FOREIGN PRIVATE PARTICIPATION FOR THE PROVISION OF STRATEGIC INFRASTRUCTURE IN INDONESIA: A LEGAL PERSPECTIVE

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Abstract

Infrastructure is seen as an essential and significant element of competitiveness, in driving the national economy. The government continues to pursue advanced infrastructure development to improve Indonesia's competitiveness ranking at the international level through National Strategic Project (NSP). Previously, the financing for the provision of national infrastructure was highly dependent on the funding by the government. The government's funding, was limited in number, so that it was not sufficient to meet the financing needs of national infrastructure. Its development began a paradigm shift that in financing the provision of infrastructure, it no longer relied solely on government's budget but also provided opportunities for foreign private companies to invest in the required infrastructure projects. This new paradigm reflects the spirit of "not doing business as usual" in financing infrastructure provision in Indonesia. In the national economy based on economic democracy, both national and foreign private firms can develop the Indonesian economy. Foreign private investment in financing the provision of strategic infrastructure is included in production branches that are important to the state and control many people's livelihoods. It is realized through a partnership between foreign private companies and State-Owned Enterprises (SOEs). The cooperation is built on the condition that foreign partner is needed. The SOEs invite them to participate in the provision of strategic infrastructure while still placing the state firms as the determinant actor in decision-making and the holder of control in *the management of the national strategic infrastructure. However, in providing opportunities for foreign private companies in delivering national strategic infrastructure, an analysis of the costs and benefits should be carried out so that the benefits obtained would be more significant than the costs borne by the Indonesians to improve their welfare.*

Keywords: *Infrastructure, Strategic, Development, Partnership*

Introduction

The World Economic Forum (WEF) states that twelve pillars determine a country's competitiveness in free trade (the 12 pillars of competitiveness) which are used to measure the level of global competitiveness of a country (Global Competitiveness Index/GCI), one of the twelve pillars is infrastructure. Increasing the country's competitiveness in infrastructure is closely related to the policies and regulations made by the government in the infrastructure sector[1]. The Indonesian government has made various policies and regulations for accelerating infrastructure development. Some of the rules include Presidential Regulation Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects. The regulation is clear evidence of the government's efforts to accelerate national infrastructure development, which is also a priority project. This strategic plan is also a mandate in Presidential Regulation Number 18 of 2020 concerning the 2020-2024 National Medium-Term Development Plan (abbreviated Indonesian: RPJMN 2020-2024).

The Presidential Regulation on National Strategic Project (NSP) 2020 was issued to optimize the implementation of the project to maximize the impact in accelerating development, creating job opportunities, and recovering the national economy. NSP is a project or program implemented by the central government, regional government, and business entities that have a strategic nature to increase growth and equitable development in improving community welfare and regional development. The criteria for infrastructure projects are included in the strategic category, namely[2]:

1. Has a strategic role in the economy, social welfare, defense and national security (contribution to Gross Regional Domestic Product (GRDP) and Gross Domestic Product (GDP), employment, socio-economic effects, environmental effects)
2. Has linkages between infrastructure sectors and between regions (having a complementary effect)
3. Has diversity of inter-island distribution (balance of development between areas in the western and eastern parts of Indonesia)

The attachment to the Presidential Regulation on NSP 2020 contains the types of projects as shown in the table below:

Table 1

Types of NSP

Project Sectors	Number of Projects
Road and Bridge	54
Seaport	13
Airport	8
Train	15
Industrial area	18
Housing area	2
Dams and Irrigation	57
Clean Water and Sanitation	12
Beach Embankment	1
Energy	15
Technology	5
Education	1

NSP is a strategic national policy in accelerating the implementation of strategic projects to meet basic needs and improve the community's welfare, whose performance requires considerable funding. Only relying on government funding sources will be possibly insufficient. Based on the 2020-2024 RPJMN, the financing need for national infrastructure development is Rp 6.445 trillion. With the government's ability to finance Rp 2.385 trillion or only 37% of the total cost required, there is still a shortage of four thousand sixty trillion or 63%[3]. The government is trying to overcome the lack of funding by involving the private sector in providing infrastructur[4]. The government's policy to apply the private sector in national infrastructure development reflects the spirit of "*not doing business as usual*" as a new paradigm of financing that originally came entirely from the government. Private sector participation is based on the following considerations[5]:

1. Providing additional capital for the government in developing investment in the infrastructure sector
2. Reducing the burden of state financial expenditures given the limited government funds so that funds from the private sector are expected to be used to finance projects that the State Budget (APBN)/Regional Budget (APBD) cannot fund
3. Private services may vary
4. Improving service quality and growing competition
5. Increasing efficiency in operational activities

The paradigm shift in infrastructure development financing by involving the private sector has at least three advantages, namely: first, accelerating infrastructure development to increase medium-long term economic growth; second, fixing the current account deficit; and third, expanding the opportunities for domestic and foreign investors to participate in infrastructure financing[6, 7]. The expansion of opportunities for foreign investors to participate in infrastructure development is closely related to investment policies and regulatio[8]. Various rules were made to support the acceleration of strategic infrastructure development, namely Presidential Regulation on NSP 2020, Presidential Regulation on RPJMN 2020-2024, Law Number 11 of 2020 concerning Job Creation, and Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector, and recently issuance of Government Regulation Number 42 of 2021 concerning Ease of National Strategic Projects. The NSP simplicity refers to all forms of licensing and non-licensing easiness provided in accelerating the planning, preparation, transaction, construction, and smooth operation control processes, including the financing mechanism for NSP.

NSP is one of the strategic national policies in accelerating national infrastructure development whose financing relies on funds from within the country and foreign investors. Several strategic national infrastructure projects were built by involving foreign investors as financing providers, including the Jakarta-Bandung high-speed rail project, toll road construction projects, steam/gas power plant projects, international airport development projects, and several infrastructure projects. Foreign investors are interested in investing capital, including dam and power plant construction projects and seaport infrastructure.

Many experts state that infrastructure is included in public goods, although this is still debated. As public goods, the state has a vital role in ensuring the availability of infrastructure to be used for the greatest prosperity of the people[9]. However, the problem is the limited state to finance infrastructure projects and the low investment in infrastructure[10]. [11]argued that:

"There are ongoing, hotly contested debates in economics about the costs and benefit of infrastructure - for example, about the degree to which particular infrastructure investment contributes to social welfare or economic growth, and about how to prioritize infrastructure investment in developing countries. Regardless, most economists recognize that infrastructure resources are important to society precisely because infrastructure resources give rise to large social gains".

Based on this statement, infrastructure has a very strategic role for a country's economy that will provide social benefits for the community. About the extent to which investment in particular infrastructure contributes to the social welfare of economic growth and about how to prioritize investment in infrastructure in developing countries, this is what the host country considers.

A host country, of course, also has the freedom to set investment regulations according to its national development[12]. The host country government will use its power to encourage the private sector to enter the country in line with its national goals. In line with what [13]stated, the foreign capital allowed to enter Indonesia was for development. It should be following economic developmen[14]. From the beginning, the founding fathers of the Republic of Indonesia wanted to form a state as a vehicle for pursuing the nation's ideals[15]. Therefore, the state should maintain the welfare of its people through the power and authority to manage production branches that are important for the state and affect the livelihood of the people[16]. Article 33 of the 1945 Constitution requires a state monopoly to control the earth (land) and water along with the natural resources contained therein and the production branches that hold the livelihood of many people.

The question is whether it is not too soon to rely on the private sector for infrastructure financing, especially those with a strategic function for the economy and significant externalities for the community[17]. Then does the government's limited budget reflect the best or efficient efforts, so it can no longer carry out its minimum role in developing strategic and vital projects for the lives of many people? If the private sector plays a role in infrastructure management, does the constitution support the private sector's role[18]? Infrastructure is needed to increase competitiveness, encourage more investment, production, and trade activities, and accelerate equitable development to reduce poverty and unemployment rat[19, 20]. This article examined the participation of foreign investors in strategic infrastructure financing linked to the national economy based on economic democracy.

Private Participation in the National Economy Based on Economic Democracy

Article 33 of the 1945 Constitution affirms that the Indonesian economy is based on economic democrac[21]. It means that the financial system, economic development objectives, policies, and programs are all based on economic democracy. Economic democracy, as stated in Article 33 and its explanations, are the only articles that refer to the financial system. An economic system that embodies the principle of economic democracy has three main characteristics. One of the main characteristics of an economic system is the existence of three principal economic actors, namely cooperatives, the state sector, and the private sector. All three are recognized for their presence and role[21].

According to[21], the essence of economic democracy was the broadest possible economic participation by economic actors consisting of three sectors: the cooperative, the state, and the private. All three must work together. A partnership must be established between the three economic actors in the current context. Partnerships among economic actors are increasingly emphasized and strengthened by MPR Decree Number XVI/MPR/1998 concerning Economic Politics in the Context of Economic Democracy. This regulation highlights the existence of mutually beneficial linkages and partnerships between economic actors, including small, medium, and cooperative businesses, large businesses, private sector, and State-Owned Enterprises (BUMN). They strengthen each other to realize economic democracy national efficiency that is highly competitive. In the national financial system based on economic democracy, cooperatives, state-owned enterprises, and the private sector, each as a sub-system, form the economic structure as a joint effort based on the "kinship" principl[22, 23].

The principle of "kinship" requires the national economy to be built based on the principles of togetherness, the spirit of mutual assistance, and cooperation[22]. In this regard, in the national economy, the role of the private sector, in addition to making profits, is also directed to create cooperative relationships based on mutual support and mutual benefit (the spirit of mutual assistance, the principle of "kinship" in the Indonesian economic system) with other economic actors, namely SOEs and cooperatives, making a positive contribution to increasing national production, and providing goods/services needed by the community, in terms of adequate quantity, quality, and affordable price[24]. The roles of each economic actor are described in Table 2 below[25]:

Table 2

The roles of economic actors

Economic Actors	Position/Role
SOE	The most appropriate institution to play a significant role in strategic activities and control many people's lives (capital and technology-intensive) to create stability and equitable growth. SOEs are the principal factor in critical economic activities and managing the livelihood of many people. SOEs play a significant role in strategic economic activities that affect many people's lives. If not SOEs, it is feared that one person would be financially dominating, which would harm the people.
Cooperative	Institutions of economic actors owned by all people are more appropriate to carry out their primary role in economic activities that control many people's lives (people's economy) to create equitable growth and stability. Cooperatives are the pillars of the people's economy and are given a role by the state to develop economic activities. These activities include controlling many people's livelihood and are produced by many people.
Private	Economic institutions owned by individuals or groups are more appropriate for creating growth and equity. Private companies will mainly engage in economic activities outside the production branches, which are important and affect the livelihood of many people. Following its characteristics, private companies can create high collective productivity and efficiency.

State Control of Strategic Production Branches That Control the Lives of Many People

Constitutionally, the national economy, which is based on Article 33 paragraph (2) of the 1945 Constitution, has provided the basis for regulating all economic development activities that are strategic for the state: "*production branches which are important to the state and which affect the state controls the livelihood of the people by the state*." The phrase "*the state controls*" is nothing but control in a broad sense, including the notion of ownership in a general mind, which consists of the idea of ownership in public and civil, including the power to control in managing these business fields directly by the state. The authority is burdened with particular tasks[26, 27].

Important production branches, natural resources, and production branches that control many people's lives are placed in the area of public law, not private. Consequently, these three sectors cannot be placed in the context of individual ownership (institutional property rights, etc.) but are set in collective ownership. This conclusion argues that all economic resources contained in Article 33 of the 1945 Constitution are public goods, under the characteristics of public goods built from a financial perspective. Public goods have a non-excludable nature, and the state must guarantee access to these public goods. Thus, the emergence of state control rights is a collective representation of the Indonesian people[28]. The meaning of being controlled by the state is stated in Article 33 paragraph (2) of the 1945 Constitution has the following normative powers:

1. The constitution gives the state the authority to control the production branches, which are essential to the state and which affect the livelihood of the people

2. The authority is directed to those who will or have worked on the production. This product must be essential for the state and affect people's livelihood. In a production branch whose type of production does not yet exist or is about to be cultivated, whose kind of production is vital to the state and affects the livelihood of many people, the state has the right to take precedence, namely the state operates on its own and controls the branch of production and at the same time prohibits individuals or the private sector from running the production branch

3. In the production branch, which has been managed by individuals or the private sector and it turns out that the production is vital for the state and affects the livelihood of the people, with authority granted by Article 33 paragraph (2) of the 1945 Constitution, the nation can take over the production branch in a manner that is under the fair rule of law

Discussion

Increasing the country's competitiveness in infrastructure is related to the critical role of the government in making and issuing policies and laws in the infrastructure sector[29]. [30]stated that in the era of construction, the law must be the commander of development and a means of community renewal. The law must oversee development in the future and not be hobbled behind by events in society. The legal instruments needed are legal instruments that can meet the needs of the Indonesians in a global era that can also support the ideals of national law to achieve national goals in the form of mutual prosperity while competing with other countries[31].

Infrastructure gets priority to be accelerated in national development through the policy of accelerating national infrastructure development. NSP is one of the strategic national policies in accelerating national infrastructure development to meet basic needs and improve people's welfare. The government accelerates infrastructure development through NSP carried out by the central government, regional government, and business entities, originating from the government and non-government budgets. The infrastructure funding framework for 2020-2024, as referred to in the Presidential Regulation on the 2020-2024 RPJMN, the financing needs for infrastructure provision is Rp. 6.445 trillion, of which the source of financing comes from the government (37%), SOE (21%) and the private sector (42%).

The financing posture that gives the most considerable portion to the private sector for infrastructure provision in Indonesia is depicted in the diagram below[32]:

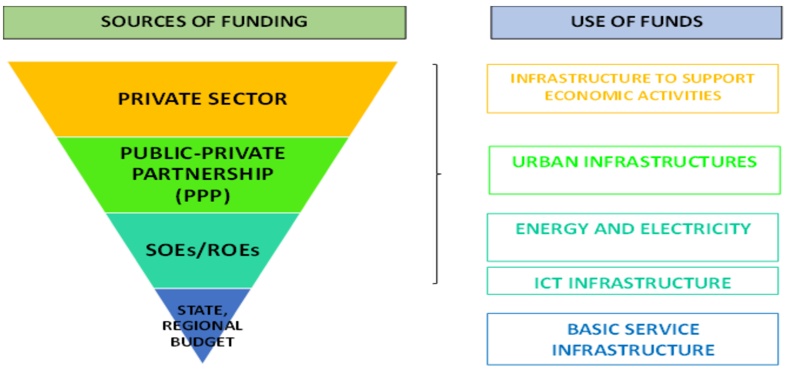

Figure 1. Sources of funding for infrastructure provision

Even though infrastructure provision is seen from a commercial and profit perspective, it must benefit the people. Of course, the responsibility for infrastructure development cannot be left to the private sector. Infrastructure development is closely related to the roles and responsibilities of the government and the state[33, 34], so that involving private sector participation in the provision of government and state infrastructure is very important in intervening because:

1. The private sector cannot be involved in the problem of externalities, i.e., social and economic benefits in general; thus, public sector intervention is needed
2. Without this intervention, infrastructure that must be freely available to all as public goods and services cannot be built, especially involving networks, including roads and road services
3. Infrastructure competition provisions can be inefficient, and monopoly provisions require some form of public control
4. Although competition is possible, the public sector must continue to provide valuable goods and services (merit goods), i.e., less readily available infrastructure (such as private schools)
5. Infrastructure requires a high initial investment and thus yields only long-term returns. It isn't easy to get private capital for this investment without the support of several public sectors

According to [35], the government's role in providing infrastructure is related to the following three functions:

1. *Allocation* is the function of the government in delivering goods. This role is intended so that the community can meet their needs. The market cannot provide these goods, so the government offers the goods
2. *Distribution* is the government function that seeks to achieve equity in the procurement of goods/services in each region, and
3. *Stabilization* is the government function in maintaining the stability of the country's economic sector

The founders of the Republic of Indonesia agreed that one of the goals of establishing the Republic of Indonesia was to realize justice and prosperity for the nation[36]. In this regard, the state or government should recognize and ensure social welfare in an atmosphere of maximum wealth according to social justice for all Indonesians[37]. The national economic framework must be aimed at realizing the interest of the Indonesian people through state control over strategic production branches controlling the livelihoods of many people.

Referring to Hatta's views and the views of experts regarding the elaboration of Article 33 of the 1945 Constitution, the meaning of being controlled by the state is the state must strengthen the position of the company or production branches owned by the state. Little by little, it can finally provide itself with the needs that constitute the livelihoods of many people and replace the role of private companies, both national and foreign ones. Meanwhile, in other considerations, it is stated that private business actors will be oriented towards profits only obtained in a market that has been formed. In his view related to this, according to [38]: "*Even if private investors target infrastructure development, they prefer to work in more profitable sectors, especially the telecommunications sector, while important sectors for the poor, like clean water and sanitation, are neglected*." In this regard, the question is how is the participation of the foreign private sector in carrying out businesses in the fields of production branches that are strategic and affect the livelihood of many people and strategic infrastructure.

Quoting Soepomo's opinion as quoted by Atif Latipulhayat, that: *"…the private sectors may be involved only in non-strategic sectors that do not affect the lives of most people… if the state does not control the strategic sectors, they will fall under the control of private individuals, and they will oppress the people*"[39]. From the statement, the private sector may only be involved in non-strategic industries that impact many people's lives. If the state does not control the strategic industry, the industry will be under the control of private individuals, and those private individuals will oppress the people.

State control over strategic sectors, including crucial strategic infrastructure, is carried out by the state through the government's role in providing infrastructure. As stated by Mohammad Hatta quoted by Atif Latipulhayat and then repeated by [40]: "*The government should build public infrastructures such as electricity, water supply, sewage system, public transportation, and other utilities that affect the livelihood of the* *most people or what we call "public utilities." All these are the responsibility of the government*." From the statement, the government should build public infrastructures such as electricity, water supply, sewage system, public transportation, and other utilities that affect many people's lives or so-called "public utilities" because all infrastructure is the government's responsibility.

The Indonesian constitution does not specify which infrastructure belongs to the category of production branches that are important to the state and affect the livelihoods of many people, which the state must control. However, in Article 33 of the 1945 Constitution paragraph (2) and paragraph (3), this matter is regulated. Paragraph (2) states that "*Production branches that are important for the state and affect the people's livelihood are controlled by the state*." Then in paragraph (3), it is stated that "*Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people*." Regarding state control over the strategic sector, Mohammad Hatta, as the founding fathers, also gave his opinion:

"…Paragraphs two and three of Article 33 deal with state control over the strategic sectors. Nevertheless, it does not necessarily mean the state itself should be an operator or provider of goods or services. More precisely, state control means state regulation of economic activities, particularly to prevent the exploitation of those who are economically weak by those who are economically strong…." [41]

The state must take control of the production branch it controls to fulfill three things that are in the public interest, namely: (1) sufficient availability, (2) equitable distribution, and (3) affordable prices for many people. The mission contained in state control is the integrity of the paradigm adopted by the 1945 Constitution. It can even be a legal ideal (*rechtsidee*) of the 1945 Constitution. Therefore, according to [42], "The government can no longer burden the work on the private sector. Private investment in infrastructure can never be sufficient and often has an unintended consequence: sacrifice the poor." For example, in considering the Constitutional Court's Decision No.001-021-022/PUU-I/2003 regarding the review of Law Number 20 of 2002 concerning Electricity, the Constitutional Court stated as follows:

"*Electricity as a public utility cannot be submitted to a free-market mechanism because, in a free market, the parties make decisions based on supply and demand, while the so-called market is essentially based on purchasing power and supply strength. If that is the case, then the accurate measure of each transaction that occurs is the profit of certain parties based on supply and demand, which is based more on reduced supply. Still, demand grows, which only profits producers or power plants*."

Electricity (which belongs to public goods) is a classic case of natural monopoly under public regulation [43]. The Constitutional Court stated that it had been proven that electric power is a vital production branch for the state and affects the livelihood of many people. Following Article 33 paragraph (2) of the 1945 Constitution, the state must control the electricity production branch. Electricity is vital for the state, both as a commodity that becomes a source of income and a necessary infrastructure to carry out development tasks needed by the community and control many people's lives because electricity is a public service. Another example is the port being a vital production branch and maintaining the livelihood of many people. This right of state control becomes a tool to achieve the goal of the greatest prosperity of the people, which imposes obligations on the state as follows[44]:

1. All forms of port utilization must significantly increase the prosperity and welfare of the community
2. Protect and guarantee all the rights of the people around the port, and the benefits of the port's operational activities can be enjoyed directly or indirectly by the people
3. Prevent all actions from any party that will cause the people not to have the opportunity or will lose their rights to participate in the port activities

Port infrastructure, both seaports, and river or lake ports, have a vital role in its strategic role as:

1. An intersection in the transport network according to their hierarchy
2. Gateway to economic activity
3. A place to change modes of transportation
4. Supporting industrial and trade activities
5. Area of distribution, production, and consolidation of cargo or goods, and
6. Realizing the archipelagic concept (Nusantara) and state sovereignty

In many developing countries, government-owned enterprises have traditionally provided infrastructure services, referred to as SOEs (BUMN) in Indonesian laws and regulations[45]. Based on Article 33 paragraph (2) of the 1945 Constitution, state companies manage necessary economic fields that control many people's lives. If the state does not control it, it is feared that some individuals or financial institutions will have financial domination that oppresses the people and makes them suffer. Thus, SOEs' primary function and role are to ensure the availability and accessibility of critical economic needs that concern the livelihoods of many people, both those that are not and are produced by the people[46].

State intervention in production branches that are important to the state and affect the people's livelihood must be the basis of economic development. A financial system can be structured based on the "kinship" principle and togetherness [47]. The concept of the welfare state becomes a guideline for the state to continue to realize the welfare of the community through the management of production branches that are important for the state and the livelihoods of many people, requiring that the existence of monopoly rights cannot be eliminated. To remain competitive with the private sector, the state companies can cooperate. Through SOEs, the state will still have control in vital SOE business activities related to production branches that are important for the state and the livelihoods of many people by not handing over all management authority to the private sector[48]. The prominent role of SOEs is to produce goods and services that are strategic and concern the livelihoods of many people in sufficient quantities, of high quality at affordable prices for the community. Industries that are strategic and control the lives of many people must still be governed by the state, in that the state must manage them through SOEs.

The Constitutional Court Number 001-021-022/PUU-I/2003, regarding the review of Law Number 20 of 2002 concerning Electricity, clearly states that electricity is still an important production branch for the state and affects the livelihood of many people. Therefore, according to article 33, paragraph (2) of the 1945 Constitution, it must remain controlled by the state. The state must manage it through state companies funded by the government or in partnership with national or foreign private companies that include borrowed funds from within and abroad or involving national/foreign private capital with a good and mutually beneficial partnership system. It means that only SOEs can manage the electric power business, while national or foreign private companies only participate if they are invited to cooperate by SOEs, either through partnerships, equity participation, capital loans, or others. In this regard, the production branches that are important for the state and affect the people's livelihood must remain controlled by the state through management by SOEs. At the same time, foreign private companies are allowed to participate if they are invited to cooperate by SOEs through good and mutually beneficial partnerships with the state companies.

However, in terms of involving foreign private companies through financing partnerships in infrastructure projects, it is necessary to consider what benefits and costs will be borne by the community from the participation of this foreign investment. A project that will provide maximum benefits to investors will not necessarily offer full benefits to the community[49]. Because it is undeniable that there are differences in interests between investors and the government in an infrastructure project, investors will pay more attention to the level of expected profits and risks. In contrast, the government is more concerned with the project's benefits for the national economy[50]. Given the limited resources they have in providing infrastructure, the state must choose from the many options available, what policies to take and which projects to finance to support the achievement of larger national goals. When the government decides to build or not build infrastructure, there will be a decision-making cost. Decisions that take place in a political process need to be scrutinized. What then becomes a decision does not necessarily reflect economic calculations but is greatly influenced by the subjective perceptions of the parties involved in the process[51]. Therefore, the point of view used in decision-making in infrastructure development is the pursuit of profit and how the infrastructure built can benefit the community.

According to[52], the methodology often used in decision-making by estimating the benefits and costs of projects from the community's point of view is *Cost-Benefit Analysis* (CBA). How much help will be obtained by identifying all costs and benefits that the project will generate for the public? A project will be considered economically viable if needed and can provide better or similar benefits at a lower cost than the alternative options. The project is evaluated to see the project's contribution to the community's welfare. CBA becomes a tool for making public decisions by considering the community's interests[53].

In this regard, decision-making on infrastructure provision by providing opportunities for foreign private companies to participate as a new paradigm reflects the spirit of "*not doing business as usual*" so that it does not completely depend on government financing. It is necessary first to examine the costs and benefits that the community will bear with the participation of the foreign private sector. As a developing country like Indonesia, it is hoped that foreign private sector participation in infrastructure projects is in line with the state's interests in realizing people's welfare. The involvement of the foreign private sector in financing the provision of infrastructure must provide greater benefits than the costs for the community. The built partnership must provide the best public service (best sourcing) to the community to be a solution amid the government's limitations in providing financing for the provision of national strategic infrastructure.

As stated by [54], in developing the national economy, there is no need to reject the entry of foreign investment to participate in building the national economy. Mohammad Hatta even emphasized that "*This is the way we used to think about how to carry out economic development based on Article 33 of the 1945 Constitution. If national energy and capital are insufficient, borrow foreign workers and foreign capital to launch production. If foreign nations are not willing to lend their capital, they are allowed to invest their capital in our homeland on conditions determined by the Indonesian government itself [55]*."

For this reason, as a sovereign country, the Indonesian government as the host state will encourage foreign private companies to invest in the country so that it is in line with national interests. As a host state, it must evaluate the costs and benefits of foreign investment as a consideration in making decisions to provide opportunities for foreign private companies to invest through financing partnerships in national strategic infrastructure. In general, developing countries will ensure that the entry of foreign investment into their land so that it is in line with the host country's interests is carried out by "filtering" the foreign investment to prevent harmful impacts on its economy. This idea is as stated by [56]

"*The developing states maintain screening legislation to exclude investments they perceive as harmful to their economies. This is a right that is unlikely to be given up*".

United Nations Centre on Transnational Corporations (UNCTC).

Sornarajah conducted a study on the role of foreign investment in the host country by identifying the following costs and benefits:

"*The studies of the* UNCTC *on the role of foreign investment helped to identify the benefits and the harmful effects of foreign investment. The beneficial effects identified were similar to those identified by the classical theory of foreign investment supporters. There was definite supports for the view that foreign investment made by multinational corporations benefits the local economy through the flow of capital and technology, the* *generation of new employment, and the creation of new opportunities for export income. While pointing out the benefits of foreign investment, these studies also identified the harmful effect of foreign investment. For the first time, serious efforts were made to identify the precise types of activity of multinational corporations which could harm the host economy.*"

The effects of foreign investment for host countries will vary from one country to another depending on the priorities of each government. Robock and Simmonds [57] argued: "The mix of effects included in any evaluation, however, will vary from nation to nation and reflect differences in national priorities. The same effect will almost certainly be weighted differently by different nations, and the effects considered will change over time as national priorities change." Furthermore, they explained three stages in calculating the benefits of foreign companies for the host country, namely:

"Conceptually, the final or "bottom line" calculation in measuring national benefit involves three steps that the foreign firm must understand. First, it does not benefit from the business expansion that is being measured. Instead, the focus is on contributions by the foreign firm that would not otherwise be available to the nation. Only the net contributions from domestically controlled business activities count over what might have been available. Second, cost and benefits are calculated, and the foreign enterprise must provide a surplus of benefits over cost. Third, it is not enough for the benefits to be positive. The surplus must be greater than that for other alternatives available to the nation for significant common interests to exist between the enterprise and the specific nation-state."

According to what Robock and Simmonds explained above, calculating the benefits of foreign companies for the host state can be done by calculating the costs and benefits. Foreign companies must provide benefits to the host state if the latter's benefits exceed the costs that the host state must bear.

Likewise, in utilizing foreign investment through financing partnerships, the provision of infrastructure must provide benefits in terms of technology, skills, managerial, employment opportunities, and so on that provide a multiplier effect for national economic development. The participation of the foreign private sector investing in Indonesia to participate in national infrastructure development must provide benefits greater than the costs borne by the Indonesian people. Incoming foreign investment must support the implementation of national development, which is directed at increasing national production but must be more directed at improving the community's welfare. Therefore, in national development, what can be taken into consideration in providing opportunities for foreign private investment can be viewed from the following aspects [58]:

1. Does the investment increase production and explore the existing potential into reality? How to direct and secure it so that it benefits the interests of national development and not the other way around getting results enjoyed by other parties?
2. Can the investment create employment opportunities for Indonesian workers, including aspects of the type needed, the amount and for how long the foreign workers can be replaced with Indonesian workers, educate or train workers, and so on?
3. Can the investment increase development results' distribution and community participation in development activities? How to strengthen the role and involvement of the community, create strong entrepreneurship, and enter into joint venture cooperation with foreign capital that brings benefits to the national side?
4. Can the investment create an even distribution of activities to the regions, including aspects of marketing, availability of labor, raw materials to be used widely, and how infrastructure development can be developed in the areas so that it has a double effect on further business development?

Following Article 33 of the 1945 Constitution, the Indonesian economy is based on economic democracy, meaning that both the financial system, the objectives to be achieved by economic development, policies, and programs are all based on economic democracy[59]. Economic growth is based on economic democracy and prosperity[60]. The 1945 Constitution requires government intervention and regulation in the community's economic life only in terms of the production branches, which are harmful to many people's lives and even then because the state's aim is the greatest prosperity of the people [61]. Referring to Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution, any investment activity that concerns the public interest or affects the livelihood of many people, the government of Indonesia must have control in regulating and taking advantage of the investment activity[62].

In connection with the government's efforts to accelerate strategic infrastructure projects, the strategic role of infrastructure is to increase productivity, reduce production costs, create jobs, encourage the development of other sectors, improve information networks and market access. Infrastructure progress also impacts the effectiveness of achieving economic growth, reducing poverty, unemployment, and equitable development in each region[63]. Therefore, the participation of foreign private sectors in providing infrastructure through financing partnerships in Indonesia must pay attention to the following principles[64]:

1. Stay in line with the principles, goals, objectives, and insights in the implementation of national development
2. Mutual need, mutually reinforcing, and mutually beneficial
3. Improving the efficiency and quality of infrastructure development and management
4. Increasingly encouraging economic growth
5. Improving service quality and providing greater benefits to the community
6. The participation process is carried out through an open and transparent bidding process to encourage the investment climate
7. Following the applicable laws and fully complies with Indonesian law

According to [65], the partnership between SOEs and foreign private companies in the provision of infrastructure must be able to:

1. Meet strategic needs that affect the lives of many people for all levels of society
2. Generate a mutual agreement between the government (SOEs) and foreign private sector in determining the number of goods and services as well as a reasonable income to ensure the continuity of its business activities through deliberations aimed at reaching a consensus, and
3. Support and strengthen each other to realize a strong and independent national economic structure

Conclusion

Foreign private sector participation in investing in the framework of financing the provision of strategic infrastructure included in production branches that are important to the state and which controls the livelihoods of many people is still possible in the national economy based on economic democracy. It is through a partnership between foreign private companies and SOEs on the condition that the foreign partners are very much needed so that SOEs invite them to participate in the provision of strategic infrastructure. As a partner of SOEs in providing infrastructure, foreign private companies can join in the form of capital, technology, expertise, and labor and management needed while still placing SOEs as determinants in decision making and controlling holders in the direction of national strategic infrastructure. The reason is to fulfil three public interest matters: (a) sufficient availability, (b) even distribution, and (c) affordable prices for many people. The participation of the foreign private sector in the provision of national strategic infrastructure must provide considerable benefits compared to the costs borne by the Indonesians in improving welfare. For this reason, the results of the analysis of the costs and benefits of foreign private participation in the provision of national strategic infrastructure are very important in setting up policies in providing opportunities for them to provide national strategic infrastructure.

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