAKI) found that villages with greater public access to village funds experienced lower corruption rates (MAKI, 2019).

Data Type	Source	Key Finding
MAKI Study 2019	Center for Anti-Corruption Studies (MAKI)	Villages with higher transparency in village fund management have lower corruption rates.
Village Fund Transparency Survey 2021	Ministry of Village, Development of Disadvantaged Regions, and Transmigration (Kemendes PDTT) & Central Bureau of Statistics (BPS)	Villages with higher transparency in village fund management have a lower risk of corruption.
Law Enforcement Data on Village Fund Corruption Cases	Corruption Eradication Commission (KPK)	Villages with higher public participation in managing village funds tend to be less involved in corruption cases.

In addition, the government should understand that public responses regarding information disclosure are expected by the public to combat various forms of authoritarianism in government, starting from corruption. A 2020 survey by Indonesian Corruption Watch (ICW) found that:

- 82% of respondents believe public access to information is important to fight corruption.



- 78% of respondents believe the government should be more transparent in its decision-making.
- 73% of respondents believe the public should have greater rights to access public information.

The government, along with its special agencies, as state administrators also have rights as a means of exercising their power, administrative power, power which ultimately is also intended for the safety of society and the nation as a whole. In this case, human rights are in conflict with the rights of the state administration. These things must be placed in reasonable proportions and not negate each other. Like family secrets, state secrets are also something that naturally exists and is necessary.

Freedom in a democratic climate should not destroy the goals of democracy itself. The principle of freedom in democracy, philosophically, has the potential to kill democracy itself. We certainly don't want this in the context of a democratic country which is based on legal certainty, usefulness and peace. The Law on Freedom of Obtaining Information should not be transformed into a Law on Inappropriate Obtaining Information. Ignoring the substance of information that needs to be kept secret is a form of reform that is excessive and destructive for improving healthy state management (Prastyo, 2002).

Scope of the State Secrets Bill

The scope of the actual (pragmatic) regulation of state secrets can be seen from two sides. First, look at the articles regarding information that is excluded in the draft Law on Freedom of Information. Second, look at the categorization of academic research results that have been carried out in the form of a rough draft of the existing Law on State Secrets. These two sources can be compared and common ground can be found to complement and clarify each other. In principle, the regulation of confidential information in the Law on Freedom of Information only provides general provisions (outline) which will be explained and will refer to the Law on State Secrets (A special law overrides a general law).

From an academic perspective, it would be a good idea for the two parties who drafted the two laws to meet and communicate with each other the substance and scope of the state secret regulatory material. For parties who object to the narrowing or expansion of the scope of confidential material, they can express their respective rational and tendentious arguments. This is important in order to achieve a rational compromise and conditions for the formation of laws that are truly aimed at national interests, not the domination of the vested interests of certain parties. An open and pressure-free discourse ethic becomes a vehicle for the democratization of efficient and effective legal formation for the creation of a legal order that accommodates the interests of various participants directed towards the broader interests of the nation.

The significant thing that must be understood is that single object from this setting is data that has been processed, yes that is 'information'. Information is the focus as confidential news that must be protected. Other things that are not information such as operational planning, activities, facilities and infrastructure is scope 'property' from the information itself. When information concerns activities, planning, property or concerns confidential locations, then all of this is within the scope of protected 'information'. This must refer to other legal regimes relevant to the protected property. For example, if the property is the location of a secret military installation, then the land (agrarian) legal regime will grant certain rights called state management rights to the relevant agencies. Not in the form of ordinary rights such as IMB, HGB, HGU, etc.



So, the Freedom of Information and State Secrets Laws should not be perceived as being able to stand alone, both are always related to regulation a special law in other laws. However, for special agencies working in the fields of military, intelligence, coding, this isa special law which directly regulates the existence of institutions and their work. The closure of information or protection of confidential news must be classified rationally and objectively within strict boundaries. The method of determining and changing the classification is an element. If viewed through a democratic paradigm, the public has basic human rights to obtain information about the government freely and easily (Nurtjahjo, 2017).

CONCLUSION

A balanced arrangement between public rights and state rights in implementing the information confidentiality regime is very important. That the state apparatus also needs definite legal guarantees and the existence of information that needs to be kept private for the sake of the state's existence, is a reality that cannot be denied. Discussion and issuance of complementary bills should be carried out in parallel (together). There needs to be awareness from both parties who drafted and provided input for the two bills to communicate with each other to argue about things that might be a threat to one against the other. A healthy discourse ethic must involve participants who think freely and without pressure from any party. In order to create an effective state confidentiality law.

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