

CHAPTER I

INTRODUCTION



1. BACKGROUND

Information law is an important tool to ensure governmental transparency and accountability, as well as improvement in good governance and public participation in the political process. It can contribute to a change in bureaucratic culture – from a secretive regime to a more open and transparent administration – and hence reduction of corruption. Finally, it promotes human rights by reducing abuses of power.

In the past, the governments of ASEAN countries controlled access to information. Governmental matters were closely controlled by the bureaucratic culture of secrecy. The public had no right to access administrative information to examine governmental work and budget. The information control has nevertheless been gradually abolished as a result of democratic movements, technological advances, and the increasing integration of regional economies into global trade and finance

Thailand was the first country in ASEAN to draft a separate law on access to information. This draft legislation was adopted as the Official Information Act by Parliament in 1997. This legislation was the result of the anti-government protest in Bangkok which ended with bloody military crackdown and was thus remembered as the Black May 1992 event. During this political disturbance, the front page of the International Herald Tribune's 20 May 1992 issue was blacked out, as was an editorial of the Bangkok Post of the same date. Three other newspapers were shut down on 21 May. It was obvious that the media were censored by the government. News and reports on the public radio and television stations were distorted. Only a handful of people who subscribed to cable networks received the news through foreign agencies and conveyed messages they had received via mobile phones.

In the aftermath of the tragic event, people called for political reform that included access governmental information so that they could monitor the use of governmental authority and more effectively control corruption.

The Official Information Act was first drafted by the government of Prime Minister Anand Panyarachun in 1992. Generally recognized as transparent government, Anand's administration intended to use the OIA to promote good governance and strong democracy. It took more than five years to overcome various impediments to complete the draft, and then several months of public debates, before it was adopted by Parliament in July 1997. The Official Information Act became effective on December 9, 1997

The aim of the Official Information Act is to guarantee individual's right to have full access to government information. According to the Act, almost all official data and information should be made public.¹

On the Official Information Commission website, the four main objectives of this law are outlined as follows:

1. To ensure people's right to know state agency information in order to:
 - (1) Enable the people to voice their opinion and use their political right correctly
 - (2) Promote transparent and efficient government.
 - (3) Promote democratic stability.
2. To define clearly the kind of official information that may not be disclosed
3. To protect personal information in possession of, or as control by, a state agency
4. To secure historical information²

Nakorn Serirak, who is a veteran official in Official Information Commission, explained the details and procedures of this system in his article, which can be divided into 3 parts, as follows:

1. Publish the following official information in the Government Gazette:

¹ Nakorn Serirak. **Challenges of Thailand's freedom of information law** [Online]. 2000. Available from: <http://www.worldlii.org/int/journals/PLBIN/2000/29.html> [retrieved November 2, 2008.]

² 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.]

1. The structure and organization of its operation
2. The summary of important powers and duties and operational methods;
3. A contact address for the purpose of contacting the state agencies in order to request and obtain information or advice;
4. By-laws, resolutions of the Council of Ministers, regulations, orders, circulars, rules, work patterns, policies or interpretations only in so far as they are made or issued to have the same force as by-laws and intended to be of general application to private individuals concerned.

A state agency shall, for dissemination purposes, compile and make available the said information for sale, disposal or distribution at its office.

2. Make available at least the following official information for public inspection:

1. A result of consideration or decision which has a direct effect on a private individual, including a dissenting opinion and an order relating thereto;
2. A policy or an interpretation which does not fall within the scope of the requirement of publication in the Government Gazette;
3. A work-plan, project and annual expenditure estimate of the year of its preparation;
4. A manual or order relating to work procedure of state officials which affects the rights and duties of private individuals;
5. A concession contract, agreement of a monopolistic nature or joint venture agreement with a private individual for the provision of public services;

6. A resolution of the Council of Ministers or of such Board, Tribunal, Commission or Committee as established by law or by a resolution of the Council of Ministers; provided that the titles of the technical reports, factual reports or information relied on in such consideration, shall also be specified.

3. Provide information according to individual requests:

If any person makes a request for any official information, other than the official information already published in the Government Gazette, or already made available for public inspection, or already made available for public studies, and if such a request makes a reasonably apprehensible mention of the intended information, the responsible state agency shall provide it to such a person within a reasonable period of time.

Any person, who considers that a state agency fails to publish the information in the Government Gazette, fails to make the information available for public inspection, fails to provide him with the information, violates or fails to comply with this Act, or delays in performing its duties, or considers that he does not receive convenience without reasonable cause, is entitled to lodge a complaint with the Commission.³

After decades of development efforts, Thailand has made much progress in social as well as economic development. Thai politics has also become more democratic with increasing public participation and involvement in political affairs. The OIA, however, made some significant impact for only a short period, especially under the Democrat-led coalition government during 1997-1999.

Though the OIA is aimed at promoting the people's rights to know as well as democratization, and despite the increase in the number of Thai people becoming aware of the right to access

³ Nakorn Serirak. **Thailand's Information Law** [Online]. 2000. Available from: <http://www.seapabkk.org/column/thailand/7282000.html> [retrieved November 2, 2008.]

governmental information, they still represent the minority in Thai society. The most important reason is that the Thai public generally does not realize that they have this right to seek information, because most Thais still believe that official data and information are confidential and not subject to any disclosure, except for rare circumstances.

There is another obstacle to the enforcement of the Act, apart from most Thai people's mistaken beliefs about, or unawareness of rights to access official information. This particularly concerns the procedural matters involved in gaining access to state information. Indeed, not only the people in general do not realize their right, but also some high-ranking officials do not understand this right and how to implement it.

Nevertheless, OIA still has tremendous potential and benefits for a burgeoning democracy like Thailand, as suggested by Mr. Nakorn Serirak, senior official, Official Information Commission,

The Official information Acts guarantees the freedom of information and declares people's right to have access to state information. This is indeed the reflection of participatory political development as the people now absolutely enjoy their freedom in expressing opinion. The utilization of people's right to access official information meets with the good operational services of providing access and is therefore a process towards transparency and accountability, key elements of good governance.⁴

As mentioned above, Thailand is the first ASEAN country that instated a freedom of information act with Indonesia following as the second nation next year to implement similar laws. Thailand and Indonesia are democratic countries whose people enjoy more press freedom than those of some other countries in Southeast Asia.

Both Thailand and Indonesia had similar political experiences of people taking to the streets in making their political demands, such as in Bangkok in 1992 and Jakarta and other cities in Indonesia in 1998. They also have similar media systems; therefore both countries can share their experiences and take advantage to benefit from each other.

⁴ Nakorn Serirak. Towards personal Data Protection: A Proposed Model for the Development of 'Right to Know' in Thailand. *Thammasat Review* 2006, Volume 11: pp.115 – 116

Using Thailand as a model for its information law, Indonesia has made its own version of the law (the "Openness of Public Information Act") even more liberal. Indonesia non-governmental organizations (NGOs) took a major and important part in developing and pushing forward the law on freedom of information. The reasons Indonesia needs the Act is similar to those of the Thai case – that is, the high level of corruption, no rights of access to information, and the culture of secrecy.

During President **Suharto's** "New Order" (1966-1998), Indonesia was under a strong, centralized and military-dominated government. Suharto initiated the idea of a "floating mass" to exclude people from political activities. The only important form of political participation would be the general elections. Criticisms of national security affairs were not tolerated. The media were closely monitored and interfered with by state and news reports must have been approved prior to publication. Strong punishments were imposed on those who violated the press law.

After President Suharto was ousted in 1998, Vice President Jusuf Habibie took the office and started a political reform to encourage wider political participation. Journalists were given more freedom and more than a thousand of new newspapers were launched. Since then Indonesia has placed greater emphasis on civic politics. Eleven years after the ouster of Suharto, the present President Susilo Bambang Yudhoyono passed the Openness of Public Information Act, which famed Indonesia to have the highest growth for press freedom in Southeast Asia.

The Openness of Public Information Act was passed by Indonesian Parliament and government on April 3, 2008. The objectives of the Act are to some extent different from Thailand's Official Information Act; for example, Indonesia does not place as much emphasis on promoting the people's right to know as public information.

Indonesia has at least one more year before the Act takes effect, to study some positive and negative sides of the freedom of information law from Thailand. The most research will go into the means of educating the people of their own rights, the methods in getting the people to understand how this Act can be of help in increasing the transparency and accountability of government at all levels – that is, from local to national; how it is related to their well-being; and how the benefits from access to government information can serve many other purposes. Of

2. OBJECTIVES

The objectives of this thesis are as follows:

- 1) To study the strengths and weaknesses of Thailand's Official Information Act (OIA) and its impacts on Thai society.
- 2) To examine the OIA implementation using Thai case studies since its enactment in 1997.
- 3) To provide comparative studies of the OIA and Indonesia's newly enacted Openness of Public Information Act.
- 4) To identify lessons including good practices of Thai experiences for the implementation of the Openness of Public Information Act in Indonesia in 2010.

3. MAJOR ARGUMENTS

Free flow of information and access to information guaranteed by an information law would dismantle the culture of secrecy, making politics, the bureaucracy and society at large more open and transparent.

Access to information, especially the government-held information, would make the government more accountable and leads to improvement in good governance. An open and transparent environment would reduce corruption and abuses of power and empower the public.

In 1997, Thailand became the first country in ASEAN to enact a separate law on access to information, known as the Official Information Act. In April 2008, Indonesia became the second country to have such law.

Although this is a positive step that will lead to a more transparent government, the information law is not widely used or respected by the government and public. One reason has to with the lack of awareness on the part of the Thai people of their rights to know.

Although this is a positive step that will lead to a more transparent government, the information law is not widely used or respected by the government and public. One reason has to do with the lack of awareness on the part of the Thai people of their rights to know.

Even though with more than ten-year experience, the majority of Thai public still does not use this access to information law because the government and authorities lack understanding of the essence of information law as part of the government's service. However, lessons and good practices could be obtained from the studies and research on OIA, which will be useful for Thailand and Thailand's neighboring countries.

With less than one year to go before the implementation of its Openness of Public Information Act, Indonesia can look to Thailand as a model concerning the use of information law. Both countries are leading ASEAN members which share similar political values and media systems.

With information law, the Indonesian government wants to transform its nascent democratic way of life into a more liberal one, especially in the media. Indonesia has enjoyed free media as never before seen since the people's power in 1998.

With lessons and good practices from Thailand, Indonesia will have sufficient time to prepare its officials and the public for the efficient implementation of its information law. At the same time, it is useful for Thailand to find out the OIA strengths and weaknesses.

4. METHODOLOGY

This study will be a qualitative research. The research objectives will be addressed as follows:

- 1) The strengths and weaknesses of Thailand's Official Information Act will be shown through in-depth interviews with key informants, some case studies, and policy analysis.

- 2) Impacts of strengths and weaknesses upon Thai society will be identified through case studies and other documentary researches.

- 3) The comparative analysis between OIA and OPIA (Openness of Public Information Act), the analysis will compare only important part as objective, time period for procedure, penalty and etc.
- 4) The lesson, positive and negative, of Thai case studies will be evaluated through reports in the documentary research and in-depth interview with key informants.

5. LIMITATIONS

This thesis suffers from a number of limitations. Firstly, data on the OPIA are limited because it was only recently promulgated. The second limitation is the researcher's lack of basic knowledge of the law, and this makes difficult to decipher its detailed rules and regulations. The third limitation is that the study requires not only a deep and broad knowledge about the OIA and OPIA but also the contexts of both Thai and Indonesian history and political developments. Time and other constraints have prevented the researcher from going deep into these matters. Indeed, given the existence of various approaches to the study of Thai politics, in particular, more time and efforts would be needed for the researcher to present a fuller account of the subject.

6. SIGNIFICANCE AND USEFULNESS OF RESEARCH

This research focuses on the comparative studies of information law in Thailand and Indonesia. Lessons and good practices from the over ten-year implementation of OIA can serve as a learning tool for Indonesia. The Indonesian government and public will have a year of preparation before the information law enters into force. With an information act, free flow and access of information for the public can be guaranteed. This will result in a more transparent and accountable government and society, which, in turn, would serve as a sound basis for building a democratic system and good governance. This study is probably the first attempt to explore issues that are directly relevant to all ASEAN members; that is, apart from Indonesia, other countries in the region can learn from Thailand's experiences as well.