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Juridical Study on Changes from Perumda to Perseroda (PT. Air Minum Giri Menang)

Baiq Nunung Sukaryati Chindra¹, Hirsanuddin², Djumardin³

^{1,2,3} Notary Masters Study Program, Faculty of Law, University of Mataram

E-mail: nunungschindra@gmail.com

Abstract

Este estudio tiene como objetivo analizar y determinar el estado de participación de capital regional presentado a Perseroda PT. Giri Gana y analiza y descubre cómo los directores son responsables de las pérdidas que se producen en la gestión de la empresa PT. Giri gana agua potable. Los resultados de este estudio son primero, el gobierno local en el contexto de la implementación de la autonomía regional puede tomar medidas y esfuerzos para aumentar las fuentes de ingresos locales con el fin de aumentar el crecimiento y desarrollo de las actividades de desarrollo en el sector económico a través de la formación y participación de locales. capital del gobierno a BUMD. El régimen jurídico de la propiedad estatal debe dividirse en "propiedad privada (dominio privado) y propiedad pública (dominio público)". En segundo lugar, el Consejo de Administración de la empresa puede ser considerado personalmente responsable de la quiebra de PT. La rendición de cuentas debe basarse en hechos jurídicos como principal requisito para impulsar la implementación de los artículos de la Ley PT y la Ley KPKPU. Los miembros de la Junta Directiva no pueden ser considerados responsables por las pérdidas de la Compañía si pueden probar ciertas acciones que han sido determinadas.

Keywords: *Regional Capital Participation, Perseroda PT. Air Minum Giri Menang, Responsibilities of the, Board of Directors, Company*

A. Introduction

In the context of Regional Owned Enterprised (hereafter referred to as BUMD) activities, Law Number 23 of 2014 concerning Regional Government (UU Pemda) is the legal basis for regions in managing government activities in the regions, including their economic activities, on the basis of the principle of the greatest autonomy within the framework of the Unitary State of the Republic of Indonesia. In the system of the Unitary State of the Republic of Indonesia, the concept of the widest autonomy refers to the flexibility in exercising the authority delegated by the Central Government to the Provincial, Regency, and/or City Governments to care for their own government households, increase competitiveness in relation to globalization and democratic principles, equity, justice, specificity, as well as regional potential and diversity (Stievany & Jalunggono, 2022). The principle is to expedite the attainment of societal welfare.

Based on Article 114 paragraph (2) of Government Regulation (PP) No. 54 of 2017, Regional Public Company (hereinafter referred to as Perumda) may transform into Regional Limited Liability Company (hereinafter referred to as Perseroda) during its development (Ainiyyah, 2022). Further, Article 334 paragraph (2) of Law No. 23 of 2014 stipulates that Perumda be renamed by Perseroda if it is owned by more than one region (Sari et al., 2017). Regarding the change in its aims, neither Law No. 23 of 2014 nor its implementing rules, notably PP No. 54 of 2017, regulate the change in its legal

form. Article 114 paragraph (2) of PP No. 54 of 2017 merely indicates that the change in the legal form of the Regional Owned Enterprises (BUMD) is carried out in order to achieve the goals and restructuring, without specifying what kind of goals would be attained following the change in legal form. As a result, it is difficult to ascertain whether the aims of Perseroda have changed as a result of the change in the legal form of Perumda, i.e., whether they are no longer oriented toward public services and are instead more profit-driven (business oriented) (Ikhwanisyah et al., 2018). The uncertainty arises because Limited Company (Perseroda) aims to seek profit. According to Prof. Soekardono, Limited Company is an agreement with a special shape designed to generate economic benefits (Burton, 2007). Although there is no rule governing the change in intent, it is anticipated that the transition from Perumda to Perseroda will not harm the community (Cahyaningrum, 2018).

It is impossible to separate the formation of this BUMD regulation from Law No. 5 of 1962 regulating Regional Enterprises. (Chusnida & Binada, 2022) On its voyage, BUMD is included in one of the Regional Government Law's materials, specifically Chapter XII beginning with Article 331 and ending with Article 343. The most current is the December 2017 implementation of Government Regulation (PP) Number 54 of 2017 pertaining to BUMD (PP BUMD). BUMD has not always offered optimal conditions for its management, as the BUMD special law has not yet been drafted and it is only partially regulated in regional government documents. The Government Regulation defines BUMD as a business whose capital is entirely or partially controlled by the region (Lathif et al., 2021; Rustini et al., 2022a). Similar to the formulation of Law No. 5 of 1962 regarding Regional Enterprises, in which Regional Companies are all companies founded with capital deriving from regional assets that have been separated, unless otherwise governed by law. The government acts as a business actor in terms of capital ownership (Abrianto et al., 2019).

A regional public company can change its status/legal form to become a regional limited company. Based on Article 114 paragraph (2) Government Regulation of the Republic of Indonesia Number 54 of 2017 concerning Regional Owned Enterprises determines BUMD can make changes to the legal form, Changes in the legal form as referred to in paragraph (1) in order to achieve the objectives of BUMD and restructuring, The change in the legal form of BUMD as referred to in paragraph (1) consists of Changes in the legal form of a regional general company into a regional company company; and Changes in the legal form of a regional company to a regional public company. The change in the legal form of BUMD as referred to in paragraph (1) is stipulated by a Regional Regulation. Further provisions regarding changes to the legal form of BUMD are regulated in a Ministerial Regulation.

Following the issuance of the Regional Regulation of the Regency of West Lombok Number 2 of 2019 concerning the Giri Menang Regional Water Supply Company, that the Giri Menang Regional Water Supply Company of West Lombok Regency which is stipulated in the Regional Regulation of the Regency of West Lombok Number 4 of 2012 changed to the Giri Menang Regional Water Supply Limited Company. With the change in the legal entity status of Regional Public Company (Perumda) to Regional Limited Company (Perseroda), there will be a fundamental change in the establishment, management of the Perseroda, especially the responsibility of the perseroda managers,

especially with regard to shareholders, directors and commissioners as well as the status of regional money that is paid up as capital participation for regional companies.

This study aims to analyze and determine the status of regional capital participation submitted to PT. Giri Menang limited company and analyzes and finds out how the directors are responsible for losses that occur in managing the PT. Air Minum Giri Menang as a limited company.

B. Method

This research belongs to the type of normative legal research or also known as doctrinal research with a statute approach and a conceptual approach. The primary legal materials used are court decisions. Legislation and court decisions in question include: The 1945 Constitution of the Republic of Indonesia and all its amendments, Law Number 5 of 1962 concerning Regional Enterprises, Law Number 17 of 2003 concerning State Finance, Law Number 19 of 2003 concerning State-Owned Enterprises, Law Number 23 of 2014 concerning Regional Government, Law Number 40 of 2007 concerning Limited Liability Companies, Government Regulation of the Republic of Indonesia Number 54 of 2017 concerning Regional Owned Enterprises., West Lombok Regency Regional Regulation Number 4 of 2012 concerning the Giri Menang Regional Water Supply Company (PT. Air Giri Menang), West Lombok Regency Regional Regulation Number 2 of 2019 concerning the Giri Menang Regional Water Supply Limited Company (PT. Air Giri Menang).

C. Research Results And Discussion

1. Regional Capital Participation Application Status For Pt. Air Minum Giri Menang As A Regional Limited Company

In legal science, there are two types of legal entities in terms of the authority they have, namely: (Atmadja, 2009).

- 1) A public legal entity (*personne morale*) that has the authority to issue public policies, either binding the general public or *algemeen bindend* (eg the Taxation Law) and not binding the general public (eg the APBN Law); (Nurnaningsih & Solihin, 2020)
- 2) Private legal entities (*personne juridique*) that do not have the authority to issue public policies that are binding on the general public.

Meanwhile, the state is a public legal entity that cannot carry out its authority without going through its organs represented by the government as a public authority. The state can establish another public legal entity (regional) or establish a civil legal entity (*Persero* or Limited Company) such as *Nederlandse Bank NV* in the Netherlands or *Javaansche Bank N.V.* during the Dutch East Indies period, whose organization and establishment based on certain considerations were carried out by public legal entities (Perorangan & Kekeluargaan, n.d.), while civil legal entities do not have the authority to form public legal entities.

In doctrine, legal entities or *rechtspersoons* (*corpus habere*) have the same rights and obligations as other legal subjects such as humans (*natuurlijke persoon*). Therefore, it is very thin before the law to distinguish the rights and obligations of the two legal subjects. Although legal entities are not in the *jus gentium* sense, as are human legal subjects that require certain requirements to be said to have

rechtsbevoegdheid or legal capacity (Article 29 of the Civil Code), legal entities require formal juridical requirements and four material requirements, namely having separate assets, having certain goals, have certain interests, have an organized organization.

In the context of the state as a public legal entity, the legal position of state property must be divided into "private property (domaine prive) and public property (domaine public)" (Perorangan & Kekeluargaan, n.d.). The law governing private property is not at all different from the law governing ordinary civil property (gewone burgerlijke eigendom), namely civil law. Meanwhile, the law governing public property is regulated in a separate statutory regulation. In the case of the state as the owner of private property, the government as a representative of the state, takes actions or actions that are private (civil) as well. In its position as a private legal entity, the government enters into legal relations (rechtsbetrekking) with other legal subjects based on private law. One of these civil law relations is the government's own or together with other legal subjects, which do not include state administration, incorporated in a certain form of cooperation (vorm van samenwerking) regulated by civil law, for example joining to form a limited liability company.

The existence of this form of cooperation in the formation of a limited liability company, based on Law Number 40 of 2007 is carried out on the basis of an agreement. This means that when the government expresses its desire to establish a limited liability company, its implementation is carried out on the basis of an agreement or cooperation with other parties. In the process of establishing a company agreement, the government cannot force its will to reach an agreement. In other words, the government in entering into an agreement to establish a limited liability company, the government must comply with the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, namely the existence of an agreement, skill, regarding a certain matter, and a lawful cause.

In the case of the establishment of a limited liability company, the government cannot act using its public power and authority to regulate and manage the company. This is because the government's participation in the company acts as a private legal subject so that the responsibility for its management cannot be borne by the government as a public legal entity. For example, the burden of liability for companies whose shares are owned by the state, which causes losses to other parties cannot be borne by the government as a public legal entity. However, it is charged to the company to carry out the provisions of Article 1365 of the Civil Code which states as follows. "Every unlawful act that causes harm to another person, obliges the person who caused the loss to pay compensation for the loss."

If the responsibility for compensation is borne by the government as a public legal entity, it is feared that public services will be disrupted. Likewise, government planning and work will not be carried out properly due to civil claims and lawsuits filed by other parties against the government as a civil legal entity (the state as a *sui generis* legal entity).

Consequently, if there is no distinction between legal position and the government's *recht positie* in a limited liability company, the limited liability company's autonomy will be diminished. This is the result of excessive government intervention and the government's tendency to neglect owners, creditors, other associated parties, and the company's own interests. There is a possibility of a conflict

of interest between shareholders and a limited liability corporation, or between minority shareholders and majority shareholders, according to the general explanation of Law Number 40 of 2007. This situation demonstrates the function of the state, which in this case is represented by a government that has positioned itself as a private legal entity within a limited liability company, identical to the legal status of other shareholders. Its role must be distinct and independent from its status as a public legal entity since the two statuses have distinct legal characteristics. Without such variations in roles, it will be difficult to establish a legal system that is conducive and gives the maximum support for achieving the Pareto optimum level of economic development.

With the differentiation of the role of the state, which is represented by the government, as a private legal entity in a limited liability company, the loss of a limited liability company caused by irregularities in company funds such as corruption cannot be called a loss to the state, in the sense of harming state finances or the state economy, as regulated in Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption. Therefore, if the public prosecutor applies the articles in Law Number 31 of 1999, to charge a person who commits misappropriation of funds of a limited liability company (Persero) whose shares are all or partly owned by the state, the indictment can be declared not to meet the elements of criminal corruption because the provisions that apply to limited liability companies (Persero) are purely private law including Law Number 40 of 2007.

There are important considerations that must be considered in the legal aspect of state losses in this limited liability company (Persero), namely regarding the position and legal status of state finances in the limited liability company. When it comes to the definition of state finances, the first thing that needs to be understood and stated is what is meant by state finances? The relevance of the definition of state finances in knowing the legal aspects of state losses is due to the fact that this definition directly helps to limit the scope of state losses. The definition of state finances can be understood from three interpretations or interpretations of Article 23 of the 1945 Constitution (Original) which is the constitutional basis of state finances, namely the first interpretation is as follows.

"...the definition of state finances is narrowly defined, and for that it can be stated as state finances in a narrow sense, which only includes state finances sourced from the State Budget (APBN), as a sub-system of a state financial system in a narrow sense..."

If based on this formula, state finances are all aspects covered in the APBN submitted by the government to the DPR every year. In other words, the State budget (hereinafter referred to as APBN) is a description of state finances in a narrow sense so that supervision of the APBN is also a supervision of state finances.

Meanwhile, the second interpretation relates to the systematic and historical method which states as follows.

"...state finance in a broad sense, which includes state finances originating from the state budget (APBN), regional budget (APBD), state owned enterprises (BUMN), regional owned enterprises (BUMD), and essentially all state assets, as a state financial system..."

This meaning contains an understanding of state finances in a broad sense, namely all activities or activities that are closely related to money received or formed based on

state privileges for the public interest. This understanding is then more directed at two things, namely the rights and obligations of the state that arise and the meaning of state finances. As for what is meant by the right is the right to create money; the right to generate results, the right to collect fees; the right to borrow, and the right to coerce." Meanwhile, obligations are the obligation to carry out state duties in the interest of the community, and the obligation to pay claims rights of third parties based on legal relations or special legal relationships. The third interpretation is carried out through an "matic and teleological or sociological system approach to state finances that can provide a relatively more accurate interpretation according to its objectives." The meaning is as detailed below..

"If the purpose of interpreting state finances is to find out the management and accountability system, then the definition of state finances is narrow, meaning that the management and accountability of state finances only applies to provisions concerning state finances, such as UU 17/2003, UU1/2004, and UU15/ 2004. Furthermore, regarding the understanding of state finances, if the approach is carried out using a systematic and teleological interpretation method to determine the accountability system of supervision or examination, the definition of state finances is in the sense of state finances in the broadest sense, which includes finances that are in the APBN, APBD, BUMN/D and essentially all state assets are objects of inspection and supervision."

This third interpretation seems to be the most essential and dynamic in responding to various developments in society. However, such an interpretation will be in line with the development of today's society which demands speed of action and policies, especially from the government, both those based on law (*rechtshandeling*) and those based on facts (*feitelijke handeling*)" and watertight (*waterdicht*) formulation of state finances in terms of management and accountability.

Based on the management and accountability aspects, a fundamental difference will arise when investing with all the risks offered by the government in the two existing types of business entities (BUMN). For investments invested by the government in agency companies (henceforth *Perjan*), the management and accountability are guided by the *Indische Bedrijvenwet* (IBW). Meanwhile, before being amended by Law No. 19 of 2003 concerning BUMN in public companies (*Perum*), it was guided by Law No. 19 Prp. 1960 and now a limited liability company (*Persero*) in Law No. 40 of 2007 and the deed of establishment. With this distinction, it can be seen that the position of state finances in terms of investment invested by the government and the function of public services for the three types of business entities are different. In Agency Companies (*Perjan*) and Public Company, the state's financial position is state assets that are not separated, but based on Law Number 19 of 2003 concerning BUMN, *Perum*'s capital is separated state assets and does not consist of shares. This is different from a limited liability company whose capital is separated state assets. This separation of state assets implies that the government sets aside state assets to be used as investment capital to be used as capital for the establishment of a company or to increase and strengthen the capital structure of a limited liability company so that the logical consequence of state equity participation in a limited liability company is that the government shares the risk and is responsible for business losses incurred that financed it. In taking the risk and being responsible for the loss of

this business, the position of the government cannot be in the position of a public legal entity. This is because the task of the government as a public legal entity is *bestuurszorg*, which is a task that covers all social fields and a concept of a modern legal state that pays attention to the interests of all the people. The consequence is that if a public legal entity has to bear the risk and is responsible for the loss of the business, this function cannot be optimally and maximally carried out by the government and is contrary to general legal principles and applicable legal logic.

Based on this view, it cannot be stated that the government's stake in a limited liability company represents the state as a public legal entity. This notion must be stressed as a positive application of private law in limited liability companies, the shares of which are held by the state, among others. By stating the logical basis of law regarding features of state losses in a limited liability company in which the state owns all or a portion of the shares, the concept of state losses in the sense of affecting state finances is not met. This is due to the fact that when the government, which represents the state as a private legal entity, decides to invest its capital in the form of shares in a limited liability company, public immunity from the state is lost and the government's legal relationship with finance is transformed into shares. Likewise, the provisions for the management and accountability of state finances in the form of shares automatically apply and are guided by Law Number 40 of 2007.

Such conditions resulted in the severance of the relationship between state finances invested in the form of shares in limited liability companies (*Persero*) and state finances so that state finances in the form of shares could no longer be said to have legal status as public finance, but their legal status had changed as private finance which was fully subject to in Law Number 40 of 2007, concerning Limited Liability Companies and other civil law provisions. The difference between the legal status of public finance and private finance in terms of management and accountability procedures is very important, because the management philosophy and responsibilities of each are very different. As for the philosophy of private finance, especially in limited liability companies on the basis of freedom, is how finance can be used as a tool solely to gain the greatest possible profit, without taking into account the negative or positive implications for the welfare of society. In contrast to the philosophy of public finance, which focuses solely on finance to provide the greatest benefit and welfare for the community (*welfare state*), it is this philosophical demarcation that is how important it is to distinguish between public finance and private finance, which in Law No. 17 of 2003, regarding the State Finances this demarcation issue is not touched in the slightest. Apart from that, as said by Hillen Steiner in his book *Public and Private* (in 2000) there is "... that the relation between the public and private domains is essentially asymmetrical", so that the formulation of state finances in Article 2 letter g and i of Law Number 17 of 2003, in terms of philosophy, theory and practice does not qualify as a law that formulates state finances so easily, and cannot be accounted for for the benefit of the people and the state.

Based on this insight, it can be stated that establishing a criminal act of corruption as an act that is detrimental to the state is not limited to the nature of following the formulation of its formal action, which is more important in its material formulation and which is detrimental to state finances. This element of governmental losses is always associated with the state budget. Apparently, a person's act of corruption in a

limited liability company (Persero) whose shares are controlled by the state constitutes a violation of the law and enriches them, other individuals, or an entity. Even so, this act does not materially harm the state's finances because the position and legal status of the state's finances in the company are no longer state finances, but rather the finances of the company (Persero), where the government, as the owner of the shares, has the same legal status as other private shareholders.

As a result, a new legal formulation is required for law enforcement, particularly the criminal law regarding corruption in Indonesia, which is tied to several areas of state losses.

The application of the rules of the criminal law of corruption, as evidenced in Law 31 of 1999, that muddle and fail to differentiate the form of state losses is a legal departure. Possibly as evidence of the separation of the state as a public legal entity with its finances in the form of shares in the Persero, it will be evident that if the Persero experiences a loss and is declared bankrupt, this does not result in the state filing for bankruptcy. Moreover, the mixed position and legal status of state finances in the criminal code of corruption supersedes the separation of the state based on its role and legal status as a public legal entity and a private legal organization.

On the basis of the legal formulation above, it can only be stated that the formulation of Article 3 of Law Number 31 of 1999 cannot be applied to a person who commits an unlawful act to enrich himself, another person, or an entity as not harming the state finances in a certain way. Persero. The public prosecutor is obliged to pay attention to the element of "detriment to state finances" as a means of justifying the existence of a criminal act.

2. Board Of Directors Responsibilities For Losses Incurred In Managing The Pt. Air Minum Giri Menang

Board of Directors Responsibilities according to Law Number 40 of 2007 concerning Limited Liability Companies The personal liability of shareholders is regulated in Article 3 of Law no. 40 of 2007 concerning Limited Company: he shareholders of the company are not personally responsible for the engagements made on behalf of the company and are not responsible for the company's losses in excess of the shares owned. The above provisions do not apply if: The requirements for the company as a legal entity have not been or have not been fulfilled. The shareholders concerned, either directly or indirectly, in bad faith take advantage of the company for personal gain, The shareholder concerned is involved in unlawful acts committed by the company; or the shareholder concerned either directly or indirectly unlawfully uses the company's assets, which results in the company's assets being insufficient to pay off the company's debts.

Company shares are issued in the name of the owner The requirements for share ownership can be stipulated in the articles of association by taking into account the requirements set by the competent authority in accordance with the provisions of the legislation. In the event that the requirements for share ownership have been determined and are not met, the party obtaining the share ownership cannot exercise its rights as a shareholder and the shares are not counted in the quorum that must be achieved in accordance with the provisions of this law and/or the Articles of Association.

As it is known that one of the most fundamental matters of corporate law is related to the principle of limited liability or *limitatief aansprakelijkheid*. Limited liability or *limitatief aansprakelijkheid* is a condition where the shareholders or shareholders or *aandeelhouder* of a company are only responsible for the number of shares they have in the company. In the American legal tradition, the principle of limited liability cannot be separated from the case of *Salomon vs. Salomon & Co.* (1897). The Case of *Solomon vs. Solomon & Co.* This becomes a very important lesson to be able to distinguish between the concept of limited liability and the concept of corporate personality. Which should be the responsibility of the shareholders and which should be the responsibility of the company, if at any time in a legal relationship with a third party the company harms a third party. Basically, a company has several legal rights, which include:

- a) The right to own or control the property.
- b) The right to enter into or make an agreement.
- c) The right to sue and be sued in court.

A company established in Malaysia with the intention of providing leisure activities or promoting business, industry, the arts, sciences, or religion is not permitted to own land without the minister's consent or license, but the minister may grant certain companies with the right to control land land tenure licenses in the amounts and under the conditions deemed appropriate.

As previously stated, the principle of limited liability or *limitatief aansprakelijkheid* is one of the most essential instruments in company law. The concept cannot be authorized based on the principle of piercing the corporate veil, often known as "unscrewing the veil or veil of the company." The principle is a situation in which a court may decide to disregard the principle of separate personality connected to the management of a company or the company as a legal entity. According to Black's Law Dictionary, piercing the corporate veil is a legal procedure in which the court disregards the immunity of the company's management for carrying out the incorrect responsibilities in operating the company. Although the requirements for the establishment of a limited liability company have been explained, not all business entities must meet the requirements for establishment as stipulated in the Limited Liability Company Law.

3. Responsibilities of the Board of Directors According to Government Regulation Number 54 of 2017 concerning State-Owned Enterprises.

According to Chapter 2, the Regional Head is the holder of the regional financial management power and represents the Regional Government in the ownership of Separated Regional Assets. The exercise of power as referred to in paragraph (1) in the BUMD policy includes: equity capital, subsidy, assignment, use of the results of the management of Separated Regional Assets and fostering and supervising equity participation in BUMD.

Article 3 (1) The Regional Head represents the Regional Government in the ownership of Separated Regional Assets on: Regional public company, domiciled as the owner of capital; and Regional limited company, domiciled as shareholder. The Regional Head as the general owner of the Region or the holder of a regional company has a decision. Capital in the share company in the company has the authority to make decisions (3) The authority to make decisions as referred to in paragraph (2) can be

delegated to regional officials. (4) Delegation of authority as referred to in paragraph (2) in paragraph (3) include: a. amendments to the articles of association; b. transfer of fixed assets; c. cooperation; d. investment and financing, including the establishment of subsidiaries and/or equity participation; e. local government capital participation sourced from capital reserve capitalization, asset revaluation gains, and share premiums; f. appointment and dismissal of the Supervisory Board, Commissioners, and Directors; income of the Supervisory Board, Commissioners, and Directors; determination of the amount of use of profit; ratification of the annual report; merger, separation, consolidation, acquisition, and dissolution of BUMD; and asset guarantees amounting to more than 50% (fifty percent) of the total net worth of BUMD in 1 (one) transaction or more; The executor of the authority as referred to in paragraphs (2) and (3) may be given incentives originating from the results of the management of Separated Regional Wealth. The amount of incentives for implementing the authority as referred to in paragraph (5) is determined based on: a. BUMD performance targets; b. classification of results of the management of Separated Regional Assets according to the type of business field; and c. BUMD financial reports.

Article 6 (1) Characteristics of BUMD include: a. a business entity established by the Regional Government; b. the business entity is owned by: 1) 1 (one) Regional Government; 2) more than 1 (one) Regional Government; 3) 1 (one) Regional Government and a non-Regional Government; or 4) more than 1 (one) Regional Government and a non-Regional Government. c. all or most of the capital is Separated Regional Wealth; d. is not a regional apparatus organization; and e. managed by using the usual in the business world. (2) In the event that BUMD is owned by more than 1 (one) Regional Government as referred to in paragraph (1) letter b number 2) and number 4), the share ownership must be owned by one of the Regions more than 50 (fifty one percent).

Article 11 (1) of Regional regulation for the establishment of regional public companies shall at least contain: a. name and place of domicile; b. purpose and objectives; c. business activities; d. standing period; e. the amount of authorized and paid-up capital; f. the duties and authorities of the Supervisory Board and the Board of Directors; and g. use of profit.

Article 17 (1) The articles of association of a regional limited liability company are stated in a notarial deed in accordance with the provisions of the laws and regulations. (2) The articles of association of the company as referred to in paragraph (1) contain: a. name and domicile; b. aims and objectives; c. business activities; d. period of establishment; e. amount of authorized capital and paid-up capital; f. number of shares; g. classification of shares; h. number of shares for each classification; i. rights attached to each share nominal value of each share name of position and number of members of the Board of Commissioners and members of the Board of Directors j. determination of place and procedures for holding the GMS k. method of appointment, replacement, dismissal of members of the Board of Commissioners and members of the Board of Directors l. Duties and authorities of the Commissioners and Directors m. use of profits and distribution of dividends; and n. Article 20 BUMD capital originating from regional capital participation is the limit of regional liability for losses to BUMD.

Article 21 (1) Regional equity participation is conducted for: a. establishment of BUMD; b. addition of BUMD capital; and c. purchase of shares in other regional

companies. (2) Regional capital participation can be in the form of money and goods belonging to the Region. (3) Regional property is valued according to the real value when regional property is made into regional capital participation. The real value as referred to in paragraph (3) is obtained by interpreting the price of regional property in accordance with the provisions of the legislation. Regional capital participation as referred to in paragraph (1) is stipulated by a Regional Regulation.

Article 22 Regional capital participation in the framework of establishing a BUMD is intended to fulfill authorized and paid-up capital. Regional capital participation to fulfill the authorized capital as referred to in paragraph (1) is carried out in accordance with the provisions of the laws and regulations governing regional financial management. The paid-up capital as referred to in paragraph (1) in a regional public company is fulfilled no later than 2 years since its establishment. Regional capital participation in the context of establishing a regional company is carried out in accordance with the provisions of the laws and regulations governing limited liability companies.

Article 23 (1) Regional capital participation in the context of increasing BUMD capital is carried out for: business development; strengthening the capital structure; and local government assignments. (2) Regional capital participation for the addition of BUMD capital as referred to in paragraph (1) is carried out after an investment analysis is carried out by the Regional Government and the availability of a BUMD business plan. Part Three Reduction of Regional Capital Article 24 (1) Reduction of Regional Capital in BUMD can be carried out as long as it does not cause share ownership to be below 51% (fifty one percent) by 1 (one) Region. In maintaining share ownership of at least 51% (fifty one percent) as referred to in paragraph (1), the Regional Government must pay attention to the regulation of authorized capital and paid-up capital in the articles of association. (3) The reduction in share ownership as referred to in paragraph (1) may occur due to divestment and/or dilution; (4) Reduction of legal ownership due to divestment and/or dilution as referred to in paragraph (3) in BUMD is prioritized to be taken over by other Regions and/or other BUMD.

Article 30 Everyone in the management of BUMD in 1 (one) Region is prohibited from having family relations up to the third degree based on a straight line up, down, or sideways, including relationships arising from marriage. Article 55 (1) The Board of Directors manages BUMD. (2) Management by the Board of Directors of a regional company is carried out in accordance with the provisions of the laws and regulations of a limited liability company. which regulates the Limited Liability Company.

Article 56 The Board of Directors of a Regional Public Company is appointed by the Human Development Cadre (hereinafter referred to as KPM) and the Board of Directors of a Regional Government Company is appointed by the GMS.

Article 57 To be appointed as a member of the Board of Directors, the person concerned must meet the following requirements: a. physically and mentally healthy; b. have expertise, integrity, leadership, experience, honesty, good behavior, and high dedication to advancing and developing the company; understand the administration of regional government; understand company management; have adequate knowledge in the company's line of business; f. the lowest certificate is Bachelor (S-1); g. a minimum of 5 (five) years of work experience in the managerial field of a legal entity

company and has led a team; h. aged at least 35 (thirty five) years and a maximum of 55 (fifty five) years at the time of first registration; i. never been a member of the Board of Directors, Supervisory Board, or a Commissioner found guilty of causing the business entity to be led to be declared bankrupt; j. have never been convicted of a criminal act that is detrimental to state finances or regional finances; k. not currently undergoing criminal sanctions; and l. is not currently an administrator of a political party, candidate for regional head or candidate for deputy regional head, and/or candidate for legislative members.

Article 58 (1) The selection process for members of the Board of Directors shall be conducted through selection. (2) The selection as referred to in paragraph (1) shall at least include the fit and proper test stages carried out by a team or professional institution. (3) Further provisions regarding the selection as referred to in paragraph (1) and paragraph (2) are regulated in a Ministerial Regulation.

Article 59 (1) Candidates for members of the Board of Directors who are declared to have passed the selection as referred to in Article 58 are required to sign a performance contract before being appointed as members of the Board of Directors. (2) The provisions regarding the selection as referred to in Article 58 do not apply to the reappointment of members of the Board of Directors who are considered capable of carrying out their duties properly during their term of office. (3) In the event that a member of the Board of Directors is reappointed, the member of the Board of Directors is required to sign a performance contract. (4) The signing of the performance contract as referred to in paragraph (3) is carried out prior to reappointment as a member of the Board of Directors.

Article 60 (1) The number of members of the Board of Directors for regional public companies is determined by KPM. (2) The number of members of the Board of Directors for regional companies is determined by the GMS. (3) The number of members of the Board of Directors for a regional public company as referred to in paragraph (1) and for a regional company as referred to in paragraph (2) is at least 1 (one) person and a maximum of 5 (five) people. (4) The determination of the number of members of the board of directors as referred to in paragraph (3) is carried out based on the principles of efficiency and effectiveness in the management of BUMD. (5) The main director is appointed from one of the members of the Board of Directors as referred to in paragraph (3). Article 61 Members of the Board of Directors are appointed for a maximum term of 5 (five) years and may be reappointed for 1 (one) term of office except: a. determined otherwise in accordance with the provisions of the legislation; and b. In the event that a member of the Board of Directors has special expertise and/or excellent performance, he may be appointed for a third term of office. Article 62 The division of duties and authorities of members of the Board of Directors of BUMD is stipulated in the articles of association.

Article 63 The position of a member of the Board of Directors ends when a member of the Board of Directors: a. passed away; b. his term of office ends; or c. dismissed at any time.

Article 64 (1) In the event that the positions of members of the Board of Directors end due to the expiration of their term of office as referred to in Article 63 letter b, the members of the Board of Directors are required to submit a report on the management of the final assignment of the term of office no later than 3 (three) months before the

end of their term of office. (2) The members of the Board of Directors as referred to in paragraph (1) are required to report the remaining unreported management duties at the latest 1 (one) month after the end of their term of office. (3) Based on the report on the management of the final assignment as referred to in paragraph (2), the Supervisory Board or the Commissioners are required to submit an assessment and recommendation on the performance of the Board of Directors to the shareholders. (4) The report as referred to in paragraph (2) as well as the assessment and recommendation as referred to in paragraph (3) shall serve as the basis for consideration of the KPM or GMS to extend or dismiss members of the Board of Directors. (5) The report on the management of the final assignment of a member of the Board of Directors whose term of office ends is carried out after the results of an audit with a specific purpose or an annual audit from a public accounting firm and submitted to KPM or the annual GMS.

Article 65 (1) In the event that the position of a member of the Board of Directors ends due to being dismissed at any time as referred to in Article 63 letter c, the said dismissal must be accompanied by reasons for dismissal. (2) Dismissal of a member of the Board of Directors as referred to in paragraph (1) is carried out if based on data and information that can be legally proven, the member of the Board of Directors concerned: a. unable to carry out the task; b. does not implement the provisions of laws and/or provisions of the articles of association; c. involved in fraudulent acts that result in losses to BUMD, the state, and/or the region; d. found guilty by a court decision that has permanent legal force; resign; no longer meets the requirements as a member of the Supervisory Board or a member of the Board of Commissioners in accordance with the provisions of the legislation; and/or not being re-elected due to changes in local government policies in terms of restructuring, liquidation, acquisition, and dissolution of BUMD. Article 66 Directors in regional public companies are dismissed by KPM and Directors in regional companies are dismissed by the GMS.

Article 67 (1) Members of the Board of Directors are prohibited from holding concurrent positions as: a. members of the Board of Directors in other BUMD, state-owned enterprises, and private-owned enterprises; b. other positions in accordance with the provisions of the legislation; and/or c. other positions that may create a conflict of interest. (2) Violation of the provisions as referred to in paragraph (1) is subject to administrative sanctions in the form of being dismissed at any time from the position as a member of the Board of Directors. (3) In the event that the provisions as referred to in paragraph (2) are not implemented by the KPM or the GMS no later than 20 (twenty) working days since the person concerned is appointed to a new position as a member of the Board of Directors, the position concerned as a member of the Board of Directors shall be declared terminated.

Article 68 (1) Members of the Board of Directors must in good faith and responsibility carry out their duties for the interests and business of BUMD. (2) Each member of the Board of Directors is fully responsible personally if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as referred to in paragraph (1). (3) KPM may file a lawsuit against a member of the Board of Directors who due to his/her mistake or negligence causes a loss to a regional public company unless the member of the Board of Directors concerned compensates for the resulting loss and deposited it into the regional general treasury

account. (4) The filing of a lawsuit by the shareholder in a regional company in accordance with the provisions of the laws and regulations governing limited liability companies.

Article 69 (1) The income of the Board of Directors in a regional general company is determined by KPM. (2) The income of the Board of Directors in regional companies is determined by the GMS. (3) The income of members of the Board of Directors as referred to in paragraph (1) consists of at most: a. wages; b. allowances; c. facility; and/or d. *tantiem* or job incentives. (4) Further provisions regarding the income of members of the Board of Directors shall be regulated in a Ministerial Regulation.

Article 70 (1) All decisions of the Board of Directors are taken at the meeting of the Board of Directors. (2) In certain circumstances, the decision of the Board of Directors may be taken outside the meeting of the Board of Directors as long as all members of the Board of Directors agree on the method and material to be decided. (3) In every meeting of the Board of Directors, minutes of the meeting are made containing the matters discussed and decided, including if there is a statement of disapproval of the members of the Board of Directors.

Article 71 (1) In the event of a vacancy in the positions of all members of the Board of Directors, the implementation of the tasks of managing BUMD is carried out by the Supervisory Board or the Commissioner. (2) The Supervisory Board or Commissioners may appoint officials from internal BUMD to assist the implementation of the duties of the Board of Directors up to the appointment of the definitive Board of Directors for a maximum of 6 (six) months. (3) In the event of a vacancy in the positions of all members of the Board of Directors and all members of the Supervisory Board or Commissioners, the management of the regional public company is carried out by the KPM and the management of the regional company by the GMS. (4) KPM or GMS may appoint officials from internal BUMD to assist the implementation of BUMD management duties up to the appointment of members of the Supervisory Board or members of the Board of Commissioners and definitive members of the Board of Directors for a maximum of 6 (six) months.

Article 72 (1) Members of the Board of Directors are not authorized to represent a regional public company if: a. there is a case in court between the regional general company and the relevant member of the Board of Directors; and/or b. the member of the Board of Directors concerned has interests that conflict with the interests of the regional public company. (2) In the event of a situation as referred to in paragraph (1), those entitled to represent a regional public company are: a. other members of the Board of Directors who do not have a conflict of interest with a regional public company; b. the Supervisory Board in the event that all members of the Board of Directors have a conflict of interest with a regional public company; or c. other parties appointed by KPM in the event that all members of the Board of Directors or Supervisory Board have a conflict of interest with the Regional public company.

D. Conclusion

In the framework of implementing regional autonomy, regional governments can take initiatives and make efforts to boost regional revenue sources in order to increase the growth and development of economic sector development activities through the formation of and participation in BUMD. The legal status of state property must be

separated into private property and public property. The law governing private property is identical to the law managing common civil property, namely civil law. Meanwhile, the law regulating public property is governed by a different statute. In the event where the state is the owner of private property, the government, as the state's representative, also takes private (civil) proceedings. This idea must be reinforced as a positive form of the employment of private law in limited liability companies, the shares of which are owned by the state. By expressing the legal basis of the legal logic of the aspect of state losses in a limited liability company in which the state owns all or a portion of the shares, the idea of state losses in the sense of endangering state finances is not met. Consequently, the regulations for the management and accountability of state finances in the form of shares are governed by Law No. 40 of 2007 and automatically apply. Such conditions result in the severance of the relationship between state finances invested in shares in limited liability companies (Persero) and state finances, so that state finances in the form of shares can no longer be considered public finance, but has changed its legal status to private finance, which is fully subject to Law No. 40 of 2007, pertaining to Limited Liability Companies and other civil law provisions.

The Board of Directors of the company may be held personally liable for the insolvency. Such accountability must be based on legal events as the main requirement to drive the enactment of the articles of the Limited Liability Company Law and the KPKPU Law. Members of the Board of Directors cannot be held accountable for the Company's losses if they can prove The loss is not due to his fault or negligence, Has carried out management in good faith and prudence for the benefit and in accordance with the aims and objectives of the company, Does not have a conflict of interest, either directly or indirectly, over management actions that result in losses; and Have taken action to prevent the occurrence or continuation of the loss.

There needs to be a synchronization of a number of laws and regulations related to BUMD, especially Law no. 23 of 2014 concerning Regional Government in conjunction with Government Regulation no. 54 of 2017 concerning BUMD, Law no. 17 of 2003 concerning State Finance, Law no. 40 of 2007 concerning Limited Liability Companies, West Lombok Regency Regulation No. 2 of 2019 concerning the Air Minum Giri Menang Regional Company as well as a number of other laws and regulations related to state/regional financial management and state financial audits so as not to make mistakes in regulating financial status state/regional assets as separated regional assets in state-owned enterprises (BUMD) and state losses.

There should be provisions in the rules and regulations that clarify and explain explicitly that the regional assets that are split as equity participation in the BUMD are the BUMD's property and that its financial status falls within the area of private finance.

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