

# TINJAUAN HUKUM

## PERMOHONAN INFORMASI YANG TIDAK SUNGGUH-SUNGGUH DAN BERITIKAD BAIK (VEXATIOUS REQUEST)



# A Legal Review

## Information Request that is Not Sincere and in a Good Faith (Vexatious Request)

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### INTRODUCTION

The data of information disputes from the Central Information Commission (KIP) shows that from 2010 until 2017, KIP has received 2724 requests of information dispute resolution. Therefore, from 2724 requests, it was just 901 information disputes that have been resolved. Thus, KIP still has dispute areas of 1823.

There were interesting things about the information dispute areas from KIP: *First*, from 1823 disputes, 1209 were the requests submitted by Muhammad Hidayat or known as MHS. 1209 information disputes were submitted by MHS using several identities, such as Mata Ummat, Perkumpulan Mata Umat, Pergerakan Mata Umat, Sahabat Muslim, Sahabat Muslim Indonesia, and Perkumpulan Sahabat Muslim. *Second*, 1209 dispute requests were made by MHS in 2014, and all of them were considered to have no direct interest in the requested information.

Out of dispute data recorded by KIP, at the beginning of the enactment of Act No. 14 of 2008 regarding Public Information Disclosure (KIP Act), Information Commission Regulations (Perki) No. 1 of 2010 regarding Standard of Public Information Service (Perki SLIP), and Perki 2 of 2011 regarding Procedures of Public Information Dispute Resolution (Perki PPSIP),<sup>2</sup> MHS has shocked almost all public agencies at the central level (ministries and civil society organizations). At the beginning of the KIP Act and the enactment of the derivative regulations, MHS's actions were quite helpful in the information disclosure implementation at the national level. Many public agencies started to fix it to improve their information service. This is because MHS always submitted information disputes to KIP towards the public agencies that did not give the requested information. However, the MHS's action gradually began considering as unsettling, such as: *first*, MHS had the requests on the same information in all public agencies, which were all information regulated in Article 11, Article 12, and Article 13 of Perki SLIP. *Second*, MHS had information requests in an intimidating way (i.e., angry, impolite, etc.) to the public agencies. *Third*, MHS always disputes the public agencies to the KIP. *Fourth*, MHS was disrespectful at the trial of the KIP. In the context of justice, MHS's behavior is contempt of court or disrespectful to the court. The contempt of court done by MHS was by publicly demonstrated the vote of no confidence to the KIP Commissioners. *Fifth*, MHS's actions spread in Indonesia, such as Central Java,

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2 Perki No. 2 of 2011 regarding the Procedure of Public Information Dispute Resolution has changed with Perki No. 1 of 2013 regarding the Procedure of Public Information Dispute Resolution

West Java, Banten, Sumatera, and Kalimantan that became the target of MHS's information request.

MHS's behavior is considered not sincere and in good faith information requests (vexatious request). Then, it became one of the considerations in revising the Perki PPSIP to be Perki No. 1 of 2013 regarding the Procedure of Public Information Dispute Resolution, where Article 3 and Article 4 are regulated about the not sincere and in good faith information request.





## Practical Application of Vexatious Request Clauses in Several Countries

### Scotland

FOI Act 2002 Scotland regulated two types of information requests that were considered not sincere and in good faith: vexatious request and repeated request.

**The Vexatious Request.** Article 14 paragraph (1) of FOI Act 2002 was regulated that public agencies must not fulfill the information request that was considered not sincere and in good faith. In the FOI Act 2002, it was not clearly mentioned the criteria of this vexatious. Therefore, the Scotland Information Commission gave the vexatious request criteria as follows:

1. Give a huge burden to the public agency. For example, to fulfill the information requests requires a disproportionate of time, massive diversion of resources (human resources, budget, etc.), so it can disrupt the main duty of public agency. Another example if the information request is in a huge amount and at once by one person.
2. Have no clear purpose.
3. To make a distraction to public agencies.
4. Harass public agencies. For example, use harsh words and impolite behavior.
5. Logically, the information request is considered disproportionate or unreasonable. For example, the complexity of requested information, amount, etc. This point also related to Point 1 – giving a huge burden to the public agency.
6. Illusive information request. For example, the public agency has provided and published all information, and there is no other information (addition) that can be provided again.
7. If any, the additional information will not be able to explain or change the Petitioner's situation because actually all information intended has been given.

The Implementation of Vexatious Request. Determination of a vexatious request must be conducted carefully by considering various situations, evidence that shows the impact over the public agencies, and other relevant factors. Several things must be elaborated in determining vexatious request:

1. "Vexatious" clause is addressed to the request, NOT the Petitioner. Thus, it is not the person who is determined as vexatious, but the request. Although the Petitioner's history or track also can be used as a consideration in determining vexatious, it must be conducted carefully. There are cases, such as the real purpose of the information request, to have an argument with a public agency, while obtaining information is not their main purpose. In this context, requests are not automatically rejected, but the public agency must still provide the discussion space for the information petitioner, so it is to ensure all processes of fulfilling the rights regarding information have been conducted.
2. The attitudes of public agency over the information request are:

- a. If a public agency has well conducted all procedures to fulfill the information request, and the Petitioner is still annoying, it can be determined as vexatious. Conversely, if a public agency gives a partial, ambiguous, and inconsistent response, then causing the Petitioner submits further requests to clarify or obtain a full explanation, so it should not be considered as vexatious.
  - b. Article 15 FOI Act 2002 mentioned that the public agency must provide appropriate advice and assistance for information petitioner. Related to the request with a huge amount that impacts the significant burden for the public agency to fulfill it, the public agency firstly can give the Petitioner advice and assistance to have request and provision of information according to the limit of public agency's ability. Besides that, the public agency also explains the difficulty in fulfilling the request for intended information. In this case, all things have been conducted by the public agency, and Petitioner refuses and still annoying, then it can be determined as vexatious.
3. The vexatious request is first determined by the public agency through the notification to the Petitioner. The notice contains:
    - a. The reason why the application is determined as vexatious;
    - b. The rights for the information petitioner to object to the decision, whether it is an objection to the public agency and/or to the Information Commission, if they still are not satisfied with the response of objection from the public agency.

***The Repeated Request.*** Article 14 paragraph (2) of FOI Act 2002 was regulated that if the public agency has provided the information requested by Petitioner, the public agency does not have to provide the same information requested by the Petitioner, which requested information is identical or basically the same as the previous information provided.

The implementation of repeated request is based on:

1. The clause "reasonable timeframe." It means that an information request is considered a repeated request if made in the adjacent time, where there is no change of information or condition. The change in this condition for the example is the public interest that requiring information disclosure.
2. Over the repeated request is suggested to conduct proactive release or proactive information publication.
3. The repeated request is first determined by the public agency through the notification to the Petitioner. The notice contains:
  1. The reason why the Petitioner is determined as a repeated request;
  2. The rights for the information petitioner to object to the decision, whether it is an objection to the public agency and/or to the Information Commission, if they still are not satisfied with the response of objection from the public agency.

## **Ireland**

FOI Act 2002 Ireland regulated two types of information request that was considered as not sincere and in good faith: vexatious request and frivolous request (insignificant information

request, does not need serious attention, has no clear purpose, tends to the annoying situations).

Criteria of vexatious request and frivolous request are:

1. It is done in bad faith. For example, the Petitioner will not follow or comply with the procedures of information request as regulated in the act.
2. It is an abuse of the rights over the information. For example:
  - a. The information request in a huge amount and do not make sense;
  - b. The scope of information requested is broad or very detailed;
  - c. The information request is made repeatedly;
  - d. The information request has no clear purpose;
  - e. The information request is made for harassing the public agency.
  - f. The information request is made to interfere with the process of dispute resolution.

The vexatious request and frivolous request are first determined by the public agency through the notification for the Petitioner. The notice contains:

1. The reason why the request is determined as vexatious or frivolous request;
2. The rights for the information petitioner to object to the decision, whether it is an objection to the public agency and/or to the Information Commission, if they still are not satisfied with the response of objection from the public agency.

## **Canada**

Canada regulated two types of information request that was considered as not sincere and in good faith:

1. The vexatious request is the information request made for disturbing, harassing, embarrassing, and causing inconvenience.
2. The frivolous request is the reckless information request. It is usually related to insignificant things. However, it should be noted that some information may be insignificant according to someone but may be important for others.

## **England**

FOI Act 2002 England in Article 14 regulated two types of information request that was considered as not sincere and in good faith: vexatious request and repeated request.

***The Vexatious Request.*** *In the FOI Act is not mentioned the definition of vexatious request explicitly. However, the information Commission gives the criteria about the vexatious request that is:*

1. The obsessive information request or in a huge amount and disturbing;
2. Made for harassing the public agency;
3. Made for causing difficulty to the public agency staff;
4. To fulfill the information request, they enforce the significant burden for the public agency, either for budget side or human resources side;
5. The information request is designed to disrupt public agency;
6. Information request has no clear purpose;

Information Commission further re-detailed several criteria of vexatious request above, such as:

1. An obsessive information request is a request for information that:
  - a. Made in a huge amount and high intensity/frequency;
  - b. Made for information that is previously owned, known, or has been provided for Petitioner;
  - c. It is made to re-open the problems or cases that actually have been resolved, especially resolved through existing legal mechanisms.
2. The information request is made for harassing the public agency is a request for information that:
  - a. Made in a huge amount and high intensity/frequency;
  - b. Use offensive language and offensive actions;
  - c. Deliver unreasonable criticism and complaints to public agency staff;
  - d. The information request is made with accusations and complaints.

*Note: the meaning of harassing here is not the result of the information disclosure.*

3. Information request that enforces the significant burden for the public agency is a request for information that:
  - a. Required a large transfer of resources (budget and human resources);
  - b. The transfer of resources disrupts main services functions to other publics;
4. The information request is designed to disrupt public agency is the request for information that:
  - a. Difficult to prove the intention or purpose of the request;
  - b. It is made to disrupt the ongoing dispute process.

**The repeated request** is the repeated information request that fulfills the criteria as follows:

1. Made by the same Petitioner;
2. The requested information is similar or in substance the same as the previous information request;
3. It is made in an adjacent period where there is not any change to the substance of the requested information.





### The Regulation of Vexatious Request in Perki No. 1 of 2013

Two articles strictly regulate the not sincere and in a good faith information request, which is Article 3 and Article 4 Perki No. 1 of 2013. The complete Article is as follows:

#### *Article 3*

*The resolution request for public information dispute is conducted only for fulfilling the rights on public information.*

#### *Article 4*

- (1) The parties who submit the resolution request for public information dispute have to follow the resolution process of public information dispute with sincere and in good faith.*
- (2) Information Commission does not have to respond to a request that is not sincere and in good faith.*
- (3) What is meant by not sincere and in good faith request as referred to paragraph (2):*
  - a. Having a huge amount of requests at once or repeated but has no clear purpose or relevance to the request's purpose.*
  - b. Have a request to disrupt the process of dispute resolution.*
  - c. Harass the dispute resolution staff with behavior out of the dispute resolution procedures.*

- (4) *In the case when Information Commission does not respond to the request as referred to the paragraph (2), the Head of Information Commission determines the decision to terminate the dispute resolution process according to the reasons as referred to the paragraph (3).*
- (5) *Further provisions will be determined in the Decree of the Head of the Central Information Commission.*

*The explanation of Article 4 paragraph (3) letter c*

*What is meant by harassment include but is not limited to condescending to the staff, gender harassment, and sexual harassment.*

From the two articles can be drawn the two main provisions regarding the not sincere and in good faith information request are:

1. The resolution request for public information dispute is conducted only for fulfilling the rights on public information. Thus, the Information Commission does not have to respond to a request that is not sincere and in good faith.
2. Criteria about the request that is not conducted sincerely and in good faith are:
  - a. Having a huge amount of requests at once or repeated but has no clear purpose or relevance to the request's purpose.
  - b. Have a request to disrupt the process of dispute resolution.
  - c. Harass the dispute resolution staff with behavior out of the dispute resolution procedures.

Besides that, the objectives of Article 3 and Article 4 are the request that is not conducted sincerely and in good faith. Thus, the objectives are the request, not the Petitioner. Therefore, the determination of an information request is considered as not sincere and in good faith conducted on case by case.

### **Vexatious Request in Indonesia vs. Other Countries**

Generally, the criteria of the vexatious request in Perki No. 1 of 2013 are not much different from the practice of other countries. However, several criteria can be included to strengthen the vexatious request regulations in Perki No. 1 of 2013 that is:

1. To make a distraction to public agencies.
2. Harass public agencies. For example, use harsh words and impolite behavior.
3. Illusive information request. For example, the public agency has provided and published all information, and there is no other information (addition) that can be provided again.

Besides that, KIP needs to elaborate on the meaning of "request in a huge amount at once." This is because, in practice, it is possible for information's Petitioner to requests information in a huge amount at once because they really need the information immediately. This condition certainly cannot be determined easily as vexatious request. The meaning of "request in a huge amount at once" could possibly adopt Scotland's practice, where the criteria of request in a huge amount at once are the information request that gives a big burden for the public agency. For example, to fulfill the information request need a disproportionate time, massive diversion of resources



(human resources, budget, etc.) so that it can disrupt the public agency's main duty.

Therefore, besides the vexatious request, KIP also needs to consider the repeated and frivolous request as the practice in Ireland and Canada. Repeated and frivolous requests are actually the most practiced in Indonesia (Seen from MHS and Topan AD cases).

Then, regarding the implementation of vexatious, repeated, and frivolous requests, it is different from the practice in Scotland, Ireland, and Canada that has a mechanism to decide an information request as vexatious, repeated, and frivolous request. In Indonesia, those mechanisms have not occurred or been regulated yet. This mechanism needs to be regulated. For example, how the Petitioner can object to the determination of their request as vexatious, repeated, or frivolous request. It is important because it involves the rights to information and an evaluation that not all information requests are considered vexatious, repeated, and frivolous requests, which is really vexatious, repeated, and frivolous information request.

## RECOMMENDATION

In the context of the problems faced by the Information Commission, especially KIP, there are currently two things:

1. Resolve the cases reached up to 1209 cases that are presumed as the vexatious request.
2. To minimize the information request or request of information dispute resolution that leads to the vexatious request.

Thus, there are two different recommendations for every case above. *First*, the recommendation for the resolution of cases reached up to 1209 cases on behalf of MHS, and KIP held one trial inviting public agencies that are requested for information by MHS. This trial is intended to explore the facts of information request by MHS that lead to the vexatious request. If it is not possible to present all public agencies requested by MHS, it can ask for written information from the public agencies. Then, the results of these trials and written statements are used as the basis for determining 1209 cases as the vexatious request, so it will not be continued to be examined by the KIP.

Regarding the recommendation to hold one trial is to ensure that the examination process is conducted properly (examination is conducted by bringing the parties together to explore the legal facts). Besides that, the examination through the trial will create a DECISION, where will also accelerate the legal process, which 14 days after the decision is read out the Petitioner does not make an appeal, the decision will have permanent legal force. Comparing if the process in deciding the vexatious request is made with the Decree of the Head of the KIP, according to the administrative procedure law mechanism in Indonesia (PTUN), the legal action will be much longer that is 90 days.

*Second*, minimize the information request or request information dispute resolution that leads to the vexatious request. KIP, as mandated in Article 4 paragraph (5) Perki No. 1 of 2013, must determine the Decree containing: 1) *criteria and derivative indicator of information request that is not conducted sincerely and in good faith as regulated in Article 4 paragraph (3) Perki 1/2013, and 2) the examination mechanism over the vexatious request.* (More detail is explained in the resolution mechanism design of vexatious request).

**INFORMATION COMMISSION REGULATIONS  
NUMBER ... OF 2017**

**REGARDING**

**THE EXAMINATION MECHANISM OVER THE INFORMATION REQUEST THAT IS NOT SINCERE AND  
IN GOOD FAITH**

**INFORMATION COMMISSION**

Considering: to implement the provision of Article 4 paragraph (5) Information Commission Regulation No. 1 of 2013 regarding the Resolution Procedures of Public Information Dispute need to determine the Information Commission Regulations regarding the Examination Mechanism over the Information Request that is Not Sincere and in Good Faith.

Reminding: 1. Act No. 14 of 2008 regarding the Public Information Disclosure (State Gazette of the Republic of Indonesia of 2008 No. 61, Supplement to the State Gazette No. 4846);  
2. Information Commission Regulation No. 1 of 2013 regarding the Resolution Procedure of Public Information Dispute (State Gazette of the Republic of Indonesia of 2013 No. 649, Supplement to the State Gazette No. 5).

**DECIDING:**

Determining: **THE INFORMATION COMMISSION REGULATIONS REGARDING THE EXAMINATION MECHANISM OVER THE INFORMATION REQUEST THAT IS NOT SINCERE AND IN GOOD FAITH**

**CHAPTER I  
GENERAL REQUIREMENTS**

Article 1

In this regulation, what is meant by:

1. Information is an explanation, statement, idea, signs that contain values, meaning, and message, either data, fact, or explanation that can be seen, heard, and read presented in various packages and formats according to the development of information and communication technology electronically or non-electronically.
2. Public Information is the information generated, stored, managed, sent, and/or received by a Public Agency, which is related to the state administrator and administration and/or other Public Agencies administrators and administration in accordance with Act No.



14 of 2008 regarding the Public Information Disclosure and other information related to the public interests.

3. Public Agency is an executive, legislative, judiciary agency, and other agencies with the main function and duty related to the state administration, which part or all the funds come from the state revenue and expenditure and/or regional revenue and expenditure budget. Or, it is a non-governmental organization that part of all the funds come from the state revenue and expenditure and/or regional revenue and expenditure budget, public donations, and/or abroad.
4. Information Commission is an independent institution that is to implement the Act of Public Information Disclosure and its derivative regulations, determine the technical guidelines for the standard of public information service, and resolve the public information dispute through mediation and/or non-litigation adjudication.
5. Information Management and Documentation Officer or PPID is the officer who responsible for storing, documenting, providing, and/or information service in the Public Agency, and directly responsible to the PPID supervisor.
6. PPID supervisor is an officer who is the direct supervisor officer concerned and/or the supervisor of the officer's direct supervisor.
7. Public Information Petitioner is Indonesian citizens and/or legal entities who request Public Information as regulated in Act No. 14 of 2008 regarding Public Information Disclosure.

#### Article 2

This regulation aims to provide the guide for Information Commission in Indonesia in implementing the examination on information request that is not sincere and in good faith.

### **CHAPTER II CRITERIA OF INFORMATION REQUEST THAT IS NOT SINCERE AND IN GOOD FAITH**

#### Article 3

Not sincere and in good faith of information request is the information request that fulfills the following criteria:

- a. Giving a huge burden to the public agency;
- b. Has no clear purpose;
- c. To make a distraction to public agencies;
- d. For harassing the public agency;
- e. Logically, the information request is considered disproportionate or unreasonable;
- f. Illusive information request;
- g. The information request is made repeatedly;
- h. The information request is made for abusing the rights of information;

#### Article 4

Information request that gives a big burden for the public agency as referred to Article 3 letter a is the request that:

- a. Made in a huge amount and high intensity/frequency;
- b. Made for the information that is previously owned, known, or has been provided for Petitioner; and/or
- c. To fulfill it, it needs disproportionate time and transfer of human resources and budget to interfere with the main tasks of public agencies and/or other public service duties.

#### Article 5

Information request that made to create a distraction to the public agency as referred to Article 3 letter c is the request that:

- a. Difficult to prove the intention or purpose of the request; and/or
- b. It is made to disrupt the ongoing dispute process.

#### Article 6

(1) Information request that made for harassing the public agency as referred to Article 3 letter d is the request that:

- a. Made using offensive language and offensive actions;
- b. Made by delivering excessive criticism and complaints to the public agency staff; and/or
- c. It is made with excessive accusations and complaints to the public agency.

(2) Harassing the public agency referred to in paragraph (1) is not included in disclosing or providing information to the Information Petitioner.

#### Article 7

Illusive information request as referred to Article 3 letter is the request that:

- a. Made to the information that is provided and published by the public agency, while there is no or no more recent or additional information that can be provided;
- b. It is made over the information generated, stored, managed, sent, and/or received by the public agency as the main duty, function, and authority.

#### Article 8

Information request that is made repeated as referred to Article 3 letter g is the request made by one Petitioner for the information that has been provided before and made in adjacent time, where:

- a. There are no changes of information substance; and/or
- b. There are no changes in a condition requiring information disclosure.

#### Article 9

Information request made for abusing rights on the information referred to the Article 3 letter h is the information request made for extorting public agency.

### **CHAPTER III EXAMINATION PROCEDURES**

#### **Part One General**

##### Article 10

- (1) The dispute resolution over the information request that is not sincere and in good faith can be made when:
  - a. The Petitioner is not satisfied with the public agency decision, which states that the petition is the information request that is not sincere and has good faith; or
  - b. In the trial in the resolution of public information dispute, the Information Commission found evidence that the Petitioner was included in the not sincere and in a good faith information request.
- (2) Dispute resolution over information request that is not sincere and in good faith as referred to in paragraph (1) can be made with information dispute resolution.

##### Article 11

- (1) The dispute resolution over the information request that is not sincere and in good faith is made for every information request.
- (2) The determination of the information request that is not sincere and in good faith is made over the request, not the Information Petitioner.
- (3) The determination of information request that is not sincere and in good faith is made accurately and carefully according to the evidence.

#### **Part Two Request**

##### Article 12

- (1) The dispute resolution request over the information request that is not sincere and in good faith is submitted by the Petitioner or the Information Commission's authority.
- (2) The request is submitted in writing, either by filling the Request Form or sending a Request Letter.
- (3) Request form or letter as referred to the paragraph (2) at least contains:
  - a. Petitioner identity;
  - b. Description regarding the reason for submitting the request;

- c. The things requested to the Information Commission to be decided are:
  1. Stating that the public agency decision stating the information request from the Petitioner that is not sincere and in good faith information is not valid, so it must be canceled.
  2. It is stated that the public agency must provide the information service over the information request conducted by the Petitioner.

#### Article 13

- (1) The Petitioner must include the Petitioner documents as follows:
  - a. The Petitioner's valid identity;
  - b. The information request to the public agency;
  - c. The public agency's Decree that state information request for Petitioner is not sincere and in good faith information; and/or
  - d. Other relevant documents, if needed.
- (2) If the Petitioner is accompanied by the attorney, the Request must be accompanied by a power of attorney.

### **Part Three Period of Time**

#### Article 14

The request is submitted no later than 14 (fourteen) working days since the written decision from the public agency that states the Petitioner's information request is not sincere and in good faith information, received by the Petitioner.

### **Part Four Registration**

Article ... (and so on following the flow of information dispute resolution as regulated in Perki No. 1 of 2013)

## **Determination and Summons of the Parties**

### **Summons of the Parties**

#### **Inspection Process**

### **Part ... Trial Procedures**

#### Article ...

- (1) The trial can be conducted:

- a. Specifically to examine the information request that is not sincere and in good faith; or
  - b. It is made together to examine the information substance that became the information request object.
- (2) In the trial conducted together to examine the information substance that becomes the information request object, the Information Commission has authority to decide its information substance as open information even though the information must not be given to the Petitioner.

### **Proof**

### **Conclusion of the Parties**

### **Decision**

The suggestion of a regulatory substance is:

1. In deciding the information request that is not sincere and in good faith, the Information Commission may consider the track record of the Information Petitioner.
2. In the information's Petitioner stated through the Information Commission decision (5 or 10 or ...) has made the information request that is not sincere and in good faith. Thus, the Information Commission may give the decision for the Petitioner not to request information to the public agency for (6 months or 1 year or ...) as a punishment. (Note: focus on the Petitioner's personal identity, so when they make the information request using the different legal entity identities, the first identified is his personal identity).
3. In this case, the Petitioner is punished as the Number 2 above, and the Petitioner can have the information request with notification to the Information Commission by explaining the reason for the request. Based on the notification, the Information Commission will determine whether the information request can be made or not. (Note: maybe this can be limited in the number of the request, and if it turns out that the Petitioners are still doing more vexatious, then the penalty as referred to Number 2 can be added.)
4. Over this Information Commission decision, the Petitioner can take legal attempts to court within 14 working days since a copy of the decision is given and received by the Petitioner.

**so on.**



Penentuan *vexatious request* harus dilakukan dengan seksama dengan mempertimbangkan berbagai situasi, bukti yang menunjukkan dampak yang ditimbulkan terhadap badan publik, dan faktor-faktor relevan lainnya.

