



## Realizing Original Legal Construction in Regional Bank Company Directors

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### **Abstract**

There has been a change in the government system from the New Order regime to the Reformation Order since 1998, then consequently the juridical consequences have had a change in the system of government that has been running to date. In real terms and the ongoing changes in the system of government in the constitutional order as referred to in Article 18 of the 1945 Constitution of the Republic of Indonesia have given autonomy to autonomous regions. Therefore, each autonomous region has the rights, authorities and obligations of the autonomous region to regulate and manage all matters under its authority. Regional-owned enterprises in reconstructing the authority to appoint and determine directors of regional bank companies must comply with the mandate of Law Number 23 of 2014 as amended by Law Number 9 of 2015 concerning Regional Government and taking into account Government Regulation Number 54 of 2017 concerning Business Entities Regional Owned.

**Keywords:** *Company; Regional Bank; Legal Construction*

### **Preliminary**

There has been a change in the government system from the New Order regime to the Reformation Order since 1998, then consequently the juridical consequences have had a change in the system of government that has been running to date. In real terms and the ongoing changes in the system of government in the constitutional order as referred to in Article 18 of the 1945 Constitution of the Republic of Indonesia have given autonomy to autonomous regions. Therefore, each autonomous region has the rights, authorities and obligations of the autonomous region to regulate and manage all matters under its authority. Regulating and administering it's carried out by autonomous regions themselves.(1)

For this reason, the factor of regional financial capacity is the main characteristic that indicates an autonomous region is capable of autonomy. *Self supporting* finance is one of the weights of implementing this autonomy. This means that autonomous regions have the authority and ability to explore financial sources, manage and use their own finances that are sufficient to finance the implementation of regional development.

This financial support is indicated by the increasing value of local revenue and decreasing central support in the form of donations/assistance. Therefore, local revenue should be the largest source of finance for the implementation of regional autonomy. This shows that the local revenue is the most important measure for the ability of the region to organize and realize regional autonomy, so that regional revenue reflects the independence of a region. This is in line with the objective of implementing regional autonomy, namely that in addition to giving flexibility to regions to manage their respective regions, it also provides opportunities for local governments to explore the potential of businesses that can be used as a source of regional income.

Over time in the Reform Government system, there have been several changes to the Law governing the Regional Government system, which is commonly referred to as the Regional Autonomy Law. Starting from Law Number 22 of 1999, reform was carried out by Law Number 32 of 2004, which was then updated by Law Number 23 of 2014 and amended again by Law Number 9 of 2015.

Empowerment of community institutions, including regionally owned enterprises, is an effort to increase the dignity and layers of society to support sustainable regional development efforts. This means that empowering means enabling and empowering the community and its institutions.

Empowerment of Regional Owned Enterprises first begins by creating an atmosphere or climate that allows the potential of Regional Owned Enterprises to develop. Second, is to strengthen the potential or power possessed, which requires more positive and tangible steps, providing the various inputs needed, and opening access to various opportunities so that they are more empowered to take advantage of opportunities. Third, empowerment also means protecting, so that in the empowerment process it must be prevented so that the weaker party becomes weaker, but can live with adequate competitiveness.(2) Based on the problem of norms conflict in these laws and regulations, this research formulates reconstruction legal authority for the appointment and appointment of Directors of Regional Banks.

### ***Research Method***

In this research, the method used is normative legal research to solve and answer the existing problem formulations.(3)

### ***Research Results and Discussion***

#### **Position of the Board of Directors according to the Limited Liability Company Law**

The existence of Law 40 of 2007 regarding Limited Liability Companies has placed corporate arrangements as an arrangement that seeks to follow and align them with various universal arrangements. Article 1 number 1 of Law 40 of 2007 regarding Limited Liability Companies, a limited liability company is confirmed as a legal entity. This affirmation is intended to clarify that a limited liability company is a legal subject. As an organ formed by law, of course, in carrying out its daily activities, an organ that represents the company is needed.

Limited Liability Company is a company whose capital consists of shares and the responsibilities of allies of limited shareholders, which are in accordance with the number of shares it owns. The term company in a limited liability company refers to the method of determining the capital in that legal entity which consists of shares and the term limited shows the limit of liability of the owned companies (shareholders), which is limited to the nominal value of all the shares that are owned.

A limited liability company is a business entity that is loved by businesses considering the limited responsibilities in it.(4) In principle, what is done by the company, as a legal entity, will be its own responsibility, and cannot be requested or transferred to become the responsibility of the shareholders, directors and /or board of commissioners.

Limited Liability Companies are important business components and are widely available in the world, including in Indonesia, which are legal entities that have different characteristics and quality characteristics from other forms of business. One of the characteristics that distinguishes Limited Liability Companies from other business entities can be seen from the *doctrine of separate legal personality*, which basically explains that there is a separation of wealth between owners or investors (shareholders) and the assets of the legal entity itself.(5)

Each person can own more than one share which will be proof of ownership of the company. The responsibility as a shareholder is also limited, namely as much as the shares it owns.(6) If the company's debt exceeds the company's assets, then the excess debt is not the responsibility of the shareholders. If the company makes a profit, the profits will be distributed according to the amount of ownership of each shareholder or other provisions stipulated in the articles of association.

Shareholders will receive a share of the profits called dividends, the amount of which depends on the profits obtained by the limited liability company. Apart from coming from shares, the capital of a Limited Liability Company can also come from bonds.

### **Harmonization of Laws and Regulations on Invitations in the Appointment and Stipulation of Regional Bank Companies**

General Meeting of Shareholders, commissioners and directors. These three organs have different duties, authorities and responsibilities from one another. The Board of Directors is one of the organs of a limited liability company that has the duty and is fully responsible for the management of the company for the interests of the company and represents the company both inside and outside the court in accordance with the provisions of the articles of association.(7)

The Board of Directors has a very central function and role in the limited liability company paradigm. This is because the directors who will carry out the management function and representatives of the limited liability company. According to the organism theory of Otto von Gierke, "Directors are organs or equipment of a legal entity. Just as humans have organs, such as hands, feet, eyes, ears and so on and because every movement of these organs is desired or ordered by the human brain, every movement or activity of the Board of Directors of a legal entity is desired or governed by the legal entity itself, so that The Board of Directors is the personification of the legal entity itself.(8)

In contrast, Paul Scholten and Bregstein immediately said that the Board of Directors represents a legal entity. Starting from the expert opinion above, it can be concluded that the Directors of the Limited Liability Company act on behalf of the Limited Liability Company as a legal entity.(9)

Limited Liability Companies obtain status as legal entities, according to Article 7 paragraph (4) of Law 40 of 2007 concerning Limited Liability Companies, which is "Companies obtain legal entity status on the date of issuance of a Ministerial Decree concerning the ratification of the Company's legal entity".(10) Banking is a world industry which is an important component in the national economy in order to maintain balance, progress and national economic unity.

This is because the economy of a country is never separated from the traffic of money payments and banks play a very important role in the growth of the national economy, but in fact running a banking

business is not as easy as imagined because there are quite a number of banks that are experiencing problems and must be designated as banks failed.

The board of directors can be held personally responsible if the failure of the bank occurs due to an error or negligence by the board of directors and the company's assets aren't sufficient to pay the creditors' debt, however, the board of directors can refuse to be responsible for the company's losses if it meets the requirements contained in the law. The bank liquidation process failed to be carried out by the Deposit Insurance Corporation.(11) The Deposit Insurance Corporation is responsible for the failed bank liquidation process and guarantees customer funds up to a certain point in accordance with statutory regulations.(12)

Credit from the Bank, namely funding provided by a party to another party to support planned investments, either by itself or by an institution. In other words, credit is funding issued to support planned investments.

Credit Decision Stage On the basis of the report on the results of credit analysis, the bank, through the credit decision maker, is either an appointed official or the head of the bank or a committee with more than one member. If the request is eligible to be granted, it will immediately be included in a credit decision letter, usually accompanied by certain conditions. For relatively large loans, credit decisions are usually held by the management or directors of the bank, and may even be decided by more than one decision maker who is a committee.(13)

Implementation and Credit Business Administration Stage After the prospective debtor studies and approves the contents of the credit decision and the bank has received and examined all credit requirements from the prospective debtor, especially the original documents of proof of guarantee, photocopies of business licenses and places of business, photocopies of Taxpayer Identification Numbers and proof of tax payment for the last year (for credit exceeding Rp. 50,000,000) and so on, then both parties sign the credit agreement and general terms.

The supervision/supervision /control phase of credit and debtor guidance is basically an effort to secure credit that has been provided by the bank by continuously monitoring/monitoring and following the course of the company (directly or indirectly), as well as providing advice/advice and consultation for the company/debtor going well according to plan, so that credit repayments go well and so credit too.

In the settlement of non-performing loans, the possibility of bad credit must exist, this is due to the following two elements: a. From the banking side, this means that in conducting the analysis, the analyst is not careful enough so that what should happen is not predicted beforehand.(14)

Banks that are positioned as intermediary institutions really need a subsidy on the credit portfolio for Micro, Small and Medium Enterprises to mitigate risks. The importance of implementing risk mitigation principles in banking institutions was considered. The results of Bank Indonesia's research also confirm the possibility that the credit guarantee system may suffer losses. To anticipate these losses, the need for similar institutions to anticipate possible difficulties and even failure of the guarantor institution to fulfill its financial obligations to creditors.

Some of the concerns of parties who are concerned about the possible risks faced by the parties in the credit agreement are accommodated in Law Number 1 of 2016 concerning Guarantee. This law contains arrangements for risk mitigation obligations in the underwriting activity which is borne by two institutions, namely the reinsurance agency and the reinsurance agency.

If the guarantee agency doesn't receive support from the reinsurance agency, then this reinsurance company will reinsurance. This means that the law expands the scope of risk mitigation. This provision implies that if the guarantee institution doesn't receive financial support from the reinsurance institution, the risk mitigation is taken over by the reinsurance company.

In this regard, Article 1 point 7 of Law Number 40 of 2014 concerning Insurance stipulates that the guarantee company is one of the objects of reinsurance services against the risks that the company may face. This law contains the regulation of the scope of reinsurance services which justifies the existence of a reinsurance institution as a form of risk mitigation to credit guarantees.

## **Conclusion**

Regional-owned enterprises in reconstructing the authority to appoint and determine directors of regional bank companies must comply with the mandate of Law Number 23 of 2014 as amended by Law Number 9 of 2015 concerning Regional Government and taking into account Government Regulation Number 54 of 2017 concerning Business Entities Regional Owned. This Government Regulation fills a legal vacuum related to regulations regarding the management of Regional Owned Enterprises, which often results in general meeting of shareholders failing the fit and proper test at the Financial Services Authority. The legal concept of the appointment and appointment of the Directors of a Regional Bank Company must be adjusted to the regulations of the Financial Services Authority, because all regulations and supervision of financial services are already under the Financial Services Authority.

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