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## Achieving Public Information Transparency in The Dissemination of Local Regulations

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### Abstract

Comparing the disclosure of public information regarding the dissemination and publication to the public of newly enacted rules, setting Indonesia and the Netherlands as parameters is interesting as the legal cultures of both countries are intertwined and legal perspectives are constantly evolving. Despite differences in the rule of law, both countries have similar regulatory frameworks. This research uses a normative juridical writing method with a literature study to analyze the relationship between good governance and public information disclosure, including definitions, indicators, objectives, and important factors that influence the concept. The aim is to serve as a comparison parameter for a more efficient information disclosure mechanism. In Indonesia, the role of DPRD is closely related to the issue of public information disclosure, as DPRD has a dominant role in authority. Meanwhile, in the Netherlands, the local government takes the lead in setting regulations. Nonetheless, both countries emphasize the importance of checks and balances through the establishment of RvD and KIP, to oversee and integrate the aspirations of the community. The results of this study suggest that public information disclosure is important in both Indonesia and the Netherlands, as demonstrated by regulations that prioritize transparency, accountability, public participation, responsiveness, and the rule of law in governance. This commitment to openness aims to bridge the gap between public expectations and government actions. And in conclusion, the harmony between the process of forming regulations involving the DPRD as a representative of the people's voice and information disclosure is interrelated in public services towards the achievement of good governance.

**Keywords:** Local Regulations; Public Information Transparency; Good Governance.

### Introduction

The advancement of science and technology necessitates that a nation provides its citizens with facilities that ease their access to public information relevant to national

life. In line with this, the Indonesian government has enacted several regulations that accommodate issues related to the provision of public information services. Law Number 14 of 2008 on Public Information Disclosure and Law Number 43 of 2009 on Archives are two examples of these. The Ministry of State Apparatus Empowerment and Bureaucratic Reform Regulation No. 1 is one example of an implementing regulation issued in accordance with the aforementioned laws. Regulation No. 1 of 2014 on Guidelines for the Management of National Archives Head Regulation No. 45 of 2016 on the Implementation of Local Government Archival Systems, Indonesian National Archives 7 of 2019 on the implementation of archival systems for public bodies. In addition, the Government Regulation No. Presidential Decree No. 61 of 2010 on the Implementation of the Public Information Disclosure Law Regulation No. 61 of 2010 regarding the Information and Documentation Management Unit (UPID), 1 of 2010 on Standard Public Information Services and Regulation No. 2 of 2010 on the Costs of Public Information Duplication and Delivery.

In practice, the Public Information Disclosure Law and the Archives Law do not automatically guarantee that the public is open to the information provided by the government. The proliferation of misinformation (hoaxes) in electronic media and the resulting societal unrest suggest that the issue may never be fully resolved, leading to reduced public contributions and suboptimal quality of public services. The essence of the state's objective to realize social welfare for all Indonesian people is in line with the nation's legal principles as a rule-of-law state, which necessitates the implementation of existing regulations and the compliance of the public in their execution.<sup>1</sup>

The right to access public information is one of the issues highlighted by the international community, represented through the United Nations or commonly

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<sup>1</sup> Kadek Cahya Susila Wibawa, 'Urgensi Keterbukaan Informasi Dalam Pelayanan Publik Sebagai Upaya Mewujudkan Tata Kelola Pemerintahan Yang Baik' (2019) 2 Administrative Law and Governance Journal.[219].The government carries out three main duties, namely: organizing government, carrying out development, and holding public services. State that is required to attend to serve every citizen and citizen to fulfill the rights and basic needs of the community under government approval, accept the mandate of the UUD NRI 1945 (Constitution of the Republic of Indonesia).

referred to as UN, in the *Universal Declaration of Human Rights (UDHR) Article 19*, which states:

“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”.

In this declaration, the UN recognizes and emphasizes the fundamental right of individuals to freely express their opinions and ideas, as well as their right to access, utilize any media to seek, receive, and disseminate information and ideas without regard to national boundaries.

In addition, the UN has undertaken several actions to uphold the principles of public information disclosure in order to facilitate public access to data provided to the society. The 2030 Agenda for Sustainable Development is the result of a growing push to increase public participation in decision-making processes, despite the fact that it does not explicitly regulate information openness. Target 16.10 in this agenda emphasizes the significance of ensuring public access to information and safeguarding the right to free speech.

The World Summit on the Information Society or commonly referred to as WSIS, through its Declarations and Action Plans adopted in 2003 and 2005, recognizes the significance of freedom of opinion, opportunity of articulation, and all inclusive admittance to data and information. The UN Special Rapporteur on Freedom of Expression issued the Joint Declaration on Freedom of Expression and Access to Information in 2011 and the Organization for Security and Cooperation in Europe or commonly referred to as OSCE, underscores the importance of information openness as a vital element in democratic systems and human rights protection. UNESCO, the United Nations Educational, Scientific and Cultural Organization, actively promotes information openness. They have developed principles and guidelines on the right to information and support countries in developing policies and practices that foster information openness.

These efforts align with *Article 28F of the Constitution of the Republic of Indonesia, enacted in 1945*, which provides the constitutional basis for the right to

access information. The article states:

“Every person is entitled to communicate and to obtain information for the development of his/her personality and social environment, as well as be entitled to seek, to obtain, to own, to store, to process, and to convey information by means of all kinds of available channels”.

Although *Law No. 39 of 1999 on Human Rights* does not specifically mention the right to access public information, the control of society in every step and policy taken by Public Bodies, especially the government, is crucial. Therefore, public information disclosure becomes an important means to realize such control. A policy has an effect on people's lives in practice. The Public Information Disclosure Law establishes a specific legal framework for Indonesia's right to access public information in this context. This law emphasizes the significance of transparency and public participation in decision-making as well as guarantees public access to information held by public entities. Therefore, despite not being explicitly regulated in *Law No. 39 of 1999 on Human Rights*, the significance of societal control and information disclosure in the context of public policy is recognized and supported within the constitutional framework of Indonesia.

Information that is created, stored, managed, transmitted, or received by a public body in accordance with this law is referred to as public information.<sup>2</sup> Other forms of information that are related to public interest are also included. The following are some reasons why openness to information is critical: First and foremost, information is essential for personal growth and the social environment, as well as for national resilience; Second, public information disclosure is an essential characteristic of a democratic state that upholds the sovereignty of the people in order to achieve good governance, and the right to obtain information is a human right. Thirdly, public disclosure of information increases public oversight of the state administration, other public bodies, and anything else that affects public interests; Fourthly, the goal of public information management is to make society more informed.<sup>3</sup>

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<sup>2</sup> Afrizal Tjoetra, 'Peran Perguruan Tinggi Dalam Membangun Budaya Keterbukaan Informasi Publik' (2019) 4 Jurnal Community.

<sup>3</sup> Eko Noer Kristiyanto, 'Urgensi Keterbukaan Informasi Dalam Penyelenggaraan Pelayanan Publik (Urgency of Disclosure of Information in The Implementation of Public Service)' (2016) 16 Jurnal Penelitian Hukum De Jure.[233].

In the context of access to public information, the openness of information systems, information disclosure, and archiving are all interconnected. They make it possible for the general public to access information and encourage participation by incorporating technology that is open and inclusive. Information disclosure is a principle that encourages public bodies to provide broader access to information they possess. This involves processes and policies designed to ensure that information generated, stored, and managed by public bodies is available to the public. On the other hand, archiving involves the structured and systematic management and storage of documents and information. Good archiving ensures that public information is preserved, easily retrievable, and remains accessible for the necessary duration. Through the synergy of these three elements, transparency, accountability, and public participation are achieved.

In the effort to seek answers to the identified issues regarding information disclosure with public participation, there are several writings that address similar themes. One of them is “*Keterbukaan Informasi Publik Di Indonesia (Perspektif Akuntabilitas, Transparansi Dan Partisipasi)*” by Ricky, Muh. Tanzil Aziz Rahimallah, which elaborates on the importance of public information disclosure in achieving accountability, transparency, and participation. It discusses the efforts that can be undertaken by the Public Information Commission at both the central and regional levels to promote public information disclosure and the realization of an informed society. It focuses on the implementation of good governance as one of the efforts to achieve public information disclosure and encourages relevant authorities to take action.<sup>4</sup> “*Keterbukaan Informasi Publik Melalui Akses Informasi dan Pelibatan Masyarakat Dalam Pembangunan Hukum di Bidang Pemasarakatan*” by Markus Marselinus Soge focuses on the implementation of information disclosure within the Prison Institutions through providing information access and involving the community in the development process of the prison

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<sup>4</sup> Muhammad Tanzil Aziz Rahimallah and Ricky Ricky, ‘Keterbukaan Informasi Publik Di Indonesia (Perspektif Akuntabilitas, Transparansi Dan Partisipasi)’ (2023) 12 Jurnal Ilmiah Wahana Bhakti Praja.[62].

sector through internet-based applications.<sup>5</sup> “*Penerapan Inovasi Sistem Informasi Manajemen Guna Mewujudkan Keterbukaan Informasi Publik*” The writing by Lely Indah Mindarti, Choirul Saleh, and Aulia Puspaning Galih is a result of their dedication to the Management of Public Information Disclosure, emphasizing the principles of public information openness based on Law Number 14 of 2008 on Public Information Disclosure and Commission of Information Regulation Number 1 of 2018 on Village Public Information Service Standards, as well as the utilization of information technology in public services in Arjowilangun Village.<sup>6</sup>

That the process of forming regulations is crucial to obtaining a legal product that has a tendency to favor the community and gives the impression that a regulation must be based on the values of justice. Therefore, the writing of this article is intended as a medium for learning and opening insights into the process of forming a regulation that needs to be accompanied by information disclosure by the government. Because later the regulation can be applied and interpreted properly by the community and law enforcement officials. This rationale is based on the interpretation that information disclosure has the following objectives: showing transparency of policy makers, encouraging public participation and providing space to convey aspirations, and providing a forum for monitoring the eradication of corruption.

Underpinning some previous research, therefore the development in this paper is to make a comparison between information disclosure in Indonesia and the Netherlands with the title “*Achieving Public Information Transparency in The Dissemination of Local Regulations*” examining the implementation of good governance in Indonesia and the Netherlands regarding public information disclosure, and the mechanisms for establishing legislation, particularly local regulations, in both countries with similar legal cultures.

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<sup>5</sup> Markus Marselinus Soge, ‘Keterbukaan Informasi Publik Melalui Akses Informasi Dan Pelibatan Masyarakat Dalam Pembangunan Hukum Di Bidang Pemasarakatan’ in Universitas Pembangunan Nasional ‘Veteran’ Jakarta Fakultas Hukum (ed), *National Conference on Law Studies (NCOLS)* (Universitas Pembangunan Nasional ‘Veteran’ Jakarta 2020).[1169].

<sup>6</sup> Lely Indah Mindarti, Choirul Saleh and Aulia Puspaning Galih, ‘Penerapan Inovasi Sistem Informasi Manajemen Guna Mewujudkan Keterbukaan Informasi Publik’ (2022) 6 JMM (Jurnal Masyarakat Mandiri).[266–267].

This article refers to literature consisting of relevant books, journals, and scientific articles as primary sources to be analyzed and used as a basis for elucidating the research problem.<sup>7</sup> The literature used in this research is related to the study of good governance and public information openness, including definitions, indicators, objectives, and important factors that influence these concepts.<sup>8</sup> To address the research questions, this study employs an analysis of the idea of openness to public information and how it relates to putting accountability, transparency, and public participation into action. The goal of this analysis is to find a comparison between Indonesia's accountability, transparency, and participation practices and the Netherlands' concept of public information openness. This study aims to gain a deeper understanding of the connections between public information openness and other important aspects of good governance by employing methods of literature review and conceptual analysis.<sup>9</sup> Plus, Mr. Mulyadin and Mr. Ahmad Shobib from the Ministry of Law and Human Rights of Central Java Province, members of the Councilor in West Kotawaringin Regency, Central Kalimantan, will be interviewed.

### **Local Regulations**

Law Number 12 of 2011 Concerning the Formation of Legislation provides an explanation of Indonesia's definition of regional regulations. The sections 7 and 8 of Article 1 divide regulations into two groups. First, the Member of the Provincial Legislative Council and the Governor jointly approve the Provincial Regional Regulations, which are legislative regulations. Second, District/City Regional Regulations are legislative rules made by the district/city council

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<sup>7</sup> Melfianora, 'Penulisan Karya Tulis Ilmiah Dengan Studi Literatur' [2019] Open Science Framework.

<sup>8</sup> Mahanum Mahanum, 'Tinjauan Kepustakaan' [2021] ALACRITY : Journal of Education.

<sup>9</sup> This research integrates literature review and conceptual analysis with the aim of clarifying the definitions, usage, and interconnections of these concepts, as well as explaining the nature of their interrelatedness. The focus of this study lies in comparing two countries with interconnected histories, making it crucial to understand the concepts involved in the context of both countries.

with the Regent/Major's joint approval.<sup>10</sup> In the Netherlands, the formation of regional regulations can be seen through the Law on Municipalities (*Wet gemeenschappelijke regelingen*).<sup>11</sup> Local regulations are legal rules created by the local government, namely the municipal or “*gemeente*” government. These local regulations govern issues that fall under the jurisdiction and authority of the local government, such as spatial planning, development, permits, cleanliness, local transportation, and others.

### The Disclosure of Public Information

The disclosure of public information in the Netherlands is regulated by the “*Wet openbaarheid van bestuur*” (WOB) or the Government Transparency Act.<sup>12</sup> This law makes information and documents belonging to the Dutch government accessible to the general public. In Indonesia, disclosure of information is governed by similar rules by *Law Number 14 of 2008 concerning Public Information Transparency (UU KIP)*.<sup>13</sup> The public's right to access information held by public institutions is affirmed by these laws. Transparency, accountability, and public participation in government decision-making are all aims of both. These laws provide broader access for the public to obtain public information, thereby enhancing public participation and oversight of government actions.

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<sup>10</sup>Novliwanda Ade Putra, Zaili Rusli and Febri Yuliani, ‘Formulasi Kebijakan Pembentukan Peraturan Daerah Oleh Dewan Perwakilan Rakyat Daerah’ (2020) 16 Jurnal Ilmu Administrasi Negara; Asri Lasatu, ‘Urgensi Peraturan Daerah Tentang Program Pembentukan Peraturan Daerah Terhadap Kinerja DPRD’ (2020) 14 Jurnal Ilmiah Kebijakan Hukum; Sofwan Sofwan, ‘Partisipasi Publik Dalam Pembentukan Peraturan Daerah’ (2022) 37 Jatiswara.

<sup>11</sup>HS Taekema and BMJ van Klink, ‘Wetenschap - 1993 Dwarsverbanden. Interdisciplinair Onderzoek in de Rechtswetenschap’ [2009] *Nederlandsch juristenblad* : weekblad behorende bij de Nederlandsche jurisprudentie.

<sup>12</sup>Mireille MM van Eechoud and Brenda van der Wal, ‘Creative Commons Licensing for Public Sector Information - Opportunities and Pitfalls’ [2011] *SSRN Electronic Journal*; Kars J de Graaf, Albert T Marseille and Hanna D Tolsma, ‘Transparency and Access to Government Information in the Netherlands’, *Governance and Public Management* (2019).

<sup>13</sup>Sintar Nababan, ‘Strategi Pelayanan Informasi Untuk Meningkatkan Keterbukaan Informasi Publik’ (2020) 17 Jurnal Ilmu Komunikasi.

## Good Governance

Good governance refers to the principles and practices that prioritize transparency, accountability, public participation, responsiveness, and the rule of law in governance management.<sup>14</sup> This encompasses policies and actions aimed at creating effective, efficient, and well-serving governance. These principles apply in various countries, including the Netherlands and Indonesia, and serve as the foundation to ensure that governance acts responsibly, involves the public in decision-making, and operates in accordance with the principles of the rule of law.<sup>15</sup>

## Indonesia

In Indonesia, the principles and practices that promote transparency, accountability, public participation, responsiveness, effectiveness, efficiency, and the rule of law in government management are upheld. The implementation of good governance is crucial to improving the quality of government and generating policies that serve the public interest. Several steps have been taken in Indonesia to promote good governance, including:

1. **Public Information Disclosure:** The enactment of *Law Number 14 of 2008 concerning Public Information Disclosure (UU KIP)* grants the public the right to access public information held by government agencies providing public services. This promotes transparency in governance and strengthens accountability.
2. **Law Enforcement and Anti-Corruption:** Indonesia has been actively combating corruption and striving to enhance the rule of law through institutions such as the Corruption Eradication Commission (KPK) and other law enforcement agencies. These measures contribute to fostering a clean and accountable government environment.
3. **Public Participation:** The government encourages active participation of the

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<sup>14</sup> Awaludin Marwan, Diana Odier Contreras Garduno and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia' (2022) 10 *Bestuur; Ayu Amrina Rosyada*, 'Analisis Penerapan Prinsip Good Governance Dalam Rangka Pelayanan Publik Di Badan Pelayanan Perizinan Terpadu Satu Pintu Di Kota Samarinda' (2016) 4 *e-Journal Ilmu Pemerintahan*.

<sup>15</sup> IG Kozynets and KB Mishasta, 'Principle of the Rule of Law in Administrative Judiciary' [2021] *Uzhhorod National University Herald*. Series: Law.

public in decision-making processes through mechanisms such as community meetings, public discussions, and policy consultations. These initiatives ensure that the voices of the people are heard and enhance the legitimacy of government decisions.

4. **Bureaucratic Reform:** Efforts have been made to improve the effectiveness and efficiency of the bureaucracy, including personnel reforms and the utilization of information technology in government administration. The aim is to establish a responsive, professional bureaucracy and provide quality public services.
5. **Public Oversight:** The public is encouraged to play an active role in overseeing government administration through complaint mechanisms, complaint forums, and oversight bodies such as the Ombudsman of the Republic of Indonesia. These measures promote government accountability and enhance public services.

### **Netherlands**

In the Netherlands, the principles of good governance are similar to those in Indonesia, with a focus on openness as a fundamental aspect of government management. Some key aspects of good governance in the Netherlands include:

1. **Transparency and Accountability:** The Dutch government is committed to maintaining transparency in government administration and providing open access to information and government decisions for the public. Government financial reports and public policies are often made available for public scrutiny.
2. **Responsiveness and Public Participation:** Public participation is considered crucial in the decision-making processes of the Dutch government. Communities have opportunities to participate in public consultations, policy discussions, and decision-making forums to have a say in the policy-making process.
3. **Rule of Law:** The Netherlands places strong emphasis on the rule of law. Governments and public institutions are required to operate in accordance with applicable laws and legal principles. An independent justice system plays a vital role in ensuring compliance with the law.
4. **Public Oversight:** Oversight agencies, such as the Court of Audit, are responsible for monitoring the use of public funds and government performance. Additionally, the ombudsman or public complaint mechanism exists to handle grievances and complaints related to public services.
5. **Bureaucratic Reform:** The Netherlands has implemented bureaucratic reforms to enhance the efficiency and effectiveness of the government. Efforts have been made to reduce excessive bureaucracy, improve public services, and foster innovation in governance.

## **The Process of Formulating Regional Regulations in Indonesia and The Netherlands**

The mechanism for formulating regulations in Indonesia shares similarities with the Netherlands,<sup>16</sup> This is because the windmill country has had a significant influence on the development of culture, including legal culture, in Indonesia. The difference between these two countries lies in Indonesia having a specific regulation, namely *Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations*. In contrast, the Netherlands does not have specific regulations, and the procedures and criteria for preparing regulations are governed by the Directives on Legislation, with the Prime Minister as the creator of these procedural rules.

In Indonesia, the process for creating regional regulations (PERDA) is based on the Law on the Formation of Laws and Regulations and Law Number 23 of 2014 on Regional Government. As a result, the DPRD and regional governments play a significant role in the development of PERDA. The DPRD, as the regional legislative body, has legislative, budgetary, and oversight functions. In the making of laws and regulations, particularly PERDA, the DPRD must create regulations that can be effectively, efficiently, and sustainably enforced, thereby applying its legislative function.<sup>17</sup> However, the government plays a vital role in the formation of regional regulations. PERDA can be divided into two categories: those that regulate with legally binding force, and specific PERDA that govern local taxes, local levies, Regional Revenue and Expenditure Budget (APBD), changes to APBD, and spatial planning. The difference between the two lies in the fact that regulations that have legally binding force will only take effect once they are recorded in the State Gazette, whereas PERDA governing levies, APBD, and spatial planning require evaluation by the regional government before they can be enforced. This is done

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<sup>16</sup> Kementerian Keuangan, 'Framework Apakah Yang Digunakan Pemerintah Belanda Untuk Menguji Dan Mengevaluasi Peraturan Perundangannya?' (*Kementerian Keuangan Republik Indonesia*, 2013).

<sup>17</sup> Gokma Toni Parlindungan, 'Prinsip-Prinsip Negara Hukum Dan Demokrasi Dalam Pembentukan Peraturan Daerah' (2018) 16 Jurnal Hukum Respublica.[387-388].

with the consideration of protecting public interests, aligning and adjusting with higher laws and regulations and/or other PERDA, especially those concerning local taxes and levies.<sup>18</sup>

The Planning, Drafting, Discussion, Determination or Approval, and Promulgation stages of the regulation-making process are outlined in the Law on the Formation of Legislation.<sup>19</sup> In the planning stage of local regulations, there is a division of initiative regarding the importance of creating a regulation. The initiative can come from the government or from the DPRD itself, and sometimes community groups also submit initiatives through conveying aspirations to the DPRD.<sup>20</sup> Subsequently, the DPRD collaborates with academic institutions for the drafting of the local regulation and academic texts. This is done due to the limited human resources within the DPRD, although each region has a specialized institution for handling regulation formation, the contribution of universities is given priority.

In the subsequent stages, the collaborating academic institutions will carry out activities such as socialization, research, and others for the purpose of drafting the regulation based on the cultivation of local cultural values.<sup>21</sup>

Once the draft is completed, it will be submitted to the DPRD and the next stage involves conducting socialization before proceeding to the discussion stage. It is important to emphasize the adherence to the principles of justice and considering the community's conditions as a priority. The steps taken by the DPRD usually include engaging in discussions with community leaders and organizations. These activities are also attended by academic institutions and government representatives

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<sup>18</sup> Parlindungan (n 17).

<sup>19</sup> Hermi Sari BN, Galang Asmara and Zunnuraeni Zunnuraeni, 'Pengharmonisasian Rancangan Peraturan Daerah Inisiatif Eksekutif Oleh Kementerian Hukum Dan Hak Asasi Manusia' (2020) 22 Jurnal Dinamika Sosial Budaya.[315].

<sup>20</sup> Adriana Mustafa, 'Implementasi Antara Legislatif Dan Eksekutif Dalam Pembentukan Peraturan Daerah Yang Partisipatif' (2018) 5 Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam. The implementation of this provision is further regulated through the DPRD Rules of Procedure. The DPRD could ask a statement of responsibility for the Governor, Regent, and Mayor. With this clause, the position of the DPRD in carrying out its duties becomes very strong. Regional governments should be able to organize and manage their own government affairs according to the principle of autonomy and co-administration.

<sup>21</sup> Lasatu (n 10).

to listen to the perspectives and additional inputs from the community.

Furthermore, the DPRD conducts closed-door reviews to examine the incorporation of cultural values in the draft prepared by academic institutions. Providing input has already become part of the legislative function. After the review, the draft regional regulation along with the academic script must go through the harmonization stage, which can be understood as achieving balance, harmony, or consistency. Harmonization in the process of regulation formation aims to minimize overlapping regulations (duplication) and ensure the effectiveness and relevance of the regulation, especially during its implementation in society. The function of harmonization is strategic, as it serves as a preventive measure to avoid submitting requests for judicial review to the competent judiciary authority, with the Supreme Court having the authority to review regulations at the regional level.

The requirement and obligation for the regional government to conduct the harmonization of regional regulations and submit them to the Ministry of Law and Human Rights are often considered trivial.<sup>22</sup> However, when taken seriously, there are often cases discovered during the process of regulation formation. Many shortcomings occur in this harmonization stage, including:

1. Imbalances between the proposed draft and the human resources within the Ministry of Law and Human Rights responsible for harmonization often occur.
2. Time constraints also contribute to the suboptimal nature of the harmonization process. The article-by-article review cannot be adequately balanced due to time limitations. The harmonization process aligns with the incoming requests, but there are often cases where a single request contains multiple regional regulations, leading to a lack of precision in this process.
3. The authority of the Ministry of Law and Human Rights is not specific and influential enough. It is only when a regulation does not receive a completion letter for harmonization that regional governments tend to circumvent the harmonization process.
4. The harmonization process occurs at a non-crucial stage, as the discussion stage follows after harmonization. This means that differences can arise between the harmonization process and the resulting regional regulation after the discussion stage.

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<sup>22</sup> M Jeffri Arlinandes Chandra and others, 'Tinjauan Yuridis Pembentukan Peraturan Perundang-Undangan Yang Sistematis, Harmonis Dan Terpadu Di Indonesia' (2022) 19 Jurnal Legislasi Indonesia.[1].

After the harmonization process has been carried out, and having received a letter of completion of harmonization the local government can proceed to the next stage. The discussion process within the DPRD is the next stage before it is ratified, at this stage there is further discussion regarding the foundations for forming a regulation such as the Philosophical Foundation, Legal norms are in accordance with legal ideals (*rechtsidee*) as the most positive number; Legal norms that will be established in accordance with having a high degree of effectiveness in society; Legal Basis: The norms above must serve as the foundation for any new legal standards. Institutions that form laws and examine them are carried out by institutions appointed and given authority; Political Basis, In the preamble to the law, it must be illustrated that there is a constitutional reference system according to the ideals and basic norms of the 1945 Constitution of the Republic of Indonesia; and Administrative Basis, is a sub-section of attention or preamble that is optional or according to needs.<sup>23</sup>

As a result, there are often discrepancies between the harmonized text and the text resulting from the discussions. When the regulation is ratified and enacted, it opens the possibility of testing the regional regulation submitted to the Supreme Court because it contradicts the higher regulations. The final stage is when the discussion process has been completed, and the regulation is handed over to each faction for signing. Afterward, it is ratified and promulgated in the official gazette if it is a regulation that has legal force. Alternatively, it undergoes evaluation by the government if the regulation pertains to matters such as APBD or imposes charges.

In the Netherlands, the procedures for establishing local regulations, also known as “*verordeningen*”, vary depending on the specific region or municipality. The Law on Local Government (*Wet gemeenschappelijke regelingen*) in the Netherlands regulates various aspects related to the governance and management of communities by local governments. This law provides a legal framework for the formation, structure, and powers of local governments in the country. It

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<sup>23</sup> Tanto Lailam, *Teori Dan Hukum Perundang Undangan* (Pustaka Pelajar 2017).[61–71].

encompasses several key areas, including the establishment of local governments, such as municipalities or autonomous regions, as well as regulations regarding the election of local leaders and council members, and facilitating citizen initiatives.<sup>24</sup> This law also regulates the organizational structure and division of powers between local governments and the central government, including provisions related to regional councils, mayors, and relevant committees. Additionally, the law specifies the authorities and responsibilities of local governments in areas such as spatial planning, public services, education, health, finance, and others. Furthermore, the Law on Local Government governs the relationship between local governments and the central government, including provisions for coordination, cooperation, and the division of powers between these entities. The law also outlines the procedures for the formation and amendment of local regulations, including public consultation, legal evaluation, adoption, publication, and implementation of local regulations. The Law on Local Government serves as an important legal foundation for local governments in the Netherlands, defining their duties and powers.

Although the mechanism is delegated to local governments, there are general steps involved in this process with the contribution of the Municipal Council or “*Gemeenteraad*”. Despite being a parliamentary system, not all policies in the Netherlands are solely held by the parliament. The division of power and democratic spirit permeate the governance aspects of the country, with citizens’ voices represented fully by the Council of Representatives at various levels, ranging from the provincial to the municipal level. Here is a brief overview of the typical procedure for enacting local regulations in the Netherlands:<sup>25</sup>

1. Proposal: This process usually begins with a local regulation proposal. These proposals may be initiated by the local government or as a result of public demand or specific needs in the area. The proposal for regional regulations in the Netherlands is the first step in the process of establishing regional regulations.

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<sup>24</sup>Heleen LP Mees and others, ‘From Citizen Participation to Government Participation: An Exploration of the Roles of Local Governments in Community Initiatives for Climate Change Adaptation in the Netherlands’ (2019) 29 *Environmental Policy and Governance*.

<sup>25</sup>Tom Barkhuysen, Willemien den Ouden and Ymre E Schuurmans, ‘The Law on Administrative Procedures in the Netherlands’ [2017] *Nall* 1.[3–18].

These proposals include ideas or initiatives to regulate specific issues at the regional or local level.<sup>26</sup>

As a country that provides a regional autonomy system like Indonesia, and is responsible for forming regulations given to local governments it is almost like the formation mechanism in Indonesia, with reference to the conditions of society but still adheres to the principle that the regulations below do not conflict with the rules above. However, during the formation stage, observations must be made regarding the need to form a regional regulation, such as demographic changes, economic development, community safety issues, or other local issues.

2. **Drafting of Regulations:** After proposals have been made the local government, often the city council, is responsible for drafting the regulations. This involves formulating content, scope, and provisions in regulations. Local governments or government agencies authorized to conduct research, collect information, and consult with relevant stakeholders to draft regulations. This process may involve an analysis of existing national regulations, best practices from other regions, or expert advice.
3. **Consultation and input:** Prior to the final regulation, there is usually a period of public consultation. This allows stakeholders, including citizens, organizations and interest groups, to provide input, suggestions or objections to regulatory proposals. Public consultation can take many forms, including open meetings, written contributions, or online platforms.
4. **Legal Assessment:** The regulatory proposal will be subject to legal assessment to ensure its conformity with higher level laws, including national legislation and the constitution. This assessment is usually carried out by legal experts within the local government. This stage is the harmonization of regional regulations, a legal review is carried out to ensure compliance with national laws, the Dutch Constitution and European Union regulations. If deemed legally appropriate, the regulations are officially published and communicated to the public.<sup>27</sup>
5. **Approval and Decision Making:** After considering public input and legal judgments, the local government reviews the regulatory proposals. The decision-making process may involve discussion, debate and voting within the city council or the relevant local government body. Endorsement refers to the formal act or procedure carried out by a governing body to officially certify that a draft regulation has been accepted or approved. Usually, this occurs after the draft regulation has gone through the public consultation stage and required revisions. Decision-making relates to the process by which the competent governmental body decides to approve draft regulations and grants official approval. This decision can be made through a meeting or formal meeting of the government body, at which the members of that body decide to accept or reject the draft

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<sup>26</sup> Et al Edward Figee, *Local Government in the Netherlands* (The Hague Drukkerij Excelsior bv ed, Association of Netherlands Municipalities 2017).[19–29].

<sup>27</sup> Koen van der Krieken and Laurens de Graaf, 'Dichotoom in Dialoog? Lokale Referenda in Nederland' (2015) 2 Bestuurswetenschappen.

- regulation. This ratification and decision-making is an important step in the formation of regional regulations in the Netherlands, as it indicates that these regulations have the force of law and can be applied in the area concerned. After this process, the regional regulations will be formally issued and announced to the public so that they can be implemented and enforced by the local authorities.
6. **Publication and Implementation:** After local regulations are approved and adopted, they are published in official gazettes or other appropriate publications. The regulatory effectiveness date is also determined. The local government then ensures the implementation and enforcement of these regulations. Publication and implementation in question is the act or process of officially announcing regulations that have been ratified to the public. The purpose of publication is to provide information to the public about the existence of these regulations, the contents and provisions contained therein, and the effective date is the stage of publication. While the implementation or application has meaning as the steps taken to implement and carry out regional regulations that have been ratified. Implementation involves a wide range of actions, including assigning tasks and responsibilities to relevant government agencies, ensuring sufficient resources are available to implement regulations, regulating inspections and oversight, and establishing enforcement mechanisms and sanctions for violations of regulations.

**Table 1.** A Comparative Picture of the Process of Forming Regional Regulations in Indonesia and the Netherlands

No	Stages	Indonesia	Netherlands
1.	Legal Basis	1. Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 on the Formation of Legislation  2. Law Number 23 of 2014 concerning Regional Government	1. In the Netherlands, there is no specific regulation, but the formation of legislation is governed by the Directives on Legislation, which means that potential changes are likely to occur following the change of Prime Minister.  2. Law on Local Government ( <i>Wet gemeenschappelijke regelingen</i> )
2.	The party that has the initiative to form regulations	DPRD and Regional Government, assisted by community proposals through aspirations to members of the Council	Local Government and <i>Gemeenteraad</i> have a vital role to play

3. The government's position in the formation of draft regulations	The government involves academics in drafting academic regulations and texts, the DPRD as an institution that has a legislative function only provides input regarding customary values and customs.	The design is fully made by the government by involving experts as input providers
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### **Implementation of Government Governance and Mechanism of Delivery of Perda Products as a Form of Information Dispense between Indonesia and The Netherlands**

Good governance is a government approach to management that can accommodate the role of society, especially in a democratic country like Indonesia, where it is considered necessary to implement good governance.<sup>28</sup> Based on the *Constitution of the Republic of Indonesia of 1945, Article 1 Paragraph (1) states that "The State of Indonesia is a Unitary State in the form of a Republic"*, Furthermore, *Article 18 Paragraph (1) specifies that "The Unitary State of the Republic of Indonesia is divided into provincial regions and those provincial regions are divided into regencies (kabupaten) and municipalities (kota), whereby every one of those provinces, regencies, and municipalities has its regional government, which shall be regulated by laws"*.<sup>29</sup>

The principle of good governance originated from classical thinking about government theory, which revolved around centralized governance that led to failures in government efficiency, often intertwined with politics. With its

<sup>28</sup> Indah Wahyu Utami Widi Nugrahaningsih, 'Implementasi Good Governance Dengan Dasar UU No. 32 Tahun 2004 Tentang Pemerintah Daerah Di Kota Surakarta' (2013) 1 eJournal Ilmu Administrasi Negara; Ananda Rayhana Putri, 'Implementasi Peraturan Daerah Dalam Otonomi Daerah Menjadi Salah Satu Parameter Good Governance' (2022) 2 "Dharmasisya" Jurnal Program Magister Hukum FHUI.[839].

<sup>29</sup> A Zarkasi, 'Pembentukan Peraturan Daerah Berdasarkan Peraturan Perundang-Undangan' (2004) 2 Jurnal Ilmu Hukum INOVATIF.[104].

development, there is a demand for the state to provide good public services to its citizens. The adoption of private sector principles, such as management principles, market mechanisms, resource allocation, and human resource development, inspired the emergence of the concept of good governance. However, some critics argue that the concept of good governance is an imperialistic and colonialistic concept from developed countries.<sup>30</sup> It can't be kept that the idea from getting great administration has been very progressive in achieving great administration for agricultural nations.<sup>31</sup> The concept of good governance has indeed faced criticism as being seen as a new form of imperialism and colonialism. As a result, there has been a growing thought to connect the autonomy of a (developing) country with universally applicable practices of the global system. *Sound governance, dynamic governance, dan open government* indeed, these concepts represent an evolution of good governance. The aim of these concepts is to explore new ways and models to effectively structure and manage governance in order to address government challenges.

Open government, dynamic governance, and sound governance all appear to be underused in Indonesia. Good government,<sup>32</sup> *the phrase "soundness is used to characterize governance with superior qualities in functions, structures, processes, values, dimensions, and elements that are necessary in governing and administration" is defined as "sound governance is used in this book as an alternative to the term good governance". There are a few main components that make up good governance. Process, structure, knowledge values, rules, organization, management, policy, the private sector, globalization, accountability, and transparency are the primary components of a dynamic system.*<sup>33</sup> Dynamic

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<sup>30</sup> Lesmana Rian Andhika, 'Evolusi Konsep Tata Kelola Pemerintah: Sound Governance, Dynamic Governance Dan Open Government' (2017) 8 Jurnal Ekonomi dan Kebijakan Publik; Ali Farazmand, 'Innovation in Strategic Human Resource Management: Building Capacity in the Age of Globalization' (2004) 4 Public Organization Review.

<sup>31</sup> Ronald L Holzacker, Rafael Wittek and Johan Woltjer, 'Decentralization and Governance for Sustainable Society in Indonesia', *Decentralization and Governance in Indonesia* (2015).

<sup>32</sup> Andhika (n 30).

<sup>33</sup> *ibid.*

governance, Neo dan Chen,<sup>34</sup> define, “*dynamic governance is the key to success in a world undergoing accelerating globalization and unrelenting technological advancement*”. Policies that constantly adapt to changing environments are the key to achieving relevance and effectiveness in both the present and the future through dynamic governance. Next, according to Wirtz and Birkmeyer, what does it mean for the government to be open<sup>35</sup> *a multilateral, political, and social process, including in particular transparent, collaborative, and participatory action by government and administration*” is how open government is defined. Open government is defined as an act of participation, collaboration, and transparency.<sup>36</sup> In Indonesia, the open government movement has been responded to by the government through the enactment of Law Number 14 of 2008 on Public Information Transparency. According to data released by the Central Information Commission, there have been disputes filed by individuals and community groups. These disputes often arise due to the lack of transparency in government data that should be accessible to the public. This is in line with the principle of legislative formation in Indonesia, which emphasizes openness. It states that the entire process of legislative formation, including the planning, drafting, discussion, approval, and publication of laws (including regional regulations), should be transparent and open. As a result, the process of forming legislation affords everyone in society the greatest possible opportunity to participate. This includes taking into account the public’s desire to provide suggestions and feedback on legislative drafts through public participation.

Indeed, the government’s governance and the principles of good governance are closely intertwined during the process of drafting legislation, including regional regulations. Particularly in light of the rise of open government, in which policy

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<sup>34</sup> Ismiyarto and others, *Laporan Penelitian Kelompok Penyelenggaraan Dynamic Governance Dalam Penanganan Pandemi Covid-19* (Institut Pemerintahan Dalam Negeri 2021).

<sup>35</sup> Yusri Rio Maulana, ‘Desain Kolaborasi Penyediaan Layanan Pemerintahan Berbasis Open Government’ (2018) 41 *International Journal of Public Administration*.

<sup>36</sup> Barack Obama, ‘Transparency and Open Government: Memorandum for the Heads of Executive Departments and Agencies’ ([obamawhitehouse.archives.gov](http://obamawhitehouse.archives.gov), 2009); Wahyudi Wahyudi, Intan Fitri Meutia and Devi Yulianti, ‘Implementasi Open Government Melalui Partisipasi Masyarakat Pada Formulasi Kebijakan (Studi Pada Raperda Penyelenggaraan Pesantren Di Provinsi Lampung)’ (2021) 3 *Administrativa: Jurnal Birokrasi, Kebijakan dan Pelayanan Publik*. [253].

makers should involve the general public in the formulation of regional (district, city, and province) regulations. They should not just be seen as “victims” of policies and regulations that already exist. Participation, accountability, transparency, and the rule of law are all central to the idea of good governance. This means that the government should make sure that the process of creating legislation is open to the public scrutiny and transparent. It should actively engage and involve the public, allowing them to contribute their perspectives, concerns, and suggestions. This participatory approach aims to create a sense of ownership and legitimacy of the regulations among the public. By involving the public in the legislative formation process, it allows for better-informed decision-making, reduces the risk of overlooking important considerations, and fosters a sense of inclusivity and democracy. It also helps to address the potential issues of top-down decision-making and ensures that the regulations truly reflect the needs and aspirations of the people they will affect. Therefore, incorporating the principles of good governance and embracing the concept of open government in the process of forming legislation, particularly at the regional level, can lead to more effective and legitimate governance that better serves the interests of the public.

Similarly, according to Law Number 12 of 2011 Concerning the Formation of Legislation, the process of forming legislation in the Netherlands consists of several stages that are somewhat analogous to the process in Indonesia. The Prime Minister issues a set of Directives on Legislation rather than a specific law in the Netherlands that is devoted to the formation of legislation. The procedures and standards for creating high-quality regulations are outlined in these directives. Members of the Dutch Parliament and Local Government are not bound by them, but the Central Government/Ministries’ legislative drafters are.<sup>37</sup> It is important to note that the government initiates almost all laws in the Netherlands. Preparations in the relevant ministry are the first step in the process of drafting laws, followed by coordination in the Ministry of Security and Justice. The Council of Ministers,

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<sup>37</sup> Rudy B Andeweg, ‘Parliamentary Democracy in the Netherlands’ (2004).

made up of representatives from various ministries, receives the draft when it is finished. The Council of State, an independent organization headed by the King of the Netherlands, reviews the proposed legislation before it reaches Parliament. The Chamber gives feelings and counsel on political, legitimate, and specialized angles. Before the final piece of legislation is enacted, the government and parliament discuss the draft.

The Netherlands uses the Integrated Assessment Framework, Regulatory Impact Assessment, Regulatory Pressure/Burden Assessment, Regulatory Compliance Risk Management, and Table of Eleven to evaluate the quality of legislation prior to its enactment. Questions that must be answered before a regulation can be enacted are included in these tools. Based on the responses to these questions, it is possible to determine if a regulation needs to be enacted and whether its provisions are practical and enforceable.

In addition, as outlined in Article 5 of Law No. 12 of 2011, the Dutch government applies quality criteria for the preparation of legislation that broadly aligns with Indonesia's principles of good legislation formation. The six focuses that comprise the quality models for regulation in the Netherlands are (I) legitimacy and standards of equity, (ii) adequacy and proficiency, (iii) subsidiarity and proportionality, (iv) achievability and enforceability, (v) coordination, and (vi) straightforwardness, lucidity, openness. Meanwhile, the seven principles of good Indonesian legislation formation are (i) clear objectives, (ii) appropriate institutional or regulatory bodies, (iii) alignment between type, hierarchy, and substantive content, (iv) implementability, (v) utility and effectiveness, (vi) clear wording, and (vii) transparency.<sup>38</sup> To ensure that legislation can provide benefits and that the public has access to it, in the Netherlands, the Government Information Service (*Rijksvoorlichtingsdienst* or RVD),<sup>39</sup> plays a part in ensuring that public information is transparent. As the official information service of the Dutch government and

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<sup>38</sup> Keuangan (n 16).

<sup>39</sup> BGJ de Graaff, 'M. Wagenaar, De Rijksvoorlichtingsdienst. Geheimhouden, Toedekken En Openbaren' (1999) 114 BMGN - Low Countries Historical Review.

spokesperson for the Prime Minister, the Council of Ministers, and the Dutch Royal Family, the RVD is a government agency. Information about government policies, the Prime Minister, and the Ministry of General Affairs is provided by the RVD. The RVD coordinates all information services provided by ministries in the Netherlands and provides advice on publicity and communication to various institutions and the Royal Family.

Similar to the RvD, Indonesia has a Public Information Commission (KIP) which is an independent institution that functions to implement this Law and its implementing regulations to establish technical guidelines for public information service standards and resolve public information disputes through mediation and/or non-litigation adjudication. This institution, has roles such as Receiving, examining and deciding requests for settlement of Public Information Disputes through Mediation and/or Non-Litigation Adjudication submitted by each applicant for public information based on the reasons referred to in this Law; Establishing general policies for Public Information service policies; and Establishing implementation guidelines and technical guidelines. In addition, KIP has the following authorities:

1. The authority to resolve disputes concerning the relevant provincial level Public Agency;
2. Summoning and/or bringing together the parties to the dispute;
3. Request relevant records or materials owned by the relevant Public Bodies to make decisions in an effort to resolve Public Information Disputes;
4. Request information or present Public Agency officials or related parties as witnesses in the settlement of Public Information Disputes;
5. Taking the oath of every witness who is heard in the non-litigation adjudication of the Public Information Dispute settlement.

The presence of KIP in the community protects all human rights and the orderliness of the government in carrying out its functions as the holder of the wheels of government. Being located at various levels, namely at the central level, at the provincial level and at the district/city level, makes information easier to access, although not absolutely openness can be obtained.<sup>40</sup>

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<sup>40</sup>Yudhitiya Dyah Sukmadewi and Kartika Widya Utama, 'Relevansi Undang - Undang Keterbukaan Informasi Publik Dan Asas Kemanfaatan' (2022) 5 Law, Development and Justice Review.[1 and 5].

Information disputes handled by KIP do not only apply in the government environment, but in other environmental sectors still make the door to supervision more open. Until finally, its presence raises an alternative to information dispute resolution, on the other hand, it makes legal certainty longer because of the dualism of dispute resolution between through the KIP intermediary and the State Administrative Court.<sup>41</sup>

Quo Vadis of information disclosure in Indonesia, due to the KIP Law that intersects with Law Number 30 of 2014 concerning Government Administration (UU AP). Literally, the mechanism of information disputes due to information disclosure can be carried out sequentially, namely starting with dispute resolution at KIP, then if it raises objections, it can be continued to the realm of the State Administrative Court. This mechanism is based on Article 23 of UU KIP, which states that non-litigation adjudication decisions issued by the Information Commission “have the same force as court decisions”. Alternatively, the KIP decision can be submitted to the State Administrative Court or the District Court, if the disputing party objects. They can be filed as early as 14 days after the official KIP decision is received by the parties.

In addition to the establishment of KIP, the Ministry of Home Affairs Regulation No. 3/2017 on Guidelines for the Management of Information Services and Documentation of the Ministry of Home Affairs and Local Government issued by the Ministry of Home Affairs, as an effort to accelerate the implementation of public information disclosure in local government. But in reality, there are still many local governments that have not implemented public information disclosure practices.<sup>42</sup>

In the end, information disclosure overseen by the RvD and the Public Information Commission is like a double-edged knife. On the one hand, it provides an opportunity for good governance, on the other hand, information disclosure will create other problems caused by the vast amount of information received by the public.

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<sup>41</sup> Kartika Widya Utama and Yudhitiya Dyah Sukmadewi, ‘Dualisme Penyelesaian Sengketa Permohonan Informasi Publik’ (2019) 2 Administrative Law and Governance Journal.[673–674].

<sup>42</sup> Ahmad Budiman, ‘Penguatan Keterbukaan Informasi Publik’ (2017) IX Info Singkat.[18].

## **Conclusion**

The similarities between Indonesia and the Netherlands in the process of forming regional regulations are an interesting study, considering the Dutch contribution to the development of law in Indonesia, which has shaped the legal culture used until today. The differences lie in several aspects, as Indonesia follows a presidential system of government where the role of the head of government is significant. In the Netherlands, which adopts a parliamentary system of government, the local government plays a vital role in the formation of regulations. The journey of forming local governments differs in terms of the initiating institution. In Indonesia, the Provincial Legislative Council (DPRD) has the largest role in forming regional regulations compared to the local government. In contrast, in the Netherlands, the formation of regional regulations is predominantly carried out by the local government, but the municipal-level DPRD has the task and authority to oversee and often participate in the regulation-making process. This mechanism aims to merge the aspirations of the community with the government's perspective, ensuring that the regulations truly meet the needs. Good governance is achieved when all layers of society interact with each other, and therefore, besides being supported by good regulations, the government is obliged to provide information related to the regulations used to the public. Both Indonesia and the Netherlands share a similar view on this matter. Thus, creating a well-governed administration in line with technological advancements becomes a facilitator in achieving Public Information Transparency. The presence of the RvD and the Public Information Commission is a way of stating that the governments in Indonesia and the Netherlands want to realize good governance.

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