

# The Legal Practice of Privatisation on State Owned Enterprises in Indonesia

Dr. Arrisman, SH, M.H.

Graduate Program of Legal Studies, Jakarta National University

**Abstract-** The influence of globalization in many fields (social, political, cultural, legal, economic and others) needs to be understood that the national economic development should be oriented on the constitutional commitment as defined in the Article 33 of the 1945 Constitution of the Republic of Indonesia embracing the principles of economic democracy- *Pancasila*. Of the many economic activities that need to be improved their productivity and their efficiency is a State-Owned Enterprises (SOEs). To optimize the role of SOEs and to maintain its presence in the competitive world economy, the SOEs need to improve their corporate cultures and professionalism based on the principles of good corporate governance (GCG) as stated in the Indonesian Government Regulation No. 33/2005 which has been amended by the Regulation No. 2009. For that reason, this study based on desk research, aims at discussing the practice of privatisation of SOEs in Indonesia. The study suggests that to implement privatization for the SOES, the government should conduct a judicial fencing associated with the implementation of the privatization, meaning that the law as an institution of social institutions must be there to play the function and its role in regulating economic activity. Also, it is argued that the privatization carried out today has no clear and strategic direction. The law No. 19/2003 on SOEs is still inadequate in providing policy guidance towards privatization. The policy and strategy of privatization currently is still not fit for the state purpose, constitution, and economic development concept. The present privatization policies and strategies tend to be more oriented to the sale of shares owned, with a maximum target price. The privatisation of SOEs is still very practical oriented and pragmatic, which is more precise to mention the divestiture rather than privatisation. Thus, much remain to be done in improving the practice of privatisation towards SOEs in accordance to the 1945 Constitution.

**Index Terms-** Laws, Privatization, State owned enterprises, the 1945 Constitution, globalization, the government.

## I. INTRODUCTION

It is widely known that the State Owned Enterprises (SOE) was established by the Government of Indonesia is for two main objectives. The first is to improve the social well-being of the people by creating employment opportunity and improving the local economy. The second is to increase economic welfare by managing and controlling strategic business sectors including electricity power companies, oil and other natural resources that were mandated in the Article 33 of the 1945 National Constitution. To achieve these objectives, a great concern on

micro, small and medium scales enterprises indeed cannot be underestimated. This is simply because these economic activities play important role in the economy. In fact, these activities became the economic safety valve when there was multidimensional crisis in the fiscal year 1997/1998.

However, to achieve the above objectives, it is indeed not so easy. The reason is partly because by privatising the SOEs there will be many social dimensions that have to be limited. This is because the formation of SOEs under privatisation is usually aimed at maximising profits rather than welfare maximisation. For this reason, this brief paper aims at discussing how can the practice of SOEs' privatisation be harmonised in accordance to the 1945 Constitution law. The data and information throughout the study were collected from library and other sources available such as in the internet media and the government regulations. This paper is organised into four sections. Section 2 highlights the forms of business organization and other relevant materials advanced in the literature. Section 3 discussed experts' views as well as regulations to support the important of harmonisation of privatisation in accordance to the 1945 Constitution law. Finally, concluding notes are given in section 4.

## II. LITERATURE REVIEW

The forms of business entity or business organization in Indonesia are many. However, many of the business forms were originated from the Dutch era. There are at least four types of business organization in Indonesia. These are Limited Company or *Perseroan Terbatas* (PT), Firm, CV, cooperatives, and *Maatschap*. These business organizations initially were in the form of association in a broad sense which do not have their own personality and have the following elements, namely, common interests, togetherness, common goals and cooperation.

In terms of the company's ownership, there are two types of the company. The first is the companies that were owned by the state or so called the State-Owned Enterprises (SOEs) including the Regional SOEs. The second is the private owned company whose capital is owned by the private sector, typically in the form of PT.

The regulation that regulated the SOEs was in the Law Number 19 Prp Year 1960 jo Law of the Republic of Indonesia Number 9 Tahun 1969 On the Stipulation of Government Regulation in Lieu of Law No. 1 of 1969. In this regulation it was stated in Article 1, that: "Except under the legislation specified, then the efforts of the State in the form of the Company, distinguished in: Bureau Company (PERJAN), Public Corporation (Perum), and Limited Liability Company (Persero).

However, under the Law Number 9 of 1969, it is grouped that the State enterprise, are: (1). All companies that were founded and governed by the provisions of *Indonesische Bedrijven Wet* (IBW) Stbl. 1927: 419 as amended several times and supplemented, all companies in the form of public company, and public corporation. See the Law No. 19 Prp of 1960, and the Government Regulation No. 13 of 1998. Therefore, the form of SOEs has been regulated in the law no. 9/1969.

## I. RESULTS AND DISCUSSION

The important of SOEs in Indonesia has been outlined in the Article 33 of the 1945 Constitution of the Republic of Indonesia, in which it is stated that Year 1945, states that:

(1) the economy is structured as a joint venture based on the principle of family;

(2) The resource production that is important for the State and which largely needed by the population is owned by the State;

(3) Earth, water and natural resources contained in it are controlled by the state and utilized for the benefit of the people;

(4) the national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability and environmental insight, independence, and balancing progress and national economic unity. This statement is the fourth amendment of the 1945 Constitution which was passed on August 10, 2002)

The above article 33 of the 1945 Constitution was approved as a very strategic and ideologist articles. The present of this article can be considered as the main philosophy that makes the 1945 constitution as the economic constitution, especially the paragraph 2 that states "controlled by the State". Also, the paragraph (3) that states that "controlled by the state and utilized for the benefit of the people"

The above two paragraphs are of course important for the State and they contain provisions on the tenure rights of the State. In the Article 33 of the 1945 Constitution paragraph (1) & (2), it is mentioned that the people gave the mandate and authority to the State and that the state should governs the largely resources needed by the people. This suggest that the State should meet its obligations to the people as stated in the Preamble to the Constitution NRI 1945, as follows :

"... to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare ..." and "... the realization of a social justice for all Indonesian people ..."

Furthermore, the Article 33 paragraph (2) of the 1945 Constitution that gives the sense or meaning of "controlled by the State " can indicate the following meaning. The first is that the Constitution authorizes the State to master the production branches which are important for the State and dominate the life of many people. The second is that the state is the authority that needs to utilise the largely needed the resources, while the private companies at the same time are prohibited to commercialize the production branch. The third the economic resources which has been managed by individuals or private companies while it is known that those resources are important for the country and the large of population, the State may take over those companies in according to the law.

In conjunction with the word "control" as a philosophical meaning, BPUPKI chaired by Mohammad Hatta formulate a definition of "controlled by the State" as follows: a. Government should become a watchdog and regulator that must be based on the safety of the people; b. The greater company and the increasing number of people who depend his life need to be organised by the government; c. Land should be under the authority of the State; and a big mining company should be operated as the state company (Sulistio, 2010).

However, there are other views given by the experts in relation to the meaning of "controlled by the state. Mohammad Hatta , for instance, in his book titled *Meninjau Masalah Koperasi*, stated that the Government's responsibility to protect the livelihood of the people and manage the production aim to organize prosperity of the people. The word Ruled is by no means that the Government itself is an entrepreneur in any form. The word "controlled" means also that the Government set up the production in order to benefit the welfare of the people.

The Minister of State Enterprises also argued in a written statement at the hearing the Court interpreted the "controlled state" means the State as regulator, facilitator, and the operator dynamically to the State only as a regulator and facilitator. Widjojanto in his Juridical Studies on Constitutional Court ruling of 2009, argued that the word "controlled by the State" in article 33 of the 1945 Constitution has a higher understanding or more extensive than ownership in the civil law conception. The concept of the State authority is a public law concept which relates to the principle of people's sovereignty in the 1945 Constitution, both in the field of politics (political democracy) as well as in economics (economic democracy). People recognized as a source, owner and the holder of the highest power in the life of the state, according to the doctrine "of the people by the people and for the people.

Similarly, the former Vice President of the Republic of Indonesia Dr. Mohammad Hatta at the end of 1977, argued: "The government building from the top, carries the big things such as developing electric power, drinking water supply, and manufacturing various products that dominate the life of many. What is called in English "public utilities" should be run by the Government. Owned by large companies that should be possible in the hands of the Government ". Also, Muhammad Yamin argues that the word owned by the State includes manage and arranging and / or operate to improve and enhance the production with emphasis on cooperative.

Bagir Manan, however, argues that the word the right of the State can be meant as (i) the State through the Government is the sole authority to determine the right to authorize resources including the earth, water and natural resources contained therein; ( ii) Organize and supervise the use and utilization; (iii) Investments in the form of capital and the State enterprise's specific efforts.

In 2003 there was a debate that was mediated by the Constitutional Court on the word "controlled by the State". The Constitutional Court Decision argued that the word controlled by the State should be interpreted to include the meaning of the State authority in the broad sense sourced and originates from the conception of the sovereignty of the people of Indonesia on all sources of wealth "earth, water, and natural resources contained therein. It involves the sense of ownership of the public by the

collective people of the sources referred wealth. People collectively are constructed by the 1945 Constitution that gives mandate to the State to establish policies (regelendaad), management (beheersdaad) and supervision (toezichthoudensdaad) for the greatest prosperity of the people " There are many arguments have been advanced in the literature regarding the articles 33 of the 1945 constitution that cannot be elaborated one by one here. In short, the Article 33 of the 1945 Constitution did not reject the idea of competition among businesses, as long as the competition does not negate the State authority which includes the power to regulate, administer, manage and oversee the production branches which are important for the State and / or that dominate lives of many people for the purpose of the prosperity of the people.

Based on the above consideration and in view of Article 33 of the 1945 Constitution of 1945, the importance of the SOEs has been stipulated in Article 2 of Law No. 19 Year 2003. The SOEs should be directed to achieve sustainability of the national economy, especially the increase in performance and value of the company, as mandated by the People's Consultative Assembly (MPR) through Decree No. IV / MPR / 1999 on Guidelines of the State Policy 1999-2004, Chapter IV Economic Letter B number 12 and number 28, ruled that the State-Owned Enterprises should be organised in an efficient, transparent, and professional ways related to public interest in the provision of public facilities, security and defence industries, strategic asset management, and other business activities that are not carried out by the private sector and cooperatives. The existence and management of State-Owned Enterprises defined by law. Also, the government needs to assist the State-Owned Enterprises and Regional State Owned Enterprises that have business activities relating to the public interest. However, the State-Owned Enterprises that business activities are not related to public interest, it should be privatized through capital market.

Despite of the above laws, the Government has also made guidelines for SOEs that deals with detail matters relating to the mechanism of coaching, management, and supervision as in the Government Regulation No. 3/ 1983 which was further amended into the Government Regulation No. 12/1998 for Limited Company (Persero), the Government Regulation No. 13/1998 for Public Company (Perum), and the Government Regulation No.6/ 2000 for Company Bureau (PERJAN). However, these various laws and regulations cannot be used as legal foundation in accommodating any recent changes associated with the enterprise development towards privatization and the implementation of the principles of good governance (GCG), namely, transparency, independence, accountability, and responsibility.

Due to the above conditions, the government immediately issued the law No. 19/2003 on State-Owned Enterprises. The issuance of this law made the following laws are no longer valid. These laws are as follows.

1. *Indonesische Bedrijven Wet* (IBW) Stbl.1927: 419 or the Corporate Law Indonesia. As several times amended and supplemented the latest by Law No. 12 of 1955 (LNRI 1955 No. 49, TLNRI No. 850). Example: Pawn Bureau, Bureau of Post, Telephone and Telegraph (PTT), Railway Bureau,

2. Law No. 19 Prp Year 1960 On the State Enterprise (LNRI 1960 59, TLNRI No.1989);

3. Law No. 9 of 1969 Concerning Determination of Government Regulation in Lieu of Law No. 1 of 1969 (LNRI 1969 16, TLNRI No.2890) About Forms State became Act (LNRI of 1969 No. 40, TLNRI No.2904).

It should be noted that the law No. 19/ 2003, though it is the legal basis for the existence of state-owned enterprises in Indonesia, it needs also to comply with the law No. 40/2007 as well as the Law No. 25/2007 regarding Capital Investment. In the law No. 19/2003, there are criteria to be fulfil for the SOEs. These criteria are as follows.

1. In Article 1, paragraph 1 of the law No. 19/ 2003, as it is also stipulated in the Government Regulation No. 45/2005, it was mentioned that the State-Owned Enterprises (SOEs) is defined as a "business entity that all or most of its capital owned by the State through the direct sharing comes from the separate State assets.

2. The article 1 (2) states: Limited Company or locally called *PERSERO* is defined as a state-owned limited liability company whose capital is divided into shares of all or at least 51% (fifty one percent) of its shares owned by the Republic of Indonesia with the main objective is to obtain profit;

3. The article 1 (3), states: an open limited company is defined as a company where the capital and the number of share holders should meet certain criteria or a company that conduct a public offering in accordance with the legislation in the capital markets;

4. The article 1 (4) states that a Public Company or locally called *PERUM* is defined as a state company that is wholly owned by the State and is not divided into shares, which aims for the public benefit in the form of provision of goods and / or services of good quality and at the same time pursue profit based on company management principles. In addition to the above, it was also clearly stated in the Article 9 of the Law No. 19/2003 that SOEs consist of Limited company (Persero) and Public company (Perum).

The purpose of establishing SOEs has also been stated especially in the Article 2 of the law No. 19/2003. The objectives of SOEs are: (1) to contribute the development of the national economy in general and the state revenue in particular; (2) to obtain profit; (3) to hold public services in the form of provision of goods and / or services that are high quality and adequate for fulfilment of the people; (4) being a pioneer of business activities that cannot be implemented by the private sector and cooperatives; (5) Participate actively to provide guidance and assistance to employers which are economically weak, assisting cooperatives units, and other weak communities' businesses. This suggests that the business activities of SOEs should not only focus on profit, but also to assist the disadvantage public business community.

In terms of the working capital, the SOEs used the separate state assets. This separate state assets is defined as the wealth of the State that are separated from the State Budget (APBN) used to serve as the SOEs' capital investment, while the management of this capital investment is done by the SOEs. In addition, other financial sources of the SOEs are taken from reserve capitalization and other financial sources. However, due to the issuance of the Law No.17/ 2003, especially in the Article 1 paragraph (1), the State Finance is defined as all rights and obligations of which can be measured by money, and everything

in cash as well as goods which can be owned by the State in connection with the implementation of the above rights and obligations. In this law as mentioned in the Article 2, the state finance is defined as :

- a. The rights of the state to collect taxes, disbursing and circulating money and loans;
- b. The obligation of States to organize public service task of the State government and pay the bill to third parties;
- c. State revenues;
- d. State expenditure;
- e. Regional revenues;
- f. Regional spending;
- g. State wealth or regional assets that are managed by the state or by others in the form of cash, securities, receivables, goods, as well as other rights that can be valued in money, including the separated wealth of the State companies and or Regional Companies;
- h. Wealth other parties controlled by the government in the implementation of tasks of government and / or public interest;
- i. Wealth other parties that obtained from using the state facilities.

There are pillars or principles in the State Financial Management mentioned in the law No. 17/2003. These pillars are annual pillar, universality pillar, unity pillar and specialty pillar as well as other new pillars including accountability, professionalism, proportionality, openness in state financial management, examination of state finances by the independent financial agency. However, there are legal differences concerning the capital aspect of SOEs as stipulated in Article 4 paragraph (1) of the law No. 19/2003 and the law No. 17/ 2003. In the article 11 of the law No. 19/2003, it was stated that for limited company (Persero) all the provisions and principles are applicable to this type of company as stipulated in the Law No. 40/2007 regarding the nature and characteristics of the company as a legal entity in that the wealth and debt of company is separated from wealth and debt of the board and shareholders.

The structures of the SOEs consist of: Board of Directors, and the Board of Commissioners, the shareholders and the Supervisory Board. These people are fully responsible for the supervision of state-owned enterprises as well as towards the objectives and profit orientation. These people have also to comply with the statutes of SOEs and legislation and are obliged to implement the principles of professionalism, efficiency, transparency, independence, accountability, and responsibility. They are prohibited from taking personal advantage either directly or indirectly from activities other than their own incomes. However, the member of SOEs' Board of Directors may hold another position, as follows : (a) as a member of the Board of Directors in SOEs, locally-owned enterprises, private enterprise, and the position which may give rise to a conflict of interest; (b) Position in Structural and other functional agencies / central and local government agencies; and / or (c) Other positions in accordance with the laws and regulations. While the member of commissioners may not hold another position, as: (a) as a member of the Board of Directors in SOEs, locally-owned

enterprises, private enterprise, and the position which may give rise to a conflict of interest; and / or (b) other positions in accordance with the laws and regulations.

The definition of privatisation according to Law No. 19/ 2003 is the sale of shares, in part or in whole, to other parties in order to improve the performance and value of the company, to increase benefits for the State and society, as well as to broaden the ownership of public shares. However, privatization in Indonesia can be done in two ways, namely, direct sales (strategic sales) and sale of shares in the Indonesian stock Exchange (BEI). The purpose of doing privatisation explained in the Article 74 paragraph (1) and paragraph (2) of the Law No. 19/2003 are as follows. (1) Expanding community ownership towards the SOEs; (2) Improving the efficiency and productivity of the company; (3) Creating good and strong financial structures and financial management; (4) creating competitive and globally oriented SOEs; (5) Growing conducive business environment and good macroeconomic condition and market capacity. Whereas the goal of privatization is to improve the performance and the added value of the company and enhance public participation in the shares' ownership of company.

The government is able to take action to privatise the SOEs after the Parliament approved the draft budget in which there are the target of state revenue from the privatization. The plan must be set forth in the annual privatization program, while the implementation of the plan should be consulted with the parliament. Privatisation should be done on the basis of the principles of transparency, independence, accountability, responsibility and reliability. However, the SOEs that can be privatised need to fulfil at least the following criteria. First, it should be an industry or sector that has competitiveness. The second is an industry or sector that has a rapid changing in technology. Whereas the SOEs that cannot be privatized are the SOEs that have scope of business which can only be maintained by the state, the SOEs which engaged in the business sector related with defence and security of the State, the SOEs in particular business sector that have specifically tasked to carry out certain activities related to the public interest, and the SOEs that engaged in the natural resources which by law is prohibited to be privatized.

Privatization can be undertaken by the following means. The first is by selling the shares as determined by the capital markets. This can be done via the sale of shares through a public offering (Initial Public Offering / Go Public), bond issuance conventions, and other equity securities. In this grouped, it includes the sale of shares to strategic partners (direct placement) for company registered in capital markets. The second is by selling shares directly to investors. This selling shares can be done directly to the state-owned investors. The Minister may make direct appointments. However, it should be in accordance to the law, the basic budget SOE concerned, and / or the shareholders agreement. Note that, the words "selling shares directly to investors" means that the sale of shares to strategic partners (direct placement) or to other investors, including financial investors. This method specifically applies to the sale of shares of Persero that are unlisted at capital markets. The third is through the sale of shares to the management (MBO / Management Buy Out) and / or employee (EBO / Employee Buy Out) concerned, namely, the sale of most or all of the shares

directly to the management and / or employees of company (Persero) respectively. In the case that the management and / or employees are not be able to buy most or all of the shares, the offer to the management and / or employees is done by considering their ability. The word management here means the Direction. Note that for the SOEs (Persero) that are not wholly owned by countries, the implementation of the ministerial regulation should be consulted under the public annual shares meeting.

In terms of the procedures for Privatization. This can be done as follows.

1. The government needs to form a Privatization Committee as a coordinating media to discuss and decide privatization policy in connection with cross-sectoral policies;

2. Privatization committee should be chaired by the Coordinating Minister for the economy with the members include the Minister of Finance and other Technical Ministers where the SOEs involved in business activities;

3. Privatization Committee membership which is determined by Presidential decree;

4. Privatization Committee will: a. Formulate and establish general policies and requirements for the implementation of privatization; b. Sets out the steps necessary to expedite the process of privatization of state-owned; c. Discuss and provide an exit on strategic issues arising in the process of privatization of state-owned including those associated with the policy of the government sector;

5. Minister needs to select and establish a plan limited company to be privatized, privatization method used, and the type and range of shares to be sold. The results of selection and plans for privatisation are then derived in the annual privatization program. This annual privatization program is submitted to the Privatization Commission to obtain referrals and to the Minister of Finance for specific recommendations. This should be done no later than the end of the first month of the current budget year. Further, recommendation made by the Minister of Finance may be given at a meeting of the Privatization Committee as outlined in the privatization Committee's decision.

6. The Finance Minister needs to socialize annual privatization program. The socialization annual privatization program was conducted by companies, communities and other stakeholders, as well as through the press, or other media.

7 The minister needs to consult the privatization plans to the parliament;

8. The Minister will made policy decision after taking notes views given by the Privatization Committee and the recommendation of the Minister of Finance;

9. Minister is able to take the necessary steps such as the appointment of the profession and / or supporting institutions, drafting necessary agreement, the concept of association change, government regulations, and the implementation of the shareholders meeting in the implementation of privatization;

10. The Minister may establish a privatization team if privatization is conducted towards state shares or privatization of the state shares together with new shares;

11. Formation of the privatization team can be delegated to the Board of Directors only if it is necessary to expedite the process of privatization and / or administrative discipline of

company. The membership of privatization team formed by the Board of Directors or delegated by the Minister that are from the outside of the SOE should be proposed by Ministers or officials designated by the Minister;

12. The Board of Directors may form a team of privatization if the privatization is carried out on new shares. The membership of privatization team formed by the Board of Directors from the outside of the SOE should be proposed by Ministers or officials designated by Minister.

13. The minister set of institutions / professions and other professions after going through a selection process conducted by the Minister or the team of privatization;

14. The cost in undertaking privatisation includes institutional cost and / or professions and other professions and operational cost of privatization.

15. The results of the privatization of state shares in Persero are remitted directly to the State Treasury;

16. The results of the privatization of shares in deposit cash deposited directly into Company (Persero) concerned;

17. The results of the privatization is the net result after deducting the costs of the implementation of privatization;

18. Administration and implementation of the privatization of the deposit are set as follows:

a. Guarantor of emissions or financial advisors may open account (escrow account) to collect the proceeds of privatization;

b. After deducting the costs of the implementation of the privatization, the underwriter or financial adviser is obliged to immediately deposit the net proceeds of privatization to the State Treasury and / or Persero treasury concerned.;

c. Underwriter or financial adviser is obliged to immediately report the privatization of the deposit to the Minister, the Minister of Finance, and the Board of Directors Persero concern.

19. Other income earned on the escrow account of the results of privatization are taken into account as a result of privatization;

20. Verification of the costs and results of privatization by public accountants appointed by the Minister;

21. The sale of shares owned by the Republic of Indonesia on limited liability whose shares are less than 51% (fifty one percent) owned by the Republic of Indonesia conducted in accordance with the articles of association and shareholders' agreement as well as observing the principles set out in laws and legislation as well as regulations implementation of applicable;

22. The sale of shares owned by state enterprises in the limited liability company whose shares are at least 51% owned by the state conducted in accordance with the articles of association and shareholders' agreement as well as observing the principles set out in the legislation and its implementation regulations applicable;

23. The sale of shares owned by the Republic of Indonesia on the Open Persero be carried out based on the principles and provisions in the field of market modal.

Based on record made by the Indonesian Stock Exchange office, it was recorded that on Thursday, April 9, 2015, there were about 20 companies have been privatized and have sold their shares in the capital markets. These companies included PT Indofarma,Tbk (INAF), PT Kimia Farma, Tbk (KAEP), PT Perusahaan Gas Negara,Tbk (PGAS), PT Krakatau Steel,Tbk

(KRAS), PT. Adhi Karya (ADHI), PT Pembangunan Perumahan, Tbk (PTPP), PT Widjaja Karya, Tbk (WIKA), PT Waskita Karya, Tbk (WSKT), PT Bank Negara Indonesia, Tbk (BBNI), PT Bank Rakyat Indonesia, Tbk (BBRI), PT Bank Tabungan Negara, Tbk (BBTN), PT Bank Mandiri, Tbk (BMRI), PT Aneka Tambang, Tbk (ANTM), PT Bukit Asam, Tbk (PTBA), PT Timah, Tbk (TINS), PT Semen Baturaja, Tbk (SMBR), PT Semen Indonesia, Tbk (SMGR), PT Jasa Marga, Tbk (JSMR), PT Garuda Indonesia, Tbk (GIAA), PT Telekomunikasi Indonesia, Tbk (TLKM).

Whilst the SOEs that were privatized by way of direct sales is the Jakarta International Container Terminal (JICT) to Hutchison Port Holdings (HPH), a subsidiary of Hutchison Whampoa Limited (HWL) belong to the richest man Hongkong Li Ka-shing. Then there are PT Indosat Tbk (ISAT) was sold to Singapore Telecom (SingTel) in 2002.

PT Semen Gresik Tbk (SMGR), is the first state-owned enterprises listed on the Indonesia Stock Exchange (BEI) in Indonesia, and also an SOE first among eleven other SOEs to be privatized after the issuance of the privatization policy in 1998. The SMGR is a state that is engaged in the production of cement company was founded in 1957 during the old order. On July 8, 1991, SMGR listed on the Jakarta Stock Exchange and Surabaya Stock Exchange with the release of its shares to the public, making the company a first SOE to be listed on the stock exchange. The government holds a 73% stake after the IPO while the public holds 27% shares. In September 1995, SMGR releasing shares to the public through the Limited Public Offering I (Rights Issue I), which alter the composition of ownership to proportions of 65:35 between the government and the public. On 15 September 1995, SMGR consolidated with PT Semen Padang and PT Semen Santosa, formed PT Semen Gresik Group (SGG).

The case of privatization in the divestment / sale of shares of PT Indosat Tbk (Indosat) should be observed and analyzed as a precedent holding of lawsuits from the public by reason of "the lawsuit on the grounds of public interest" or action popularity. Although the lawsuit at the end was rejected, however, the arguments of the plaintiff deserves to be discussed. The applicant in the case is finally decided in the Supreme Court by No. Register No. 2280K / Pdt / 2005 consisted of 23 people, among others, Mahfud MD, AS Hikam, Marwan Coal, Adi Sasono, Zulkifliemansyah, Eros Djarot, Ichsanuddin Noorsy, Fahri Hamzah, Laode Ida and Drajad Wibowo ( "Plaintiffs"). Whilst the "Defendants" means the Government c.q. State Ministry of BU MN, STT Communications Limited ("Defendants"). It should be noted that at the time the lawsuit is shown, there is no Constitutional Court, which then formulates its interpretation of "the right to control the State". This suggests that privatization on one hand can be valuable and important, but on the other hand it can also be counter-productive if the impact reducing the value of the company at a cost that is also borne by minority shareholders and if implemented with violations of the GCG implementation.

In 2016, the Commission VI of the House of Representatives approved the privatization of four state-owned enterprises, Tbk. The decision was taken after the working committee meeting with Finance Minister Sri Mulyani, a meeting chaired by the Vice Chairman of Commission VI Dodi Reza

Alex Noerdin. According to the privatization agreement is a consequence of the State Capital (PMN) The results of the meeting agreed to retain ownership stake of the Government by issuing new shares or rights issue by using PMN in APBN-P 2016. Four SOE approval privatization, among others: PT Wijaja Karya (Persero) Tbk., PT Jasa Marga (Persero) Tbk., PT Krakatau Steel (Persero) Tbk, and PT Pembangunan Perumahan (Persero) Tbk.'

The investment given to the SOEs from APBN P 2016 was prioritized in the Government program that is useful for economic growth and welfare of the people, as Dodi said while chairing a meeting in the courtroom of Commission VI, Senayan, Jakarta, Wednesday (24/08/2016). Although it was given the approval of the privatization of four state-owned enterprises, the Commission VI of the House of Representatives noted that the government must considered the SOEs that are able to increase economic growth and the welfare of the people. It was approved that there are three sectors that should be given priority using the national budget ( APBN-P 2016). These three sectors are the construction and energy sector, food sector and credit program for SMEs. The Commission VI also provides direction, in the disbursement of investment conducted and recorded in separate accounts. In addition, the parliament Commission VI also gave investment for the fast train project, either directly or indirectly. This policy is decided by the Commission VI with the expectations that there will be SOEs that received government budget able to improve Good Corporate Governance (GCG) .

### III. CONCLUDING NOTES

Privatisation that can bring benefits to the Government and the people of Indonesia are privatisation that can improve the performance of SOEs, able to encourage SOEs to apply the principles of good corporate governance in the management of state-owned enterprises, able to improve access and competitiveness to the international market, able to push changes in work culture, and able to generate funds to cover the budget deficit, able creating a healthy business climate for its people, with the aim of promoting the general welfare or the welfare of the people of Indonesia. These expectations are in accordance with the Article 33 paragraph (2) and (3) of the 1945 Constitution.

However, this study argues that the privatization carried out today has no clear and strategic direction. The law No. 19/ 2003 on SOEs is still inadequate in providing policy guidance towards privatization. Thus, it is easy to understand if then, the policy and strategy of privatization currently is still not fit for the state purpose, constitution, and economic development concept. The present privatization policies and strategies tend to be more oriented to the sale of shares owned, with a maximum target price. The privatisation of SOEs is still very practical oriented and pragmatic, which is more precise to mention the divestiture rather than privatisation.

The direction and policy of privatization to date was also still not in line with the concept of economic development adopted in Indonesia. The 1945 constitution emphasised that the economy should be structured as a joint venture based on family principles. There are two words that are important in the economic development concept, namely "joint venture" and

"principle of the family. Joint venture is a business that is compiled and made that involve a shared vision between the three pillars of national economic actors, namely Governments, Communities, (consumers), and Manufacturers (market participants). Indonesia's economy must be prepared by accommodating the interests of the three pillars of economic agents in a balanced and fairness ways. These three pillars of economic actors must be contained in a range of economic policies, including the establishment of state-owned enterprises, management of state-owned enterprises, and privatization of SOEs. Whilst "family principle" is the principle of mutual cooperation or the principle of synergy of the three pillars the economic actors, the synergy between the government, the community and family principles referred market. The privatization should have a positive impact and healthy for the development or growth of the economic actors.

Privatization conducted to date, is also not in accordance with the 1945 Constitution. The problems lie in the existence of the SOEs and the privatization itself. The existence of SOEs in implementing economic policy, as mandated by the constitution remains unclear in terms of the definition, purpose, authority, supervision and inspection. There are many overlaps with each other, both at the level of legislation and in practice or implementation. Similarly, the activities of privatization itself which lost its strategic significance as an effort to improve the economy of the State. The implementation of the privatization program is more dominant in an attempt to divest or sell stock to save the state-owned and state expenditure only. These activities are indeed not in line with the constitutional mandate that requires a community-based economic policies, which means the privatization of justice for the people of Indonesia or privatization for the people.

When compared with the laws and regulations in other countries that regulate privatization, there needs to be a foundation of clear policies and procedures that detail the process and institutional management privatization program. For example, privatization in Malaysia have a firm direction statement alignments. Meanwhile, the Law on Privatization in Turkey provide clear direction, about alignments against the employee and the use of proceeds from privatization. In some other countries (including Germany and Malaysia), privatization is not limited to just selling state assets, but private participation in the activities of state / country at large. Thus, much remain to be done in the practice of privatization in Indonesia.

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## AUTHORS

**First Author** – Dr. Arrisman, SH, M.H., Graduate Program of Legal Studies, Jakarta National University , Email: [arrisman.dr@gmail.com](mailto:arrisman.dr@gmail.com)