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Commoditization of Energy: a case of PPP scheme Implementation in Central Java Power Plant/CJPP Project

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Abstract

Despite to meet the people basic needs, the Government of Indonesia tends to release state assets that should be directly managed by the government to private sectors. Investment projects, either that managed by foreign company or national ones, are widely opened due to lack of fund for development. The rationale is mainly about positive contribution for increasing of national growth level through extractive economic activities in various regions. Because of that, a number of policies are adjusted to meet an adequate circumstance of investment, so it will continue and run smoothly, including investment in power investment as one of vital sectors. This paper will show how investment running by private sector will be taken over state asset, which is addressed to public systematically. The main instrument used is Public Private Partnership (PPP) scheme. In one point, state will be lost their task as an institution that guarantees the people basic needs. The case that will be taken is a preparation process of mega-project development implementation, which is not only taking agriculture land of local people, but it also will give its asset, i.e. power electricity, to be managed by private sectors. The case is mega-project of CJPP (Central Java Power Plant Project), located in Batang Regency, northern of Central Java province, which will use around 270 ha of agriculture land and will impact to around 2,000 local people, which are peasant and fisherman that live in entire area of the project. The main impact is, beside local people will lost their fertile land and fishing area, the electricity power will be no longer as basic services received by people, the project indicate to make the power as a commodity stuffs that should be bought and sold to whom need it, including local people. This paper concludes two fundamental changes of this mega-project development. Firstly, it is not only about land acquisition by private sector, but also about state asset and authority acquisition process in term of its function to serve people electricity as one of people basic needs. The ongoing preparation process explains that the project is addressed to meet the need of industrial sector that will be developed in entire of Northern Java Island, instead of dedicated to meet people needs of electricity power. It goes along with the development paradigm that only wants to increase or improve the level of economic growth on the paper. The physical impact in the future, the area will shift into industrial economic activities, as main infrastructures well developed. Secondly, a significant and worse of land control structures that tends to sharp an inequality condition. Through this process, the land structure will smoothly shift to a particular group of entrepreneur, who has capital to make and create extractive industrial sector over the agriculture land.

Introduction

This paper describes how state involves in commoditization of energy for public. It has taken from a lesson learn from implementation of Central Java Power Plant (CJPP) mega-project planning in Batang, Central Java, Indonesia. Its preparation implementation refers to national economic development aimed to meet energy needs and to contribute to economic growth. Essentially, the project required land with strategic location and led to land grabbing phenomenon also shows how state has privatizing public assets, as well as land and the energy that will be generated. Even though it generate an increasing of economic growth level, through guarantee of energy supply distributed to industrial area that developed in Java island, it does not reflect that state in the process to run their task to fulfill people basic need, particularly energy services as public service agent. It is a result analysis of development implementation in SBY's government era that emphasizes efficiency of production state assets benefitted the country's economic growth rate, which is a continuation of the previous government policy and continued by the current administration.

The ruling elite point of view is how to maximize existing resources to create an increasing economic growth rate, by developing and pushing extractive industries in populated area. The main strategy is cutting all of obstacles especially the limits of electricity supply¹. Without shifting the state point of view that only to reach economic growth rate, using public resources become commodity will be undeniable. Then, it will ignore people interest. This case reflects how does state role in privatizing public assets or commoditization energy/electricity resources, by seeing role and task that have been implementing to realize this mega-project of CJPP Batang, as well as how its impact to people who lives in entire area. The increasing economic growth target is the main background why state gives a chance to commoditize the electricity resources, even though it does not generate an increase level of prosperity.

Through the case, it will see how to interpret the state as an entity that has given a priority to capital flow interests and has subordinated its essential function for public services delivery. The state in this case describes as a system to guarantee and/or to implement free market. The role of the state is strongly needed, at least to minimize various social and political obstacles impacted to capital accumulation flow. Referring to the New Institutional Economy concept that essential critics for the Neo Classical theory particularly talking about limits of state role when will be implemented free market principle, the most important to do by the state is to secure or to make sure property rights and to guarantee markets works. Even farther, actually, the state only wants to insure free market economy practices works that is believed to be the best alternative to reduce politicization of public services and to increase efficiency through market mechanism. As shown by McDonald how water and electricity sectors become general cases showing privatization of public assets to meet industrial sectors needed, which is aimed to spread control various public sectors by corporations (McDonald 2014, 1). In this case, through giving the private sector to develop and maintenance the electricity power generated from CJPP Batang, this is in line with economic efficiency concept by optimizing the existing natural resources distributed to industrial sectors in order to run free market economy activities. It reflects the state becomes guarantee agent for capital accumulation as well as to mitigate political impact which can hamper the interest of dominant groups (Grindle 1986, 12) through issuing related laws and regulation for smoothing preparation and implementation processes of CJPP.

¹ The other investor complaints are road and sea transportation, fuel supply, the hassle of obtaining a license for investment and taxation (KP3EI Jawa 2012).

Indonesia Politic of Energy and Power

Energy and power in Indonesia experiences a long evolution since it has been controlled by Republic of Indonesia 1945 after nationalization of the Netherlands-Indies companies. Its development cannot be separated from evolution of political condition Indonesia's economic development. Old order era policy that emphasizes state ownership turned to opening private sector involvement in New Order era up to now through various scheme and type of maintaining and involvement. In general, as long as Republic of Indonesia government, control and management of electric power has been in private sectors with various forms of involvement as well as influenced by external parties through various policies that has been occurred in each era and decades.

After independence in 1945, state-based management of electric power experienced urgency that should be handed to its previous owner. However, in the beginning 1950s, the Old Order regime that is leaning or has a spirit of "anti-western" released a policy that change the status of foreign companies, which were controlled by the Netherlands-Indies government, be controlled by the state. The policy itself called as the nationalization of foreign companies' policy in 1958². A year after (1959), all of electric (PLN) and gas companies (PGN) became part of *Perusahaan Listrik Negara* (PLN/State Electricity Company)³ until 1960⁴, amount of those companies have integrated to *Badan Pimpinan Umum Perusahaan Listrik Negara* (BPU-PLN/Board of General Administration of PLN)⁵. Separation of PLN and PGN occurred in 1965⁶ in order to meet national electricity and gas needs, at the same time, these institutions has replaced the BPU-PLN tasks⁷.

Very important change was when PLN opened possibility for private sector to be involved in electricity provision in Indonesia. In 1972, PLN was determined as *Perusahaan Umum* (State-Owned General Electricity Company)⁸ that still controlled by state. In the mid of 1980s, through the Law of Electric Power 1985⁹ was possibly a limited involvement of private sectors in electric power management (PwC 2011)¹⁰. It was started a new era that PLN would buy private sector electric production, which was further regulated by policies issued in 1989¹¹.

And so on up to electricity supply management is managed by market system that examined has a more efficient through competitive and independent manner by PLN (Sulistiyanto & Xun, 2004). These have been along with IMF recommendation for all economic sectors to overcome crisis occurred in 1997¹². It was also strengthened by restructuring of electricity management policy in 2002. It has not only given an opportunity to private sector to produce electricity, but it has also provided an

² Based on Law (UU) No. 86/1958 on Nationalization of the Netherland Indies Companies, dated 27 December 1958

³ Based on Government Regulation (PP) No. 18/1959 on Determination of the Netherland-Indies Electricity and/or Gas Companies that impacted to Nationalization, dated 17 April 1959, article 1. There were 9 companies included in this regulation.

⁴ Government Regulation in Lieu of Law (Peraturan Pengganti UU) No. 19/1960 on State-Owned Company.

⁵ Based on PP No. 67/1961 on Establishment Board of General Administration of State Electricity Company (BPU-PLN), dated 29 March 1961, article 1.

⁶ Based on PP No. 19/1965 on Liquidation of BPU-PLN and Establishment of PLN and PGN, dated 13 May 1965, article 2.

⁷ Based on PP No. 19/1965, article 1.

⁸ PP No. 18/1972 on General State Electricity Company, article 1. This regulation has changed PP No. 19/1969 and PP No. 30/1970 on the article 11 (1) changing in PP No. 19/1965.

⁹ UU No. 15/1985 on Electricity.

¹⁰ UU No. 15/1985 article 7.

¹¹ Based on PP No. 10/1989 on Utilization and Supply of Power, as well as a more detailed regulation on electricity provision by private sector in Presidential Decree No. 37/1992.

¹² In Indonesia, deregulation and privatization policies became one of clauses issued by IMF in *Memorandum on Economic and Financial Policies* and has agreed by government of Indonesia as a solution of economic crisis. (IMF, 1997).

authority to determine tariff. In 2009, the 2002's regulation has reaped many protests, in particular a bigger chance to determine tariff that were more about local government tasks, while private sector only involved in transmission and distribution development (PwC, 2011).

The importance of private sector involvement in electricity production has been also supported by collaboration between private sector and the government scheme, called Public-Private Partnership (PPP) issued in 2005. In Presidential Regulation no. 67/2005, it has legalized of private sector in every single economic development, including electricity provision. This policy has been revised in 2010¹³ by putting several forms of institutional support in PPP, such as in a process of (electricity) infrastructure construction, there are PT. *Sarana Multi Infrastruktur* (SMI) and the derivative company called PT. Indonesia Infrastructure Financing (PT.IIF). In addition, in 2011, in order to fill role of risk guarantee, it was regulated and formed PT. *Penjamin Infrastruktur Indonesia* (PT.PII/The Indonesia Infrastructure Guarantee Company (PT IIGF)). The electricity policy and PPP policy have been aimed to support the PLN mandated task to accelerate power plant development in Indonesia¹⁴.

The CJPP Case and State's PPP Scheme Implementation

The CJPP Batang is one of mega-project under Indonesian Economic Corridor (IEC)¹⁵ policy implementation scheme, which is also a piloting project of Public Private Partnership (PPP) scheme for vital infrastructure development in Indonesia. The project that will be developed in northern area of Java, precisely in Batang district covers around 200 ha of land, located in two sub districts, sub-district of Kandeman and Tulis. There are 4 villages¹⁶ that will be impacted directly by the project. While, there are some people in other villages in the same sub-district and its neighbor that beside will lost their agriculture lands¹⁷, they also will be excluded from their livelihood as fisher-folks, whom are lived in Subah sub-district.

¹³ Presidential Regulation (Perpres) No. 67/2005 that has been revised by Perpres No. 13/2010.

¹⁴ This is in line with World Bank direction on IPP in entire East Asia region in the mid of 2005 (<http://siteresources.worldbank.org/INTEASTASIAPACIFIC/Resources/Connecting-East-Asia.pdf> (8 Mei 2013)).

¹⁵ Master plan for economic development Indonesia 2011-2025 regulated by Presidential Regulation No. 32/2011 on *Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia 2011-2025*.

¹⁶ Ujung Negro, Karang Geneng and Wonokerso villages in Kandeman sub-district, and Ponowareng village in Tulis sub-district.

¹⁷ According to statistical data 2010, all those villages indicate as productive lands produced rice, around 50% of land in the each villages planted by paddy fields and various cash-crops. (BPS 2011, BPS 2011)

Figure 1. Site Location CJPP Batang

The project has been estimated will generate around 2 x 1,000 MW of electricity power, which is the biggest in Southeast Asia. The main raw material is coal using a high technology¹⁸ that possibly generating the low level of environment pollution (called Flue-Gas Desulfurization/FGD system).¹⁹ The plant assumed will provide approximately 8-9% of national annual electricity demand after its operation in 2016 (Strategic Asia for UK Foreign Commonwealth Office 2012, 35) For government of Indonesia, this is about a breakthrough in response to criticism and rejection or resistance of the use of coal to produce electricity power²⁰. One of company in the consortium appointed had developed this technology and had succeeded to convince the government that the processes will be environmental friendly (PT BPI 2011).

The three companies included to the consortium, called PT Bhimasena Power Indonesia (PT BPI), are combination of coal supply company, a high technology provision to build the plant and industrial company. They are PT Adaro²¹, PT Itochu²² and PT J-Power²³. Except PT Adaro, the two other

¹⁸ Namely Ultra Super Critical (USC) Technology, which is Turbine propulsion technologies that will work efficiently at very high pressure. This technology will possibly reduce the use of coal and omit emission. (<http://www.asiapacificpartnership.org/pdf/PGTTF/events-october-06/24%20-%20New%20Gen%20Strategy%20Ultra-Supercritical%20Technlgy.pdf>, accessed at 26 March 2013).

¹⁹ The FGD is a set of technology used to remove sulfur dioxide (SO₂) contents of sewage fossil power plants. For the particular steam power plant, the FGD will throw away more than 95 percent of SO₂ contents in the gas pipe.

²⁰ Local people together with Green Peace foundation and Legal Aid Foundation Semarang as well as others environmental movement groups, until now, have conducted rejection movement with environmental pollution/degradation and social and economic losses will be experienced by local people (peasant, fisher folks) around pointed location (Antara Jateng.Com 2012, Kompas.com 2013, Mongabay.com 2012, Portalkbr.com 2013).

²¹ One of Indonesia companies, established in 1992, supplied coal from coal mining located in Tabalong area in South Kalimantan. Its strategy develops Indonesia through maximize coal resources value to reduce transaction cost in production various industries used coal as raw materials. (PT Adaro NA) For this project PT Adaro invest about 34% of the total value of project. (PT Itochu 2011)

²² Japanese company focusing on various industries, such as textile, metal and minerals, food processing, machinery, energy and chemical, and others industries spread globally. (PT Itochu n.d.) PT Itochu spent about 32% of total value of project. (PT Itochu 2011)

²³ The company with "From Japan to the World and on the Future" slogan is one of Japanese company focused on an electric power wholesaler with a proven track record of reliable, low-cost power supply. Since 60 years ago has worked for power transmission networks nationwide. (JPower 2014) The ownership of this mega-project is about 32%. (PT Itochu 2011)

companies are Japanese companies that have been appointed by Indonesia government to control operational, implementation and maintenance of the mega-project for 25 years of contract (PT BPI 2011). The expectation of this implementation is to meet a lack of electricity in Indonesia.

Nevertheless, it is important to questioning or to examine further who will use the energy in the future, by seeing the fact of electricity in Indonesia, in particular in Java, and the acceleration of economic growth scheme centered in Java. The two things will meet the reasons why is needed the scheme, the public and private partnership, if it is intended to meet the electricity public demand and why not choose a location that near to the areas where are in fact still require an electricity supply at the household level users.

Java islands, where the plant will be built, is the area owned an adequate number of electricity users compared to other islands. The percentage of electrification ratio (the ratio between electricity users and the total of households), according to PLN data 2011, in Java-Bali region almost 76%, while the others only about 64% (PLN 2012, 20). Moreover, in 2011, from all number users in Indonesia, around 64% are in Java (PLN 2012, 5). So it is not an exaggeration to claim that the power plant with 2,000MW of capacity is not intended to deal with people needs in Java (Safitri 2014, 28), and if it is related to another tendency that Java is the heart of Indonesia economic growth up to 6-9% in 2025 since the previous government era, this to be reasonable.²⁴

The regime shifting did not stop efforts to develop industrial sectors in Java, including running the ‘acceleration’ scheme as it was intended by SBY’s IEC policy. The areas pointed as the main area for industries still become main attention of the new regime. At least, there were 34 areas projected to be investment locations, especially in along northern Java islands (Tim Kerja MP3EI Jawa 2012) (Table 1). IEC’s Focused Investment Areas (Kawasan Perhatian Investasi/KPI) concept continues and becomes a main target of electricity distribution generated by (one of which) CJPP Batang.

Table 1. Focused Investment Areas (KPI) by Main Economic Activity in Java

No.	Main Economic Activity	Focused Investment Areas (KPI)					Total
		West Java	DKI Jakarta	Banten	Central Java	East Java	
1.	Food and beverage	6	1	3	4	7	21 KPI
2.	Textile	7	-	1	2	-	10 KPI
3.	Shipping	1	-	-	-	1	2 KPI
4.	Defense equipment	2	-	-	-	-	2 KPI
5.	Transportation Equipment	4	1	1	-	-	6 KPI
6.	ICT	2	-	-	-	-	2 KPI
7.	Oil and Gas	1	-	1	-	-	2 KPI
	TOTAL	23	2	6	6	8	

Source: *Result of Coordination Meeting, Java Economic Corridor Team* (Tim Kerja MP3EI Jawa 2012, 44-45)

Barriers to the availability of electricity power supply to meet the needs of the industries operations denote one of existing obstacles faced by investors, following to other obstacles, i.e. infrastructure facilities and fuel supplies. The verification result conducted by KP3EI team in 2012 concluded that one of grievances mentioned by entrepreneurs is a guarantee of power/electricity supply (KP3EI Jawa 2012), which had often not achieved the production targets impacted on slow capital turnover. This explanation shows how the CJPP Batang is crucial in order to fill the lack of

²⁴ It refers to SBY regime economic development policy, called IEC, and now, along with the shifting regime to Jokowi-JK government, even though the IEC is no longer mentioned, the content is still the same does and becomes one of pillar in the new government’s economic policy, as stated in Nawacita’s Jokowi-JK.

power/electricity for industries in Java.

Besides associated with the growth of industrial sectors, PT PLN also puts commercial sectors became leading sectors to meet the electricity demand fulfillment indicator by the state. Even though population is the main background for power/electricity provision, electrification ratio target fulfillment being more emphasized to power/electricity selling and an increase the number of consumers by commercial sectors, i.e. industrial sectors (Safitri 2014, 36-37). The target of 93% in 2021 will be reached if the sales target increase up to 95% in 2011 (PLN 2012, 770-775). Pretext of electricity demand in Indonesia, responding of investor grievances, as well as the main target to reach power/electricity infrastructure supplies that make the mega-project are the most priority and important project.

On the pretext of lack of government fund, the power/electricity supplies have been pursued by involving private sectors. PPP scheme is firstly used in CJPP Batang's mega project (Bappenas 2011, Ministry of National Development Planning 2012), with various revisions and adjustments all of rules and regulations regarding PPP²⁵, since 2005 to 2011²⁶. This PPP scheme also became one of pilot project in the frame of IEC policy. As the pilot project, all of parties that interested in this development exert all their ability to produce a successful example of this PPP scheme (Strategic Asia 2013, 28).

Although the PPP scheme is collaboration between the government and private sectors, in this project is dominated by the private sector, since preparation process, operation and its maintenance. As described in the figure below, the government represented by PT PLN designates development control and its operation as well as giving them a guarantee for all risk that could be happened during the processes. The first agreement had conducted between PT BPI and the government of Indonesia, which is represented by PT Indonesia Infrastructure Guarantee Fund (IIGF)²⁷, for development implementation and guarantee all risks, including the risk of loss in the land acquisition²⁸. The second agreement is with PT PLN for power purchase agreements for 25 years (PT BPI 2011). This is the latest form of cooperation between the government and the private sectors applied in the CJPP Batang, which is the government gives full of control to the consortium company to provide power/electricity and the products will be bought by the government with the price determined by the company (stated in Presidential Regulation No. 56/2011 on PPP).

In this project development implementation, PPP scheme used is Build- Own-Operate-Transfer (BOOT) scheme²⁹, as the newest form that the asset and productions are nearly controlled by private

²⁵ The PPP scheme is the latest method to provide power infrastructure facilities. This has been the trend in many developing countries since the 1970s. In Indonesia, the private sector had always been involved in the electricity supply system and such involvement reached its height in 1985, when laws on electricity in Indonesia enabled the private sector (cooperative and other enterprises) to sell electricity to PLN, although limited (Article 7). During the *Reformasi* era, PLN experienced bankruptcy due to a number of terminated partnership/cooperation projects, leading Megawati's government to issue a new bill in 2002 that, in principle, paved the way for a more competitive scheme. For one, it allowed the private sector to help set prices (Article 9). However, the Constitutional Court eventually revoked the bill in 2004.

²⁶ PPP regulation was issued first time in 2005, by Presidential Regulation No. 67/2005, then it had been changed several times into Presidential Regulation No. 13/2010 on the revision of Presidential Regulation No. 67/2005 and lastly, in 2011, by issuing Presidential Regulation No. 56/2011.

²⁷ PT IIGF is derivative of the revised 2005's policy on PPP (Presidential Regulation No. 67/2005) changed into Presidential Regulation No. 13/2010, which mandates Ministry of Finance to establish an Infrastructure Guarantee Enterprise (Badan Usaha Penjaminan Infrastruktur/BUPI). PT GIIF is a BUPI's company established in December 30, 2009. (PT IIGF n.d.)

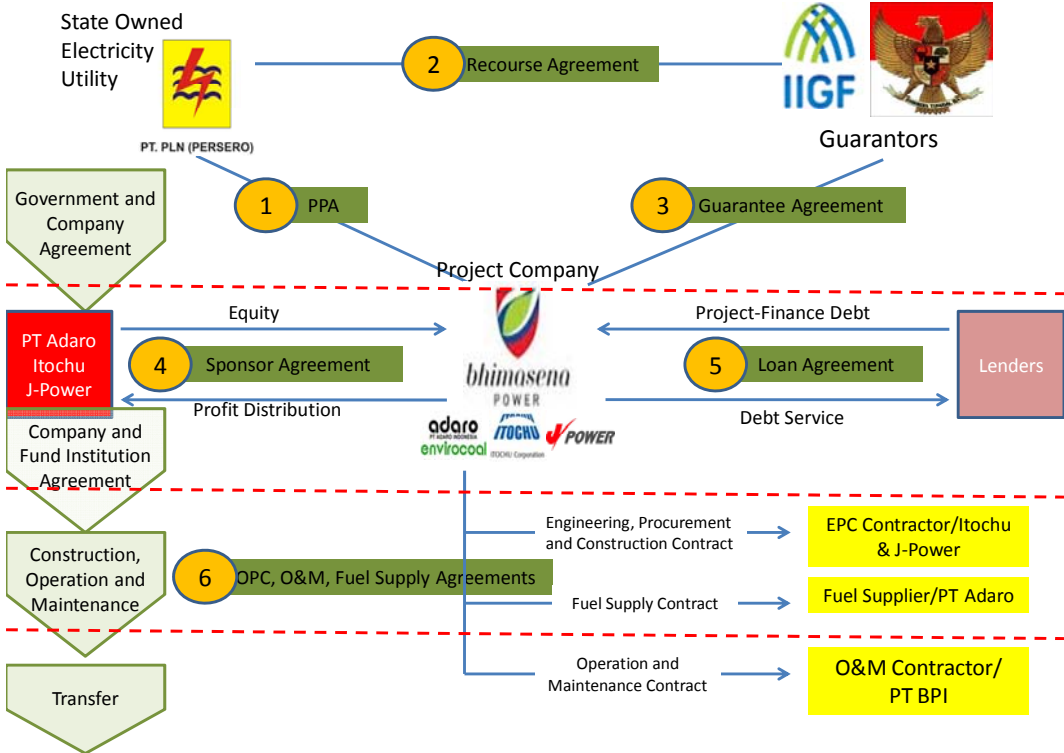
²⁸ Presidential Regulation No. 13/2010 on Revision of Presidential Regulation No. 67/2005 on Public and Business Entity partnership in Infrastructure Provision.

²⁹ Various PPP scheme shown a continuity until the asset becomes purely controlled by private sector. As resumed by Kwak, Yingyi and Ibbs called as *Continuum of Type of PPP*, sequentially Operation Maintenance (OM), Design-Build-Operate (DBO), Design-Build-Finance-Operate (DBFO), Build-Operate-Transfer (BOT) and Build-Own-Operate-Transfer (BOOT) types. (Kwak, Yingyi and Ibbs 2009)

sector (group) pointed as contracting agency. BOOT scheme refers to collaboration between public (government) and entrepreneurs (private) or group of companies, which the private has full responsibility to take care of financing, preparation, construction, operating and maintenance as well as will get property right on asset in certain period as mentioned in agreement paper or contract. Public sector in this scheme agrees to purchase products generated by private sectors. At the end of concession contract, asset and all of the things on it will be back to the state represented by related government institutions (Kwak, Yingyi and Ibbs 2009, 54). As described in Figure 2, after finishing a construction under PPP scheme, as well as power purchase agreement (PPA) by PT PLN, PT BPI operates the project for the next 25 years, and the asset will give back to the Government of Indonesia, particularly PT PLN.

As seen in the picture above, the BOOT scheme will pass an agreement phases which involves related parties. On the early stage, PT BPI on October 6, 2011 signed an agreement with PT PLN (as the buyer of the products) and IIGF (as the guarantor of purchasing transaction), which prior exists the agreement between PT PLN and IIGF (PT BPI, 2011)³⁰. This signed agreement has indicated that the project be ready to be started, which is planned to operate in 2016.

Figure 2. PPP Scheme for CJPP’s Batang



Source: Modified from a Presentation in PPP Days 2012 (IIGF 2012) and Interpretation of PT Adaro News Release (PT BPI 2011) (quoted from (Safitri 2014, 54).

In the second phase PT BPI play its role as the mandate holder of CJPP’s Batang development, particularly to find sponsor and fund. The indicated sponsors are the member of PT BPI consortium; PT Adaro, Itochu and J-Power. Each of them will contribute in this project. J-Power is an experienced company in coal-fired power plant development using USC technology. PT Adaro as a company that working for coal exploration in Indonesia, will be the coal supplier for the power plant project in

³⁰ The similar information also can see in PT IIGF’s website (<http://iigf.co.id/Website/News.aspx?id=64>, accessed on May 14, 2013)

Batang, while Itochu is one of important Japan company that just starting to expand its business in power plant project. As explained in the scheme above, each and every sponsor will get profit sharing from the selling margin of electricity produced³¹.

After the second phase is completed, PT BPI may proceed to the third phase: the development process. The contract between the developer and fuel supplier are to be done by PT BPI, including the contract to operate as well as maintain of the product for the next 25 years. The contract for the development will be signed between PT BPI and Itochu and J-Power, while the contract for the fuel supplies will be held with PT Adaro, while for the operational and maintenance activities is the common contracts for all member of consortium PT BPI.

By BOOT type implementation, at least within next 25 years, electricity supply that should be also reserved for rural household will be only enjoyed by industrial sectors in Java. Not only that, through power resources control and its authority to determine selling price, as regulated in 2011 PPP's regulation³², therefore power/electricity sector is no longer under state control, which is mandate holder to provide basic services for people.

Land Acquisition for Energy Commoditization

PPP scheme is believed as an effective scheme to run efficiency in vital sectors in order to improve or increase level of economic growth. This scheme is associated to collaboration work between government and entrepreneur groups in development implementation, especially in public facilities development. Since in the beginning of this initiative, role of the state are strongly dominant, besides as an authoritative party to formulate various policies and also becomes a guarantor of public services provision. In various experiences of this implementation, the scheme is used either collaborative or participative terminology exchangeable that leads to privatize public assets (ADB n.d., 1). The evolution of this scheme has shown that role of the state are gradually less and even, it has been happened such of public assets transfer within certain a long period. The manual book issued by ADB explains that there are 5 generic form PPP implementation, which shows the evolution role of the state, i.e. Service Contract, Management Contract, Lease Contract, Concessions and Build-Operate-Transfer (BOT) (ADB n.d., 28). In order to handle a local or internal political dynamic, a guarantee institution becomes a precondition of this scheme, which is aimed to ensure the project will keep continue even in regime change period and others related political hassle³³, including bearing the entire risks that could be happened during the constructing process, financing, ability and social demands as well as residual value (Wibowo 2012, 34, Kwak, Yingyi and Ibbes 2009, 68). In this section, through seeing thoroughly CJPP Batang case, it will show how the state releases public assets to the private sectors, therefore the state will have no longer authority to manage and regulate further.

The PPP scheme makes the state only work in limited and minimum space in its territory, especially if BOOT is applied in this scheme. Even though, it is limited within certain period in contract agreement, control of assets as well as its operational until maintenance following by the benefits will go to private groups pointed in the scheme as contracting agent. At the most experiences, the state has only 5 kind of responsibilities and roles, there are to create an adequate investment climates, to formulate and decide various policy frameworks supported investment works, to build coordination scheme within government institutions in various levels, to determine concession area

³¹ The lender for PT BPI is still unknown.

³² Presidential Regulation No. 56/2011 on Second Revision of Presidential Regulation No. 67/2005 on Public and Business Entity partnership in Infrastructure Provision

³³ The comparison and experience any guarantee institutions are described in study conducted by Imam Pandu Wibowo (2012), including the future of PT IIGF as a guarantee institution built by government of Indonesia in 2011.

and to be active in every step of constructions (Kwak, Yingyi and Ibbs 2009, 59-61). However, the practices can be read as the form of state intervention to respond market inability to distribute various risks and obstacles of capital circulation, which are later considered as a form of the state guarantee or assurance for market work (Wibowo 2012) and by BOT and BOOT scheme, nevertheless the assets will be transferred back to the state, it is the most crucial state contribution in public assets transfer process to private sector in certain long period (ADB n.d., 1).

In the CJPP Batang case, this BOOT-PPP scheme makes the consortium have a fully control on land/area assets to develop plant site, and also the productions. The choice of location is more determined by PT BPI with a variety of political and technical considerations, while the government only legitimize in land acquisition process. Various form of legitimacy provided are issuing or revising related regulations in order the chosen site cannot collide to any existing rules, particularly in the site opted. The Indonesian government guarantee land provision for the CJPP's Batang development site. In PPP scheme, that is the main task of the government to find the location for the development site and ensure that the particular land is ready to be acquired. The newest land provision regulation issued in early 2012 (UU No. 2/2012) also applied for this project, that the government (both central and regional) ensuring this land provision for public purposes (article 4) and implementing its process (article 6).

In Law No. 2/2012 explained that every related party (included local inhabitants) should obey this regulation (article 8). However, besides unfair compensation process, the guarantee of their better livelihood in the future should be also taking into consideration. In this case the local inhabitants have never got an adequate explanation from PT BPI regarding the guarantee scheme of local people except they have an approximate price for their land³⁴. Nevertheless, referring to PPP policy scheme and MP3EI policy implementation scheme, it is very limited explanation concerning guarantee for the local inhabitants whose land will be acquired, other than have compensation and the possibility to be involved in the project as paid workers³⁵.

It would be better if the chosen site is the state lands, it will be easier to the acquisition process without bothering local people livelihoods. In addition, taking over of state-land, if previously it is not a clear land, it requires merely a simple coordination among, at least, two institutions and the restitution process is thus unnecessary, the allocation of state owned land in the other region – which can be used the same purpose as the previous institutions holder – is instead necessary.

Since the beginning of CJPP's Batang development plan, several locations had been identified and reviewed before it is decided in Batang regency. According to Head of Central Java Department of Energy and Mineral Resources³⁶, the several proposed regencies for the power plant development sites are Kendal, Pemalang and Batang (SuaraMerdeka.com, 2011). In Batang regency, the proposed locations are Tanjung Celong, Pantai Ujung Negro, Degayu, and Labuhan, and another alternative location in Kendal regency, in Tanjung Korowelang to be exact (SuaraMerdeka.com, 2011). The location in Kendal regency was no longer available due to another power plant development plan, funded by the investor from India. Therefore Batang regency was the one and only possible choice, because Pemalang regency at the moment was also considered unavailable, because compared to Batang regency, Pemalang has state own lands for plantation purpose, which are held by PTP (SuaraMerdeka.com, 2011). Related to state-land status, the Central Java government recommended Tanjung Celong and Labuhan areas, where there are plantation areas situated in this location, which can be easily transformed into development site for power plant Batang.

³⁴ Based on one of the conclusions stated by the Human Rights Commissioner (Dianto Bachriadi) on the meeting within local inhabitants in Batang with PT BPI, PT PLN and local government, on February 21, 2013.

³⁵ This point will be discussed specifically in the last section, in order to see how much the local people loss due to the development of this power plant megaproject.

³⁶ Mister Teguh Dwi Priyono as an officer at that time.

Nevertheless, the next process was handed to investor which in the end chose Pantai Ujung Negoro as the location. Several reasons concerning the location Pantai Ujung Negoro suggested is, one of them, about the more appropriate condition of transportation facilities in entire area. Although the transportation facilities still need an improvement, but generally, its area is in a relatively better condition compared to the other areas. Another reason is the coastal condition, which is adequate enough for a large ship to lean back in order to make coal shipping process. The Central Java Department of Energy and Mineral Resources had warned PT BPI and PT PLN concerning Pantai Ujung Negoro as the chosen site because this area is partly sea conservation zones enacted by the Regent of Batang in 2005³⁷.

Finally, PT BPI chose Pantai Ujung Negoro as the location, in Karang Geneng village, which will involve local people, who own agricultural land exactly in the chosen location. Unlike what provincial government officer said, PT BPI considered that it is easier to acquire privately-owned lands rather than the state-owned lands. From the investor's point of view, using the state forest or plantations will increase the cost. In addition to this reason, it is convoluted bureaucracy, because – based on the experiences another investor, for instance, in Lontar power plant – the land titling process takes about 3 years (ListrikIndonesia.com, N/A). It is about entrepreneurs calculation, which compensation scheme is the most strategic to be done, even though through the rejection risks as happened in CJPP's Batang.

As soon as the location for the project set and authorized by the government, PT BPI may be soon doing land acquisition and the restitution process for every inch of lands that will be used. The government gives a legal guarantee to PT BPI if local people try to refuse it, by using Law on Land provision (No 2/2012), every development project for public purpose, like the development of power plant Batang, the previous land holder obliges to surrender their land assets and should be ready to receive any compensation offered.

The other policy that figures the limit of state role is ruling the location or site status chosen, so it will not infringe existing regulations. The municipal/regional government was forced by the central government (through IEC implementation and to follow the PPP scheme) to change a number of regional regulations related to the CJPP-Batang construction site.³⁸ In 2005, certain areas in what is now part of the CJPP were declared as marine conservation zones by virtue of The Regent of Batang Decree No. 523/283/2005. Then, investors made a decision to construct the CJPP in the region after merely three months of study and without any consultation with local residents. Through time, part of this area became a dumping ground of CJPP waste.

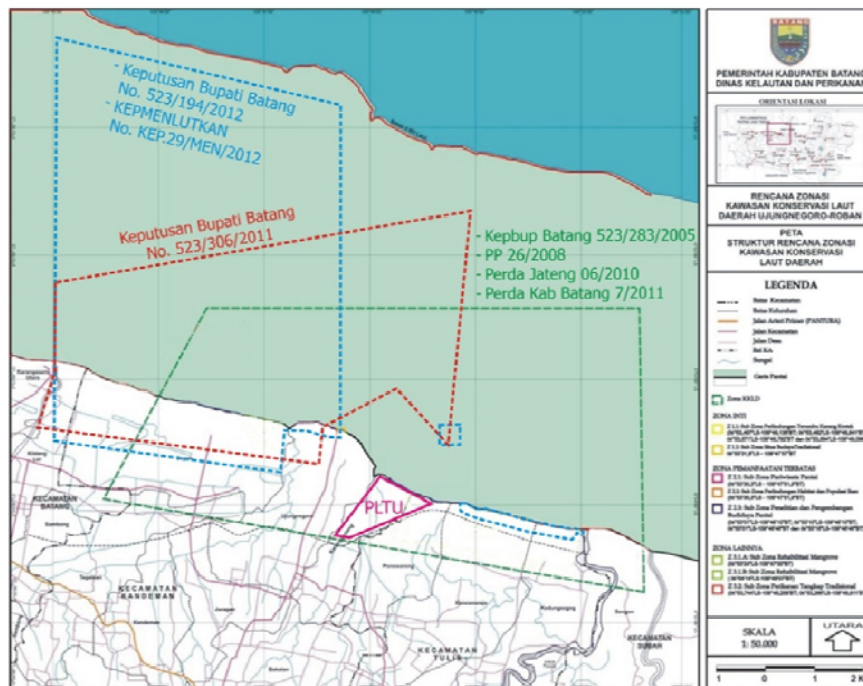
On June 7, 2011, PT BPI was appointed as a licensed constructor of the CJPP in Batang regency. In 2011, the central government demanded the government of Batang regency to convert the marine conservation zones into free zones so as to support the CJPP construction. The Batang regional government took action swiftly as instructed. Changes were done twice by virtue of two Regent of Batang decisions: the first in 2011 (i.e., The Regent of Batang Decree No. 523/306/2011) and the second, in 2012 (i.e., The Regent of Batang Decree No. 523/194/2012). Also, the Batang regency authorities agreed to the CJPP development in its region (With Kendal regency as an alternative for the CJPP site³⁹). These changes in the zoning are illustrated in Figure below.

³⁷ Based on Keputusan Bupati Batang No. 523/283/2005 on an appointment of sea conservation zones Ujungnegoro-Roban in Batang district.

³⁸ The dynamic of this policy change obtains a strong resistance from some environmental activist and people rights defender groups; either they are based in Central Java or Jakarta, such as Go Green, Legal Aid Semarang Chapter, Indonesia Legal Aid Foundation and also the Green Peace. (YLBHI dan LBH Semarang 2012, YLBHI, LBH Semarang, GreenPeace dan Warga Batang 2012)

³⁹ Based on an interview with Go Green activist on 3 September 2013.

Figure 3. Change of Regulation on Marine Conservation Zones in the Planning Area of CJPPBatang



Source: Compiled by Semarang Legal Aid Foundation and quoted by Mongabay (Mongabay.com 2012). The changes were from the green area into the red zone and then into the blue areas. (Quoted from (Safitri 2014, 64))

In August 2011, the plan for the CJPP project was included in the Spatial Plan of the Batang regency, which takes effect until 2031 (Local Government Regulation No. 7/2011). According to Go Green, an organization observing the impact of the constructions in Batang regency on the environment, the proponents did not disseminate the Spatial Planning document to the public after its adoption⁴⁰, aside from not involving the local people in the planning process.

To tone down the criticisms against the project, accelerating the issuance of the EIA document as a debottlenecking step was important. The local people demanded both PT BPI and the government to provide options to solving the social and economic problems of residents negatively affected by the CJPP construction⁴¹. Their appeals and demand were supposed to be documented in the EIA records, which until August 2013 was still in the draft phase. Based on the assessments, the EIA draft (dated July 5, 2013) deemed the project to be unsuitable. Therefore, the process, especially site construction, had to be terminated until proven otherwise. Surprisingly, a revised version of the document was initiated quickly. Within a month (August 21, 2013, to be exact), the revised EIA document---where the evaluation and results had drastically changed since the last update---was adopted. While the first draft had around 80 percent containing criticisms on the project, the newest (and sanitized) version, on the other hand, was readily acknowledged as appropriate⁴².

The acceleration process in this case had connections to a politics-related event at that time; namely, the succession of governorship in Central Java province. The adoption of EIA was signed by the previous Central Java governor, prior to the inauguration of the newly elected governor on August

⁴⁰ Based on an interview with Go Green activist on 3 September 2013.

⁴¹ Based on an interview with Komnas HAM commissioner who mediated the local residents, the company, and regency and provincial government on 4 September 2013.

⁴² Supported by an interview with a Go Green activist on 3 September 2013.

23, 2013. Thus, on August 25, 2013, the new elected governor was obligated to disseminate the document among the institutions and stakeholders, including the people of Batang regency⁴³.

Therefore, the two biggest obstacles including local people resistance who are working together with environmental activists and people rights defender groups can be managed and controlled. The existing and biggest problem is land acquisition, which later can be confirmed by the argument stated in one of article in the regulation (Law No. 2/2012) that nobody or no any party can refuse any single location or site that has been determined become a development project location. The issue that Indonesia has experience energy crisis, so CJPP Batang will resolve the problem and be considered as a vital resource for energy that calculated will sustain national electricity demand (Strategic Asia for UK Foreign Commonwealth Office 2012). Meanwhile, environmental issue, which is related to the conservation area as mentioned in previous regent decision, can be solved by changing related regulation that issued by regent decree. Even though the project has not been started, the preparation project has been legally solved and no any conflict of law.

Conclusion

The commoditization assets for public services, including energy sources, have been conducted by state systematically. Hence, the assets have changed into commodity that supposed to be public resources that aimed to meet people basic needs. The CJPP case has shown that energy sources as public asset, later, not only become trade stuffs that the state as an important actor, but the state also has previously ignored or make a waiver of people livelihood sources due to implementation of efficiency in the development process.

Under the pretext of a PPP scheme's pilot project, the CJPP Batang processes are smoothly facilitated by various policies issued by either central or local government. The main target is 97% of electrification ratio in Indonesia. However, the target is only calculated or focused to electricity consumption or uses by industrial or commercial sector that located in Java. The operator or contracting agent of the project is private sector, which is required by PPP scheme by using BOOT type. This scheme makes possibly the private sector to manage, not only the source of energy, but also a whole processes, to maintain and to sell the products. Through this scheme also make the private sectors hold in the process of distribution and price control. To ensure all the processes, since the construction until the distribution of products, the state agreed to guarantee all the risks that probably experienced by the contracting agent. This is also confirmed by the rules that are made specifically to complement a number of regulations on PPP which has existed since 2005.

Although essentially the PPP scheme was built in order to share a number of risks that have been faced by the government in the process of development project, but in fact, the opposite one happened, which the private sector that often asked for all the risks, especially that indicated will be harm or halted capital circulations, to be transferred to the state or the government. Focusing on role of the state as the single actor to fulfill people energy basic needs, from this case will be one of proof that the mandate only as a reason to do some others commercial things that even far or opposite from the original objective of state function. It does not exaggerate that the state becomes an instrument or traffic control for working of specific group interest, which is aimed to accumulate benefits or profit through their role as public assets management administrator.

⁴³ Based on the announcement letter of Central Java Governor on Disseminating the EIA document on 26 August 2013.

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