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**INDEPENDENT REPORT MONITORING  
IMPLEMENTATION OF OPEN GOVERNMENT  
PARTNERSHIP IN INDONESIA 2012 - 2013**

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Prepared by:



Supported by:



**INDEPENDENT REPORT MONITORING  
IMPLEMENTATION OF OPEN GOVERNMENT PARTNERSHIP IN INDONESIA 2012 - 2013**

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## INTRODUCTION

Open Government Partnership [OGP] is a global initiative declared in New York on 20 September 2011 with a view towards increasing the availability of information on governance, supporting civic engagement, implementing the highest standard of professional integrity in public administration, and improving access to new technologies to promote openness and accountability. Indonesia currently assumes a central role in this initiative as the co-chair of OGP alongside the United Kingdom, and shall rise to leadership position as Lead Chair in 2014.

Since 2011, we, civil society organizations working to promote transparency accountability - ICW, YAPPIKA, IBC, IPC, MediaLink and with full support from Tifa Foundation – have been actively monitoring the implementation of OGP in Indonesia. Based on our monitoring activities, it is revealed that the government of Indonesia has failed to meet expected targets in the first commitment stage of the action plan with regard to increasing the availability of data and access to information, including innovations for openness and accountability. The proportion of local government agencies that have established their own information and documentation service unit reached a disappointing 29%.

In 2013, we resumed monitoring of OGP implementation in Indonesia from 2012 to 2013 which focused on the extent to which the action plan has contributed to the achievement of OGP commitments and the implementation of the FOI Law, and assessing the execution of the action plan in three pilot project locations (Central Kalimantan Province, Indragiri Hulu District and Ambon City). A set of indicators was also developed to examine how OGP should best be implemented in Indonesia by engaging other sectors, including those involved in public service delivery and anti-corruption. Monitoring is grounded in the commitment that Indonesia's participation in the OGP global movement should significantly contribute to efforts made by the government of Indonesia in tackling national issues.

In light of current achievements that have yet to be optimized, whereas Indonesia has fairly effective modalities to advance the initiative, we shall therefore take further action by discussing monitoring results and recommendations with UKP4 and relevant state departments to help deal with various critical issues relating to the formulation of the OGP implementation action plan in Indonesia in the future. This monitoring report will also inform follow-up measures for preparing a more measurable action plan to strengthen OGP implementation in Indonesia.

Sincerely,  
Team of Authors

YAPPIKA (Civil Society Alliance for Democracy), Perkumpulan Media Lintas Komunitas, Indonesia Corruption Watch, Indonesia Budget Center, Indonesia Parliamentary Center, INFID (International NGO Forum for Indonesian Development), Tifa Foundation

## ACKNOWLEDGEMENT

This report is the outcome of an agenda shared by a coalition of civil society organizations for monitoring OGP implementation in Indonesia. It is prepared jointly by a team of lead researchers, namely Hendrik Rosdinar (Yappika), Agus Sunaryanto (ICW), Arif Nur Alam (IBC), Ahmad Fasiol (Media Link), Desiana Samosir (IPC) and Danardono Sirajudin (FOINI Network), and edited by Tanti Budi Suryani (Monitoring Coordinator from Tifa Foundation).

This report is not simply about words and how the team of researchers put them together to form meaningful sentences. A group of other individuals are also involved either administratively or substantively in the research process, and for this, we would like to extend our utmost appreciation to local researchers, Triono (Fitra, Riau), Baehajar Tualeka (Yayasan Lappan, Ambon) and Safrudin Mahendra (Save Our Borneo, Central Kalimantan) who have been more than willing to dedicate their time and share their thoughts. A word of thanks is also due to Fransisca Fitri, Director of Yappika, for contributing in the write-up of this report. To Dody Muhtadi and Riena Luciana, Yappika finance staff, we sincerely thank you for your invaluable assistance with respect to financial and administrative reporting. We are also indebted to Sisca Afriani, OGP program monitoring administrator, for making all the necessary preparations for the researchers. We would also like to convey our gratitude to Moelyono Anka, Yappika's layouter, for his artistic talent in making this report more appealing to read.

Finally, an honorable mention goes to Tifa Foundation for financially supporting the research process, in addition to the writing and publishing of this report. We hope that this report will be an essential source of reference for the government of Indonesia, civil society and other like-minded social activists working towards ensuring a more effective implementation of OGP in Indonesia.

standing banner  
in Ambon City  
Government Office to  
inform that public could  
make the complaint  
through SMS

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## EXECUTIVE SUMMARY

This report is a civil society's assessment of the implementation of the Open Government Partnership (OGP) initiative in Indonesia from 2012 to 2013. Assessment indicators are identified in keeping with global commitments declared through OGP and Indonesia's legal framework related to the global initiative, including Law on Freedom of Information (FOI Law), Law on Public Services and a package of finance laws. These indicators are civil society's proposition for the improved implementation of OGP Indonesia in the future.

Research was conducted according to the Open Government Indonesia (OGI) implementation report as part of Indonesia's commitment to the OGP initiative published by UKP4. Based on the report, three OGI pilot projects introduced at the Indragiri Hulu district government, Central Kalimantan provincial government and Ambon city government were monitored. Analysis focused on examining the implications of pilot projects on the implementation of the FOI Law, Public Service Law and the package of state finance laws.

### A. Assessing the Implementation of Information Openness

The OGP Declaration endorsed by Indonesia has not been able to accelerate the effective enforcement of the country's Law on Freedom of Information. Data published by the Indonesian Ministry of Communication and Informatics in 2012 showed that only 30% of government bodies at all administrative levels (central to district/city level) have established a PPID (information and documentation service unit). Provincial information commissions on the other hand have only been instituted in 20 provinces from a total of 34 provinces. PPID and information commission are two key institutions for the effective implementation of the FOI Law as they are the lead implementers in public information delivery.

OGI programs carried out by UKP4 also made no difference in speeding up the implementation of the FOI Law because the action plan for these programs was not sufficiently directed at fulfilling the mandates embodied in the FOI Law. Information delivery models developed in three public agencies – Police Force, National Land Agency and Tax Authority – have not been optimally applied. The OGI program introduced for the police force failed to accelerate the implementation of the FOI Law. This is also the situation for the National Land Agency which was ranked the lowest by a survey launched by the Information Commission and KPK with regard to information disclosure through the agency's official website, and by the integrity index survey.

The OGI three-track program is more inclined towards the development of web-based delivery of public information. The program however fails to include the fulfillment of FOI Law mandates as one of its indicators, specifically related to the disclosure of periodic information, and as such available data and information does not satisfy service standards laid down in the FOI Law. OGI



programs introduced in the three pilot project locations have also focused on the use of internet-based information delivery models, but are not backed by policies that push for equitable access to internet infrastructure and greater public awareness on internet literacy.

The number of internet users in Indonesia has risen significantly from a mere 1% from total population in 2000 to 12.3% in 2010, and expanded further to 16.1% in 2011. It should however be noted that internet services are only restricted to Java Island. The Ministry of Communication and Informatics reported that by 2010, 62.5% of fiber optic internet services are concentrated in Java, 20.31% in Sumatera and 6.13% in Kalimantan. The eastern part of Indonesia - Nusa Tenggara, Maluku and Papua – remains unserved areas. The effectiveness of other programs under the Ministry of Communication and Informatics intended to broaden internet connection such as the Sub-District Internet Service Program (PLIK and M-PLIK) is also seriously questioned because such programs in reality have only distributed the equipment needed for internet access without providing any form of assistance or institutional support. The concentration of network infrastructure also means the concentration of internet use, whereby from a total of 1.9 million ISP subscribers, 1.5 million are located in Java and Sumatera.

This concentration of internet users in Java creates an immense potential for more effective delivery of information in the three pilot project locations – Ambon, Central Kalimantan and Indragiri Hulu. Information published through the official websites of the three local governments however is more easily accessible from Java than the respective region. This is indeed an ironic situation for OGI and its information openness model where the local population instead faces difficulty in obtaining information from their own region. Who then is information transparency intended for?

Another noteworthy point on OGI implementation is that the initiative has not been able to change the way in which the government deals with information disclosure. To date, the Indonesian National Police still refuses to release information on suspiciously huge bank accounts of senior police officials, even though the National Information Commission has ruled in favor of ICW as the requester. A local government agency under the Central Kalimantan provincial administration has also rejected the decision handed down by the Information Commission that instructed on the disclosure of budgetary information, despite the fact that one of OGI programs being implemented concerns open budget. UKP4 took the initiative to push the Central Kalimantan Governor to order all local government ranks to comply with the Commission's ruling. The decision to date however is still ignored.

## **B. Key Findings on Public Services**

The government has not pushed for the comprehensive implementation of the Law on Public Services, specifically with regard to four key indicators: (1) availability of public service standards at every level, formulated in a participatory manner; (2) availability of a nation-wide information system established at every level; (3) availability of a complaint mechanism; and (4) availability of legal instruments and mechanisms that guarantee the implementation of a redress system with regard to public services.

LAPOR as an initial innovative step towards creating a complaint mechanism integrated nation-wide should indeed be appreciated. Nevertheless, several aspects still need to be addressed in terms of its mechanism and recommendations. **First**, LAPOR is not integrated into the national complaint-handling system because only 64 state ministries/agencies and a local government are connected

through the system. **Second**, LAPOR lacks the capacity to deal with complaints under emergency situations. Given the extent of coverage area and bureaucratic structure, a complainant must inevitably go through a lengthy process. A considerable number of grievances on public services are emergency cases, such as with regard to low-income citizens often denied admission to the emergency ward of a local hospital for not being registered under *jamkesmas* (government health insurance scheme). **Third**, LAPOR is not integrated into the Indonesian Ombudsman, specifically for following up on public complaints and disputes related to public services. **Fourth**, the public at large is still unfamiliar with the LAPOR mechanism. Only certain segments of society, primarily those who are active users of the internet or social media networks, are aware of the mechanism.

### C. Key Findings on Transparency of Public Financial Management

A similar assessment also applies to the issue of transparency in the management of state finances. At the central government level, key information pertaining to public financial management has not been wholly published and neither is it easily accessible to the public. First, information on budget planning available on the official website of state ministries/agencies is mainly general information without any details by sector and region, and whatever information available is not updated regularly. Several websites of government agencies such as the Ministry of Finance at [www.kemenkeu.go.id](http://www.kemenkeu.go.id) even do not provide such information. At [www.anggaran.depkeu.go.id](http://www.anggaran.depkeu.go.id), information is not presented manually in an easily understandable format.

Second, no information is available on the evaluation of the draft/national budget at DPR (House of Representatives), Ministry of Finance, state ministries/agencies and Ministry of Home Affairs. The disclosure of such information in fact is crucial in order to understand the rationale behind allocating more budgetary funds to one ministry compared to another ministry/agency. Third, information on financial accountability (LKPP/D – Agency for Government Procurement of Goods and Services, financial reports of government agencies), including a narrative performance report, is not comprehensively available. Financial statements prepared by government bodies made available to the public are mainly general information and are not referred to in the budget planning process for the subsequent year. Even if such reports are available, information on financial accountability merely highlights on budget absorption. To date, there is no indication on whether budgetary funds under the control of state ministries/agencies are wisely spent to fulfill their duties and functions, and to improve public services and public welfare.

Fourth, information on audit reports prepared by BPK on a mid-year/annual basis after submission to parliament is not updated on websites managed by the parliament and government (ministry/agency), including the BPK website. This is also the case for information on improvements that a ministry/agency must make based on BPK recommendations.

The implementation of the open budget program in the three identified pilot projects, including on school and health budget, does not optimally engage key stakeholders and the public at large. This should be seriously taken into account in order to ensure that public participation more effectively heightens the transparency and accountability of state administrators. Field findings in all three project locations, primarily Central Kalimantan, have revealed that the policy commitments of regional heads do not automatically mean that institutions under their respective jurisdiction are similarly committed. Bureaucrats appear to have their own “way of thinking”. Vigorous oversight by regional heads is therefore essential to broaden public participation. Open budget is part of government obligation that must be fulfilled pursuant to existing laws, and in order to address

critical local issues. It is also an agenda that the local population finds to be of utmost importance. Implementing the open budget program therefore must make broader civic engagement a priority. Open budget is not simply about government willingness, but also government obligation to meet public demands.

The open budget program in the three pilot projects could not also be effectively implemented due to the focus on internet-based platforms, while regions are still confronted with inequitable access to information technology, and a less than tech-savvy society. Local governments should not emphasize on online publishing of information, but should provide a more definitive procedure for offline delivery of information (manual) in a speedy, timely and affordable manner easily accessible to all.

#### **D. Key Findings on Corruption Eradication**

Ongoing efforts have been made in order to prevent and bring corruption to an end. Based on monitoring activities conducted by ICW (Indonesian Corruption Watch) on corruption cases throughout Indonesia in the first semester of 2013, law enforcement agents have at least dealt with 291 cases involving 670 corruption suspects, causing the state an estimate loss of IDR 4.4 trillion. In terms of court decisions for corruption cases from 2010 to the first half of 2013, from 344 cases involving 756 defendants, 81.09% were proven guilty whereas the remaining 18.91% were acquitted or released.

Data from the Ministry of Home Affairs has shown that soon after the district head elections were held, the number of district heads accused of complicity in corruption has seen an upward trend from 173 cases in 2011, to 235 cases in 2012 and rising to 293 cases by May 2013. Furthermore, efforts made by the Corruption Eradication Commission to enforce the law have been successful in prosecuting offenders who are high-ranking officials, including members of parliament, chairpersons of political parties, ministers and high-ranking police officers. The Chief Justice of the Constitutional Court was recently caught red-handed by KPK for his alleged involvement in bribery related to district head elections held in Lebak Banteng and Gunung Mas in Central Kalimantan.

Political corruption is inextricably linked to a weak recruitment process in addition to political party financing that counts on contributions from well-heeled party members as well as those occupying strategic positions in state ministries/agencies. Those in decision-making positions have typically taken advantage of their rank and title to embezzle public resources for personal and party interests. Attempts made at pushing for information openness in political parties are regrettably far from adequate. Civil society's efforts at gaining access to information on party financing have mostly ended in disputes brought before the Information Commission. In several cases, political parties have even openly defied the Information Commission that has ruled in favor of disclosure.

#### **E. Policies with the Potential to Hamper OGP Implementation**

Two policies have been identified that may hinder efforts to create an open government. First, the provision on defamation set forth in the Law on Electronic Information and Transactions. This particular clause has the potential to obstruct freedom of information from internet-based media as it may be used to criminalize internet users on defamation charges. This provision may hamper the implementation of innovative initiatives on public information delivery and public services through web-based platforms as citizens will be fearful of requesting for information or filing a complaint lest they be sued for alleged defamation.

Another policy that should be taken into consideration is the Law on Mass Organizations. It has the potential to restrict the people's access to information as it narrowly defines the type of institution or legal entity that may have legal standing as an information requester, even though the entity is already registered as an incorporated organization in compliance with the law, be it in the form of a foundation or association. The enforcement of the Law on Mass Organizations shall curb access to information held by public bodies.

## **F. Positive Potential**

In an effort to accelerate the implementation of FOI Law and create an open government, there is the prospect of turning to the Indonesian National Archives (ANRI) for help as it has developed an information and documentation systems software that meets archival standards. The software has been presented to UKP4 as the leading sector in the implementation of OGP commitments. No information however is available on whether the software has been applied by government agencies at all levels. The software can fill the existing gap for an information and documentation system as mandated in the FOI Law.

## **G. Recommendation**

In view of the aforementioned findings, the implementation of OGP Indonesia in the future should focus on efforts to accelerate the enforcement of the Law on Freedom of Information (FOI Law) as this will have a bearing on other aspects, in addition to public services, transparency of public finances and on eradicating corruption. Several recommendations to help speed up the implementation of FOI Law are as follows:

1. The government of Indonesia must improve its OGP action plan by emphasizing on the accelerated implementation of all mandates put forth in the FOI Law at all government levels. The OGP action plan should be directed at formulating FOI Law implementation standards within government agencies applicable to all bureaucratic hierarchy by building on important milestones that have thus far been achieved.
2. OGP action plan should not be carried away in applying ICT when the necessary preconditions are absent as it has instead further isolated local populations from accessing much needed information. The action plan should first educate the public and push for equitable access to infrastructure.
3. OGP action plan needs to stimulate innovations in information delivery by using the appropriate media suitable to the local culture and characteristics to ensure the accessibility of information held by local governments for the local population who will be the ones most affected.
4. Online disclosure of information must remain consistent with the criteria set out in the FOI Law in a language easily comprehensible to the local people.

In relation to the Law on Public Services, the following measures are recommended:

- To ensure the availability of service standards, the OGP action plan must be in harmony with State Administrative and Bureaucratic Reform Ministerial Regulation No. 36/2012 that lays down the technical guidelines for formulating, setting and applying service standards.
- To ensure that a complaint mechanism is in place in every service unit, the OGP action plan must be able to help hasten the passage of the Presidential Regulation on Complaint Handling. Furthermore, the OGP action plan should also be able to strengthen the presence of the

Indonesian Ombudsman, specifically in urging administrators to comply with Ombudsman recommendations.

- In an effort to establish legal instruments that guarantee the institution of a redress mechanism related to public services, the OGP action plan must be capable of quickening the ratification of the Draft Presidential Regulation on the Redress Mechanism in Public Service.
- Concerning existing legislation that does not bode well for creating an open government and promoting freedom of association, recommended actions are as follows:
- Review all regulations that can impede open government, including the Law on Electronic Information and Transactions and the Law on Mass Organizations.
- To seriously implement commitments under the OGP Declaration, particularly in guaranteeing freedom of expression, association and opinion. This can be achieved by repealing Law No. 17/2013 on Mass Organizations that has proven to undermine civil society's right to information, and in replacement a legal instrument that appropriately regulates civil society organizations.
- To fully implement the OGP Declaration and not allow the emergence of legislation and practices inconsistent with OGP commitments.

## **OVERVIEW OF OPEN GOVERNMENT PARTNERSHIP [OGP] AND OPEN GOVERNMENT INDONESIA COMMITMENT**

Open Government Partnership (OGP) is a global initiative in pursuit of more open, transparent, effective and accountable governments. By 2013, OGP has a membership of 61 countries. This initiative seeks to fulfill the main purpose of increasing the availability of information on the administration of the state, supporting public participation, implementing the highest standard of professional integrity in public administration and improving access to new technologies for openness and accountability. To this end, OGP sets a minimum eligibility requirement for participating countries that includes fiscal transparency, access to information, and information openness relating to public officials and civic engagement (further information on OGP is accessible at [www.opengovpartnership.org](http://www.opengovpartnership.org)). In the first track, ensuring transparency of public information by enforcing Law No.14/2008 on Freedom of Information and Law No. 25/2009 on Public Services shall pave the way for reducing poverty and improving public services. Second, the development of national portals is essential to encourage public participation. Third, opportunities for new initiatives will also be widened for an open government at every administrative level, including through three pilot projects introduced at the Indragiri Hulu district government, Ambon city government and Central Kalimantan provincial government. More information on OGP implementation by the government of Indonesia is available at <http://opengovindonesia.org>.



Box of information:  
the computer of  
public information  
officer in Ambon City  
Government Office

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## CHAPTER 01

### INDICATORS FOR FULFILLING OPEN GOVERNMENT INDONESIA COMMITMENT: A PROMISING OFFER FROM CIVIL SOCIETY

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#### A. Civil Society Perspective On OGP

Open Government Partnership [OGP] is a global initiative that promotes an open, transparent, effective and accountable government. The initiative was declared in New York, United States on 20 September 2011 for the purpose of increasing the availability of information on the administration of the government, promoting public participation, implementing the highest standard of professional integrity in public administration and broadening access to new technologies for supporting openness and accountability.

Similar to other global initiatives that Indonesia is involved in, Indonesia's commitment toward OGP should contribute to the realization of its national strategic agenda related to the OGP initiative. Within this context, Indonesia should agree on and declare national strategic interests that will help accelerate the implementation process achievable through the OGP initiative. These national strategic interests shall guide the formulation of an action plan submitted to OGP.

It appears that the process of identifying national strategic interests has been overlooked during the drafting of the Open Government Indonesia (OGI) action plan. In an independent report on OGP implementation in Indonesia in 2011, civil society groups consisting of ICW, Yappika, IBC, IPC and MediaLink took note of the gap between OGP's main purpose with the commitment and action plan prepared by the government of Indonesia. The government of Indonesia has only declared its commitment to broaden public participation in the education and health sector, and made no specific mention of its commitment to improve data availability and access to information, including with regard to innovations in an effort to promote openness and accountability.

Programs conducted under the OGI action plan are intended to make available the appropriate channels or forums that allow the public to participate in the delivery of public services. This does not include the urgency to push the government to provide more public information which can help enhance the quality of civic engagement.

Indonesia currently co-chairs OGP together with the United Kingdom and shall accede to the office of chair by 2014. This strategic position within OGP as an international institution should become a propitious momentum for making the most of OGP commitments in order to accelerate the advancement of national strategic interests. In keeping with OGP goals, Indonesia's national strategic interests refer to the creation of an open and accountable government. This among others involves efforts to guarantee public access to information, including the use of new information technologies initiated by the government. Serious attention should be awarded to the broadening of public access because the transparency of information does not simply end with the disclosure of information. Regarding the use of information technology, the government must ensure equitable access to technology infrastructure, and to educate bureaucrats and the public on how to effectively use these technologies.

Guaranteeing access to public information should also include the creation of an environment conducive for promoting access to information. OGP has incorporated the guarantee of civil liberties as part of its commitment. Indonesia needs to re-examine laws and regulations that may obstruct public access to information. The following are several laws that the government should re-evaluate.

First, the Law on Mass Organizations that restricts freedom of association and assembly, thus has the potential to hamper public access to information as it limits the type of institution or legal entity that may have legal standing as a requester of information, even if it is already an incorporated organization in compliance with the law, either as a foundation or association. The enforcement of this law shall restrict people's access to information held by public bodies.

Second, Law on Electronic Information and Transactions governs on communication and information available through the internet. This law regulates on two key issues: internet-based transactions and trading, and behaviors related to internet usage, including criminal sanctions liable to internet users. Provisions set forth in this law, specifically related to defamation, have the potential to curb access to information. Many cases have begun to emerge that criminalize internet users who are being prosecuted on defamation charges. A particular case that has garnered public attention involves Prita Mulyasari, a housewife who wrote an email about her grievances following treatment provided by a local hospital that later circulated in the internet, and resulting instead in her criminalization. The imposition of this law shall restrict access to information obtained through the internet. Citizens will instead be fearful of requesting for information or filing a complaint as they may be sued for alleged defamation.

## **B. OGP Framework: A Promising Offer**

This section presents an analysis of the mandates enshrined in OGP and that of the government of Indonesia as laid down in laws that have been ratified. This analysis also looks at civil society's role in incorporating global commitments into the national agenda.

OGP commitments are examined against the statutory mandates that the government must fulfill as embodied in several laws that we consider relevant. This process is expected to produce a comprehensive analytical framework on the implementation of Indonesia's action plan, particularly in ensuring that the implementation of OGP commitments benefits the people to the widest extent possible.

### **a. Public Services**

One of OGP commitments is to leverage efforts for the systematic collection, management and disclosure of government data, primarily on government spending and performance in providing public services.

With regard to this mandate, Indonesia already has a legal instrument – Law No. 25/2009 on Public Services – in place to improve government performance in the delivery of public services. Several provisions in the law, specifically concerning the obligations of service providers, can serve as a framework of reference for assessing government's seriousness in working towards guaranteeing the availability of quality public services.



Article 15 of the Law on Public Services lays down the obligations that public service providers must fulfill. In relation to OGP's core mandate, the following obligations must be carried out:

1. Set service standards
2. Publish service-related information and announcements
3. Hold accountable to services rendered

The Law on Public Services was drawn up with the intent of fulfilling the people's basic needs with regard to public services as governed in the Constitution (see preamble of the Law on Public Services). This is expressly defined as the right of citizens to access public services as stipulated in Article 18.

Article 18 essentially consists of four key aspects on citizens' rights: (1) to receive services that meet applicable standards; (2) to be informed on service standards; (3) to oversee the implementation of service standards; (4) to file a complaint against a service implementer and provider in the event of inconsistency in the delivery of public services. All four aspects are reinforced with the obligation of the service provider to publish the service standards and other service-related information or announcements as governed in Articles 15 and 22.

Concerning the people's right to be informed about service standards, service providers must have a nation-wide information support system in place. Pursuant to Article 23, this national information system must be developed by providers at all levels.

Regarding the right to file a complaint against a provider for services inconsistent with applicable standards, the provider is obliged to establish a complaint mechanism, in addition to a redress system. This is explicitly regulated in Article 50 that requires the government to introduce a legal instrument that guarantees the availability of a compensation mechanism through a presidential regulation.

#### **b. Openness of Public Information**

OGP is committed to broaden the availability of information on governmental activities. The government manages information on behalf of the people who have the right to information on governmental activities.

In line with this global commitment, Indonesia has introduced its own Law on Freedom of Information (FOI Law) since 2008. The basic principle of this law is actually the implementation of the aforementioned OGP commitment. The law essentially governs on the public's right to access information held by public bodies.

In Article 2 of the law, public information should be transparent and accessible to users, while information exempted from disclosure is strictly limited, and public information must be provided to a requester in a speedy, straightforward and timely fashion at low cost.

Article 3 on the other hand clearly states that the purpose of the law is to guarantee citizens the right to be informed about public policy making, public policy programs and public decision making processes, including the rationale behind a decision, as well as to promote public engagement in policy making and the effective management of public agencies, to ensure good governance in order to establish a transparent, effective, efficient and accountable government, and to inform the public on the underlying principle behind policies that affect the lives of the people.

In order to guarantee the fulfillment of the people's right to information, the government of Indonesia has the obligation to appoint a designated public official for handling requests for information, while establishing and developing an information and documentation system to effectively and efficiently manage public information, as well as to provide and publish accurate and truthful information. The appointed official is also expected to build and develop a mechanism for the immediate release of public information accessible to the public in language that can be easily understood.

**c. State Finances and Financial Audit**

OGP commitment on an open budget in principle is directly related to Law No. 17/2003 concerning State Finances. In Article 3 clause 1, state finances shall be properly managed in an efficient, economical, effective, transparent and accountable manner in compliance with existing laws and regulations by paying heed to the principles of justice and appropriateness. The management of state finances as expressed in this clause refers to the entire range of activities encompassing planning, control, utilization, oversight and accountability. In Article 15 clause 3, the House of Representatives (DPR) may recommend amendments to the amount of revenue and expenditure set forth in the Bill on National Annual Budget (APBN). Article 15 clause 5 stipulates that the APBN approved by parliament should be broken down according to the type of organization, function, program, activity and spending. Article 25 clause 1 states that the Minister of Finance must develop and oversee public fund management bodies receiving assistance from the central government. Article 9 letter (G) specifies on the need for the heads of state ministries/agencies to prepare and submit financial reports. Article 11 clause 5 governs on government spending that should be itemized by organization, function and expenditure. State expenditure according to function among others consists of public services, defense, order and security, the economy, the environment, housing and public facilities, health, tourism, culture, religion, education and social protection. Expenditure items by type of spending (economic in nature) include for government employees, goods, capital, interest, subsidies, grant and social aid.

To guarantee the transparency of financial information, several articles in Law No. 15/2004 on the Supreme Audit Agency (BPK) have been enacted, including Article 19 clause 1 in which audit reports presented to representative agencies are to be made known to the public. Article 20 clause 1 concerns the obligation of public officials to act upon recommendations set forth in the audit report. Article 17 clause 1 governs on the audit of central government financial reports to be submitted by BPK to parliament and the Regional Representatives' Council (DPD) no later than 2 (two) months upon receipt of the financial statements from the central government.

**C. RECOMMENDED INDICATORS FOR FULFILLING OGP COMMITMENTS**

Based on the foregoing analysis, four of the following proposed indicators may be applied to measure the extent to which the government of Indonesia has made good on its commitment as mandated in the OGP framework:

1. Extent to which the government has ensured that all service providers at every level have set service standards in a participatory manner.
2. Extent to which the government has established nation-wide information support systems for public services at every level.
3. Extent to which the government has guaranteed the availability of a complaint mechanism.

4. Extent to which the government has provided the necessary legal instruments and redress mechanisms with regard to public services.
5. Availability of an effective and efficient documentation and archiving system to deliver truthful, accurate and non-misleading public information.
6. Availability of national information service standards for speedy, accessible and appropriate delivery of services.
7. Implementation of an information service system at executive, legislative and judiciary branches from the central to village level.
8. Availability of a proactive information disclosure system accessible to the public in a language that can be easily understood, including the use of announcement boards, information desks and official websites.
9. Equitable access to information technology and public education.
10. Availability of information on the draft national/regional budget (APBN/D) planning process.
11. Availability of information on the use/implementation of government budgets (APBN/D).
12. Availability of information on the evaluation of APBN/D performed by the government.
13. Availability of information on the accountability of financial performance.
14. Availability of information on the audit report prepared by BPK and follow-up to BPK recommendations.



Sub-Division Head of Information Services, Public Relations and Protocol Division of Ambon City to provide and communicate information services for implement FOI act.

## CHAPTER 02

### FINDINGS AND ANALYSIS OF MONITORING RESULTS

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#### A. Monitoring Methodology

##### a. Monitoring Focus

Monitoring the implementation of Open Government Indonesia (OGI) focuses on: (1) examining the consistency between OGI action plan and OGP commitments; (2) examining how the OGI action plan contributes to the accelerated implementation of the Law on Freedom of Information; (3) assessing the implementation of the action plan in three pilot project locations; (4) examining the impact of OGI action plan implementation in pilot project locations, specifically on whether it has managed to promote transparency in governance, inspire innovations, strengthen public participation and ensure the sustainability of innovations.

##### b. Monitoring Framework

Monitoring is grounded in the belief that Indonesia's commitment to join the global initiative known as Open Government Partnership (OGP) must be linked to its national interests. OGP should contribute to the government of Indonesia's efforts in fulfilling its constitutional mandates. In view of this, Indonesia's national interests and ways to achieve OGP agendas need to be identified.

In reference to the OGP Declaration, member countries have pledged a shared commitment on the following agendas: (1) guarantee the right to information; (2) guarantee the transparency of public budgets and services; (3) open data and information management on governance; (4) guarantee freedom of expression, association and opinion; and (5) create mechanisms that allow for the scaling up of collaboration between the government, civil society organizations and business sector.

In keeping with the OGP Declaration, several relevant laws in Indonesia include: Law on Freedom of Information, Law on Archives, Law on Public Services and State Finances Law Package. The formulation and assessment of the action plan for OGP implementation must therefore be in accordance with the commitment made by the government of Indonesia in fulfilling the core mandates of the abovementioned laws. It can be said that the indicators of success on OGP implementation can be reflected through the government of Indonesia's ability to realize the core mandates set forth in several of these laws.

##### c. Data Collection Method

Monitoring data is sourced from policies/practices related to public services and the views of policy makers, actors and beneficiaries of the action plan for OGP implementation in Indonesia. Data is obtained from the study of policy documents, in-depth interviews and focus group discussions.

##### d. Monitoring Sites

Monitoring is conducted in state ministries/agencies and three pilot project locations for the action plan on OGP implementation in Indonesia, namely Central Kalimantan Province, Indragiri Hulu District and Ambon City.

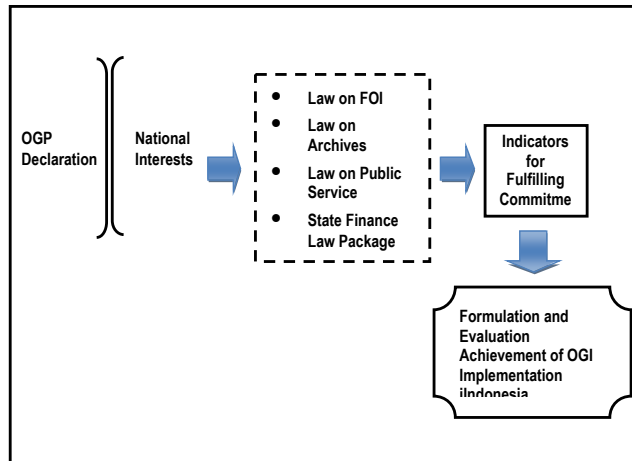


Figure 1: Monitoring Framework

## B. MONITORING RESULTS

### B.1. Analysis Of Findings In Public Service Sector

#### a. OGP Helps Accelerate Implementation of Public Services Law

One of the agendas put forward in the OGP Declaration is to enhance the transparency of government budgets and improve the quality of public services. As one of its member countries, Indonesia consequently has the obligation to live up to its commitment. In order to fulfill these commitments, a national action plan shall be required. Much earlier before joining the OGP global initiative, Indonesia already has a key instrument - Law No. 25/2009 on Public Services - in place for improving the quality of public services. Its implementation however was delayed.

The Law on Public Services was enacted and entered into force since four years ago (2009). Article 59 of this law sets a two year period for the government to make the necessary adjustments to all relevant regulations and provisions related to public services. At least five government regulations and a presidential regulation needed revisions. Regrettably, the government has failed to comply with the timeframe for making the required adjustments as set out by the law. In 2012, the government had only managed to issue Government Regulation No. 96/2012 on the Implementation of Law No. 25/2009. Government Regulation No. 96/2012 is derived from the Law on Public Services containing five aspects that should be governed by separate government regulations. To date, a presidential regulation on the compensation mechanism with regard to public services has yet to be enacted. This presidential regulation in fact can serve as the guiding principle for the redress mechanism available to citizens who have been adversely affected by the administration of public services that does not comply with service standards. The Draft Presidential Regulation on Compensation Mechanism for Public Services has actually been discussed and consulted with the public since early 2012. However, deliberations were discontinued by the government.

The foregoing situation illustrates two similar interests: Indonesia's attempt to advance national agendas, specifically in accelerating the implementation of Law on Public Services,

and the promise to fulfill OGP global commitments. Regardless of whether these two similar interests are coincidental or by design, they are in fact indeed constructive for Indonesia's national agenda. This is because Indonesia's participation in OGP can be a propitious momentum for accelerating the implementation of Law on Public Services that has been delayed. In formulating the OGP implementation action plan, the government of Indonesia must refer to the core mandates of the Law on Public Services. This action plan must ultimately contribute to the achievement of key mandates embodied in Law on Public Services.

### **b. Core Mandates of Law on Public Services**

The Law on Public Services is an important milestone achieved by the government of Indonesia in ensuring the delivery of quality public services in an accountable, equitable, and participatory manner. This law has instilled a new perspective in the administration of public services through government control that are no longer dominant, but instead allows greater room for public dialogues and participation.

Several provisions in the law, specifically on the obligation of service providers, serve as the framework of reference for assessing government seriousness in guaranteeing quality public services. Article 15 of this law explicitly sets out obligations that service providers must fulfill, including: (1) Setting service standards; (2) Publishing service-related information and announcements; and (3) Holding accountable services rendered.

The Law on Public Services is formulated with the intent of giving priority to the realization of basic rights of citizens in receiving public services as governed in the constitution. This shapes the definition of the rights of citizens as governed in Article 18 of the Law on Public Services that essentially consists of four key aspects: (1) to receive services that meet applicable standards; (2) to be informed on service standards; (3) to oversee the implementation of service standards; (4) to file a complaint against a service implementers and providers in the event of inconsistencies in the delivery of public services.

All four aspects are reinforced with the obligation of the service providers to publish the service standards and other service-related information or announcements as governed in Articles 15 and 22 of the Law on Public Services. Concerning the people's right to be informed about service standards, service providers must have a nation-wide information support system in place. Pursuant to Article 23 of the Law on Public Services, this national information system must be developed by providers at all levels.

Regarding the right to file a complaint against a provider for services inconsistent with applicable standards, the provider is obliged to establish a complaint mechanism, in addition to a redress system. This is outlined in Articles 36 and 50 of the Law on Public Services. Article 50 even requires the government to introduce legal instruments that guarantee the availability of a compensation mechanism through a presidential regulation.

Based on the analysis above concerning core mandates enshrined in the Law on Public Services, the following four key indicators can be applied to measure the extent to which the commitment made by the government of Indonesia has been fulfilled as mandated in the Law on Public Services:

1. Availability of public service standards at every level formulated in a participatory manner.

2. Availability of a nation-wide information system at every level.
3. Availability of a complaint mechanism.
4. Availability of legal instruments and mechanisms that guarantee the implementation of a redress system with regard to public services.

In relation to OGP implementation, the action plan prepared by the government of Indonesia should be directed at the achievement of the four indicators mentioned above.

### **c. OGP Action Plan in Indonesia in the Public Service Sector**

The government of Indonesia is fully committed to promote openness in a sustainable manner. Action plans for OGP implementation in Indonesia is built on 3 main pillars: transparency, participation and innovation. The government of Indonesia has set several key priorities, including the strengthening of government programs related to transparency, disclosure of public information on key sectors such as education, health and welfare, and preparing an action plan to promote public participation.

Based on these priorities, 38 action plans have been prepared for OGP implementation in Indonesia, and are divided into three tracks<sup>1</sup>:

1. Track 1: strengthening and accelerating on-going programs through action plans for speeding up the implementation of FOI Law; implementation of relevant presidential instructions.
2. Track 2: developing web portals on information transparency and public participation through action plans for the establishment of a one-stop public service portal (SatuLayanan.net); a portal for the transparency of public agencies (SatuPemerintah.net); a portal for an integrated map (one map);
3. Track 3: new initiatives through action plans for identifying provinces/districts/cities as part of pilot projects on open government; new initiatives on open government.

When linked to Indonesia's national interests in the public service sector as reflected in the mandate set forth in the Law on Public Services, the outcome of the implementation of action plans must be directed at achieving the four indicators presented above.

### **d. Evaluation on Implementation of OGP Action Plan in Public Service Sector**

The implementation of the OGP action plan with regard to public services is assessed by examining the extent to which outcomes from the action plan have contributed to the fulfillment of core mandates embodied in Law on Public Services. Based on an analysis of these core mandates, progress achieved in the action plan shall be assessed in terms of its contribution in meeting the four key indicators: (1) Availability of service standards at every level and formulated in a participatory manner; (2) Availability of a nation-wide information system for public services at every level; (3) Availability of a complaint mechanism; and (4) Availability of legal instruments and mechanisms to guarantee the implementation of a redress system related to public services. The following further elaborates on each indicator:

#### **1. Availability of service standards at every service unit level, formulated in a participatory manner.**

Service standards are the benchmark that guides the administration of public services and the evaluation of the quality of services as part of the provider's obligation and promise to the public in providing first-rate, speedy, accessible and measurable

<sup>1</sup> All action plans are available at <http://opengovindonesia.org/?p=684>.



services.<sup>2</sup> Based on Article 20 of the Law on Public Services, providers has the obligation to set service standards in accordance with the capacity of providers, public needs, and environmental conditions by engaging the public and relevant parties in its formulation process. Pursuant to Article 21 of the law, components of service standards should at least consist of the following:

- a. Legal foundation;
- b. Requirements;
- c. System, mechanism, and procedure;
- d. Duration of delivery;
- e. Cost/fee;
- f. Service product;
- g. Facilities and infrastructure;
- h. Competency of providers;
- i. Internal supervision;
- j. Handling of complaints, recommendations, and inputs;
- k. Number of providers;
- l. Service guarantee to provide assurance that services are delivered in accordance with service standards;
- m. Guarantee of service safety and security by ensuring a sense of security, harm-free and minimizing uncertainties; and
- n. Evaluation of providers' performance.

The government of Indonesia has ratified the Regulation of the Minister of State Administrative and Bureaucratic Reform No. 36/2012 concerning Technical Guidelines for the Formulation, Setting and Application of Service Standards. Service standards that should be the responsibility and commitment of providers must be published in a transparent manner to the public through announcements as governed in Article 22 under Law on Public Services.

In light of the three-track strategy for the action plan on OGP implementation in Indonesia, there are several relevant action plans crucial for achieving indicators:

- a. Online public services in several state ministries/agencies including Ministry of Industry (<http://kemenperin.go.id/>); Ministry of Finance (<http://www.depkeu.go.id/Ind/>); Ministry of Trade (<http://www.kemendag.go.id/>); and the Police Force (<http://www.polri.go.id/>).
- b. One-stop service portal through [www.satulayanan.net](http://www.satulayanan.net) that contains information on basic public services, such as the installation of power and phone lines, application for identity card, passport, visa and certificates, as well as various information on scholarships.

The method for assessing these action plans is by reviewing available website links to determine whether: (1) components of service standards have already been incorporated as set forth in Article 21 of the Law on Public Services; (2) the obligations or commitments of service providers in applying the service standards are made known publicly through announcements.

Based on a study of online public services managed by the four ministries/agencies above, the following facts are found:

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<sup>2</sup> Article 1 clause (7), Law on Public Services.

- a. From the four websites above, only three addresses can be easily accessed, while the website run by the police force (<http://www.polri.go.id/>) is inaccessible.
- b. The Ministry of Industry website (<http://kemenperin.go.id/>) does not specifically present information on service standards for every type of services offered. Service standards refer to a policy document endorsed by the head of a service provider that contains therein components as governed in the Law on Public Services. The website however only features partial information related to service standard components such as the type of services available, requirements, service delivery procedure, duration for delivery, service fee, and complaints handling.
- c. The Trade Ministry website (<http://www.kemendag.go.id>) specifically releases information on the standards for each type of services available and endorsed by the head of a service provider. Upon further study of each standard however, not all components set forth in the Law on Public Services are incorporated. Only several components are available, such as the legal basis for each service standard, type of services offered, requirements, service delivery procedure, duration for delivery, service fee and competency of implementers. This website does not publish information on the complaint handling mechanism accessible to the public when services do not conform to the applicable standards. Pursuant to the Law on Public Services, this is an obligation that every service unit must comply with.
- d. The Finance Ministry website (<http://www.depkeu.go.id/Ind/>) does not specifically present information on the standards of each type of services available and endorsed by the head of the service provider. The website however only makes available partial information on standard components, such as the type of services available, requirements, service delivery procedure and duration for delivery. Concerning the complaint mechanism, this website only provides a link for the lodging of complaints developed by UKP4 (Presidential Working Unit on Overseeing and Controlling Development). As laid down in the Law on Public Services, every service unit has the obligation to make a complaint handling mechanism available to the public for services that do not meet the required standards.

Based on the purpose of its establishment, the website [www.satulayanan.net](http://www.satulayanan.net) is designed as a web portal for providing information on basic public services administered by service providers at all levels. In addition, this portal is also intended to allow public participation in offering inputs, contributing to content, improving information accuracy and maintaining the sustainability of content.

The website [www.satulayanan.net](http://www.satulayanan.net) currently presents 171 types of information on public services held by 50 service institutions/providers. Based on a random sampling of available information on public services, the majority of websites only publish information concerning the type of services offered and requirements that the public must meet when accessing the service. Information on components such as delivery procedure, delivery duration and service fees is not available. These components are in fact key elements of service standards described in the Law on Public Services. Only a few websites provide the complete range of information, such as for telecommunication services provided by state-owned enterprise PT Telkom and water utility services managed by state-run company PDAM.

Another reality not addressed by the action plan but related to the achievement of this indicator is the unavailability of a database on the actual number of public service units/

categories available in Indonesia and how many of them have service standards in place<sup>3</sup>. This lack of database indicates weak control by the Ministry of State Administrative and Bureaucratic Reform as the leading sector for public service reform. This inevitably slows down efforts to accelerate the implementation of Law on Public Services, primarily in order to ensure the delivery of services that meets the required standards. Without a database, the government, in this case the Ministry of State Administrative and Bureaucratic Reform, is comparable to a vessel navigating without a map and compass.

Indonesia in fact already has a fairly comprehensive range of legal instruments in place. Several policies derived from the Law on Public Services specifically regulates on the procedure for setting service standards such as Government Regulation No. 96/2012 on the Implementation of Law No. 25/2009 and Ministerial Regulation on State Administrative and Bureaucratic Reform No. 36/2012 on Technical Guidelines for the Formulation, Setting and Application of Service Standards.

## 2. Availability of a nation-wide public service information system at every level

In order to support the administration of public services, a nation-wide information system must be established<sup>4</sup>. This information system refers to a series of activities that cover the storage and management of information as well as the delivery mechanism from the provider to the public and vice versa either verbally, in writing, in Braille form, visually or in the local language and to be presented manually or electronically<sup>5</sup>. An electronic or non-electronic information system should at least consists of the following: (a) Profile of service provider; (b) Profile of service implementer; (c) Service standards; (d) Service announcements; (e) Complaint management; and (f) Performance evaluation.

Main programs in the action plan on OGP implementation for the second indicator are no different from the first indicator as it covers:

- a. Online public services in several state ministries/agencies including Ministry of Industry (<http://kemenperin.go.id/>); Ministry of Finance (<http://www.depkeu.go.id/Ind/>); Ministry of Trade (<http://www.kemendag.go.id/>); and the Police Force (<http://www.polri.go.id/>).
- b. One-stop service portal through [www.satulayanan.net](http://www.satulayanan.net) that contains information on basic public services, such as the installation of power and phone lines, application for identity card, passport, visa and certificates, as well as various information on scholarships.

The method for assessing several of these action plans is by browsing through the available website links in order to determine on whether published information complies with Article 23 clause 4 of Law on Public Services.

From our review of the five available websites, only four of them are accessible, whereas the police force website was inaccessible. Out of the four accessible websites, all of them contain information on the profile of service providers/implementers and service standards. However, information on service standards does not wholly cover service components as stipulated in Article 21 of the Law on Public Services. Not a single website publishes information on service announcements. Meanwhile, regarding

<sup>3</sup> Interview with the Deputy for Public Services, Ministry of State Administrative and Bureaucratic Reform.

<sup>4</sup> Article 23, Law on Public Services.

<sup>5</sup> Article 1 clause (9), Law on Public Services.

the complaint mechanism, only two websites – Ministry of Industry and Ministry of Finance – have posted such information. Specifically for the type of interconnected services available at [www.satulayanan.net](http://www.satulayanan.net), many websites still do not provide citizens with information on how to lodge a public service complaint.

### 3. Availability of a public service complaint mechanism

Article 36 of the Law on Public Services requires service providers to establish a complaint mechanism and assign a competent implementer for handling public grievances. In addition, the law also stipulates on the obligation of a service provider to follow up on complaints and act upon recommendations issued by the Ombudsman, as well as the national and regional parliament (DPR/DPRD).

LAPOR, an Indonesian acronym for Public Online Complaint Services ([www.lapor.ukp.go.id](http://www.lapor.ukp.go.id)) is one of the main programs described in the action plan for OGP implementation in Indonesia. LAPOR seeks to establish an online complaint handling procedure integrated into the complaint mechanism of various state ministries/agencies.

LAPOR facilitates the public in filing complaints against inconsistencies in the administration of public services or the government in general. Members of the public need only text message to 1708 of which standard text messaging charges will apply or through [www.lapor.ukp.go.id](http://www.lapor.ukp.go.id). An increasing number of citizens have turned to LAPOR to lodge their grievances, reaching nearly over 60 thousand incoming reports to date from which 53% have been dealt with.

Through the LAPOR mechanism, all incoming complaints will be passed on to the relevant state ministry/agency no later than 3 days upon receipt of the report. The ministry/agency is given a maximum of 5 days to coordinate internally for follow-up action. A complaint is considered resolved when the relevant ministry/agency has followed up on the report and no other response is forthcoming from the complainant. To date, some 64 ministries/agencies and a local government (DKI Jakarta) are connected under the LAPOR system.

LAPOR as an initial innovative step towards creating an integrated complaint resolution system on a national scale merits due appreciation. Nevertheless, in terms of its working mechanism and recommendations, several aspects still need to be worked out. **First**, LAPOR has yet to be integrated into the national complaint mechanism, particularly as only 64 ministries/agencies and 1 local government are currently connected through the system. Given the breadth of territorial coverage and number of service institutions, a much broader scope and reach becomes inevitable if LAPOR is to become a nationally integrated complaint handling system. **Second**, LAPOR does not have the capacity to deal with complaints under emergency situations. This is because an incoming complaint must first go through the relevant ministry/agency before the report will be followed up by the service institution/unit under the said ministry/agency. Given the extent of coverage area and bureaucratic structure, a complainant must inevitably go through a lengthy process. A significant number of complaints on public services are lodged under emergency situations, such as with regard to low-income citizens often denied admission to the emergency ward of a local hospital for not being covered by *jamkesmas* (health insurance scheme). **Third**, LAPOR is not integrated into the Indonesian Ombudsman, mainly for following up on public complaints and disputes

related to public services. Fourth, the general public is still unfamiliar with the LAPOR mechanism. It is still known only to certain segments of society who are active users of the internet or social media networks.

LAPOR can have a more meaningful presence if supported by policies derived from the Law on Public Services that require every service unit to provide the necessary complaint handling mechanisms. To date, the Indonesian Ombudsman along with the Ministry of State Administrative and Bureaucratic Reform has drawn up the Draft Presidential Regulation on Complaint Management. This draft presidential regulation has on separate occasions been discussed in public consultation forums, yet to this day has not been passed.

4. Availability of legal instruments and systems to guarantee the implementation of a compensation mechanism related to public services

If a loss has been incurred during the administration of public services that fail to comply with applicable standards, a service user may claim for compensation. The redress mechanism and policies are governed further in the presidential regulation<sup>6</sup>. A presidential regulation on the mechanism and rules for awarding compensation must be ratified no later than 6 (six) months from the date the Law of Public Services is enacted<sup>7</sup>.

Four years have elapsed since the passage of the Law on Public Services, yet the government of Indonesia has not enacted a presidential regulation on a redress mechanism on matters related to public services. In early 2012, a draft presidential regulation on the redress mechanism has been deliberated on, but even to this day nothing has come out of it. The Deputy for Public Services of the Ministry of State Administrative and Bureaucratic Reform informed that deliberations over the draft presidential regulation have been halted.

The absence of a legal framework has led to uncertainties in guaranteeing compensation for aggrieved service users due to the delivery of public services that fail to meet the recommended standards.

**e. Conclusion**

1. Progress in the OGP action plan has not contributed much to achieving indicators on the commitment to implement the Law on Public Services. Outcomes achieved by the action plan have only scratched the surface and the spirit of public service delivery remains confined to online availability. The action plan has not been able to become a driving force for service providers at all government levels to comply with the Law on Public Services, particularly with regard to the setting of service standards in accordance with components laid down in Article 21, developing a nation-wide information system that conforms with Article 23 clause (4), establishing a complaint handling mechanism in every service unit, and introducing legal instruments that guarantee the adoption of a redress mechanism related to public services.
2. The OGP action plan on public services has yet to support the existing national regulatory framework.
3. Concerning the establishment of service standards, the OGP action plan has failed

<sup>6</sup> Article 50, Law on Public Services.

<sup>7</sup> Article 60 clause (7), Law on Public Services.

to help accelerate the implementation of the Regulation of the Minister of State Administrative and Bureaucratic Reform No. 36/2012 on Technical Guidelines for the Formulation, Setting and Application of Service Standards.

4. Concerning the availability of a complaint handling mechanism in every service unit, the OGP action plan has not been able to speed up the passage of the Presidential Regulation on Complaint Management. Furthermore, the action plan is not linked to the Indonesian Ombudsman, specifically to ensure the compliance of service institutions with Ombudsman recommendations.
5. Concerning the availability of legal instruments that guarantee the implementation of a redress mechanism, the OGP action plan has failed to expedite the passage of the Draft Presidential Regulation on Redress Mechanism Related to Public Services. Deliberations over the draft presidential regulation have in fact been discontinued.

**f. Recommendation**

1. Concerning the establishment of service standards, the OGP action plan should be in synergy with the Regulation of the Minister of State Administrative and Bureaucratic Reform No. 36/2012 on Technical Guidelines for the Formulation, Setting and Application of Service Standards.
2. Considering the availability of a complaint handling mechanism in every service unit, the OGP action plan should be able to help speed up the passage of Presidential Regulation on Complaint Management. In addition, the OGP action plan should also help strengthen the Indonesian Ombudsman, primarily in ensuring that service institutions comply with Ombudsman recommendations.
3. Concerning the availability of legal instruments that guarantee the implementation of a redress mechanism related to public services, the OGP action plan should be able to accelerate the passage of the Draft Presidential Regulation on Redress Mechanism Related to Public Services.

**B.2. Analysis Of Findings In The Public Information Sector**

An analysis on the transparency of public information will consist of two sections: analysis on the implementation of Law No. 14/2008 on Freedom of Information and analysis on the implementation of OGI program in Indonesia, for track 1, 2 and 3. An analysis of FOI Law implementation was carried out in advance because the OGI program, specifically for track 1, is intended to speed up the enforcement of the law. This also applies to track 2 and 3 action plans designed to develop an appropriate model for FOI Law implementation. Monitoring results of the overall implementation of the law shall inform the assessment of OGI program implementation.

An evaluation of FOI Law implementation is conducted in accordance with the obligation of public agencies as outlined in the FOI Law and its resultant regulations, specifically Government Regulation No. 61/2010 and Information Commission Regulation No. 1/2010. These regulations call for the availability of a documentation and information archiving system, national standards on public information service, implementation of an information service system in all public agencies and the establishment of a proactive information disclosure system. Apart from the indicators above, another assessment parameter is equitable information technology infrastructure, as well as equal access to ICT-based information channels and public education for the use of ICT-based media. The inclusion

of this parameter corresponds with the current trend in using ICT-based public information channels.

#### **a. FOI Law Implementation in Indonesia**

FOI Law came into effect in May 2010 following its passage on 28 April 2008. A two-year interval prior to its entry into force is intended to provide public bodies with sufficient time to make the necessary preparations for implementing the law from the date of its enactment. The Ministry of Communication and Informatics as the lead implementer has identified three execution phases: sensitization, implementation and public participation.

Five years into its passage, the following progress has been achieved in the implementation of FOI Law, mainly in state agencies. An Information Commission has been established at the central level, in addition to 20 provincial information commissions from a total of 34 provinces. With regard to the establishment of PPID (information and documentation service unit) at the central and regional government level, only 29.15%<sup>8</sup> have complied with the requirement. At the ministerial level, from the 34 state ministries, 33 of them (97.06%) have assigned officers specifically responsible for the delivery of public information services. As for non-ministerial central government agencies, from 129 institutions only 35 of them or 27.13% have taken the necessary measures. At the provincial level, from a total of 33 provinces, 18 of them (54.55%) have appointed information officers. As for district governments, from all 3999 districts, only 86 of them (21.55%) have established their own PPID. At the municipal level, from a total of 98 city governments, 23 of them (29.59%) have appointed their own information officers. The establishment of PPIDs along with the appointment of its information officers is a key indicator as it is an essential precondition for FOI Law implementation.

The fact that only 30% of government agencies have appointed information officers as the most fundamental element in FOI Law implementation reveals low-level compliance in contrast to the two-year interval allowed for making the necessary preparations. Based on an evaluation conducted by the Ministry of Communication and Informatics, the non-compliance of a considerable number of government agencies to the FOI Law is attributed to 5 (five) key factors. *First*, a prevailing closed culture and frame of mind among government agencies, and as a consequence only general information is published, including with regard to budget commitments. *Second*, institutional factor and regulatory framework in which government agencies, primarily local governments, blame the absence of local regulations on PPID formation procedure for their failure to meet requirements. *Third*, inequitable sensitization efforts, resulting in inadequate knowledge on FOI Law. Fourth, lack of preparedness of human resources for FOI Law implementation. *Fifth*, negligible public participation in pushing for the implementation of FOI Law.

The results of an evaluation performed by the Ministry of Communication and Informatics relating to FOI Law implementation in 2012 are similar with the outcomes of reports submitted by several other institutions. An annual report released by the National Information Commission in 2012 recorded that only 14 provincial information commissions have been established, namely in West Java, East Java, Riau Islands, Banten, Gorontalo, South Sumatera, Lampung, Central Java, DI Yogyakarta, South Sulawesi, Central Kalimantan, Nanggroe Aceh Darussalam, DKI Jakarta, East Kalimantan and North Sulawesi. From 34

<sup>8</sup> Data from the Directorate General of Public Information and Communication, Ministry of Communication and Informatics, by 12 February 2013.

provinces across Indonesia, 13 of them have not made any effort to establish a provincial information commission.

The FOI Law and its resultant regulations mandate public agencies to have a proper documentation and information archiving system in place, in addition to national standards on public information services, implementation of information service mechanisms in all public agencies, and proactive information disclosure systems. There are five indicators for evaluating the execution of the foregoing mandates. *First*, availability of an effective and efficient documentation and information archiving system that delivers correct, accurate and non-misleading public information. In practice, such documentation and archiving mechanism has in fact been developed by ANRI (National Archives). Archives consist of dynamic and static content. Dynamic archives are under the responsibility of the institution that created the archive, while static archives are managed by ANRI. Documentation can be done manually and electronically. In creating an e-government, the documentation and information archiving system should be managed electronically. ANRI has offered UKP4 its e-records and e-archives system.

ANRI works in collaboration with PT Telkom to build the National Archival and Information System (SIKN). Through SIKN, all public agencies/bodies as archive creators are expected to input data or physical information to ensure accessibility from any location through the National Archival and Information Network (JIKN) as set out in Law No. 43/2009 on Archives. Through Letter No. IK.00.03/1839A/2012, ANRI has informed and explained on the advantages of e-records and e-archives for public agencies at the national and sub-national level, whereby the JIKN website contributes in supporting the implementation of Law No. 14/2008 on Freedom of Information. The principles of accessibility, timeliness, effectiveness and affordability of public information can be realized if public agencies/bodies input data or public information into the existing system. In practice however, not all institutions are aware of the availability of this system. The Ministry of Communication and Informatics stated that a documentation and information archiving system has yet to be established. An ongoing system still involves manual and electronic processing at working units. As a consequence, the existing system cannot work optimally as network nodes do not key in information as expected.

*Second*, with regard to national standards on speedy, accessible and appropriate information services, ANRI has prepared general guidelines on information service standards that can be developed according to the specific characteristics of the respective public body. Within the OGI context, ANRI provides a national archival and information system and network, and has informed this to relevant agencies, but in reality it has not been implemented, specifically in the three OGI pilot project locations in Central Kalimantan, Indragiri Hulu and Ambon. The Ministry of Communication and Informatics has produced a service standard book distributed through government-initiated forums. The Ministry admitted that an evaluation has not been conducted to guarantee the adoption of the service standards.

*Third*, the implementation of an information service system in every executive, legislative and judiciary branch, from the national to rural level. The Ministry of Communication and Informatics pools resources with local information offices at the provincial and district/city level to provide facilities for media centers, including 5 to 10 computer terminals complete with modems and mobile information units (MPUSTIKA). Nevertheless, telecommunication networks in regions remain inequitably distributed, thus impeding the implementation



of information service systems which still cannot be applied up to the village level. At the district level, limited telecommunication networks further hamper the implementation of these systems right through to the rural level.

Fourth, availability of a proactive information disclosure mechanism easily accessible to the public in a language that can be understood, including through the use of announcement boards, information desks and official websites. In reality, such information disclosure systems are not widely known to the public.

*Fifth*, equitable access to technology and public education to ensure easier access to technology. The Ministry of Communication and Informatics has not been able to build the appropriate telecommunication networks, and neither has it been successful in ensuring equal access to technology. Public education on the other hand relies on the print and electronic media, dialogues, broadcasts and traditional art and cultural performances to sensitize the public on the transparency of public information.

#### **b. Evaluation of OGI Implementation Related to Transparency of Public Information**

The OGI program implemented by UKP4 pertaining to the freedom of information is consistently featured in all three tracks in program implementation. For track 1, OGI includes programs for accelerating FOI Law implementation, while OGI track 2 program concerns the development of an information transparency and public participation portal, and track 3 focuses on pilot projects and new open government initiatives.

##### **1. Assessment of OGI Track 1**

Track 1 speeds up the implementation of FOI Law through the development of models for agencies involved in the delivery of public services, such as the Indonesian National Police (Polri), National Land Agency (BPN) and the Directorate General for Taxes of the Ministry of Finance. Given the current implementation of FOI Law in Indonesia, it seems that the development of models for accelerating the implementation process has failed to achieve the desired outcome. This is reflected in the failure to implement the model development program in the three government agencies mentioned above, and the inability of the OGI program to help expedite the overall implementation of FOI Law.

Failure to implement OGI program in the three government agencies identified as the subject for track 1 is evident in these institutions and how they apply norms set out in the FOI Law. Only the National Police Force has adopted these norms as it already has internal regulations and standard operating procedures for public information delivery in place, and as such PPID has been established across the police organizational structure, beginning from the police headquarters and provincial police to the district/city level. FOI Law implementation within the police force however cannot be entirely considered as part of the OGI framework because the process has been underway long before OGI initiative was launched in Indonesia.

Another indicator that points to the failure in OGI program implementation concerns information availability in the three public agencies identified in track 1. This is not included in the assessment of the Information Commission, and the 9 ministries or agencies that have made the necessary adjustments in their official websites in accordance with the requirement laid down in the FOI Law concerning the need to regularly publish information. The National Information Commission has given a less

than satisfactory assessment of BPN with regard to the delivery of updated information. BPN was ranked 61st position out of 82 state ministries/agencies monitored by the National Information Commission in the year when OGI track 1 was implemented. The integrity survey report released by the Corruption Eradication Commission (KPK) in 2007 placed BPN at the lowest rank among institutions that provide corruption-free public services. In 2011, the Task Force for Eradication of Judicial Corruption published information on the number of reports lodged by citizens on land disputes from which 4,301 complaints were filed to the task force where land-related cases was the highest at 22%.

The failure of OGI track 1 to speed up FOI Law implementation is substantiated by an evaluation conducted by the Ministry of Communication and Informatics which found that FOI Law enforcement in government agencies, from the central to district level, still hovers at 30%. This further confirms that OGI has not been successful in expediting efforts to effectively implement FOI Law. Furthermore, at the provincial level only 14 provinces have established information commissions. This overall failure is also evident in the absence of national standards on information delivery that should have been the benchmark for FOI Law implementation in public bodies. This further shows OGI's failure to push for the implementation of the law particularly as the model produced should have been adopted as the national standard for information services.

The inability to achieve OGI track 1 goals is because the selected OGI programs are incapable of meeting the strategic needs for FOI Law implementation, in addition to the issue of coordination among implementing institutions under UKP4. OGI does not include the realization of mandates embodied in the FOI Law, such as in setting service standards, and development of the appropriate model in the three government agencies. OGI also needs to deal with institutional coordination, particularly as UKP4 as the lead sector in OGI implementation does not engage the Ministry of Communication and Informatics as the lead sector for FOI Law implementation. Outcomes of the OGI initiative therefore cannot be applied for FOI Law implementation.

## 2. Assessment of OGI Track 2

OGI track 2 formulates the program for web portal development on information transparency and public participation that consists of the portal for public services, transparency of public agencies and integrated map. This program is implemented through the development of the LAPOR complaint handling portal, SatuLayanan.net portal, one-map portal and one-government portal. In line with OGP commitments, the development of these portals on information transparency and public services is part of an effort to establish an integrated information system accessible to all government levels, including through the use of communication technology.

Several indicators can be applied to assess program effectiveness for greater information transparency and improving public services. *First*, the portals mentioned earlier are not linked to websites managed by government agencies, thus they have not been able to function as an effective medium for the delivery of one-stop services by government agencies. The situation is made worse by the lack of OGI programs aimed at improving these websites in accordance with the requirement for the release of information on a regular basis as mandated in the FOI Law. The complaint handling portal is also not linked to institutions established for managing complaints, particularly the Indonesian Ombudsman.

*Second*, these programs are not supported by the necessary synergies with regard to policies on equitable access to the internet and other ICT-based media. Portals should be established as a forum for liaising with the government, yet programs are not backed by efforts to ensure equal opportunity for every citizen in assessing them. Two major challenges that the OGI program has not dealt with concern the inequitable access to infrastructure and internet-based media, both within government bureaucracy and the public.

Nevertheless, internet-based media in Indonesia has enormous potential to function as the future information platform given the upward trend in the number of internet users. In 2000, only 1% of the total population in Indonesia is familiar with the internet. By 2010, percentages have risen to 12.3% and further increased to 16.1% in 2011. It must however be noted that the availability of internet services in Indonesia is still limited to the island of Java. Data from the Ministry of Communication and Informatics reveals that by 2010, at least 62.5% of fiber optic cable services are concentrated in Java followed by 20.31% in Sumatera and 6.13% in Kalimantan. In the eastern part of Indonesia that covers Nusa Tenggara, Maluku and Papua, fiber optic networks are unavailable. The effectiveness of programs launched by the Ministry of Communication and Informatics for the purpose of broadening internet access – the sub-district internet service program – is also being questioned because it only involves the distribution of instrument and devices for accessing internet without providing the necessary assistance or institutional support for operating the equipment. This concentration in network infrastructure also leads to the centralization of internet services, whereby from 1.9 million ISP subscribers, 1.5 million of them can be found in Java and Sumatera. This also applies to Facebook and Twitter users. Facebook users are still concentrated in Jakarta (50.33%), Bandung (5.2%), Bogor (2.3%) and Yogyakarta (3.09%), whereas Twitter users are mostly from Jakarta (16.3%), Bandung (13.79%), Yogyakarta (11.05%), and Semarang (8.29%).

### **3. Assessment of OGI Track 3**

OGI track 3 highlights on the development of pilot projects and new initiatives on open government. Projects are piloted in 3 locations: Ambon for the city government level, Indragiri Hulu for the district government level and Central Kalimantan for the provincial government level. Programs on the transparency of public information conducted under the pilot projects include the activation of information services and implementation of the open school program.

#### **3.1. Activation of Information Services**

This program as part of the OGI pilot project for track 3 consists of two key activities: appointment of PPID officers and laying down the standard operating procedure for PPID. The three OGI pilot projects being monitored already have an information and documentation service unit in place. The Ambon city government has established such unit as required by the Ambon Mayoral Decree No. 24/2013. The PPID organizational structure consists of the PPID Head, a position held ex-officio by the Head of the Public Relations and Protocol Division, and the position of PPID Assistant held by the Secretary or the second-in-line public official of the local implementing unit within the Ambon city government. PPID under Ambon city government also consists of different functions, including data management under the responsibility of an officer from the Statistical Bureau of Ambon City Bappeda (Regional Development Planning Agency), data

documentation under the responsibility of an officer from the Regional Archival and Library Agency, and information services under the responsibility of the Sub-Division Head of Information Services, Public Relations and Protocol Division of Ambon City.

Apart from the PPID Head, with regard to the delivery of information services, the Ambon City government also appointed a spokesperson, a position concurrently held by Joy Adrians Rainer, the PPID Head which is in accordance with Mayoral Decree No. 185/2013, as well as an expert staff of the Ambon Mayor. The spokesperson is an initiative of the Ambon city government because the authority conferred to PPID as prescribed in the FOI Law does not include the provision or delivery of public information. After further discussions, it was agreed that the spokesperson shall be responsible for conveying information or statements to the mass media.

The establishment of PPID in Indragiri Hulu is not directly related to the OGI pilot project as it has been established since 2011, far before the introduction of the pilot project. Pursuant to Indragiri Hulu District Head Decree No. 279/2011 on the Information and Documentation Unit (PPID) within the Indragiri Hulu district government, the PPID Head will be a position held by the Head of Local Transportation, and Communication and Informatics Office, while the Head of all other local government agencies under the district government shall serve as the PPID Assistant. The existing PPID however, is not being well implemented because it is not reinforced with a standard operating procedure to guide the delivery of public information. A standard operating procedure and list of public information were only drawn up following the implementation of the OGI pilot project.

Similarly, the Central Kalimantan provincial government has established a PPID in compliance with Article 13 of the FOI Law. PPID at the provincial level is formed through Gubernatorial Decree No. 188.4/172/2013 dated 5 March 2013. In accordance with the decree, PPID shall consist of 5 (five) PPID Heads and 32 PPID Assistants. According to data from the Local Transportation, Communication and Informatics Office by October 2013, some 35 local government agencies have issued a directive for the establishment of PPID. Prior to the formation of a PPID within the Central Kalimantan provincial government, the province has already set up an information commission approved by Gubernatorial Decree No. 188.44/322/2011 whose members were inducted on 7 October 2011<sup>9</sup>. Even though this was accomplished past the two-year time limit as prescribed by Article 59 Law No. 14/2008, the Provincial Information Commission of Central Kalimantan is the first to be established in Kalimantan and the tenth in Indonesia. The second part of the service activation program concerns the availability of a PPID standard operating procedure. The Ambon city government PPID comes complete with a standard operating procedure for drawing up the list of public information standardized under Ambon Mayoral Instruction No. 1/2013. The SOP outlines six main steps, beginning from the drafting of the list of public information in the respective local government agency prepared by the PPID Assistant, and approved by the head of each institution, to the regular updating of the list by the respective agency. To date, the Ambon city government has already prepared a list of public information that the PPID Head considers to still be in its early stage as it only contains the profile or names of public officials in each local government agency.

<sup>9</sup> Publication on Transparency of Public Information, Services, Requests and Dispute Resolution Related to Public Information, 2013

Meanwhile, the standard operating procedure on information services for Indragiri Hulu is established through District Head Instruction No. 2/2013 on Standard Operating Procedure for the Management of Information Services. Apart from the SOP, the Indragiri Hulu district PPID has also prepared its own list of public information as governed in District Head Regulation No. 391/2013. The list however does not include information on budgeting in the planning process and neither does it elucidate on the type of information set forth in the FOI Law (immediate information, regularly published, available at any time, and exempt information).

The SOP on public information services for the Central Kalimantan provincial PPID is still in draft form and has not been ratified. In practice, public information is still not being delivered optimally due to unavailability of proactive information, whereas information exempted from disclosure still depends on the decision of the head of local government offices. The PPID officer from the local youth and sports office whom we spoke to complained about the shortage of budget and resources, and the failure of other internal units/divisions to present the list of information to PPID.

Apart from the establishment of PPID and the formulation of the SOP on information services, the OGI program in Central Kalimantan has two other programs also associated with the public information. The first program focuses on overhauling the official website of the Central Kalimantan provincial government at [www.kalteng.go.id](http://www.kalteng.go.id). The website was developed by the Bureau for Development Management under the provincial government. The second program relates to the office, whereby the provincial government already has the necessary software or e-office application. This application still awaits presentation before the Governor of Central Kalimantan. The provincial government has set up plans for a trial run of the application in five local government offices prior to its adoption by all working units within the Central Kalimantan provincial government.

Based on the explanation above, both programs on the activation of public information services in three pilot project locations are currently underway. However, indicators of success determined by the OGI program have not been achieved. The first indicator on the availability of a list of exempt information is not available in the three pilot project locations. PPIDs in Ambon and Central Kalimantan have yet to finalize their list of public information. The PPID for Indragiri Hulu district government on the other hand has already prepared the list of public information, apart from classified information which includes therein information exempted from disclosure. Another indicator of success is that 50% of information requests must be dealt with according to the FOI Law and data on such requests is to be recapitulated on a quarterly basis. The PPID Head in all three pilot projects however does not have data on the number of requesters and the services provided.

In addition to an evaluation of the indicators determined by OGI, it has also been observed that public information services promoted by OGI in the three pilot locations tend to be internet based. For example, the activation of information services carried out by the Ambon city government is directed at supporting the city government website at [ambon.go.id](http://ambon.go.id). Among the channels employed for obtaining information include the complaint mechanism by text messaging at 9386 and complaint mechanism/information request through website [ambon.go.id](http://ambon.go.id). The website and text messaging

services are already available before PPID was established and are integrated into the PPID information service function. PPID provides information by responding to incoming requests submitted through text messages and websites. The information service activation program in Ambon through the use of internet-based platforms is not supported by adequate internet infrastructure. As mentioned earlier in another section of this report, fiber optic networks are unavailable in Ambon. The city government has introduced a cyber-city program where free wifi services are available in several public spaces such as Pattimura Park. In reality however, these services are protected by password of which users are not informed of.

Interviews and FGDs with several community groups in Ambon reveal how these groups are unfamiliar with internet-based information services. As respondents for the study, the community groups have stated that it has been difficult for them to obtain information as they are only provided with the option of accessing required information through the internet. This is an indication of how the use of internet-based media has instead become an obstacle for the people, apart from the issue of network infrastructure.

The difficulties faced by these community groups further raise the question on the suitability of OGI program that tends to focus on internet-based information services as an innovation for the transparency of public information. The FOI Law has mandated that information services provided by public agencies must make use of media easily accessible to the public in a language that can also be easily understood. If the preferred media instead hampers access to information for the local community, for whom then is the published information for?

Programs on increasing the transparency of public information should explore different approaches to ensure delivery suitable with the characteristics of the local population in order for them to benefit from information available to the public. Given Indonesia's diverse society, including with regard to communication channels being used will undoubtedly lead to varying models of communication platforms to deliver public information. Programs aimed at increasing information transparency introduced within the context of the local people, such as ICT-based platforms, must be accompanied with public education programs and accessible infrastructure to allow easy access to services being offered.

## **3.2. Open School Program**

### **3.2.1 Open School Program Implementation in Ambon**

The open school program launched in Ambon was introduced for the application of an online new student intake system and online disclosure of information related to BOS (school operational aid). The online student enrolment procedure is to be adopted by senior high schools. The Ambon city government collaborates with PT Telkom to provide a designated room for the registration of new junior high students in Ambon. Among the problems faced in this program include limited internet access as only one location is available for internet services. For students who live far from the Telkom office, the adoption of the system will only mean additional cost and more time consuming.

The program on the disclosure of information related to BOS funds is implemented by the Ambon local education office by publishing the name of schools receiving BOS funds at website [www.ambon.go.id](http://www.ambon.go.id) and through pilot projects in 40 schools. To date, the Ambon Education Office has not released any information on the 40 schools, except for the recommended two schools considered to be eligible for the verification process, namely primary school SD Kristen A2 Urimeseng and public junior high school SMPN 2 Ambon. This is because the Head of the Ambon Local Education Office has issued a circular letter stating that schools are not permitted to handle information requests from external parties without recommendation from the local education office.

Information on BOS funds at SDN Kristen A2 Urimeseng is published through the school website at [www.sdkristen-urimessinga2.com](http://www.sdkristen-urimessinga2.com), that was established only 3 weeks before research was conducted. The Ambon Local Education Office partnered with PT Telkom to organize a two-day training course for operators of online information disclosures in 40 schools. The website however does not publish information on the utilization of BOS funds due to networking problems and the inability of operators to input data into the website. PT Telkom does not provide post-training assistance. Website development and internet access are paid for by BOS funds received by the school. The school must pay Rp 250,000 monthly fee for the use of the Speedy internet connection, an internet service from provider PT Telkom. In reality however, during the verification process it was found that the network was not functioning properly due to damages. The school has lodged a report on the damage and requested Telkom to mend the problem, but to no avail. The school then shifted to the Telkomsel Flash modem at the cost of only Rp 50,000 per month.

School operators at SD Kristen A2Urimeseng mentioned that the cost for online disclosure of BOS funds has become burdensome for the school. The open school program is financed by BOS funds, thus school receiving limited BOS funds shall find difficulty in implementing the program. SD Kristen Urimeseng receives BOS funds worth Rp 22,500,000 every three months. The unavailability of further assistance from PT Telkom as the party providing the training course for school operators has made difficult for schools to consult with PT Telkom when facing problems, mainly on technical issues in publishing data onto the website.

SMP 2 Ambon on the other hand does not use internet facilities to publish BOS-related information. It relies on school-net that teachers and students rely on to seek learning materials. A computer room is available with 50 computer units bought from donations made by parents and connected to the Speedy internet service scheme. Information on BOS funds at school is published through the announcement board (in front of the school), as well as parent and teacher and school committee meetings. It includes information on the amount of BOS funds received on a quarterly basis and its realization as planned jointly by the school committee, parents and teachers.

### **3.2.2. Open School Program Implementation in Indragiri Hulu**

The open school program is part of the OGI action plan for the district of Indragiri Hulu. Various activities in the action plan include disclosure of information

related to students, personnel, assets, curriculum, school profile and new student intake system through an online mechanism. Information is also released on BOS funds. Information on students, personnel, assets, curriculum, school profile and student intake system has already been published yet due to shortages in resources including human resource, such information is made available manually through the announcement board of the respective school. However, when researchers paid a visit to several schools for verification, it was found that not all of them have published information as expected. Several schools have in fact only put up such information the night before researchers did their verification. According to a public official from the local education office and several school representatives, the local education office had instructed to put on display information on students, personnel, assets and other relevant information.

This also applies to information on BOS funds. Public officials at the Indragiri Hulu district government have stated that BOS-related information has been made public in the respective schools through the announcement board of every primary, secondary and vocational school, specifically in 48 primary and secondary schools identified as pilot projects. Similar to information on students and personnel, BOS-related information is also not being published in all schools. Researchers also found that several schools had only put up such information the night before verification was made as instructed by the local education office.

### **3.2.3. Open School Program Implementation in Central Kalimantan**

No observations could be made on the implementation of the open school program in Central Kalimantan because the relevant institutions were unwilling or refused to confirm their participation in the study. Based on online records however, activities related to the open school program in the province have already been conducted, mainly in organizing announcement board competitions for secondary schools. The competition is expected to promote transparency of school-related information, primarily on the utilization of BOS funds, to be made known to students, parents and visitors to the school<sup>10</sup>. Furthermore, information on BOS fund management and new student admissions is accessible at <http://kalteng.siap.web.id/>, <http://www.disdik-kalteng.info>.

In both websites, information as expected from the pilot project is relatively available, that covers information on students, personnel, assets, curriculum, school profile including that of BOS recipients that can be downloaded. No information on the accountability of fund utilization however is available.

Nevertheless, efforts made by the Central Kalimantan provincial government to heighten the transparency of educational information through the open school program indeed should be appreciated. There is however the continual need to ensure strict supervision considering the likelihood of budget misappropriation or the imposition of unwarranted fees burdensome to students. There has been media exposure of payments made to public schools for classroom chairs or desks or school building funds during student enrolment<sup>11</sup>.

<sup>10</sup> <http://media.hariantabengan.com/index/detail/id/33341>

<sup>11</sup> <http://www.tribunnews.com/regional/2013/07/18/dprd-kalteng-pungutan-untuk-siswa-baru-sebuah-pelanggaran>



In addition, an audit performed by BPK revealed that the realization of block grants for educational facilities and infrastructure in schools throughout Central Kalimantan has not been done in compliance with applicable rules and procedures. Expenditure on block grants for 2012 amounted to Rp 367.41 billion and in 2011 at Rp 21.50 billion, yet its realization to schools in 2012 was only Rp 55.91 billion and in 2011 at Rp 54.43 billion<sup>12</sup>.

In early 2013, the panel of judges at the anti-corruption court of Palangkaraya sentenced a teacher and former principal of primary school SDN 3 Mintin Pulang Pisau, charged with the misappropriation of BOS funds, to a year in prison and a penalty of Rp 50 million or one-month incarceration and the obligation to pay compensation to the state worth Rp 58 million<sup>13</sup>.

### **c. Analysis of OGP Commitments and FOI Law Implementation**

As discussed in the previous chapter, FOI Law implementation is consistent with the OGP commitment to open up access to information for the public and to create a transparent government. FOI Law is a legal framework for fulfilling the people's right to information held by government bodies. Data from the Ministry of Communication and Informatics, and the Information Commission on the contrary showed a lack of significant progress in the implementation of FOI Law. The Ministry of Communication and Informatics noted that FOI Law implementation is still at the first phase of the road map that it has drawn up. It is still at the awareness-building stage and has yet to be effectively implemented, much less expected to broaden civic engagement as an ideal outcome of genuine access to public information in Indonesia.

OGP commitments that Indonesia has endorsed have been incapable of accelerating the implementation of FOI Law due to the inadequacy of the OGI action plan in pushing for the enforcement of the law. Programs conducted under OGI are not directed at fulfilling the mandates embodied in the FOI Law. The development of models for information service delivery in three public agencies – Police Force, National Land Agency and Directorate General of Taxes – did not proceed as expected.

The OGI program conducted within the police force has failed to speed up the implementation of FOI Law. This is also the case for the National Land Agency. A survey conducted by the Information Commission and KPK has given the institution the lowest grade with regard to information disclosure through its official website and the integrity index survey on public services.

OGI three-track program leans more toward the development of website-based information delivery models. This program however does not include the fulfillment of FOI Law mandates as a benchmark, primarily related to the regular disclosure of information, and given the fact that published data and information does not meet service standards set forth in the FOI Law. The OGI program is also not supported by equitable infrastructure and public education to make the most of internet-based media. Fiber optic infrastructure in Indonesia is still restricted to Java, Sumatera and Kalimantan, while Nusa Tenggara, Maluku and Papua remain unserved territories. Internet users in Indonesia are predominantly in Java. As a consequence, information from three pilot project locations – Ambon, Central

<sup>12</sup> <http://www.antarakalteng.com/print/220809/bpk-tegaskan-pemberian-disclaimer-tidak-terkait-politik>

<sup>13</sup> <http://media.hariantabengan.com/index/detail/id/32335>

Kalimantan and Indragiri Hulu – made available through the websites of all three local governments is more accessible from Java than the three regions themselves. This is indeed an ironic situation for OGI and its attempt at ensuring information openness because the local population instead faces difficulty in accessing information from their own regions. Who then is information transparency for?

Apart from the issue of infrastructure and the culture of using internet-based media, Indonesia has enacted its own Law on Electronic Information and Transactions that may instead curb the freedom to obtain information through internet-based platforms. There appears to be a pattern of taking advantage of the law to criminalize internet users on defamation charges. This may hamper the delivery of information through web-based media due to concerns that a request or complaint may be liable to defamation allegations.

This monitoring exercise has also come across several milestones achieved by public bodies that can help accelerate the implementation of FOI Law. The National Archives has succeeded in developing an information and documentation systems software that meets archival standards. The software has been presented to UKP4 as the lead sector for the implementation of OGP commitments. No information however is available on whether the software has been applied by government agencies at all levels. The software can meet the need for an information and documentation system as required in the FOI Law.

**d. Accelerating Corruption Eradication by Guaranteeing Access to Information**

The Open Government Partnership (OGP) Declaration reaffirms the commitment of participating countries to strengthen transparency, fight corruption, empower citizens and harness technologies to make governments more effective and accountable.

Indonesia as a participating country shall accordingly be expected to make good on its commitments and lead by example in applying OGP principles. This essentially should not be a difficult challenge to undertake as Indonesia already has a strong foundation in terms of its regulatory and institutional framework. Several pertinent policies are Law No. 14/2008 on Freedom of Information, Law No. 31/1999 in conjunction with Law No. 20/2001 on Eradicating Corruption, Law No. 25/2009 on Public Services and Law No. 28/1999 on Clean State Administrators Free From Corruption and Nepotism.

With regard to its institutional framework, various quasi-government bodies have been established to ensure effective implementation, inter alia, Information Commission, Corruption Eradication Commission (KPK), Indonesian Ombudsman (ORI), National Police Commission (Kopolnas), Attorney’s Office Commission, Judicial Commission (KY), Government Goods and Services Procurement Agency (LKPP) and Witness and Victim Protection Agency (LPSK) as well as other quasi agencies involved in ensuring the incorruptible administration of the state.

To date, efforts have consistently been made to prevent and eradicate corruption. Based on the monitoring of corruption cases across Indonesia conducted by Indonesia Corruption Watch (ICW) for the first semester of 2013, law enforcement apparatus has handled at least 291 graft cases involving 670 alleged corruptors who have caused the state to suffer losses to the tune of Rp 4.4 trillion. In terms of court decisions for corruption cases from 2010 to the first half of 2013, from 344 cases with 756 defendants, 81.09% were proven guilty whereas the remaining 18.91% were cleared of all charges.

According to data from the Ministry of Home Affairs, immediately following the district head elections the number of district heads embroiled in legal cases has seen an upward trend in 2011 (173 people), in 2012 (235 people) and by May 2013 (293 people)<sup>14</sup>. Furthermore, efforts made by the Corruption Eradication Commission to enforce the law have been considered to be successful in prosecuting offenders who are high-ranking officials, including members of parliament, chairpersons of political parties, ministers and senior police officers. The Chief Justice of the Constitutional Court was recently caught red-handed by KPK for his alleged involvement in bribery for the district head elections in Lebak Banten and Gunung Mas in Central Kalimantan. The table below presents the statistics for cases handled by KPK.

**Data Tabulation of Corruptors by Position, 2004-2013<sup>15</sup>**  
(30 September 2013)

Position	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Number of people
Member of national and local parliament	0	0	0	2	7	8	27	5	16	7	72
Head of state agency/ministry	0	1	1	0	1	1	2	0	1	2	9
Ambassador	0	0	0	2	1	0	1	0	0	0	4
Commissioner	0	3	2	1	1	0	0	0	0	0	7
Governor	1	0	2	0	2	2	1	0	0	1	9
Mayor/District Head and Deputy	0	0	3	7	5	5	4	4	4	2	34
Echelon I, II and III	2	9	15	10	22	14	12	15	8	7	114
Judge	0	0	0	0	0	0	1	2	2	3	8
Private sector	1	4	5	3	12	11	8	10	16	17	87
Others	0	6	1	2	4	4	9	3	3	9	41
<b>Total</b>	<b>4</b>	<b>23</b>	<b>29</b>	<b>27</b>	<b>55</b>	<b>45</b>	<b>65</b>	<b>39</b>	<b>50</b>	<b>48</b>	<b>385</b>

<sup>14</sup> <http://www.metrotvnews.com/metronews/read/2013/06/03/1/158629/Jumlah-Kepala-Daerah-Tersangkut-Masalah-Hukum-Terus-Meningkat>

<sup>15</sup> <http://acch.kpk.go.id/statistik-penanganan-tindak-pidana-korupsi-berdasarkan-tingkat-jabatan>

Apart from corruption eradication, Indonesia has also initiated parallel efforts to prevent corruption, among others with regard to budget transparency. In 2011, the National Information Commission issued Circular Letter No. 1/2011 stating that RKAK/L (Ministry/ Agency Budget Work Plan) and DIPA (Budget Implementation List) are information that must be provided and published regularly and automatically, and made available at all times providing these documents do not contain exempt information as laid down in Article 17 of FOI Law.

Home Affairs Ministerial Instruction No: 188.52/1797/SJ of 2012 concerning Increasing Transparency of Regional Budget Management instructs all governors, districts heads and mayors in Indonesia to provide a content menu in the official website of local governments that presents updated information on the summarized documents of budget implementation, budget realization reports and audited accountability reports on local government finances along with the audit opinions.

Prevention and eradication efforts also need to deal with emerging challenges particularly given the backgrounds of those complicit in corrupt practices. As seen in the KPK data tabulation, offenders are not only from the private sector, but are also public officials from the upper echelon, and the involvement of legislators in corruption cases is equally high. This reflects the gravity of the situation with regard to political corruption in Indonesia.

Political corruption is inextricably linked to a weak recruitment process in addition to political party financing that depends on moneyed party members as well as those occupying strategic positions in state ministries/agencies. Those in strategic positions have time and again taken advantage of their office to plunder public resources for their own interests or that of their political parties.

Civil society's efforts to obtain information on political party financing culminated in a dispute brought before the Information Commission. In several cases, political parties have even disobeyed the decision handed down by the Information Commission that ruled in favor of disclosure.

The secretive nature of political parties should also be addressed by Open Government Indonesia as an integral part of efforts to advance the democratization process and to combat political corruption. Alas, interventions have been difficult to push through given the limited powers of UKP4 whose movement is confined to the executive level.

Another critical challenge concerns the need to promote transparency in law enforcement institutions, primarily the police force. Several corruption cases in which police officers were alleged to be involved in have been exposed. Suspiciously huge bank accounts have been linked to high-ranking police officers, not to mention the case on the graft-ridden procurement of driving simulators of which the offenders have been sentenced by the anti-corruption court.

Concerning the fat bank accounts, ICW had earlier brought an information-related dispute case before the National Information Commission, calling for the disclosure of 17 bank accounts of police personnel. Following an adjudication process, the National Information Commission through Decision No: 002/X/KIP-PS-A/2010 upheld ICW's request, and instructed the police headquarters to name the 17 account owners. To date, there has been

no follow-up to the case as the police headquarters did not act in accordance with the Commission's decision.

The non-compliance of the Police Force toward the ruling is somewhat a disappointment because the institution is one of the model agencies included in OGP Indonesia Track 1 action plan. In view of this, OGI should attempt to make the National Police Chief comply with the Information Commission's decision. Although the Police Force has established the required infrastructure such as the PPID, in practice it has failed to fulfill its obligation.

Under such circumstances, intervention initiated through the OGI action plan is expected to address strategic and crucial issues to prevent corruption in politics and law enforcement. The establishment of PPID and SOP on information services should also be accompanied by substantial oversight to guarantee that the public's right to information is duly fulfilled.

**e. Recommendation**

1. The government needs to strengthen OGP action plan in Indonesia to ensure the effective implementation of all mandates set out in the FOI Law.
2. The OGP action plan should be directed at encouraging innovation in information service delivery through the use of appropriate media suitable to local culture and characteristics in order to guarantee accessibility of information held by the local government for the benefit of the local population who will be the ones most affected.
3. The government must push for equitable access to technology infrastructure and public education on internet-based media.
4. The disclosure of information through the internet must be consistent with the criteria set forth in the FOI Law and presented in a manner understandable to the local population.

**B.3. Open Budget: Quasi-Reality**

Due to an environment that increasingly condones the squandering of budget funds, inaccurate distribution of budget funds and budget misappropriation, many state actors at the central and regional level, both in parliament and judicial bodies have taken advantage of the situation. This directly leads to rising unemployment and poverty rates. Not only will this inevitably result in low-level government transparency and accountability, but at a more worrying level it will further diminish public trust toward the administration of the state. In order to ensure early prevention without having to attach less importance on the open budget program launched by the government, in this case UKP4 and/or in cooperation with the local government, open budget indicators should therefore include information transparency related to budget planning, budget utilization, budget implementation, evaluation results on draft/national/regional budget, financial accountability and audit reports prepared by BPK. All of this information should be made available and published through easily accessible portals and manuals.

At the central government level, based on interviews and available information, it is found that: 1) Information and documents on budget planning published at the website [www.kemenkeu.go.id](http://www.kemenkeu.go.id) is unavailable. Even if such information and documents are available, it will be general in nature and not up-to-date. Information published at website [www.anggaran.depkeu.go.id](http://www.anggaran.depkeu.go.id) for example, is not available manually in an understandable format.

2) Information on budget utilization or implementation has been less than transparent. Budget information is mostly provided at the website of the respective ministry. Only general information is released without any detail broken down by sector or region. Budget allocation in the interest of the public appears to have less tangible benefit where information is ambiguous and outdated, particularly concerning the extent to which the budget is utilized for the benefit of the public both for the previous and current fiscal year. 3) Information on the evaluation of the draft national budget and national budget (parliament, Ministry of Finance, Ministry of Home Affairs, other ministries and agencies) is either ambiguous or unavailable. Such information is in fact crucial to examine the rationale for allocating more budget to one ministry compared to another ministry/agency. 4) Information on financial accountability (LKPP/D – Agency for Government Procurement of Goods and Services, financial reports of government agencies), including a narrative performance report, is not comprehensively available. Based on interview results and the gathering of information from the respective ministry/agency website, specifically related to financial performance, financial reports submitted by government institutions are relatively general in nature and do not serve as key reference for budget planning for the subsequent year. No information is also available on the extent to which a ministry/agency utilizes its budget to strengthen its main duties and functions, as well as improve public services and public welfare. 5) Information on audit reports prepared by BPK on a mid-year/annual basis after submission to parliament is not updated on websites managed by the parliament and government (ministry/agency), including the BPK website, as well as with regard to the report submitted every three years. This is also the case for information on improvements that a ministry/agency must undertake based on BPK recommendations. Budgeting decisions and the rationale behind them are still baseless. On the other hand, information on BPK audit results and follow up to BPK recommendations is considered not important enough for disclosure as it will only interfere with the performance of the ministry/agency. The audit report presented by BPK also tend to be manipulated by certain groups for profit-making purposes. The essence of information openness is in fact meant for promoting accelerated efforts and increasing the effectiveness of a transparent and accountable government.

#### **a. Open Budget Program Implementation in Central Kalimantan**

The implementation of the open budget program in the province of Central Kalimantan seeks to inform the public on the amount of budget available and serves as a learning process and entry point for public participation in determining development policies and programs, including in monitoring the implementation process.<sup>16</sup>

Central Kalimantan provincial government through the Regional Secretariat Finance Bureau has prepared an open budget action plan jointly with UKP4. Expected outputs include the disclosure of information on regional budgets, as well as the availability of quarterly and mid-year regional budget realization reports, audited year-end financial statements, and TEPPA (Budget Absorption Evaluation Team) reports. Technical guidelines for open budget implementing units in Central Kalimantan refer to Home Affairs Ministerial Instruction No. 188.52/1797/SJ on Increasing the Transparency of Regional Budget Management. Information on open budget shall be published through the official website of the provincial government at [www.kalteng.go.id](http://www.kalteng.go.id). This budget transparency initiative is nothing new for Central Kalimantan. The province has already enacted Local Regulation No. 1/2007 that

<sup>16</sup> Central Kalimantan as Pilot Project, Draft for Review | October 2012 version 1.0

outlines basic guidelines for the management of regional finances.<sup>17</sup>

This monitoring report looks at the availability and transparency of budget policies including on deconcentration funds, assistance, and other sources that cover the planning and implementation process, as well as accountability and reports on follow-up to BPK audit results as mandated in the FOI Law, Law on State Finances, and Law on Supreme Audit Agency. Monitoring results in general show the availability of a significant number of internal regulations and policies, and government technical guidelines, while on the other hand they reveal on how open budget has not been effectively and optimally implemented.

It is also found that proactive information remains unavailable, while exempt information still depends on policies issued by the head of local government offices. Based on the performance of public agencies under the Central Kalimantan provincial government<sup>18</sup>, it has also been observed that: 1) the majority of office-holders in local government agencies lack understanding on the meaning and content of Law No. 14/2008 on Freedom of Information, 2) there is still the perception that the disclosure of budget information held by public bodies must first obtain approval from certain parties and higher level executives of the relevant institution, 3) some public agencies involve in dispute cases continue to ignore decisions handed down by the adjudication process of the Central Kalimantan Provincial Information Commission, and 4) PPID established in local government agencies do not fully understand their duties and functions, and available information services are not oriented towards serving the people's needs for information, but instead appear to be complicated and troublesome.

In 2013, there are at least nine cases on FOI disputes. Three of the cases have reached the mediation stage, while the other six were resolved through the adjudication process conducted by the Central Kalimantan Provincial Information Commission. The Commission has instructed the public institution concerned to disclose the required information, but in fact was not acted upon. The governor even stepped in and ordered the release of the requested information in accordance with the recommendation of the Assistant Head of UKP4. Even this was ignored by the public institution.<sup>19</sup> A certain local government agency has even issued a letter blatantly rejecting the decision made by the Information Commission.

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<sup>17</sup> In Article 4 clause 2, Regional Finances shall be properly managed in compliance with existing laws and regulations in an efficient, economical, effective, transparent, and responsible manner by paying heed to the principles of justice and appropriateness, for the benefit of the people. Article 117 stipulates that information contained in the regional financial information system audited by BPK shall be treated as public information to be made known, and which the public can access and obtain.

<sup>18</sup> Evaluation of the transparency of information in Central Kalimantan based on dispute resolution at the Central Kalimantan Information Commission.

<sup>19</sup> Letter issued by the Governor of Central Kalimantan on follow-up to the decision handed down through the adjudication hearing as recommended by UKP4.

**Table:** Application for FOI Dispute Resolution at Central Kalimantan Commission Information in 2013

Registry Number	Complainant	Respondent	Requested Information	Note
01/Reg-PSI/KI Kalteng/III/2013	Alpian AS	Central Kalimantan Forestry Office	<ol style="list-style-type: none"> <li>1. Copy of work plans for 2011, 2012, 2013</li> <li>2. Copy of budgetary work plan for 2011, 2012, 2013</li> <li>3. Budget implementation documents for 2011, 2012, 2013</li> </ol>	<ul style="list-style-type: none"> <li>• Decision No.01/KI Kalteng/PSI/MK.A/V/2013, on 15 May 2013, instructs the Respondent to release all information requested by the Complainant</li> <li>• As testified by the Complainant, the requested information has yet to be released, while the Respondent citing the reason that the Central Kalimantan Regional Secretariat has not responded to their letter requesting for further consideration of the Central Kalimantan Information Commission decision.</li> <li>• Local Forestry Office has sent Letter No.800/914/Dishut to the Central Kalimantan Regional Secretariat concerning the decision on FOI dispute case, dated 4 June 2013.</li> </ul>



Registry Number	Complainant	Respondent	Requested Information	Note
02/Reg-PSI/KI Kalteng/III/2013	Alpian AS	Central Kalimantan Forestry Office	Same as above	<ul style="list-style-type: none"> <li>• Decision No.02/KI Kalteng/PSI/MK.A/V/2013, dated 24 May 2013, instructs the Respondent to disclose all information requested by the Complainant</li> <li>• Local Plantation Office issued Letter No.183/613/VI/Disbun/201, dated 17 June 2013, concerning the Information Commission decision, addressed to the Central Kalimantan Information Commission, stating rejection of the decision made by the Central Kalimantan Information Commission.</li> </ul>
03/Reg-PSI/KI Kalteng/III/2013	Alpian AS	Central Kalimantan Public Works Office	Same as above	<ul style="list-style-type: none"> <li>• Decision No.03/KI Kalteng/PSI/MK.A/VII/2013, dated 3 July 2013, instructs the Respondent to disclose all information requested by the Complainant</li> <li>• Based on information provided by the Complainant, to date the requested information has not been released by the Respondent in accordance with the Central Kalimantan Information Commission decision.</li> </ul>

Registry Number	Complainant	Respondent	Requested Information	Note
04/Reg-PSI/KI Kalteng/V/2013	Anang Juhaidi, ST	Central Kalimantan Health Office	<ol style="list-style-type: none"> <li>1. Copy of work plan for 2011, 2012, 2013</li> <li>2. Copy of budgetary work plan for 2011, 2012, 2013</li> <li>3. Budget implementation documents for 2011, 2012, 2013</li> <li>4. Details of expenditure in the Regional Budget for 2011, 2012 and 2013</li> </ol>	A resolution was reached at the mediation stage where an agreement has been reached for the Respondent to disclose all information requested by the Complainant.
05/Reg-PSI/KI Kalteng/V/2013	Anang Juhaidi, ST	Central Kalimantan Tourism, Arts and Culture Office	Same as above	A resolution was reached at the mediation stage where an agreement has been reached for the Respondent to disclose all information requested by the Complainant
06/Reg-PSI/KI Kalteng/V/2013	Anang Juhaidi, ST	Local Manpower and Transmigration Office	Same as above	<ul style="list-style-type: none"> <li>• Decision No.04/KI Kalteng/PSI/MK.A/VII/2013, dated 11 July 2013, instructs the Respondent to disclose all information requested by the Complainant</li> <li>• Pursuant to existing rules, the Central Kalimantan Information Commission decision shall be definitive when after a span of 14 (fourteen) working days, none of the involved parties have submitted their objection or appeal.</li> </ul>

Registry Number	Complainant	Respondent	Requested Information	Note
08/Reg-PSI/KI Kalteng/V/2013	Anang Juhaidi, ST	Central Kalimantan Education Office	Same as above	When an adjudication decision has been handed down, an announcement of the decision was carried out on 30 July 2013, instructing the Respondent to release the requested information.
09/Reg-PSI/KI Kalteng/V/2013	Anang Juhaidi, ST	Local Youth and Sports Office	Same as above	Still in the adjudication process (decision to be announced on 31 July 2013)

The open budget program, as part of OGI action plan for Central Kalimantan, needs to be seriously implemented, particularly as BPK has recently issued a disclaimer of opinion on the regional budget utilization report for 2012.<sup>20</sup> Similarly, the implementation of the open school action plan, specifically on budget information, also needs to be taken seriously. There is lack of accountability of the use of funds, while fees are still being imposed for the purchase of classroom chairs, desks, or for school building funds during the student enrollment process in public schools.<sup>21</sup> Furthermore, the BPK audit process detected inconsistencies in the realization of block grants for educational facilities and infrastructure for schools across Central Kalimantan not in compliance with existing policies. Expenditure for block grants amounted to Rp 367.41 billion in 2012, and Rp 21.50 billion in 2011, whereas the realization of funds channeled to schools only reached Rp 55.91 billion in 2012, and Rp 54.43 billion in 2011.<sup>22</sup>

In early 2013, a particular case caught public attention when the judicial tribunal of the Palangkaraya anti corruption court sentenced a teacher and former principle of primary school SDN 3 Mintin, Pulang Pisau to a year in prison and a penalty of Rp 50 million or one-month detention and the obligation to compensate the state for losses amounting to Rp 58 million, for his involvement in the misappropriation of school operational aid funds.<sup>23</sup>

#### **b. Open Budget Program Implementation in Ambon**

The OGI open budget action plan in Ambon City, Maluku, implemented jointly between the Ambon city government and UKP4 covers the disclosure of information on the draft national budget and national budget, and the implementation of the regional budget through website [www.ambon.go.id](http://www.ambon.go.id) and *Ambon Ekspres* which is part of a partnership forged by the Ambon city government for a one-page news coverage. Based on monitoring results however, no updated information on budget documents is published in *Ambon Ekspres*.

<sup>20</sup> <http://www.antarakalteng.com/print/220809/bpk-tegaskan-pemberian-disclaimer-tidak-terkait-politik>

<sup>21</sup> <http://www.tribunnews.com/regional/2013/07/18/dprd-kalteng-pungutan-untuk-siswa-baru-sebuah-pelanggaran>

<sup>22</sup> <http://www.antarakalteng.com/print/220809/bpk-tegaskan-pemberian-disclaimer-tidak-terkait-politik>

<sup>23</sup> <http://media.hariantabangan.com/index/detail/id/32335>

Budget-related information downloaded from the website on 21 October 2013 is not up-to-date, mostly general information and not itemized by sectors and regions. Discrepancies are also found in budget information for 2011, among others with regard to cash flow statements, comparative balance sheet and budget realization reports, as well as for 2012 that covers information on regional budget documents along with the amendments and budget realization, annex II of local government agencies and annex III of the draft regional budget for governmental affairs. This includes the revised regional budget that encompasses a summary of the regional budget, annex II of the regional budget for local government institutions and annex III for regional budget related to governmental affairs.

Information can also be accessed on budget realization, including for the first and third semester of 2012, and November 2012. Furthermore, information on 2013 budget documents published via website [ambon.go.id](http://ambon.go.id) covers a summary of the regional budget and annexes of local government agencies according to governmental affairs as well as realization reports for the first half of 2013 and projections for the next six months. Half-hearted attempts at transparency of educational budget information and BOS funds are also evident from the local education office. This is because the head of the Ambon local education office has issued a circular letter stating that schools should not deal with requests for information from external parties without the recommendation of the Ambon local education office.

It is also found that information on the outcomes of musrenbang (development planning deliberative forums) is not published as expected of PPID Ambon and local government agencies. Information on budget transparency programs implemented outside of the OGI program, including with regard to budget information and documents are likewise not available and go undocumented. This also covers information on deconcentration funds, assistance and other sources, as well as information on follow-up reports to BPK audit results.

Based on interviews and initiatives developed by the majority of FGD participants in Ambon, the open budget program should manually disclose information. As manual information is not only relatively low cost, it is also more straightforward as available internet connection is both limited and difficult to access, thus hampering the effective implementation of the open budget initiative.

### **c. Open Budget Program Implementation in Indragiri Hulu**

Unlike the situation in Palangkaraya and Ambon, the open budget program is not part of the OGI action plan in Indragiri Hulu, Riau. Regardless of this fact, it remains essential to conduct monitoring research for gaining insight into public aspirations on open budget in Indragiri Hulu, including on the transparency of budget information in the open school action plan.

Within the context of information openness, the transparency of budget policies, including on deconcentration funds, assistance and other sources from the planning to implementation stage, accountability and follow-up reports to BPK audit results is far from expectation as mandated in the FOI Law and State Finance Law. Through interviews and FGDs, informants and FGD participants have been eager to know why the open budget initiative is not included in the OGI action plan for Indragiri Hulu and have expressed their disappointment. They are aware that budget information is crucial and should urgently be made known to the public.

The need for an open budget initiative in Indragiri Hulu is increasingly urgent given the lack of information on the disbursement and spending of BOS funds as part of the open school action plan launched in 48 schools (primary and secondary level) across Indragiri Hulu. Even if such information is available, information related to BOS funds released by several schools are not provided regularly (quarterly basis in accordance with technical guidelines for BOS fund management). Outdated information is still published on school announcement boards, specifically related to school budgetary needs and BOS planning for 2011. Furthermore, not all information on BOS funds is released to the public. Schools will only provide information on its budgetary plan, whereas fund utilization reports, disbursement notification letters, recapitulation of quarterly BOS disbursements are not as easily available. BOS and other educational fund managers still hold on to the perception that such information and documents should only be accessible to certain institutions or parties, and should not be for public consumption.

Information on health operational aid (BOK) and its realization based on four key activities (BOK technical guidelines) allocated to *puskesmas* (community health center) and *pustu* (sub-health center) is only available at the website of the Indragiri Hulu local health office. Such information is generally not published by health facilities (public hospital, *puskesmas*, *pustu*, community mother-and-child health centers). The local health office does not provide a comprehensive range of budget information (planning, implementation, and utilization). Health budgets are also not published in detail except for budgets that are more general in nature.

#### **d. Conclusion and Recommendation**

1. The formulation and implementation of the open budget plan, including educational and health budgets, do not optimally engage multi-stakeholders and the public at large. This should be taken into serious consideration as public participation can more effectively heighten the transparency and accountability of state administrators.
2. In the three identified pilot project locations, specifically in Central Kalimantan, policy commitments pledged by district heads do not automatically mean that institutions under their jurisdiction will have a similar conviction. Bureaucrats appear to have their own “way of thinking”. In view of this, robust oversight by district heads is crucial, in addition to broadening civic engagement.
3. In all three identified regions, a regulatory framework is already in place to guarantee public access to budget information. Nevertheless, efforts to internalize various regulations that promote budget transparency are still superficial attempts because the commitment of executives is not accompanied with a similar conviction at the middle and lower level.
4. Open budget is a government obligation that must be fulfilled in accordance with existing laws. It must also accommodate pressing issues confronting local governments that are also the shared concerns of the local population, specifically in Indragiri Hulu. Open budget implementation should therefore promote broader public participation. Open budget is not only about the willingness of the government but also government obligation to meet public demands.
5. Open budget should deal with important local issues, such as the transparency of budget information (planning, utilization, implementation, accountability, and auditing), for both sectoral and territorial budgets. In the three selected regions, the inequitable access to information technology and a less than technological savvy society are factors

that impede the implementation of an open budget. Specifically in Ambon and Indragiri Hulu, the local government therefore should not have emphasized on online disclosure of information. They should instead clearly inform the public through offline (manual) information service procedures accessible in a speedy, straightforward, timely, and low cost manner in order to build broader public participation for undertaking collective efforts in making the government more transparent, accountable, and participatory.

6. Government/UKP4 as the leading sector for OGI Indonesia should intensify assistance for OGI implementation in pilot project locations by engaging other stakeholders. It also needs to ensure clarity in guidelines, including for the technical implementation of an open budget. Regular monitoring of field implementation is also essential.

#### **B.4 LAW ON MASS ORGANIZATIONS: AN ANOMALY IN THE IMPLEMENTATION OF OPEN GOVERNMENT INDONESIA**

In September 2011, the government of Indonesia voluntarily binds itself to commitments enshrined in the Open Government Partnership Declaration. One of these commitments is “to protect the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association and opinion, and commit to creating mechanisms to enable greater collaboration between governments and civil society organizations and businesses.”

Through a plenary session convened on 2 July 2013, the Indonesian parliament eventually passed the initiated Bill on Mass Organizations into law by means of a voting mechanism. Three parliamentary factions – from political parties PAN, Gerindra and Hanura – held dissenting opinions, while the other 6 (six) factions – from political parties Demokrat, PDIP, Golkar, PKS, PPP and PKB – have agreed to the passage.

There was also a wave of rejection throughout the deliberative process of the Bill conducted by parliament and the government amongst state agencies, such as the National Commission on Human Rights, National Law Commission, Center for Political Studies, Indonesian Institute of Sciences, major civil society organizations such as PP Muhammadiyah, Indonesian Muslim Students (PII), labor unions under the Indonesian Labor and Workers Council, Coalition for Freedom of Association (KKB) consisting of dozens of civil society organizations, experts on administrative law, and sociologists. These government institutions and civil society groups have forewarned on the possibility of legal chaos that may instigate violations against civil liberties due to the imposition of the Law on Mass Organizations.

Within only one week following the passage of the Bill on Mass Organizations, the UN Committee on ICCPR (International Covenant on Civil and Political Rights) has put forth recommendations to the ICCPR implementation report in Indonesia through the 108th session of the Human Rights Committee held in Geneva on 10-11 July 2013<sup>24</sup>. The Committee expressed its concern over the ratification of the Law on Mass Organizations that has instead erected excessive or undue hurdles to freedom of association, expression and religion on both Indonesian and foreign civil society organizations. The Committee is equally concerned that the law has imposed unwarranted registration requirements for civil society organization. It urges the government of Indonesia to re-examine the law to guarantee that

<sup>24</sup> The full report is available at: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>, 108th session of the Human Rights Committee: 8-26 July 2013 in Geneva, Indonesia.

it remains consistent with Articles 18, 19, and 22 of the Covenant.

On 22 July 2013, the Bill on Mass Organizations was passed into Law No. 17/2013 on Mass Organizations after it was signed by President Susilo Bambang Yudhoyono. The law was promulgated through State Gazette of the Republic of Indonesia No. 116 of 2013 and Supplement to State Gazette No. 5430.

The enactment of the Law on Mass Organizations in Indonesia as an emerging democracy is viewed by many, including among the international community, as an anomaly. CIVICUS feared that the law will be repressive toward civil society organizations and will instead confer the government with the power to terminate or dissolve a civil society organization.<sup>25</sup> The OGP Civil Society Coordination team highlighted on intensified conservatism and diminishing freedom of association for civil society in the 'New Indonesia' due to the imposition of restrictions under the pretext of a global "war against terror" and the need to control "anarchist groups" from using religion, ethnicity or other diversity issues for the purpose of provoking conflict. The report also noted on how the Bill on Mass Organizations, in addition to the Intelligence Law and National Security Bill, will undermine fundamental democratic freedoms.<sup>26</sup>

Reasons cited by the government for pushing through the Law on Mass Organizations have time and again been challenged. The consideration that this law will function as an instrument to prevent acts of violence, and claims that it will also promote transparency and accountability among civil society organizations are in fact countered by relevant legislation such as the Criminal Code/Civil Code, Law on Foundation, Law on Freedom of Information, Law on Corruption, Law on Money Laundering and Law on Anti-Terrorism and the Criminal Act of Terrorism Financing. These legal instruments shall actually silence any argument on the need for introducing the Law on Mass Organizations as contended by the parliament and government.

#### **a. Identifying Problematic Articles in Mass Organization Law Related to Implementation of Open Government Partnership Declaration**

The Law on Mass Organizations contains several articles that may create problems which can be grouped into different categories of issues. These articles are highly susceptible to misinterpretation to suit the vested interests of those in power. The following table presents five categories of issues found within the Law on Mass Organizations specifically related to the implementation of OGP commitments in Indonesia, mainly based on their potential to curb the participation of civil society organizations. The five categories ultimately boil down to the issue of civil society organization's "registration" or whether it is a "registered entity or not".

<sup>25</sup> State of Civil Society 2013: Creating an enabling environment, pg. 25, CIVICUS, 2013.

<sup>26</sup> The full report is available at: <http://www.ogphub.org/blog/improving-the-ogp-experience-country-article-conclusion/>

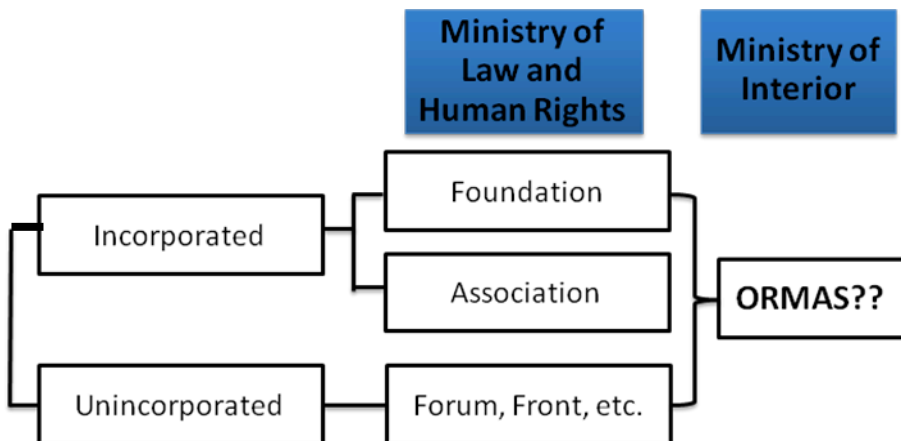




No	Category	Problematic Articles	Note
3.	Inconsistent norms	Article 15 clause (1) and clause (3)	<p><b>Article 15 clause (1)</b> and clause <b>(3)</b> of the Mass Organization Law indicate that a legal entity is declared as a registered organization after it has gained approval as an incorporated entity. If a civil society organization has already been incorporated (foundation or association), it therefore does not need a Certificate of Registration (SKT). However, <b>Article 15 clause (2)</b> that reads “registration of incorporated mass organizations” will be inconsistent with <b>Article 15 clause (1)</b> and <b>clause (3)</b>. Based on <b>Article 15 clause (1)</b> and <b>clause (3)</b>, it can be implied that if the requirement for approval of a legal entity has been met according to the existing rules (for example in the Foundation Law), the organization will therefore right away be given the status of a registered organization.</p>
4.	Articles with ambiguous norms	Article 16	<ul style="list-style-type: none"> <li>• <b>Article 16</b> regulates on the registration of unincorporated organizations. As for these organizations, is registration then an order/obligation or simply optional?</li> <li>• Administrative requirements for registration are overly excessive for unincorporated organizations, and instead violate the constitutional rights of citizens. It is mentioned in <b>Article 16 clause (2)</b> that unincorporated organizations should meet the following registration requirements: (a) deed of incorporation issued by a notary public that contains the Memorandum of Association or the Memorandum and Articles of Association; (b) work program; (c) board structure; (d) declaration of domicile; (e) tax payer registration number under the organization’s name; (f) letter certifying that the organization is not involved in any management dispute in a court case; and (g) statement letter on willingness to report on activities.</li> </ul>

No	Category	Problematic Articles	Note
5.	Norms with multiple interpretations	Article 59	<b>Article 59</b> of the Mass Organization Law sets out a range of prohibitions open to multiple interpretations that can be misuse to serve the vested interests of the ruling power. Anti-corruption organizations pursuing the prosecution of corrupt public officials or formal leaders can be considered as entities detrimental to the security of the state. Organizations campaigning against gross human rights violations on international platforms can be viewed as organizations engaged in activities that can threaten, disrupt and/or endanger the integrity and sovereignty of Indonesia. Organizations that accept foreign money, for example from international cooperation agencies, UN agencies and funding agencies, either as an institution or individual, may be banned for being the right arm of foreign interests and for operating in violation of existing laws and regulations

Despite the many problematic clauses in the Law on Mass Organizations, the most fundamental issue lies not only in the principal part of the law (articles), but also with regard to the basic conceptualization of its regulatory framework. In other words, despite improvements made to the Bill/Law on Mass Organizations (in earlier discussion) by parliament and the government, it was done in a makeshift manner because changes were made based on a misguided frame of mind.



The diagram above shows the framework for regulating incorporated civil society organizations divided into two categories: non-membership- and membership-based organizations. This is governed by Law on Foundations for non-membership-based organizations, and Staatsblad 1870 No. 64 on Incorporated Associations for membership-based organizations. Mass organizations however are not recognized within the standard legal framework as these entities are the creation of the New Order regime under former President Soeharto with the intent of controlling the dynamics of community-based organizations in Indonesia. The obligatory registration of organizations under the new framework offered by the Law on Mass Organizations will only lead to a lengthier bureaucratic process harmful to the freedom of association and assembly as guaranteed by the 1945 Constitution.

### **b. Findings on Violations Against the Right to Information**

The following presents cases on the violation of the right to information instigated by the Law on Mass Organizations (No. 17/2013) that can lead to varying interpretations, and were committed following the passage of this law. These incidents have undermined the right to information and restricted the space and role of civil society in monitoring government performance relating to the implementation of the OGP Declaration in Indonesia. Unfavorable circumstances have also developed that may obstruct the participation of civil society organizations.

1. In August 2013, FITRA (*Forum Indonesia untuk Transparansi Anggaran* or Indonesia Forum for Budget Transparency) based in North Sumatera was denied access to the Budget Work Plan (RKA) held by the Karo District Communication and Informatics Office and Electronic Data Center. The reason cited by the local office is that FITRA-North Sumatera is not registered with Kesbangpolinmas (National and Political Unity and Public Protection Authority) of Karo District as required by Law No. 17/2013 on Mass Organizations. Before gaining status as a registered organization from this Unit, FITRA-North Sumatera could not access data and information that it requires. FITRA-North Sumatera is an incorporated foundation that according to the Mass Organization Law is waived of the obligation to register itself because it has been automatically registered as laid down in Article 15 of the Law on Mass Organizations concerning the registration of incorporated mass organizations. As a legal entity, FITRA-North Sumatera meets the requirement of an information requester as governed in **Article 1 clause 12** of the FOI Law.<sup>28</sup>
2. FITRA-Riau's FOI dispute case was rejected by the Riau Information Commission on the grounds that the organization is not registered with Riau's Kesbangpol (National and Political Unity Authority) as required by the newly enacted Law on Mass Organizations. As a legal entity, FITRA-Riau is already registered with the Ministry of Law and Human Rights, thus has satisfied requirements of an information requester. In response to the rejection, FITRA-Riau must file another suit, but this time no longer as an institution but on a personal basis.<sup>29</sup>
3. At the time of deliberations over revisions to the Law on Mass Organizations, the Ministry of Home Affairs issued Ministerial Decree No. 33/2012 concerning Guidelines for Registration of Mass Organizations Within the Ministry of Home Affairs and Local Governments that still however refers to the earlier Mass Organization Law. By using the same definition to describe mass organizations as set forth in the previous law

<sup>28</sup> Source: Documentation on Violations Against Freedom of Association and Assembly, Coalition for Freedom of Association, 2013.

<sup>29</sup> Source: Documentation on Violations Against Freedom of Association and Assembly, Coalition for Freedom of Association, 2013.

that is clearly a sweeping and ambiguous definition applicable to all forms of civil society organizations, unwarranted and confused interpretations will therefore not be surprising, primarily among local governments who will be implementing the law. This is illustrated in cases presented in points 4 and 5 below.

4. A field evaluation conducted by the Central Lombok Kesbangpol found that 47 NGOs, including those who often hold public hearings with local government offices and local parliament, are operating without a permit. *“If you don’t have an office and neither do you have a permit, then this means that the majority of our NGOs are illegal,”* asserted HM Suhardi, Head of Central Lombok Kesbangpol. Even though an NGO may have a deed of incorporation, Memorandum/Articles of Association and board structure, the establishment of an office constitutes as part of legal recognition from Kesbangpol. (see Lombok Post, Monday 16 September 2013, and Harian Umum Nurani Rakyat 23 August 2013). This incident was not tantamount to a violation of the right to information, but being labelled ‘illegal’ may lead to a more restricted role of NGOs (among others with regard to participation and monitoring) by unsympathetic parties, that unsurprisingly may include the local government.<sup>30</sup>
5. Lampung Gubernurial Circular Letter No.045.2/0427/11.03/2013 on Mass Organizations/NGOs registered with the Lampung provincial government, specifically point 5 states that mass organizations, NGOs or non-profit organizations in Lampung that have not obtained a Certificate of Registration (SKT) from Kesbangpol shall be considered illegal. This circular letter was issued prior to the passage of the new Law on Mass Organizations. Serious attention should be given to this policy in order to avoid undermining the freedom of association and assembly in Indonesia. Those who do not see eye to eye with critical-thinking organizations may indiscriminately label organizations as ‘illegal’, and this in turn will restrict participation in governance.

### c. Recommendation

The international community bound by the OGP declaration needs to urge the government of Indonesia:

1. to seriously work towards fulfilling its commitment to the OGP declaration, specifically in guaranteeing freedom of expression, association and opinion. This can be demonstrated through the revocation of Law No. 17/2013 on Mass Organizations that has proven to be detrimental to the right to information of civil society, and by applying the appropriate legal framework to regulate civil society organizations.
2. to fully implement the OGP Declaration and to refrain from issuing legislation and from promoting practices contradictory to the commitments set forth in the Declaration.

<sup>30</sup> Ibid.



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