

The Privatization of State-Owned Enterprises in Islamic Perspective: Case of Indonesia

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Abstract

In Indonesia, the last few years have seen the privatization of many industries previously owned by the state. The surge was requirement of International Monetary Fund (IMF) to lend its fund in order to support Indonesian economy after monetary crises between 1997 and 1999. However, this phenomenon causes some novel polemics amidst stakeholders. Most of nation's wealth is brought by multinational companies to overseas without rendering great benefit to citizen. Therefore, inhabitant cannot savour many advantages from their abundant natural resources. In line with this privatization case, Islam as a way of life which is universal and comprehensive has a particular discussion on assets ownership that should be utilised according to its status. There are three concepts of ownership in Islam, namely individual, public and government ownership. The main objective of this paper is to point out the best scheme of natural resources ownership, whether should be owned by public, private or state based on *siy'asah shar'iah* approach. The author utilizes descriptive qualitative methodology to find the appropriate pattern of natural resources management in Indonesia, particularly firms which manage the basic need of human being.

Index terms— privatization; natural resources; privatization of state-owned enterprises

1 Introduction

Indonesia is the largest Muslim majority country in the world which is blessed by Allah with an abundance of natural resources. It consists of 13,466 large and small islands that make Indonesia being the largest archipelagic country in our earth ?? . Definitely, Indonesia can become tremendously rich nation, if Indonesian's government can manage its natural resources truly. Indonesia has significant natural gas reserves and supplies 20 percent of the world's tin and has considerable copper, nickel, gold, and coal resources ?? . Oil and gas are found in Aceh, Riau, South Sumatra and East Kalimantan. Mineral ores such as copper and gold are abundant in Papua, coal in most of Kalimantan and West Sumatra, tin on the island of Bangka, and nickel in South Sulawesi and North Maluku. At the same time, as a tropic country, it has very diverse forest and marine resources. Indonesia's vast rainforests account for over 50 per cent of the tropical forests in the Southeast Asian region and more than 10 per cent of the world's total tropical forests. In them, there are found extremely diverse flora and fauna with abundant nutrients and untapped medicinal potential. Similarly, for marine resources, fish stocks in Indonesian waters provide a source of income and livelihood for at least 5 million fishermen. Fish provide more than 60 per cent of the animal protein intake of the average Indonesian and are the only affordable source of protein for the majority of the population ?? .

On the other hand, almost of them, particularly underground mine and agricultural sector, are owned by foreign corporates which purchase through privatization policy which has been made by authority. There are several nations which extremely dominate natural resources management in Indonesia such as United State of America, China, England, France, and Canada. America, for instance, is main player in gold mine, oil and

gas sector which has many big enterprises operating in Papua and Nusa Tenggara. In 2012, Newmont, one of American companies, could reach \$ 4.17 million in NTT. Moreover, Freeport McMoran, a gold mine company, is able to produce 220.000 ton seed of gold and silver every day in Mimika, Papua. However, those cannot contribute more to make people prosperous owing to privatization ?? . Therefore, inhabitant cannot savour many manfaah from their abundant natural resources.

The exploitation of Indonesia's natural resources intensified greatly after Soeharto came to power in 1966-1967. But, the massive surge happened after facing monetary crises from 1997 to 1998. The currency crisis in the region, which began in mid-1997, destroyed the expectation that rapid growth would continue. In this climate, the loss-making state companies were a serious financial burden, and privatisation has been promoted as a quick solution. In response to IMF and World Bank pressure and its own ?? Budy P. Resosudarmo, eds., *The Politics and Economics of Indonesia's Natural Resources* (2005), 2-3 ?? Hizbut Tahrir Indonesia <http://hizbut-tahrir.or.id/2013/06/25/5-negarayang-meraup-untung-dari-kekayaan-alam-indonesia/> fiscal difficulties, the government took several measures to reform the state sector. Policy makers privatized some potential companies like which had been in great financial burden by low price. PT Indosat, PT Semen Gresik, PT Aneka Tambang, PT Tambang Timah, PT Angkasa Pura II, PT Telkom, PT Pelindo II dan III, PT Jasa Marga, PT Perkebunan Nusantara IV, PT Tambang Batu Bara Bukit Asam and PT Krakatau Stell. This phenomenon is in line with the tendency of global economy which wants a less role of state in economy and this role will be replaced by market mechanism like what was done in British and USA before 1980s decade by capitalism system. This privatization policy applied by current government is deterioration compared with what founding fathers have done by nationalizing colonists' companies managing natural resources in the beginning of independence. Nationalization of ex-Netherlands's corporates was undertaken with the aim of equity distribution. The main task of state-owned companies is to equalize welfare for people. It produces several functions which can be categorized to become two goals, both social oriented and commercial oriented. To conduct both functions, those should be source of government income ?? .

In line with this privatization discourse, Islam as a way of life which is universal and comprehensive has a particular discussion on assets ownership that should be utilised according to its status. There are three essences of belonging in Islam. First and Foremost, Allah is the only creator of the universe owning all of asset. Secondly, wealth is facilitation from Allah to ease mankind live in the earth. Thirdly, Allah has graced the ownerships of natural resources to human. There are three concepts of ownerships according to Islamic perspective, namely individual, public, and state possessing. These terms extremely relate to privatization policy and natural resources management in Indonesia since every categorization of ownership has consequences of management and utilizing processes 7 .

Looking in the detail way at phenomenon of privatization in state-owned companies leading to many polemics among stakeholders, author argue that it should be discovered the best scheme of natural resources ownership, based on Islamic perspective.

2 II. Theories of Privatization and Islamic

View Towards Ownership

There are several definitions which are given by experts regarding to term of Privatization. Generally, privatization is defined as the transfer of ownership ?? Yulizar D. Sanrego Nz & Rusdi Batun, "Pandangan Islam Terhadap Privatisasi BUMN," *La-Riba Jurnal Ekonomi Islam*, Vol. III, No. 2 (2009), 133 7 Ibid, P 134 control or functions from the public to a private sector. 8 Meanwhile, according to Savas (1987) privatization means changing to an arrangement where the private sector plays a more dominant role. 9 To privatize means to rely more on the private institutions of society and less on government to satisfy people's needs. More narrowly, privatization is the act of increasing the role of the private sector, or decreasing the role of government, in an activity or in the ownership of assets. 10 On the other hand, based on Presidential Decree No. 122/2001, privatisation means a transfer of part of state enterprise control to private hands through an initial public offer, direct sale to strategic partners, sale to workers, or via other appropriate means. According to Gupta, privatisation, in the present context, refers not only to the transfer of ownership of public assets but also the abandonment of some of the functions that the government had taken upon itself in the recent past. 11 The most commonly used methods of privatization are: Islam includes a set of principles and doctrines regulating a Muslim's relationship with God and community. Islam is not only the service of God as well as Judaism and Christianity, but also unifying the rules which organize people both in the human and spiritual life material. In the view of Islam, owner of all property with all of stuff is Almighty God because He is the creator and owner of all existing in this universe, as His word in surah Al-Maidah verse 17: ??? "And to Allah belongs the dominion of the heavens and the earth, and all that is between them. He creates what He wills. And Allah is Able to do all things" While humans are the ones who get the power of Allah to own and utilise the natural resources, Allah says in surah Al-Hadid verse 7: 14 "Believe in Allah and His Messenger, and spend of that where of He has made you trustees. And such of you as believe and spend (in Allah's Way), theirs will be a great reward"

In Islam, everything belongs to God and so the accumulation of wealth is not a goal, but a source of pleasing God. What individuals consume or give away to charity is what they own 15 . A person who has been fortunate to have wealth essentially only receives the mandate to be distributed and spent in accordance with the owner's will actually, God Almighty, either in developing or utilizing. From the beginning God has ordained the wealth

should be used for public interest, even if it is not excessive said that in the beginning it is society that is authorized to use the property as a whole, then Allah bestows some of it to individuals and institutions that seek acquisition according to their respective needs. So that an ownership wealth can be regarded as valid if they have earned the permission of Allah SWT to have it, this means that the ownership and utilization of a property must be based on Qur'an and al-Sunnah. ??6 Islamic economics has explained everything matters relating to the ownership acquisition mechanism, the procedures for managing and develop ownership, as well as how to distribute that wealth in the midst of men in detail by statute laws. On that basis, the laws concerning economic issues in Islam built on common economic rules of Islam that includes three rules, namely: ownership, wealth management mechanism and distribution wealth among humanbeing. 17

III. Ownership Classification in Islamic Perspective

According to shar?"ah perspective, there are three kinds of ownership in Islam which are classified, namely: Individual, public and government ownership.

a) Individual Ownership

Private ownership of resources is recognized as God has created the world with natural resources for people to enjoy. Private owners are entitled to returns on their labor and capital investments. Also individuals involved in free trade must be rewarded for their investments and willingness to take risks. But, they all must contribute to the betterment of the community by making tax and charity payments. Unproductive hoarding of resources is prohibited and profit making is ??3 encouraged. Collective ownership of resources is not recognized as absolute ownership is only limited to God. ??8 Private ownership is shar?"ah stipulation which allows the owner to take advantage of those goods, as well as obtain a good compensation for usefulness taken by others such as rent or consumption of the goods. Their authority rendering to people to spend and perform various forms of transactions on property owned, such as trade, mortgage, lease, grant, wills, and others is a roof recognition of Islam on their individual ownership rights. ??9

b) Public ownership

Common ownership is the provision of shar?"ah to a community to jointly utilize the objects, while the objects that belong to the category of common ownership are objects that have been declared by God as objects owned by the community together and should not be controlled by only one man or a certain group.

Due to public property, then each individual can use but are forbidden to have it. At least, objects can be grouped into common ownership; there are three types, namely:

i. Public Facilities

These objects belong to the kind of public ownership owning to becoming a staple of society and if not met can cause disputation. This property type described in the hadith of the Prophet relating to public facilities 20 : "Muslims associate (together own) in there things: water, pastures, and fire 21 (in the another hadith there are additional :) and the price is haram ??2

7 "

In the hadith above water is still not taken, either out of springs, wells, and flowing in a river or lake water is not owned by an individual at his home. Therefore, the discussion of the jurists of the water as a common property is focused on water that has not been captured. As for al-kala' is meadows, either wet grass or green (al-Khala') and hay (al-hashish), which grows in the ground, mountains or streams that has no owner, while the question of al-Nar is material fuel and everything associated with it, including the firewood. Forms of public ownership is not just limited to the three kinds of the object, but also includes everything needed by the public. This is because there is an indication related to this such issue looked at objects that are categorized as public property due to certain properties contained therein categorizing them as common ownership. According Sholahuddin, the state must provide public infrastructure facilities so that all people can enjoy and use it as a shared ownership, such as: First, factories associated with an object belong to public property. The types of this plant may be used as common ownership, following the law of objects produced by the plant and related to it. Second, the factory plant related to heavy industry and military industry. This type of plant can be owned by individuals, as part of individual ownership. But this type of factory requires a very large capital so hard to do individual. So it is the state that should be established manufacturers/ military industry and heavy industry, but that does not mean it prevents a person to set up factories/ industries. ??3 ii. Natural resources which are forbidden to be owned by individual or certain group Even though they are same as public ownership of the first kind, but there is a difference between the two. If the ownership of the first kind, character formation and origin does not preclude a person to have it, then this second type, in character and origin of its formation, prevents a person to have it personally. As the hadith of the Prophet SAW "City of Mina is place residence for everyone who comes first" ??4 Mina is a place located outside the city of Makkah al-Mukarramah as a haven Hajj people fafter completing standing at Padang Arafah with the intention of carrying out the symbols of the pilgrimage that time

is determined, like throwing jumrah, hadd slaughtering animals, cutting sacrificial, and overnight there. Meaning of "place residence for everyone who comes first" in the hadith above is that Mina is where all the Muslims, he who firstly reaches the place in Mina and he occupies it, then part of it is a part and not owned by individuals so that others may not have it (occupied).

Similarly with Common Street, everyone has the right passing over it. Therefore, the use of the road that can harm others should not be permitted by the authorities. ??5 It also applies to the mosque, are included in this category is the train, the installation of water and electricity, pillars electricity, drains and pipes. Those are public property in accordance with the status of a public road itself as the common property, so he should not be privately owned. ??6 iii. Unlimited mining Basic Argument which is used for this kind of goods is the hadeeth of the Prophet narrated by Abu Daud on Hamal ibn Abyad who asked the Prophet that he would be allowed to manage the salt mines in the area Ma'rab:

"That he came to the Prophet asking for (mine) salt, then he gave it. After he left, there was a man who asked him: "O Messenger of Allah, do you know what you give him? Look, you have to give something like water flowing ". Then he said: Then the Messenger pulled back from her mine" According to Al-Maliki, the ban is not limited to the salt mines alone but includes all minerals that amount of deposit a lot (like running water) or unlimited, this also includes ownership of all types of mines, both of which appear on the surface of the earth like salt, precious stones or mines that are in the bowels of the earth like mine gold, silver, iron, copper, oil, tin and others.

Such minerals become public domain so that should not be owned by an individual or a few people and should not be legal to give privileges for a specific person or institution to exploit, but authorities shall allow them as common property for all citizens. It is the state that must dig and separate from other objects, sell and store the result in the bait al-mâl. ??? Meanwhile minerals that deposit is small or very limited can be owned by individuals or trusts. It is based on the hadith of the Prophet which allowed the Bilal bin Harith al-Muzani for having a mineral that already is at the Najd and Tihamah, just that they are obliged to pay the khums (one-fifth) of which produced the bait almâl. 28 ??5 State ownership includes all types of property that cannot be classified into types of public property, but sometimes can be classified into individual types of property ownership. In the shar?"ah there are some of the treasures that can be categorized into types of ownership and the state is entitled to manage them with a view of ijtihad. ??? 1. Treasure ghanimah, anfâl (assets acquired from the spoils of war with kafir), fay' (treasure obtained from the enemy without fighting) and khums. 2. Treasure comes from kharaj (the rights of the Muslims over land acquired from kafir, either through war or not). 3. Treasure from the jizyah (the rights given by God to the Muslims of the ka? R as their subjection to Islam). 4. Treasure from taxes. 5. Treasure from 'ushr (sales tax taken by the government of merchants beyond its boundary with levies that classified by religion). 6. Treasure no heirs or excess property from the rest of the inheritance (amwâl al-fadla). 7. Treasure left by murtad people. 8. Assets acquired illegally by rulers, state employees, treasure obtained is not in line with shar?"ah. 9. Other Assets belonging to the state, such as deserts, mountains, beaches, sea and dead land that has no owner. ??0 Shar?"ah outline the government has a strong role in the economy, so it should not be leaving the hands of the rights of its people. Shar?"ah said the government should be able to be a regulator and steward public affairs as that relates to what the prophet Muhammad (PBUH) said: "An imam (caliph) is a maintainer and regulatory affairs (of the people), and he will be held accountable to the people ". ??1 To be able to organize and serve the affairs of society, the government must have the tools and means, one of them by setting up agencies in charge of exploring minerals, producing vital goods and dominate the life of the people, producing capital goods/ 30 Abd al-Qadim Zallum, 1986, al-Amwâl _Daulah al-Khilâfah, p39 and Abu 'Ubaid ibn Salâm, Al-Amwâl, (Beirut: Dâr el-Hikmah el-'Ilmiyah.), p21 qf : Yulizar D. Sanrego Nz & Rusdi Batun, "Pandangan Islam Terhadap Privatisasi BUMN," La-Riba Jurnal Ekonomi Islam, Vol. III, No. 2 (2009), 143 ??1 Bukhari and Muslim machinery needed by the community in carrying out their industrial and agricultural activities. Government should has an institution that ensures the distribution of goods and services needed by society. ??2

8 Rasulullah said:

"A rulers is like a shepherd and he alone is responsible for the flock (people)" ??3 Privatization of state-owned enterprises, which has been conducted by government, categorized public property and strategic industrial sectors are not allowed in Islamic law. the Prophet Muhammad (PBUH) said:

"The Muslims of association in three things: water, pasture and fire" ??4 According to Al-Nabhani, public property generally includes public facilities, tremendously large number of mineral, the natural resources that the nature of its formation has made it impossible controlled by the individual, while other strategic industry is an industry that produces products/machines required by the activities of the sector economy such as manufacturing, agriculture, transportation, and telecommunications. The chart above shows that the number of state-owned enterprises based on its categorization. Indonesian government has 31 SOEs which operate in processing industry sector, whereas the number of SOEs in accomodation, electricity, waste management, real estate, information and communication, and retail trade sector are relatively small which are less than 4. Meanwhile, the figure for sectors which can obtain large amount of fund like mining, constraction and techical and scientific service are 5, 7,8 subsequently. However, the number of financial service and insurance, agriculture, forestry, fisheries and transportation witness fairly similar around 23-25 SOEs.

However, 20 companies have been offered to public in the Indonesian Stock Market. These are enterprise which a portion of its stock has belonged to public: ??8

9 Discussion

In this part, the author will elaborate more regarding to the status for every categorizing of SOEs based on operation sector, which SOEs can be privatized according to Islamic perspective about ownership.

10 a) Agriculture, Forestry and Fishery

Government has 25 enterprises which operate in this sector, whereas 7 companies run in forestry area, 2 are in fisheries and others produce agricultural products. Regarding to their status, firm running in forestry arena are not allowed to be privatized since those can be analogized as pasture. Thus, those are categorized as public ownership which should be managed by authority in order to give prosperous to people. Meanwhile, PT Perkebunan Nusantara I-XIV classified as state ownership, but may be privatized since everyone is allowed to have land. The permission of privatization is allowed by note that government can guarantee the availability and stability of agricultural product. It also happed with fishery sector because of similar characteristic.

11 b) Mining and Excavation

The Privatization of State-Owned Enterprises in Islamic Perspective: Case of Indonesia Based on stipulation above, all of SOEs operating in mining and mineral industry may not be privatized definitely. This is because mining and mineral can be analogised as flame like what the Prophet said that Muslim associate in three things; water, pastures and fire. As such, the meaning of fire in this hadeeth is all fuel and everything which are associated with fire, such as petroleum, tin, natural gas, and coal. Those are public ownerships which are not allowed to be privatized. Moreover, in this case in Indonesian authority should pull out the licences of mining management which have been given to private. Government have to abolish exploitation licences of giant company like Chevron and Freeport.

12 c) Processing Industry

This is the widest sector that government has many SOEs which consist of 31 companies. Basically, almost of firms operating in this field is permitted to be offered to public. However, there are three enterprises which may not be sold to individual or certain groups, namely Batan Teknologi running in atomic and uranium area, Industri Kereta Api operating in train system and Perum PERURI printing both paper and metal currency. Industri Kereta Api and PERURI are not allowed to be privatized because these two are categorized as public facilities which absolutely needed by public, while Batan Teknologi is classified as fires and fuel. Meanwhile, Pupuk Holding Company, Semen Baturaja, Semen Indonesia, and Semen Kupang are permitted to be sold to public, but the ownership is not more than 55%. This is because their products are really determine other price. The SOEs in this sector surely are not allowed to be offered to public. As such, their products are classified as public facilities which dominate people needs and also analogised like fire.

13 e) Water Supply, Waste Management and Recycling, Disposal of Waste and Garbage Clean-up

This area operation is allowed to be privatized due to classifying as individual ownership.

14 f) Construction

Fundamentally, corporates running in this business are permitted to be sold to individual or groups. Nevertheless, the author suggest that when government construct various infrastructure, such as railway, bridges, institutional buildings and others, it is preferable to utilised SOEs in order to economize budget.

15 g) Wholesale and Retail Trade

This operation area is allowed to be privatized due to classifying as individual ownership. Essentially, this service area is allowed to be offered to public since such operational businesses categorized as state ownership. However, government may not sell most of stock, at least less than 45%. This is because these corporates have significant role in country's economy. If owners do not manage carefully, it has domino effect financial sector.

16 l) Real Estate

This sector is allowed to be privatized because individual or certain groups can have it. Generally, this sector is allowed to be offered to public, but PT Sucofindo and PT Biro Klasifikasi Indonesia are not. The reason is because both companies hold control in their each area. While Sucofindo has role in securing foreign exchange in international trade, PT Biro Klasifikasi Indonesia is the only one company which is assigned to classify commercial ships either domestic or foreign operating in ocean of Indonesia.

V.

17 Conclusion

From such elaboration in this article, author can summarize some pivotal points: 1. Islam as a comprehensive and universal way of life provides different economic system from either capitalism or socialism. In this noble concept, Islamic economics harmonizes and protects two interests, both present and hereafter by involving state as deputy of God in the world (khalifatullah) and also as holder of people trustworthiness based on primary resources, Alqur"an and Sunnah. 2. Islamic Economics has known privatization before and it can be done for properties which are classified as individual and state ownership only if government is able to ensure the stability and availability of other products. However, it cannot be permitted for natural resources which categorized as public ownership. Allah has created and presented this universe to all people with the aim of achieving welfare, not only for certain groups. 3. Privatization are not enabled for SOEs which are categorized as; firstly, SOEs managing public facilities which dominant people needs like classifying as water, pasture and fire, secondly, SOEs operating natural resources which its structuring characteristic forbid to owned by private, thirdly, SOEs producing unlimited mining such as gold, silver, petroleum, metal, tin, coal and so on.¹

c) State ownership

Year 2019

22

Volume XIX Issue VI Version I

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Figure 1:

¹Yulizar D. Sanrego Nz & Rusdi Batun, Op. Cit P 140 24 Narrated by At Tirmidzi, Ibnu Majah, and Al Hakim

Listed/Public SOEs
 Non Listed SOEs
 Special Purpose Entity
 Total Number of SOEs

Ownership Concept in Islamic 18

Enterprises With Minority Government Ownership

Source: The State Minister for State-owned Enterprises, P

Meanwhile, those can be categorized into 13

Year Private Ownership types based on each on operation sector. Those are: 36 Public Ownership 1. Agriculture
 2019

(
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Provision of Accommodation and Eating And Wholesale and Retail Trade 4 Transportation and Wareh
 Drinking 1 Information and Communication
 3

[Note: ? Working ? Inheritance ? Hibah ? Other resources ? All of facilities which are really needed by many people (categorised water, pastures, fire) ? Natural resources which are forbidden to be owned by individual or certain group ? Unlimited mining ? Ghanimah,kharaj, ushur, taxes ? properties which are less-ownership ? unusable land State-Source: The State Minister for State-owned Enterprises, Republic of Indonesia 37Figure 2:]

Year	Name of SOEs	1 PT Indofarma	2	Sector
2019	PT Kimia Farma			Pharmacy Pharmacy
26	3 PT Perusahaan Gas Negara	Energy	4 PT Krakatau Steel	Metal Industry
Vol- ume XIX Issue VI Ver- sion I			5 PT Adhi Karya	Const
() B	13 PT Aneka Tambang	14 PT	Mining	Mining
	Bukit Asam			
Global Jour- nal of Man- age- ment and Busi- ness Re- search	15 PT Timah	16 PT Semen Baturaja	17 PT Semen Indonesia	18 PT
	Jasa Marga	19 PT Garuda Indone-	sia	20 PT Telekomunikasi Indone-
	sia IV.			
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Figure 3:

	State-Owned Enterprises m) Professional, Scientific and Technical Services	Service
	108 Perum Jamkrindo	Credit for SMEs
	109 PT Asabri	Insurance for Military
	110 PT Askrindo	Credit for SMEs
	111 PT Asuransi Ekspor Indoensia	Insurance
	112 PT Asuransi Jasa Indonesia	Insurance
	113 PT Jasa Rahardja	Insurance
	114 PT Asuransi Jiwasraya	Insurance
32	117 PT Bank Mandiri 118 PT Bank Negara Indonesia 115	Banking
Year	PT Asuransi Kesehatan Indonesia 116 PT Bahana PUI	Banking
2019		Insurance Loan for SMEs
Volume	119 PT Bank Rakyat Indonesia 120 PT Tabungan Negara 121 PT Biro Klasifikasi Indonesia 122 PT	
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Figure 4:

.1 State-Owned

.2 Marine Transportation allowed

Government has 24 corporates which run in this service. Some company are allowed to be owned by individual or groups but others are not. For those which are not permitted to be privatized to public, the reason is because such firms are facilities which satisfy public interest and which structuring character forbid to owned by private. Taking PT Angkasa Pura I & II as an example, these are companies managing all of airports in Indonesia. Hence, this business is advisable to be administered by authority.

.3 i) Provision of Accommodation, Food and Beverage

This is the only one SOE doing this business and it is categorized as private ownership. So, it is allowed to be offered to public.

.4 j) Information and Communication

This field are allowed to be privatized owing to be categorized as private ownership.

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