

Juridical Implications of Regional Regulations on the Management of Land Management Rights that have been Incorporated in Public Companies

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<i>Article Info</i>	<i>Abstract</i>
Received: 2021-10-24 Revised: 2022-02-31 Accepted: 2023-06-20 Keywords: <i>Inbreng, Management Rights, Public Company, Material Transactions, Affiliate Transactions, Conflict of Interest Transactions.</i>	<i>Inbreng is a deposit of capital in forms other than money. BUMD Tbk. is a company whose capital is invested by the Regional Government Y in the form of Land Management Rights. This capital investment has been approved based on the Governor's Decree regarding Development Guidelines in the BUMD Tbk. Area, as well as giving BUMD Tbk. the right to provide recommendations on Land Management Rights. However, currently the Governor's Decree regarding Development Guidelines in the BUMD The Province of the Special Capital Region of Jakarta has the right to provide recommendations given by the Regional Government. As a result, BUMD Tbk. lost one of its income from providing recommendations. Apart from that, questions arise regarding the status of Land Management Rights which have become capital investments. Bearing in mind that BUMD Tbk. is a Public Company, BUMD This research will focus on Company Law and Capital Market Law. Especially according to the provisions of Financial Services Authority Regulation Number 42/POJK.04/2020 concerning Affiliate Transactions and Conflict of Interest Transactions and Financial Services Authority Regulation Number 17/POJK.04/2020 concerning Material Transactions and Changes in Business Activities.</i>

A. INTRODUCTION

At its founding, the company was basically formed based on the capital paid in by the founders as regulated in Article 1 point (1) of Law Number 40 of 2007 concerning Limited Liability Companies ("PT Law") which states that the company

is a partnership of capital, established based on an agreement. , carries out business activities with authorized capital which is entirely divided into shares. This capital can be obtained from various sources and forms, one of which is through the local government by means of inbreng. Apart from that, Public Companies (Tbk.) can obtain capital by selling their shares through the capital market.

Inbreng is a capital deposit in a form other than money as regulated in Article 34 of the PT Law. Meanwhile, based on Law Number 23 of 2014 concerning Regional Government, regions can invest in capital in State-Owned Enterprises (BUMN) and/or Regional-Owned Enterprises (BUMD). Providing capital participation funds is an effort to provide financial assistance to regional companies sourced from public money managed by the Regional Government in regional finances. Regional Government Expenditures recorded as capital participation is included in the APBD and a separate regional regulation is made to regulate it.

BUMD Tbk. is a public company engaged in the development (real estate) sector. The majority/main shareholder and controlling shareholder is the Regional Y Provincial Government ("Pemda") with a total ownership of 60% (sixty percent) of the shares. Other shareholders are the private sector with ownership of 25% (eighty five percent) of the shares and the public owns the remaining 15% (fifteen percent). BUMD Tbk. own assets that have economic value in the form of Land Management Rights ("HPL") in the name of the Regional Government. Apart from that, it also owns several plots of land with land rights in the form of Building Use Rights ("HGB"). The HPL and several HGBs are part of the regional government's involvement in BUMD Tbk.

In the period since its founding, the provisions governing development activities were stipulated in the Governor's Decree concerning Development Guidelines in BUMD Tbk Areas. This regulation also stipulates that providing recommendations for applications for rights to HPL land which are inbreng falls under the authority of BUMD Tbk.. However , since the issuance of Governor's Regulation Number 239 of 2015 concerning Procedures for Providing Recommendations for Applications for Rights in Land Sectors, Management Rights for Ex-Village Land and Ex-Township Land Owned/Controlled by the Provincial Government of the Special Capital Region of Jakarta ("Pergub No. 239/2015"), providing these recommendations falls under the authority of the Regional Government.

As a result, BUMD Tbk. loss of income due to providing recommendations on the management of BUMD Tbk's HPL land. which is controlled by BUMD Tbk. has economic value which becomes the company's income. Apart from that, Gubernatorial Regulation no. 239/2015 raises several legal consequences for BUMD

Tbk., especially regarding the status of HPL which has become inbreng. As a public company, BUMD Tbk. has a responsibility to the wider community which includes the company's public investors. Public trust in the value of shares, differences in company reports, prospects for future profits, government policies that support the capital market, up to the process of guaranteeing that the law will be obeyed by parties. In the event of a violation of the principle of openness in the capital market related to stock trading, there are parties who must be held responsible for the violation of the principle of openness.

Based on these problems, it can be seen how important transaction transparency is in a Public Company. Therefore, in this article we will discuss the legal position in the capital markets sector, especially according to the provisions of the Financial Services Authority Regulation Number 42/POJK.04/2020 concerning Affiliate Transactions and Conflict of Interest Transactions ("POJK 42/2020") and Financial Services Authority Regulation Number 17/POJK.04/2020 concerning Material Transactions and Changes in Business Activities ("POJK No. 17/2020"), regarding the revocation of the Governor's Decree on Development Guidelines in BUMD Tbk Areas. by Gubernatorial Regulation no. 239/2015 which in this case can be qualified as a material transaction which is also an affiliate transaction and/or a conflict of interest which results in loss of income from the property sector due to the provision of recommendations which can disrupt the continuity of business activities and be detrimental to BUMD Tbk.

B. METHODS

The approach method used in this research is normative juridical. The juridical approach is an approach that refers to law and statutory regulations. Meanwhile, the normative approach is the approach taken on case studies, which in other words is referred to as library legal research.

C. RESULTS AND DISCUSSION

Corporate itself comes from the word corpus (Indonesian = body), which means to give body or make a body. Thus, in the end, corporation means the result of bodily work, in other words, a body that is made into a person, a body that is obtained by human actions as opposed to the human body, which occurs according to nature. Meanwhile, the capital market can be briefly defined as a place where capital owners or investors meet with other parties who trade shares, bonds and other securities using the services of securities traders. Meanwhile, a public offering is an offering of securities by an issuer which is carried out within the territory of

the Republic of Indonesia or to Indonesian citizens using mass media or is offered to more than 100 (one hundred) parties or has been sold to more than 50 (fifty) parties within the value and limit limits. certain time. Previously BUMD Tbk. carried out an initial public offering in 2004, so its status has become a public company. Considering BUMD Tbk. is a public company, apart from referring to the PT BUMD Tbk Law. are also required to comply with the provisions of Law Number 8 of 1995 concerning Capital Markets and other related regulations. Where for open PTs the provisions in the PT Law apply if they are not regulated in the statutory regulations in the capital markets sector, and must not conflict with the company legal principles in the PT Law.

In this case, it is necessary to explore whether the revocation of the Governor's Decree concerning Development Guidelines in BUMD Tbk Areas. which resulted in company losses including transactions that had to be published. Asymmetric information is the difference in information obtained between one party and another party in economic activities. For example, this asymmetric information occurs between investors who want to invest in the capital market. Therefore, asymmetric information has the potential to be considered a violation of information disclosure because the information received by investors is misleading and does not provide a clear picture, thereby potentially harming investors. While going public, openness must continue. Basically, in the capital market there is no prohibition on carrying out Affiliate Transactions, Conflict of Interest Transactions, Material Transactions and Changes in Business Activities, as long as they are carried out in accordance with certain requirements. Meanwhile, these requirements are as follows:

Affiliate Transactions

After the issuance of POJK No. 42/2020, the definition of affiliate transactions becomes broader. Previously only activities and/or transactions carried out directly with parties who had an Affiliate relationship, but now every activity and/or transaction carried out for the benefit of an Affiliate can also be categorized as an Affiliate Transaction. Meanwhile, one of the things included in an affiliate relationship is the relationship between the company and the main shareholder.

Affiliate transactions are any activity and/or transaction carried out by a public company or controlled company with an affiliate of a public company or an affiliate of a member of the board of directors, member of the board of commissioners, main shareholder or controller, including every activity and/or transaction carried out by the company public or controlled company for the benefit of affiliates of a public company or affiliates of members of the board of directors,

members of the board of commissioners, major shareholders or controllers. Meanwhile, what is meant by 'controller' is as follows:

1. own shares in a public company of more than 50% of all shares with voting rights that have been fully paid up; or
2. have the ability to determine, either directly or indirectly, in any way the management and/or policies of a public company.

In this case, the Regional Government is the controlling party in BUMD Tbk. Because apart from having total ownership of 72% (seventy two percent) of the shares, the Regional Government based on the Articles of Association of BUMD Tbk. can also nominate the President Director and President Commissioner. Thus, the relationship between BUMD Tbk. with the Regional Government is included in the affiliation.

Procedures for carrying out affiliate transactions are differentiated according to their respective criteria. Generally, the procedures that must be fulfilled include conducting a fair value assessment, announcing information disclosure, obtaining independent shareholder approval. However, if the reason for the transaction being carried out is the implementation of statutory regulations or a court decision, certain procedures are excluded. However, BUMD Tbk. are still required to report Affiliate Transactions to the Financial Services Authority ("OJK") no later than the end of the 2nd (second) working day after the date of the Affiliate Transaction.

Administrative sanctions for violations in POJK 42/2020 are regulated in Articles 27 to. 29, as follows:

1. written warning;
2. fine, namely the obligation to pay a certain amount of money;
3. restrictions on business activities;
4. freezing of business activities;
5. revocation of business license;
6. cancellation of consent; And
7. cancellation of registration.

Conflict of Interest Transactions

Conflict of Interest Transactions are transactions carried out by a public company or controlled company with any party, both Affiliates and parties other than Affiliates that contain a Conflict of Interest. Meanwhile, a conflict of interest itself is a difference between the economic interests of a public company and the

personal economic interests of members of the board of directors, members of the board of commissioners, major shareholders or controllers which could be detrimental to the public company in question. In this case, the Regional Government as an affiliate with the revocation of the Gubernatorial Decree on Development Guidelines in BUMD Tbk Areas. which disrupts the continuity of business activities and is detrimental can be categorized as a Conflict of Interest Transaction, because there are differences in the economic interests of BUMD Tbk. as a public company with the economic interests of the Regional Government as the main shareholder and/or Controller.

Similar to the Affiliate Transaction provisions above, if the reason for the transaction is to implement statutory regulations or court decisions, certain procedures are excluded. However, BUMD Tbk. is still obliged to report Conflict of Interest Transactions to the OJK no later than the end of the 2nd (second) working day after the date of the Conflict of Interest Transaction. If this is not done, the imposition of administrative sanctions is regulated in Articles 27 s.d. 29 POJK 42/2020 as described above.

Material Transactions

Material Transactions are any transactions carried out by a public company or controlled company that meet the value limits as regulated in this Financial Services Authority Regulation. Meanwhile, one of the activities referred to is a material transaction Material Transactions are any transactions carried out by a public company or controlled company that meet the value limits as regulated in this Financial Services Authority Regulation. Meanwhile, one of the activities referred to as a material transaction includes purchasing, selling, transferring, using, exchanging assets or operating segments.

1. Transaction value is equal to 20% (twenty percent) or more of the Public Company's equity.
2. Acquisition or disposal of a company or operating segment:
 - a. The transaction value is equal to 20% (twenty percent) or more of the Public Company's equity;
 - b. The total assets that are the object of the transaction divided by the total assets of the Public Company are equal to or more than 20% (twenty percent).
 - c. The net profit of the transaction object divided by the net profit of the Public Company is equal to or more than 20% (twenty percent); or
 - d. The business income of the transaction object divided by the business income of the Public Company is equal to or more than 20% (twenty percent).

e. 10% (ten percent) of total assets in terms of negative equity.

Basic calculation:

1. Audited financial reports;
2. Quarterly financial reports accompanied by an accountant's report on the results of the review or audit; or
3. Audited interim financial reports other than letter b.

If the basic calculation results above meet the value limit and considering that the transaction is an affiliated transaction and a conflict of interest, then BUMD Tbk. must carry out the procedures as written in Article 6 POJK No. 17/2020. Apart from that, BUMD Tbk. are also required to have adequate procedures to ensure that affiliated transactions are carried out in accordance with generally accepted business practices and are required to store documents related to the implementation of these procedures within the document storage period in accordance with the provisions of statutory regulations.

Based on the Material Transaction provisions above, it is necessary to consider whether the Regional Government in this case cannot separate itself as the organizer of government affairs or shareholder of BUMD Tbk., so that in revoking the permit to grant recommendations the Regional Government does not consider corporate law in practice. Apart from that, in determining whether a transaction is material or not, other impacts on BUMD Tbk must also be taken into account. The consequences of withdrawing the recommendation are mainly from production factors. For example, if BUMD Tbk. can no longer plan development or master plans for buildings and recreational facilities because they have to wait for permission from the government.

Changes in Business Activities

Business Activities are business activities that are listed in the articles of association of a Public Company and have been carried out. In the event that there are changes to the business activities written in the articles of association, the following provisions must be followed:

1. first obtain GMS approval;
2. use an Appraiser to conduct a feasibility study on changes to Business Activities;
3. announce the disclosure of information regarding planned changes to Business Activities to shareholders at the same time as the GMS announcement;
4. provide data regarding changes in Business Activities for shareholders since the

- announcement of the GMS; And
5. submit the information disclosure as intended in letter c and supporting documents to the Financial Services Authority no later than the announcement of the GMS.

Exception Article 22 POJK No. 17/2020 when:

1. Business activities that will be reduced have experienced business losses for 3 (three) consecutive years based on the Public Company's annual financial report; And
2. Reduction of Business Activities will not affect the business continuity of the Public Company.

Meanwhile, the withdrawal of the activity of providing recommendations does not change the main business activities of BUMD Tbk. services, so it is not included in the changes in business activities referred to above.

Impact on Revenue and Company Value (Company Value)

For public companies (going public), the company value indicator is reflected in the share price traded on the capital market, because all financial decisions will be reflected in it. Making inappropriate investment decisions, funding and dividend policies causes investors to react and cause stock market prices to fall. On the contrary, they will react and increase share prices in the market because of a company policy that is considered good. So, based on this goal, a good decision is a decision that is able to create prosperity for shareholders, in addition to considering various other financial problems faced by the company (Halim, 2015).

Apart from the legal provisions regulated in the PT Law above, when running a company you must also pay attention to the application of GCG principles, as is known the GCG principles prioritize: fairness (balance), transparency (transparent), accountability (accountability) and responsibility (responsibility) . In this case, it is necessary to pay attention to the revocation of the Gubernatorial Decree on Development Guidelines in BUMD Tbk Areas. which results in the loss of a source of income or even public trust, so that BUMD Tbk. potentially sued by private and public shareholders. Apart from that, GCG principles must be implemented consistently and with full commitment so that the Board of Directors cannot deviate from conflicts of interest within them.

Meanwhile, it should also be noted that in general one of the main reasons a company undertakes a public offering is to increase company value. Company value is a certain condition that a company achieves company, as a form of public trust in the company after going through a process of activities for several years, since the

company was founded until now. After the public offering, any increase in operational performance and financial performance will generally have an impact on share prices on the stock exchange which will ultimately increase the overall value of the company.

Based on the Annual Report of BUMD Tbk. 2015 to 2015 2022 BUMD Tbk shares. which is traded on the Indonesian Stock Exchange, every year after the revocation of the Gubernatorial Decree on Development Guidelines in BUMD Tbk Areas. closed at a steadily decreasing price. In fact, throughout 2015, shares of BUMD Tbk. traded on average at IDR 2,171.66, up 54.70% from the 2014 average of IDR 1,403.75. However, there are several external and internal factors that can cause share prices on the stock exchange. However, it should be noted that after the revocation of the Gubernatorial Decree on Development Guidelines in BUMD Tbk Areas. BUMD Tbk share price. can be said to have experienced a decline in company value.

Shareholders are one of the main elements of a company and have rights, obligations and interests that are protected by the PPT Law. So the rights of shareholders, both majority and minority, must be protected. According to Black's Law Dictionary, minority shareholders are shareholders of a company who hold so few shares in relation to the total outstanding that they cannot control the company's management or elect directors. Minority public shareholders in accordance with Article 3 paragraph (1) letter a POJK No. 15/2020 determines that the voting rights of minority public shareholders represent at least 1/10 of the total number of shares, unless the articles of association of a public company determine a smaller amount. In this case, the minority shareholders in BUMD Tbk. is public.

Forms of protection for minority shareholders in defending their rights are generally regulated in the PT Law. The rights of minority shareholders in the PT Law are as follows:

1. Propose to hold a GMS;
2. File a lawsuit against the company;
3. File a lawsuit against a member of the board of directors;
4. File a lawsuit against a member of the board of commissioners;
5. Request the purchase of shares at a fair price;
6. Submit a request for company inspection; And
7. Submit a proposal for dissolution of the company through the GMS.

So, apart from the potential for lawsuits by the private sector (as shareholders), BUMD Tbk. The public also has the potential to be sued for these losses.

Administrative sanctions for violations in POJK No. 17/2020 is regulated in

Articles 34 s.d. 36, as follows:

1. written warning;
2. fine, namely the obligation to pay a certain amount of money;
3. restrictions on business activities;
4. freezing of business activities;
5. revocation of business license;
6. cancellation of consent; And
7. cancellation of registration.

D. CONCLUSION

Revocation of Gubernatorial Decree on Development Guidelines in BUMD Tbk Areas. resulting in loss of income from providing recommendations which could disrupt the continuity of business activities and be detrimental to BUMD Tbk., so that as a public company BUMD Tbk. must protect public investors (in addition to other shareholders), one of which is by providing equality and fairness of information. These activities are included in affiliate transactions and conflict of interest transactions based on POJK No. 42/2020. However, because the transactions were carried out as an implementation of statutory regulations or court decisions of BUMD Tbk. you only need to report the transaction to the OJK. Apart from that, it is necessary to calculate whether the transaction reaches the value limit as specified in POJK No. 17/2020 to determine whether it is a material transaction or not.

SUGGESTION

The majority shareholder's actions that are detrimental to the company can be stated in a study whether the action is an affiliated transaction, has a conflict of interest or is accounting material. Furthermore, efforts were made to follow the protocol in accordance with the Capital Market Law considering BUMD Tbk. is a public company. On the other hand, it needs to be reviewed again based on adequate expert calculations in assessing the fair value limits and the value of the decline in BUMD Tbk's income. as regulated by Capital Market Law.

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