



Policy Brief



Strengthening The Anti-Corruption Program of The Indonesian State-Owned Enterprises (SOES)

Background

Indonesian State-Owned Enterprises (SOEs) have a crucial role in Indonesia economy. SOEs have a role to produce goods and services which is necessary to manifest social welfare for all Indonesians and as the one of the significant source of state revenue through various tax, dividend, and privatization¹. SOEs crucial role could be seen on SOEs share on National Strategic Project (NSP). From the estimation of total investments of all projects which reach IDR 4,197 trillion, the source of investment from SOEs is 30% of the total investment (IDR 1,258 trillion)². Meanwhile, regarding tax revenue, SOEs contribution for the State Budget on 2017 amounted to IDR 351 trillion³, or approximately 20% of the total tax revenue obtained in 2017 (IDR 1,736 trillion)⁴.

SOEs task in the infrastructure development would not be impeded by any legal issues, and their contribution to tax revenue could be increased if the SOEs governed transparently and professionally. Thereby, there would be neither state losses which is caused by corruption and tax avoidance which is undertaken by exploiting loophole on tax policy and shift the corporate's profit to tax haven countries—which is known as Base Erosion and Profit Shifting (BEPS)⁵. To drive corporations—including SOEs—to not commit the corporate crime, the Supreme Court issued the Supreme Court Regulation Number 13 the year 2016 regarding the Procedures for Handling Criminal Offenses by the Corporation on the last 2016.

Through the regulation aforementioned, corporation who commits corrupt practices⁶ could be deemed liable if (i) the corporation is earning any benefit from the crime committed or the crime was committed to the interest of the corporation, (ii) the corporation acquiesced the undertaking of the criminal offense, or (iii) the corporation did not take any necessary steps to prevent the crime, to avoid the greater impacts, and to ensure compliance with the legal provisions to prevent the criminal offense⁷. After the regulation aforementioned was issued, Nindya Karya which is one of the SOE from the construction sector has been named as a suspect by the Corruption Eradication Commission (CEC)⁸.

Indonesian SOEs indeed has been forced to demonstrate their leadership on implementing the anti-corruption program which is more stringent than the Indonesian private companies, mainly due to Indonesia's Corruption Eradication Act which regulates the SOEs stricter than private companies since the private-to-private corruption (commercial bribery) not regulated under the current Act⁹. Although the United Nations Convention Against Corruption (UNCAC) which has been ratified by the Government of Indonesia (GoI) under the Law No. 7 the year 2006 concerning the Ratification of UNCAC, the State Parties are recommended to criminalize the private-to-private corruption¹⁰.

G-20 Annual Meeting in 2018 under the Argentina Presidency has been stated that the reinforcement of the SOEs anti-corruption program has become the top priority¹¹. Thereby, the urge towards Indonesian SOEs to strengthen their anti-corruption program does not only exist on the national level, but it has expands to the international level.

Transparency in Corporate Reporting (TRAC) Objectives and Methodology

To assess SOEs readiness on preventing corruption, spark improvement on the SOEs anti-corruption program—which complements the standard of Good Corporate Governance (GCG), and to drive SOEs to publish essential financial information on country-by-country basis, Transparency International Indonesia (TI-I) conducted a study that is entitled “Transparency in Corporate Reporting (TRAC): Assessing Indonesian State-Owned Enterprises”

105 SOEs had been assessed through this study, either Listed SOEs or Non-Listed SOEs which comes from the 13 business sector¹². The process of SOEs assessment had been undertaken from June 2017 to February 2018. This study conducted through three phases: (i) data collection which was conducted by the researchers by examining the company's official website; (ii) two-step validation forum to verify the data which had been collected on the previous phase; and (iii) received feedback from every SOEs

There are three dimensions on Transparency in Corporate Reporting (TRAC), namely:

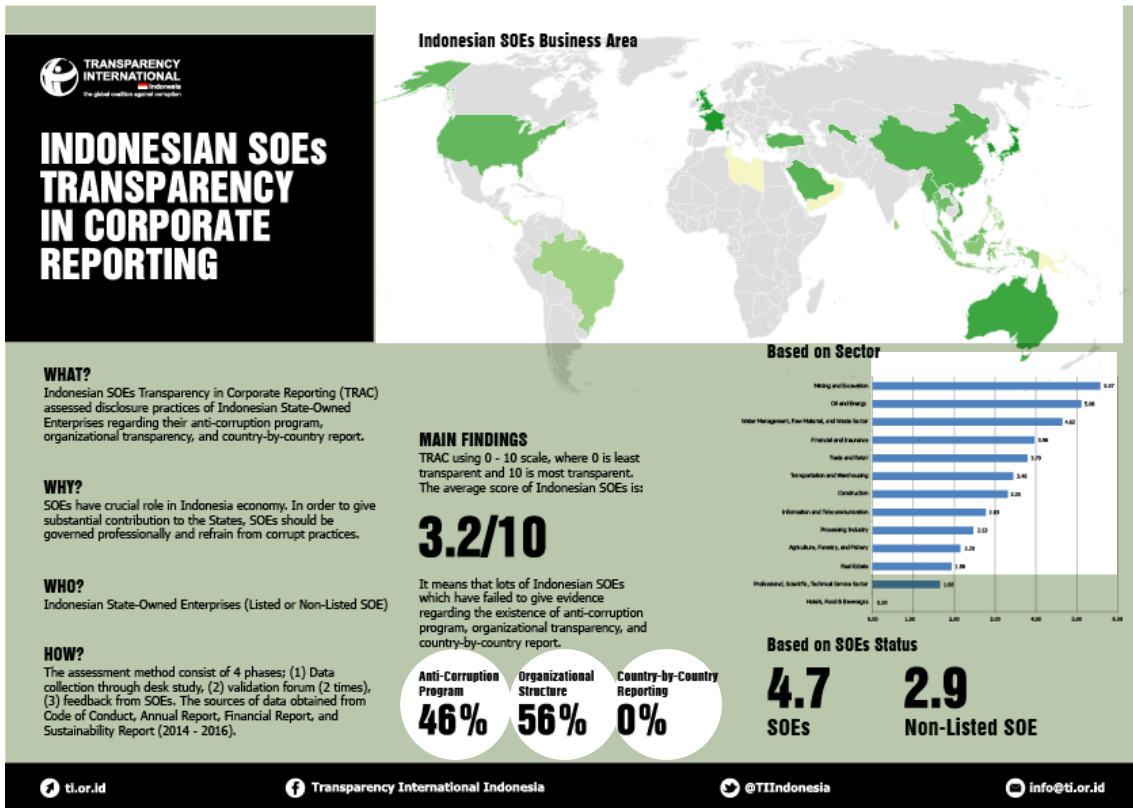
1. Reporting on Anti-Corruption Program
2. Organizational Transparency
3. Country-by-Country Reporting

The data source of the TRAC study is the documents which have been published the SOEs on the period of 2014 – 2016. The typical documents which have been assessed by TI-I are the Code of Conduct, Annual Report, Financial Report, Sustainability Report, and the website menu which describes the company's corporate governance or anti-corruption program.

Main Findings

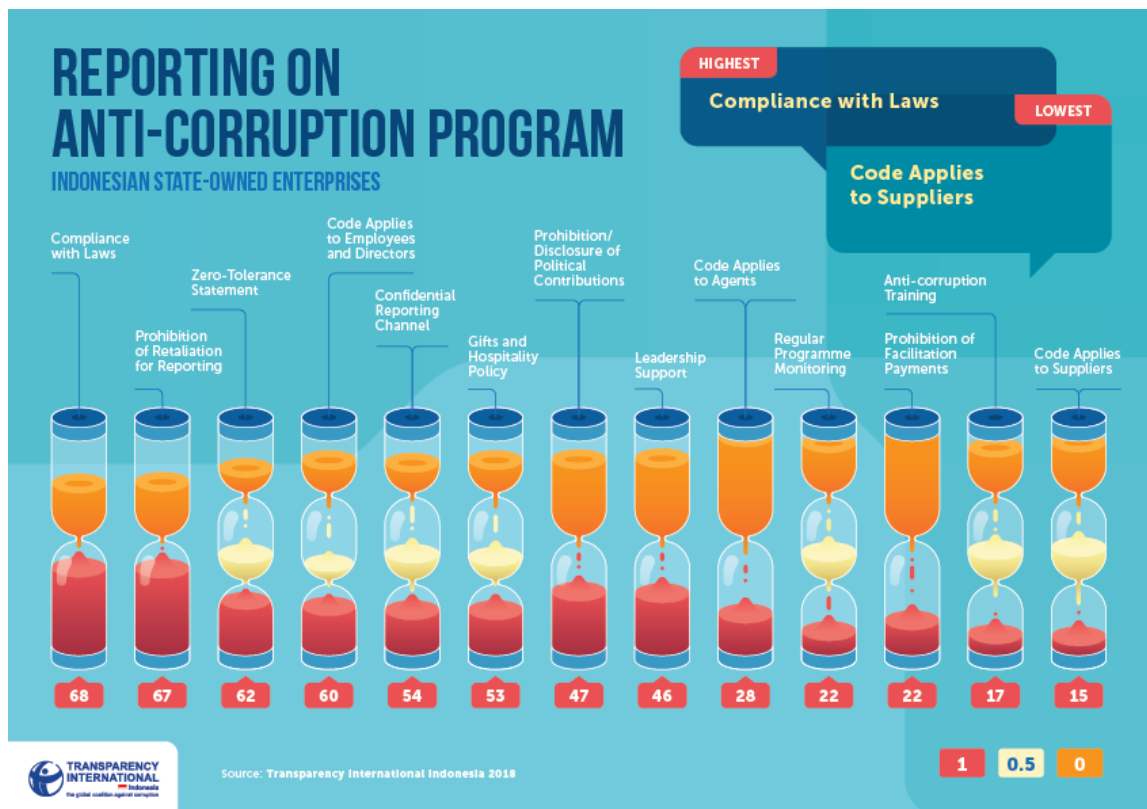
Based on the analysis of "TRAC: Assessing Indonesian State-Owned Enterprises (SOEs)," TI-Indonesia presents the main findings as follows:

- 1. The average score of the 105 SOEs are 3.2 (0 = least transparent, 10 = highly transparent).** Based on the analysis of the SOEs legal form, the Listed SOEs have a better average score than the Non-Listed SOEs; the average score is 4.7 for the former and 2.9 for the latter. Meanwhile, based on the analysis of the business sector, the highest average score achieved by the SOEs which come from Mining and Excavation Sector (5.57). In contrast, the lowest average score achieved by SOEs which comes from Accommodation, Food, and Beverages sector (0), and followed by SOEs which comes from the Professional, Scientific, and Technical Services Sector (1.68). From the 105 SOEs which had been assessed, 14 SOEs got a score of 0.
- 2. The SOE which has achieved the highest score is Pertamina (6.7).** Meanwhile, the list of SOEs from 2nd – 10th are as follows: (2) Pelabuhan Indonesia II, Bank Mandiri and Timah (6.4); (5) BRI and Pelabuhan Indonesia III (6.3); (7) Perum Bulog, PLN, and Semen Baturaja (6.2); (10) PP, Pelayaran Nasional Indonesia, and Permodalan Nasional Madani (5.9).
- 3. The average score of the first dimension regarding the reporting of the anti-corruption program is 46%¹³.** The Listed-SOEs have a better average percentage score than the Non-Listed SOEs, 59% and 43% respectively. The SOEs which operate a business upon Mining and Excavation Sector have the highest average percentage score, that is 67%, and followed by the SOEs from Banking and Insurance Sector (64%). However, the SOEs which have the lowest average score are the SOEs which come from the (i) Accommodation, Food, and Beverages Sector, and (ii) Real Estate Sector. Both of these sectors got a score of 0%.



Graphic 1. The infographic of the *Transparency in Corporate Reporting (TRAC): Assessing Indonesian State-Owned Enterprises (SOEs)*

- The indicator which is frequently fulfilled by the majority of the SOEs on the first dimension regarding the reporting of the anti-corruption program is the indicator of “Compliance with Laws.”; There are 68 SOEs which have committed to comply with the laws. Furthermore, the second indicator which is mostly fulfilled by the SOEs is “Whistle-Blowing System.”. From 105 SOEs, 67 SOEs stated that their enterprises already have a Whistle-Blowing System which gives protection to the whistle-blower.
- In contrast, the indicator which is least fulfilled by the SOEs on the first dimension is the indicator of “Code of Ethics which apply to the Supplier.”. From 105 SOEs, only 15 SOEs which stated that the enterprise (i) obliges its supplier to comply with the SOE’s anti-corruption program, (ii) undertake due diligence on the supplier’s anti-corruption program, and (iii) actively supervise the compliance of its supplier regarding the anti-corruption program. Another indicator which is least fulfilled by the SOEs in the indicator of “Anti-Corruption Training for the Employees and Directors.”. There were only 17 SOEs which informed that the SOE had been giving the anti-corruption training to its employees and directors. Moreover, there are only 22 SOEs which inform that the SOE has a policy which prohibits the facilitation payment.

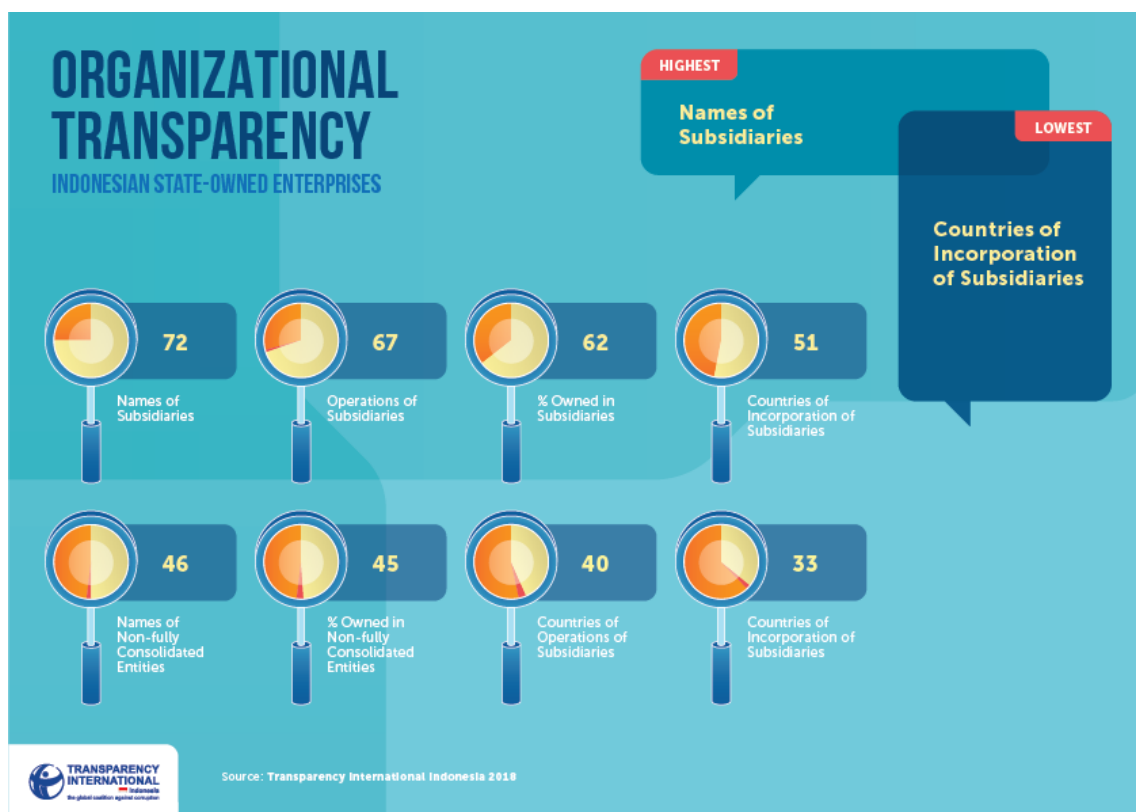


Graphic 2. The Indicators Fulfillment on the First Dimension regarding the Reporting of Anti-Corruption Program.

- On the second dimension concerning Organizational Transparency, the SOEs average percentage score is 56%.** The average percentage score of Listed-SOEs nearly perfect as the score reaches 91%. Meanwhile, the average percentage score of the Non-Listed SOEs is just 47%. According to the analysis of each business sector, the SOEs which have the best average percentage score is the (i) SOEs on Gas and Electricity sector, and (ii) SOEs on Mining and Excavation sector (80%). However, the SOEs which originate from the Accommodation, Food, and Beverages sector have the lowest score, that is 0%
- The indicator which is often fulfilled by the SOEs on the second dimension concerning organizational transparency is the indicator of “List of Subsidiaries.”** There are 72 SOEs which have fulfilled the indicator aforementioned. The next indicator which has been fulfilled by the 67 SOEs is the business process of its subsidiaries.
- Conversely, the indicator on the second dimension that was least fulfilled by the SOEs is the indicator of “Countries of Incorporation of the SOE’s Associates.”** There are only 33 SOEs which was able to fulfill such an indicator. The next indicator which is least fulfilled by the SOEs is the indicator of the business process of its associates since there are only 40 SOEs which had publicized it.

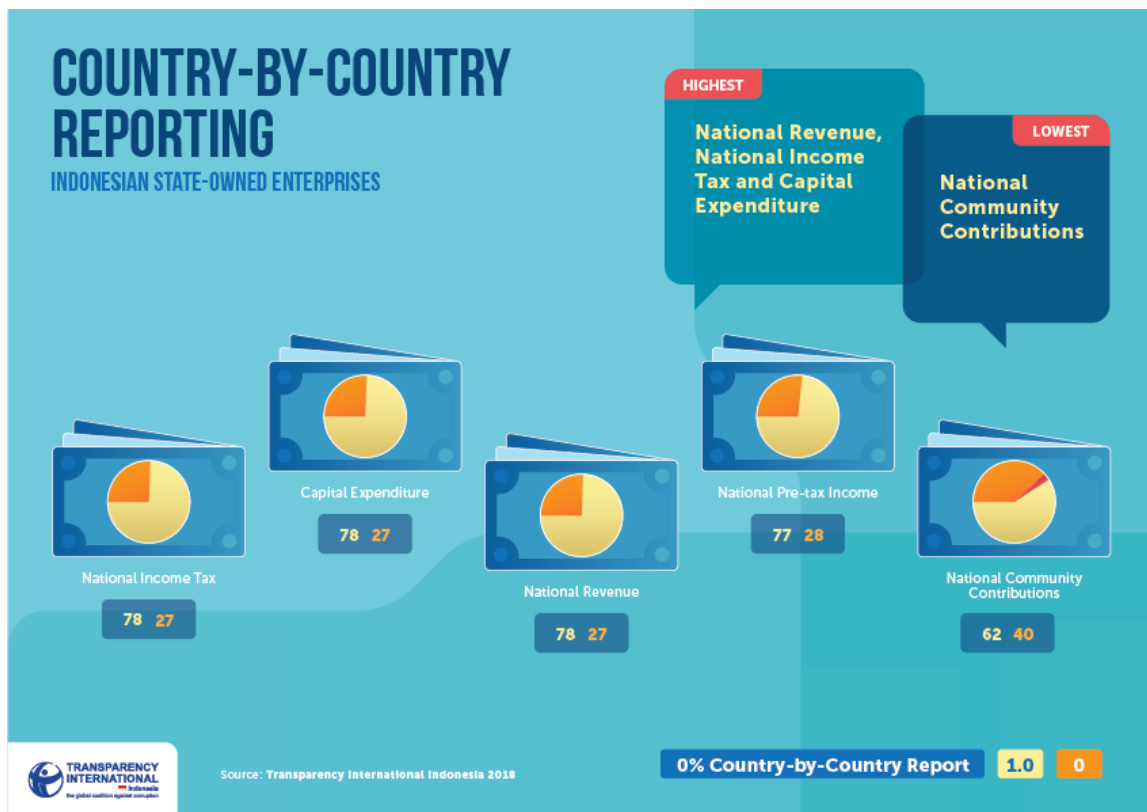
9. The average percentage score of the transparency of SOEs national financial information is 71%. Concerning transparency of the SOEs on essential financial information regarding total revenue, capital expenditure, income before tax, corporate income tax, and social contribution, the Listed-SOEs can reach perfect score (100%), whereas the Non-Listed SOEs are only able to get the average score of 65%. SOEs which originate from (i) Mining and Excavation Sector, (ii) Gas and Electricity Sectors, and (iii) Water and Waste Management Sector have the highest average percentage score of 100%. Conversely, the SOEs which originate from (i) the Accommodation, Food and Beverage Sector and (ii) Real Estate Sector have got the lowest percentage point of 0%.

10. Nevertheless, the SOEs average percentage score of their key financial information that is published on a country-by-country basis is extremely low, that is only 0%. This low average percentage score indicates that the SOEs currently do not publish their financial report which has been disaggregated according to the countries in which the SOEs have been operating.



Graphic 3. The Indicators Fulfillment on the Second Dimension concerning Organizational Transparency

11. The indicators on the third dimension regarding domestic financial disclosure which is frequently fulfilled by the SOEs are the indicators of (i) total revenue, (ii) capital expenditure, and (iii) corporate income tax. 78 SOEs have publicized their financial statements which contained essential financial information aforementioned. Meanwhile, the indicator that was least fulfilled by the SOEs is the indicator regarding the reporting of SOEs social contribution—which includes the lists of SOE activities upon social contribution and the spending of each activity. There are only 62 SOEs which reported their social contribution.



■ Graphic 4. The indicators fulfillment on the third dimension concerning the country-by-country report.

Recommendations

Based on the main findings of the study which is entitled “Transparency in Corporate Reporting (TRAC): Assessing Indonesian State-Owned Enterprises (SOEs),” TI-Indonesia delivers several recommendations as follows:

GOVERNMENT AND REGULATOR

- 1. Oblige SOEs to prohibit facilitation payment.** TI-Indonesia has conducted a gap analysis between TRAC indicators with the SK-16/S.MBU/2012 concerning the Indicator/Parameter of Assessment and Evaluation towards the implementation of Good Corporate Governance by the SOE¹⁴. The gap analysis result finds that the Ministry of State-Owned Enterprises—which has a role as the ownership entity—has not required the regulation which prohibits facilitation payment as one of the indicators in the regulation aforementioned.

2. Oblige SOEs to manage their third parties such as intermediary, consultant, advisor and the supplier of SOEs to comply with the SOEs anti-corruption program. Aside from obliging the third parties and the suppliers to comply with the SOE anti-corruption program, the business dealings between SOE and its supplier should be preceded by the due diligence of the supplier's anti-corruption program. The due diligence phase towards the supplier's anti-corruption program is crucial, and it could be implemented as a supplier selection mechanism which aims to mitigate corruption risk which arises from the suppliers which are considered do not implement an adequate anti-corruption program. Some of the corruption cases which involve the SOE's Director such as the corruption case which involves the former President Director of Garuda Indonesia revealed a typical pattern in which the bribe-giving process was conducted by using the role of the intermediary¹⁵. Therefore, the anti-corruption program of the SOE should be applied to its third parties and suppliers. Moreover, based on the gap analysis which is undertaken against the TRAC indicators and the Ministry of State-Owned Enterprises Regulation regarding the indicators/parameters of Good Corporate Governance of the SOE, the obligation to ensure the compliance of the SOE's third parties is not exist, whereas the due diligence phase to assess the appropriateness of the supplier's anti-corruption program was not written explicitly¹⁶. Furthermore, the SOEs should have a higher authority to monitor the implementation of the anti-corruption program that is carried out by their third parties and suppliers¹⁷. Moreover, the Ministry of State-Owned Enterprises (SOEs) could replicate a policy which was issued by the Ministry of Energy and Mineral Resources (MEMR) which obliges the company who wants to get a permit on a mineral and coal sector to inform the company's list of the beneficial owner¹⁸. Ministry of SOEs should oblige all the suppliers who have business dealings with the SOEs to inform their list of beneficial owners.

STATE-OWNED ENTERPRISES

- 1. Enhance the frequency and effectiveness of the SOE anti-corruption training.** The indicator regarding the anti-corruption training simply could detect the SOE's goodwill to internalize the value of integrity/anti-corruption to its employees and directors. If the SOE already has a proper anti-corruption policy yet it does not complement with anti-corruption training; it is possible that the law enforcement agency assumes that the SOE does not undertake appropriate measures to prevent corruption. Eventually, the SOE could be deemed culpable due to corrupt practice which is committed by its employees and directors.
- 2. SOEs should improve the transparency of their associates.** According to the gap analysis result between TRAC indicators and the SOE's indicator/parameter of the implementation of good corporate governance (GCG), the indicator which obliges SOEs to inform their (i) list of subsidiaries and associates, (ii) shares of the SOE's percentage in their subsidiaries and associates, and the (iii) information regarding the business process of their subsidiaries and associates has been present¹⁹, although the SOEs tend to inform their subsidiaries better than their associates. Moreover, the indicator regarding the SOE's obligation to publicly report the countries of incorporation of its subsidiaries and associates was not found.

3. SOEs could become a pioneer regarding the reporting of financial statements on a country-by-country basis. As previously stated in the main findings section, the average percentage score of the country-by-country report of SOEs are extremely low, that is 0%. To tackle Base Erosion and Profit Shifting (BEPS)²⁰, Ministry of Finance has issued the Minister of Finance regulation No. 213 the year 2016 concerning the type of additional documents and/or information mandatory to be kept by taxpayers who conduct transactions with related parties and its procedures (transfer pricing documentation)²¹. One of the documents which have to be reported to the Government of Indonesia (Gol) according to the regulation aforementioned is a country-by-country report. SOEs should report their key financial information publicly regarding total revenue, capital expenditure, income before tax, and corporate income tax which has been separated in accord with the countries in which the SOEs operate. Besides as an effort to prevent Base Erosion and Profit Shifting (BEPS), the publication of the country-by-country report is regarded as an embodiment of the transparency and accountability of SOEs toward Indonesian citizen.

CIVIL SOCIETY

- 1. Demand the SOEs be transparent and accountable.** Civil Society Organizations (CSOs) should focus their attention to demand SOEs to manage the enterprises in a transparent and accountable manner, particularly due to SOEs primary function regarding Public Service Obligation (PSO) which affect the lives of Indonesian citizen significantly.
- 2. Demand the SOEs publish Country-by-Country Report (CbCR).** The country-by-country report has been considered as one of the action plans which is agreed by the countries which become the member of OECD to tackle Base Erosion and Profit Shifting (BEPS). Besides the issue of beneficial ownership transparency, CSOs should advocate the Country-by-Country Report to prevent tax avoidance.

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Endnotes:

- 1 Government of Indonesia. (2003). *Law No. 19 the year 2003 concerning the State-Owned Enterprises*. Page 32. Accessed through <http://jdih.bumn.go.id/lihat/19%20Tahun%202003>
- 2 Committee for Acceleration of Priority Infrastructure Delivery. (2016). *National Strategic Projects*. Accessed through <https://kppip.go.id/en/national-strategic-projects/>
- 3 Katadata. (2018). *Sumbangan BUMN terhadap APBN 2017 mencapai 351 Triliun*. Accessed through <https://katadata.co.id/berita/2018/06/06/sumbangan-bumn-terhadap-apbn-2017-mencapai-rp-351-triliun>
- 4 BPS-Statistics Indonesia. (2018). *Actual Government Revenues (Billion Rupiahs), 2007 – 2018*. Accessed through <https://www.bps.go.id/statictable/2009/02/24/1286/realisasi-penerimaan-negara-milyar-rupiah-2007-2018.html>
- 5 See, OECD. (2018). *About the Inclusive Framework on BEPS*. Accessed through <http://www.oecd.org/tax/beps/beps-about.htm>
- 6 The article number 20 of the Corruption Eradication Act No. 31 the year 1999 has stated that if the corrupt practice committed by or on behalf of the corporation or its management, the criminal prosecution and the criminal sanction could be imposed to the corporation and/or its management. Accessed through <https://www.kpk.go.id/images/pdf/Undang-undang/uu311999.pdf>
- 7 Supreme Court. (2016). *Supreme Court Regulation Number 13 the year 2016 concerning the Procedures for Handling Criminal Offenses by the Corporation*. Article 4. Accessed through http://bawas.mahkamahagung.go.id/bawas_doc/doc/perma_13_2016_web_fix.pdf
- 8 The Jakarta Post. (2018). *KPK Steps Up Corporate Prosecution*. Accessed through <http://www.thejakartapost.com/news/2018/04/16/kpk-steps-corporate-prosecution.html>
- 9 Pradipto, Rimawan. (2017). *Business Integrity in Indonesia: An Obligation or Needs?*. Page. 14. The material was presented on the launching of “Transparency in Corporate Reporting (TRAC): Assessing Largest Companies in Indonesia in 6th December, 2017.
- 10 United Nations Office on Drugs and Crime. (2004). *United Nations Convention Against Corruption*. Article 21. Accessed through https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf
- 11 G-20. (2018). *Anti-Corruption*. Accessed through <https://www.g20.org/en/g20-argentina/work-streams/anti-corruption>
- 12 There were 14 SOEs which was not assessed on this study due to the moment of deciding the SOEs that would be assessed in this study on 20th – 21st May 2017, the 14 SOEs didn't have a company website or the company website could not be accessed. The 14 SOEs which were not assessed are as follows: (1) Perum Perhutani, (2) Perum PPD, (3) Barata Indonesia, (4) PT Berdikari, (5) PT Binakarya, (6) PT Iglas, (7) PT Kertas Leces, (8) Primissima, (9) Reasuransi Umum Indonesia, (10) Reasuransi Indonesia Utama, (11) Sang Hyang Seri, (12) Semen Kupang, (13) Survei Udara Panas dan (14) Yodya Karya.
- 13 TI-Indonesia merely assessed the transparency of the SOEs regarding the reporting of the anti-corruption program. Although several SOEs has been assessed quite well based on the TRAC indicator, TRAC did not assess whether the SOE had implemented the anti-corruption program

effectively—which influence the SOE’s ability to minimize the incidence of corruption.

- 14 Minister of State-Owned Enterprises. (2012). *Minister of SOEs Decree SK-16/S.MBU/2012 concerning the Indicator/Parameter for Assessment and Evaluation of the Implementation of Good Corporate Governance in State-Owned Enterprises*. Accessed through <http://jdih.bumn.go.id/lihat/SK-16/S.MBU/2012>
- 15 Jakarta Globe. (2017). *KPK Questions Senior Managers with Links to Garuda Indonesia Bribery Scandal*. Accessed through <https://jakartaglobe.id/news/kpk-questions-senior-manager-links-garuda-indonesia-bribery-scandal/>
- 16 One of the sub-indicators in the Minister of SOEs Decree SK-16/S.MBU/2012 on 4th Aspects regarding “Director”, Indicator 28, Sub-indicator 102 and the factors which is used to assess the implementation stated as follows “the procurement that is carried out by the SOE is open to the suppliers which are able to fulfill the requirements and passed through the competitive process between suppliers and fulfill particular requirements/criteria according to the provision and the procedure that is unambiguous and transparent. The factor that is stated above implies that the requirement or the criteria that are defined by the SOE is not necessarily related to the anti-corruption program of its supplier.
- 17 The “right to audit” clause which has been implemented by the Special Task Force for Upstream Oil and Gas Business Activities Republic of Indonesia (SKK Migas) should be replicated by the SOE to audit its supplier rigorously. See the SKK Migas presentation material which is entitled “Pengelolaan Sumber Daya Hulu Migas dengan Akuntabel dan Transparan”. Accessed through <https://acch.kpk.go.id/images/ragam/makalah/pdf/iibic/day-2/puriagung/3.-presentasi-SKKMigas-pada-FORUM-IBIC-FINAL.pdf>
- 18 The obligation to report the list of beneficial owners of the company who wants to get a permit in the mineral and coal sector has been regulated under the Minister of Energy and Mineral Resources (MEMR) Regulation No. 11 the year 2018 regarding the procedures for granting territory, licensing, and reporting upon the mining activities, which some of the articles has been revised through the MEMR Regulation No. 22 year 2018 concerning the amendment of the MEMR Regulation No. 11 the year 2018. The regulation aforementioned is also supplemented by the MEMR Decree Number 1796 K/30/MEM/2018 concerning the Guidelines for Requesting, Evaluating, and Issuing the permit on the mineral and coal sector. Accessed through <https://jdih.esdm.go.id/peraturan/Kepmen%20ESDM%20Nomor%201796%20K%2030%20MEM%202018%20tentang%20Pedoman%20Perizinan.pdf>
- 19 Found in the SK-16/S.MBU/2012 in the aspect of “Information Disclosure and Transparency”, Indicator 40, Sub-indicator 146, and the factors which are used to assess the implementation of the corporate governance number 10.
- 20 See, Ernst & Young. (2017). *Indonesia implements new transfer pricing documentation requirements in line with BEPS Action 13*. Accessed through <https://www.ey.com/gl/en/services/tax/international-tax/alert--indonesia-implements-new-transfer-pricing-documentation-requirements-in-line-with-beps-action-13>
- 21 Minister of Finance. (2016). *Minister of Finance Regulation Number 213/PMK.03/2016 concerning the type of additional documents and/or information mandatory to be kept by taxpayers who conduct transactions with related parties and its procedures*. Accessed through <http://www.jdih.kemenkeu.go.id/fullText/2016/213~PMK.03~2016Per.pdf>