



CHAPTER IV

COMPARATIVE STUDIES OF OIA AND INDONESIA'S FOIA

It has been eleven years since President Suharto stepped down and ended his New Order regime, leaving behind public emotional pain and failure of the government system. The widespread corruption and nepotism still exist everywhere and at every level of the bureaucracy, and Indonesia has to face this situation and find solutions to it.

The Republic of Indonesia comprises 17,508 islands with an estimated population of around 237 million people. It is the world's fourth most populous and the biggest Muslim nation. Indonesia consists of 300 different ethnic groups and 25 different languages. Most people live on the five largest islands: Sumatra, Java, Kalimantan, Sulawesi and Irian Jaya.

As a result of decades of centralized development policies and the nature of the political system, the majority of Indonesians, about 60 percent, live in Java, which is the smallest of the five major islands, containing a mere 9 percent of the country's total land area.¹

Jakarta, where 60% of the entire financial activity of the archipelago is situated, is the capital and the largest city of Indonesia, and is the economic, cultural and political center of the country.

In the era of Sukarno, Indonesia's first president, also known as the Guided Democracy era, there was more "guidance" than democracy in the system as stated in Chapter II where Sukarno declared martial law and, within a year, carried out over 125 acts of suppression against the press, including interrogations of journalists, detentions, and newspaper closures. In 1966, before his stepping down from presidency, Sukarno signed a revised Press Act into law, known as Law No. 11/1966.

After Sukarno ceded power to Suharto in 1967, the New Order regime began under the reign of Suharto. In this era, Suharto implemented a package of Five Political Laws (*Paket Lima UU Politik*). In this package, all political and social forces were under the direct supervisory control

¹ Amir Effendi Siregar. Challenges in the Process of Democratization of Communication and Information. *Seminar :Access to information: Lesson from the region*, pp.38. Bangkok Thailand,2003.

of the central government. In addition, Suharto created the social marketing strategy through the media to promote his political ideologies.

To implement his social marketing system, Suharto instated an anti-subversion law, which made the dissemination of works that “arouse hostility, cause splits, conflict, chaos, disturbances, or anxiety” a crime punishable by death. Statements critical of the President or Vice President were strictly prohibited. By January 1974, Suharto had dismantled twelve publications and arrested 470 individuals. Those arrested consisted primarily of activists, journalists, and students.¹

In 1975, most of the journalists and editors were forced by Suharto’s administration to follow the new government regulations, and by 1982 what remained of a free press was completely dismantled.

At the same time, Sukarno’s 1966 Press Act was revised to mandate licensing from the Ministry of Information regardless of the political climate. During this period, licenses that were issued were called Press Publication Enterprise Permits (*Surat Izin Usaha Penerbitan Pers*) which became the most powerful tools in controlling the activities of the press.

In the early 1990s, the press received more freedom due to the economic boom in the late 1980s and globalization. However, in 1994, the time of press freedom was over. Three leading publications, *Tempo*, *Detik*, and *Editor*, were banned on charges of “spreading hatred toward the government” and tensions between the press, the public, and the government began.

In the days following the ban, there were demonstrations comprised of journalists, intellectuals, student activists, and non-governmental organizations. This was seen as one of Suharto’s biggest mistakes; that is, going against the three publications only prompted the citizens to go out to vent their resent against the government’s authoritarian rule.

¹ Zola V. Maddison. Information’s Role in Emerging Democratic Societies: the Case of Indonesia [Online]. Available from: <http://libr.org/isc/issues/ISC25/articles/INFORMATIONS%20ROLE%20IN%20EMERGING%20DEMOCRATIC%20SOCIETIES.pdf> [retrieved January 24, 2009]

Finally, after the Tom Yam Koong economic crisis, Indonesia was greatly economically affected. Suharto still suppressed the media in an attempt to prevent them from releasing information regarding the financial market and the economic situation. This suppression had the important effect of again prompting the population to organize strikes and demonstrations which involved bloodshed and finally the end of Suharto and his New Order Era.

With the end of the New Order regime, the Indonesian public and media have obtained more rights and freedom. In 1999, Law No. 40/1999 of the Republic of Indonesia on the Press, which is simply called 1999 Press Law, was passed to protect the rights and freedom of the media.

This legislation was well known in Indonesia from the court case of *Tempo* Weekly News magazine when it was charged for defamation in criminal court by Tomy Winata, an influential businessman, who had a close relationship with both the police and military. The verdict resulted in the termination of the publishing license and Bambang Harymurti, the editor, was sentenced to a one year jail term in a court trial. In 2006 the Supreme Court reversed the verdict by using the 1999 Press Law. The magazine editor, Bambang Harymurti, was released. It was a historical judgment because the Supreme Court ruled that the 1999 Press Law, not the criminal law, should be used to judge any court cases with the media.

Surprisingly, although Indonesia has three Press Laws, there was previously none that was equivalent to a Freedom of Information Act to accompany the Press Law – one which allows access to public information. There was only the right from the **1945 Constitution of the Republic of Indonesia** Fourth Amendment (11 August 2002) Article 28F, which states that,

Each person has the right to communication and to acquiring information for his own and development of his social environment, as well as the right to seek, obtain, possess, store, process, and spread information via all kinds of channels available.²

Eventually, Indonesia passed a freedom of information act whose official name is the Openness of Public Information Act³ (OPIA) on April 3, 2008, and which will take effect in 2010.

² 1945 Constitution of the Republic of Indonesia Fourth Amendment (11 August 2002)

³ Tanti Budi Suryani. Program officer of Yayasan TIFA, Indonesia. Interview, 9th April 2009.

4.1 A Major reason for Indonesia to pass the Freedom of Information Act

The major reason for Indonesia to have an FOI is similar to that of any other country in the world, including Thailand, which is to have good governance – rule of law, transparency, and accountability in the country. It is believed that a freedom of information act can help solve the problem of high levels of corruption in Indonesia which has been deeply rooted since the latter half of the 1960's, when New Order authoritarianism came into existence. Widespread corruption – estimates of government funds misappropriated by the Suharto family range from US\$1.5 billion and US\$35 billion – was a source of much discontent, and Suharto was known as one of the most corrupt political leaders in the world.

Presently, the extent of corruption in Indonesia is less than in the Suharto period, but it still remains quite high compared to other countries.⁴ Staffan Synnerstrom, a leading public sector specialist for World Bank Indonesia, has suggested that, "Access to public information would allow greater success in promoting good governance in Indonesia, and acts as a stronger weapon in the fight against corruption."⁵

The main aspect of worldwide corruption is that government officials make no effort to disclose any administrative information, to adjust, or to act accountably to the public, so that the people can develop and increase demands for public services. The OPIA will assist officials in managing their agencies, such that the corruption in Indonesia could be lessened.

In addition, Tanti Budi Suryani Program officer of Yayasan TIFA, Indonesia also made a remark at Access to Information Workshop in April 2008, that there were other reasons why Indonesia needs FOIA:

- People cannot access any public documents easily so that they cannot understand their own rights.
- Advocacy on human rights, anti-corruption, and environment delayed by culture of secrecy.

⁴ Data from <http://www.transparency.org>

⁵ Swatz, Nikki. **Indonesia passes new FOI law** [Online]. 2008 Available from: <http://www.highbeam.com/doc/1G1-184324900.html> [retrieved March 10, 2009]

- People cannot fully participate on budget process because they don't have any access to know the document of budget planning. For women, it is worst. The government regardless their involvement in every level of decision making process.
- Marginalized people cannot voice their unfairness situation without any information related to their rights. (For example: the scarcity of fuel or oil or gas for daily life)⁶

Thailand and Indonesia may be viewed as sharing the main reasons why they need a freedom of information law. However, in the case of Indonesia, as Tanti Budi Suryani has noted, the OPIA not only aims to provide more transparency in the budgetary process in government agencies but also gives more importance to female rights – that is, to better arm women in Muslim society. This proves that Indonesia is not only going to use this law to really investigate the work of government but also to elevate the status of women in society.

4.2 Process of Adopting FOI in Indonesia

The FOI legislative process in Indonesia began in 1998, with a group of 18 NGOs forming an alliance, which was later extended to cover 40 Civil Society Organizations in 1999, joined forces in a coalition to push for the passage of FOI in Indonesia.

Hinda IP Pandjaitan, one of the members of coalition for Freedom of Information, described the process and procedures of advocating this legislation, as follows:

To make the work effective, we provide a General Coordinator who leads the secretary and 4 other coordinators, they are: Lobbying Coordinator, Formulization Coordinator, Campaign Coordinator, and Network Coordinator. The Lobbying Coordinator focuses on the approach to the political elite in parliament and government, so that the work format

⁶ Tanti Budi Suryani. The Openness of Public Information Act in Indonesia. *Access to Information Workshop*, pp.1. Jakarta Indonesia, 2008.

and campaign can be scheduled for further discussion. The Network Coordinator is responsible for building networks in the region to mobilize public support.⁷

The coalition later adopted FOI International principles and prepared a draft of the Indonesian FOIA. This draft was then submitted to the parliament for its due consideration. In 2001, the parliament legally adopted this draft as a legislative proposal and started the legislative process, which was suspended until 2003 when there was growing pressure on the parliament to schedule the passage of this freedom of the information bill. Consequently, the House of Representatives had to form a Special Committee to discuss the draft Law.

Initially, there were three versions of the law proposed by the NGOs coalition, the House of Representatives, and the Government, respectively. The contents of the NGOs Coalition and House of Representatives versions represent in principle that society has to be able to access any public information in possession of public and state institutions, and that an Independent Information Commission should be established to inspect and regulate the exercise of this law.

Meanwhile, the government draft did not envisage establishment of an Independent Information Commission. In case of complaints or appeals, they should be taken to court, whose proceeding takes a long time before a verdict is delivered on whether any information may be released.

Moreover, some articles in the government draft were not very clear and thus needed later to be interpreted in government rules established by the government itself. Obviously, the Indonesian government had no real intention to reveal any government information because it still wanted to control public information.

In the Indonesian political system, a draft law could officially come from The House of Representatives or from the government; then they will discuss and both have to agree on it. The next step is to submit the result to the Plenary Session of the House of

⁷ Hinca IP Pandjaitan. To fight the act of the freedom of information access in Indonesia: Hard and Tiring "An Experience". *Seminar :Access to information: Lesson from the region*, pp.6. Bangkok Thailand,2003.

Representatives for discussion before being either notarized or rejected. The Act that has been notarized has to be enacted by the president in no later than 30 days.⁸

However; this process was not practical due to the election of 2004. The parliament and the president were preoccupied with the electoral process and this draft was not a priority issue to discuss in parliament. The five organizations in the NGOs coalition continued to discuss the draft together with the initial draft from the previous period. The newly elected parliament for the parliamentary period of 2004-2009 decided to adopt the best draft as their legislative initiative.

In 2005, this draft was taken up for consideration again but it took the parliament and government almost three years to eventually pass this law on April 3, 2008. The content is 80 percent similar to the NGOs coalition draft.

28th September 2005, the parliament asked the President (for appointed ministry of info and ministry of law and human rights) to discuss it in parliament on legislation processed. The draft of FOIA was discussed again until 2nd April 2008.⁹

4.3 Barrier to the Legislation Process

Government agencies were much responsible for the delay in the process of enacting the FOIA in Indonesia. It is understandable that they did not want to hand over their authority to others though it was not actually theirs. Indonesia State Sign Agency, the Ministry of Defense, and State Intelligence Agency have not yet given the approval for the plan of implementing this law.

On the contrary, they are trying to consider the state secret law as a more important priority. In addition, during that time, the president had his statement published in the April 10, 2003 issue of *Tempo*, a daily newspaper, saying "there are many figures who leak the secrets of the nation".

⁸ Amir Effendi Siregar. Challenges in the Process of Democratization of Communication and Information. *Seminar :Access to information: Lesson from the region*, pp.41. Bangkok Thailand, 2003.

⁹ Tanti Budi Suryani, Ibid.

This statement can be a pressure and influence on the public for not accepting the bill, as it was not yet necessary.¹⁰

At the same time, the Head of State Intelligence Agency also stated that Indonesia needed to have the Act of National Secrecy to minimize information leaks, further commenting that a freedom of information access act would endanger national security and defense as it would make possible wide open access to all state secrecy including sensitive information on the country's relations with foreign countries.¹¹

It is clearly seen that the government intended to misinform and caused confusion among the public, and this was in itself a major form of serious blockage of information. Nevertheless, the NGOs Coalition for Freedom of Information persisted in lobbying and using several media campaigns to educate the public, as well as organizing public discussions to express ideas and suggestions to improve this draft.

4.4 Two years before the OPIA became effective

The reason why Indonesia had not implemented the OPIA immediately and postponed it to 2010 is explained by Tedjabayu, a veteran senior official in the Institute for the Study on Free Flow of Information Indonesia (ISIA). He claims that during the discussions and debates in parliament, as well as among the media and NGOs of Indonesia, all have agreed on the present Indonesian situation that requires such a postponement:

- Indonesia is in a transitional period from a dictatorship to democratic rule.
- The Reformasi¹² itself is not able to completely change the machinery of bureaucracy.
- The people working for the government have for a long time been working in an undemocratic atmosphere. Bureaucratic management in the public sector with bad mentality (corruption, bribery, etc) has been in place for almost 35 years.

¹⁰ Hinca IP Pandjaitan.,Ibid.

¹¹ Ibid.,P.7-8

¹² Democratic era

- As a result, the civil servants are mentally not ready to implement the democratic OPIA
- In Orde Baru era¹³, organizationally, the government did not have machinery to serve transparent and democratic management within the public bodies, let alone implementing the OPIA.
- Members of the public, who have the rights to use the OPIA, do not know their privileges.

From the aforementioned situation, all have agreed that Indonesia needs a rather long period of preparation before implementing the freedom of information law in 2010. Things that will need preparation include all public institutions and government officials including military personnel. They will need to have full comprehension of the OPIA. Also, the Independent Information Commission (IC) will form from the selection of 7 out of 21 candidates, following acceptance by the president. In addition, there will be pressure to socialize the FOIA to the people such as journalists, peasants, factory workers, university and high school students, and NGOs. It is hoped that these people will have an important role in advocating the FOIA cases.

4.5 Comparisons of Thailand's OIA with Indonesia's OPIA

Generally, a freedom of information act, which guarantees the people's right of access to information, is comparable worldwide; differences exist only in details according to the society, culture, people and government.

As members of ASEAN, both Thailand and Indonesia have democratically elected governments. There is more freedom of the press in the two countries than in some other members of the grouping, whose governments still control most, if not all, public information. People in both countries have had the experiences of demonstrating for public rights and freedom: for instance, 1992 in Bangkok, and 1998 in Jakarta and other cities in Indonesia. In 2010, Indonesia's freedom of information act will come into force. Differences nevertheless exist between OIA and OPIA.

¹³ Orde Baru is the New Order era

4.5.1 Objectives

Though the main objectives of both laws are identical, they are slightly different in detail. For example, the Indonesian OPIA aims at public access to information rather than promoting the people's right to know.¹⁴ Differences in this respect may be set forth in more detail, as follows.

Thailand's OIA has four essential objectives, as identified by Nakorn Serirak, a veteran official in OIC, as follows:

1. To ensure people's right to know state agency information in order to:
 - 1) Promote the people expressing their views and opinions, and using their political right correctly
 - 2) Promote transparent and efficient government
 - 3) Promote democratic development
2. To define clearly what kind of official information may not be subject to disclosure.
3. To protect the personal information possessed or controlled by a state agency
4. To acquire historical information.¹⁵

In short, the main objective of Thailand's OIA is to promote people's right to know rather than access to government information, as in the case of Indonesia's OPIA. Of course, access to public information is actually a way of ensuring people's right to know, but in Indonesia, as we have seen, the main problem in this respect was the way the state agency effectively blocked access to public information largely to cover up large-scale corruption. Hence, the NGOs, and perhaps almost the whole community, had a major part in pushing for this law. This is why this law aims specifically at gaining access to government information.

¹⁴ Data from Republic of Indonesia Act

¹⁵ Office of the Official Information Commission. **Official of Information Act, B.E.2540** [Online]. Available from: http://www.oic.go.th/content_eng/privacy.html [retrieved November 2, 2008]

Prior to the promulgation of OPIA, Indonesians already used the concept 'right to know' as in the case of Lebak district, a poor district located in west Java, where the organization called CITP was founded.

CITP is an independent organization which functions as a watchdog, overseer, facilitator and mediator established under local regulation No. 6 of 2004 and inaugurated on the 12th September 2005.¹⁶

CITP was formed by the people to assist in pushing for greater transparency of Lebak's local administration. Even though it is a poor district, the system that has been established ensures the public's right to know. CITP has performed successfully.

The case of CITP clearly shows that Indonesians have demanded good governance in political rule. More specifically, they have always exercised their right to know by demanding to see the official information in order to inspect the administration – that is, to probe irregularities in its work. In the case of Thailand, on the other hand, while good governance has been demanded, the public has not yet learned about the right to know, which is essential, and Thailand's OIA has the priority to promote it.

4.5.2 The Unrevealed Documents

A freedom of information act is meant to be the law to enforce the revelation of official documents; yet there are some exceptions. Even in the case of those that are subject to disclosure, there are often delays and obstructions of various kinds. Hence, we have seen a lot of complaints and appeals.

In the case of Thailand, which is under a constitutional monarchy, the most sensitive issue is the information that may harm the monarchy or bring it into disrepute. Any documents concerning

¹⁶ Dr Agus Pramusinto. BUILDING GOOD GOVERNANCE IN INDONESIA: Cases of Local Government Efforts to Enhance Transparency. **EROPA Conference: Modernising the Civil Service Reform in Alignment with National Development Goals**, pp.6. Bandar Seri Begawan Brunai Darussalaam, 2006.

the royal family as stated in Article 14 of the OIA are considered to be historical and not available to the public; they will be disclosed only after 75 years.

In Indonesia, a clear time frame for the disclosure of historical documents is not specified. The other types of information that cannot be disclosed according to OPIA are State intelligence; information that could obstruct law enforcement efforts or business competitiveness; information pertaining to national defense, security, and resources; information pertaining to economic, foreign, and private interests; and memos exchanged among private companies. Even with complaints to the Information Commission (IC), the release of these documents is not possible.

In Thailand, the types of information similar to those mentioned above in the case of Indonesia cannot be uncovered either. In addition, medical reports and personal information which include those of NGOs may not be disclosed under the OIA. This provision on NGO information is contrary to Indonesia's OPIA that stipulates that NGOs must also make their information public, for example, the information on substantial financial support from other countries.

4.5.3 Official Information Commission and Information Commission

There has been debate on whether it is appropriate for Thailand's Official Information Commission (OIC) to be under the supervision of the Prime Minister's Office. Mr. Surasri Kosolnawin, the first OIC director, viewed that the OIC would be easily intervened by the government if it were directed by the Prime Minister's Office, mainly because the lower-level government officials are afraid to release any information. The OIC would turn into another dull bureaucratic agency. As an independent agency, OIC will be more efficient.¹⁷

The OIC has set up five sub-committees to consider appeals related to different categories of information, namely, social and administrative affairs, medical and public health issues, foreign and defense issues, economic and financial matters, science and technology, industrial and agricultural issues.

¹⁷ Surasri Kosolnawin. The Official Information Commission's first director. *Interview*, 12 March 2009.

The IC is provided for in the OPIA as an independent organization and not under government supervision. It is thus hoped to be exempt from government intervention. However, in reality, the members of IC consist of not only civil society representatives but also government elements. Yet, it is still better than the Thai case, in that all the OIC members have been drawn from government agencies.

Being a big country, Indonesia is divided into different levels of commission: The National Information Commission to watch over the capital city, The Provincial Information Commission to handle provinces and the district/municipalities, and the local Information Commission. Members are from both government and people working directly under IC.

4.5.4 Time Period for Procedure

Article 11 of the OIA says if anyone makes a request for official information other than that published in the Royal Gazette or already available for public inspection, the responsible state agency must provide it "within a reasonable period of time". Meanwhile, Article 13 provides that a person who believes that a state agency has failed to comply with the provisions of the Act can lodge a complaint with the OIC. Should the OIC rule in favor of the state agency, the complainant can still file an appeal within two weeks after the ruling. The OIC then forwards the appeal to the Information Tribunal, which must decide on the case within seven working days. All appeals must be considered and completed within 30 days, with an extension allowed of 30 days more at most.

In Thailand, this is not practical, especially in sensitive cases. It normally takes longer time than stated in the law; sometimes it could take more than two years before any information is disclosed. Another reason for this tardiness is that members of Information Disclosure Tribunals do not work only for OIC; they have other responsibilities, and this makes it difficult to schedule any meeting.

The OPIA, on the other hand, states clearly in Article 22 that after the filing of a request to disclose official information, the concerned public agency must consider it within 10 days if it is

possible to reveal. If there problems for a possible delay, additional seven days are permitted. This is different from Thailand that stipulates ‘within a reasonable period of time.’

For the IC, in case of complaints or appeals, these must be handled within 14 working days and the whole procedure must be completed within 100 working days after the request is filed.

4.5.5 Penalty

In Thailand, any officials who refuse disclosure in response to a request will be punished but very lightly. In fact, so far no official has been punished yet. When the officials do not want to reveal any information, they just pass it on to Information Disclosure Tribunals to decide. However, according to Article 40 of the law, any person who fails to comply with a request for disclosure could face a three-month jail term or a 5,000 baht (US\$120) fine, or both. Punishment for the officials who provide information by mistake can be more severe with a one-year jail term and a 20, 000 baht (or US\$526) fine. In Indonesia, punishment for the officials who refuse to disclose public information and intend to provide wrong or incomplete information could face a one year jail term and five million Indonesia rupiah (US\$ 437) fine, or both.

Finally, both countries have almost the same penalty for officials who do not duly perform their duties under their respective the freedom of information acts. The penalty may nevertheless vary in some details. But from Thailand’s 12 years of experience, Indonesia should be aware that the penalty cannot really successfully promote the FOIA. This researcher believes that pressure from the public or social sanctions like criticisms or condemnations through the media could be used together with legal punishment.

The most of the contents of the OIA and OPIA are very similar. However, as the OPIA is by far the latest version of freedom of information law, it has incorporated numerous details different from those in the Thai and other counterparts on which its drafters might have significantly drawn. In particular, many sections of the OPIA contain details that are more precise than those in the OIA. Therefore, Thailand, in this respect, should learn from Indonesia and proceed to improve, especially by defining more accurately the terms of, the OIA after implementing it for 12 years.