

JURIDICAL ANALYSIS OF PUBLIC INFORMATION DISCLOSURE RELATED TO CONTRACTS ON PUBLIC AND PRIVATE PARTNERSHIPS

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ABSTRACT

The purpose of this study is to explore the openness of contracts for Public and Private Partnership (PPP) in civil law and legal aspects of state administration. The type of research used is normative juridical, with an approach to laws and regulations (*statute approach*), conceptual approach (*conceptual approach*), and the case approach (*the case approach*). The study results show that the position of contract documents in relation to public information disclosure on civil law and state administration legal aspects has not demonstrated consistent provisions. In the civil aspect, the contract is binding only for the parties in it. Meanwhile, in state administrative law, the implementation of Public and Private Partnership (PPP) contracts that affect the community is precisely related to openness which becomes an urgency as a manifestation *good governance* and transparency as the embodiment of the General Principles of Good Governance. Legal certainty is an urgency to be realized.

Keywords: Public Information Disclosure; Contracts; *Public and Private Partnership*.

1. INTRODUCTION

1.1 Background

Public Information Disclosure basically in Indonesia already has a legal umbrella as stipulated in the Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure. This is the mandate of Article 28F of the 1945 Constitution of the Republic of Indonesia (here in after abbreviated as the 1945 Constitution of the Republic of Indonesia), that every person has the right to communicate and at the same time obtain information in order to develop his personality and social environment, and has the right to seek, obtain, possess and store information using all kinds of available channels. This shows that everyone is guaranteed the right to public information disclosure. Apart from that, it is an embodiment of the General Principles of Good Governance, namely transparency.¹

The right to obtain information is a human right which is one form of democratic life as a nation and state. One of the critical elements in realizing an open state

¹Ricky and Muh. Tanzil A R. Keterbukaan Informasi Publik di Indonesia (Perspektif Akuntabilitas, Transparansi, dan Partisipasi), *Jurnal Ilmiah Wahana Bhakti Praja*, 12 (2), (2022).

administration is the public's right to obtain information in accordance with statutory regulations. The right to information is fundamental, considering that the more open administration of the state makes it easier for the public to supervise the administration of the state, for which this can be accounted for. ²The right to open information is no exception, as stated in Article 4 of the Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure. The article stipulates that the public's right to obtain public information. The gain is from looking at it and knowing public information. Besides that, you can also visit public forums. Copies of public information can be obtained by request or by dissemination. The applicant has the right to request public information as well as reasons. It can sue to court when obstructed or failed to obtain this information. The limitation of the right to information is not only for documents, but at the same time an activity of the government as a public institution so that people in need can access information. ³

The government in carrying out its duties and authorities certainly cannot fully stand alone. Government agencies need other parties to support the smooth running of work programs. The other party means none other than the private party (private legal entity). The government and the private sector cannot stand alone, just like humans who need one another.⁴. This resulted in cooperation between the government and the private sector.

Cooperation between the government and the private sector is commonly referred to as PPP (Public Partnership with Business Entities). Internal legal relations *Public and Private Partnership* of course based on the existence of a contract or agreement.⁵ Article 1313 of the Indonesian Civil Code basically stipulates that a deal is an action in which one or more people bind themselves to one or more people.

It was found that in the PPP contract documents there were problems related to public information disclosure, as was the case in the Information Commission Decision of Lampung Province Number 005/IV/KIProv-LPG-PS-A/2022. In this case, it shows that initially there was implementation of PPP by the Dinas Bina Marga dan Bina Konstruksi Lampung as the government and PT. Talang Batu Berseri as a private party or private business entity. The contract for the PPP is related to the interests of the work to improve the Pekon Balak – Suoh West Lampung road section. In the course of time, the implementation of this work gave birth to several problems that ended up causing harm to the surrounding community. On this matter, then the community and related parties, in this case the Branch Leadership Council of the Association of Indonesian Journalists (here in after abbreviated as DPC PWRI) do not accept and at the same time raise issues with Dinas Bina Marga dan Bina Konstruksi Lampung by submitting a request for information disclosure as well as an objection. Initially, DPC PWRI submitted a request for information disclosure in the form of a 2020 development budget plan, a 2020 Fiscal Year development realization report, a development drawing design document, and a 3rd Party Tender Contract document

² Adam Muhshi, Pemenuhan Hak atas Informasi Publik sebagai Tanggung Jawab Negara dalam Rangka Mewujudkan *Good Governance*, *Lentera Hukum*, 5 (1), (2018).

³ Yudhitiya Dyah Sand U., Kartika Widya. Relevansi Undang-Undang Keterbukaan Informasi Publik dan Asas Kemanfaatan, *Law, Development & Justice Review*, 5 (1), (2022).

⁴ Kurniadi, *Collaborative Governance dalam Penyediaan Infrastruktur*, Deepublish, Yogyakarta, 2020, pg.12.

⁵ Azzahra Salsabila N and W., I Ketut. Pola Kerjasama Pemerintah dengan Pihak Swasta dalam Pembangunan Infrastruktur. *Jurnal Kertha Negara*, 8 (5), (2020).

for the Construction of the Pekon Balak-Suoh Road Section, West Lampung District, 2020 Fiscal Year. Dinas Bina Marga dan Bina Konstruksi Lampung only provided information that it had worked to improve the Pekon Balak-Suoh road section in West Lampung Regency with a contract value of Rp. 7,577,927,000, - won by PT. Talang Batu Berseri. DPC PWRI then filed an objection due to the non-implementation of public information disclosure as requested by one of the documents requested by the tender contract. This objection was then not responded to by Dinas Bina Marga dan Bina Konstruksi Lampung and remained firm in stating that the document requested by the DPC PWRI could not be further informed because it was included in the category of excluded information in accordance with Article 2 Paragraph 4 of the Law of the Republic of Indonesia Number 14 of the Year 2008 concerning Public Information Disclosure, that public information can be excluded when it is confidential in accordance with law, decency and public interest based on examination of the consequences that arise when information is provided to the public and after careful consideration that closing public information can protect the interests of the public. Greater than opening it or vice versa. DPC PWRI then submitted a request for information, in which the Lampung Province Information Commission Decision Number 005/IV/KIProv-LPG-PS-A/2022 decided that the tender contract document could not be opened because it involved the personal data of the parties to the contract, which in this case relates to private party data.

The public and DPC PWRI who request disclosure of public information regarding tender contract documents do not need personal data in the contract, but what is needed is related to the contents of the agreement which is to ensure the construction of road sections that are experiencing problems to the detriment of the surrounding community. Administrative law of a country is actually attached to the function of creating the implementation of good governance, by applying the values of norms, instruments and laws that can guarantee the creation of good governance. The government must carry out actions according to applicable regulations that do not result in inappropriate public services or maladministration to the detriment of the public who wish to obtain information disclosure. ⁶ It is known that Dinas Bina Marga dan Bina Konstruksi Lampung, before being involved in the process of resolving disputes at the Information Commission, as the respondent, did not respond to community objections, in this case the DPC PWRI. DPC PWRI certainly did not accept this, so they finally submitted a request to the Information Commission and the decision was that the application was rejected. Based on the description above, it is worth exploring the legal certainty of contract documents for PPP in relation to public information disclosure. The theory of legal certainty according to Jan Michael Otto is that legal certainty should be realized by the availability of legal rules that are clear, consistent, and easy to obtain or access. (Redi, 2018). This will explore based on aspects of civil law and public information disclosure law, *novelty* of this research is that in previous studies no one has discussed its relation to contract documents as private matters which are then linked to public information disclosure to explore legal certainty in the current legislation.

⁶ Sri Nur H S, *Good Governance* dalam Konteks Hukum Administrasi., *Administrative Law & Governance Journal*, 2 (2), (2019).

1.2 Problem Statement

The purpose of this study is to analyze and identify: 1) How is the Contract Disclosure above *Public and Private Partnership* (PPP) in Civil Law (KUHperdata), and 2) how is the Contract Disclosure above *Public and Private Partnership* (PPP) in Public Administrative Law?

1.3 Research Target

The purpose of this study is to analyze and identify the openness of contracts for PPP in the aspects of civil law and legal aspects of state administration.

2. METHOD

The type of research used in this research is normative juridical. Normative juridical analysis provides systematization regarding rules, which is then analyzed by exploring the relevant rules in statutory regulations.⁷ The research approach used is an approach to laws and regulations (statute approach), a conceptual approach, and the case approach.

3. RESULT AND DISCUSSION

Contract Disclosure above *Public and Private Partnership* (PPP) in Civil Law

The Public and Private Partnership (PPP) contract as the object being requested for disclosure as the case in the Lampung Province Information Commission Decision Number 005/IV/KIPprov-LPG-PS-A/2022, is related to construction work. Construction services based on the provisions of Article 1 point 1 of the Law of the Republic of Indonesia Number 2 of 2017 concerning Construction Services are construction consulting services and construction work as stipulated in Article 1 point 3 of the Law of the Republic of Indonesia Number 2 of 2017 concerning Construction Services. The article stipulates that construction work is the whole or part of an activity, including the construction, operation, maintenance, demolition and rebuilding of a building. The parties to the contract consist of Dinas Bina Marga dan Bina Konstruksi Lampung as government parties with PT. Talang Batu Berseri as a private party. The government party in this matter is a service user, as stipulated in Article 1 point 5 of the Law of the Republic of Indonesia Number 2 of 2017 concerning Construction Services, which is the owner or employer of a job that uses Construction Services. While the private sector is the provider of construction services. The contract is in the framework of the work to improve the Pekon Balak - Suoh West Lampung road section. The birth of the contract is based on the project tender implementation process as follows:⁸

1. Announcement of Project Tender Procurement

Dinas Bina Marga dan Bina Konstruksi Lampung initially announced that there was procurement of construction services, namely a project tender in the context of work on the improvement of the Pekon Balak-Suoh road section, West Lampung. The agency held this through website LPSE Lampung Province

⁷ Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Formaci, Semarang, 2021, pg.20.

⁸ Johan Oberlyn, et. al, *Analisa Kontrak Proyek Konstruksi di Indonesia*, *Jurnal Visi Eksakta*, (JVIEKS), 2 (2), (2021).

<https://www.lampungprov.go.id>. This is intended to be able to partner with the private sector in the field of construction services, which of course has fulfilled all the conditions required in the procurement.

2. Registration by Private Parties

There was an announcement of the procurement of construction services related to project tenders in the context of work on improving the Pekon Balak-Suoh road section of West Lampung by Dinas Bina Marga dan Bina Konstruksi Lampung through the website LPSE of Lampung Province certainly includes all the details related to the development, including the Self-Estimated Price and the deadline for registration. Private parties engaged in construction services can register for project tenders by fulfilling all requirements within the specified time limit.

3. Selection

After the registration process carried out by private parties in the field of construction services ends according to the deadline determined by Dinas Bina Marga dan Bina Konstruksi Lampung through the website LPSE of Lampung Province, then the Service conducted a selection of private parties who had registered. The Office chooses a company that has fulfilled all the requirements for procuring a project tender. The things that become the assessment are from the documents and the results of the presentation. In the contract on PPP as the object being requested for disclosure as the case in the Decision of the Information Commission of Lampung Province Number 005/IV/KIPprov-LPG-PS-A/2022 shows that PT won the selection process from several private parties who had registered. Talang Batu Berseri.

4. Announcement

After the selection process was carried out by Dinas Bina Marga dan Bina Konstruksi Lampung and determined that PT. Talang Batu Berseri, which is a private party that has registered for the procurement of tender construction services for the Pekon Balak-Suoh road improvement project, West Lampung through website LPSE of Lampung Province has fulfilled all the requirements, then the Service announced that PT. Talang Batu Berseri as the winner of the tender for the project.

5. PPP Contract Arrangement

Dinas Bina Marga dan Bina Konstruksi Lampung together with PT. Talang Batu Berseri, as the project as soon as possible, draws up a contract in the framework of the work on improving the Pekon Balak-Suoh West Lampung road section. The two parties negotiated while agreeing on the agreed upon and then outlined in a contract.

6. Work Order Letter

After the PPP contract Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri was arranged, the agency then issued a Work Order (SPK) on behalf of the private party as a construction service provider, which gave instructions regarding the implementation of the contents of the contract.

7. PPP Contract Execution

After the issuance of a Work Order by Dinas Bina Marga dan Bina Konstruksi Lampung, the contents of the contract were fully implemented with the inherent rights and obligations of both parties.

The contract that underlies PPP basically must be born based on contract principles in civil law in its manufacture which consists of the following:⁹

1. Fundamentals of Freedom of Contract

The principle of freedom to enter into contracts is one of the principles of general law that applies worldwide. This principle gives able every citizen freedom to enter into contracts, as long as they do not conflict with the provisions of laws and regulations, decency and public order. The agreement then binds the parties entering into the contract and specifies valid simultaneously applies as a law for the parties, as stipulated in Article 1338 Paragraph (1) of the Civil Code specifies that all valid contracts are valid as statutes. law for the parties who made it. The principle of freedom to enter into contracts is to give freedom to the parties entering into contracts for the following matters:

- a. Making or not making contracts;
- b. Enter into a contract with any party;
- c. Determine the contents of the contract, its implementation, as well as the conditions;
- d. Determine the form of the contract, both written and unwritten; and
- e. Accept or deviate from the provisions of laws and regulations rationally.

PPP contract between Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for disclosure as the case in the Decision of the Information Commission of Lampung Province Number 005/IV/KIPprov-LPG-PS-A/2022 shows that it has fulfilled the principle of freedom to enter into contracts. Dinas Bina Marga dan Bina Konstruksi Lampung together with PT. Talang Batu Berseri here by fulfills his rights to enter into a work contract for the improvement of the Pekon Balak – Suoh West Lampung road section. This does not conflict with the provisions of laws and regulations, decency and public order. For this reason, the contract binds the Highways and Construction Services of Lampung Province with PT. Talang Batu Berseri stipulated in Article 1338 Paragraph (1) of the Civil Code. The contents of the contract, implementation and requirements have been known and mutually agreed upon, in which the form of the contract is in writing.

2. The Principle of Consensualism

The true principle of consensualism is as stipulated in Article 1320 number 1 of the Civil Code, namely that one of the conditions for a valid contract is the achievement of an agreement by the parties regarding the main matters. The principle of consensualism in the Civil Code is related to the form of a contract. PPP contract between Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for disclosure as the case in the Lampung Province Information Commission Decision Number 005/IV/KIPprov-LPG-PS-A/2022 shows that it has fulfilled the principle of consensualism. This is because there has been an agreement between the two parties regarding the work to improve the Pekon Balak – Suoh West Lampung road section.

⁹ Sigit Sapto. H. N, Anik Tri. Munir, Usman, *Dinamika Hukum Kontrak*, Lakeisha, Klaten, 2023, pg.60.

3. Basic Agreements are to be kept

This principle is a legal certainty as stipulated in Article 1338 Paragraph (1) of the Civil Code, that every contract that is made legally is enforceable as a law. Principle agreements are to be kept stating that the Judge or third party must respect the substance of the contract created by the parties, as befits a law. These parties may not intervene or interfere with the importance of the agreement made by the parties.

PPP contract between Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for disclosure as the case in the Lampung Province Information Commission Decision Number 005/IV/KIProv-LPG-PS-A/2022 shows that the principle agreements are to be kept have been injured. This is because of the contract that has been legally drawn up between Dinas Bina Marga dan Bina Konstruksi Lampung and PT. Talang Batu Berseri is valid as law for both parties. The presence of a party disputing the contract, namely the PWRI DPC as stated in the Decision of the Information Commission of Lampung Province Number 005/IV/KIProv-LPG-PS-A/2022, shows that there is a third party who does not respect the existence of the substance of the contract made by the two parties. DPC PWRI, as a third party or a party other than those bound by the agreement should not be allowed to intervene or interfere with the substance of the contract made by the parties. The request for information disclosure regarding the contract submitted by the DPC PWRI will thus violate the principle agreements are to be kept that should have been attached to the contract.

4. Good Faith Foundation

The principle of good faith is true as stated in the provisions of Article 1338 Paragraph (3) of the Civil Code, that every agreement must be carried out in good faith. This principle mandates the parties to the contract to be obliged to carry out the contents of the agreement based on a sense of trust, firm belief, and the good will of the parties.

PPP contract Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for disclosure as the case in the Decision of the Information Commission of Lampung Province Number 005/IV/KIPprov-LPG-PS-A/2022 shows that the principle of good faith attached to the contract has actually been damaged. This is indicated by the implementation of the contract which then leads to disputes due to other parties being harmed.

5. Principles of Personality

The principle of personality in contracts is to determine that someone who will make a contract is only for individual interests. This is by the provisions of Article 1315 and Article 1340 of the Civil Code. Article 1315 of the Civil Code stipulates that in general no one can bind himself/herself on behalf of himself or ask for a promise to be made, except for himself, while Article 1315 of the Civil Code deals with the provisions of Article 1340 of the Civil Code namely that the validity of the contract is only for the parties who make it.

PPP contract between Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for disclosure as the case in the Decision of the Information Commission of Lampung Province Number 005/IV/KIPprov-LPG-PS-A/2022 shows that it has fulfilled the principle of personality. It is shown that the birth of the contract is to facilitate the interests of the duties and authorities attached to each party. When it is found that there is a request

for disclosure of information related to the contract, of course this will violate the principle of personality, because the contract's validity which should only be for the parties who make it will become vague.

Basically, the making of a PPP contract must fulfill all the legal requirements of the contract as stipulated in Article 1320 of the Civil Code, namely:¹⁰

1. Agreement of the Parties

The parties to the contract have to mutually agree on what is stated in the contract. The first condition of the contract being declared valid is the agreement of the parties, which must have the agreement or agreement of the parties making the contract. There should be no coercion or pressure, but the contract must be based on one's own will. This has also been reaffirmed in Article 1321 of the Indonesian Civil Code, that no contract has the force of law if it is given based on an oversight or obtained by force or fraud. The agreement here is a subjective condition. When these conditions cannot be met, the contract can be cancelled. Contract can be withdrawn (voidable) means that one of the parties can apply for cancellation. The agreement here remains binding on both parties, as long as the Judge does not cancel it.

PPP contract between Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for information disclosure as in the case of the Lampung Province Information Commission Decision Number 005/IV/KIProv-LPG-PS-A/2022 shows that it has fulfilled the legal requirements in the form of an agreement of the parties. The contract is undoubtedly legally enforceable, because there is no element of oversight, coercion, or fraud. The Judge also did not cancel the contract, so it remains binding on both parties.

2. Competence of the Parties

The parties' agreement then does not just happen, but the parties must also be capable. The proficient requirement here is also subjective; when this condition cannot be fulfilled, the contract can be canceled. Regarding whether or not a person is competent according to the law, pay attention to the provisions of Article 1330 of the Civil Code. Parties who are not legally capable of making contracts include:

- a. Children who are not yet mature;
- b. People who are placed under guardianship (trusteeship); and
- c. All persons who are prohibited by law from entering into certain contracts.

PPP contract between Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for disclosure as the case in the Decision of the Information Commission of Lampung Province Number 005/IV/KIPprov-LPG-PS-A/2022 shows that it has fulfilled the elements of competence of the parties. This is because both parties are legal entities. The party that represents must be an adult, not under guardianship, and not a party prohibited by law in the context of making a contract.

3. A Certain Thing

A certain thing is the same as the object of the contract. In order for a contract to be declared valid, it must have an object of the contract, namely an achievement to give something, do something, or not do something as stipulated in Article 1234 of the Civil Code. The condition of a certain thing is an objective condition. When the objective

¹⁰ Salim HS, *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak*, Sinar Grafika, Jakarta, 2021, pg.33.

conditions of the contract are not fulfilled, the legal consequence is that the agreement can be null and void. PPP contract between Dinas Bina Marga dan Bina Konstruksi Lampung as the object being requested for disclosure as the case in the Decision of the Information Commission of Lampung Province Number 005/IV/KIPprov-LPG-PS-A/2022 shows that it has met the objective legal requirements regarding certain matters, The object of the contract as a certain matter is the work of upgrading the toll road the Pekon Balak-Suoh road, West Lampung.

4. Because Halal

The real contract must have an object which is for permissible reasons. A contract must not conflict with law, decency and public order. This requirement is further regulated in Article 1335 of the Civil Code, that agreements made without cause or based on false or prohibited causes are without legal force. This is related to the good faith of the parties. Any agreement that occurs must be based on the principle of good faith. Article 1338 of the Indonesian Civil Code stipulates that contracts must be executed in good faith. Conditional cause (cause) halal is an objective requirement, which when not fulfilled is a legal consequence in the form of a contract that can be null and void by law.

PPP contract between Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for disclosure as the case in the Decision of the Information Commission of Lampung Province Number 005/IV/KIPprov-LPG-PS-A/2022 shows that it has fulfilled the legal requirements in the form of causal lawful. This is because the object of the contract in the form of work to improve the Pekon Balak - Suoh West Lampung road is not prohibited. However, when in practice it is found that there is bad faith on the part of the parties to the contract to the detriment of other parties, it certainly shows that this does not fulfill the purpose and of course null and void.

Based on the description above, the contract for PPP between Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for disclosure as the case in the Decision of the Information Commission of Lampung Province Number 005/IV/KIPprov-LPG-PS-A/2022 complies with the provisions of Law of the Republic of Indonesia Number 2 of 2017 concerning Construction Services, related to the condition of services construction and the binding of the two parties as service providers and service users, both of which are entities as referred to in Article 39 Paragraph (2) letter b of the Law of the Republic of Indonesia Number 2 of 2017 concerning Construction Services. The binding work relationship shows that it has been based on the principle of fair competition and can be accounted for, because it has gone through the project tender procurement process through *website* as stipulated in Article 39 Paragraph (3) of the Law of the Republic of Indonesia Number 2 of 2017 concerning Construction Services. In addition, the binding of the parties to the construction work contract as stipulated in the Law of the Republic of Indonesia Number 2 of 2017 concerning Construction Services in Article 40 stipulates that it also refers to basic arrangements related to agreements in accordance with the Civil Code, which in this case refers to Article 1313 and Article 1320 of the Civil Code. The contract has fulfilled the legal terms of the agreement as referred to in Article 1320 of the Civil Code, but in its implementation it was later found that there was bad faith to the detriment of other parties indicating that the provisions of this article had not been implemented properly. Of course, it is necessary to have law enforcement efforts to recover the aggrieved parties and so that the implementation of the agreement can

be based on *lawful cause*. Aggrieved parties' requests to disclose contracts are one of the efforts to realize law enforcement. But on the other hand, when the contract is opened it will violate the basic concept agreements are to be kept, the principle of good faith, and the principle of personality. Disclosure of contracts on PPP in civil law is thus not in accordance with the principles of the contract or the identity of the contract itself.

Contract Disclosure above Public and Private Partnership (PPP) in Public Administrative Law

State administrative law is attached to the function of creating the implementation of good governance, by applying the values of norms, instruments and laws that can guarantee good governance. The government is obliged to carry out actions according to applicable regulations, including public information disclosure as a form of transparency in the hope that it will not harm the community. The right to obtain information is one of the human rights regulated in Article 14 of Law Number 39 of 1999 concerning Human Rights. As a right, information disclosure is an essential element in creating a meaningful democracy. The availability of information is essential for human survival where this information will be able to provide consideration for humans to make rational decisions. Assessment of good or bad an existing information can be used as a reference in thinking to develop personal and social environment. Therefore much information must be obtained by the community.

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Fulfilling the right to information in the context of the state, for the community is not only the implementation of the obligation to fulfill human rights, but also one form of implementation of the General Principles of Good Governance, namely transparency. The government as the holder of power cannot act as it pleases. They need to be accountable for the policies they take to the community. This is where the right to public information plays a very important role. With access to this information, the public can monitor whether the policies taken are detrimental to society, both in terms of taking sides with the authorities and fulfilling human rights. In addition, to ensure and participate in the framework of supervising the work and authority possessed by the state through its government agencies.¹²

KIP as the Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure in Article 2 Paragraph (1) is the existence of open information that can be accessed by every user of public information. Public information is an inherent right of the public, as stipulated in Article 4 Paragraph (1) of the Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure. Article 4 Paragraph (2) also stipulates that the public has the right to see and know public information, attend public meetings open to the public to obtain public information, obtain copies of public information through requests, and disseminate public information. People who feel they need public information but there is no openness can submit a request, which acts as a requester for information. Article 2 Paragraph (3) stipulates that public information must be accessible to all applicants quickly, on time, at low cost, and simply. Article 4 Paragraph (3) further stipulates that the applicant has the right to submit a request for public information along with the

¹¹ Muhaimin. Penguatan Penyelenggaraan Pelayanan Publik melalui Penyelesaian Sengketa Informasi Publik. *Jurnal Ilmiah Kebijakan Hukum* 12 (2), (2018).

¹² Solechan, Asas-Asas Umum Pemerintahan yang Baik dalam Pelayanan Publik. *Administrative Law & Governance Journal*, 2 (3), (2019).

reasons. In fact, the applicant has the right to file a lawsuit in court if obtaining public information encounters obstacles or failures. This shows that the need for public information for the community is an urgency that must be properly fulfilled as stipulated in Article 4 Paragraph (4). On the other hand, the Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure regulates the existence of public information an exception. In Article 2 Paragraph (2) it stipulates that exempt public information is inherently strict and at the same time limited. Article 2 Paragraph (4) stipulates that "public information that is exempt is confidential by law, decency and public interest, based on an examination of the consequences that arise when information is given to the public and after careful consideration that closing Public Information can protecting the larger interest rather than disclosing it or vice versa". Article 6 actually regulates the existence of the Government as a public body that has the inherent right to refuse to provide exempted information. Public information that cannot be provided includes:

1. Information that can harm the state;
2. Information relating to the interests of business protection from unfair business competition;
3. Information relating to personal rights;
4. Information relating to job secrets; and/or
5. The requested Public Information has not been mastered or documented.

Chapter V of the Law of the Republic of Indonesia Number 14 of 2008 concerning Disclosure of Public Information in Article 17 regulates explicitly the disclosure of exempted public information, namely information that can hinder law enforcement, information that can interfere with the interests of protecting intellectual property rights and protection of intellectual property rights. Unfair business competition, information that could jeopardize national defense and security, information that could reveal Indonesia's natural wealth, information that could harm national economic security, information that could harm the interests of foreign relations, information that could reveal the contents of authentic private deeds and someone's last will or testament, information that can reveal personal secrets, and information that is a memorandum or letters between public or intra-agency bodies which by their nature are kept secret.

PPP contract between the Dinas Bina Marga dan Bina Konstruksi Lampung with PT. Talang Batu Berseri as the object being requested for disclosure as the case in the Decision of the Information Commission of Lampung Province Number 005/IV/KIPprov-LPG-PS-A/2022 basically aims to fulfill one of the functions of the press (control/supervision of governance and development, as well as for the accuracy of media reporting as an independent and responsible press in accordance with journalistic rules and codes of conduct in accordance with the Law of the Republic of Indonesia Number 40 of 1999 concerning the Press DPC PWRI as the applicant for public disclosure regarding contracts had initially requested directly to the public body concerned, namely Dinas Bina Marga dan Bina Konstruksi Lampung. However, because the request for information was not adequately responded to because the contract documents requested included exempt information, the applicant submitted an application through the Information Commission by the provisions of Article 4 Paragraph (3) of the Law Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure.

DPC PWRI as the Petitioner in the Decision of the Information Commission of Lampung Province Number 005/IV/KIProv-LPG-PS-A/2022 stated that the

documents requested for disclosure were not documents that were exempt according to the Law of the Republic of Indonesia Number 14 of 2008 concerning Disclosure Public Information, Law of the Republic of Indonesia Number 25 of 2009 concerning Public Services, Law of the Republic of Indonesia Number 40 concerning the Press, Law of the Republic of Indonesia Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Corruption Crimes, Regulation of the Information Commission of the Republic of Indonesia Number 1 of 2021 concerning Public Information Service Standards, Regulation of the Governor of Lampung Province Number 20 of 2017 concerning Standard Operational Procedures for Public Service Information Management Officials and Provision of Lampung Documentation, Government Regulation of the Republic of Indonesia Number 61 of 2010 concerning Implementation of the Law Number 14 of 2008 concerning Public Information Disclosure, Jurisprudence Decision of the Palangkaraya State Administrative Court Number 21/G/KI/PTUN.PLK, Decision Number 18/G/KI/PTUN.PLK, Decision Number 21/G/KI/2021/PTUN .PLK, Decision of the Bandar Lampung State Administrative Court Number 10/G/KI/2021/PTUN-BL, and Decision Number 14/G/KI/2021/PTUN-BL. DPC PWRI as the information requester hereby believes that the contract for which the information disclosure is requested is not an exempt document. Disclosure of the PPP contract documents is requested due to the assumption that the Pekon Balak-Suoh road section project, Kab. In West Lampung there are acts of Corruption, Collusion and Nepotism or abuse of power, so the only way to avoid this is with a contract document for the Pekon Balak-Suoh road works, one of them. Project work is causing much harm to the community, so it is hoped that the disclosure of contract documents is a form of transparency so as not to cause prolonged problems in the surrounding community. The contract that is being requested for openness should not harm either party, so the document deserves to be opened as a manifestation of government accountability and transparency in carrying out its duties and functions. Accountability and Transparency are one of the principles of the General Principles of Good Governance.

Dinas Bina Marga dan Bina Konstruksi Lampung as stated in the Decision of the Information Commission of Lampung Province Number 005/IV/KIProv-LPG-PS-A/2022 refused to provide disclosure of contract documents for the Pekon Balak-Suoh Road Works because it is classified information, which if disclosed can reveal unfair business competition and interfere with the interests of protecting Intellectual Property Rights which are confidential in accordance with the provisions of Article 17 letter b and letter h of the Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure and Article 2 of the Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets. Dinas Bina Marga dan Bina Konstruksi Lampung is concerned that if contract documents are provided, they could be misused by unauthorized parties. Dinas Bina Marga dan Bina Konstruksi Lampung at the time of the first adjudication hearing, the information had not yet been tested for consequences but when there was a request for information and stated that it excluded information as closed information which would lead to unfair business competition and disrupt the interests of intellectual property rights. The results of the consequence test were never submitted to the DPC PWRI as the applicant. Dinas Bina Marga dan Bina Konstruksi Lampung which refuses to disclose information about contracts because it includes excluded documents, should pay attention to the Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure in Article 2, which to exclude a public information is Dinas Bina Marga dan Bina

Konstruksi Lampung as a public agency is required to go through the consequence test method and a weighing test of the greatest public interest. Public information that is simply excluded without going through these two things, of course, becomes baseless. Such information should be declared open. Dinas Bina Marga dan Bina Konstruksi Lampung stated that the contract being requested for disclosure, including the exception document, had not previously carried out a consequence test and a public interest test as Article 19 of the Law of the Republic of Indonesia Number 14 of 2008 concerning Public Information Disclosure. Dinas Bina Marga dan Bina Konstruksi Lampung in carrying out a consequence test did not conduct an analysis of the law which was used as the basis for the exception taking into account propriety, public interest, the interests of the Applicant and/or other measures regulated by laws and regulations.

Dinas Bina Marga dan Bina Konstruksi Lampung categorizes contract documents as exempt documents because they are trade secrets as stipulated in the Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets, which are information that is not known to the public in the business sector with economic value. Because it is in business activities, and kept confidential by the owner. Of course, this should not be appropriate, considering that the object agreed upon by the gods regarding construction services is certainly not a commercial object that needs to be kept secret. These construction services greatly affected the surrounding community, which of course shouldn't be something that should be kept private. Thus it is very inappropriate when the Dinas Bina Marga dan Bina Konstruksi Lampung states that the request to disclose information regarding contract documents is not in the interests of the Petitioners and their urgency as social control. The contract document as stipulated in Article 100 of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation is not actually an "authentic deed that is personal in nature", with which a substantial contract should be opened for the benefit of society. DPC PWRI as an applicant for information disclosure is also by Lampung Province Governor Regulation Number 20 of 2017 concerning Public Operational Standards for Information Management and Documentation Officials for Lampung Province regarding contract documents that are not included as exempt documents as well as being transparent and/or open.

The concept of information disclosure contains 6 (six) universal principles, one of which is Maximum Access Limited Exemption (MALE). The concept means that information is open and can be accessed by the public. Information can be excluded, only because if disclosed, it will harm the wider public interest. These exceptions must be limited, only certain information is limited, and not permanently valid.¹³ PPP contract between Dinas Bina Marga dan Bina Konstruksi Lampung and PT. Talang Batu Berseri, which in its implementation actually harmed the community and there were discrepancies (projects that were not completed and the results were not good) showed that related documents including contracts became an urgency to be given transparency as an effort to ensure government action in the implementation (as social control). The contract is not able to fulfill aspects of Maximum Access Limited Exemption (MALE) as a whole, because it involves the personal data of private parties in the contract. However, it should be remembered that what the community and the applicant need is not the personal data, but the substance of the agreement to ensure

¹³ Rachmat Kriyantono, *Best Practice Humas (Public Relations) Bisnis dan Pemerintahan*, Kencana, Jakarta, 2021, pg. 183.

whether it has been carried out as it should, considering that on the other hand it harms the community a lot. In this case, the contract should be opened with the exception of personal data, which at this moment fulfills the limited nature, only certain information is limited, and is not permanent.

4. CONCLUSION

Current laws and regulations in Indonesia do not specifically regulate the position of contract documents as objects included in the object of public information disclosure or even those that are excluded from public information disclosure. The current legal regulations can only explore the concept of civil law and state administrative law; of course, these two aspects are very contradictory. This shows that there is legal inconsistency regarding the position of contract documents in relation to public information disclosure. Legal certainty with this has not materialized properly. According to Jan Michael Otto, legal certainty is recognized by the availability of clear, consistently to obtain, and obtain easy-to-obtain or accessible legal rules. The current legal regulations regarding the position of contract documents to public disclosure of information in civil law and state administrative law at this moment at this moment show ambiguity and inconsistency which results in the absence of legal certainty as Jan Michael Otto views.

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