

**DISCLOSURE ON BUSINESS INFORMATION OF STATE-OWNED ENTERPRISES
(BUMN) ACCORDING TO LAW NO. 14 OF 2008 AND MASLAHAH MURSALAH**

Thesis

Presented to

Fill One Of The Requirements Used to Get The Degree Of Bachelor Of Law (S.H)

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2019

STATEMENT OF THE AUTHENTICITY

In the name of Allah (SWT),

With consciousness and responsibility towards the development of science,
the author declares that the thesis entitled:

**DISCLOSURE ON BUSINESS INFORMATION OF STATE-OWNED
ENTERPRISES (BUMN) ACCORDING TO LAW NO. 14 OF 2008 AND
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It is truly the author's original work. It does not incorporate any material previously written or published by another person, If it is proven to be another person's work, duplication, plagiarism, this thesis and my degree as the result of this action will be deemed legally invalid.

Malang, 12th of December 2019

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APPROVAL SHEET

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DISCLOSURE ON BUSINESS INFORMATION OF STATE-OWNED ENTERPRISES (BUMN) ACCORDING TO LAW NO. 14 OF 2008 AND MASLAHAH MURSALAH

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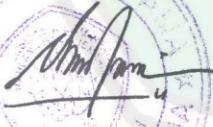
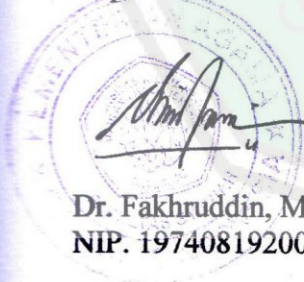
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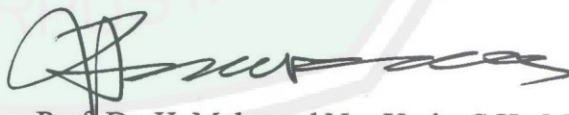
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







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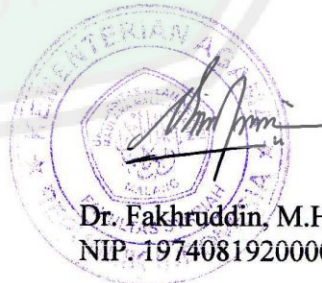
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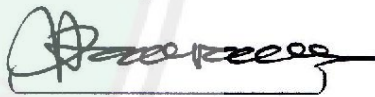
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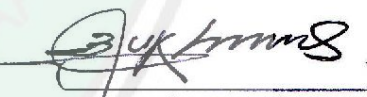
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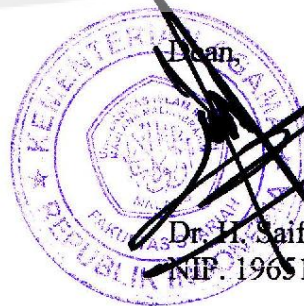
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MOTTO

فَإِذَا فَرَغْتَ فَانصَبْ وَإِلَىٰ رَبِّكَ فَارْغَبْ

“so when you have finished (your duties), then stand up (for worship) and to your
Lord direct (your) longing..”

(Al- Insyirah: 7-8)



ACKNOWLEDGEMENT

All praise due to Allah, The Cherisher and Sustainer of all the world. There is neither might nor power but with Allah The Great, The Exalted because of The Only His Grace and Guidance, this thesis entitled **“DISCLOSURE ON BUSINESS INFORMATION OF STATE-OWNED ENTERPRISES (BUMN) ACCORDING TO LAW NO. 14 OF 2008 AND MASLAHAH MURSALAH”** could be completed and also with His benevolence, love and peace. Peace be upon The Prophet Muhammad (SAW) who had brought us from darkness into the light in this life. May we be together with those who believe and receive intercession from Him in the day of judgement.

With all the support and help, discussion, guidance and direction from all parties involved during the process of completing this thesis, the authors wishes to express his utmost gratitude to the following:

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9. All of International Class Program (ICP) HBS of 2015 who always accompany and helping me, feel blessed to meet you all.

Hopefully, by imparting what has been learned during the course of study in the Faculty Sharia of State Islamic University, Maulana Malik Ibrahim Malang, it will benefit all readers and the author herself. Realizing the fact that error and weakness is impartial to being human, and that this thesis is still far from perfection, the author appreciates constructive criticism and suggestions for the improvement and betterment of this thesis.

Malang, 12th of December 2019

Author,

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TRANSLATION GUIDANCE

In this scientific opus, there is some terms or sentences that comes from Arabic language, but written in letter. The written is based on the rule as follows:¹

A. Consonant

ا	= a	ض	= dl
ب	= b	ط	= th
ت	= t	ظ	= dh
ث	= ts	ع	= ‘ (comma facing up)
ج	= j	غ	= gh
ح	= h	ف	= f
خ	= kh	ق	= q
د	= d	ك	= k
ذ	= dz	ل	= l
ر	= r	م	= m
ز	= z	ن	= n
س	= s	و	= w
ش	= sy	ه	= h
ص	= sh	ي	= y

¹Tim Fakultas Syariah. *Pedoman Penulisan Karya Ilmiah Fakultas Syariah UIN Malik Ibrahim Malang Tahun 2015* (Malang :UIN Press, 2015).73-76.

The hamzah (ء) which is usually represented by alif, when it is at the beginning of word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of word, it is represented by a comma facing upwards (“ ’ ”), a Government Regulation close to a comma (,) which replaces the “ ع ”.

B. Vocal and Diftong

In every written Arabic text in the latin form, its vowels *fathah* is written with “a”, *kasrah* with “i”, and *dolmah* with “u”, whereas elongated vowels are written such as:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = î example قيل becomes *qîla*

Elongated (u) vowel = û example دون becomes *dûna*

Specially for the pronouncing of *ya' nisbat* (in association), it cannot be represented by “I”, unless it is written as “iy” so as represented the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after *fathah* it is written as “aw” or “ay”. Look at the following examples:

Diftong (aw) = و example قول becomes *qawlun*

Diftong (ay) = ي example خير becomes *khayrun*

C. Ta' Marbutah

Ta' Marbutah is transliterated as “t” if it is in the middle of word, but if it is *Ta' Marbutah* at the end, then it is transliterated as “h”. For example: الرسالة

للمدرسة will be *al-risalat li almudarrisah*, or if it has Government Regulations to be in the middle of a phrase which constitutes *mudlaf* and *mudlaf ilayh*, then the transliteration will be using “t” which is enjoined with the previous word, for example في رحمة الله becomes *fi rahmatillah*.

D. Auxiliary Verb and *Lafadh al-Jalalah*

Auxiliary verb “al” (ال) written with lowercase form, except if it is located at the beginning of word, while “al” in *lafadh al-jalalah* which located in the middle of two words or being or become *idhafah*, it is removed from writing.

Study the following:

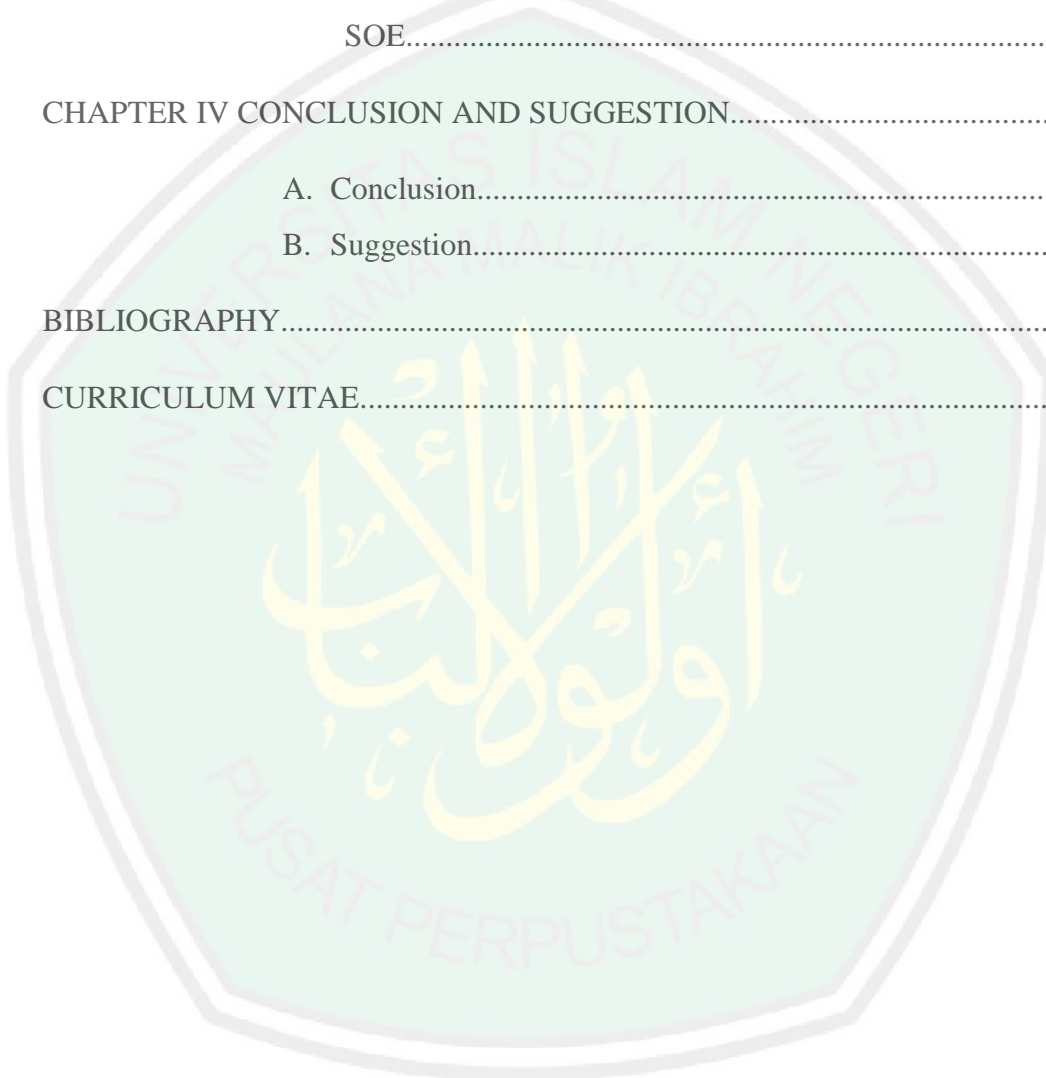
1. Al-Imâm al Bukhâriy said...
2. Al- Bukhâriy explains, in the prologue of his book...
3. *MasyâAllâhkânawamâ lam yasya” lam yakun.*
4. *Billâhi ,,azzawajalla.*

TABLE OF CONTENT

TITLE SHEET.....	i
STATEMENT OF AUNTENTICITY.....	ii
APPROVAL SHEET.....	iii
CONSULTATION SHEET.....	iv
LEGITIMATION SHEET.....	v
MOTTO.....	vi
ACKNOWLEDGMENT.....	vii
TRANSLITERATION GUIDANCE.....	x
TABLE OF CONTENT.....	xiii
TABLE.....	xv
ABSTRAK.....	xvi
ABSTRACT.....	xvii
مستخلص.....	xviii
CHAPTER I INTRODUCTION.....	1
A. Background of Research.....	1
B. Statement of Problem.....	8
C. Objective of Research.....	8
D. Significance of Research.....	8
E. Research Method.....	9
F. Previous Research.....	16
G. Structure of Discussion.....	21

CHAPTER II REVIEW OF RELATED LITERATURE.....	23
A. Concept of Public Information Disclosure.....	23
1. Principles of Public Information Disclosure.....	23
2. Objectivities of Public Information Disclosure.....	29
3. Benefits of Public Information Disclosure.....	31
4. Rights and Obligations of Information Applicants.....	32
5. Rights and Obligations of Public Agencies.....	34
6. Classifications of Public Information.....	37
7. Mechanism of Getting Information.....	47
B. Conception of Maslahah Mursalah.....	51
1. Definition of Maslahah Mursalah.....	51
2. The Kinds of Mashlahah Mursalah.....	55
3. Hujjah of Maslahah Mursalah.....	57
4. The Requirement of Maslahah Mursalah.....	57
CHAPTER III FINDING AND DISCUSSION.....	60
A. The Position of of State Own Enterprise on Public Business Information Disclosure (SOEs/BUMN) in Indonesia.....	60
1. Concept of State-Owned Enterprises (BUMN).....	67
2. Implementation of State-Owned Enterprises in Indonesia.....	67
B. Disclosure of Public Business Information Under Law No. 14 of 2008.....	77
1. Regulation of Public Bussines Information Disclosure.....	77
2. Character of Business Information by SOE.....	91
3. Obligation of SOE as Provider of Business Information to Public Under to Law No. 14 of 2008.....	92

C. Public Business Information Disclosure of State-Owned Enterprises Under Perspective of Maslahah Mursalah.....	100
1. Freedom In Islam.....	100
2. Maslahah in Public Bussiness Information Disclosure SOE.....	102
CHAPTER IV CONCLUSION AND SUGGESTION.....	108
A. Conclusion.....	108
B. Suggestion.....	110
BIBLIOGRAPHY.....	cxi
CURRICULUM VITAE.....	cxv



LIST OF TABLES

Table 1.1 Previous Research



ABSTRAK

Afrashani Salsabila Zata Mazaya, 15220110, ***Keterbukaan Informasi Bisnis Badan Usaha Milik Negara Menurut Undang-Undang No. 14 Tahun 2008 dan Mashlahah Mursalah***. Skripsi, Jurusan Hukum Bisnis Syariah, Fakultas Syari'ah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing: Prof. Dr. H. Mohamad Nur Yasin, S.H., M.Ag

Kata Kunci: Keterbukaan Informasi Publik, Informasi Bisnis, BUMN

BUMN merupakan entitas bisnis sekaligus menjadi salah satu badan publik yang diberi amanah oleh UU No. 14 Tahun 2008 untuk melaksanakan keterbukaan informasi publik. Kepentingan publik diutamakan atas akses informasi yang diperlukan dan merupakan kebutuhan esensial setiap masyarakat. Transparansi dalam keterbukaan informasi publik adalah tujuan dari *Good Corporate Governance*, yang menjamin hak memperoleh informasi bagi masyarakat untuk menghindari perilaku korupsi.

Ada tiga rumusan masalah dalam penelitian ini. *Pertama*, bagaimana kedudukan BUMN dalam keterbukaan informasi bisnis di Indonesia?. *Kedua*, bagaimana keterbukaan informasi bisnis BUMN menurut UU No. 14 Tahun 2008 tentang Keterbukaan Informasi Publik. *Ketiga*, bagaimana keterbukaan informasi bisnis BUMN perspektif Masalah Mursalah?. Tujuan penelitian ini adalah untuk mengetahui keterbukaan informasi bisnis BUMN bagi publik.

Penelitian ini merupakan penelitian hukum normatif (*library research*) dengan pendekatan perundang-undangan (*statute approach*) dan pendekatan konseptual (*conceptual approach*). Menggunakan studi kepustakaan dalam teknik pengumpulan bahan hukum. Bahan hukum penelitian terdiri dari bahan hukum primer yaitu UU Keterbukaan Informasi Publik dan peraturan lain yang relevan dengan kegiatan keterbukaan informasi publik dan bahan hukum sekunder yang meliputi bahan-bahan pustaka yang terkait.

Ada tiga temuan dalam penelitian ini. *Pertama*, kedudukan BUMN sebagai penyedia informasi bisnis menganut prinsip tata kelola perusahaan yang baik dan penyelenggaraan keterbukaan informasi publik BUMN yang disediakan secara online sesuai dengan Pasal 14 UU No. 14 tahun 2008. *Kedua*, keterbukaan informasi bisnis bagi publik dan oleh BUMN merupakan bentuk perlindungan Negara terhadap masyarakat atas hak mendapatkan informasi dan peran ganda BUMN sebagai yang sifatnya *profit oriented* dan sebagai *agent of development* dalam penyediaan informasi bisnis memiliki andil dalam transparansi nasional. *Ketiga*, Keterbukaan informasi publik memiliki kesamaan konsepsi dalam ajaran agama Islam dimana terdapat *kemashlahahan* dalam perwujudannya.

ABSTRACT

Afrashani Salsabila Zata Mazaya, 15220110, *Disclosure on Business Information of State Owned-Enterprises (BUMN) According to Law No. 14 of 2008 and Maslahah Mursalah*. Thesis, Sharia Business Law Department, Sharia Faculty, Islamic State University (UIN) Maulana Malik Ibrahim Malang, Supervisor: Prof. Dr. H. Nur Mohamad Yasin, SH, M.Ag

Key words: Public Disclosure, Business Information, SOEs

SOEs is a business entity that is also one public body was mandated by Law No. 14 of 2008 to carry out public information disclosure. The public interest takes precedence over access to the necessary information and is an essential requirement of every society. Transparency in public information disclosure is the aim of good corporate governance, which guarantees the right to obtain information for the public to avoid corruption.

There are three formulations of the problem in this study. *First*, How the position of SOEs on public business information disclosure in Indonesia ?. *Second*, how the disclosure of business information SOEs according to Law No. 14 of 2008 on Public Disclosure. *Third*, how the disclosure of business information SOEs under perspective Maslahah Mursalah?. The purpose of this study to determine the SOE business information disclosure to the public.

This study is normative legal research (library research) with the approach of legislation (statute approach) and the conceptual approach. Using the study of literature in the collection of legal materials. Legal materials research consisted of primary legal materials namely Information Law and other regulations that are relevant to the activities of public disclosure and secondary legal materials which include materials related literature.

There are three findings in this study. *First*, the position of SOEs as provider of business information disclosure adheres to the principle of good corporate governance and the implementation of public disclosure provided online SOEs following Article 14 of Law No. 14 of 2008. *Second*, the disclosure of business information for the public and by the State is a form of protection of the State against the people of the right to obtain information and the dual role of SOEs as a profit-oriented and as an agent of development in the provision of business, information has contributed to the national transparency. *Third*, public information disclosure has a common conception of the teachings of Islam where there *mashlahah* in its realization.

مستخلص

أفرشأني سلسبلا ذات مزيا ، 15220110. "الكشف عن الشركات المملوكة للدولة المعلومات التجارية بموجب القانون رقم 14 لعام 2008 و مصلحة مرسله". خطة بحت الجامى ، قسم الحكم الإقتصادي الإسلامي ، كلية الشريعة ، جامعة مولانا مالك إبراهيم مالانج. المشرفة: البروفيسور الدكتور الحاج نور محمد ياسين، الماجستير.

الكلمات الأساسية : حرية الإعلام، المعلومات التجارية، الشركات المملوكة للدولة

لشركات المملوكة للدولة هي كيان الأعمال التجارية أيضا هيئة عامة واحدة التي كلفت بموجب القانون رقم 14 لعام 2008 لتنفيذ الإفصاح عن المعلومات العامة . يأخذ المصلحة العامة الأسبقية على الحصول على المعلومات اللازمة وشرط أساسي في كل مجتمع . الشفافية في الإفصاح عن المعلومات العامة هي الهدف من الحوكمة الجيدة للشركات (GCG)، الذي يضمن حق الحصول على المعلومات للجمهور لتجنب الفساد. هناك ثلاثة صياغة المشكلة في هذه الدراسة .أولا، ما هو موقف الشركات المملوكة للدولة (BUMN) في الكشف عن المعلومات التجارية في إندونيسيا؟ ثانيا، كيف الشركات المملوكة للدولة الإفصاح عن المعلومات التجارية للجمهور، وفقا للقانون رقم 14 لعام 2008 بشأن الإعلام .ثالثا، كيف الإفصاح عن المعلومات التجارية عن وجهة نظر مصلحة مرسله الشركات المملوكة للدولة الجمهور؟ .وكان الغرض من هذه الدراسة هو تحديد الإفصاح عن المعلومات الشركات المملوكة للدولة الأعمال للجمهور.

هذه الدراسة هو البحث القانوني المعياري (البحوث المكتبية) مع اقتراب التشريعات (النهج القانوني) والنهج المفاهيمي . عن طريق دراسة الأدب في جمع هندسة المواد القانونية .المواد القانونية الأبحاث التي تتألف من المواد القانونية الأساسية وهي قانون المعلومات والأنظمة الأخرى ذات الصلة بأنشطة الكشف العلني والمواد القانونية الثانوية والتي تشمل المواد الأدبيات ذات العلاقة.

هناك ثلاثة نتائج في هذه الدراسة .أولا، يلتزم موقع الشركات المملوكة للدولة كمزود للمعلومات التجارية بمبادئ الحوكمة الجيدة للشركات وإجراء الكشف عن المعلومات العامة للشركات المملوكة للدولة على الإنترنت وفقاً للمادة 14 من القانون رقم. 14 لعام 2008 .ثانيا، الانفتاح المعلومات التجارية للجمهور والدولة هي شكل من أشكال حماية الدولة ضد شعب الحق في الحصول على المعلومات والدور المزدوج للشركات المملوكة للدولة على أنها ساهمت في الطبيعة وبصفتها وكيلا للتنمية في مجال توفير المعلومات التجارية الهادفة للربح في تحقيق الشفافية وطنية .ثالثا، والإفصاح عن المعلومات العامة لديها تصور مشترك لتعاليم الإسلام حيث هناك مصلحة في تحقيق ذلك.



CHAPTER I

INTRODUCTION

A. Background of Research

Basically, every human being requires the correct information in order to avoid distortions. Allah said in Surah Al-Hujurat verse 6: :

يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَن تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصِحُّوا
عَلَىٰ مَا فَعَلْتُمْ نَادِمِينَ

Meaning: "*O ye who believe! If a wicked person comes to you bringing a message, then check carefully lest you afflict a disaster to a people without knowing the circumstances that cause you sorry for what you did.*"²

The information is very important thing in life. Everyone will do something, whether related to anyone or any needed information. Availability

²Q.S. Al-Hujurat (49) : 6.

of information to assist in determining any decision taken. The right to information is also a human right, everyone is entitled to have.

Understanding the information in Article 1 (1) of Law No. 14 of 2008

Information on Public Information is:

Information means any description, statement, idea, and signs that contains value, meaning and message either as data, fact or their elucidation that may be seen, heard and read which is presented in various packages and formats inline with information and communication technology development electronically or non-electronically.³

The right of citizens to obtain information guaranteed by the Constitution of 1945;

"Everyone has the right to communicate and obtain information to develop personal and social environment, and the right to seek, obtain, possess, store, process and convey information by using all available channels".⁴

With issued Law No. 14 of 2008 on Public Disclosure, the permissibility of access to information for the public to exercise its right to be a legal basis which is getting stronger. Communities can use the ease of obtaining the information needed and given extensive exploration, but still with certain conditions and in accordance with the laws that regulate.

In connection with public information allowed to access the wider community, some public bodies are given the mandate to carry out the responsibility of public disclosure in the form of providing information that is necessary to be announced. Disclosure and transparency of information on the

³Article 1(1) of Law No. 14 of 2008 on Public Disclosure.

⁴Article 28F on Constitution of 1945

sector or public agency regulated in the Law of the Republic of Indonesia No. 14 of 2008 on Public Disclosure. Act implementation guidelines Public Information outlined in the Indonesian Government Regulation No. 61 of 2010 on the implementation of Law No. 14 of 2008 on Public Disclosure and Information Commission Regulation No. 1 of 2015 on Public Information Service Standards.

In the realm of business, the inclusion of SOEs as public bodies are obliged to implement the provisions of the Public Disclosure Act confirmed in article 14 of Law of the Republic of Indonesia No. 14 of 2008 on Public Disclosure: “Public Information that must be provided by the State-Owned Enterprises, Regional-Owned Enterprises and / or other business entity owned by the state...⁵”. Then the supply of information to the public by the state associated with article 2 paragraph 2 of Law No. 19 of 2003 on State-Owned Enterprises: "The activities of SOEs should be consistent with the intent and purpose and not contrary to the provisions of law, public order and / or morality.”

Since the entry into force Law No.14 of 2008 on the Public Disclosure Act, the public has not fully actively participating. Society considered not fully understand the benefits of the right to public disclosure. Three major issues that led to the birth of awareness on the need for information is an

⁵Article 14 of Law No. 14 of 2008 on Public Disclosure.

attempt to combat corruption, upholding human rights and good governance.⁶ If Public Information not optimal done indirectly inhibit the intended purpose.

With the ease of access granted, for example, SOE to provide information under Article 14 (3) "The annual report, financial statements, balance sheet income statement, and statement of corporate social responsibility which has been audited"⁷, Benefits the public can see SOE legal act transparently. Thus it is expected there will be a public trust. Conversely, if there is no public disclosure by public bodies, several cases were proclaimed state officials take action deviating namely corruption will continue to emerge.

There are some cases of corruption in The SOE environment. The first case, the bribery case of procurement of aircraft and aircraft engines from Airbus SAS and Rolls-Royce PLC on PT Garuda Indonesia Tbk.⁸ The second case, the case corruption sale of two assets of the Provincial Government of East Java in 2003, which dragged Dahlan Iskan as President Director of PT Panca Usaha Wira (PWU)⁹. Third Case, disputes between Papuan tribal chiefs with local regent because of no data transparency regarding land acquisition, which should be open and to be published. Some chiefs are

⁶Dhoho A. Sastro, *Buku Saku Mengenal Keterbukaan Informasi Publik*. (Jakarta : LBH, 2010).2.

⁷Article 14(3) of Law No. 14 of 2008 on Public Disclosure.

⁸<https://nasional.kompas.com/read/2019/08/07/18260161/eks-dirut-garuda-indonesia-dan-pengusaha-ditahan-kpk>. accessed Desember 7, 2019

⁹<https://nasional.tempo.co/read/885310/kasus-dahlan-iskan-kejati-jawa-timur-sita-duit-rp-15-miliar> accessed Desember 7, 2019

disadvantaged because they do not receive restitution of land built SOE projects.¹⁰

The position of state-owned enterprises as a provider of business information for the public is the duty of public bodies. SOE is implementing public information disclosure since the inclusion of state-owned enterprises as the organizing entity Disclosure of Public Information. SOE carry out one of its functions is to provide information supporting good government organization (*good governance*). However, in relation to a *business entity*, SOEs are expected to apply the principles of good corporate governance (GCG).

According to Pulukadang as quoted by Marghita, that the notion of good governance concerning the implementation of the government's power in terms decision making and in carrying out its functions as a whole, and complete as a unity of action-focused and organized, whether it includes economics, politics, and administration.¹¹ According to Kurniawan the purpose of *Good Governance* is realize solid-state governance and responsible, as well as the efficiency and effectiveness of safeguards in the

¹⁰<https://news.detik.com/berita/d-1605308/dari-kip-kasus-korupsi-itu-terbongkar> accessed May 28, 2019.

¹¹A Margitha. *Pengaruh Penerapan Prinsip-Prinsip Good Governance Terhadap Kualitas Pelayanan Publik Pada Dinas Penanaman Modal Dan Pelayanan Terpadu Satu Pintu Kota Palembang*, Undergraduate Thesis(Palembang : Politeknik Negeri Sriwijaya , 2017), 2.

form of interaction that are constructive synergy that exists between the domain of the state, private, and community.¹²

In line with the government to promote the principles of good governance, the state in carrying out its duties applying the principles of sound corporate governance or good corporate governance. Muh Arief Effendi¹³ concluded GCG is a set of systems that regulate and control the company to create value-added for stakeholders of the company. So the purpose of the GCG may encourage the formation of management work patterns Clean, Transparent and Professional (CTP). SOEs that GCG optimally and consistently in the company will attract domestic and foreign investors. It is very important for the company that will expand its business, such as investing in new or expansion projects.

Based on the above description can be stated that there is a norm-related information, but not complete (*Uncompletely law*), Some rules have been set related to public disclosure, yet not fully explained on the following details in the case above.

The process of doing a transaction between the parties, particularly the needs of trust. Trust can be built with maximum information transparency. The development of the business world is not limited to consumptive things but also expanded on the nature of the investment. Parties that embodies the

¹²Agung Kurniawan, *Transformasi Pelayanan Publik*, (Yogyakarta: Pembaharuan, 2005).12.

¹³Muh. Arief Effendi, *The power of Good Corporate Governance* (Jakarta : Salemba Empat, 2009),2.

investment is the publicly-traded company with listing on the stock exchange, one of which SOEs. Prospective investors who wish to invest in a company are supposed to find out information related to the company. So that business information is very influential on the sale value of the company to attract investors.

Information or a description of a business to the public can be classified as information provided by public bodies to be announced, confidential and/ or excluded from society. The classification of any information may be limit the right to information for the public to obtain business information and the obligation for providers of business information that public bodies (SOE).

Disclosure of public information by the SOE studied of Islamic law determination method known as *maslahah mursalah*. *Maslahah mursalah* in Arabic is the deeds that led to the goodness of man. In the common meaning is every anything that benefits humans, both in terms of interest or make a profit or pleasure; or in the sense of rejecting *mudharat* or damage¹⁴. *Mursalah maslahah* method is preferred for a review of Islamic writers in looking at regulations on Disclosure of Information by the state of business in particular in Law No.14 of 2008 on Public Disclosure. Seen from this rule supports the right of people to obtain freedom of access to information needed.

¹⁴ Amir Syarifuddin, *Ushul Fiqh Jilid 2*, (Jakarta: Bina Ilmu, 2010). 368.

B. Statement of Problem

Based on the background that has been described above, the formulation of the problem:

1. How the position of SOEs on public business information disclosure in Indonesia?
2. How the disclosure of business information SOEs according to Law No. 14 of 2008 on Public Disclosure?
3. How the disclosure business information SOEs under perspective *Maslahah Mursalah*?

C. Objective of Research

1. To find the position of SOEs on public business information disclosure in Indonesia.
2. To know the disclosure business information SOEs according to Law No. 14 of 2008 on Public Disclosure.
3. To know the disclosure of business information SOEs under perspective *Maslahah mursalah*.

D. Significance of Research

The benefits expected from this research;

1. Theoretical Benefits

The results of this study are expected to contribute ideas for the development of the science of *sharia* and law, particularly in the field of

Islamic Business Law, regarding the public disclosure of SOEs according to Law No. 14 of 2008 and *Maslahah Mursalah*.

2. Practical Benefits

- a. The results of this study are expected to be as a basis for further research. Then, to illustrate how the Public Disclosure by the State according to Law No. 14 of 2008 and *Maslahah mursalah*.
- b. To provide knowledge about the Public Disclosure by the state according to Law No. 14 of 2008 and *Maslahah mursalah*.

E. Research Method

Legal research is a scientific activity, which is based on methods, systematics and certain thoughts, which aims to study one or more symptoms of a particular law, by way of analyzing it.¹⁵

According to Peter Mahmud Marzuki legal research is activity know-how, not in the form of know-about. Activity in the research know-how is used to solve the legal issues at hand. In its implementation requires the ability to identify legal issues, legal reasoning and then provide solutions to these problems¹⁶. To achieve the maximum results of this research takes appropriate research methods that can be accounted for. So Methods used are:

¹⁵Soekanto, Soerjono. *Pengantar Penelitian Hukum* (Jakarta : UI Press,1986) 43.

¹⁶Peter Mahmud Marzuki. *Penelitian Hukum : Edisi Revisi*(Jakarta : Kencana Prenada Media Group). 60.

1. Types of Research

Referring to the background and the formulation of the problem are taken, this research categorized as normative legal research. Normative legal research is legal research literature. From the corner of his own research purposes, normative legal research includes the study of the principles of law, the legal systematics, phase synchronization of law, legal history and comparative law.¹⁷ This study discusses disclosure of business information for the public, according to Law No. 14 of 2008 on Public Disclosure, SOEs legal position as a provider of business information to the public, according to Law No. 14 of 2008 on Public Information Disclosure (KIP), State-Owned Enterprises (BUMN) and *Maslahah mursalah* perspective.

2. Research Approach

This study uses *Statute approach* and *Conceptual approach*. Statute approach that examines all the laws and regulations relating to the legal issues that are being studied¹⁸ namely Law No. 14 of 2008 on Public Disclosure, Law No.19 of 2003 on State-Owned Enterprises.

The conceptual approach examines the concept that departs from the views and doctrines that developed in the science of law and religion¹⁹

¹⁷Soekanto, Soerjono. *Pengantar Penelitian Hukum*.(Jakarta : UI Press,1986)..51.

¹⁸Tim Fakultas Syariah. *Pedoman Penulisan Karya Ilmiah Fakultas Syariah UIN Malik Ibrahim Malang Tahun 2015* (Malang :UIN Press, 2015). 20.

¹⁹Tim Fakultas Syariah. *Pedoman Penulisan Karya Ilmiah ...* (Malang :UIN Press, 2015). 21.

namely the concept of disclosure of business information to the public by the state and the concept of *Maslahah*.

3. Legal materials

In normative research, data that can be used is the data obtained from the information that is already written in the form of documents. This term is often referred to as legal material. Distinguished legal materials of three types, namely primary legal materials secondary law and tertiary legal materials. Primary legal materials are all materials related laws related to legislation and state public disclosure. Secondary legal materials in the form of supporting books and literature relating to the disclosure of public information, business information for the public, the state can be found on the website, previous studies, journals, etc.

a) Primary legal materials

The primary legal materials are;

1. Law No. 14 of 2008 on Public Information Disclosure,
2. Law No. 19 of 2003 on State-Owned Enterprises,
3. Law No. 40 of 2007 on Limited Liability Company,
4. Government Regulation No. 61 of 2010 on Public Information,
5. Government Regulation No. 13 of 1998 on Public Company
(Perum)

6. Government Regulations No. 44 of 2005 concerning Procedure and Administration of Venture Capital Investments In SOEs and Limited Liability,
7. Government Regulations No. 20 of 2015 on Public Accounting Practice,
8. SOE Minister Regulation Number. PER-02/MBU/ 2009 on income of directors, the board of directors and the supervisory board of state-owned enterprises established by the AGM/ Minister,
9. SOE Minister Regulation No. PER-01/MBU/2011 on Implementation of Good Corporate Governance (GCG).
10. SOE Minister Regulation No. PER-08/MBU/2014 on Guidelines for Management of information and documentation within the Ministry of Enterprise,
11. Information Commission Regulation No. 1 of 2015 on Public Information Service Standards,
12. Law No. 13 of 2006 on the Protection of Witnesses and Victims
13. Law No. 24 of 2013 on Population Administration,
14. Decree of the Minister of State 117/M-BUMN/2002 on the Implementation of Good Corporate Governance of State-Owned Enterprises,
15. Bapepam Regulation XK6 on Obligation to Submit Annual Report for Issuers and Public Companies.

b) Secondary Legal Materials

Secondary legal materials Books of this research is supporting research and related literature.

4. Collection of Method Legal Materials

Because of this type of research is normative legal research, the researchers chose to use the documentation for the study of documents or legal material collection tool. Study documentation is the first step in any legal research. The study documents for legal research includes the study of legal materials consisting of primary legal materials, secondary law, and tertiary legal materials²⁰ Documentation method is to find data about things or variables in the form of notes, transcripts, books, newspapers, magazines, and so on.²¹

5. Legal Materials Analysis Method

The analysis will be used in this normative research using legal reasoning logical, systematic, coherent, and abstract the legislation relating to public disclosure. The tools used in the analysis is the interpretation of the law.

- a. The first interpretation of the principal, ie understanding the law by seeking suitability of existing legal principles.

²⁰Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2004), 68.

²¹Suharismi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek* (Jakarta:PT. Rineka Cipta, 2002), 206.

- b. Systematic interpretation of interpreting the Act as a part of the overall legislation by linking between articles in the law or with the other legislation or read the explanation so understood his point.
- c. Grammatical interpretation, which captures the meaning of the legislation is based on the sound of the word.²²

Data analysis procedures essentially correspond to the type of data or materials on the law and the approach he used, then in analyzing the legal material can not escape from the interpretation known in the science of law. Then, in a legal matter management steps being taken is Editing, Classifying, Verifying, Analyzing, Concluding²³, So, in this study using the following materials processing law,

- a) Editing

Inspection data is done by examining the records or information derived from the data library to determine whether the records or information that is good enough or not and can be prepared for subsequent processes.

- b) Classifying

Furthermore, all data, comments the researcher himself, and documents relating to reading and analyzed (classified) deeply.

²²Mohamad Nur Yasin, *Politik Hukum Ekonomi Syariah di Indonesia* (Malang: UIN Press, 2018).6.

²³Tim Fakultas Syariah. *Pedoman Penulisan Karya Ilmiah Fakultas Syariah UIN Malik Ibrahim Malang Tahun 2015* (Malang :UIN Press, 2015). 22.

c) Verifying

In this stage, to obtain data and information from the data library crossing-check again to be accurate and valid so that it can be recognized by the reader.

d) Analyzing

The next stage is the analysis of the data to obtain the answer, the conclusions on these results. Data analysis is the process of preparing the data so that the data can be interpreted.²⁴

e) Concluding

Conclusions creation phase is the last stage after this has done. Analysis is a conclusion of a writing process that produces an answer to the questions that have been described to be a generalization background section.

In this study also used *mursalah masalah* analysis. *Maslahah mursalah* is Problem determination method is a method of determination of the law developed by scholars of *usul fiqh* which there is no argument in mind, describing or proposition cancel it, but according purpose of mind.

²⁴ Ahmad Dadang, *Metode Penelitian Agama* (Bandung: CV Pustakasetia, 2000), 102.

F. Previous Research

In order to support this study, previous research is needed to complete the related discourse. Previous studies with regard to public disclosure, namely:

1. Undergraduate Thesis written by Rio Siddik Maulana, Economic Law University of North Sumatra, 2018, *Kajian Hukum Transparansi Informasi Perbankan Di Indonesia (Studi pada PT. Bank BTN Persero Kantor Kas Utama Di Medan)*

The results showed that the principle of transparency in the banking information that is intended to implement the Good Corporate Governance (GCG) at Bank BTN refers to Law No. 10 of 1998 jo. Law No. 7 of 1992 has not been fully implemented. Barriers that occur in applying the principle of transparency is a conflict of interest from several parties. Of customers that although it has opened access to information on the website, for our customers to lower-middle can not be denied the information is not delivered optimally. Later in the human resources are employees of Bank BTN allows for keeping employees who do not know the work of operational standards (SOP) that was created by Bank BTN although has conducted various training on the principles of Good Corporate Governance. Then competition with competitor products and services are common and can be published to the public, but the mechanism of its implementation is the secret that can not be made

public. The equation in this study was discussed in running SOE information disclosure. SOE researchers examined differences in general.

2. Undergraduate Thesis written by Vladira, Administrative Law Gadjah Mada University, 2016, *Implementasi UU No. 14 Tahun 2008 tentang Keterbukaan Informasi Publik untuk pemenuhan Hak Masyarakat atas Informasi Publik Pada Dinas Perizinan Kota Yogyakarta.*

The results showed that: First, application of Law No. 14 of 2008 on Public Information at the Licensing Agency of Yogyakarta has been very good, with accomplished all the rules in Freedom of Information Law, but there are obstacles (some rules that can not be practiced in the field) in the form of lack of inclusion of the budget department of licensing page of the site Licensing Agency of Yogyakarta, then the lack of supporting facilities in Yogyakarta Licensing Office. Second, the difficulties that occur in the application of Law No. 14 of 2008 on Public Information that is the difference in the perception of information from employees to the applicant, misunderstandings about the licensing procedures carried out, etc. *Third*, efforts made by the Department of licensing in the face of difficulties that occur in the application of Law No. 14 of 2008 on Public Information that align the viewpoint of civil servants and applicants for licenses in several ways. The equation in this study was to discuss public body in carrying out the openness of

information. The difference researchers examined public bodies in the form of state enterprises.

3. Undergraduate Thesis written by oleh Fahri Suryanto, Law , State of Semarang University, 2013, *Pelayanan dan Mekanisme Informasi Publik (Studi Di Badan Pertanahan Nasional Provinsi Jawa Tengah Dalam Reformasi Birokrasi Indonesia)*

The results showed that: *first*, public information services in the BPN is a form of guarantee fulfillment of the rights of society as mandated by Article 28 paragraph 1 of the F and J 1945 but the public information service has been based on more specific rules on Public Information. *Second*, the mechanism on public information especially about Locket Land Services is set up by BPN Head Regulation No. 3 of 2010, but in practice is still not functioning as the direct manager of data and information requested. This is caused by the lack of a PPID (Information and Documentation Management Officer), which has been required in the Freedom of Information Law. The equation in this study was to discuss public body in carrying out the openness of information.

4. Undergraduate Thesis written by Asep Sholihin, Sharia and Law Syarif Hidayatullah State Islamic University Jakarta,2011, *Kebebasan Informasi Menurut Undang-Undang Nomor 14 Tahun 2008 Tentang Keterbukaan Informasi Publik dalam Perspektif Hukum Islam.*

The results showed that: *First*, public disclosure to be meaningful when the existence of the Public Information Committee formed later can perform the duties and authority to create transparency of governance in particular regions. Then the next task is to fight local budget management information disclosure by public officials at the provincial and district/ city (executive and legislative). *Second*, the conception of freedom in Islam is for commanding the good and forbidding the badness. Freedom of information in the Islamic state structure can be seen from the duties and functions of an imam or caliph. Freedom of information is the responsibility of a priest/ public officials to maintain, manage any information that must be provided and published and confidential or exempt information in accordance with Law No. 14 of 2008 on Public Information. The equation in this study was to discuss public disclosure. The difference researchers examined public disclosure of public bodies in the form of state-owned enterprises in *masalah mursalah* perspective.

Table 1.1

Similarities and Differences with Previous Research

No	Name/Univ/ Year	Title	Difference	Similarity
1.	Rio Siddik Maulana/ Ekonomic Law Univ. of North Sumatera/ 2018	Kajian Hukum Transparansi Informasi Perbankan Di Indonesia (Studi pada PT. Bank BTN Persero Kantor Kas Utama Di Medan)	Focusing research on BTN while the researcher examined the SOEs in general and the kind of empirical legal research	Discussing the disclosure of information SOE in running.
2.	Vladira/ Administrasion State Law of Gadjah Mada Univ./ 2016	Implementasi UU No. 14 Tahun 2008 tentang Keterbukaan Informasi Publik untuk pemenuhan Hak Masyarakat Tas Informasi Publik Pada Dinas Perizinan Kota Yogyakarta	Focusing research on Yogyakarta Licensing Office while the researcher examined the general state enterprises and the kind of empirical legal research	Discussing the public body in the form of state-owned enterprises in implementing information disclosure.
3.	Fahri Suryanto/ Law of State Univ. Semarang/ 2013	Pelayanan dan Mekanisme Informasi Publik (Studi Di Badan Pertanahan Nasional Provinsi Jawa Tengah Dalam Reformasi Birokrasi Indonesia)	Focusing research on the National Land Agency while the researcher examined the general state enterprises and the kind of empirical legal research	Discussing the public body in the form of state-owned enterprises in implementing information disclosure.
4.	Asep Sholihin/ Sharia and Law of Negeri Syarif Hidayatullah State Islamic Univ. Jakarta/ 2011	Kebebasan Informasi Menurut UU No. 14 Tahun 2008 Tentang Keterbukaan Informasi Publik dalam Perspektif Hukum Islam	Disclosure of public information in the perspective of Islamic law while researcher masalah mursalah and normative law research	The concept of disclosure and freedom of information are described in terms of Islamic law aimed at <i>amar ma'ruf nahi munkar</i> .

Based on some research in advance above can be observed there are similarities and differences to the research conducted by the author. Equations with several previous studies that lies in the material objects which examines the openness of Public Information. Research conducted by Rio Siddik Maulana, Vladira and Fahri Suryanto to the implementation of public disclosure in their respective public bodies they studied. In the focus of the researchers themselves are public information disclosure by SOEs. Then in research and Asep Sholihin who use the perspective of Islamic law in general, the focus of this research is to use a more specific Islamic law is mashlahah mursalah.

G. Stucture of Discussion

To get an idea of the content of the overall study author describes globally each chapter includes several sub-chapters include:

CHAPTER I : INTRODUCTION

In the introductory chapter the author describes the background of the problem, statement of the problem, research objectives, significance of research, research methods, previous research and discussion structure of research.

CHAPTER II : REVIEW OF RELATED LITRATURE

This chapter consisting of two concept related to the discussion of the study. Conceptual foundation presented in the form of

public disclosure conception and conception of Masalah mursalah.

CHAPTER III: FINDINGS AND DISCUSSION

This chapter discusses the position of State-Owned Enterprises on Business Information Disclosure in Indonesia, SOE Business Information Disclosure under perspective to Law No. 14 of 2008 on Public Information and SOE Business Information Disclosure under perspective Masalah mursalah.

CHAPTER IV: CONCLUSIONS AND SUGGESTIONS

Chapters cover the final chapter of the study. This chapter contains two points that the conclusions and suggestions. *First*, the conclusion contains brief answers to the formulation of the problem set. *Second*, unbiased advice about the proposal or advice to taste to the parties related to the research theme.

References : It contains literature which is a reference in the scientific work of this study.

CHAPTER II

REVIEW OF RELATED LITERATURE

Chapter II contains exposure to related concepts that are the next chapter references. There are two concepts outlined. *First*, the conception of public information disclosure. *Second*, the conception of *Mashlahah Mursalah*.

A. Conception of Public Information Disclosure

1. Principles of Public Information Disclosure

Draft Law on Public Disclosure, hereinafter referred to Law No. 14 of 2008 on Public Information authorized the President on April 30, 2008. However, in practice Public Information Disclosure is not directly applicable, it took two years from the date of promulgation. Law on Public Disclosure consists of 64 Articles and 14 Chapters. Law on Public Disclosure in the considerations expressly and explicitly right to information is a human right and the disclosure of information

is an essential feature of democracy. Disclosure of information becomes a means of optimizing public supervision.²⁵

Understanding the information in the Dictionary of the Indonesian (*KBBI*) is lighting; notifications, news; meaning that support the overall mandate of the visible parts of the mandate that section.²⁶

Understanding the information in Article 1 (1) of Law No. 14 of 2008 Information on Public Information Disclosure is:

Information means any description, statement, idea, and signs that contains value, meaning and message either as data, fact or their elucidation that may be seen, heard and read which is presented in various packages and formats inline with information and communication technology development electronically or non-electronically.²⁷

Understanding the above explained that the elements of information may be classified form the three parameters, namely: the shape and nature of the information content, how to get it and preparations.

In terms of form, it shows that the information is not in the form of a list of entries or the file alone, but the views of the nature of the information, in the form of information, ideas, or statements that the substance containing the value of the meaning and the message either

²⁵R. Muhammad Mihradi. *Kebebasan Informasi Publik Versus Rahasia Negara*, (Bogor : Ghalia Indonesia, 2011), 115.

²⁶W.J.S Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Jakarta : Balai Pustaka, 1982), 145.

²⁷Article 1(1) of Law No. 14 of 2008 on Public Disclosure.

fact or explanation. In addition to the form and content of the information, the object information such as how to get it, that is heard, seen or noticed, the preparations or format is biased in the form of data and information in electronic form or nonelectronic.²⁸ Then the division associated with the target areas or the quality of the substance of the information is grouped into two major groups, namely public information and private or personal information

According Suryanto (in Ade Suhendar) public information implies data is a historical record that is recorded and archived without intent and was immediately taken back to decision-making or data that has been placed in the context of a more meaningful and useful communicated to the recipient to be used in decision-making.²⁹

Definition of public information contained in the Public Disclosure Act are:

Public Information is information generated, stored, managed, sent, or received by a public body relating to organizing and administering the state and or organizer and organizing other public bodies in accordance with this Act as well as other information relating to the public interest.³⁰

Based on the above understanding can be concluded to be one piece of information in a country, where the government or

²⁸Yos Johan Utama, *Hukum Administrasi Negara: Buku Materi Pokok Modul 1- 9*, Cet. 8, Ed. 2, (Tangerang: Universitas Terbuka, 2018), 7.2.

²⁹Hereyanto, "Analisis Capaian Keterbukaan Informasi Publik Pada Pemerintah Kota Banjarmasin" *Meta Communication : Journal Of Communication Studies*, (September, 2007), 40.

³⁰Article 1(2) of Law No. 14 of 2008 on Public Disclosure.

public agency may inform an information which can be either a decision or public policy.

It is what distinguishes the type of information provided and/ or other information that is the subject as a provider of related information is managed by a public entity. described in Law No. 14 of 2008 on Public Disclosure:

Public agencies are public bodies are the executive, legislative, judicial, and other body functions and their main tasks associated with the administration of the state, partly or entirely funded from the Budget of the State and/ or the Budget Revenue and Expenditure, or non-governmental organizations along most or all of the funds sourced from the State Budget and/ or Budget Revenue and Expenditure, community contributions, and/ or abroad.³¹

Based on the explanation of the quotation public bodies can be concluded that public bodies covering all types of bodies of power, both the State and private institutions, with the fulcrum of the main determinants of a public body over the side of funding (sources of funds). None or not specified how large percent of public funding had been spent on (a role in financing) by the government so that an entity can be classified as a public body. So no matter how big a role the help of funding by the

³¹Article 1(3) of Law No. 14 of 2008 on Public Disclosure.

government to an institution or entity can already be classified as a public body.³²

Definition of a public body who base side of the State financial role in it in line with the principles used in the financial law of the State. In the law of the State finances, particularly in explanation of Article 2 and 3 of Law No. 31 of 1999 on Corruption Eradication (now Act No. 20 of 2001 on the Eradication of Corruption (*TIPIKOR*) declare as follows:

Is all the wealth of the State in any form, separated or not separated, including all parts of the State assets and all rights and obligations arising

- a) Being in control, management of, and accountability for state officials, both at the central and regional levels.
- b) Being in the procurement, maintenance, and accountability of state-owned enterprises / regionally owned enterprises, foundations, legal entities and companies that include the State capital or companies that include third-party capital under the agreement with the State.

Explicitly in article 2, paragraph 2 of Law No. 20 of 2001 states that state-owned enterprises or enterprises receive proceeds from the State, following the understanding that the State assets referred in article 1 of Law No. 19 of 2003 on SOE: State-separated wealth is the wealth of the country came from the State Budget (APBN) to be used as investment of the

³²Yos Johan Utama, *Hukum Administrasi Negara: Buku Materi Pokok Modul 1- 9*, Cet. 8, Ed. 2, (Tangerang: Universitas Terbuka, 2018), 7.4.

Limited and *Perum* as well as a limited liability company or other.

According to Article 2 on Public Information Disclosure Law contains a principle in public disclosure, namely:

First, Open which can be accessed by all users of public information. Basically, every piece of information is open and can be accessed unless restricted by the Act (Maximum Access Limited Exemption).

Second, a rigorous and is limited to information that is excluded. Freedom of access but excluded with bounded by the Act or in other words *Maximum Access Limited Exemption* (MALE). This principle is realized through some formulations include:

1. Enforcement of exclusion should be based on the precautionary principle by using a test method for the consequences (consequential harm test) and test weighing the public interest of the greatest (balancing public interest rest).
2. Enabling the confidentiality status of the information has a time limit (not permanent).
3. The scope of the public agency providers unlimited access to information on state institutions (state institutions), but also institutions outside the country who obtain and use the

state budget (related to the actualization of the principle of public accountability).

Third, can be obtained quickly, timely, low cost and simple way or procedure. There should be clear procedures regarding the procedure of obtaining information so that the principle of public disclosure can be realized. Public information disclosure set time limit is needed most, but not regulate the matter of cost³³. Punctuality is the fulfillment of the appropriate information prescribed time limit. A simple way is the information requested can be accessed easily in terms of procedure and easy to understand. Low costs are proportionately the imposition of fees following applicable generally.

Fourth, confidential by law, decency and common interests to public information are exempt. It was based on the testing of the consequences that arise if given to the public. The larger interests that take precedence.³⁴

2. Objectivities of Public Information Disclosure

The number of cases of abuses by the authorities who have engaged in corruption is to create transparency in the administration of the state. This legalization of Law No. 14 of 2008 on Public

³³Article 21 of Law No. 14 of 2008 on Public Disclosure.

³⁴Dhoho A. Sastro, dkk. "Buku Saku Mengenal Undang-Undang Keterbukaan Informasi Publik", (Jakarta : Lembaga Bantuan Hukum Masyarakat, 2010), 4.

Disclosure by the Parliament on 3th April of 2008. Article 3 of Law on Public Disclosure stated objectives as follows;³⁵

- a) guarantee citizens' right to know the plan of public policy, public policy programs, and public decision-making processes, as well as the reason for making a public decision;
- b) encouraging community participation in public policy-making process;
- c) increase active role in community and public policy making good management of public bodies;
- d) realize good governance, namely transparent, effective and efficient, accountable and accountable;
- e) to know the reasons of public policy that affects the lives of many people;
- f) developing science and intellectual life of the nation; and / or
- g) improve management and information services within the Public Agency for generating quality information service.

Governments are responsible for providing public services and carry out the functions required under existing regulations for the organization of any level government is expected to appropriately can identify problems, set the agenda and direction, and the right strategy. Furthermore, the government must be able to quantify its promises to the people and measure all the steps taken begin monitoring and evaluation of the performance to be input restoration development policies have not provided optimum results in implementation. It is the demands of social society, which matured in democracy, so that

³⁵Sirajudin, dkk, *Hukum Pelayan Publik Berbasis Partisipasi dan Keterbukaan Informasi* (Malang: Setara Press, 2012).102.

accountability requires transparency on the use of the burden of taxes they pay to the government.³⁶

The progress of the nation's welfare will not be reached consistently without accountability and transparency in the implementation of government in providing quality public services. Government or organization that is transparent and accountable to its performance will earn the trust and support of the communities it serves in total in its function to build accountability through existing development performance reporting transparently to the public needs to be done by governments who want to gain trust or the trust of its people. Only the government assessed impartially in the public interest will be trusted and supported by the community to collectively achieve the success of each program and its activities.³⁷

3. Benefits of Public Information Disclosure³⁸

Public Disclosure Law in relation to a positive impact on governance, which is composed of several benefits:

- a) Reducing the level of corruption, because the higher the public's access to the financial statements, the lower the level of corruption, and vice versa ;.

³⁶Penny Kusumastuti, *Membumikan Transparansi Dan Akuntabilitas Kinerja Sektor Publik : Tantangan Berdemokrasi Ke Depan*. (Jakarta: Grasindo, 2014). 2.

³⁷Penny Kusumastuti, *Membumikan Transparansi...* (Jakarta: Grasindo, 2014). 2.

³⁸Nunuk Febriananingsih, "Keterbukaan Informasi Publik dalam Pemerintahan Terbuka Menuju Pemerintahan yang Baik", *Jurnal Rechtvinding*, Vol 1 (Januari-April, 2012), 146.

- b) Obtain early indication mal-practice administration and corruption, and corruption, the efficiency of the budget.
- c) Opening up public participation.
- d) For public bodies, get feedback from the public about the performance of public bodies.
- e) For the community, receive legal guarantee of the right to access public information and to avoid abuse of state apparatus.

4. Rights and Obligations of Public Information Applicant

The right to information is a human right. As mentioned in Article 19 of the Universal Declaration of Human Rights:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and Regardless of frontiers.

Other than as mentioned in the Universal Declaration of Human Rights, guaranteeing the right to information was also confirmed in the Constitution of the Republic of Indonesia of 1945, contained in Article 28 as follows:

"Everyone has the right to communicate and obtain information to develop personal and social environment, and the right to seek, obtain, possess, store, process and convey information by using all available channels".

Rights and obligations of the applicant and the public need information mentioned in Article 4-5 on Public Disclosure Act . Article 4 insists on the right of the alicant information as follows: *first*, everyone is

entitled to obtain public information in accordance with the provisions of this Act. *Second*, the applicant has the right to see and know the public information. *Third*, attend public meetings that are open to obtain public information. *Fourth*, get a copy of public information through the application as per the Act. *Fifth*, according to disseminate public information legislation. *Sixth*, the applicant may request the public information public information with the reasons of the request. *Seventh*, the applicant challenged the information that public information can be filed to the court.

Based on the above explanation that the use of the right to public information as set out in the Universal Declaration of Human Rights and the Constitution of the Republic of Indonesia of 1945, these rights are not absolute and could be ruled out its use if it relates to the larger interests or rights of others. In addition to the greater public interest and interests of the other party, each party who begs a public information is also subject to several obligations attached to it.³⁹

Obligations of the user information in article 5 explained that users of public information required to use the information as appropriate or as the original purpose of the information request. Then the source

³⁹Yos Johan Utama, *Hukum Administrasi Negara: Buku Materi Pokok Modul 1- 9*, Cet. 8, Ed. 2, (Tangerang: Universitas Terbuka, 2018), 7.8.

from which the obligation to include public information, either for personal benefit or the publication in accordance with regulations.

5. Rights and Obligations of Public Bodies

To ensure the use of the information filed by the applicant information, public bodies have the right to protect that information. Public bodies have the right to refuse to provide information on the condition does excluded laws as the information can not or are not allowed to be accessed by outside parties or the public.⁴⁰

In public information there is some information that can be maintained in confidence by the public body, as it can be interpreted that a public body may refuse to disclose information to an applicant who wants. No other information needs to be kept confidential on the grounds

- a) Information that could endanger the State
- b) Information relating to the protection of businesses from unfair competition
- c) Information relating to personal rights
- d) Information relating to the rights of private
- e) Information relating to professional secrecy, and
- f) Public information requested has not been controlled or documented.⁴¹

⁴⁰Article 6 of Law No. 14 of 2008 on Public Disclosure.

⁴¹Dhoho A. Sastro, dkk. "Buku Saku Mengenal Undang-Undang Keterbukaan Informasi Publik", (Jakarta : Lembaga Bantuan Hukum Masyarakat, 2010), 27.

Rights of public bodies to refuse access to information which excluded in the legislation to the applicant, it is a public body must first test the consequences of information. Public body shall conduct a test consequences for any information it manages and in terms of the consequences based on the test results is indeed perceived their greater needs or interests that require the closure of that information so that the public bodies eligible to open access to information from the public.⁴²

However, if the test the consequences of showing the absence of the dangers posed and the interests of open larger and has conducted a study of the political considerations, economic, social, cultural, or defense and security of the State, there is no reason for the public body to close the access information from the public , Related topics must be opened by a public entity.

The obligation of public bodies are obliged to provide in terms of issuing public information under its authority beyond the information that is excluded. Public bodies are also required to provide accurate information, correct and not misleading. As a continuation of the Public Agency obligations to build and develop information and documentation systems for managing public information properly and efficiently to be

⁴²Yos Johan Utama, *Hukum Administrasi Negara: Buku Materi Pokok Modul 1- 9*, Cet. 8, Ed. 2, (Tangerang: Universitas Terbuka, 2018), 7.15.

easily accessible.⁴³ SOE has established an information system in the Ministry of SOEs by Ministry Regulation SOE No. PER -08/MBU/2014 on Guidelines for Management of information and documentation in the Environment Ministry of SOEs. The obligation of public bodies relating to archives and documentation of public information held by the legislation.⁴⁴

Every public body shall announce the Year of information services which include: the number of information requests received, the time required public bodies to meet any request for information, the number of granting and denial of requests for information along with reasons.⁴⁵ Public bodies are required to make a judgment in writing of any measures taken as the fulfillment of the right of every applicant political considerations of public information in the form of economic, social, cultural, defense and security of the State. Public bodies can also utilize the facilities in the form of electronic media and nonelectronic.

To realize the service fast, accurate and simple, a public body appointed Manager of Information and Documentation and in performing his duties assisted by functional officials.⁴⁶

⁴³ Article 7 of Law No. 14 of 2008 on Public Disclosure.

⁴⁴ Article 8 of Law No. 14 of 2008 on Public Disclosure.

⁴⁵ Article 12 of Law No. 14 of 2008 on Public Disclosure.

⁴⁶ Article 13 of Law No. 14 of 2008 on Public Disclosure.

6. Classification of Public Information.

A. The information is public

The information that is public is the information generated, stored, managed, delivered and/ or received by a public body relating to organizing and administering the state and or organizer and organizing other public bodies, in accordance with this law, and other information relating to the public interest, as represented in article 2 of Law No. 14 of 2008 on Public Disclosure.

Grouping information is public by the subject of the information in accordance with the basic tasks, functions and activities of each business unit. Grouping information is public includes:

- a. Public information that must be provided and published regularly, including:
 - 1) Information related to the Ministry of Communications.
 - 2) Information on the activities and performance of the Ministry of Communications.
 - 3) Information on the financial statements.
 - 4) Additional information is set out in the legislation.
 - 5) More detailed information on request of the applicant.
- b. Public information collection point 11 to 5 above made by each Directorate/ Agency in coordination with the bureau chiefs who have the authority corresponding duties and functions in the

management of information that must be provided and published periodically as mentioned above.

- c. Public information shall be announced immediately, ie information that could threaten the lives of many people and public order. Example: BMKG obliged to inform the prediction of post-quake *tsunami* on society.

B. Information that is excluded⁴⁷

Exempt information contained in article 17 of Law No. 14 of 2008 on Public Disclosure Act.

Access to earn a or obtain public information can be done through the six types of information;

a) **Information to be provided and published/ mandatory information**⁴⁸

Public bodies are obliged to announce some information that is compulsory or mandatory information. Understanding this information is a public body shall be obliged to announce every time, whether there is or there is no public information request from the aGovernment Regulationlicant. Information that must be communicated to the public are included:

⁴⁷Dhoho A. Sastro, dkk. “Buku Saku Mengenal Undang-Undang Keterbukaan Informasi Publik”, (Jakarta : Lembaga Bantuan Hukum Masyarakat, 2010), 22-28.

⁴⁸Article 9 of Law No. 14 of 2008 on Public Disclosure.

- 1) List all of the information a whole list of public information under its control, does not include information that is excluded;
- 2) the decision of the Public Agency and consideration;
- 3) the entire existing policies and supporting documents;
- 4) project work plan including the Public Board Annual expenditure estimates;
- 5) Public Agency agreements with third parties;
- 6) and policy information submitted public officials in a meeting open to the public;
- 7) Public Agency employees working procedures related to public services; and/ or
- 8) a report on public information access services as stipulated in this Law.⁴⁹

b) Information to be provided and published periodically/ regular information⁵⁰

Access to information is the obligation of public bodies as the provider is not covered only the basic information that is mandatory information, but also must conduct periodic information. It has been suggested that such information has been provided and published although not or no one has asked, this includes regular information

⁴⁹Article 11 of Law No. 14 of 2008 on Public Disclosure.

⁵⁰Article 9 of Law No. 14 of 2008 on Public Disclosure.

region (regular information). To ensure the availability of access to public information each public body has a duty to convey regular basis for a minimum of six months general information that must be given or made public.⁵¹ Such information is:

- 1) Information relating to the public body;
 - 2) Information on the activities and performance of the public body concerned;
 - 3) Information on the financial statements, and;
 - 4) Additional information that is set in the legislation.
- c) On request or request/ information to be requested
- d) Information obtained through a request (information to be requested)**

Information obtained through a request (information to be requested) were submitted to a public body is a kind of information other than those liabilities to be submitted and the information excluded. Region information obtained through (request/ to be requested) this application is usually a relative position information,ie, whether it can be given or not so that public bodies are required to test

⁵¹Yos Johan Utama, *Hukum Administrasi Negara: Buku Materi Pokok Modul 1- 9*, Cet. 8, Ed. 2, (Tangerang: Universitas Terbuka, 2018), 7:13.

the consequences of such information if there is a party that begs to get that information.⁵²

e) The information must be announced immediately/ necessarily information⁵³

In addition to the information that is compulsory (mandatory information), regular information on also the type of information that is necessarily (necessary information) that is information that must be conveyed to the public, if such information is very important and is related to things that threaten the lives of many people and order general. This type of information is not necessarily, public bodies shall seek to ensure that everyone can easily access the information needed. In this case the information is related to disaster mitigation, which is for example information relating to the tsunami after a major earthquake or lava flow hazard because the volcano erupted. The information should be up to the public to weigh the amount of losses incurred if there is no warning information,⁵⁴

f) Information to be available at any time/ instant information⁵⁵

Obligations of public agencies in providing information that must be provided, scheduled or on request, including mandatory

⁵²Yos Johan Utama, *Hukum Administrasi Negara: Buku Materi Pokok Modul 1- 9*, Cet. 8, Ed. 2, (Tangerang: Universitas Terbuka, 2018), 7.14.

⁵³Article 11 of Law No. 14 of 2008 on Public Information.

⁵⁴Yos Johan Utama, *Hukum Administrasi Negara: Buku Materi Pokok Modul 1- 9*, Cet. 8, Ed. 2, (Tangerang: Universitas Terbuka, 2018), 7.14.

⁵⁵Article 12 of Law No. 14 of 2008 on Public Information.

delivered based on the substance of the public body should also provide information that must be available at all times (instant information), so that people can ease to access at any time and quickly, The type of information that must be provided each time by a public entity is:

- 1) a whole list of public information under its control, does not include information that is excluded;
- 2) the decision of the Public Agency and consideration;
- 3) the entire existing policies and supporting documents;
- 4) project work plan including the Public Board Annual expenditure estimates;
- 5) Public Agency agreements with third parties;
- 6) and policy information submitted public officials in a meeting open to the public;
- 7) Public Agency employees working procedures related to public services; and / or
- 8) a report on public information access services as stipulated in this

Law.

g) The information to be excluded/ exempt information

Exempt information contained in article 17 of Law No. 14 of 2008 on Public Disclosure (*KIP*) provides as follows⁵⁶ :

1. Can inhibit the process of law enforcement
 - a. Inhibiting the process of investigation or investigation of a crime (Criminal Code)
 - b. Reveal the identity of the informant, informer, witness or victim, who knows a crime. However, witnesses and victims are entitled to information about the progress of the case and information about the court ruling.⁵⁷
 - c. Data reveal criminal intelligence and plans relating to the prevention and treatment of all forms of transnational crime (according to Law No Money Laundering in court though witnesses witness, prosecutor, judge and two other people concerned shall with the money laundering that are under investigation are prohibited complainant's name or address, or other things that allow the disclosure of the identity of the complainant.)
 - d. Endangering the safety and lives of law enforcement and his / her family.

⁵⁶Mustafa Lutfi dan M. Iwan Satriawan, *Meneropong Komisi Informasi Publik*, (Malang : Universitas Brawijaya Press, 2014), 58.

⁵⁷Article 5 paragraph 1 of Law No. 13 of 2006 on Protection witnesses and victims.

e. Jeopardize the security of the equipment, facilities and infrastructure of law enforcement (the case of building fire district court and the state prosecutor Larantuka. That building or a secret prison.)

2. Can interfere with the protection of intellectual property rights (IPR) and protection from unfair competition,

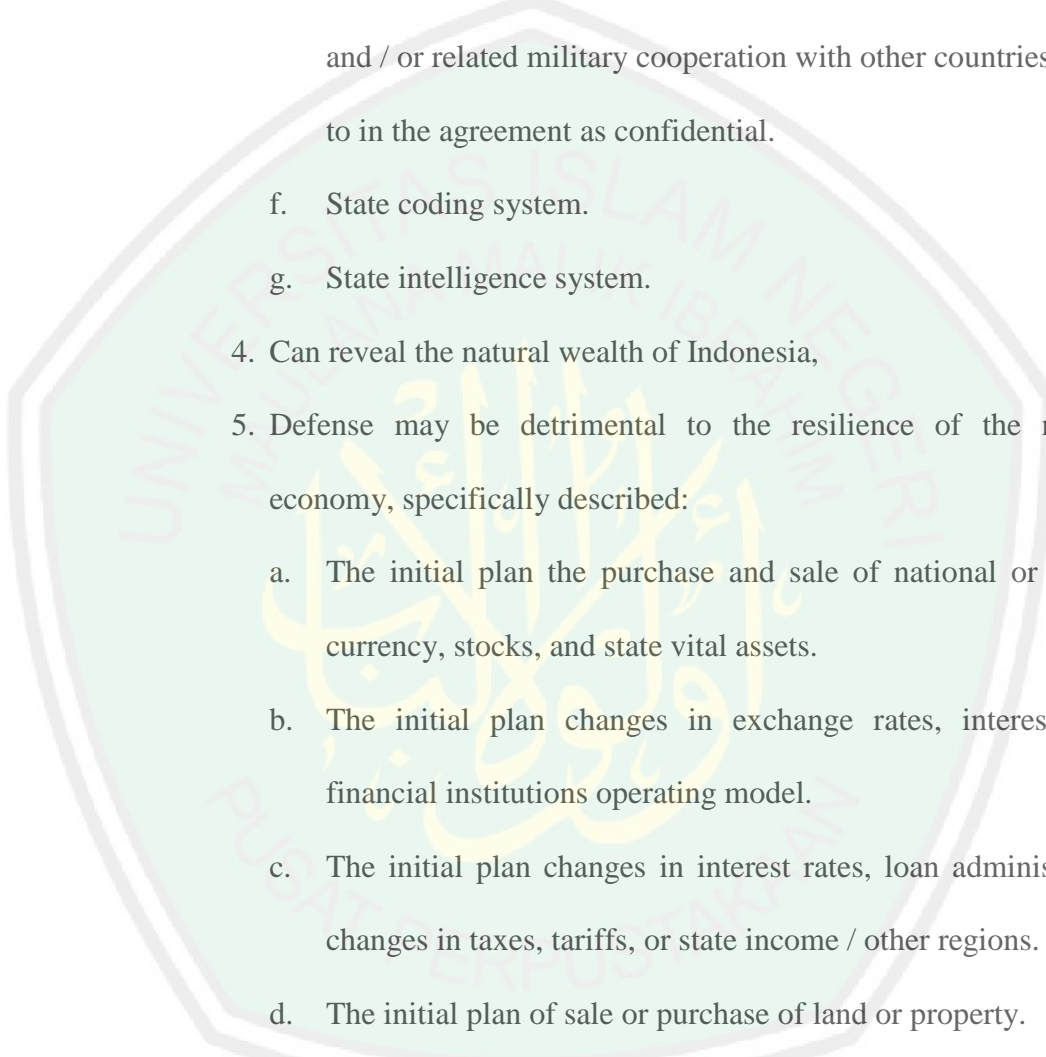
3. Can prejudice the defense and security of the State, specifically described:

a. Information on strategy, intelligence, operations tactics, and techniques related to the implementation of state defense and security system, covering planning, execution, and termination or evaluation in relation to the threats in the country and abroad.

b. Documents containing about strategy, intelligence, operations, techniques, and tactics related to the implementation of defense and state security system that includes planning, implementation, termination or evaluation.

c. The number, composition, disposition, or the allocation of power and the capacity to administer the system defense, and security (defense) as well as its development plan.

d. Images and data about the situation and the state of bases and / or military institutions.

- 
- e. Estimates of military capabilities and defense of other countries is limited to the actions and / indication that State which could jeopardize the sovereignty of the Unitary Republic of Indonesia and / or related military cooperation with other countries agreed to in the agreement as confidential.
 - f. State coding system.
 - g. State intelligence system.
4. Can reveal the natural wealth of Indonesia,
5. Defense may be detrimental to the resilience of the national economy, specifically described:
- a. The initial plan the purchase and sale of national or foreign currency, stocks, and state vital assets.
 - b. The initial plan changes in exchange rates, interest rates, financial institutions operating model.
 - c. The initial plan changes in interest rates, loan administration, changes in taxes, tariffs, or state income / other regions.
 - d. The initial plan of sale or purchase of land or property.
 - e. The initial plan of foreign investment.
 - f. The process and results of banking supervision, insurance or other financial institutions.
 - g. Other matters relating to the printing of money.

6. May harm the interests of foreign relations, in the form of specific information regarding:

- a. Bargaining power and strategy to be and have been taken by the State in connection with international negotiations.
- b. Diplomatic correspondence between nations.
- c. Communication and coding system used in the running of international relations.
- d. Protection and security of strategic infrastructure Indonesia abroad.

7. Authentic act can reveal the contents of a personal nature and the will last or will someone (Law Notary)

8. Can reveal personal secrets, namely:

Memoranda or letters between Intra Public Agency or Public Agency, which by their nature are confidential unless the decision of the Public Information Committee.

- a. History and condition of the family members.
- b. History, condition and care, treatment, physical health, and psychological person.
- c. Financial conditions, asset income, and one's bank account.
- d. The results of the evaluation with respect to their capability, intellect, and on one's ability.

- e. Note that an individual's personal concerns relating to the activities of formal education units and non-formal education units.⁵⁸

9. The information should not be disclosed under the Act.

Principles to be considered in classifying information Excluded are:

- a) Tight, to categorize the information is exempt should really refer to a valid method and emphasizes objectivity.
- b) Limited, exempt information should be limited to certain information in order to avoid subjective interpretation and tyranny.
- c) Not absolute, no information is absolutely excluded when the larger public interest wills.⁵⁹

7. Mechanisms Getting Information

Public service delivery and management of information within a public body, any public body supported by the Official Information and Documentation or abbreviated Government Regulation. Mandate to public bodies as at *Perki* No. 1 of 2010 in order to lift the Government Regulation that has a special task in the field of public information

⁵⁸Article 79 Law on Civil Registration mention demographic data and documents must be kept and protected by the state. Interior Minister in charge of giving permissions to the officer on penyelenggara and implementing agencies for to memaksukkan, store, read, modify, rectify, delete, and print, copy data and personal documents.

⁵⁹Mustafa Lutfi dan M. Iwan Satriawan, *Meneropong Komisi Informasi Publik* (Malang : Universitas Brawijaya Press, 2014), 61.

management that handles the storage, documentation, supply, and service information in public bodies.⁶⁰

Government Regulation in carrying out its duties not only providing information that must be provided by a public body, but also in serving the public information request submitted by the applicant is public information. Public services in the activities referring to the principle of public service that is fast, timely, and inexpensive. In addition the applicant may request information should not be written but can be verbal. As the public information that excluded in Article 17 on Public Disclosure Freedom of Information.

Based on Information Commission Regulation (*Perki*) No. 1 of 2010 whenever there is a request regarding the request for information submitted, Government Regulation is obliged to record the identity of the applicant that include name, address of the applicant, and subject and format of the information required or the delivery of information desired by the applicant. In addition to record the identity of the applicant Government Regulation is also obliged to provide public information request receipt.

The application submitted by the applicant public information Government Regulation can answer that is a response to some action. If the applicant information about to ask for information and do not

⁶⁰Information Commission Regulation No. 1 of 2010 on Public Information Service Standards.

constitute information excluded, Government Regulation is obliged to provide sufficient access to the applicant. However, if the submitted information is information that excluded, then the action Government Regulation is to provide a written explanation that of the request is rejected and the reasons why it was rejected.

The next step if the request is rejected, the applicant must be given information on how to appeal against the refusal of public information requests made by the requested information. However, if the applicant who filed information where the information is not the excluded, Government Regulation is obliged to register and to provide sufficient access for the applicant to see, read, and check out the information requested and was given a copy of that information.

Before an applicant who ask for public information, first Government Regulation give reply to the application is accepted or rejected. The answer given to the applicant information Government Regulation at least contain a description of:

1. The information requested included in the control of public bodies intended or not;
2. Informing the public body which controls the information requested, the requested information if it is not under its control;
3. Accept or reject the application for the following reasons of public information;

4. The form of publicly available information;
5. Costs and how to pay for public information requested;
6. The time needed to provide the requested public information;
7. Explanation for blackening / dissemination of information requested, if any;
8. Explanation if the information can not be given because they have not mastered or have not been documented.⁶¹

Notice the answer to the applicant at the latest information 10 days after submission to the public body. The answer should give information whether the copy will be provided in whole or in part. With regard to the request submitted to a public body which has not mastered information or still in the test analysis undetermined consequences that such information is excluded, Government Regulation can prolong a maximum of 7 days must provide answers arise.

If the application process requires that public information charges a fee, Government Regulation shall endeavor should not burden the applicant information, outside of formal charges as stipulated. Under Article 27 Information Commission Regulation (*Perki*) may incur costs limited to:

1. The cost of copying public information;
2. Shipping costs of public information;

⁶¹Article 26 on Information Commission Regulation No. 1 of 2010

3. Permit fees provide public information in which there are third-party information.

B. Conception of Maslahah Mursalah

1. Understanding of Mashlahah Mursalah

Mashlahah (مصلحة) Is derived from the word shalaha (صلاح)

With the addition of "aleph" diawalnya that the word means "good" versus the word "bad" or "broken". He is mashdar of said Salah, the "benefits" or "detached therefrom damage".

Understanding maslahah in Arabic means "acts that push the human kindness". In the common meaning is every anything that benefits humans, both in terms of interest or generate as profit and pleasure, or in the sense of rejecting kemudharatan or damage. So each containing a benefit worth mentioning mashlahah. With so mashlahah it contains two sides, that is interesting or bring kemashlahatan and resist or avoid kemudharatan.⁶²

In mashlahah definitively interpret differences in the formulation of the scholar who analyzed it turns out that is essentially the same.

⁶²Amir Syarifuddin, Usul Fiqh Volume 2, (Jakarta: Development Studies, 2010). 368.

1. Al-Ghazali explained that according to Maslahah origin that means all bring benefits (profits) and keep harm (damage), but the nature of maslahah is maintaining the goal of Mind (in establishing law).
2. Al-Khwarizmi gave a definition which is similar to the above, namely maintaining the goal of Mind(the law sets) denagn way to avoid damage from humans.
3. Al-Syaitibi mashlahah interpret it from two viewpoints:
 - a) In terms of the mashlahah in fact, meant something back to the upholding of human life, the perfect life, achieved what was intended by nature absolute syahwati and minds.
 - b) In terms of the dependent claims Mindto kemashlahatan which is the purpose of the establishment of Islamic Shari'ah. To produce God requires men to do.

From the definition of mashlahah with a different formulation, we can conclude that mashlahah it is something regarded by common sense for the good and avoid vices (damage) to humans, consistent with the goals of Mindin determining the law.⁶³

Mashlahah mursalah consists of two words that relationship both in the form of nature-mausuf, or in a special form indicating that he was part of *al-mashlahah*. About the sense described above mashlahah

⁶³Amir Syarifuddin, *Ushul Fiqh Jilid 2* (Jakarta: Bina Ilmu, 2010),369.

etymologically and terminological.⁶⁴ *Al-mursalah* is *isim maf'ul* (object) of *fi'il madhi* (basic words) in the form of *tsulasi* (basic three-letter word), namely *rasala*, with the addition of the letter "Alif" at the base, so that it becomes *Arsala*. Etymologically (language) meaning "apart", or in the sense *muthlaqah* (free). The word "detached" and "free" here when associated with *mashlahah* word meaning is "detached or free of information that shows there is proper or not to do.

There are several formulations of different definitions of this *mursalah mashlahah*, but each has in common and adjacent understanding. Among these definitions are:

1. *A-Ghazali* in the book of *al-Mutasyifamus'* stated that *Marsalah mursalah* as follows; nothing (*mashlahah*) that there is no evidence to him of *Mind* in the form of *nash* Certain cancel and no one noticed.
2. *Al-Syukani* in the book *Irshad al-Fuhul* give a definition: *Maslahah* unknown whether the shari'ah 'reject or notices.
3. *Ibn Qudaamahof Hanbalis* give formula: *mashlahah* with no evidence of specific instructions that cancel nor the notice.
4. *Yusuf Hamid al-Alim* provides formula: anything (*mashlahah*) that there is no hint of *Mind* is not to cancel it, also not to notice.

⁶⁴Amir Syarifuddin, *Ushul Fiqh Jilid 2* (Jakarta: Bina Ilmu, 2010),369.

5. *Muhammad Abu Zahra* define: *mashlahah* are aligned with the goal of Islamic shari'ah and there is no certain clues that prove the confession or refusal.

In addition to the above definition, there are many other definitions *mashlahah mursalah*, but for understanding almost simultaneously, no need to put forward all. Indeed, there is a different formula, but the difference did not arrive at essentially the difference.

From some of the above definition formula can be deduced about the nature of the *mursalah mashlahah* as follows:

- a. It is a good thing in mind with consideration to realize the goodness for avoid badness of humans.
- b. What is good in that sense also consistent with the purpose of mind in determining the law.
- c. What is good according to reason and in line with the objectives of mind is no hint of mind in particular are rejected also no hint of mind claimed.

Marsalah mursalah in some literature referred to *Maslalah Mutlaqoh*, some are calling it the *manasib mursal*, there also are named by *al-istishlah*. This naming differences do not make a difference in the nature of understanding.⁶⁵

⁶⁵Amir Syarifuddin, *Ushul Fiqh Jilid 2* (Jakarta: Bina Ilmu, 2010),377-379.

2. The Kinds of Mashlahah

As explained above that mashlahah in the sense of Mind is not only based on the reasoning in assessing the merits of something, nor because it can bring pleasure and to avoid damage, but further than that, that what constitutes good sense must also be in line with the objective mind in establishing the law, which maintains five basic principles of life

Mashlahah strength can be seen in terms of the purpose of Mind in the established laws, relating directly or indirectly to the five principles for human life. Namely religion, life, intellect, lineage and property. It can also be seen in terms of the level of need and the guidance of human life to five things.⁶⁶

From their harmony and good in line by reasonable assumption that the purpose of Mind in determining the law, in terms of looking for a business purpose and established the law, it is also called the *mashlahah manasib* or *mashlahah* harmony with the purposes of the law. Judging from the makers of law (*shari'ah* ') watched or not, mashlahah divides into three kinds:⁶⁷

⁶⁶Amir Syarifuddin, *Ushul Fiqh Jilid 2* (Jakarta: Bina Ilmu, 2010). 371.

⁶⁷Amir Syarifuddin, *Ushul Fiqh Jilid 2* (Jakarta: Bina Ilmu, 2010). 148.

- a. *Al-mashlahah mu'tabarah*, namely *maslahah* which expressly recognized Shari'a and has assigned legal provisions to make it happen.⁶⁸
- b. *Al-mashlahah al-Mulghah*, which is something that is considered spurious because, contrary to the provisions of *Shari'ah*. For example, there is a presumption that equate inheritance among boys and young girls are *maslahah*. But such a conclusion contrary to the provisions of Shari'ah, namely verse 11 *an-Nisa* letter affirming that the division boys girls division twice. Contradiction shows that the supposed beneficiaries were not *Maslahah*.
- c. *Al-mashlahah al-mursalah*, and *maslahah* this kind is referred to in this discussion, whose meaning is as in the definition mentioned above. *Mashlahah* is in this kind of problems mu'amalah that there is no legal rigor nor mentioned anywhere in the *Qur'an* and *Sunnah* to do an analogy. Examples of traffic regulations by all sign. Regulation as it was nothing special proposition that govern it, both in *the Quran* and *the Sunnah* of the Prophet. However, such regulations in line with the objectives of Shari'ah ie in this case is to preserve life and property.

⁶⁸Rafsan Mulky, *Ushul Fiqh* (Bandung: Pustaka Setia, 2009). 149.

3. Hujjah of Mashlahah Mursalah

The legal source (*mashlahah mursalah*) including the sources of law are disputed among scholars of fiqh experts. Group Hanafi and Shafi'i school of thought does not consider *mashlahah mursalah* as a stand-alone source of law and put it into chapters (categories) *qiyas*, if within a *mashlahah* not found texts that can be used as a reference *qiyas*, then *mashlahah* is considered null and void, are not accepted. Imam Malik and group Hanbali found acceptable *mashlahah* and be a source of law for fulfilling all of the requirements above. Because in essence, existence is in order to realize *Mashlahah shar'ī maqasid* (goals *shari'ah* ') although there are direct texts that strengthen it.⁶⁹

4. The Requirements of Maslahah Mursalah

Mashlahah mursalah or *istishlah* is *mashlahah*-*Mashlahah* corresponding to the goals of Islamic *Shari'ah*, and not supported by specific sources proposition is both legitimize or cancel the serious benefits. If *maslahah* are supported by special arguments, then included into *qiyas* in a general sense. And if there is a typical *ashl* (source specific proposition) which is to cancel, then *maslahah* is canceled. Taking *mashlahah* within the meaning of the latter is contrary to the objectives of *shari'ah* '.

⁶⁹Abu Zahrah Muhammad, *Ushul Fiqh* (Jakarta: Cipta Karya Ilmu. 2010). 428.

Imam Malik was Imam sect that uses *mashlahah mursalah* proposition. To apply this proposition, he advocated a condition that can be understood by the above definition, namely:⁷⁰

1. The existence of a approachment between *mashlahah* which is seen as the source of a stand-alone proposition with the objectives of shariah (*maqasid shari'a*). With this requirement, meaning *mashlahah* should not negate the argument of another source, or contrary to the argument of the definitive. but must comply with *mashlahah-mashlahah* which is to be realized by *Syari'*. For example, the kind of familiar, though not reinforced by the distinctive proposition.
2. *Mashlahah* it to be reasonable (rationable), has properties that correspond to rational thinking, which if put to the rationalist group will be accepted.
3. The use of this *maslahah* proposition is in order to eliminate the difficulties that had to happen (*raf'u haraj prevalent*). In terms if *mashlahah* acceptable reason it was not taken, surely people will have trouble. Allah says:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ ۗ

*It means: "And he did not ever menjadika for you in religion."*⁷¹

⁷⁰Abu Zahrah Muhammad, *Ushul Fiqh* (Jakarta: Cipta Karya Ilmu. 2010). 427.

The terms above are the terms that make sense to prevent the use of the source of this proposition (*mashlahah mursalah*) uprooted (deviating from its essence) and prevents it from making the texts are subject to the laws that affected lust and lust dengan *Mashlahah mursalah* ,

Abdul Wahhab Khallaf explain the requirements and functioning *mashlahah mursalah*, namely:⁷²

1. Something considered *Mashlahah* it must be true that is really going to bring the benefit of or refuse kemudharatan, is not a mere allegation by only considering the expediency without seeing the negative consequences thereof.
2. Something considered *mashlahah* man ought to be in the public interest, not private interests.
2. Something considered *mashlahah* it does not conflict with existing provisions firmness in *the Quran or Sunnah*, or contrary to the *ijma'*. *Tasyri* 'must not conflict with the benefit of this law.

⁷¹QS. Al-Hajj (22): 78

⁷²Rafsan Mulky, *Usul Fiqh* (Bandung: Pustaka Setia, 2009). 152.

CHAPTER III

FINDINGS AND DISCUSSION

A. The Position of State-Owned Enterprises (SOEs/BUMN) on Public Bussines Information Disclosure in Indonesia

1. Concept of State-Owned Enterprises (BUMN)

State Owned Enterprises or shortened by SOE is a business entity of all or most of its capital owned by the State through direct investments originating from the State assets separated.⁷³

SOE is an entity running a business. Understanding of the business in KBBI interpreted as trade, commerce, business (commercial)⁷⁴, In other words what is meant by the word business is a commercial enterprise, business, and so forth. Business so it generally means an activity of commerce, industry and finance. All activities related to the production,

⁷³Article 1(3) of Law No. 19 of 2003 on SOEs

⁷⁴W.J.S Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Jakarta : Balai Pustaka, 1982), 145.

exchange of goods and services, and financial affairs relating to these activities. To illustrate the magnitude of a company by one sphere of activity later or a transport or matters that can be linked to business activities.⁷⁵

State Owned Enterprises consists of Limited Liability and Perum⁷⁶. SOE engaged in various fields, with business activities almost all sectors of the economy. Such as agriculture, fisheries, agriculture, forestry, manufacturing, mining, finance, post and telecommunications, transportation, electricity, industry and commerce, and construction.⁷⁷

In general intent and purpose of the establishment of state-owned enterprises are:

Act 2 Law on Limited Liability

1. The intent and purpose of establishment of SOEs
 - a. Contribute to the development of the national economy in general and state revenues in particular;
 - b. pursuit of profit
 - c. Organize public service in the form of provision of goods and or services that are high quality and adequate for fulfillment of the lives of many people;
 - d. Being a pioneer of business activities that can not be implemented by the private sector and cooperatives;
 - e. To actively provide guidance and assistance to employers of economically weak groups, cooperatives, and community.
2. SOE activities must be in accordance with the intent and purpose and not contrary to the laws and regulations, public order and immoral.
 - a. **SOE Limited Liability (Persero)**

Company The Company is a state-owned limited liability company whose capital is divided into shares of all or at least 51% of

⁷⁵Nindyo Pramono, *Hukum Bisnis: Buku Materi Pokok Modul 1-6*. Cet 8, Ed. 1. (Tangerang: Universitas Terbuka), 1.29.

⁷⁶Article 1(3) of Law No. 19 of 2003 on SOEs

⁷⁷Elucidation of Law No. 19 of 2003 on SOEs

its shares (through direct placement⁷⁸) is owned by the State of Indonesia whose main purpose for profit⁷⁹ (Increasing the value of the company) and provide goods and / services are of high quality and competitive tight, both on the market in the State or international⁸⁰.

Persero arrangements apply the provisions and principles of the limited liability company as stipulated in Law No. 1 of 1995 on Limited Liability Company.⁸¹

Establishment of the company begins with the direct participation by the finance minister (or can appoint / member power) another minister acting on behalf of the State to appear before the notary later issued confirmation. Determination of the Regulation on the establishment of a state-owned government was seen as an endorsement equity in a limited liability company and not as an endorsement of a company legally established. Deed of incorporation which includes Statutes Persero prior approval of the Minister of Finance.

Investment of capital specified in the limited liability company that includes the purpose investments and the amount of wealth that

⁷⁸Article 1(2)of Government Regulation No. 13 of 1998 on Public Company (Perum)

⁷⁹Article 1(2) of Law No. 19 of 2003 on SOEs

⁸⁰Article 4(1)of Government Regulation No. 13 of 1998 on Public Company (Perum)

⁸¹Article 11 of Law No. 19 of 2003 on SOEs

are separated for the capital participation⁸². Direct equity participation of separation of State assets to be used as a limited liability company capital carried out as the purpose of establishing a new Limited Liability Company or Limited Liability Company which is not *Persero* state that has been established; the addition of a capacity Limited Company, and the Company's capital restructuring Limited.

b. SOE Public Company (Perum)

Public Company according to Article 1 paragraph (1) Government Regulation 13 of 1998, public companies are hereafter referred to Public Company is a State-Owned Enterprise as stipulated in Law No. 9 of 1969 that are wholly owned state form of State assets were segregated and not divided into shares⁸³ which aims for the public benefit in the form of provision of goods and services of high quality and at the same time the pursuit of profit is based on principles of corporate management.⁸⁴

Then to follow up the objectives of Public Company can perform certain activities relating to its business and / or make capital participation in other business entities⁸⁵, In other words Perum can

⁸²Article 2(1) of Government Regulation No. 13 of 1998 on Public Company (Perum)

⁸³Article 1(1)of Government Regulation No. 13 of 1998 on Public Company (Perum)

⁸⁴Article 1(4) of Law No. 19 of 2003 on SOEs

⁸⁵Article 1(1)of Government Regulation No. 13 of 1998 on Public Company (Perum)

conduct cooperation (joint venture) with other business entities or establish another subsidiary.⁸⁶

Public Company Establishment based provisions of Article 7 Government Regulation 13 of 1998, where the legal status Public Company after making capital investment made in the provision which is the establishment of Public Company⁸⁷. Government Regulations establishment includes:

1. Determination of Public Company establishments;
2. Determination of the amount of state assets set aside for the statement in the capital Public Company;
3. Public Company base budget;
4. Delegation of the finance minister and the government as a representative of the delegation of authority to the minister of finance minister in the execution of daily coaching Public Company.

Then the statute of Public Company load⁸⁸:

- a) The name and domicile of Public Company;
- b) The purpose and objectives and business activities Public Company;

⁸⁶Nindyo Pramono, *Hukum Bisnis: Buku Materi Pokok Modul 1-6*. Cet 8, Ed. 1. (Tangerang: Universitas Terbuka), 3.25.

⁸⁷Nindyo Pramono, *Hukum Bisnis: Buku Materi Pokok Modul 1-6*. Cet 8, Ed. 1. (Tangerang: Universitas Terbuka), 3.25.

⁸⁸Article 10 of Government Regulation No. 13 of 1998 on Public Company (Perum)

- c) Public Company founding period;
- d) The composition and the number of board members and the number of supervisory board members; and
- e) Determination procedure of the meetings of directors, supervisory board meetings, meetings of directors and / or supervisory board by the finance minister and the minister.

c. Concept of Good Corporate Governance

The terms of Corporate Governance by the Cadbury Committee of the United Kingdom in Sedarmayanti:⁸⁹

A set of rules that define the relationship between shareholders, managers, creditors, the government, employees, and other internal and external stakeholders in respect to their right and responsibilities, or the system by which companies are directed and controlled.

Meanwhile, according to Agus Sukrisno:

Good corporate governance as a system that regulates the relationship role of board of directors, the board of directors, shareholders, and other stakeholders. Good corporate governance also referred to as a transparent process for determining the company's goals, achievements and performance assessment.⁹⁰

Meanwhile, according to Minister of SOEs mentioned in the Regulation on Implementation of Good Corporate Governance (GCG), hereinafter referred to corporate governance are the underlying principles and mechanisms of a process based enterprise management

⁸⁹Sedarmayanti, *Good Governance "Pemerintah Yang Baik" & Good Corporate Governance "Tata Kelola Perusahaan Yang Baik"*, (Bandung: CV Mandar Maju, 2012). 53.

⁹⁰Agus Sukrisno. *Etika Bisnis dan Profesi* (Jakarta: Salemba Empat, 2011), 101.

legislation and business ethics.⁹¹ Application of the Principles of Good Corporate Governance in the Company to be accommodated in the organization of daily business activities of the Company, as follows:

1. Transparency, that transparency in the decision making process and openness in disclosing material and relevant information about the company.
2. Accountability, namely clarity of function, implementation and accountability of organs so that the Company's management are effective.
3. Responsibility, the suitability in the management of the Company to Regulation Legislation and the principles of a healthy corporation.
4. Independency, which is the state in which the Company is managed in a professional manner without any conflict of interest and influence / pressure from any party that is not in accordance with Regulation Legislation and healthy corporate principles.
5. Fairness, namely justice and equality in fulfilling the rights of Stakeholders arising under treaties and legislation⁹²

Aim Implementation of Good Corporate Governance in the Company's purpose is none other⁹³:

- a. Optimizing the value of the Company in order to have a strong competitiveness, both nationally and internationally, so as to maintain its existence and sustainable living to achieve the objectives of the Company.

⁹¹Government Regulation on SOE No PER -01/MBU/2011 regarding implementation Good Corporate Governance.

⁹²Government Regulation on SOE 01/2011 Act 3 (1-5) in Guidelines Good Corporate Governance, 2018, 3.

⁹³Article 4 Government Regulation on SOE No PER -01/MBU/2011 regarding implementation Good Corporate Governance.

- b. Encourage the management of the Company in a professional, efficient, and effective, and empowering function and increase the independence of Organ Company.
- c. Encourage Organ Company in making decisions and perform actions based on high moral values and adherence to Regulation Legislation, as well as an awareness of the social responsibility of the Company to Stakeholders and preserve the environment in the Company.
- d. Increase the contribution of the Company in the national economy.
- e. Improving the enabling environment for the development of national investment.

2. Implementation of Public Bussiness Information SOE in Indonesia

a. PT. Perusahaan Gas Negara Tbk

Perusahaan Gas Negara (PGN) is an Indonesian company's largest in the field of transportation and distribution of natural gas which plays a major role in the fulfillment of domestic natural gas. In 1859 the Dutch established a private company, Firma LJM Eindhoven & CO Gravenhage. New PGN defined as the state company on 13 May 1965. In 1994 through 1998 PGN doing business Extension and expansion followed by the establishment of a subsidiary of PT Transportation Gas Indonesia, On June 30, 2019, the number of shares issued and fully paid shares is 24.241.508.196. Republic of Indonesia has one share series A *Dwiwarna*,

PT Pertamina (Persero) is a majority shareholder who has a 56.96% stake, and 43.04% of the shares held by public shareholders.⁹⁴ The Company's shares were listed on the Surabaya Stock Exchange (now known as Indonesia Stock Exchange) on December 15, 2003 with stock code PGAS. In 2007 to 2012, Establishment of a subsidiary of PT PGAS Telekomunikasi Nusantara, PT PGN Solution, PT Saka Energi Indonesia, PT Gagas Energi Indonesia and PT PGN LNG Indonesia. In 2016, PGN begin construction and project management of domestic natural gas network in the area of Batam, Surabaya and Tarakan, after 2015 assigned to manage the network in 11 regions. PGN transform joint organization Children and affiliated extremists in the form ONE PGN, confirmed the move to the next step toward a world-class company in the field of gas.⁹⁵

Vision PGN is *To Be World Leading National Gas Company for a Sustainable Future and the National Energy Sovereignty* and mission PGN is running a gas business in midstream, downstream, and supporting businesses more committed to increasing value for all stakeholders by: Providing gas and develop infrastructure for gas utilization as energy and raw materials to create the optimum value for the benefit of customers and society;

⁹⁴<http://ir.pgn.co.id/index.php/our-shareholders> accessed on December 7, 2019

⁹⁵<http://pgn.co.id/tentang-kami> accessed on December 7, 2019

PGN as a state that serves the needs of livelihood of many people aim provide expertise, energy and infrastructure needed to encourage Indonesia's economic growth in the long term. Sustainably integrate the natural gas value chain from upstream to downstream in order to serve the community.

In the implementation of PGN provides information disclosure of information relating to business activities PGN. Type public information PT Perusahaan Gas Negara (Persero) Tbk as stipulated in Law No. 14 of 2008 on Public Information consists of the Periodic Mandatory Information, Information And Merta and Information Available At Any Time. This data outside Confidential Information and Information Excluded according to the rules aGovernment Regulationlicable legislation. The information is provided and can be accessed on the web. Some of the information provided is *Home, About Us (Indonesian airport, World Class Transformation, History, Leadership, Business activities, PGN Group, Network Infrastructure & Gas, Operating synergies, Technology, investor (Our Shareholders, Stock Information, Financial Information, IDX Announcements, Business Updates & Events, Analyst Coverage, investor Services) News, Careers, Login & Register*, As well as information about Public Disclosure by PGN <https://pgn.co.id/kip> which contains the information required and information is available at any time. The information shall include *PGN profiles, information about directors and*

commissioners, institutional assessment, remuneration of directors, commissioners and supervisors PGN important matters facing, corporate governance, procurement of goods and services, the latest information and awards.

b. PT. Bank Rakyat Indonesia Tbk

Bank Rakyat Indonesia (BRI) is a state-owned bank and one of the largest banks in Indonesia. Bank Rakyat Indonesia (PT. BRI Tbk.) Was founded in Purwokerto, Central Java by Raden Bei Aria Wirjaatmadja on December 16, 1895⁹⁶, In the period after independence, based on Government Regulation No. 1 1946 Article 1 stated that BRI is a First State Bank in the Republic of Indonesia. In wartime maintain independence in 1948, BRI activity was stopped for a while and just beginning to be active again after the Renville agreement in 1949 to change its name to Bank Rakyat Indonesia States. At that time through PERPU No. 41 of 1960 established *Bank Koperasi Tani dan Nelayan* (BKTN) which is a fusion of BRI, *Bank Bank Tani Nelayan* and the *Nederlandsche Maatscha*Government Regulationij (NHM). Then, based on Presidential Decree (Presidential Edict) No. 9 1965, BKTN integrated into the Bank Indonesia Urusan Koperasi,Tani dan Nelayan. After running for one month, outgoing Presidential Edict No. 17 of 1965 on the establishment of a single bank under the name of Bank Negara Indonesia.

⁹⁶ <https://bri.co.id/en/tentang-bri> accessed on December 7, 2019

In the new provisions Bank Indonesia Urusan Koperasi, Tani dan Nelayan (ex BKTN) integrated with the name of Bank Negara Indonesia Unit II Rural field, while NHM became Bank Negara Indonesia Unit II field Export Import (Exim). Since August 1st, 1992 by the Banking Act No. 7 in 1992 and Government Regulation No. 21 1992 BRI status transformed into a limited liability company. BRI ownership was still 100% in the hands of the Government of the Republic of Indonesia. In 2003, the Indonesian government decided to sell 30% stake in this bank, so that it becomes a public company with the official name of PT. Bank Rakyat Indonesia (Persero) Tbk Farmers and Fishermen (ex BKTN) integrated with the name of Bank Negara Indonesia Unit II Rural field, while NHM became Bank Negara Indonesia Unit II field Export Import (Exim). Since August 1st, 1992 by the Banking Act No. 7 in 1992 and Government Regulation No. 21 1992 BRI status transformed into a limited liability company. BRI ownership was still 100% in the hands of the Government of the Republic of Indonesia. In 2003, the Indonesian government decided to sell 30% stake in this bank, so that it becomes a public company with the official name of PT. Bank Rakyat Indonesia (Persero) Tbk Farmers and Fishermen (ex BKTN) integrated with the name of Bank Negara Indonesia Unit II Rural field, while NHM became Bank Negara Indonesia Unit II field Export Import (Exim). Since August 1st, 1992 by the Banking Act No. 7 in 1992 and Government Regulation No. 21 1992 BRI status

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BRI's vision to become *The Most Valuable Bank in Southeast Asia and the Home To The Best Talent*. BRI mission is to Undertake the best

⁹⁷<https://bri.co.id/tentang-bri#> accessed on December 7, 2019

⁹⁸<https://ir-bri.com/shareholdings.html> accessed on December 7, 2019

banking services to segments with emphasis on micro, small, and medium to support the promotion of the local economy, providing excellent service, and to work optimally and well⁹⁹

BRI in implementing public disclosure of providing information relating to the business activities of the Bank. Includes *Corporate Information (profile companies, the board of commissioners, board of directors, affiliate relations, market supporting institutions), Corporate Reports (financial statements, presentation of corporate finance, annual reports, sustainability reports) Corporate Governance (GMS, ASEAN Corporate Governance Scorecard, Structure and GCG policies , code of conduct, the audit committee, whistle blowing system, the rights of shareholders, committees nominal and remuneration), Disclosure (setting KIP, calendar of events, news), stock / Bond Information (interactice charts, historical price, stock fundamentals, shareholders, dividend, bond information, credit rating) and the Information Request.*¹⁰⁰

c. PT Telkom Indonesia, Tbk

PT Telkom Indonesia (Persero) Tbk (Telkom) is a State-Owned Enterprises (SOEs) which is engaged in the field of services of information and communication technology (ICT) and telecommunication network in Indonesia. The majority shareholder is the Government of the

⁹⁹<https://bri.co.id/tentang-bri#> accessed on December 7, 2019

¹⁰⁰<https://ir-bri.com/> accessed on December 7, 2019

Republic of Indonesia Telkom amounted to 52.09%, while 47.91% is owned by the public. Telkom shares are traded on the Indonesia Stock Exchange (IDX) with the code "TLKM" and the New York Stock Exchange (NYSE) under the code "TLK".¹⁰¹

Telkom has been through a variety of business dynamics and go through several phases of change, namely the appearance of the phone, which is a department organizational changes Telkom birth, the growth of mobile technology, the development of the digital era, the expansion of international business, as well as its transformation into a digital-based telecommunications company. Beginning, In 1882, the emergence of rival telephone and telegraph postal service that was previously used in 1856. The presence of the phone makes people increasingly choose to use this new technology. At that time, many private companies conducting business telephone. The number of these players make phone industry is growing more rapidly: in 1892 it has been used long-distance telephone and 1929 connected internationally. In 1961, The Indonesian government established the State Enterprise of Posts and Telecommunications (Postel PN). However, with the rapid development of telephone and telex services, the Government of Indonesia issued Government Regulation 30 dated July 6, 1965 to separate postal and telecommunications industry in

¹⁰¹https://www.telkom.co.id/servlet/tk/about/id_ID/stocklanding/profil-dan-riwayat-singkat.html accessed on December 7, 2019

Postel PN: PN Post and Giro and PN Telekomunikasi. With this separation, each company can focus on managing their respective business portfolios. PN's formation Telecommunications Telkom became the forerunner of today. Transformation in Telkom from PERUMTEL company (*PT. Telekomunikasi*) until recently a listed company (PT). PN Post and Giro and *PN Telekomunikasi*. With this separation, each company can focus on managing their respective business portfolios. PN's formation Telecommunications Telkom became the forerunner of today. Transformation in Telkom from PERUMTEL company (*PT. Telekomunikasi*) until recently a listed company (PT). PN Post and Giro and PN Telekomunikasi. With this separation, each company can focus on managing their respective business portfolios. PN's formation Telecommunications Telkom became the forerunner of today. Transformation in Telkom from PERUMTEL company (PT. Telekomunikasi) until recently a listed company (PT).

Along with the development of digital technologies and the transformation of the company, Telkom has a vision *Be the King of Digital in the Region and the mission of Indonesian Lead Digital Innovation and Globalization* has been in effect since 2016. In an effort to transform into a digital telecommunication company, Telkom implement business strategies and operations oriented company to customers (customer-oriented). The transformation will make Telkom Group

organizations become more lean and agile in adapting to changes in the telecommunications industry is going very fast. The new organization is expected to increase efficiency and effectiveness in creating a quality customer experience. Telkom Group business activities grow and change along with the development of technology, information and digitization, but still in the realm of telecommunications and information industry. This is evident from the evolving business lines complement existing legacy.

Telkom made public disclosure by providing information that can be accessed online on the web telkom.co.id. information provided are¹⁰² Profile (*Profile and Brief History, Board of Commissioners, Directors, Structure subsidiaries, Awards, Articles of Association*). investor Relations : Reports (*SEC Report, Financial Reports, Annual Reports, Info Memo, Sustainability Reports, Financial Highlights*). Stock & Bond Information (*Stock Price and Volume, shareholders Composition, dividend Policy, Stock Listing Chronology, Bond Information, Prospectus*). News and Activities (*GMS, Investors Calendar, earnings Call*). Other Information (*Information to Investors, Corporate Actions, Other Information or Material Facts, Capital Market Profession Service Report, Quality Service Report*). CSR (*About CSR, CSR Policy, CSR Program, Budget and Realization, Community Empowerment and Partnership Program*) GCG (*ASEAN Corporate Governance Scorecard,*

¹⁰² <https://www.telkom.co.id/> accessed on December 7, 2019

Board of Commissioners and Directors Work Ethics, Corporate Secretary, Committees, Internal Audit Unit, Code of Ethics & Corporate Culture, Whistle Blowing System, Risk Management Policy). Human Capital (Job, internship) and news. The information can be accessed by people concerned and society at large.

B. Disclosure of Public Business Information Under Perspective to Law No. No. 14 of 2008

1. Regulation of Public Business Information State-Owned Enterprises (SOEs/ BUMN)

An explanation of the meaning of information can have a different approach depending on the angle perceive it. Understanding the information in the explanation of Law No. 19 of 2003 on state-owned enterprises, but basically understanding the information in *KBBI* is lighting, notification, news or news about something, the whole meaning of which contains a mandate seen in parts of the mandate; but there is a sense of information by State-Owned Enterprises, information is defined as material and relevant facts concerning events, occurrences, or facts that affect the price and / decisions of investors, prospective investors or other interested parties on such information¹⁰³, Meanings of the information by the state within the scope specifically by Persero SOE environment and Public Company.

¹⁰³Explanation of Article 85 of Law SOE about the notion of information. Buku Saku, 22.

Business sense in the *KBBI* is trade, commerce, business (commercial)¹⁰⁴, While the Black Law Dictionary defines that business as "a commercial Carried on for-profit enterprises; a particular occupation or employment habitually engaged in for livelihood or gain "¹⁰⁵, As according to Boediono Kusumohamidjojo that business sense covers the broad field of human life is not limited in any commercial¹⁰⁶,

As is the business information is everything associated with business, trade, and finance related in the form of data that can be submitted in writing or orally. Thus, in the explained Public Disclosure Act, Article 1 (2) of Law No. 14 of 2008 on Public Information Act that is related to the public information that must be provided by public bodies in this regard SOEs, the information is information which is public information, but there are elements of the business relation SOE in its activities. Purpose of business information when taking an expanded sense, the whole association is concerned with operations and business activities related to SOE can be understood as business information.¹⁰⁷, In incomplete information SOE in question is the information/ facts relating to prices, the decisions of investors, prospective investors, related to stock a Persero SOE and the SOE Perum, as in Persero intersect with it.

¹⁰⁴WJS Poerwadarminta, *Kamus Umum Bahasa Indonesia* (Jakarta: Balai Pustaka, 1982), 145.

¹⁰⁵Bryan A. Garner, *Black Law Dictionary*. Nine Edition (USA: Thomson Reuters, 2009), 226.

¹⁰⁶Budiono Kusumohamidjojo, *Ketertiban Yang Adil : Problema Filsafat Hukum* (Jakarta : Grasindo,, 1999), 3.

¹⁰⁷Dhoho A. Sastro, dkk. "Buku Saku Mengenal Undang-Undang Keterbukaan Informasi Publik", (Jakarta : Lembaga Bantuan Hukum Masyarakat, 2010), 22.

Public information in the Public Disclosure Act explains that:

Public Information is information generated, stored, managed, sent, or received by a public body relating to organizing and administering the state and or organizer and organizing other public bodies in accordance with this Act as well as other information relating to the public interest.¹⁰⁸

As a public body is given the mandate to carry out public disclosure so that there is responsibility to embrace. Public information is everything about the whole process in a public body carrying out its activities. So that all information obtained therein are intended for the public interest who has a stake as a form of right to information. Public information has a two-picture outline. There is information that can be opened to the public and which are excluded. By its nature it can be concluded in the public information contained business information, especially for public institutions engaged in the economic field that gave rise to profit.

SOE is a public body which bears the obligation to convey information to the public. Public body in this state that conduct business in various fields aimed at the pursuit of profit (profit-oriented) and provide a public benefit to the deciphering of business information for the public can be explored in the formal and material. Regulation of the Minister asserted in explanation of SOEs in the chapter 'The scope: The definition of information and documentation in question is limited to the information and documentation

¹⁰⁸Article 1 (2) of Law No. 14 of 2008 on Public Information.

that the authority of the Ministry of SOEs as a public entity does not include state-owned enterprises and business profile.¹⁰⁹

Understanding of the meaning of public information for the purpose within the scope of state-owned companies are under the authority of state enterprises in the procurement of a formal business information. Preparations that are related to business information, all information in the form and intent relating to the authority of the SOE as a public entity. However, related to the business or information related to the business activities of enterprises, as yet regulated in Article 14 of Law No.14 of 2008 on Public Disclosure Act in general or business information is exempt, it is necessary to test the consequences.

In general, information reporting purposes dikategorikan in two respects, namely financial information and non-finacial. Financial information published by the company to the public include the balance sheet, income statement, statement of changes in equity, cash flow statement, and notes to the financial statements. Premier financial information contained in the annual financial statements (annual report). Non-finacial information also supports the aims of financial information into value added of the benefits of the financial statements. Non-financial information is focused on the issue of disclosing the the potential risk faced by companies today and to take that risk

¹⁰⁹Explanation SOE Minister Regulation No. PER-08/MBU/2014 on Guidelines for the Management of Information and Documentation within the Ministry of SOE

management reasons.¹¹⁰ As non-financial report of the company is corporate responsibility report is part of a sustainability report.

Based on the above understanding of business information to the public by the state can be summed up as all information, data, facts, information and relevancy relation to all business activities of state-owned company that has to do with financial and nonfinancial that include finance, transaction, accounting can be accessed or requested by electronic or nonelektronik channel.

The set of information that must be published by the state contained in Article 14 of Public Disclosure Act. Announced publicly by the Public Agency information periodically include information relating to public bodies, information on the activities and performance of the public body concerned, information regarding the financial statements, and other information set forth in the legislation.¹¹¹ Public Disclosure Act specifically included on SOE liabilities are set forth in Article 14, which reads as follows:

Public Information that must be provided by the State-Owned Enterprises, Regional-Owned Enterprises and / or other business entity owned by the state in the Act are:

- a. The name and domicile, purpose and type of business activity, the period of establishment, and capital, as stated in the articles of association;

¹¹⁰Muh. Arief Effendi, *The Power of Good Corporate Governance* (Jakarta: Salemba Four, 2009), 104.

¹¹¹Article of Law No. 14 of 2008 on Public Disclosure Regarding the information published periodically.

Information about a company's most basic is a limited company identity. Identity includes the name and domicile, purpose and type of business activity, the period of establishment, and capital. Information on the identities listed on the main page of the website owned concerned. Inclusion of the name and the seat of the SOE, purpose and type of business activity, the period of establishment and capital contained in the articles of association set out in government regulations about establishment.

The name and domicile of the company is located in the territory of the Republic of Indonesia and has the full address in accordance with a position as defined in the Articles of Association.¹¹²

The purpose and goal of SOEs in general explain the intent and purpose of an establishment of SOEs that are intended, namely:

- 1) To contribute to the economy of the State.
- 2) The pursuit of profit.
- 3) Provision organize public in the form of goods and services.
- 4) a pioneer of business activities that can not be carried out crowds.
- 5) Provide guidance and assistance to employers of economically weak groups, cooperatives and community.
- 6) SOE activities must be in accordance with the intended and addressed so it does not conflict with the applicable rules promulgated.¹¹³

¹¹²Article 5 of Law No. 40 of 2007 regarding Limited Liability Company.

Intent and purpose of the establishment of State Enterprises Limited according to Article 12 of Law No. 19 of 2003 on SOEs¹¹⁴; in particular, namely, providing goods and services of high quality and strong competitiveness and the pursuit of profit in order to enhance shareholder value. The purpose and goal of SOEs establishment Public company (*Perum*) Article 36 of Law No. 19 of 2003 on SOEs¹¹⁵; in particular, is organizing the effort that aims at public interests such as the provision of quality goods and services at affordable prices to the community based on sound principles of corporate management. Then in favor of *Perum* to achieve its goals and objectives, *Perum* can make capital participation to other entities with the approval of the Minister.

Types of business activities are basically state-owned companies engaged in various fields, with business activities almost all sectors of the economy. Such as agriculture, fisheries, agriculture, forestry, manufacturing, mining, finance, post and telecommunications, transportation, electricity, industry and commerce, and construction.¹¹⁶

Duration of Association was established for a limited period or indefinitely as specified in the statutes¹¹⁷, As in the inclusion Clearly defining a limited period, for example 10 Years 20 Years and beyond.

¹¹³ Article 2 of Law No. 19 of 2003 on SOEs

¹¹⁴ Article 12 of Law No. 19 of 2003 on SOEs

¹¹⁵ Article 36 of Law No. 19 of 2003 on SOEs

¹¹⁶ Explanation of Law 19 of 2003 About SOE

¹¹⁷ Article 6 of Law No. 40 of 2007 regarding Limited Liability Company

Similarly, the inclusion of the establishment of the company indefinitely¹¹⁸,

Earlier, which was first performed in the establishment of state-owned enterprises are state-owned capital investment. SOE capital that comes from wealth are separated among other things the State Budget, the capitalization of reserves and other resources¹¹⁹, Initial setting aside the State-Owned Enterprises Law on SOE equity participation listed in Article 1 Paragraph 7 Government Regulation No. 44 of 2005 on Procedures for Investment and Administration of Venture Capital At SOE and PT, Article 4 of the Law on State Enterprises which states that in any equity participation from the State Budget was based on Government Regulation and which does not come from the state budget based with GMS/ Minister of State Enterprises and reported Ministry of Finance¹²⁰, regarding any equity, including the addition or subtraction of structural change state ownership of shares Persero limited or limited liability company from the state budget stipulated in Government Regulation¹²¹,

Described in the next article, Article 5 Government Regulation No. 44 of 2005 capital investment can be done in terms of the establishment of state-owned enterprises and PT. Article 10, paragraph 1 and 2 of the

¹¹⁸Explanation of Article 6 of Law No. 40 of 2007 on Limited Liability Company

¹¹⁹Article 4 of Law No. 19 of 2003 on SOEs.

¹²⁰Article 4 Government Regulation No. 44 of 2005 concerning Procedure and Administration of Venture Capital Investments In SOEs and Limited Liability.

¹²¹Article 4 of Law No. 19 of 2003 on SOEs.

Law of SOEs that the establishment of state-owned enterprises Limited under review by the three ministries, namely the minister of state, minister of finance and technical minister. Article 12 Government Regulation No. 44 of 2005 continue, based on the study worthy minister, the President issued the Regulation on the establishment, goals, objectives and the amount of wealth. Establishment of the *Perum* SOEs listed in Article 35 of the Law of SOEs as well as reviewed in advance by the three ministries in charge then proposed to the President by the considerations.

- b. Full name of shareholder, member of the board of directors, and board member of the company; the mechanism for setting directors and commissioners/ board of trustees; system and the allocation of funds remuneration of commissioners/ board of trustees and directors;

Inclusion of the statute of Public Company that is the explanation of Article 41 of Law SOE mention the composition and number of members of the Board of Directors and the number of members of the Supervisory Board and the elucidation of Article 23 of Law of SOEs on the inclusion of the name of the directors and commissioners. Affirmed in Article 15 of the Company Law in charge statutes include the names of positions and the number of members of the Board of Directors and

Board of Commissioners.¹²² The inclusion of the names of shareholders are also published as directors and commissioners. Given the fairly heavy task in overseeing the company's commissioner, the commissioner is assisted by several committees one of which is the nominating committee. The nomination committee in charge of preparing the selection criteria and performance assessment of commissioners and directors¹²³, The mechanism for determining commissioners and directors of state enterprises regulated in Law, Company Law, Government Regulation No. 45 of 2005 on the Establishment, Management, Monitoring and Liquidation of SOE, SOE Ministry Regulation No. PER-04/MBU/2009 on the appointment and dismissal of the Board of Directors and Commissioners/ Board of Trustees of State Owned Enterprises, the Articles of Association Limited/ Perum and Sectoral Regulation.

Other committees that assist the commissioner is the remuneration committee. Remuneration committee in charge of preparing the payroll system and the provision of benefits and give some recommendations to the assessment of the system, the given options are stock options, pension system, a system of compensation and other benefits.¹²⁴ A description of

¹²²Article 15 (1) f of Law No. 40 Year 2007 on Limited Liability Company on the basis of budget cargo.

¹²³Muh. Arief Effendi, *The power...*, (Jakarta : Salemba Empat, 2009), 21.

¹²⁴Article 14 (7) Decree of Minister of State 117 / M-BUMN / 2002 on the Implementation of Good Corporate Governance of State-Owned Enterprises.

the system and the allocation and remuneration of board members / board of trustees and directors in SOEs are divided into four categories: salaries, benefits, facilities and employment incentives / bonuses.¹²⁵

- c. Annual reports, financial statements, balance sheet income statement, and statement of corporate social responsibility which has been audited; assessment by external auditors, credit rating agencies and other agencies; case law under the Act open as Public Information; Announcement issuance of debt securities; replacement accountants who audited the company; changes in the company's fiscal year;

In general, reporting everything related to financial affairs of SOEs is described in the Annual Report. The contents and format of the Annual Report refers in accordance with applicable regulations¹²⁶, The Company shall submit the assessment and evaluation by the auditor on the implementation of good corporate governance to the shareholders through the AGM and Annual Report¹²⁷,

The financial statements (Financial Report), the company consists of several statements including balance sheet, income statement, statement of changes in equity, cash flow statement, and notes to the financial statements with the change of the fiscal year companies for the

¹²⁵ SOE Ministry Regulation. PER-02/MBU/2009 on income of directors, board of directors and the supervisory board of state-owned enterprises established by the AGM / Minister.

¹²⁶Article 6 of Law No. 40 of 2007 on Limited Liability Company and Bapepam XK6 On Obligations Submission of Annual Report for Issuers and Public Companies.

¹²⁷Article 44 (9) Ministry Regulation SOE PER-01 / MBU / 2011tentang Implementation of Good Corporate Governance (GCG).

delivery of the annual report. Submission of financial statements made after audited by an external auditor.¹²⁸ The contents and format of the financial statements must comply with the provisions of the Capital Market in Indonesia¹²⁹,

Another report in the report, namely knowledge of corporate responsibility report (Corporate Sustainable Responsibility) which is a form of reports continuity (sustainability report). Sustainability report is a report that is nonfinancial can be used as a reference by the company to look at the reporting of social, economic and environmental¹³⁰, Sustainability Report is a report showing the observance of the Company's implementation of the activities of corporate social responsibility and the environment that are relevant to ensure the sustainability of the Company¹³¹, The content and format of the Sustainability Report refers in accordance with applicable regulations.¹³²

Auditors have a role in providing audit services of financial statements, but in their duties auditor or accountant will have a term of office limited as to the rules of rotation of public accounting firm that the provision of audit services on historical financial information of an entity

¹²⁸Bapepam-LK No. XK6 on Obligation to Submit Periodic Financial Statements.

¹²⁹Bapepam Regulation XK6 On Obligations Submission of Annual Report for Issuers and Public Companies.

¹³⁰Muh. Arief Effendi, *The power...*, (Jakarta : Salemba Empat, 2009), 109.

¹³¹Article 6 (2) c of Law No. 40 of 2007 regarding Limited Liability Company

¹³²In accordance with the provisions on the content and format Sustainability Report of the Global Reporting Standard.

by a certified public accountant are limited to a maximum of five years book row respectively.¹³³ And the entity is one of them is the State Owned Enterprises.¹³⁴

A company that went public in making the announcement of the issuance of debt securities, are recorded in the Indonesia Stock Exchange. Type of securities offered by the state is korporasi Bonds. Corporate bonds are bonds issued by domestic private companies including state-owned companies and enterprises.

In conducting its business activities, if state-owned companies facing legal cases that affect the company, then by law open it as a public information and published in the annual report.¹³⁵

- d. Guidelines for the implementation of good corporate governance based on the principles of transparency, accountability, responsibility, independence and fairness;

SOEs in practice to carry out the principle of good corporate governance or good corporate governance as well as the explanation of Article 5, paragraph 2 of the Law of SOEs on the five principles of GCG explanation for SOEs namely transparency, accountability, responsibility, independence and fairness. GCG settings are also set in the SOE Ministry

¹³³Article 11 (1) Government Regulation No. 20 of 2015 on Public Accounting Practice regarding future public accountant in charge.

¹³⁴Article 11 (2) Government Regulation No. 20 of 2015 on Public Accounting Practice regarding the entity receiving the audit services.

¹³⁵Elucidation of Article 23 (1) e of Law SOEs on the charge annual report

Regulation PER-01/MBU/2011 on the implementation of good corporate governance (GCG) at SOE and SOE Ministry Regulation amendments PER-09/MBU/2012. Furthermore, independently of each SOE to develop guidelines for good corporate governance rests regulations.

- e. The activities of the government assignment and/ or public service obligations or subsidies; Government assignment on State-Owned Enterprise

Public service obligations of a state-owned companies listed in Article 66 (1) of the SOE: 'The government can provide special assignment to SOEs to perform the functions of public benefit with regard to intent and purpose of the activities of SOEs'¹³⁶, Later in the explanation of Article 66 of Law SOE explained that SOEs in carrying out its duties, the government can provide special assignment to BUMN concerns a matter of urgency, and as implementation of the previously approved and agreed upon at the AGM/ Minister. Then, if the assignment after financial examined do not materialize or materialize, the government will provide compensation for all expenses incurred and margins of companies expect¹³⁷.

¹³⁶Article 66 (1) of Law No. 14 of 2008 on Public Disclosure

¹³⁷Expalnation of Article 66 (1) of Law No. 14 of 2008 on Public Disclosure

f. Procurement mechanism

Settings on the procurement of goods and services listed Article 2 (1) c of Law SOE¹³⁸ which reads: 'Organize public service in the form of provision of goods and or services that are high quality and adequate for fulfillment of the lives of many people '.The system of procurement (tender) online or called e-procurement is a product of the development of today's technology. For companies that have gone public and some companies already have a website enabling the implementing e-procurement as the implementation of the implementation of GCG.¹³⁹

g. Additional information prescribed by the Act relating to State-Owned Enterprises/ Regional Owned Enterprises.

Provision of information/ other reports that are required to be open to the public or the applicant information by the state (the Company/ Perum) should comply with the legislation in force, submission of report incidental or sector being applied by regulators, shareholders, or other applicants concerned in accordance regulations.¹⁴⁰

2. Character Business Information by the State for the Public

Business information has a big role in the disclosure, Based on the above explanation regarding the business information that must be issued by

¹³⁸ Article 2 (1) of Law No. 14 of 2008 on Public Disclosure

¹³⁹ Muh. Arief Effendi, *The power...*, (Jakarta : Salemba Empat, 2009), 101.

¹⁴⁰ PLN, "Pedoman Good Corporate Governance", 77. <http://www.pln.co.id/statics/uploads/2017/04/Guidelines-GCG.pdf> accessed on October 25, 2019.

the State can be summed up as the characteristics of business information by the state, namely:

First, Information relating to the SOE, where business information relating to the overall activities of SOEs and issued by the relevant Information and Documentation Management Office as requested information.

Second, If deciphering understanding of business information, business sense tendency is divided into two in the broad sense and narrow sense. Understanding widely associate your business with any information on the activities of business enterprises, financial reporting, accounting, financial enterprises, the explanation in Government Regulation SOE on guidelines for the management of information and documentation environment ministry of state enterprises that states the scope of information are whole information, facts, data in the activities of SOEs are a general business update.

In a sense the narrowness of understanding information business that is associated with the explanation of Article 85 of Law SOE is affecting the price and or the decisions of investors, prospective investors or other interested parties on such information that is related to the privatization, and in Article 14 Public Disclosure on obligations SOE to provide relevant information including information that is available immediately, at any time and every time. Information such information is clearly the business information.

Third, The information has been audited. Relation to the audit information contained in the information that is on or about finance such annual financial statements. As an information which has been audited, is intended to get the information that has been carried out audit by the audit committee assessment of SOEs, especially for state-owned companies that have gone public, so we get accurate information.

Fourth, Limited no relation circuitry that are beyond the information which was enacted in the regulations. Business information is limited because it requires testing consequences in advance of the material information requested, which involves three ministries to test information to determine the information can be displayed in public or to be kept from the applicant information caused if opened would cause losses as dielaskan in Article 17 of Public Disclosure Act the information is exempt.

Provision of business information to an applicant who qualified information in relation shareholder has an interest, namely to assess the company's ability to provide benefits or pay dividends to investors and as a consideration to make an investment in a company.¹⁴¹ Optimal information disclosure in accordance with good corporate governance will add value to the company about the company's performance and therefore contributes to public trust in the community.

¹⁴¹<http://dewi1wati.blogspot.com/2012/11/kegunaan-informasi-akuntansi.html> accessed on 20 November

3. Obligation of SOE as Provider of Business Information Under Perspective to Law No. 14 of 2008

Classification of legal entities in terms of the authority granted the legal entity legal entity is classified into two, namely, legal entities of public and private legal entities. Public legal entities (state) is the legal entity set up by the government and authorized by public law such as departments, provinces other state institutions. While private legal entity (civil) is a legal entity established by the government or private and authorized under civil law, such as limited liability companies and cooperatives.¹⁴²

SOE formally is public agency authorized public information disclosure run public disclosure set out in the Public Disclosure Act. SOE is also a legal entity established under the Act. other than that SOEs in particular materially Limited is a business entity that aims to profit-oriented. SOE is a legal entity that is subject to laws (public law entity) but the rules or the entire activity management activity is subject to and governed under private law. In other words formally state-owned enterprises is a public legal entity to run the public disclosure once the entity that runs the business.

A description of the public bodies listed in Article 1 (3) of the Law No. 14 of 2008 on Public Disclosure;

¹⁴²Nindyo Pramono, *Hukum Bisnis: Buku Materi Pokok Modul 1-6*. Cet 8, Ed. 1. (Tangerang: Universitas Terbuka), 1.11..

Public Body is the executive, legislative, judicial, and other body functions and their main tasks associated with the administration of the state, partly or entirely funded from the Budget of the State and / or the Budget Revenue and Expenditure, or non-governmental organizations throughout part or the entire funds sourced from the State Budget and / or Budget Revenue and Expenditure, community contributions, and / or abroad.

Public bodies in accordance with Article 14 No. 14 of 2008 on Public Disclosure, "Public Information that must be provided by the State-Owned Enterprises, Regional-Owned Enterprises and / or other business entity owned by the state ..." ¹⁴³, Then the Government Regulation of information to the public by the state associated with the Article 2, paragraph 2 of Law No. 19 of 2003 on State-Owned Enterprises: "The activities of SOEs should be consistent with the intent and purpose and not contrary to the provisions of law, public order and/ or decency".

As the implementation of public disclosure that intent and purpose towards the national interest and not the activities that oppose the legislation, public order and morality. Then clarified in Information Commission Regulation No. 1 of 2010 on Standards for Public Service mentioned in Article 3, paragraph 1 of the "the scope of the Public Agency in accordance with this rule include (g) State Owned Enterprises or Regional-Owned Enterprises" ¹⁴⁴, Inclusion of the SOE as a public legal entity that intends menyelenggaraan transparent information to the public. Public legal entities

¹⁴³Article 14 of Law No. 14 of 2008 on Public Disclosure.

¹⁴⁴Article 3 (1) g Information Commission Regulation No. 1 of 2010 on Standards for Public Service.

in the form of private as intended SOE has a dual role that is other than the pursuit of profit in the profit oriented public law ensuring transparency in the form of public disclosure.

The setting of the SOE as a public entity listed specifically in Article 14 Public Disclosure Act that SOE is also a public body burdened with the duty to carry out the public disclosure by the State. In detail confirmed in Information Commission Regulation No. 1 of 2010 on Standards for Public Service and annex a list of SOEs as public bodies. In general the Freedom of Information Law, there are several Article governing public bodies, namely Article 6 on the right of the public body, Articles 7 and 8 of the obligations of public bodies, Article 9 of the obligation of public bodies to publish information on a regular basis, Article 10 concerning the obligation of public bodies to announce information immediately, which is information that threatens the livelihood of Article 11 concerning the obligation public bodies to publish information at any time, Article 12 on the obligation of public bodies to publish information services in the form of (amount, granting, refusal, reasons for refusal), Article 13 of the appointment Government Regulation (Acting information and Documentation), Article 14 specifically regulate SOE duty or obligation of public bodies to publish relevant information about the SOE.

Duty of the State to maintain public order and maintaining security and sovereignty of the country and citizens, there are some implications of the

information published or made public, would be known by a particular party or another country then feared to disturb public order and security and threaten the existence of the State. For that kind of information 'stored' in a certain time and only made public after the passing of the grace period. Which meant that the exceptions in the information is not permanent or temporary.¹⁴⁵

State or be represented by a public body in organizing public disclosure, have a duty to convey information to the people concerned who have a need for that information. The right to disclosure of information to get the maximum support in the realization since the enactment of Public Disclosure Act. However function until the enactment of legislation alone is not enough, need community involvement to maximize the function of the public information disclosure. The opening of public access to the public is expected of public bodies have a responsibility and orientation to service people as well as possible. There is a synergistic relationship of the Society as the applicant information and the Public Agency as an information provider. Implementation is expected to realize the openness of open government in an effort to prevent corruption, collusion.

Generally, there are three broad duties of public bodies arranged in Public Disclosure Act. *First*, require public agencies to provide and serve requests for information in a rapid, timely, low cost/ proportional and simple

¹⁴⁵Asep Sholihin, *Kebebasan Informasi Menurut Undang-Undang Nomor 14 Tahun 2008 Tentang Keterbukaan Informasi Publik dalam Perspektif Hukum Islam*, Skripsi,(Jakarta : UIN Jakarta, 2011),7.

way. *Second*, the obligation of public bodies to keep the information diperkecualikan which has a strict and limited nature. *Thirdly*, the obligation of public bodies to fix the system documentation and information services.¹⁴⁶

The task of the Public Agency to provide information on a regular basis, then suddenly, at any time, and serve as a fast, timely, low cost / proportional, and the simple way¹⁴⁷, Dissemination of public information in a way that is easily accessible to the public and in a language easily understood by means of and or electronic and non-electronic media.

Public Agency task to keep the information being extemped. Moreover, before answering the request of the applicant information is exempted or not, the Public Agency examined carefully, then if necessary consequence test as stipulated in Article 17 of the Public Disclosure Act which exempted information. Then the public agency give consideration in writing any measures taken to fulfill the right of everyone to Public Information which includes considerations of political, economic, social, cultural, defense and security of the State.

Another task of the Public Agency to appoint Government Regulation (Acting Information and Documentation), which serves build and develop information and documentation system for managing public information properly and efficiently so that it can be accessed easily.

¹⁴⁶Explanation of Law 14 of 2008 on Public Disclosure.

¹⁴⁷Articles 7, 8, 9, 10 of Law No. 14 of 2008 on Public Information regarding the obligations of public bodies.

In particular there is a duty of public bodies referred to SOEs, have a duty to carry out a public information disclosure contained in Article 14 of Law No. 14 of 2008 on Public Disclosure. The provision of information by the state, including business information in accordance with the information filed by the applicant, and information whose relation to SOEs, which are not regulated can still be submitted, but to test the consequences as stage process.

Incorporating state-owned enterprises as a public body given the responsibility of implementing public disclosure, has taken a long time. There are pros and cons of whether state-owned companies can be incorporated as a public body or not. Cons reason is that SOE is a business entity that aims to pursue profits while Public Disclosure Act is a political entity. But with SOE incorporated as public bodies, state-owned discount the role of dual functions as business entities are profit oriented and as an agent of development.¹⁴⁸

Henny Juliany mention SOE role as an agent of development, which will contribute to the development of Indonesia. The main role of SOEs in the conduct of public services, which are directly related to the public. To maximize the role of SOE as SOE development agency, its implementation is supported by implementing the principles of good corporate governance consistently¹⁴⁹, Purposes of applying GCG in SOEs¹⁵⁰ are:

¹⁴⁸<http://www.bumn.go.id/berita/19839> accessed on 20 November 2019.

¹⁴⁹Henny Juliany, "Kedudukan Kekayaan Negara yang Dipisahkan Pada Badan Usaha Milik Negara (BUMN)", jurnal FH Diponegoro, (Semarang : Universitas Diponegoro, 2015), 293.

¹⁵⁰Muh. Arief Effendi, *The power...*, (Jakarta : Salemba Empat, 2009), 63-64.

- a. maximizing the value of state-owned enterprises by improving the principle of open, accountable, trustworthy, responsible, and equitable that the company has a strong competitive edge, both nasioanl and internationally.
- b. Encouraging the SOE management in a professional, transparent and efficient, and to empower and improve the independence organ function.
- c. Push to take decisions and perform actions, organ guided by high moral values and compliance with applicable legislation, and awareness of social responsibility of SOEs to stakeholders, including environmental sustainability in the region around SOE.
- d. Increase the contribution of SOEs in the national economy
- e. Improving the investment climate nationwide
- f. The success of the privatization program.

The outline can be drawn indirectly that there is an indirect relationship between good governance and good corporate governance. Government in the implementation of good governance based on the principles of good governance, where one of the government's role in running the GG principle is transparency of public bodies. Especially since the inclusion of SOEs as public bodies are obliged to provide public information. SOE is a business entity that is built aiming to make a profit (profit-oriented) because the question is a company, so that in this case the disclosure of

information is an elaboration of the Freedom of Information Law is an endorsement of the principles of good corporate governance or good corporate governance. Holding a regulation can not be separated from the purpose and the expected benefits. Disclosure of business information by the state until the enactment of legislation has its main vision is supported on all sides; communities, public agencies and the State. Public bodies have a right and kewajiban as well as the active participation of society is needed so that the principles of transparency, accountability, responsibility, independence and fairness can be realized in synergy.

C. Public Business Information Disclosure of SOE Under Perspective of Maslahah Mursalah

1. Freedom in Islam

Understanding built on freedom in line with the doctrine taught in Islam. Freedom or *Hurriyah* is intended *amar ma'ruf nahi munkar*. Freedom in the matter of kindness, is a right which has an obligation to be conveyed to all mankind. Human freedom in Islam according to the *Quran and Sunnah*, there are at least five freedom as a basic human right. *First*, religious freedom. *Second*, freedom of thought. *Third*, freedom to own property. *Fourth*, the freedom to try and have a job. *Fifth*, the freedom to choose residence. *Five*, such freedom must not only recognized but also must be protected as a duty of the State.

In general, the concept of freedom of thought is also supported by the inclusion in several important article, article 28 F 1945, Law No. 14 of 2008 on Public Disclosure, Law No. 32 of 2009 regarding the Environment, Law No. 8 of 1999 on Consumer Protection, Law No. 28 of 1999 on the organization of the State are clean and free from corruption, Law No. 36 of 1999 on Telecommunication, Law No. 40 of 1999 on the Press. Then setting the international level, namely Article 19 of the Universal Declaration of Human Rights, 1948, Article 19 of the International Covenant on Civil Rights and Political Rights, the UN Assembly Resolution No. 59 (1) On December 14, 1946, Special Report to the UN Human Rights Council in 1998.¹⁵¹ Arrangements concerning freedom of information has been arranged in various countries including Indonesia.

The relationship of freedom in harmony with human rights. where basic human has the right to be able to maximize the freedom of access to information from any channel in terms of self-development and social environment. So that information is an essential requirement of every human being.

Freedom of the people to think in a container set in the legislation of public disclosure, where people have a need for access to information about public bodies and everything related to it. Earlier if associated with a State or

¹⁵¹Dhoho A. Sastro, dkk. “Buku Saku Mengenal Undang-Undang Keterbukaan Informasi Publik”, (Jakarta : Lembaga Bantuan Hukum Masyarakat,2010), 7-13.

facilitating freedom of the people in the form of public disclosure that there is a relationship between the mandate and powers. The position of the State, represented by the government tasked to perform a public service, as Hazarin in Asep Sholihin¹⁵², The formulation of the legal line in terms of trust that must be delivered to those who deserve it and should establish the law fairly.

Power is not only narrow meaning that the authority or authorities alone, but power is an obligation on the side of authority. Asep Muhammad Hamidullah in Solihin, in its implementation, the obligation should take precedence of authority which is the rights of the ruler. What is meant by the rights of the authorities here are the rights arising out of or born of authority. In Islam the obligation and authority of the ruler should be placed proportionally, to guarantee an implementation of the power he held in a fair and honest. Country or in particular government.¹⁵³

2. Masalahah in Public Bussiness Information Disclosure SOE

The concept of public disclosure has benefits in general. Regulation the Public Disclosure Act, is legislation that was formed to insure against the entire community without exception will need information about an entity, the activities of a body, not least by SOE business information.

As has been described above regarding the business information in the disclosure of public information, so when viewed from the aspect of Islamic

¹⁵²Asep Sholihin, *Kebebasan Informasi...*, Undergraduate Thesis, (Jakarta: UIN Jakarta, 2011), 24.

¹⁵³Asep Sholihin, *Kebebasan Informasi...*, Undergraduate Thesis, (Jakarta: UIN Jakarta, 2011), 27.

law, used the term *usul fiqh*. Then the legal determination method that is used *maslahah mursalah*.

Examines the business by the state information in the disclosure of public information, has relevance in Islamic law that the term *mashlahah mursalah*. *Mursalah* problem is a method developed by the scholars of *usul fiqh* which means absolute. Meant by absolute because it is not associated with the arguments of mind describing or arguments against it. In other words, the benefit that is not linked to the arguments that support and reject it, but according to the purpose of mind. In the implications of its use only to the problem *muamalah* and customs outside the worship area.

Purpose *Islamic Shari'ah* in the use *maslahah* is sticking in the maintenance of the five cases, namely; life, religion, intellect, lineage and property of every human being.¹⁵⁴ Protection of the rights of every individual to do with the right to the disclosure of information is derived from the protection of the soul, mind and treasure in the development of a broad sense. The need for information to humans if not fulfilled, could indirectly affect the fulfillment of an individual's life.

In the development of the increasingly diverse needs of the community. In economic terms of buying and selling objects that are based not only consumed and used nature only. But also aims to bring in more

¹⁵⁴https://books.google.co.id/books/about/Buku_pintar_ekonomi_syariah.html?id=HoTF7tPuu7MC, Ahmad Ifham Sholihin, *Buku Pintar Ekonomi* (tt : tp, t), 498. Accessed on December 7, 2019

profits for things like investing in a company. Nowadays, the business transactions began tended to conduct stock transactions or share purchase. Especially for companies that go public, offering shares on the stock exchange. Companies that perform listings are not only private companies but also the state-owned company, which shares 51% from the state budget. A publicly of state-owned company that offers capital market with various types of securities. Anyone interested to implant will consider a company's shares in the stock exchange, by way of seeking out and finding out as much as possible. Business information is needed by people who want to know a company profile and information is concerned if someone wants to do a stock transaction. Business information is not limited to people who want to conduct stock transactions only, but in the interest thereon.

Disclosure of business information when viewed from the side *maslahah*, first seen *basis maslahah* use. Basic use *maslahah* by Ahmad Hanafi, in determining the new law can be performed by any principled jurist with at *mashlahah* but remain guided by one of the four factors¹⁵⁵ that is;

- a. Realizing kindness
- b. avoid infamy
- c. occlude
- d. changing times

¹⁵⁵Ahmad Hanafi, *Pengantar dan Sejarah Hukum Islam* (Jakarta : Bulan Bintang, 1995), 78.

A *mashlahah* be realized if in a case aimed at goodness. There are essential things that is protected in the disclosure of public information, the public interest. Rights necessary to enforce the lives of people on the ground as well as possible. Arrangements regarding the disclosure of information with the intention of supporting the right of people to obtain information required public bodies to the fullest, but within the limits and provisions of existing law.

As well as to keep the ugliness of things that would happen if a *maslahah* not apply as appropriate or relevant to its purpose. This *maslahah* do so could harm society if either individual or group of people in getting information, both formal and material losses.

In terms of avoiding of badness, can *maslahah* "occlude", which is intended to close the road which is any way or manner that is intentionally or unintentionally can bring to the prohibitions of mind to the road to *mafsadat* (badness) can be closed. If *maslahah* apply the things that are becoming an intermediary towards ugliness can be prevented by *maslahah*.

Increasingly changing times and continue to go forward, because the effect on the resulting legal changes *ijtihad*. The existence of past environmental changes from the time of the determination of the law, human denagn developing ideas and lifestyles with all updates available so *maslahah* can be the foundation to address the problems that occur in the current environment.

Disclosure of business by the state if they are viewed in Islam including *ijtihadiah* problem where there is no clear proof or *nash sharih* that show it, but nor reject it. So that issues concerning *ijtihadiah* require more attention to the road more depth. Relevance to *maslahah mursalah*, disclosure of business information is eligible to determine *mashlahah* in general there are three. Generally, there is no linking texts, and has the merit or benefit. The benefit of a general nature, namely the usefulness or merit that obtained is not limited to a few people, but in society in general. No argument of the *Quran*, *Sunnah*, *ijma*, *qiyas* regarding disclosure of information, but in line with the intended mind that there is benefit in its disclosure to the public business, public bodies and the State. If the active public participation in its implementation allows become order of a society better.

In line with the principle assumed by GCG and public information disclosure has a universal nature and there are similarities with the teachings of Islam. The principle established by corporate governance are transparency, responsible, trust, fairness, and social concerns. Ary Gina in Muh. Arif Effendi explained the objectives of GCG is the attitude of honesty responsible trustworthy, reliable, and sensitivity to the social environment is the attitude exemplified by the Prophet Muhammad during the 15th century as honest (*Siddiq*), accountable (*trust*), cooperative (*tabligh*), smart (*fathonah*) or in other words are honest and truthful, trustworthy, responsible, intelligent, and

concerned with the social environment. There is a significance difference in the drive or motivation.¹⁵⁶



¹⁵⁶Muh. Arief Effendi, *The power...*, (Jakarta : Salemba Empat, 2009), 128.

CHAPTER IV

CONCLUSIONS AND SUGGESTION

A. Conclusions

Based on previous chapters ' explanation and analysis, it can be concluded that:

1. The position of State-Owned Enterprises in the implementation of the information disclosure business in Indonesia include the implementation of Good Corporate Governance principles, namely transparency, accountability, responsibility, independence and fairness. The implementation of the business information of state-owned enterprises is provided online at website *PT. Perusahaan Gas Negara, PT. Bank Rakyat Indonesia Tbk* and *PT. Telekomunikasi Tbk*. facilitate the Community and interested parties in obtaining information access for SOEs which is listed on the Indonesia Stock Exchange. SOEs *go public* is obliged to provide additional information for publicly addressed shareholders.
2. Disclosure of SOEs business information according to Law No. 14 of 2008 on Public Disclosure has obligations on the publication of business information in particular article 14 Public Disclosure Act and business information that has not been regulated other than the excluded, can be conducted test Consequences of the information.

3. Disclosure of SOEs business information in the implementation according to *Maslahah Mursalah* can be examined in the aspect of the concept of disclosure of public information that has a role in national transparency aimed at public interest. Holding on to the intention to support a deed that contains goodness, it contains the benefits of honesty, balance of information, equality, and social care.

B. Suggestions

Based on the explanation regarding the disclosure of business information by SOE, then recommended a few things as follows:

1. As a matter of course, the implementation of business activities are patterned with the availability of business information for the public to foster public participation in order to comply with good corporate governance.
2. Should the business information of SOE that can be provided has fulfilled good corporate governance standards of transparency, accountability, independence and fairness.
3. The concept of disclosure of business information continues to open space for its development through the benefit of the stakeholders.

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