

PRIVATIZATION IN INDONESIA: RESTRUCTURIZATION AND PUBLIC OFFERING*

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Privatisasi merupakan issue yang hangat dalam dasawarsa terakhir di berbagai belahan dunia ini, termasuk juga di Indonesia. Tulisan ini menyoroti aspek yuridis, ekonomis dan praktis pelaksanaan privatisasi di Indonesia, terutama privatisasi terhadap Badan Usaha Milik Negara (BUMN) yang semakin semarak pada saat ini. Selain itu, tulisan ini menyoroti pula masalah manfaat dari pelaksanaan privatisasi BUMN itu sendiri.



1. Introduction

Privatization has recently become a heated issue. Privatization is now being practiced in numerous countries all over the world, from Australia and New Zealand to Asia (China, Indonesia, Japan, the Philippines, Singapore, South Korea, Taiwan, Thailand), America (Argentina, Bolivia, Brazil, Canada, Chile, Columbia, Cuba, Jamaica, Peru, Mexico, Panama, Venezuela), and Europe (Belgium, France, Germany, Greece, Italy, the Netherlands, Spain, Sweden, United Kingdom, Estonia, Hungary, Latvia, Lithuania, Poland, Russia). The volume of the shares being privatized varied from the lowest 11%, such as in the case Singapore Telecommunications, to 100% as in the case of Qantas Airways (Australia) or Entel (Chile) or Telmex (Mexico).

*Presented at a public seminar conducted in conjunction with a semi-annual international conference of the Pacific Rim Advisory Council, held at the Grand Hyatt Jakarta, April 22, 1996 and hosted by Ali Budiardjo, Nugroho, Reksodiputro, Counsellors at Law.

Other than airways and telecommunications, on going privatization practices have included the business fields of manufacturing and services. In the manufacturing field are products such as textile, fertilizer, shipyard, petrochemicals, pulp, steel, oil, palm-oil, glass and bottles. The services field comprises banking, railways, television broadcasting, airport operator, hotel management, satellite, transportation and insurance. The privatization in these fields has been carried out either through public offerings or private placements.¹

A report by the United Nations Secretary General No. A/50/417 dated September 12, 1995 states that privatization has been made an object of study by several countries in their efforts to strengthen their economy. The report contains detailed description of the results of the studies made by the various organizations within the UN.

In essence, privatization is the involvement of private sectors in State owned enterprises ("SOEs") for the purpose of increasing their efficiency and performance. For the government of a country, privatization could be a means to reduce the State's financial burden, and, not less important than that, to give more freedom to the SOEs in executing their duties based on their articles of association. As we have seen, privatization does not differ the economic regime of a country, nor the level of economic development.

II. Economic Development and its Actors

Even though the move towards privatization in a country is not dependent upon its economic system, the practice of privatization is very much influenced by its economic development.² In Indonesia, a major change in the country's economy became apparent since 1966, when the new order led by General Soeharto replaced the old regime. Assisted by university technocrats, President Soeharto set up a total national economic development program which focuses mainly on economic recovery, which is badly needed to repair the chaotic economic condition during the old regime's administration. The program is set up to comprise sets of five-year development plans (Indonesia: *Rencana Pembangunan Lima Tahun*, known as "Repelita").

¹THE ASIAN WALL STREET JOURNAL, October 23, 1995.

²See also explanation by Mr. Bacelius Ruru, Director General of State Owned Enterprises, Ministry of Finance, BISNIS INDONESIA, April 8, 1996.

The *Repelita I*, which started in 1969/70, put an emphasize on the country's economic rehabilitation through the improvement of agricultural capacities and public sector investments. The *Repelita II* was geared to provide the people with better living conditions, whereas the *Repelita III* launched the concept of "development trilogy" which consisted of economic growth, equitable distribution of development gains and the maintenance of economic and political stability. The *Repelita IV* emphasized on the development of the country's agricultural sector for the purpose of maintaining self-sufficiency in rice. Along with the development of the agricultural sector, dynamic growth in the industrial sector was also enhanced. The *Repelita V* was a very determining stage since it was the final stage of preparation before the country entered the "take-off" era, namely after the first 25 year-development plan.

As a result of the above economic recovery, the annual economic growth from 1970 to 1993 raised from year to year as pictured on the table attached. In 1994, the growth was 7,48% and in 1995, 8,07%.³ In line with this, the annual inflation rate decreased from year.

From the above description, it is clear that Government's policy has been focused on the rehabilitation of its economy, for which efforts have been made to stimulate the active participation of all economic actors, namely:

- SOEs;
- private sectors; and
- cooperatives.

In the early stages of the new order Government's administration, the SOEs played a great role in the Indonesian economy. This was due to the fact that many of the business enterprises that were left by the Dutch administration in the fields of such as plantation, oil industry, trade and public utilities were then managed by the SOES. In the field of oil and gas, Pertamina, for example, contributed to a significant portion of the State's budget. The amount of expanded when the oil boom took place in the 1970's. In 1974, the Government reformed its tax policy in anticipation of the decline of the oil industry.

Law No. 19 Prp 1960 jo. Government Regulation No. 12 of 1989 divide the Indonesian SOEs into 3 categories, namely:

³Statement by Mr. Ginandjar Kartasastmita, Minister/Chairman of National Development Planning Board, KOMPAS, April 19, 1996.

- 1) *Perusahaan Jawatan (Perjan)*, which is a state enterprise that purely provides public services to the general public; which operation is non-profitable.
- 2) *Perusahaan Umum (Perum)*, which is a state enterprise that provides services to public, and its operation is profitable and non-profitable.
- 3) *Perusahaan Perseroan (Persero)*, which is limited liability company of which the capital is funded by and separated from the State's budget. Since it is governed by the Indonesian law on limited liability companies [*Perseroan Terbatas (PT)*], the *Persero* is also referred to as *PT Persero*.

Other than the above three types of SOES, there are also other SOEs which formation is governed by a special law. An example is Pertamina, the State oil company, which was established under Law no. 8 of 1971.

III. Restructurization of State-Owned Enterprises

As its economy was growing gradually but steadily, Indonesia made various efforts to elevate the role of its private sectors. In anticipation of the local private sector's possession of real power, the Government by enacting Law No. 1 of 1967 invited foreign investors. This foreign investment policy is affected by various factors, both local and international as could be seen from the specific policies which have been adopted, for example with regard to divestment, fields of business which are open to foreign investors, the minimum investment amount and the ratio of the local and foreign shareholdings.

Another effort is to invite private parties to get involved in the SOEs. By issuing the Decision of the Minister of Finance No. 740/KMK.00/1989, which was subsequently amended in 1992 ("Decision 740"), the Government sets up guidelines for the SOES. Article 2 (1) of Decision 740 provided the following possible ways that could be selected by the SOEs for the above purpose:

- a. status change;
- b. operation agreement or management contract with another party;
- c. consolidation or merger;
- d. stock split;
- e. capital markets;
- f. direct placement;
- g. formation of joint venture companies.

Decision 740 was issued by the Government with the purpose of providing means to SOEs for the improvement of their condition. Following Decision 740, a number of SOEs changed their status, among others the Perjan Kereta Api (railways), Perjan Pegadaian (pawn), Perum Telekomunikasi Indonesia, Perum Pelabuhan Indonesia (port-management), Perum ASTEK (manpower insurance) and Perum Pos Indonesia (post services) became Perum Kereta Api, Perum Pegadaian, PT Persero Telekomunikasi Indonesia, PT Pelabuhan Indonesia, PT Persero ASTEK and PT Persero Pos Indonesia. All State banks also converted their status to *PT Perseros*. The status conversion have also been adopted by all of the SOEs in the field of plantation which as a result became *PT Perseros*.

A few SOEs were acquired by other SOEs, as is the case with PT Persero Semen Tonasa (cement industry) and PT Persero Semen Padang, which were acquired by PT Persero Semen Gresik. Seven SOEs sold their entire shares and 2 of them sold part of their shares through private placement.

As a result of the above restructurization, there are today 178 SOES. Of this figure, 157 SOEs are *PT Perseros*, 18 are *Perums*, no *Perjans*, and 3 are of a special status.

Restructurization through cooperation has also been effected by a number of SOEs by inviting private parties to conduct certain projects through a "build, operate and transfer" (BOT) scheme. Pertamina, Perum Kereta Api, PT Telekomunikasi Indonesia and PT PLN are only some of them. The advantage of BOT lies in that the concerned SOEs do not have to bear great financial risks, as most of the expenses are born by their counterparts.

What are the impacts of the restructurization on SOEs? In 1994 the total assets of the SOEs (excluding Bank Indonesia) constituted 77,38% the gross domestic product. During 1994/1995, the SOEs' profits amounted to Rp. 1.393,1 billion or 23,2% of the total revenue (excluding revenue from tax). In term of income tax, in the same period the SOEs paid Rp. 2.299,1 Billion. In addition to the financial impact, the SOEs until 1995 employed more or less about 1.007.343 people.

On the basis of the criteria stipulated in Decision 740 (and its amendment), the performance of the SOEs grows and grows. However according to the Minister of Finance in 1995 only 49 SOEs, or comprising 27,%, could be ranked as very healthy, 43 of them are ranked as healthy whereas 37 are less healthy and 49 are not healthy at all. The concern of the Minister on the overall performance of the SOEs is interesting, because a total of 86 SOEs or 48,3% are not in a healthy condition. If this situation persists, the performance of private sectors may be affected, and in the end,

the national economy will suffer.⁴ The concern of the Minister indicated to us that the interrelationship between SOEs and private undertakings is a highly determining factor in a country like Indonesia. As explained above, both are actors in the development of the country.

IV. Capital Markets

As is known privatization could be implemented through the following various measures: operational, organizational and ownership.⁵ In addition to steps that have been taken with regard to ownership measures, Decision 740 specially mentions about public offering of shares through capital markets.

Following the issuance of Decision 740, a number of newspapers reported in the 1990's that 52 SOEs, including PT Persero Garuda Indonesia (airways), were prepared to go public. It later became apparent, however, that it was just a rumor, because it turned out that those companies were not ready to do so.

The public offering of SOEs was pioneered by PT Persero Semen Gresik (cement industry) in 1991 which offered 35% of its shares. Four years later this company launched its second offering that was limited to its existing shareholders (right issue). In 1994 PT Persero Indosat (international telecommunications) listed its American depository receipts ("ADR") at the New York Stock Exchange and at the two local exchanges (the Jakarta Stock Exchange and the Surabaya Stock Exchange). The offer amounted to US\$ 1.1 billion or 35% of the issued shares, making it the highest offer in the history of the Indonesian capital market. Indosat's action was followed by PT Persero Telekomunikasi Indonesia (domestic telecommunications) in 1995, for the public offering of 20% of its shares. In the same year PT Persero Tambang Timah also listed its depository receipts at the London Stock Exchange and simultaneously its shares at the Jakarta Stock Exchange, all of which aggregating 35% of its shares.

With the success of the above offerings, it is expected that other SOEs will follow. Government's statements have indicated that 3 SOEs are ready

⁴KOMPAS, April 18, 1996.

⁵Division for Global and Interregional Programs, UNDP, GUIDELINES ON PRIVATIZATION, 1991, p.8.

go public this year: PT Persero Bank Negara Indonesia 1946 (banking); PT Persero Krakatau Steel (steel plant) and PT Persero Jasa Marga (toll-road company).

Within the scope of capital market, a number of SOEs have also issued bonds since 1988. The respective SOEs are:

- PT Persero Bank Pembangunan Indonesia (bank);
- PT Persero Bank Tabungan Negara (bank);
- PT Persero PLN (power plant);
- PT Jasa Marga (tollroad)
- PT Persero Hotel Indonesia International (hotel);
- PT Pembangunan Perumahan (housing development);
- PT Persero Adhi Karya (contractors);
- PT Persero Wijaya Karya (contractors)
- Perum Pegadaian (pawn).

Total bonds that they have issued more than Rp. 4 trillion with various interest rates from 15½% to 20%. The bond period is mostly 5 years.

Even though this is not a restructuring act, as a consequence of the bond issuance, the company concerned must be disclosed and has to satisfy the Capital Market Supervisory Board (*Badan Pengawas Pasar Modal*) or BAPEPAM's requirement of periodical reports.

One significant development in the Indonesian capital markets is the recent enactment of a new law which is referred to as Law No. 8 of 1995. According to BAPEPAM⁶ there are four reasons for the enactment of the Law, namely:

1. to anticipate the global market;
2. to create a fair, efficient, transparent and credible capital market;
3. to promote the quality and the correctness of information;
4. to protect the investors interests.

In the framework of the implementation of the Law, the BAPEPAM Chairman issued a series of regulations, making this capital market law comprehensive. In general, the Law accommodates the contents of the Decision of the Minister Finance No. 1548/KMK/1990, as amended. In addition, a number of new concepts have also been adopted, as in the power of the BAPEPAM to carry out investigation, the imposition of liabilities for untrue

⁶See Key Note Address by the BAPEPAM Chairman at a Seminar on Law No. 8/1995, Semarang, March 9, 1996.

information, the provisions with respect to tender offer, merger, consolidation and acquisition, penalties and other provisions for the protection of public shareholders. Being listed companies, the SOEs must familiarize themselves with this new legislation, failing which they could be penalized, or even desisted from the bourse.

What is the other impact of going public on SOEs? From the legal perspective, it is important that they, in this case *PT Perseros*, adjust their attitudes and position themselves as real private undertakings, in conformity with the expectation of the Minister of Finance, who stated to reporters that as with private undertakings, the SOEs are obliged to abide by the Indonesian Commercial Code (now Law No. 1 of 1995 on Limited Liability Companies). The Minister stressed further that the recognized organs in a PT are the Shareholders Meeting, the Board of Commissioners and the Board of Directors. The Minister's statement was a positive congenial explanation, in consideration of the prevailing misperception among the Government officials, that SOEs are the extensions of certain Government agencies. With regard to this, the Minister of Finance pointed out that SOEs should be sterilized from the intervention of the bureaucrats.⁷

Just to take another provision from Law No. 1 of 1995, a shareholder, including one in a listed SOE, may bring suits to the district court if he/she suffers losses that arise as a result of the company's actions which have been performed pursuant to the resolutions of the shareholders, directors or commissioners [Art. 54(2)]. More critical is the position of the directors. A minority shareholder representing at least 1/10 of the total shares may, on behalf of the company, file a legal action against any director who causes losses to the company [Art. 85(3)].

V. Conclusion

Even though privatization is a relatively new concept for Indonesia, the country has had quite a bit of experience in it. Privatization has, as a matter of fact brought positive impacts to the country in that it reduces its financial burden and enhances the development of the SOEs themselves. The recently enacted Law No. 1 of 1995 and Law No. 8 of 1995 are important laws for the privatization program, because these two legislation lay down the basic framework for the SOEs as limited liability companies as well as in their

⁷BISNIS INDONESIA, March 12, 1996.

transactions in the capital markets. Following its privatization, either through traditional restructurization or public offering, an SOE has to behave as a private undertaking in the real term, which has as its main task the accumulation of profits.

If it is listed, an SOE is obliged to fulfill all the disclosure requirements as determined by the capital market authorities. As a result, an SOE needs to be managed professionally, in order to satisfy the objectives that are set forth in their Articles of Association.

Privatization needs the support of a legal framework. In addition to the legislation discussed above, a set of laws or regulations in certain fields of economy needs to be prepared. One example of a necessary law is law on healthy competition. One factor that will attract the private sector to involve itself in an SOE is the latter's facilities to conduct business. An SOE that enjoys monopoly facilities is an extreme example of this. Privatization should not become a means to shift the monopoly power from the government sector to the private sector. Rules and procedures on this must be established. Would the privatized-SOE still enjoy its pre-privatization facilities? If yes, in the case the privatization is executed through a private placement, the procedures have to be transparent. On the other hand, in the event the Government decides that the respective field of business no longer requires the facilities or protection, other private parties should be given equal opportunity to be involved in the same business.

The above is only one example of the impact of privatization on the economic law of this country. The reference to economic law is highly relevant because without which, economic activities, including privatization through restructurization and capital markets, can not properly grow to serve public interests.

Orang yang menerima pemberian jangan sekali-kali melupakannya, dan orang yang menerima pemberian jangan sekali-kali mengingatkannya.

POSISI OTORITAS LEGISLATIF PRESIDEN DAN DPR

Hendra Nurtjahyo



DPR cenderung distigmatisasi sebagai lembaga legislatif sentral dalam pembentukan UU. Namun peran legislatif pembentukan UU tersebut tidak pernah dilaksanakan oleh DPR secara memadai. Semua UU yang dihasilkan sejak tahun 1971 adalah produk presiden (pemerintah). Tulisan di bawah ini mencoba meninjau posisi otoritas legislatif presiden dan DPR, baik secara normatif-gramatikal maupun melalui nuansa sejarah dan praktek ketatanegaraan. Tulisan ini akan menjawab lembaga tinggi manakah yang layak diposisikan sebagai lembaga legislatif utama.

Interpretations, like colors or musical pitches, lead to many different but equally satisfactory results. Judging has something to do with achieving justice. Constitutional judging tries, though often badly, to bring about a society in which civic virtue may flourish.

■ Felix Frankfurter ■

Pengantar

Peran legislatif merupakan peran penting dalam pembentukan hukum atau undang-undang. Disamping itu kekuasaan legislatif juga sangat menentukan proses demokratisasi politik dan ketatanegaraan. Jika kita perhatikan pembagian kekuasaan negara dalam UUD '45, maka kita akan menemukan otoritas legislatif berada di tangan tiga lembaga, yaitu MPR, presiden, dan DPR. Ketiga lembaga ini menjalankan peran penting dalam posisi otoritas legislatif yang berbeda.

April 1997