

TRANSFORMATION OF THE SPIRIT OF *KERTAMASA* WITHIN THE PRIVATIZATION OF STATE OWNED ENTERPRISE

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ABSTRACT

Kertamasa which is the local wisdom in Bali derived from the practice of Subak organization can be transformed in the privatization of state owned enterprises. Values shared within Kertamasa transformed in the privatization of SOEs is value which is fundamental that includes future creative, progress, prosperity, advantages, security, order, harmonious balance between the inner and outer structure. The fundamental value of Kertamasa shall serve as basis for the elaboration of the instrumental and praxis values in the privatization of state enterprises. Transformation of Kertamasa in privatization of SOE is the realization of instrumental value and praxis value in the policy and implementation of the privatization, the practical value of the instrument and are not reflected in the current SOE Law governing the privatization of SOE.

Keyword : kertamasa, subak, privatization.

INTRODUCTION

A. Background

In the last two or three decades, the matter of privatization of State Owned Enterprise (hereinafter shall be referred as "SOE(s)") has been regarded as one of the publicly consuming issue; had it not been sexy. It can be implied from our observation that such aforementioned issue had served as headline in several mainstream publication medias in Indonesia. Privatization of SOE had also served as theme in various forum of discussions in several segment and parts of Indonesian society.

The policy of privatization of SOE had been initiated during the reign of President Soeharto in the year of 1991. During the period of 1991-1999, it had been recorded that 9 (nine) SOEs had been privatized. PT Semen Gresik served as the first to be affected by the privatization program. Other SOEs are the following: PT Aneka Tambang, PT Pupuk Kaltim, PT Kimia Farma. Meanwhile, during the reign of President Megawati Sukarno Putri, it had been recorded that 19 (nineteen) SOEs assumed the privatization program. Privatization of SOEs program during the period of 2001-2004 had resulted several entities, namely, PT Indosat PT Telkom, PT BNI, PT Batu Bara Bukit Asam, PT BRI, PT Bank Mandiri (<http://nusantaranews.wordpress.com>).

Privatization of Indosat which had been acquired by Temasek of Singapore is one of the highly publicized privatization. One of the main purpose of the privatization is to cover the deficit of the National Budget due to the economic crisis experienced by Indonesia during 1998-1999 and also as one of the requirement to admit the financial aid package provided by the *International Monetary Fund* (IMF) and World Bank (WB) to alleviate the impact of the economic crisis. Controversy occurred due to the requirement set out by the IMF and WB to privatize SOEs, as a hidden reservation agenda to steer Indonesia's economic paradigm aligned to liberal-capitalistic schools. Another contending reason shall be that Indosat is regarded as one of the state's asset which reserve high commercial value. Indonesia shall experience a great loss in economic standpoint due to the acquisition of Indosat to the foreign entities. Indosat is viewed to reserve strategic values in the field of nation security due to its nature of business in communication. Due to the acquisition of Indosat by Singapore's Temasek, it concerns the deepening role of Singaporean government in controlling or having the knowledge of the nation defence system and state confidential matters (<http://jakarta45.wordpress.com>). Privatization of Indosat remain a political issue due to its related close duration to the legislative and presidential voting in 2004. Numerous speculation rise as campaign arsenal to demise respective contending parties.

During the administration of President Susilo Bambang Yudhoyono (SBY), the privatization policy of SOEs continues. In 2008, the government announced it would privatize 44 (forty four) SOEs. In 2009, the privatization program was conducted on 30 (thirty) SOEs (<http://jakarta45.wordpress.com>). From a number of privatization were realized during the administration of President Yudhoyono, Krakatau Steel privatization shall be deemed as of controversy. The controversy arose in connection with Krakatau Steel's stock price stipulated at IDR 850 per share, apparently far below the market price of IDR 1,200 per share. Thus, emerged various speculations about the irregularities behind the privatization of Krakatau Steel which resulted to state loss (<http://sunarsip.com>).

By tracing the roadmap of privatization policies of the late President Suharto, President Megawati and President SBY, it has been founded that several aspects coloring the controversy of privatization policy of SOEs, ranging from ideological aspects, economic aspects, legal aspects.

Privatization reserve the ideological value which put this as a matter of ideology. Upon ideological realms, it encounters liberal capitalist privatization based ideology to that of nationalist based on Pancasila and the 1945 Constitution. This aspect of ideology then becomes the origin of the debate on other aspects.

From the economic aspect, the end to all discussion and controversy about the economic aspects of privatization led to the question of whether privatization is economically profitable and delivers prosperity to the people. Privatization of SOEs is related to the national economy. SOEs become one of the drivers of the national economy because in terms of the amount is not small and various types of business from upstream to downstream. As the national economy powerhouse, SOEs shall be deemed into one instrument state to prosper the society. SOEs contributed to the State Budget (APBN) through taxes and dividends. As we know one of the reasons the privatization are as one of the funding sources for APBN as a source financing for the development.

As a consequence of the debate in the aspect of ideology, controversy in the legal aspect revolves around the legal basis in the policy of privatization with the provisions regarding the privatization under Law No. 19 of 2003 on State Owned Enterprises ("SOE Law"). Prior to the issuance of the aforementioned Law, SOEs privatization policy is based entirely on legal products issued by the executive/president and through the relevant ministries. The regulation of privatization in the SOE Law set out in Article 74 to Article 84. The products derived from this SOE Law shall be Government Regulation No. 33 Year 2005 and Government Regulation No. 33 of 2009 which regulates the procedure for the privatization of Persero, then a Presidential Decree No. 18 of 2006 on the establishment of limited privatization committee, and SOE Minister Regulation No. PER-01 / MBU / 2010 regarding the method of privatization, the preparation of the annual program of privatization and appointment of the institutions and / or supporting professions well as other professions. INDEF economist Drajad Wibowo argues that SOE Law is increasingly loosening the privatization threshold because it is considered to give great authority to the Ministry of SOEs to privatize while supervising the implementation of privatization is not clear (<http://hukumonline.com>).

Controversies in various aspects of ideology, economics and law in the privatization policy as described above show a tendency to irregularity and disorder. On the other side, Privatization is expected to encourage the implementation and realization of economic democracy as an effort to improve people livelihoods of our people is not necessarily impactful, as expressed by the former Minister of State Enterprises of 2004-2007. Sugiarto in seminars and book review of privatization policies: Appreciation for the late Prof. Dr Mas'ud Machfoed, MBA, Ak, which was held in the Master of Science and Doctoral Faculty of Economics and Business UGM January 1, 2010. Further stated by Sugiarto, SOE privatization in Indonesia emphasizes the need to meet the budget deficit. Indications of privatization which have an impact on the livelihoods of our people seems insignificant due to the presence of rising levels of unemployment after the privatization took place (<http://www.ugm.ac.id>).

With regard to the privatization policy of SOE along with its controversies and impact on the livelihoods of our people has not been optimal, it is necessary to conduct a study and evaluation of the privatization policy. Questions raised in order to study and evaluate whether such privatization is err in essence, why the privatization gave rise to controversy, why privatization has not impacted towards the livelihoods of our people and so on. The answer to the question was intended to give the reference for the continuation of the privatization policy and in this context this is written.

This paper raised a concept which is then linked to the privatization that is *Kertamasa*. *Kertamasa* concept is one of the local wisdom that causes harmony in ancient times as one of the pillars of prosperity in Bali. *Kertamasa* meaning is regularity, order, and resource effectiveness. *Kertamasa* is a tradition of the traditional organization of agriculture group known as *Subak*. This tradition is a pattern of farming that puts the pattern of distribution patterns of division of the season as a periodic, regular and orderly namely paddy season, the season of crops, *Gadon* season in an area of *Subak*.

Author would like to introduce *Kertamasa* concept having linked with the privatization, because basically the drive of privatization is aimed at public welfare in alignment with the aim of concept *Kertamasa*, although the concept of privatization is sourced from western liberal capitalist ideology, while *Kertamasa*, the concept of a local wisdom in the values and the people of Indonesia. Based on the similarity of purpose but come from different sources then it raises an opportunity to examine whether the values values enshrined within *Kertamasa* concept can be transformed into the privatization of SOEs along with its manifestations and threshold if deemed possible. The answer to that question is expected to be one of the references so that there shall be no controversy in the privatization of SOE, then shall created regularity, order, harmony and public welfare as the purpose of privatization, for this paper entitled "Transformation of the Spirit of *Kertamasa* within the Privatization of State Owned Enterprise".

Research Question

Based on the background description outlined above, the problems that raised and shall be discussed in this writing are:

1. Whether or not *Kertamasa* be transformable in the privatization of SOEs?
2. How is the embodiment and the implication of *Kertamasa* transformation in privatization of SOEs?

LITERATURE REVIEW AND RESEARCH METHOD

A. Literature Review

1. Definition of State-Owned Enterprise Privatization

In Article 1 point 12 of SOE Law, privatization is selling the shares of the company, either partly or wholly to other parties to improve the company performance and value, increase the benefit for the state and the public, and expand the ownership of shares by the public. Added to that, *Persero* is one form of State-Owned Enterprise in addition to a Public State Company. According to Article 1 point 2, *Persero* means a State-Owned Enterprise in the form of limited liability company, the capital of which is divided into shares in all or at least 51% (fifty-one percent) of its shares are owned by the Government of Republic of Indonesia that aim mainly to make a profit. Therefore, according to SOE Law, privatization can only be performed by SOE upon the entity of *Persero*.

Meanwhile, the definition of privatization according to Tisa Balasuriya contention, privatization is a transfer, wholly or in a part, permanently or on a temporary lease, of the ownership and or holding of State-Owned Enterprise to the private parties sector (Belasuriya, 1993;1).

Aminudin Ilmar stated that SOE privatization is a process of shares transfer ownership which was controlled by the SOE then handed over to the private parties to organize it. In SOE, privatization should be reflected in the existence of the process of control transition from the state to the private parties upon the minimum number of shares to be released is 51% of the total State-Owned shares in SOE. The arrangement of the minimum limit of the number of state-owned shares in SOE that are released or transferred is at least 51% is a necessity as it relates to the control and administration of SOE that once controlled and held by the state in a monopolistic manner (Ilmar, 2012).

In my opinion, the definition of SOE privatization that stated by Amirudin Ilmar above, emphasizes the transfer of assignments and the holding of SOE from the State to the Private Parties so that the minimum limit of shares that owned by the state in SOE is transferred at least 51%. In relation to the emphasis of the transfer of control and the holding of State-Owned Enterprise to private parties, the minimum 51% shares of the transferred provisions is true if only 100% of the shares in the SOE prior to being transferred wholly to state-owned. But if we use the definition of SOE (*Persero*) that contained in SOE Law that stated, to be qualified as a SOE (*Persero*), State ownership can be entirely or at least 51% then what is formulated at least 51% transferred to private parties to be able to control and conduct SOE become less appropriate. In terms of State ownership of shares before privatization of 51% (based on definition of SOE in SOE Law) then a transfer below 51% to the private parties is sufficient to make the control and management shifted from the state to the private parties. In my opinion, the most appropriate statement in privatization of the transfer of state shares ownership in SOE to private parties effected the state ownership of the company shares is less than 50% or the state shares ownership maximum 49% of the entire shares of the company. Therefore, the control and management of SOE shifts from the state to the private parties.

In prior to the enactment of SOE Law, within the history of Indonesia independence aftermath, SOE is regulated pursuant to Substitute Legislation No. 19 of 1960. This regulation becomes the embryo of the State Companies that already exist at the Dutch times that regulate by *Indonesische Comptabiliteitswet* (*Staatblad 1925 N0.448*) and *Indonesische Bedrijvenwet* (*Staatblad 1927 N0 419*). According to this regulation in principle, it is only recognized upon one form of State company regardless its company's state of nature and field of different tasks. After that, Presidential Instruction No. 17 of 1967 was released to instructing all Ministers and leaders of other government institutions in charge of State Enterprises in all its forms and all leaders of independent state forms of business, to conduct preparations for control/simplification in order to await the issuance of a new Law which shall regulate State Companies. Thus, Law No. 9 of 1969 is enacted. According to this Law, State Company shall be classified upon three types, which are state agency company (*Perjan*), general state enterprise (*Perum*) dan public state company (*Persero*). In addition to that, there has been a state business entity which due to its function and nature is considered to be regulated separately, for example Pertamina is regulated by Law No. 8 of 1967, BNI 46 is regulated by Law No. 17 of 1968, BDN is regulated by Law No. 18 of 1968, BBD regulated by Law No. 19 of 1968, BRI regulated by Law No. 21 of 1968, Exim Bank regulated by Law No. 22 of 1968. After the issuance of Law No. 7 of 1992 concerning Banking these state banks were converted into *Persero* with their respective Government Regulations (Prasetya, 2001;81-91).

2. State-Owned Enterprise Privatization and The Concept of Liberalism

Privatization of SOE first occurred during the reign of President Soeharto in 1991. PT Semen Gresik became the first SOE to be privatized. This SOE privatization program is based on Presidential Instruction No. 5 of 1989 and instructs the technical minister to carry out the rescue and improvement of the holding of SOE and Government Regulation No. 55 of 1990 on *Persero* Companies that sell their shares to the public through the capital market. Since the issuance of Presidential Instruction and Government Regulation is one way in efforts to improve the SOE, especially to nourish the holding and implementation of SOE, the era of privatization of SOE in Indonesia has begun.

Privatization of SOE in Indonesia is considered as an alternative to the improvement and soundness of State-Owned Enterprise through the transfer of some or all of SOE shares or controls to private parties parties. In addition, privatization of SOE is also intended as one means of equitable income through the activities of ownership of shares by the community, as well as a means of withdrawal of public funds quickly to pay off the foreign debt of Indonesia. Privatization of SOE is believed to improve the capital structure of SOE that has been felt as a burden for the state and at the same time improve the ability of SOE holding in terms of efficiency, effectiveness and productivity so that there will be synergy between efficiency, competence and profit (Aminudin Ilmar;106).

In the book of *The Popular Capitalism* by John Redwood, he mentioned the concept of privatization arises in connection with the birth of the concept of thought that economic activities and business will be better when handed back to the private parties, because the business managed by the private parties sector is generally better and more efficient and productive. With the submission of SOE to the private parties sector, the state can concentrate more and more on public service activities (John Redwood, 1989). This conception is commonly known as the concept of liberalism.

Liberalism or for the current context is more accurately called neoliberalism according to Herley as quoted by Bagong Suyanto is a political economic theory that states that human welfare is most likely achieved by liberalizing individual entrepreneurial freedom and skills and put the freedom and skills into a framework of institutions that characterized by strong private parties property rights, free markets and free trade (Suyanto, 2013; 91). Liberalism is the foundation of the development of capitalism. Capitalism is a belief that the owner of capital can do his business to achieve maximum profit. For the sake of principle, the government can not intervene in the market for mutual benefit. Capitalism, as believed by Adam Smith has proven to encourage productivity. Free-market economies are believed to provide positive benefits, especially if the state does not preclude restrictions. In the system of capitalism, the principle of *laissez faire* (let alone act), but according to Smith, all this will make capitalism grow for the benefit of society because it is controlled by the invisible hand that will naturally set the balance between freedom and needs (law of demand and supply) (Suyanto, 2013).

Elizabeth Martinez and Arnold Garcia provide main points on the notion of neoliberalism which are:

1. Market regulation-freedom for capital, goods and services, where markets have their own mechanisms that allow trickle-down effects in the distribution of welfare. Neoliberalism also includes the dissolution of labor organizations and removal of barriers or obstacles to capital mobility, such as regulations, such as taxes. Freedom itself comes from the state or government.
2. Reduction of public expenditure is not for all social security, such as health to education from the government.
3. Deregulation to allow market forces can react as a self regulation mechanism
4. Privatization of state enterprises.
5. Change the public perception of collectivism into individualism (Suyanto, 2013).

In relation to law with Liberalism it is relevant to quote the opinion of Satjipto Rahardjo in favor of Max Weber's opinion that the growth of the modern legal system cannot be separated from the emergence of capitalist industrialization. The legal system becomes what it is today because of the capitalist industrialization demands of a normative order capable of supporting a rational pattern of work. With the law of serving and serving the industrial-capitalist society (Rahardjo, 2003; 23-24).

3. The Philosophical Meanings of *Kertamasa*

The term of *Kertamasa* is derived from the Sanskrit word that is formed of the word *Krta* and the word *Masa*. *Krta* means a prosperous, thriving, and ingenious. *Masa* (period) means month, season, time, given time, the right time. Thus, *Kertamasa* refers to a period of prosperity, thriving time, the golden ages. Before being absorbed into Bali language, the term of *Kertamasa* was firstly absorbed into the ancient Javanese language. The word *Krta* was found in various ancient Javanese text such as *Slokantara*, *Kakawin Ramayana*, *Kakawin Hariwangsa*, *Kakawin Gatotkacasraya*, *Kakawin Bharatayudha*, *Kakawin Sutasoma*. So it is also found in a number of ancient Javanese text such as *Adiparwa*, *Bhisma Parwa* *Agastya Parwa* (Suarka, 2014).

In Balinese society, term of *Kertamasa* is commonly known in *Subak*. *Subak* is a traditional organization in Bali and inherited in hereditary by the Balinese society that reserved matters related to knowledge and irrigation technology about planting patterns, equipment, agricultural, irrigation and spiritual activity.

Initially, *Kertamasa* was interpreted by rice farming season, or the right month to plant rice in the fields. The term *Kertamasa* then paradoxed by the term "*tulak sumur*" that is the time to plant rice by violating the season. In its development, the term *Kertamasa* has changed, namely rice cropping pattern in rotation between rice and *palawija*. While the *tulak sumur* is a pattern of continuous rice cultivation without interspersed by the cultivation of *palawija* (Suarka, 2014).

In practice, *Kertamasa* implies that farmers in *subak* agree to plant together simultaneously. This wisdom turned out to be useful for controlling pests, and building harmony and togetherness among *subak* members. In ancient times when the farmers still planted local rice pests that often attack the plants are rats and *walangsangit*. By implementing *Kertamasa* system, then the pest attack on rice plants will feel lighter because the spread of pest attacks will be very wide i.e. the area of *subak*. On the other hand the existence of pests can also be controlled because it is not always available for food and shelter for pests. For example if planted simultaneously rice crops and then simultaneously planting crops then pests that used to live on rice plants not get food from the next crops.

Kertamasa can also develop an attitude of harmony and togetherness. If farmers grow simultaneously and there are among those who lack water irrigation, then they will develop irrigation water borrowing customs (Windia, 2014).

Kertamasa concept in *Subak* is a manifestation of Balinese culture in Balinese human interaction in agrarian life and has become the local wisdom of Bali that is used by society to express the idea of life dynamics of agrarian society in managing and processing natural resources creatively according to the law of nature in accordance with space and time by emphasizing orderliness, order, harmony, the balance between *sekala-niskala*, the balance between inner and outer through all ages to achieve a safe and peaceful life. While in Java local wisdom that has similarities with the concept of *Kertamasa* is given the term *Pranata Mangsa* while in South Sulawesi called *Lontara* (Faisal Efendi, Effendi Pasandaran dan Achmad M. Fagi, 2003).

4. *Kertamasa* in Relation with *Pancasila*

As a local wisdom that derived from *Bali* culture especially *Subak*, in *Kertamasa* contained values that have dynamic significance according to space and time, including the meaning of creative period, progress period, prosperity period in the period that safe, order, harmony, and balance between inner and outer. In relation to *Kertamasa* as the value that comes from society, *Kertamasa* is essentially having the value of the values contained in *Pancasila*.

Values that contained in *Pancasila* is a set of values raised from the principles of values that live and thrive in society. Those values are religious value and cultural customs values (Kaelan, 2013). *Pancasila* as a value system has been rooted in the life of the Indonesian nation. Being embedded in the traditions, attitudes of behavior, customs and culture of the nation. *Pancasila* belongs to the value of spirituality in which it contains other values of value are complete and harmonious, both material value, vital value, truth and reality value, aesthetical value, ethical/moral values and religious values. This can be seen in the hierarchical systematic stratification of *Pancasila*, which begins from the first Principle "A divinity that is an ultimate unity" to the fifth Principle "Social Justice for all Indonesian people" (Sudjito, 2012;70).

Values in derivation or its elaboration can be grouped into three kinds, basic values, instrumental values, and values of praxis. The basic value as the source of the norm which in turn can be realized in a life that is praxis. The praxis aspect shall not contradict the basic values that are the source of the elaboration of the norm and the realization of the praxis. Instrumental value is a formulation of parameters which is a guideline that can be measured and directed. The value of this instrument is a direction, policy or strategic that comes from the base value. While praxis value is essentially a further elaboration of the instrumental value in real life so that the value of praxis is the embodiment of the instrumental. Thus the basic value, instrumental value and value of praxis are coherently related. In regard to the translation of this value *Pancasila* is the source of all sources of law. The value of *Pancasila* should dominantly dominate every legal product, either in the level of formation, implementation or enforcement (Sudjito, 2012).

Pancasila as the basis of state philosophy was formally established in the forth *alinea* of The Preamble of the 1945 Constitution thus *Pancasila* gained the position as the basic norm of positive law. The consequences of the inclusion of *Pancasila* in the preamble of the 1945 Constitution are:

1. Whereas the formulation of *Pancasila* as the Basic State of the Republic of Indonesia is as stated in the Preamble of the 1945 Constitution of forth *alinea*.
2. Whereas the Preamble of the 1945 Constitution, based on a scientific understanding, is a fundamental matter of a fundamental state and to the rule of law, Indonesia has two kinds of positions, namely as the basis of legal order and as the highest legal order.
3. Whereas the Preamble of the 1945 Constitution, in addition to being domiciled as a preamble, is also domiciled as a self-existence which is essentially different from the article of the law. Since the opening of the 1945 Constitution is *Pancasila* it is not dependent on the trunk of the body and even the source of the torso.
4. Whereas *Pancasila* thus has the essence, nature, position and function as the fundamental subject of the fundamental state that embodies the basis of the survival of the Republic of Indonesia proclaimed on 17 August 1945.
5. Whereas *Pancasila* as the core of the Preamble of the 1945 Constitution has a strong and unchangeable position that lies in the survival of the Republic of Indonesia.

Materially, the inclusion of *Pancasila* in forth *Alinea* of the preamble of the 1945 Constitution brings the consequences of Indonesian law to be spelled out from the values contained in *Pancasila*. As the legal source of Indonesian law *Pancasila* includes the source of value, material source, source of form and nature (Sudjito, 2012).

B. Method of Research

This writing is composed upon the utilization of holistic research method with integralistic and objective approach. Integralization in this context refers to the fusion between values, rule of law, facts and skills. Objectification seeks to make the legal science deemed useful for all (Sudjito, 2012). In connection with this writing, integralization upon the values shared within the privatization derived from the ideology of liberalization and value in

Kertamasa which is the local wisdom of Bali, legal provisions concerning privatization of SOEs including SOE Law and facts about privatization and its implications to be analyzed whole and as a whole unity. The result of this holistic approach is expected to be useful for the sustainability of privatization of SOEs with the aim of achieving prosperity for the people of Indonesia.

TRANSFORMATION OF *KERTAMASA* IN PRIVATIZATION POLICY OF SOE.

The embodiment of the *Kertamasa* in practice by traditional organizations *Subak* in Bali, is among *Subak* farmers commitment to agree to cultivate simultaneously had been proved useful for controlling pests, and building harmony and unity among the members of *Subak*. When farmers cultivate certain crop, pests that often harm the crops are rats and insects. Due to the implementation of *Kertamasa* system, the pest attack on crops will not be severe due to the spread of pest attacks will limited due to the respective area of *Subak* concerned. On the other hand the existence of pests can also be controlled because the availability of livestock for pests is limited. For instance, if the rice crop planted simultaneously and then simultaneously followed by another cycle of plants, pests that used to live on rice plants shall not detriment the next crops. *Kertamasa* can also develop the attitude of harmony and togetherness should they are simultaneously planted and some of them are a shortage of irrigation water, then they will develop the habit of lending to each other irrigation water.

Values shared within *Kertamasa* in its implementation by *Subak* as abovementioned embodies the basic values of *Kertamasa* itself. The basic values have corresponding dynamic meaning of space and time, including the meaning of the creative period, a period of progress, prosperity and excellence in a safe orderly, harmonious period drawn out balanced between inner and outer soul.

In prior to further discussion regarding transformation of *Kertamasa* in SOE privatization. As an analogy, *Kertamasa* serves a theme of Bali Art Festival XXXVI in 2014 which is interpreted as the dynamics of the life of agrarian society towards the welfare of the universe. The meaning of the dynamics of agrarian society life towards the welfare of the universe is the value of *Kertamasa* as the basic value of *Kertamasa* in relation to *Subak*. Further elaboration of the basic value of *Kertamasa* that contained at the theme of Bali Art Festival is the performance of the artist and the *sekehe* which to its capacity wearing clothes that are not glamorous, highlighting materialistic elements, minimalist choreography and sound setting, all which focuses more on the unity of each element of show which later produce balanced overall performance (<http://www.disbud.baliprov.go.id>). Therefore, the meaning of the basic value of *Kertamasa* transformed into Bali Art Festival as a theme, not as a mere implementing value which practice simultaneous cultivation of crops by *Subak* members as the history of the implementation of *Kertamasa*. The value of implementation of this theme is present in every art performance and other activities in Bali Art Festival.

In relation to SOE Privatization, can *Kertamasa* be transformed in State-Owned Enterprise privatization because between *Kertamasa* and privatization have different historical sources. *Kertamasa* is a tradition that grows and develops in Indonesian society which is in *Subak* organization in Bali, meanwhile, SOE privatization comes from liberal ideology from western countries.

As a local wisdom, *Kertamasa* is essentially a values that grows and develop in the tradition of Indonesian society that is *Subak* organization in Bali. In relation to *Pancasila* as the crystallization of noble values owned by the people of Indonesia in essence in *Kertamasa* enshrined within *Pancasila* values.

Values in derivation can be grouped into three kinds of basic values which are basic values, instrumental values and values of praxis. The basic value as a source of the norm which in turn can be realized in a life that is praxis. The praxis aspect can not contradict the basic values that are the source of the elaboration of the norm and the realization of the praxis. Instrumental value is a formulation of parameters which is the guideline that can be measured and directed. This instrumental value is a direction, policy or strategic that comes from the basic value. While a praxis value is a further explanation of the instrumental value in real life so that the value of praxis is the embodiment of the instrumental. Therefore, the basic value, instrumental value and the value of praxis are coherently related.

By referring to the fundamental value, instrumental value and the value of praxis in related with *Kertamasa* in *Subak* and *Kertamasa* as the theme of Bali Art Festival which has been described above by the author, it shall be aligned that the fundamental value that enshrined in *Subak* practice of *Kertamasa* is shared with the fundamental value that enshrined in *Kertamasa* as the theme of Bali Art Festival. While the instrumental value and the value of praxis is a further elaboration of the fundamental values of *Kertamasa* that are adapted to their respective contexts.

The author utilizes the analogy of *Kertamasa* as the theme of Bali Art Festival in related to SOE privatization is for the purpose as means of comparison to show that art festival which originated from outsider culture may be well adopted in Indonesia. This remains the same with the matter of privatization which closely-sourced and originated from the schools of liberalism of the Western countries. Although originated the western hemisphere, it does not necessarily locked the potential of *Kertamasa* as a conception which is the traditional values of Indonesian society be transformable in the SOE privatization. The values of *Kertamasa* is a fundamental value that have a dynamic significance in terms of space and time, including the meaning of creative period, progress period, prosperity period and backbone period in a safe, orderly, harmonious and balanced life between inner and outer structure.

Should the fundamental values of *Kertamasa* be transformed into the SOE privatization to become a basic values and sources of norms which in turn can be realized in the policy and implementation of SOE privatization, the policy or strategy of privatization shall serve as an instrumental value as a formulation of parameters which is a measurable and directed from the basic values in this case the fundamental values of *Kertamasa*. While the implementation of SOE privatization is a value of praxis is that serves as an elaboration of the SOE instrumental value. Therefore, the basic value, instrumental value and the praxis value in SOE privatization is coherently related.

EMBODIMENT AND IMPLICATION OF *KERTAMASA* TRANSFORMATION IN SOE PRIVATIZATION

As the consequence of the transformability of the value shared within *Kertamasa* to State-Owned Enterprise privatization, then the next question is how is the realization of *Kertamasa* value in a State-Owned Enterprise privatization. The realization of *Kertamasa* value in the SOE privatization shared within the instrumental and praxis value which stems at the fundamental value of *Kertamasa* namely the values of creative period, progress period, prosperity period and a supremacy period in a safe and orderly life, harmonious, and balanced life. Putting the fundamental value of the of *Kertamasa* as the basic value of the policy and the implementation of SOE privatization means to have viewed the law in this matter of SOE privatization as an integrality that is an order that includes transcendental order, social order and political order. SOE privatization is not only a political order because it is a decision made by political institutions such as the Constitution, Government Regulation, Presidential Decree, and Ministerial Decree, the privatization contains transcendental order and social order.

The embodiment of *Kertamasa* in this SOE privatization which serves as the form of instrumental value and the value of praxis from the fundamental of the creative period, period of progress, period of prosperity and the unbalanced period in a safe, harmonious and balanced life that described as follows;

1. The SOE privatization shall not be performed to SOE which conducts its nature and level playing field of business dominating the livelihood of the Indonesian people, it serves that the translation of the fundamental value of prosperity, welfare and the harmony shared within *Kertamasa*. State through its SOE ensures the fulfillment of basic necessities of livelihood for Indonesian people such as *Pertamina* and *PLN*. Therefore, there will be no anxiety due to the fluctuation such as an increases of the price, due to the SOE privatization the price will be determined according to market mechanism.
2. Privatization shall not be applicable to SOE whose nature and level playing field of business are directly or indirectly related to the defense system and the sovereignty of the state, the intent of this embodiment is the fundamental translation of the security and orderliness of values shared within *Kertamasa*. The sale of SOE that related to defense and security systems such as armaments, telecommunications, port operators will have an impact on the security and sovereignty of the state which later may serve as the potential to harm toward the security and order of the State itself;
3. Privatization shall not be applicable to a SOE whose nature and level playing field of business in natural resources, the purpose of this embodiment is the translation of the harmony fundamental value and balancing the *sekala-niskala* of the people in *Kertamasa* environment. Privatization will encourage the companies to claim as much profit as possible with no regard towards the preservation of nature and the environment. SOE that works in a natural resources business have greater potential to exploit natural resources and environment to gain commercial profit. With the prohibition of SOE privatization that works in human resources shall prevent or minimize the environmental damage on the grounds of economic benefits.
4. SOE privatization is conducted with the involvement and the participation of the Indonesian people, the intent of this embodiment is the translation of creative value, progress and welfare shared within *Kertamasa*. The involvement of the wider participation of the people can be done in the form of company shares ownership in respective SOE and building a strategic partnership of SOE e with *UMKM* and *Koperasi*. Ownership of SOE shares means that the people who want to buy SOE shares should not be limited to minimum wage with a high price, such as the minimum restriction to buy privatized SOE shares is 500 million IDR. With those price, only the high class people of Indonesia can participate in privatization so that the privatization of SOE shall only be profitable for a few people, thus it will not encourage the entire Indonesian people to move forward and be creative in the investment activity and at the same time can limit or balance the foreign ownership stake over the SOE shares. The more Indonesian people who own the shares of SOE, the more they get the economic benefits to achieve prosperity. Meanwhile, that strategic partnership with *UMKN* and *Koperasi* is an effort to strengthen access of *UMKM* and *Koperasi* to the effectiveness of business and capital strengthening. This strategic partnership will have an impact on the increase and absorption of manpower so as to reduce unemployment.
5. In connection with technical implementation, the SOE privatization shall not be held within the period to political terms, such as the legislative elections and presidential election, the purpose of the embodiment is the elaboration of the value of time / time to create harmony shared within *Kertamasa*. The politicization of SOE privatization issue is has an impact on the implementation of privatization into contradictions that create an atmosphere of disharmony that have an implications on the economic value of SOE itself, and at the end is inflict a financial loss of the state.

The instrumental and praxis values sourced from the fundamental values of *Kertamasa* are very relevant with the SOE privatization as regulated by the SOE Law. In Article 77, it is regulated that, SOE that shall not subject to privatization. namely;

1. *Persero* whose field of business is based on the provisions of the constitution and laws be only managed by the State-Owned Enterprise;

2. *Persero* whose field of business related to defense and state security;
3. *Persero* whose field of business sectors which by the government is given a special task to carry out certain activities related to the interests of the society;
4. *Persero* whose field of business related to natural resources which expressed accordingly within the provisions of applicable legislation is prohibited to be privatized.

In authors opinion, provisions stipulated within Article 77 have not reflected the instrumental values and praxis shared within *Kertamasa*. The provision is very general by imposing restrictions towards SOE that are prohibited to privatization which refer to another law and regulation that based on special assignments by the Government. Such general provision can be interpreted as a loose term and condition and serve the impression of the unclear direction of the policy of SOE privatization. Should the consensus is met, that to transform *Kertamasa* in the SOE privatization, it is necessary to amend or revise the Indonesian Law concerning SOE, especially the provisions on privatization with the aim of a welfare of the nation.

CONCLUSION

Based on the analysis of research question proposed that have been aforementioned in this writing, it can be concluded as follows;

1. *Kertamasa* which is the local wisdom in Bali derived from the practice of *Subak* organization can be transformed in the privatization of state owned enterprises. Values shared within *Kertamasa* transformed in the privatization of SOEs is value which is fundamental that includes future creative, progress, prosperity, advantages, security, order, harmonious balance between the inner and outer structure. The fundamental value of *Kertamasa* shall serve as basis for the elaboration of the instrumental and praxis values in the privatization of state enterprises.
2. Transformation of *Kertamasa* in privatization of SOE is the realization of instrumental value and praxis value in the policy and implementation of the privatization, the practical value of the instrument and are not reflected in the current SOE Law governing the privatization of SOE.

BIBLIOGRAPHY

1. Books

- Ali Rido, 2001, the Legal and Legal Status of the Company's Board, Society, Cooperatives, Foundations, Endowments, Alumni, Bandung.
- Chidir Ali, 1999, the legal entity, Alumni, Bandung.
- Hardijan Rusli, 1996, Limited Liability Company and Legal Aspects, Pustaka Sinar Harapan, Jakarta.
- Lewis D Solomon and Alan R Paltimer, 1999, the Corporation, Example and Explanations, Third Edition, Aspen Law aand Business, New York.
- Mochtar Kusumaatmadja, Etty R. Agoes 2010, Introduction to International Law, PT Alumni, Bandung.
- Nindyo Pramono, 2013, the Law PT Go Public and Capital Markets, Andi, Yogyakarta.
- Organanitation For Economic Cooperation and Devolepment 2005, OECD Guidlineson Corporate Governance of State-Owned Enterprise, OECD, France.
- Ray August, 1999, International Business Law, Tex, Cases and Reading, Third Edition, Prentice Hall, New Jersey.
- Rohmat Soemitro, 1993, the Limited Liability Company Law Foundations and Endowments, PT Eresco, Bandung.
- Rudhi Prasetya, 2001, Position Independent Company Limited, the cityâ Aditya Bakti, Bandung.
- Soeryono Soekanto and Sri Mamudji, 1990, Legal Research Normative, CV Rajawali, Jakarta.
- Sudikno Mertokusumo, 1993, Chapters About Invention Law, PT Citra Aditya Bakti, Bandung.

Sudikno Mertokusumo, 2001 Invention An Introduction to Law, Liberty Yogyakarta.

Van Apeldorn, 1996, Introduction to Law, PT Pradnya Paramita, Jakarta.

2. Article

Special Committee of Jurists „ Century and accessed on May 24, 2014: <http://korandemokrasiindonesia.wordpress.com>.

Data from the Internet accessed on 24 May 2014: <http://www.merdeka.com/peristiwa/>, Bagir headed Case Cassation ICW.

Data that is accessed from the Internet on May 26, 2014: <http://id.wikipedia.org>, List of Indonesian state-owned enterprises.

Data from the Internet that is accessible on May 26, 2014: <http://www.hukumonline.com/berita/baca>, LPG price hike on the CPC losses PT Pertamina just korporasi loss.

Data from the Internet accessed on June 27, 2014: <http://www.hukumonline.com/berita/baca>, MK Assembly flatten receivables rules SOE.

Data from the Internet accessed on June 27, 2014: <https://www.djkn.kemenkeu.go.id/berita/media>, Haircut Boost Performance State banks and Sector Real.

3. Legislation

Constitution of the Republic of Indonesia Year 1945.

The Book of the Law of Civil Law (*Burgerlijk Weetboek*).

The Book of the Law of Commercial Law.

Act No. 40 of 2004 on Limited Liability Company.

Act No. 19 of 2003 on State-Owned Enterprises.

Law No. 17 of 2003 on State Finance.

Act No. 15 of 2006 on the BPK.

Law No. 49 Prp of 1960 On State Receivables Affairs Committee.

Act No. 1 of 2004 on State Perbendahraan.

Constitutional Court decision on case No. 77 / PUU-IX 2011

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