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Muhammad Yasin
Universitas Indonesia

Harsanto Nursadi

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Miracle 14: Transparency in Indonesia's State-Owned Enterprises

Muhammad Yasin¹, Harsanto Nursadi²

Faculty of Law Universitas Indonesia, Indonesia^{1,2}

mysipahutar@gmail.com¹, harsanto@ui.ac.id²

Abstract. In administrative science and administrative law, public information disclosure has universally recognized as important partway to good governance. There is an explosive recognition of the world to freedom of information act. Freedom of information or right to information is an inseparable part of transparency principle in governance. Enacting freedom of information act is an effort not only to make government better, but also to create trust among government, the business, and citizens. Indonesia has enacted Act Number 14/2008 (FOI Act) and run into force in 2010, which contains 14 obligations to State-Owned Enterprises (SOE's). This paper will focus to elaborate SOE's compliance with its basic obligations in this FOI Act, resulted in monitoring and evaluation conducted by Central Information Commission (CIC); the problems; the challenges, and the opportunities. This study used secondary data from the CIC annual ranking reports. The results show that good corporate governance is actually in line with transparency principle, the increase of participation level of SOE's in complying with the FOI Act, and most of SOE's are placed in 'uninformative' category.

Keywords: compliance, freedom of information, governance, state-owned enterprises, transparency

INTRODUCTION

Transparency is generally recognized as an important element of good democracy and governance. Public administration scholars has paid more attention to good governance and its principles. The dynamic of administrative law can be understood as law that govern all government personnels and institutions, affirms their commitment to creating good governance. Normally, administrative law is regarded as the area of law concerned with the control of governmental powers. One of the key function of administrative law is to control decision-making on the basis of powers attributed by laws. Leyland and Anthony (2009) said that administrative law embodies general principles which can be applied to the exercise of the power and duties of the authorities in order to ensure that the myriad of rules and discretionary powers available to executive and other public decision-makers conform to basic standards of legality and fairness. Administrative law or administrative science is characterized by operating to provide for accountability and transparency. Cane (2011) wrote that administrative law is part of the legal framework for public administration. This dynamic in line with the administrative science and administrative law which sees the state in motion (*de staat in beweging*).

Transparency has long been understood in many aspects, but it is generally recognized as a pathway to make a better and modern government, to promote what can be named as government transparency. Government transparency is defined as broadly as a governing institution's openness to the gaze of others; is clearly among the pantheon of political virtues; a fundamental attribute of democracy; a norm of human rights; a tool to promote political and economic prosperity; a means to prevent corruption; and a tool to

increase of citizen trust to government. (Fenster, 2006; Mendell, 2003; Rose-Ackerman, 1999). Jannah, Sipahutar, and Hariyati (2020) stated that the need to open information for government officials applies both to the central and regional levels as a consequence of good governance. Moreover, information disclosure is seen as vital to the eradication of corruption in all levels of government administration.

Schiavo-Campo (2019) stated that transparency means providing reliable, relevant and timely information in forms of comprehensible to those who need it. Transparency is crucial for an informed executive, legislature, judiciary, and citizen at large. It requires the information to make available to all parties in usable form – with clear and public regulatory and policy-making process.

Fenster (2006) proposed two claims that support arguments about the importance of transparency in government. First, a government that is more transparent is therefore more democratic. Second, a government that more transparent will operate in a more effective and efficient manner, and will thereby better serve its citizens while dealing more fairly and peaceably with other nations.

Transparency is also important to make decision makers in government aware that what they are doing is not necessarily in the right direction. Transparency makes public participation is more secure, and that public participation gives rise to more ideas and consideration for the government when making decisions. In this context, Stiglitz (2013) wrote: "My experience in government suggests that those who hold positions of power want to believe that they are doing the right thing – that they are pursuing the public interest. But their beliefs are at least malleable enough for them to be convinced by 'special interest' that what they want is in the public interest, when it is in fact in their

own interests to so believe". (Note: 'their own', bold by Stiglitz himself).

The most obvious form of transparency is the openness of public information, which can be seen from the proactive provision of information by government agencies (Article 9 and 10 of FOIA-Indonesia) and the recognition of citizen's rights to access public information (Article 11 of FOIA-Indonesia). The first is commonly called as proactive disclosure of information; while the second one is information disclosure by request. Thus, public information disclosure can be seen from (i) the obligation of state agencies to make available and publish public information; and (ii) legally state recognition of citizens' rights to access information. Access to public information is a kind of human rights.

Freedom of public information has been universally passed into constitution or laws. In 1980's only 10 nations had laws that specifically guaranteed the rights of citizens to access government information. In 1990's, 56 countries have passed Freedom of Information (FOI) laws or Right to Information (RTI) laws, resulting 66 nations by October 2005. Ackerman and Sandoval-Ballesteros (2006) call this phenomenon as 'the global explosion of freedom of information laws'.

Article 19, a non-governmental organization located in London, reported that 90 percent of world's population live in countries that recognize citizens' right to public information, and there are 118 countries that have adopted the Right to Information Laws. This development demonstrates worldwide recognition of the effect of transparency on good governance. Focused on the implication of governance disclosure, Candeub (2013) revealed conventional wisdom holds that government, especially in its executive and administrative capacity, must be transparent, disclosing how and why it makes decisions. He believes that transparency limits corruption and encourages public participation. Leyland and Anthony (2013) believed that the accountability of governmental institutions is linked to their transparency. Citizens need to have access to information relating to the functioning of public agencies in many different contexts, For example, how decisions have been taken, the reasons for decisions, and how money has been spent.

Indonesia is one of the 118 countries that recognize citizens' right to information, after Act Number 14 of 2008 (then called as FOIA-Indonesia) was enacted and declared effective two years later. In fact, in Indonesia, recognition of this human right is guaranteed in the constitution (UUD 1945), so it has a stronger legal basis. Article 28F Indonesia Constitution states "Every person shall have the right to communicate and to obtain information for the purpose of the development of his/herself and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by empowering all available types of channels". Particularly in the context of governance disclosure in Indonesia, the spirit of transparency is also stated

in Act Number 30 of 2014 concerning Government Administration (UU Administrasi Pemerintahan). Article 51 of this Act states that Government Agencies or Officials are required to open access to government administration documents to every citizen of the community to obtain information unless stipulated otherwise by law.

As a form of transparency, FOIA/RTI laws not only guarantees citizens' rights to access information, but also increase citizen participation in decision-making, and makes public services in government better. FOIA is intended to increase trust between government, citizens and business entities (Hariyati et al., 2019).

The entry of government-run business entities into the obligations of the Public Agencies category that is obliged to comply with the FOIA-Indonesia is not an exaggeration. We can propose a number of reason that can be put forward. First, public companies should have implemented good corporate governance (GCG) for a long time, before enacting of Act Number 14 of 2008. Second, for State Ownership Entrepreneur (SOE's) that have listed (go public), transparency or openness is a legal obligation regulated in Act Number 8 of 1995 concerning the Capital Market (UU Pasar Modal) and Act Number 40 of 2007 concerning Limited Liability Companied. Third, openness actually provides many benefits for corporate actions and prevent corporation and its managers from fraud, excessive political pressure, or any kind of corruptions. In other hands, the application of principle of transparency is part of risk management.

Indonesia has 142 SOEs, whose core business fields are different but some overlap with each other. It is considered too fat, so there is a policy to make efficiency. After Minter of SOEs Erick Thohir carried out efficiency measures, now the number has decreased to 107. The Minister is targeting the ideal number of SOEs in the future to be 80 companies. Thohir also spoke that transparency is a requirement to encourage Indonesian SOEs to compete at the global level.

There are a number of factors that greatly affect SOEs performance. Apart from factors related to economics efficiency, there are also political influences. First, SOE's performs double functions: profit and non-profit at the same time. Second, SOEs may be pulled to finance the social activity of government institutions or activities of politicians who were shrouded in working visits or providing assistance to citizens. Third, in Indonesian, SOEs is often perceived as financial sources of politicians and political party figure, so that the position of Board of Commissioner member sometimes is filled with people with strong political backgrounds (ICW, 2020). The e-KTP procurement case can be used as a concrete example of how politicians build networks with government officials and SOEs top leader to get financial benefits (TII, 2017). Managers from at least four SOEs was under investigated and interviewed by KPK because their involvement in this case.

Seeing the position of commissioners (or directors)

of SOEs is actually very interesting. This is because they are the one who carry out the supervisory function, including ensuring compliance with the principle of transparency in business operations. On the one hand, there is a tendency to appoint commissioners of SOEs with political background; and on the other hand, there is always the desire of politicians to 'enter' SOEs even though this is considered dangerous because it is prone to conflict of interest that lead to corruption. Profiling conducted by the Ombudsman and KPK found found 138 of the 281 active Board of Commissioner member did not not match the seats occupied with their competency backgrounds (Tirto, 2020). The appointment of political background commissioners can positively encourage transparency, it is easier to lobby political power in government to support transparency policies. By applying the principles of transparency, SOEs can actually prevent irregularities, including excesses arising from political pressure. Decision-making in closed spaces to accomodate political pressure can potentially disrupt the performance of SOEs.

RESEARCH METHOD

This paper will answer the following questions: (1) What are the obligations of Indonesian SOEs as Public Agencies in the context of public information disclosure?; (2) How is SOEs compliance with information disclosure based on the assessment result of the Central Information Commission?; and (3) What are the challenges and opportunities faced by SOEs in applying its obligations according to FOIA-Indonesia, include in pandemic and new normal era?

Answering these questions, we use normative research on library materials or secondary data. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data used in this study include primary legal materials such as data for assessing the compliance of public agencies published by an authorized institution, namely Central Information Commission. The rest are secondary legal materials such as research results and writings summarized in a reference list below such scientific journals accessed through j.store.org; garuda.ristekdikti.go.id; and Westlaw; then tertiary legal materials such as dictionary.

RESULT AND DISCUSSION

(1) SOEs as Public Organs

SOEs is a business entity which all or most of its capital is owned by the state through direct participation originating from separated state assets. Theoretically and normatively, SOEs are established to many objectives: (a) to contribute to the development of the national economy in general, and state revenues in particularly; (b) pursuit of profit; (c) administering public benefits in the form of providing goods or services of high quality and adequate for the fulfillment of the livelihoods of many people;

(d) pioneering business activities that are not yet able to be implemented by the private sector and cooperatives; and (e) actively participate in providing guidance and assistance to small and medium enterprises, cooperation, and community.

FOIA-Indonesia basically adheres to the universal rule that every citizen has the right to obtain public information from Public Agency. Which institutions are included in the the category of Publik Agencies differ from country to country. In the process of enacting FOIA-Indonesia has become a long discussion. Generally accepted, public agencies include all organs in executive power or government administration bodies. But there are also those regulate broader institutions, include certain private company.

There are at least two reasons that can be put forward. The first reason, derived from the point of view of government actions (*bestuurhandelingen*). This means any action carried out by the governmental institutions (*bestuursorgaan*) in functioning government tasks and goals. Government action can be in the form of material action (*feitelijke handelingen*) and legal action (*rechtshandelingen*). In administrative law, what is important to pay attention to is legal action because it will have legal consequences for the people affected by those actions (Ridwan, 2017). Based on kind or type of action, government actions are differentiated into public legal actions and private legal actions. The presence of the state in the form of SOEs is an act of the state in the realm of private law. If government actions in the public sphere must apply transparency, then in the private sphere it must also be open, unless it is declared confidential or secret.

To find out whether a government action is public or private, we can look at the position of the government officials in carrying out any kind of action. If government official acts in quality as government, then what applies is public law. Conversely, if a government agency is involved in civil society such as rent a car or house then it is subject to private law (Ridwan, 2017). In this context, it can be seen that most SOEs whose funds come from separated SOEs assets are subject to regulations regarding corporations, namely the Limited Liability Company Law.

The second one, Indonesia embraces a broader view of public agencies, not only government agencies, but also business entities, political parties, and possibly non-governmental organizations. All state organs under the executive, judiciary and legislature are public agencies. Other agencies are also qualified as public agencies based on two criteria, namely (a) their main functions and duties; and (b) funds used. Criterion (a) includes all institutions whose main functions and duties are related to the administration of the state are public agencies, for example the Corruption Eradication Commission and state auxiliary organs. Criterion (b), which has been the focus of debate so far, includes all institutions whose funds are partly or wholly sourced from the APBN/APBD (National Budget and Expenditure/Local Budget and Expenditure), including non-governmental

organizations if part or all of the funds come from the APBN/APBD, public donations or donations from abroad.

Historically, during law-making process of FOIA Bill, there was resistance to the qualify SOEs as a Public Agency. Civil society groups who's participated in discussing this bill, urged the government and the DPR as legislators to include SOEs and political parties, considering that the state funds used by these two entities are very large. Finally, through debate and lobby, SOEs was still recognized as a public agency. As a consequence, SOEs have the same rights and obligations as other public agency, including serving requests for information from the public. The affirmation in the law does not eliminate the debate in the academic world regarding the position of SOEs as a public agency. In cases of information disputes handled by the Information Commission and the Courts, SOEs have been firmly declared as public agencies. For examples, in the case of LSM Peduli Mutu Pendidikan Nasional versus PT Pertamina (Persero) (verdict No. 038/VII/KIP-PS-M-A/2015), dan Suherly Harahap versus PT Hutama Karya (Persero) (verdict No. 062/XII/KIP-PS-A/2016).

(2) Miracle 14

Oxford English Dictionary defines word 'miracle' as : (1) act or event that does not follow the laws of nature and is believed to be caused by God; (2) lucky thing that happens that you did not expect or think possible. We prefer use word 'miracle' in this context as a 'lucky thing' because number 14. We can see SOEs as a Public Agency is regulated in an Act number 14, its obligations are outlines in Article 14, and there are 14 items of SOEs obligations. The 'miracle' of the number 14 was not intended in the law-making process.

The following table shows 14 points of SOEs obligations in the context of public information disclosure.

From the 14 liabilities in FOIA-Indonesia, most of them relate to the company's finances or financial aspects such as annual reports, financial reports, profit and loss accounts, and the allocation of remuneration funds for the company's directors and commissioners. However, some points of obligation are not something that is difficult to carry out. For example,

Table 1. SOE Obligations in the context of public information disclosure

1.	Name and domicile of company, purpose and objective as well as type of business activity, period of establishment, and capital, as stated in the Articles of Association.
2.	Name list of shareholders, Board of Directors and Board of Commissioners.
3.	Audited annual reports, financial reports, profit and loss statements, and audited reports on corporate social responsibility.
4.	Assessment results by external auditors, credit rating agencies, and other rating agencies.
5.	System and allocation of remuneration for Board of Commissioners/Board of Supervisors and Board of Directors.
6.	Mechanism to elect Board of Commissioners or Board of Supervisors.
7.	Legal cases faced by SOEs which is classified as public information.
8.	Guidelines for implementing good corporate governance based on the principles of transparency, accountability, responsibility, independence and fairness.
9.	Announcement of debt securities issuance.
10.	Replacement of the public accountant who audits the company.
11.	Change in the company's fiscal year.
12.	Government assignment activities or public services or subsidies.
13.	Guideline of procurement mechanism in SOEs.
14.	Other information as determined by the Law relating to SOEs.

information relating to the identity of the company and its shareholders; guidelines for the procurement; the mechanism for determining the board of directors and commissioners; and corporate governance guidelines.

Basically, only information relating to finance, audit results, and legal cases that relatively contains exempt information. If they consider that information is confidential, SOEs can determine which information is exempt based on a consequence test. The privatization process and the procurement, for example, contain confidential information because it is related to the objective of maintaining fair business competition. It includes legal grounds for determining confidential information. However, it is wrong to consider all financial information as confidential information. In fact, Schauer (2014) said transparency can foster accountability and prevent the misuse of funds and the abuse of power. Transparency is undoubtedly effective in lessening the incidence and consequences of official and institutional decision - financial and otherwise- that reflect incompetence, malice, or incentives at odds with those of the public interest.

The type of public information managed by SOEs is actually more than 14 items as quoted above. There are two main reasons that can be put forward. First, the general provisions regarding the obligations of public agencies set out in Articles 9-11 of FOIA-Indonesia also apply to SOEs. The types of information can be in the form of: (a) information that must be provided and announced periodically; (b) information which must be announced immediately; and (c) information which must be available at all times. Second, the Ministry of SOEs has also regulated various types of information which are its obligations, which are contained in an internal regulation, namely the Minister of SOEs Regulation Number 08/MBU/2014 concerning Guidelines for Information Management and Documentation in the Ministry of SOEs, as revised by the Minister of SOEs Regulation Number 12/MBU/10/2015.

(3) SOEs Compliance

As a business entity, some of which are publicly listed companies, SOEs are subject to the principles of good corporate governance. Act Number 19 of 2003 concerning SOEs mentions the word "information" 11 times and the word "transparency" 5 times. Article 5 requires the Board of Directors to comply with the SOEs Articles of Association and must implement the principle of transparency. The principle of transparency should be applied in the restructuring and privatization processes.

In fact, GCG has become a standard guideline, and become the "spirit" of SOEs operational. Many SOEs have announced that they have obtained universally accepted compliance standards such as ISO, which means that companies adhere to good corporate governance. There are five basic principles of GCG that are universally recognized, namely transparency,

accountability, responsibility, independence and fairness. Transparency can be defined as the disclosure of information both in the decision-making process and in disclosing material and relevant information regarding the company's activities. Daniri (2014) states that companies must provide sufficient, accurate, and timely information to various parties with an interest in the company. Each company is expected to publish financial and other information that is material and has a significant impact on company performance. Investors must be able to access important company information easily when needed. One of the benefits derived from the principle of transparency is that stakeholders can know the risks that may occur when conducting transactions with SOEs.

SOEs compliance in fulfilling its obligation to convey public information can actually be done by looking directly at the website of each SOEs. This means that a comprehensive study of the 107 available SOEs is necessary. According to FOIA-Indonesia (Article 13) and Government Regulation Number 61 Year 2010, two main aspects that have been part of the compliance assessment of public agencies are the appointment of an Information Management and Documentation Officer (Pejabat Pengelola Informasi dan Dokumentasi/PPID), and the existence of internal regulations governing information management. In this paper, SOEs compliance will be seen based on the publication of the assessment that has been carried out by the Central Information Commission.

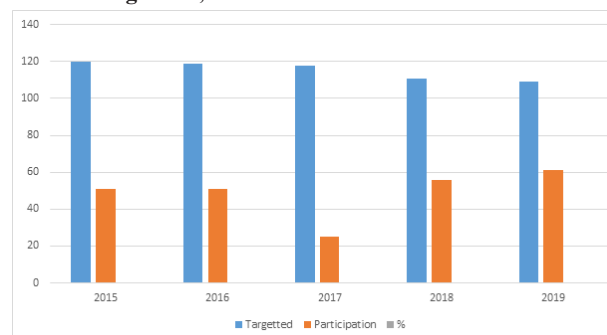
The view of Coffee (1984), as cited by Nasution (2001), can be referred to remind the basis for thinking about the urgency of disclosure principles for SOEs. First, because information has various characteristics as public goods, research on company shares is less available, resulting in verification of information received by the public (issuers). A mandatory disclosure system can be seen as a strategy to reduce the cost of seeking information. Second, it is generally recognized that greater inefficiencies will occur without mandatory disclosure systems because investors will incur more costs to pursue profits. Third, the voluntary disclosure system practiced by a number of companies has proven unsatisfactory. Information stored only by the company's top managers can misinform the market, perhaps even plunging top managers into the insider trading trap. Fourth, in an efficient capital market environment, there is a lot of other information that SOEs investors may need to optimize their investment. Such information is best provided through a mandatory disclosure system.

Participation

Participation is very important in encouraging information disclosure. One of FOIA-Indonesia's goals is "to encourage public participation in the public policy making process". The success of a policy or program is determined by the participation of stakeholders.

In the context of information management and services, there are three participation rooms that will

Graph 1. SOE's participation in monitoring and evaluation of Public Agencies, 2015-2019



be filled by SOEs. The first room is the management of information in the internal environment through the development of information systems. Article 7 (3) of FOIA-Indonesia states that Public Agencies must build and develop information and documentation systems to manage public information properly and efficiently so that it can be accessed easily. Website can be used to publish information. By using technology, SOEs can serve public easily. Second, outward participation in the form of service when there is a request for information from an Indonesian citizen or legal entity, when there is an assessment of the disclosure of public information, or when it is necessary to resolve information disputes at the tribunal stage (out of court settlement). Third, participate in the sense of being present at the courtroom if an information dispute ends in court. In this dispute process, SOEs must fight for their arguments for administrative justice. Information disputes occur if the SOEs does not provide the requested information; SOEs provides information but not as requested; has not provided information by the time specified; or SOEs charge excessive fees.

The level of participation here is intended as the level of participation of SOEs in the information disclosure assessment process conducted by the Central Information Commission. Not participating does not fully mean that the SOEs concerned is very closed. All SOEs convey information through electronic and non-electronic channels. The Central Information Commission's assessment is far from merely the existence of a company website.

The Graph 1 above shows us that in the first two years (2015 and 2016) the participation rate of SOEs following the assessment did not increase because the numbers were both 51. The lowest participation, only 25 out of 118 public agencies, occurred in the assessment period in 2017. The next two years the number of public agencies participating in The assessment has increased, but on the other hand, the number of targeted SOEs has decreased from 111 to 109. In terms of percentage, there is an increase in participation from 50.45 percent in 2018 to 55.96 percent in 2019.

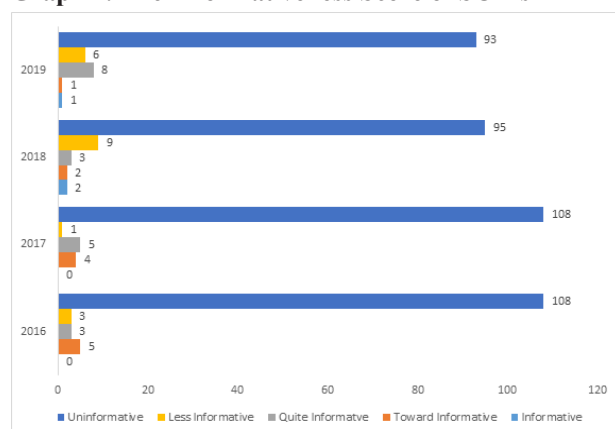
Compliance Score (Informativness)

Using five assessment categories, the Central Information Commission has conducted assessments

of public agencies. "Informative" means that the Public Agency has a score of 90-100. The category 'Towards Informative' is obtained if the score is 80-89.9; 'Quite Informative' means a score of 60-79.9 is obtained; a 'Less Informative' score is 40-59.9; and "Uninformative" means getting a score less than 40. The assessment criteria are determined by the Central Information Commission.

Based on the scoring, it can be seen that most SOEs are in the uninformative category. The table below shows that very few SOEs have successfully entered the 'informative' and 'informative' spaces. In 2015 there was actually one SOEs that got a score above 90, but in the next two years the total was 0. In 2018, there were two SOEs that were categorized as 'informative', and the following year there was only one SOEs. If illustrated in graphical form, the Informativeness Score of SOE's is as follows.

Graph 2. The Informativeness Score of SOE's



The large number of uninformative SOEs was contributed by at least two basic things: first, SOEs did not carry out the basic obligations stated in Article 14 of FOIA Indonesia; and second, the low level of SOEs participation in the assessment, even though it is actually easier because it uses the self-assessment method. The management of SOEs in Indonesia has not been completely free from the mindset of secrecy. It seems as if what SOEs are doing is not known to the public, even though the SOEs budget actually comes from funds collected from the people. In addition, most SOEs were categorized as Uninformative because they did not return the self-assessment files sent by the Central Information Commission assessment team.

The Central Information Commission, which carries out the compliance rating, has reported to the government and the public that public information disclosure in Indonesia is still far from the goal mandated by FOIA. It is evident that there are still many public agencies that do not carry out the mandate of FOIA, and SOEs make major contributions in a negative sense. This condition can be seen from the concept of people's obedience to regulatory obligations. An institution will fully fulfill its obligations if it affirms rational acceptance (rationale aanvaarding).

The degree of compliance can be determined by consideration of the benefits obtained. A Public Agency is more obedient than another because it benefits from the public information disclosure ranking. SOEs that have received top rankings in previous years always join the the following year awarding because there are benefits related to the company's brand. Moreover, from a sanction perspective, compliance with obligations is also determined whether there is a sanction for a Public Agency. Sanction or openly disputes can damage company's business reputation. If the measure is compliance with FOI Laws, then it is true what Vinogradoff (1949) wrote: "Law has to be considered nor merely from the point of view of its enforcement by the Courts; it depends unitimately on recognition. Such a recognition is a distinctly legal fact; although the enforcement of a recognized rule may depend on moral restraint, the fear of public opinion, or eventually, the fear of popular rising".

Comparison

To see the low position of SOEs compliance with information disclosure, it can be compared with the public institutions of State Universities (PTN). The comparison with PTN is based more on the relatively close number of public agencies. In 2019, there were 85 PTNs and 109 SOEs that were targeted for assessment. PTN participation rate reached 92.94 percent (79 public agencies); much higher than the participation rate of SOEs which only reached 55.96 percent.

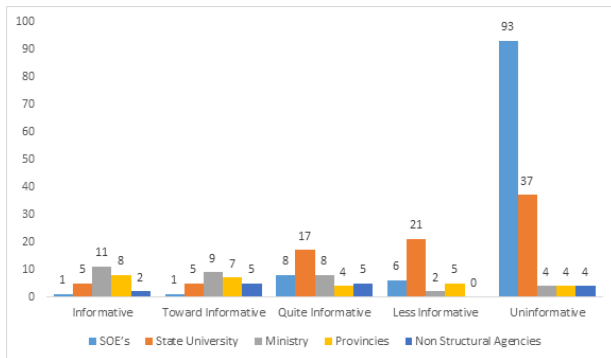
In the same period, there were 5 PTNs that were categorized as 'Informative'; followed by 'Towards Informative' (5), 'Quite Informative' (17), 'Less Informative' (21), and 'Uninformative' (37). Compare this with SOEs, which are far below in number, namely Informative (1), Toward Informative (1), Fairly Informative (8), Less Informative (6), and Uninformative (93). The compliance of SOEs in the Informative category is the same as that of political parties, but the number is far below the category of other public agencies, Non-Structural Institutions, State Institutions and Non-Departmental Government Agencies, and Provincial Governments. This comparison shows that SOEs is still inferior to other public agencies in fulfilling the obligation to disclose public information.

The following graph shows a comparison of the compliance of SOEs and other public agencies in the 2019 ranking.

This comparative study strengthens the assumption that many public agencies have not complied with and carried out their obligation to provide public information. However, the experience of SOEs shows a very striking figure. The number of "Uninformative" SOEs is nine times the number of provinces, and 23 times the number of ministerial public agencies with the same status.

What causes the level of compliance of SOEs to be lower than other public agencies is not a single factor. It could be because the closure mindset has not completely disappeared; consideration of the

Graph 3. Comparison of the Compliance of SOEs and Other Public Agencies in the 2019



benefits of rating for corporate activities; the view as a private company that is not the same as other government agencies; have conveyed transparency through the capital market so that there is no need to convey similar information to the public; and has not placed public information management as one of the priority scales.

Cases, Barriers and Opportunity

This data is a big question mark because basically transparency is part of SOEs operations. Corporate disclosure has long been viewed in many public policy discussions as “a way to reduce firms' problems. There are good reasons why disclosure can increase the value of the firm. For instance, reducing the asymmetry of information between those inside the firm and those outside can facilitate a firm's ability to issue securities and consequently power its cost of capital (Hermalin and Weisbach, 2012). Asymmetric information occurs when one party has relevant information in the legal relationship between the two parties, while the other party does not have the information.

Confidentiality or secrecy is often used by SOEs as an excuse for refusing to provide information to applicants. One example of a case is the petition by Sutarno vs the Ministry of SOEs (decision No. 066/V/KIP-PS-MA/2014. The applicant asks for a copy of the 2010-2012 Perum PPPD Articles of Association, including the Company's Budget Work Plan. SOEs stated that the information requested is confidential. Is the Company Budget Work Plan (RKAP) classified as confidential? Is the company budget of a SOEs not accessible to the public? In the end, the Central Information Commission decided the information requested was open.

The confidentiality argument is used by SOEs management in many cases of requests for SOEs agreements with third parties. In such cases, there is very little difference between protecting intellectual property and covering up potential irregularities and corruption in the agreement. Often, the reasons for confidentiality are actually not basic, and are not preceded by a consequence test and a test of the public interest (Jannah and Sipahutar, 2017).

The case citation above do not mean that SOEs

does not have exemption. Referring to Article 17 of FOIA-Indonesia, SOEs can exclude information. It is interesting to point out another example which strengthens the decision of SOEs to state that the information requested is confidential. An Indonesian citizen from Kuta Alam Banda Aceh has requested information from a state-owned company, Pertamina, in the form of a list of names of companies that purchased fuel oil (BBM) for industrial needs in Aceh Province in the 2010-2016 period and the amount purchased by each. company in the period. At first glance, the information requested by the applicant is overwhelming due to the long period of time and possibly the large number of companies.

Interestingly, this seemingly simple case has gone through a lengthy administrative process and the results have changed. Pertamina has refused to provide the requested information on the pretext of being confidential. The Petitioner has submitted a request for public information dispute resolution to the Central Information Commission for the refusal of SOEs. On May 23, 2018, the Central Information Commission decided the information requested was open information. The interpretation of whether the requested information is open or not is changed at Central Jakarta District Court. This time, the petitioner filed a cassation to the Supreme Court.

In August 2019, the Supreme Court decided to reject the appeal submitted by citizens. The judge who tried this case stated that the information requested was included in the category of exempt information, so it was confidential. The confidentiality of this information refers to the Law on Trade Secrets, propriety, and public interest. The judge was of the opinion that closing the requested information could protect a greater interest, namely healthier business competition for the interests of the industrial fuel user community (Supreme Court Decision Number 664 K/dt.Sus-KIP/2019, Safaruddin vs PT Pertamina).

In order to solve the problem of compliance with public information disclosure in SOEs, the role of the Audit Committee or the Company's Compliance Unit is actually needed. In the banking world, for example, the Compliance Director is commonly known. This committee (or under other names) is legally obliged to form company management. Its duty is "to ensure that there is a satisfactory review procedure of all information issued by SOEs".

One of the goals of the FOIA is to prevent corruption. The problem is that SOEs in Indonesia is not yet completely free from corrupt practices involving company management. Assistance by the KPK, for

Figure 1. Dispute Information Scheme



example through the Study on the Implementation of GCG in SOEs (2007) and the Study of Anti-Corruption Initiatives on SOEs (2011), did not completely eliminate the intention of corruption. Later, a SOEs was even named as a suspect in a corporate crime. This is partly influenced by corporate disclosure that has not been fully implemented. The management of SOEs has not been separated from political pressure. Jabotinsky and Siems (2018) mention the existence of political pressure 'might undermine their professional judgment and lead to suboptimal decision-making'. The involvement of politicians in managing SOEs is like a double-edged sword. On the one hand, SOEs need to get political support, especially in terms of state financing. On the other hand, the entry of many politicians into SOEs management can divert the direction of SOEs management. Indonesia has not completely separated from what MacIntyre (1990) called 'vigorous political bargaining', and instead led to the failure of SOEs privatization in the New Order era (Ma'arif, 2018; Infobank, 2019).

In fact, filling top leader positions in SOEs is not entirely based on the needs and principles of GCG. The World Bank (1995) has long been concerned about this, with the following sentence: Consequently, politicians everywhere carefully weigh any changes in state-owned enterprise policy, naturally preferring policies that benefit their constituencies and help them remain in office over policies that undermine support and may precipitate their removal.

Drastic and dramatic changes in the last few years due to technological developments affecting the business world, and actually become a good momentum and opportunity for SOEs. Companies can use the available information and data for future improvement. By quoting the views of Nonaka and Takeuchi (2019), SOEs can fill some opportunities, in national level or international level, by using information and communication technology. In other words, there are almost no obstacles for SOEs to manage and provide public information because the development of information technology has made everything easier. Evans and Wurster (2000) explained that fundamentally information and the mechanism for delivering it are the glue that holds together the structure of business. With information technology, information service officers are made easier when there is a request for information. The availability of personnel in charge of managing and providing information and funds is an inevitable condition. Why? In the framework of information disclosure, public agencies are required to appoint an PPID officer, and automatically compile their organizational structure, in order to carry out the function of managing and serving public information. The information managed by the Public Agency is relatively large, so it requires a lot of funds. The three documents containing this information will be created in the form of archives, libraries and digitization.

In the future, it seems important for SOEs to implement several compliance keys to FOIA-Indonesia. First, updating public information that is managed

and utilizing the digital era. Second, continue to maintain a consistent and simple open information policy. Third, maintain and implement confidential information security, and prevent information leaks. Fourth, a governance approach that is proactive rather than reactive.

CONCLUSION

It can be concluded that SOEs is a Public Agency that has the obligation to convey public information both to the public without having to request it. Although the source of SOEs finance is separated state assets, it is a business entity that is subject to Act Number 14 of 2008.

Based on the results of the ranking conducted by the Central Information Commission, it turns out that the participation rate of SOEs is still very low; and the number of SOEs that fall into the informative category is very minimal. The secrecy mindset still exists, and is used as an excuse for refusing to provide information to the public.

There are still many challenges faced by SOEs, especially preventing fraud and irregularities, which can actually be prevented and minimized through serious transparency. The development of information technology and the SOEs transformation program are unfortunate opportunities to be missed. Guidelines for managing information and handling information disputes are very important for every SOEs.

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