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## **Public Information Dispute Settlement through State Courts in Indonesia**

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### **Abstract:**

*Access to information is part of human rights (HAM) which are guaranteed and protected by the constitution (UUD 1945). The government in Indonesia must be able to transparently report performance results which are the responsibility of the public. Along with its development, in the judicial review of the Law on Public Information Disclosure, namely Law Number 14 of 2008 which is mostly always rejected by the Constitutional Court, therefore the author assumes that the Law has not been properly applied to law enforcement against disputes over public information. Hereinafter abbreviated as SIP, mainly related to the authority of the District Court in adjudicating public information disputes (SIP) in Indonesia. This study uses a sociological juridical approach. The purpose of this study is to identify and analyze the reconstruction of the authority of the District Court in adjudicating Public Information Disputes in Indonesia. The results show that the process of resolving public information disputes through the Information Commission is mostly resolved by mediation rather than non-litigation adjudication, but related to non-litigation adjudication that is appealed to the District Court can be resolved using PERMA No. 2 of 2011 concerning Procedures for Settlement of Public Information Disputes (SIP) in Court.*

***Keywords: District Court, Reconstruction, SIP.***

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**Introduction:** Indonesia is a legal state based on Pancasila as the ideal foundation and the 1945 Constitution of the Republic of Indonesia as the constitutional basis which aims to realize a nation's life that is prosperous, safe, orderly, and justly legal. In Indonesia, the issue of fairness and justice has a very respectable place in the life of society, nation and state. This can be seen in the Pancasila state basis, which in its second precepts explicitly states "Just and Civilized Humanity", and in its fifth precept it states "Social Justice for All Indonesian People" (bold pen.). Justice is something that is very essential for human life, so that it becomes something that every individual and society continues to strive for so that

life can run well, safely and peacefully. For the Indonesian people, justice is also a central value in the life of the nation and state which can be seen in the formulation of the 5th Precept of the Pancasila, namely: "Social justice for all Indonesian people". In relation to the system of government in Indonesia, good governance is a government that adheres to and applies the basic principles of accountability, transparency and participation. Accountability can be achieved if the administration of government is regulated by a system that ensures that all its components have measurable performance standards that can be controlled and monitored, both internally and externally. Supervision is also possible to be carried out by the public (public) as an inseparable part of a democratic state system. It is also very dependent on government administrators who have sufficient competence and moral commitment and responsibility, thus providing an open space for public supervision to be possible.

Government is essentially carrying out services to the community, in the sense that the government is not held to serve only the government or parties that benefit the government, but the community also needs to get a form of public service including knowing public transparency. With the existence of Law No. 14 of 2008 which came into effect on May 1, 2010 it is hoped that all public bodies will provide and open access to public information. The obligation to provide access to the public is aimed at realizing good governance, which is transparent, effective, efficient, accountable, and accountable. Disclosure of public information is an important means to build trust between the government and the community. The availability of public information and access to public information will improve communication between the government and the public. High trust from the community will certainly create a safe and peaceful atmosphere which is an important capital for the government to carry out its duties effectively and efficiently. The above situation is an important capital in carrying out development. This is done so that arrangements regarding matters that become public information can be accessed by the general public so that public knowledge can increase and it is hoped that there will be no deviations and disputes in the information sector; while there is a deviation from Law Number 14 of 2008 concerning Public Information Disclosure can be imposed. Legal sanctions by using the criminal provisions contained in the Act. The District Court (commonly abbreviated: PN) is a judicial institution within the General Courts which is domiciled in the district or city capital.

As a Court of First Level, the District Court functions to examine, decide, and resolve criminal and civil cases for people seeking justice in general. The decision of the Supreme Court of the Republic of Indonesia Number 012/KMA/SK/II/2007 concerning the Establishment of the Improvement Team regarding the supervision of Books 1 to 4 considering b "That judicial power is exercised by the General Courts, Religious Courts, Military Courts, and Administrative Courts The state culminates in the Supreme Court to carry out the highest supervision over the running of the judiciary. In the context of equal opportunity to obtain justice, every District Level II Region that does not yet have a District Court can be proposed to be established by a District Court (according to Article 4 (1) of

Law Number 8 of 2004 Amendment to Law Number 2 of 1986 concerning General Courts). The establishment of the Court is carried out in stages based on the urgency of priorities. The District Court or PN is a judicial institution within the district or city scope. In its formation, the District Court was established based on a Presidential Decree. In Law Number 2 of 1986 concerning General Courts, courts are divided into two types, namely: District Courts as the First Level Courts High Courts as Courts of Appeals. As an institution of the First Level Court, the District Court has a number of duties, functions and authorities that must be carried out. Duties and Authorities of the District Court the duties and authorities of the District Court are stated in Article 50 of Law Number 2 of 1986, which reads: "The District Court has the duty and authority to examine, decide and settle criminal cases and civil cases at the first level."

Based on the law, the duties and authorities of the District Court are to examine, decide and settle criminal and civil cases for the people seeking justice in general, unless the law provides otherwise. Examples of criminal cases that can be handled by the District Court are cases of fighting, sexual harassment, theft, traffic violations, domestic violence, and so on. While examples of civil cases that can be handled by the District Court are cases of defamation, inheritance, land or land disputes, child custody, and so on. With the enactment of Law Number 14 of 2008 concerning Public Information Disclosure and PERMA Number 2 of 2011 concerning Procedures for Settlement of Public Information Disputes in Courts, the authority of the District Courts has increased, especially in adjudicating public information disputes (SIP), this is in accordance with the provisions in Chapter X Lawsuit to the Court and Cassation Article 47 number (2) of Law Number 14 of 2008 concerning Public Information Disclosure (UU KIP) and also PERMA Number 2 of 2011. Article 47 of the UU KIP which reads.

A lawsuit is filed through a district court if the person being sued is a Public Agency other than a State Public Agency as referred to in paragraph (1)". Public Information Disputes (SIP) as referred to in the Public Information Disclosure Act (UU KIP) are contained in the provisions of Article 1 paragraph (5), namely: "Public Information Disputes and users of public information relating to the right to obtain and use information based on the legislation " From this definition, Law No. 14 of 2008 concerning Public Information Disclosure (UU KIP) also regulates procedures regarding the settlement of Public Information Disputes (SIP) as stated in Chapter VIII of Law Number 14 of 2008 (UU KIP) regarding objections and dispute resolution through the Information Commission. In the context of the settlement of Public Information Disputes (SIP) according to the provisions of Law No. 14 of 2008 concerning Public Information Disclosure (UU KIP) is through the Information Commission, it is hoped that all Public Information Disputes (SIP) will be resolved through the Information Commission, while the settlement process at the Information Commission is through mediation and non-litigation adjudication, but the provisions in Law No. . 14 of 2008 concerning Public Information Disclosure (UU KIP) on non-litigation adjudication decisions from the Information Commission, if there are parties

who are dissatisfied with the decision, they can file legal remedies to the Administrative Court and the District Court to the Supreme Court.

**Research Methods:** This study uses a qualitative descriptive method with a normative juridical approach. Data collection using:

- a. Study of Legal Documents Normative legal research uses data collection methods by studying legal documents, namely Law Number 14 of 2008 concerning Public Information Disclosure and PERMA No. 2 of 2011 concerning Procedures for Settlement of Public Information Disputes in Court.
- b. Literature Study This research literature uses secondary legal materials such as information commission regulations, results of previous research, literature books, legal papers, scientific articles, all of which are relevant to the subject matter that is the focus of the research.
- c. Direct Interview “An interview or interview is a conversation with a specific purpose. Interviews were conducted by two parties, namely the interviewer who asked the question and the interviewee who gave the answer to the question.

**Results and Discussion:** In general, Law Number 14 of 2008 concerning Public Information Disclosure is expected to build Information Disclosure in Government and Non-Governmental Institutions which have been very difficult to reach by the public. In particular, Law Number 14 of 2008 concerning Openness of Public Information encourages the creation of a process of democratization in the administration of government. Therefore, Law Number 14 of 2008 concerning Openness of Public Information supports transparency of information in all government institutions which is one of the prerequisites for democratic governance. Mechanisms that regulate how the public can access public information need to be formulated and defined in a standard way to become a reference for public agencies and the public using public information. The mechanism is set forth in the standard of public information services in accordance with the existing categories of public bodies and public information, because not all information in the form of data, facts and messages can be accessed by the public which in Law Number 14 of 2008 is defined as exempt information. With reference to information service standards, the public can easily get information but still adhere to ethics and procedures as regulated by laws and regulations.

**a. Public Information Dispute Resolution Process through the Information**

**Commission:** The process of resolving Public Information Disputes through non-litigation channels is a settlement carried out by the Information Commission through several models, namely as follows:

SIP Settlement Process through Mediation. Mediation is the settlement of public information disputes between the parties through the assistance of an Information Commission mediator (Article 1 paragraph (6) of Law No. 14 of 2008 concerning KIP), so in the process of resolving disputes or cases in general in public information disputes What is resolved through the Information Commission is through the spirit of mediation, because it is hoped that in mediation an agreement will be found between

the two disputing parties. Settlement of SIP through mediation is carried out for one or several of the following reasons as stipulated in Article 3 paragraph (3) Information Commission Regulation No. 2 of 2010 concerning Procedures for Settlement of Public Information Disputes, namely: 1. Periodic information is not provided which must be announced by the agency. public as referred to in Article 9 of Law no. 14 of 2008 concerning Public Information Disclosure and Information Commission Regulation Number 1 of 2010 concerning Public Information Service Standards 2. Unresponsive to requests for information 3. Requests for information were not responded to as requested 4. Unfulfilled requests for information 5. Imposition of unreasonable fees; and/or 6. Submission of information that exceeds the time period based on the provisions of the applicable laws and regulations. An important note here is the SIP case which was resolved through mediation.

Settlement of Public Information Disputes through non-litigation adjudication is an administrative appeal pattern, because here it examines not only the side of its *wetmatig* (normative) or its *rechtmatig* and *dochmatig* (policy). Based on the provisions of Article 46 of Information Commission Regulation Number 2 of 2010 concerning Procedures for Settlement of Public Information Disputes, the non-litigation adjudication process is carried out through the following stages:

- 1) Listening and/or confirming the information of the Applicant;
- 2) Listening and/or confirming the statement of the Respondent Listening to the testimony of witnesses, if any and/or required;
- 3) Listening to expert testimony, if any and/or required;
- 4) Checking the series of data, information, actions, circumstances, and/or events that are in accordance with other evidence that can be used as instructions, if necessary
- 5) Listen to the conclusions of both parties if any and/or required

The initial process of the trial the board of commissioners opens the trial and asks the parties, in the case of the parties represented by their proxies, a power of attorney from the party they represent is required, but it is important for the applicant to come to the trial process because in Article 48 PERKI No. 2010, it has been explicitly stated that in the event that the applicant for information turns out to be absent without a reason justified by law even though he has been summoned to attend the hearing, his application will be invalid and cannot be resubmitted unless it has to be repeated from the initial process again. If you are present at the trial but are unable to attend, the trial will continue. In the next process, the commissioner or the Information Commission assembly summarizes the answers to requests and answers, and provides an opportunity for both parties to be able to provide additional explanations needed, then the proof process in which in this trial the burden of proof is all placed on the respondent or in this case the agency. Public the evidence that can be submitted as regulated in Article 53 paragraph (2) Information Commission Regulation no. 2 of 2010 concerning Procedures for Settlement of Public Information Disputes is as follows:

- 1) Letters;
- 2) The testimony of a witness under oath regarding the facts he has seen, heard and experienced.
- 3) Expert testimony under oath in accordance with his expertise.
- 4) Information from the applicant, the respondent, as well as information from directly related parties.
- 5) Instructions obtained from a series of data, information, actions, circumstances, and/or events in accordance with other evidence, and/or
- 6) Other evidence in the form of information that is spoken sent, received or stored electronically with optical devices or similar.

Meanwhile, specifically for witness evidence, it is sufficient to ask them to take an oath according to their religion and belief before delivering their testimony. After all the trial processes have been carried out, namely examining and hearing requests, answers, evidence and conclusions, then before the Information Commission board of commissioners decides SIP conducts deliberation with the members of the assembly to determine the decision. After the decision is made, the decision is pronounced in a trial that is open to the public.

**b. Information Dispute Resolution in Court:** In the event that the parties or one of the parties file an objection, the mechanism of the objection is regulated in Supreme Court Regulation (Perma) No. 2 of 2011 concerning Procedures for Settlement of Public Information Disputes in Court. Perma said that the objection mechanism was filed in the format of a lawsuit, namely an objection submitted by one of the parties. Remember, according to Article 48 paragraph (1) of Law no. 14 of 2008 concerning Public Information Disclosure (UU KIP), the objection must be stated in writing. There are two pathways provided: the General Court (PN) or the State Administrative Court (PTUN). What determines the path used is the status of the person being sued. If the defendant is a State Public Agency, the route is through the Administrative Court; on the other hand, if the defendant is a non-state Public Agency that is used is the General Court. Article 47 of the UU KIP stipulates the division of competent courts. Which court is competent is basically determined by the domicile of the Public Agency. However, the objection applicant can still file an objection to the court in the area where he/she resides if the domicile of the Public Agency is far away. Later the court will send the lawsuit (objection) to a more competent court. This is an effort to make it easier for justice seekers, while avoiding the possibility of passing time. Constraints in the process of resolving information disputes, one of which is a long process, because it has to go through several previous procedures at the Information Commission, only after the complaint by the reporting party is not granted, it takes a long time of course after that, with the results of the Information Commission decision, there are other things It should be noted: there is no longer a mediation process. This is the difference from the usual civil lawsuit hearings at the PN or dismissal examinations at the PTUN.

The PN or PTUN judges only conducted a simple examination of the Information Commission's decision, case files, requests for objections, and answers to those objections.

However, if there is a rebuttal from one of the parties, the judge can examine the evidence. Even in practice, it is possible to present experts and witnesses. In practice, the panel of judges will examine the arguments or arguments of the parties who raise objections. The reasons for filing an objection can vary. For example, regarding the legal standing of the applicant for information. The KIP Law does limit applicants for information, only Indonesian citizens or Indonesian legal entities. The status of an Indonesian citizen is easy to prove through a National Identity Card (KTP). On the other hand, the status of legal entities has been the subject of debate. The Information Commission has even confirmed its legal standing through Information Commission Regulation No. 1 of 2013 concerning Procedures for Settlement of Public Information Disputes.

Submission of objections to court is bound by time. An objection to the court, for example, must be submitted no later than 14 working days after the decision of the Information Commission is received. No later than 14 days after the deregister lawsuit, the Court Registrar shall request a copy of the official decision to the Information Commission. And, 14 days at the latest, the Information Commission must submit the decision and case file to the Court. An objected respondent may submit an answer to the Registrar within 30 days after the objection is registered. The panel of judges is also time bound. The legislation only gives a time limit of 60 days for judges to decide the lawsuit. The period of time is calculated based on the date of determination of the composition of the panel of judges. The composition of the panel is determined by the Chairperson of the Court no later than 3 days after the time for the respondent to submit an answer to the objection request. The content of the decision can be seen from the type of information dispute. First, if it concerns the granting or refusal of access to information, the judge's decision can be in the form of canceling the decision of the Information Commission and ordering the Public Agency to provide the requested information; or conversely confirm by stating the decision of the Information Commission is correct and does not conflict with the law. Second, if the main object of the objection is not providing periodic information and other reasons as regulated in Article 35 paragraph (1) letters c to g of the UU KIP. In this case, the panel of judges may order the Information Management and Documentation Officer (PPID) to carry out their obligations; or reject the application; or cut the cost of copying information. The decision of the PN or PTUN on objections to information disputes is not the last stage. The law still allows the parties to file an appeal. The basis is Article 50 of the KIP Law: Article 50 of the KIP Law states "A party that does not accept the decision of the state administrative court or district court may file an appeal to the Supreme Court no later than 14 (fourteen) days from the receipt of the decision of the state administrative court or court. country".

Settlement of public information disputes through non-litigation adjudication by the Information Commission can only be taken if Mediation efforts are declared unsuccessful in writing by one or the disputing parties, or one or the disputing parties withdraw from the negotiations. The Mediation Decision is final and binding (Article 39 of the KIP Law). In the event that one or the parties do not file an objection to the Court, the decision of the

Information Commission shall have permanent legal force. As for the time for resolving public information disputes through mediation and/or non-litigation adjudication conducted by the Information Commission, it is within 100 working days at the latest. Until now, there is no exact data on the total number of applications for dispute resolution that have been submitted to the Central Information Commission (KIP) and the Provincial Information Commission. The decision of the Information Commission is actually not the end of everything, in the sense that it is not a decision that is truly final and binding. This means that there are other legal remedies provided for by law. If one of the parties – the requester for information or the public body for which the information is requested – does not agree with the decision of the Information Commission, they can file an objection to the court. The objection mechanism is regulated in Supreme Court Regulation (Perma) No. 2 of 2011 concerning Procedures for Settlement of Public Information Disputes in Court. Perma said that the objection mechanism was filed in the format of a lawsuit, namely an objection submitted by one of the parties. Remember, according to Article 48 paragraph (1) of Law no. 14 of 2008 concerning Public Information Disclosure (UU KIP), the objection must be stated in writing. In principle, which court is competent, the domicile of the Public Agency is determined.

However, the objection applicant can still file an objection to the court in the area where he/she resides if the domicile of the Public Agency is far away. Later the court will send the lawsuit (objection) to a more competent court. This is an effort to make it easier for justice seekers, while avoiding the possibility of passing time. There are other things to note including there is no longer a mediation process. This is the difference with a normal civil lawsuit trial at the PN or a dismissal examination at the PTUN.

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The composition of the panel is determined by the Chairperson of the Court no later than 3 days after the time has passed for the respondent to submit an answer to the petition for objection. In this case, the panel of judges may order the Information Management and Documentation Officer (PPID) to carry out their obligations; or reject the application; or cut the cost of copying information. The decision of the PN or PTUN on objections to information disputes is not the last stage. The law still allows the parties to file an appeal.

**Conclusion:** Settlement at the Information Commission is through mediation first (if the information requested is other than what is stipulated in Article 17 of Law Number 14 of 2008 concerning Public Information Disclosure). After going through the mediation process but without success, it will be continued with non-litigation adjudication. However, in practice many Public Information Disputes have been resolved through mediation. In principle, the Information Dispute settlement process carried out at the District Court has previously been resolved at the Information Commission either through mediation or non-litigation adjudication. The process in the District Court is to use an examination process such as an Appellate Court, this is because the object of the Public Information Dispute case is the decision of the Information Commission. Reconstruction of information dispute resolution in the District Court, which requires a correlation between Law No. 14 of 2008 concerning KIP with PERMA No. 2 of 2011 concerning Procedures for Settlement of Information Disputes in Courts. What is more emphasized is related to evidence and filing in the Information Dispute settlement process at the information commission, and the substance of the District Court's decision on the settlement of Information Disputes.

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