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LEGAL IMPLICATIONS ON THE AUTHORITY OF REGIONAL GOVERNMENTS ON THE MANAGEMENT OF REGIONAL COMPANIES IN THE FLOBAMOR OF EAST NUSA TENGGARA LIMITED COMPANY

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ABSTRACT

This paper describes the efforts to strengthen regional revenue from separated regional assets, after the local government investment through the Limited Liability Company Flobamor as a Regionally-Owned Enterprise in strengthening the source of Regional Original Income in East Nusa Tenggara Province. This paper is the result of research with the formulation of the main problems (1) What are the legal implications of the existence of local government authority on the management of regional companies in the Flobamor Limited Liability Company, East Nusa Tenggara? and how are the efforts to overcome the legal implications for the management of regional companies in the Limited Liability Company, Flobamor, East Nusa Tenggara? The research method used is descriptive legal research with the type of normative-empirical legal research or applied law research.

It was found that the regional government of East Nusa Tenggara as the shareholder was the General Meeting of Shareholders, because according to the rules of the Limited Liability Company, the Regional Government as the General Meeting of Shareholders was not submitted to the Directors and Commissioners of the Flobamor Limited Liability Company so it was difficult to find significant regional revenue. It was also found that the fundamental thing that local governments have is a strategic position in decisions to make capital participation, increase and decrease capital and share company profits. Meanwhile, regional company capital originating from separated regional assets results in a permanent investment of capital from the regional government without any efforts to maximize local revenue through the limited liability company in the Flobamor area of East Nusa Tenggara. It is hoped that supervision from the regional legislature and the community will immediately control regional capital participation through the Flobamor Regional Limited Liability Company, East Nusa Tenggara.

KEYWORDS: Legal Implications, Local Government Authority, Regional Company Management

INTRODUCTION

National Development is the development of all aspects of the life of the Indonesian people, one of which is economic development (Fuady, 2012). In an effort to realize economic development, the state plays a role in planning, guiding and directing economic activities (Djadjuli, 2018). The 1945 Constitution as the basic law of the Indonesian state regulates the involvement of the state in the production process, especially those related to strategic fields and control of the livelihood sector of the public. This strategic role means that the state has the authority to directly intervene in economic and business activities (Asnawi, 2016).

Article 33 of the 1945 Constitution is the main basis for the Indonesian economic system which states that Indonesia adheres to a democratic economic system. The economic democracy system requires economic activities that are supported by all economic units, both private companies, individuals and business entities, and the government for the purpose of mutual prosperity under the supervision of the state (Widiastuti, 2019). In accordance with the mandate of Article 33 of the 1945 Constitution, in practice, the state carries out direct equity participation by establishing companies in the form of State-Owned Enterprises and Regional-Owned Enterprises. The reason for the establishment of State-Owned Enterprises and Region-Owned Enterprises is as a means of production and distribution in an effort to realize the implementation of Article 33 of the 1945 Constitution. realizing the prosperity of the people (Jafar, 2016).

In general, State-Owned Enterprises and Region-Owned Enterprises have the same duties and functions. The objective of establishing a Regional Owned Enterprise is to provide benefits for the development of the regional economy; carry out public benefits in the form of providing quality goods and/or services for the fulfillment of the livelihoods of the community according to the conditions, characteristics and potential of the area concerned based on good corporate governance; and earn profits and/or profits (Article 7, Government Regulation Number 54/2017 concerning Regional Owned Enterprises).

Regional-owned enterprises exist as a manifestation of the principles of decentralization and regional autonomy as mandated in Article 18 of the 1945 Constitution. Meanwhile, the legal basis for implementing government activities in the regions is Law Number 23 of 2014 concerning Regional Government, which is also a legal basis. the establishment, establishment and management of Regional-Owned Enterprises based on the broadest possible principle of autonomy within the framework of the Unitary State of the Republic of Indonesia (Djadjuli, 2018).

The broadest concept of autonomy is the freedom to exercise the authority given by the central government to provincial, district and/or city governments to manage their own government households, increase competitiveness related to the flow of globalization by taking into account the principles of democracy, equity, justice, specificity, as well as the potential and regional diversity in

the system of the Unitary State of the Republic of Indonesia (Jafar, 2016). The principle is to accelerate the realization of community welfare.

Law Number 23 of 2014 concerning Regional Government regulates the establishment of Regional Owned Enterprises as stipulated in a Perda. Regional Owned Enterprises as referred to consist of Regional Public Companies and Regional Public Companies (Article 4 of Government Regulation Number 54/2017 concerning Regional Owned Enterprises). Regional Public Companies are Regional-Owned Enterprises whose entire capital is owned by one region and is not divided into shares. Meanwhile, a regional limited liability company is a Regional Owned Enterprise in the form of a limited liability company whose capital is divided into shares wholly or at least 51% (fifty one percent) of the shares are owned by 1 (one) Region. The authority of the regional government in managing Regional-Owned Enterprises is as the owner of capital in regional public companies or shareholders in regional state-owned companies is to make decisions (Article 3 paragraph (2) Government Regulation Number 54/2017 concerning Regional Owned Enterprises).

One of the problems in the management and development of Regional Owned Enterprises is the regulatory legal aspects related to Regional Owned Enterprises which do not specifically provide direction and guidance in the management of a business entity owned by the region, such as State Regional Owned Enterprises which already have a legal umbrella. Law Number 19 Year 2003. In addition to the legal umbrella issue, the management of Regional Owned Enterprises which is still far from professionalism causes distortion in the management of Regional Owned Enterprises (Muryanto and Djuwiyastuti, 2014). This is marked by the continued loss of Regional-Owned Enterprises, low commitment and professionalism in Regional-Owned Enterprises which have an impact on the implementation of the Good Corporate Government principles (Widiastuti, 2019).

According to Dian Cahyaningrum, the poor condition of Regional-Owned Enterprises is due to the fact that Regional-Owned Enterprises are not well managed. The regional government as the largest shareholder, even as the controlling shareholder, intervenes a lot in the management of Regional-Owned Enterprises. This intervention is possible because the regional government has considerable authority over Regional-Owned Enterprises as shareholders. The more shares the shareholder (the majority) owns, the greater the power of control he can exercise over the limited liability company. (Cahyaningrum, 2018). In relation to the majority share ownership, it confirms that who controls the most shares in a PT, then he is the one who determines the Limited Liability Company policy (Tobing, 2015). Another problem, according to Westra, is that regional companies currently have a strategic position, role and function as a source of regional finance but have not been able to make an optimal contribution in increasing local revenue. Regional companies in their position as regional financial sources have not been able to carry out their economic functions optimally, because regional companies are still dual functions, have not been managed professionally according to the principles of good corporate governance and the form of regional companies' businesses is not in accordance with the demands of implementing regional autonomy (Westra, 2012).

Studies and research on Regional-Owned Enterprises have been widely carried out and in various themes. This paper examines the legal implications of the authority possessed by regional governments specifically for the management of regional state-owned companies. The issue of local government authority in the management of regional state-owned companies is important to discuss because as the founder, owner and shareholder of the local government has great authority so that local governments can intervene in the management of regional companies. This research was conducted using the legal basis of Law 23 of 2014 concerning Regional Government and Government Regulation Number 54/2017 concerning Regional-Owned Enterprises and Law Number 40 of 2007 concerning Limited Liability Companies.

Based on the explanation above, it is important that this research be carried out on the grounds that the management conditions of regional state-owned companies are still not optimal because they have not clearly regulated the limits of the authority of the local government as business actors in the management of regional corporate companies. Regional holding companies still have a bureaucratic work pattern rather than being an independent company (Financial and Development Supervisory Agency, 2014). Thus, this study is a new study that is different from previous studies or research. However, all research related to the management of Regional-Owned Enterprises is used as a basis for writing, namely as a reference and material for comparative studies so that scientific accountability can be upheld.

This writing uses a conceptual framework to avoid different interpretations of the terms used. In addition, the conceptual framework is also used to provide guidance on the writing process. Concept can be interpreted as a word that expresses generalized abstraction from specific things, which is called an operational definition (Singarimbun and Effendi, 2008). The concept in question is:

- a) Legal implications, implications are everything that has been produced by the policy formulation process or the consequences and consequences caused by the implementation of certain policies or activities (Islamy, 2017). So legal implications are legal consequences arising from the exercise of certain powers, policies or activities.
- b) Authority or authority is the power of law, the right to rule or act, the right or power of public officials to comply with the rule of law within the scope of carrying out public obligations (Dictionary, 1990).
- c) Regional Government, is the regional head as an element of regional government administering who leads the implementation of government affairs which is the authority of the autonomous region (Article 1angka (3) Law Number 23 of 2014 concerning Regional Governance) or the regional head is an element of regional government administrators who lead implementation of government affairs which fall under regional authority (Article 1 number (12) Government Regulation Number 54/2017 concerning Regional-Owned Enterprises). As executor of government affairs, the regional government is the holder of regional financial management power and represents the local government in

ownership of separated regional assets. The exercise of this power in the management policy of Regional Owned Enterprises includes: capital participation, subsidies, assignments, use of proceeds from the management of separated regional assets, and guidance and supervision of capital participation in BUMD (Article 2 of Government Regulation Number 54/2017 concerning Regional Owned Enterprises).

d) Regional Limited Liability Companies, are Regional Owned Enterprises in the form of limited liability companies whose capital is divided into shares wholly or at least 51% (fifty one percent) of the shares are owned by 1 (one) Region (Article 5 Government Regulation Number 54/2017 regarding Regional Owned Enterprises).

e) Regional Owned Enterprises, are business entities that are wholly or most of the capital owned by the regions (Article 1 number (1) Government Regulation Number 54/2017 concerning Regional Owned Enterprises).

Even though the Regional Limited Liability Company, Flobamor, is a non-bank Regional Owned Company owned by the Provincial Government of East Nusa Tenggara. was established based on the Regional Regulation of the Province of East Nusa Tenggara Number 19 of 2009 concerning the Change in the Form of Legal Entity for the Flobamor Regional Company to become a Limited Liability Company Meanwhile, the objectives of the establishment of the Flobamor Limited Liability Company are: a) To increase the competitiveness of the company in anticipating global economic developments by focusing on productive businesses as well as opportunities and in accordance with market mechanisms; b) Increasing the functions and roles of companies to be more productive to support the regional economy and to make a significant contribution to Regional Original Income; c) Improve the capital structure of the company by providing opportunities for third parties to participate in investing so that they do not depend on funds from the Regional Budget; d) To assist and encourage regional economic growth and Regional Original Revenue originating from the profits of Regional Owned Enterprises; d) In its operations the company will maximize profits without reducing social services; and e) Management will be more efficient and professional. According to its function, it has not been achieved optimally.

Thus, the author wants to study it by looking at the legal implications implied by the authority of the local government in managing the regional-owned companies in the East Nusa Tenggara Flobamor Limited Liability Company as a form of failure after including their fixed capital which has never had any results as an effect of not increasing local revenue in the province. East Nusa Tenggara.

Formulation of the Problem

1. What are the legal implications of local government authority on the management of regional companies in the Flobamor East Nusa Tenggara Limited Liability Company?
2. What is the role of the local government in realizing the management of regional companies based on the principles of Good Corporate Governance in the Limited Liability Company, Flobamor, East Nusa Tenggara?

RESEARCH METHODS

This paper is the result of normative legal research, which provides a systematic explanation of the rules governing a particular legal category, analyzes the relationship between regulations explaining areas of difficulty and possibly predicting future development (Marzuki, 2011), using a statutory approach (statute approach). and a conceptual approach (concept approach) (Ibrahim, 2006). The data source comes from secondary data, namely a study of primary, secondary and tertiary legal materials (Soekanto and Mamudji, 2003). Normative legal research is research that provides a systematic explanation of the rules governing a particular legal category, analyzes the relationship between regulations explaining areas of difficulty and possibly predicting future development. (Marzuki, 2011) While empirical legal research is a study conducted on the actual situation or a real situation that occurs with the intention of knowing and finding facts through the data collected which in turn leads to problem solving (Amirudin & Azikin, 2014)

This research is descriptive qualitative and prescriptive. Qualitative descriptive aims to explain as clearly as possible about a condition or symptom, while prescriptive is intended to get suggestions about what to do to solve certain problems (Wiwoho, 2020). The data obtained from both secondary data collection and primary data, at first look at the completeness, clarity and diversity of the required data and then the data is classified and arranged systematically and consistently to make it easier for authors to analyze existing data. The research data were analyzed descriptively qualitatively and conclusions were drawn using deductive thinking logic.

DISCUSSION

1. The legal implications of the existence of the Regional Government's Authority over the Management of Regional Liability Companies in the Flobamor East Nusa Tenggara Limited Liability Company

a. Implications of internal and external policy directions

The principle of decentralization wants the formed regions to be able to regulate and manage their own households by paying attention to the potential that exists in the area properly and responsibly. The principle of decentralization through regional autonomy provides great authority for regions in running their government (Cahyaningrum, 2108). The state gives the authority to regional governments to regulate and manage government affairs by themselves according to the principles of autonomy and co-administration and regions are granted the widest possible autonomy (Article 18 paragraph (2) and (5) of the 1945 Constitution).

Regional autonomy is the right, authority and obligation that is empowered to the autonomous region to regulate and manage government affairs and the interests of the people in the area according to the aspirations of the community to increase the effectiveness and results of government administration in the framework of providing services to the community and implementing development in accordance with statutory regulations. (Sani, 2017).

Regional autonomy granted by the central government is the widest possible autonomy in the sense that the region is given the authority to manage and regulate all government affairs except those which are the affairs of the central government as stipulated in law (Cahyaningrum, 2108). The provision of the widest possible autonomy to the regions is directed at accelerating the realization of community welfare through improved services, empowerment, and community participation. The principle of broad autonomy in the era of globalization is that regions are able to increase competitiveness by taking into account the principles of democracy, equity, justice, privileges and specificities as well as potential and regional diversity in the system of the Unitary State of the Republic of Indonesia (Arifin, 2007).

Based on the principle of regional autonomy, Regional Original Income becomes a source of finance for the implementation of regional autonomy, where Regional Original Income is the most important measure for the ability of the region to organize and realize regional autonomy. Regional Original Income is also a reflection of the independence of an area (Soleh and Rocmansjah, 2010). An autonomous region must be independent in its regional development and this can be seen in the regional financial capacity. Autonomous regions must minimize dependence on the central government, especially in the financial sector. Autonomous regions must be able to explore their own financial sources so that Regional Original Income must be a fundamental source of finance supported by central and regional financial sharing policies as a prerequisite for the regional government system (Murbayani, 2019). In terms of income, successful regional finance is if regional finance is able to increase regional revenue in a sustainable manner in line with economic development in the area (Patrick, 2017).

Regional government is the administration of government affairs by the regional government and as the executor of government affairs, the regional government has the authority as the holder of regional financial management power and represents the regional government in the ownership of separated regional assets. Power and authority differ from one another. Power comes from two parts, the first comes from statutory regulations and the second comes from non-statutory regulations or because of the position he holds. Meanwhile, authority only comes from statutory regulations that are valid and recognized by the state. So that power has two aspects, namely political aspects and legal aspects, while authority only has legal aspects. Authority can be obtained from the constitution by means of attribution, delegation or mandate. Attribution is the authority inherent in a position, it can be interpreted that attribution is the original authority based on the constitution (Basic Law), while the delegation authority delegates authority to other organs of government and the mandate gives the authority to act for and on behalf of the mandate (Matutu), 2004). Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises, gives authority to local governments to participate in managing BUMDs both as owners of capital and shareholders.

The East Nusa Tenggara Flobamor Regional Company, was formed and founded by Regional Regulation Number 17 of 1981 concerning the Establishment and Management of a Regional Company of Flobamor, (Regional Gazette of the Province of East Nusa Tenggara of 1982 Number

104) in conjunction with Regional Regulation Number 12 of 2008 concerning Company Establishment Flobamor area. The purpose and objective of establishing the Flobamor Regional Company is to encourage regional economic growth, company productivity and to contribute to increasing local revenue. Efforts and policies for the empowerment of the Flobamor Regional Company have been carried out, but due to various problems, the efforts and policies implemented have not obtained results as expected, this seems to be the low contribution and contribution to Regional Original Revenue, even since 2008 the business of the Flobamor Regional Company tend to lose money. The results of the investigation of the East Nusa Tenggara Regional People's Representative Council's special committee, from 1987 to 2008, showed that the provincial government's capital participation had reached Rp. 12.995 billion, while the contribution made by the Regional Company Flobamor to local revenue was only Rp. 1.4 billion more. (Accountability Report for the 2017 East Nusa Tenggara Regional Budget)

There are various factors that cause the Flobamor Regional Company to suffer losses and not being able to achieve the goal of establishing the company. These factors are divided into internal factors and external factors. Internal factors include: 1) Human resources for employees who are less productive, resulting in weak company management; 2) Inadequate capital structure, and still relying on capital participation from the Regional Revenue and Expenditure Budget; 3) Static company structure and not market oriented; 4) The company does not have fixed assets; 5) High operational costs (salaries), due to the large number of employees with low quality (inefficiency); 6) Does not have a focused core business; and 7) The company's vision is still a dualistic orientation (profit and public service). Meanwhile, external influencing factors are: 1) Lack of independence of local companies in making strategic company policies; 2) The dominance of social interests is greater than the profit orientation of the company; and 3) Employee placement is not based on professionalism considerations. (See general explanation of Regional Regulation Number 12 of 2008)

Based on the above considerations and in order to increase the role of Regional Owned Enterprises so that their management is more efficient and professional and have more capability, in accessing financing funds outside the regional government, the regional government of East Nusa Tenggara Province changes the form of a Regional Company Legal Entity. Flobamor has become a Limited Liability Company of Flobamor with Regional Regulation Number 13 of 2009 concerning Changes in the Form of a Flobamor Regional Company Legal Entity to a Limited Liability Company. In accordance with the general explanation of the regional regulation, the basis for consideration of changing the form of this business entity is the Flobamor regional company as one of the business entities owned by the Regional Government of East Nusa Tenggara Province, its function and role need to be improved in an effort to increase competitiveness towards increasing regional economic growth and its contribution to original income. area. As an organization formed by the regional government, in the management of regional companies, the position of the local government is as the majority shareholder. The local government's investment in the Limited Liability Company Flobamor

originates from regional assets separated from the Regional Revenue and Expenditure Budget. This capital participation is regulated in the government equity participation regulations.

b. Legal implications for business economic problems

The establishment of BUMD is the hope of local governments in supporting the regional economy. This is because the profits/profits of BUMD can be a source and increase PAD. In addition, the role of government investment through BUMD is also expected to be the main driver of regional economic growth and development (engine of growth), so that it can cause a large multiplier effect (Asri, 2011). Problems that can be measured to be the material for this study, are bound and limited liability companies that must comply with the Limited Liability Company Law so that the Limited Liability Company Flobamor can be better at running its business while the business is not healthy, and has not been profitable and/or contributes to the government treasury. area. For this reason, of course, the status of this regionally owned business entity is important to have consequences in terms of company management and control.

This means that it was found that in the course of its business, the Flobamor Limited Liability Company had not made a positive contribution to the Regional Original Revenue for the Provincial Government of East Nusa Tenggara. Even though, through the supervision of the East Nusa Tenggara regional legislature, namely the Golkar Party Faction, the Regional People's Representative Council of East Nusa Tenggara Province, has provided an assessment for the Limited Liability Company Flobamor, namely after receiving a management burden that is not in accordance with the principles of good corporate governance, the Flobamor Limited Liability Company needs to fix it. core business and must be professional in managing the company. Because during 2019 for the 2020 realization, it was found that the original Regional Revenue target charged to PT Flobamor was only 500 million rupiah and this was unable to be fulfilled even this company suffered a loss of Rp. 440,639,575. Meanwhile, funds have been injected into the Flobamor Limited Liability Company to become a burden on the Regional Revenue and Expenditure Budget of the East Nusa Tenggara Provincial government.

Based on the explanation above, this research is important to do because the condition of the management of regional company is still not optimal because it is influenced by local government intervention that is legitimized in the Government Regulation on Regional Owned Enterprises. Regional state-owned companies still have a bureaucratic work pattern rather than being an independent company. In addition, the concept of good corporate governance or the principles of Good Corporate Governance that must be applied in the management of regional state-owned companies has not been fully implemented in the management of Regional Owned Enterprises.

An important aspect of Good Corporate Governance is the existence of four main principles, namely: first, the Fairness Principle, simply fairness can be defined as fair and equal treatment in fulfilling stakeholder rights that arise based on agreements and applicable laws and regulations. . Fairness also includes the clarity of the rights of investors, a legal system and enforcement of regulations to protect

the rights of investors, especially minority shareholders, from various forms of fraud. Second, the principle of transparency, transparency can be defined as the openness of information, both in the decision-making process and in disclosing material and relevant information about the company. Third, the Principle of Accountability, accountability is clarity of functions, structures, systems and responsibilities of company organs so that company management is carried out effectively. Fourth, the Principle of Responsibility (Responsibility), corporate responsibility is conformity (obedience) in the management of the company to the principles of a healthy corporation and applicable laws and regulations. The regulations that apply here include those relating to tax issues, industrial relations, environmental protection, occupational health / safety, wage standards, and fair competition. So, in simple terms the importance of implementing the principles of Good Corporate Governance in managing the company is to provide a frame of reference so that it allows supervision of the company to run effectively in the company which can support the realization of a healthy company.

One of the principles of Good Corporate Governance that clash with the authority of local governments as regulated in the Regional Government Law and Government Regulations concerning Regional Owned Enterprises is the principle of Accountability. Based on this principle, first of all each component of the company, such as shareholders, commissioners, directors, is required to understand the functions, structures, systems and responsibilities of corporate organs. This is important so that each company organ is able to carry out its duties in a professional manner and will avoid conditions of conflict of interest roles. As the founder, the owner and shareholder of the regional government are obliged to harmonize the management of the regional company with regard to the principles of Good Corporate Governance. The duty of local governments according to the essence of the principles of Good Corporate Governance is to improve company performance through supervision or monitoring of management performance.

However, according to the findings of the East Nusa Tenggara Legislative Body Special Committee, the Limited Liability Company Flobamor continues to experience losses in the management of the company, the company has not been able to make a positive contribution to the increase in Regional Domestic Revenue in East Nusa Tenggara Province. During a period of ten years of changing the form of legal entity status, the Flobamor Limited Liability Company received enough public attention, this can be seen from articles published in several media articles published in Kupang City with several headings: The Regional People's Representative Council urges the Limited Liability Company of Flobamor Immediately on the General Meeting of Shareholders, Commission C rebuked the president director of the Limited Liability Company Flobamor in presenting the company's prospects, (Pos Kupang, October 3, 2013) The Flobamor Limited Liability Company did not make a profit at all and even had debts of five billion and was subsidized by the government. The Democratic Party Faction, Solidarity and Development of the Province of East Nusa Tenggara through the spokesperson, dr. Christian Widodo questioned the performance of the Limited Liability Company, Flobamor, which did not hold a general meeting of shareholders when there was a change of management in 2018 which

resulted in unclear accountability of the old management to the new management. (Newspaper Victorinews, 7 December 2018)

Besides that, according to dr. Cristian, the appointment of the Board of Commissioners and the Board of Directors is carried out outside of standard procedures and mechanisms. The Joint Faction found that there were allegations of abuse of power and finance. Meanwhile separately in Suara Nusa Tenggara Timur, Friday, January 15, 2021, the Governor of East Nusa Tenggara, Viktor Bungtilu Laiskodat, said that the way to develop a business in the Flobamor Limited Liability Company requires expansive steps so that a General Meeting of Shareholders cannot be held in 2018. The initial General Meeting of Shareholders of the Flobamor Limited Liability Company together with the new Commissioners and Directors was held on April 24, 2019, which was attended by Assistant II for Economic Development and Karo Economics and Cooperation, representing the regional government of East Nusa Tenggara Province as shareholder, President Commissioner of the Limited Liability Company. Flobamor, Commissioner, President Director, and Operational Director of the Limited Liability Company, Flobamor, East Nusa Tenggara who discussed Increasing Subsidies in 2019. (Media Polri, 4 January 2020)

According to the legislative member of East Nusa Tenggara Province, Gabriel Kotan, the role of the Limited Liability Company Flobamor has not been optimal in tapping Regional Original Revenue because the assets belonging to the Limited Liability Company Flobamor have not been separated between regional government assets and company assets at the time the status of the legal entity was changed. In addition to the assets of the Regional Companies transferred to the assets of Limited Liability Companies, they are also due to corporate loans. This of course brings huge consequences to the management of the Limited Liability Company, Flobamor in running its business. At the time of the transfer of status, all assets and assets belonging to the Flobamor Regional Company were frozen and then the Limited Liability Company Flobamor was formed. What can be done at this time is to place people who are in charge of the Flobamor Limited Liability Company with the vision and mission of developing the company and clarity about the business direction of the Flobamor Limited Liability Company. This is in accordance with the explanation of the regional regulation on the change in the form of a Flobamor Regional Company to a Limited Liability Company, namely the Capital of the Limited Liability Company of Flobamor, which is the value of all assets of the Flobamor Regional Company at the time of the change in the form of the Legal Entity. (Article 9 Regional Regulation Number 13 of 2009 concerning Changes in the Form of Legal Entities for Regional Companies in Flobamor to become Limited Liability Companies)

Based on the descriptions above, in general the assessment of the Flobamor Limited Liability Company, as stated by Ricardus Wawo (member of the East Nusa Tenggara Parliamentary Forum) states that the company is closed, both shareholders and management; the manager of a Limited Liability Company, Flobamor, does not use business methods properly in doing business but prefers lobbying; the lack of readiness of the Limited Liability Company organs to become entrepreneurial

capable of bringing the Flobamor Limited Liability Company into the pure business world. Changes in the status of a legal entity are not accompanied by the ability to implement the Principles of Good Corporate Governance or the Principles of Good Corporate Governance (GCG) as mandated in the Limited Liability Company Law.

The change in the status of a Flobamor Limited Liability Company form of legal entity is not in line with changes in capital ownership and shareholders. The Provincial Government of East Nusa Tenggara is still the main shareholder. According to Article 3 of Perda No.13 of 2009, the Flobamor Limited Liability Company was established by the Regional Government and the Praja Mukti Civil Servant Cooperative. However, until now there is no clarity about the shares owned by Praja Mukti Civil Servant Cooperative as a minority shareholder. In the regional regulation on changing the legal entity form of a Flobamor Regional Company to a Limited Liability Company, it is stipulated that the shares of the Flobamor Limited Liability Company which are owned by the regional government are 99%. If shares are held by one person/agency, there can be abuse of authority in the direction of a company policy. This deviates from the provisions contained in the Limited Liability Company Law, namely a legal entity in the form of a Limited Liability Company, the authorized capital of the company consists of all nominal shares and each shareholder must comply and comply with all decisions that are legally established regarding all matters relating to share ownership. as stipulated in the General Meeting of Shareholders.

According to Philipus Jemadu, Commissioner of the Limited Liability Company at Bank Nusa Tenggara Timur, stated that every Regional Company adheres to the principle of guided economy with the intention of the regional government as the command that controls the company's strategic policy making. Unlike the Regional Companies, the Limited Liability Company does not recognize the principle of guided economy, but with the position of the East Nusa Tenggara Provincial Government which can hold at least 51% of the shares of the Flobamor Limited Liability Company, in other words the East Nusa Tenggara Provincial Government seems to remain in command but in the holding role. majority shares in every decision making in the General Meeting of Shareholders. With the East Nusa Tenggara Provincial Government still being dominated in every strategic policy making, the Flobamor Limited Liability Company is still inseparable from political influence, namely the interest of serving the public. Even though in principle the Limited Liability Company is profit oriented, economic interests are prioritized. Therefore, what needs to be emphasized, in the form of previously said that the motive of public service weakens the financial condition of the company, with the current principle that it does not mean that the mission of public service is eliminated.

From the description above, it can be said that even though it has undergone a change in the form of a legal entity to become a Flobamor Limited Liability Company, this regional company owned by the East Nusa Tenggara Provincial Government has not been called a healthy company and can increase local revenue as expected from the purpose of changing the form of the legal entity. . Likewise, the application of the principles of Good Corporate Governance as mandated in the Limited Liability

Company Law has not been implemented and applied in company management. This is indicated by the continued loss of Limited Liability Companies, inaccurate financial accountability, inadequate functioning of commissioners as company supervisors and the large amount of local government intervention in company management. The government's authority in managing the economy, especially in the regions, cannot be separated from one of the forms of the state's duties and functions, namely the welfare of its citizens. This can be seen in the history of the development of the 1945 Constitution up to the fourth amendment in 2002. In the constitution of the State of Indonesia it clearly states that the Indonesian state is a country based on law and uses the notion of a welfare state (Widiastuti, 2019).

2. The role of local governments in realizing the management of regional companies based on the principles of Good Corporate Governance in the Limited Liability Company, Flobamor, East Nusa Tenggara

In an effort to support economic development in the regions, local governments can establish Regional-Owned Enterprises to manage regional potential, improve the regional economy, and provide services to the community to realize people's welfare and prosperity (Djadjuli, 2018). What is meant by Regional Owned Enterprises is a business entity that is wholly or most of the capital owned by the region. The establishment of Regional Owned Enterprises is based on the needs of the region and the feasibility of the business fields of Regional Owned Enterprises to be formed (Article 1 number 40 Law Number 23 Year 2014 concerning Regional Government and Article 1 number 1 Government Regulation Number 54/2017 concerning Owned Enterprises Area).

Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises confirms that the position of regional state-owned companies as legal entities, regional capital participation in the framework of establishing regional company companies, provisions regarding the General Meeting of Shareholders, provisions regarding the authority of members of the board of directors of regional state-owned companies, annual reports for regional state-owned companies, the use of regional company-owned company profits, should be in accordance with the provisions of the law governing limited liability companies. So based on Government Regulation Number 54 of 2017 concerning Regional Owned Enterprises and considering that the legal form of a regional limited liability company is a Limited Liability Company, regional company companies must comply with Law Number 40 of 2007 concerning Limited Liability Companies (Article 4 paragraph (5) of the Regulation Government Number 54/2017 concerning Regional Owned Enterprises). A limited liability company is a partnership in the form of a legal entity, which is called a company (Kansil and Kansil, 2009). Subject to Law Number 40 of 2007 concerning Limited Liability Companies, the Regional Owned Enterprise in the form of a regional limited liability company (Limited Liability Company) aims to pursue profit (profit oriented) (Djumardin, 2018).

In contrast to regional public companies, the status and position of regional public companies as legal entities is obtained in accordance with the provisions of the law governing Limited Liability

Companies, namely Law Number 40 of 2007. Regional state-owned companies obtain legal entity status on the date of issuance of the Ministerial Decree regarding Limited Liability Companies. validation of company's legal entity. Therefore, the establishment of a regional limited liability company is bound by the provisions of the Limited Liability Company Law (Muryanto and Djuwiyastuti, 2014). The requirements for the establishment of a company are cumulative. Even one of the conditions is flawed or not fulfilled, resulting in an invalid establishment as a legal entity (Harangkap, 2009).

Based on the definition of a regional limited liability company, it appears that the regions can own all or 100% (one hundred percent) of the shares of Perseroda. 100% (one hundred percent) share ownership by the regions does not violate Law Number 40 of 2007 which requires the establishment of a Limited Liability Company to be carried out by 2 or more people. This is because there are exceptions as regulated in Article 7 paragraph (7) of Law No. 40 of 2007 which states that the provisions that require Limited Liability Companies to be established by 2 or more persons do not apply to Persero whose shares are all owned by the state. With 100% (one hundred percent) share ownership, then automatically the only regional company owned by the regional company will be the owner. This becomes a problem at the level of implementation, because these provisions tend to eventually lead to the proliferation of nominee or dummy institutions that are not in line with the tendency of corporate law developments that allow the establishment of a company by one person. This means that the mandatory provision of a minimum number of shareholders of two people will result in manipulation in the form of shadow shareholders who simply complement the requirements of a legal entity in the form of a limited liability company (Hirman, 2017).

As an independent legal entity, regional company companies have organs as regulated in the Limited Liability Company Law because as a legal subject, regional companies have legal capacity (legal standing) (Jafar, 2016). Law Number 40 of 2007 concerning Limited Liability Companies states that the company's organs consist of the General Meeting of Shareholders, the Board of Directors and the Board of Commissioners. As a legal entity, regional company companies are treated as human beings who have rights and obligations, have their own assets, and can take legal actions. This is in accordance with the theory of Organ by Otto Van Gierke, which says that a legal entity is not something abstract or presumption in the human mind but something real or real. A legal entity is an organ like a human being that can carry out an act or declare a will through its organs such as management, Directors or Commissioners on behalf of a legal entity to carry out the objectives of the legal entity (Sutarno, 2005). The organ theory follower is Z.E. Polano, which states that legal entities are not abstract (fictional) and not property (rights) that are not subject to matter, but legal entities are real organisms, which are truly incarnated in a legal association that can form their own will by means of the tools available to them. (management, members), like ordinary humans who have organs (five senses) and so on (Tutik, 2006). Legal entity organs have a very important role because they are the organs that carry out the management and represent the legal entity in carrying out an action.

The authority of the government represented by the regional government and / or appointed officials to manage regional company companies according to the Limited Liability Company Law is limited to its function at the General Meeting of Shareholders. The regional government is the shareholder who has the authority to make decisions. Based on the percentage of share ownership of a region in a regional company, the local government can become the majority shareholder. Its position as a regional majority shareholder will have an effect on the General Meeting of Shareholders, especially in terms of regional corporate capital and decision making (Yudho, 2017).

The existence of the General Meeting of Shareholders is an organ of the Company. According to company law, the General Meeting of Shareholders is an organ of a regional company that cannot be separated from the company. Through the General Meeting of Shareholders, the shareholders exercise control over the management carried out by the board of directors as well as the assets and management policies carried out by the management of the company (Harahap, 2009). In general, the General Meeting of Shareholders, as an organ of the company, has authority that is not given to the directors or commissioners within the limits specified in the Limited Liability Company Law and/or Articles of Association (Article 1 point (4) of Law Number 40 of 2007 concerning Companies. Limited). As for the division of tasks for the Perseroda organs, the task of the GMS as stipulated in the Limited Liability Company Law is to give approval for an action in the management of the company (Article 75 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies).

Apart from the aforementioned general powers, there are still a number of other more specific powers in the form of approving actions of the board of directors or the board of commissioners or issuing stipulations on certain legal acts. The authorities of the General Meeting of Shareholders which are regulated in the 2007 Limited Liability Company Law, are as follows (Pahlefi, 2016):

1. Declare to accept or take over all rights and obligations arising from legal acts committed by the founder or his proxies (Article 13 Paragraph (1));
2. Approve legal actions on behalf of the Company by all members of the Board of Directors, all members of the Board of Commissioners together with the founders on the condition that all shareholders attend the General Meeting of Shareholders, and all shareholders approve it at the General Meeting of Shareholders (Article 14 Paragraph (4));
3. Amendments to the articles of association are determined by the General Meeting of Shareholders (Article 19 Paragraph (1)),
4. Give approval for the repurchase or further transfer of shares issued by the Company (Article 38 Paragraph (1));
5. Delegate authority to the Board of Commissioners to approve the implementation of the resolutions of the General Meeting of Shareholders or the buyback or further transfer of shares issued by the Company (Article 39 Paragraph (1));
6. Approve the increase in the Company's capital (Article 41 Paragraph (1));
7. Approve the reduction of the Company's capital (Article 44 Paragraph (1));

8. Approve the annual work plan if the articles of association determine this (Article 64 Paragraph (1) in conjunction with Paragraph (3));
9. To approve the annual report and ratify the financial report as well as the report on the supervisory duties of the Board of Commissioners (Article 69 Paragraph (1));
10. Decide on the use of net profit, including determining the amount of allowance for compulsory reserves and other reserves (Article 71 Paragraph (1));
11. To determine the division of duties and management of the Company among members of the Board of Directors (Article 92 Paragraph (5));
12. To appoint members of the Board of Directors (Article 94 Paragraph (1));
13. Determine the amount of salary and allowances for members of the Board of Directors (Article 96 Paragraph (1));
14. Appoint other parties to represent the Company if all members of the Board of Directors or the Board of Commissioners have a conflict of interest with the Company (Article 99 Paragraph (2) letter c);
15. Give approval to the Board of Directors to: a). transfer the company's assets, or b). make collateral for the company's assets (Article 102 Paragraph (1));
16. Give approval to the Board of Directors to submit a bankruptcy application for the Company itself to the Commercial Court (Article 104 paragraph (1));
17. Dismissing members of the Board of Directors (Article 105 paragraph (2));
18. Strengthen the decision on temporary dismissal made by the Board of Commissioners against members of the Board of Directors (Article 106 paragraph (7));
19. To appoint members of the Board of Commissioners (Article 111 paragraph (1));
20. Determine the amount of salary or honorarium and allowances for members of the Board of Commissioners (Article 113);
21. To appoint an Independent Commissioner (Article 120 paragraph (2));
22. Give approval for the Merger Plan (Article 223 paragraph (3));
23. Give approval regarding Merger, Consolidation, Acquisition, or Separation (Article 127 paragraph (1));
24. Give a decision on the dissolution of the Company (Article 142 paragraph (1) letter a);
25. Accept the liquidator's accountability for the liquidation settlement (Article 143 paragraph (1)).

In corporate legal theory regarding the structure of a Limited Liability Company, the General Meeting of Shareholders has the highest power, but that does not mean that the General Meeting of Shareholders has the highest level among the organs of a Limited Liability Company. The General Meeting of Shareholders has the highest power if the authority is not delegated to the company's organs because each organ of the company has independent duties and authorities. The authority of the General Meeting of Shareholders is an authority that is residual in nature, namely the remaining authority of the existing powers that is not delegated to the directors and commissioners (Mishardi Wilamarta, 2002). However, in the Limited Liability Company Law, the authority of the General Meeting of Shareholders is the authority that regulates all corporate governance, including selecting and

dismissing directors and commissioners, authority regarding capital and the distribution of company profits. Whereas in practice it is always understood that the authority and position of the General Meeting of Shareholders is the highest organ in the company because the directors and commissioners are responsible to the General Meeting of Shareholders.

Based on the explanation above, the local government plays a role as a business actor in the management of regional corporate companies. This basically causes clarity regarding the position of the regional government in its status as the majority shareholder, especially in its decision to make capital participation, increase and decrease capital and share company profits. In the context of a regional limited liability company as a company, when the local government represents the local government in ownership of separated regional assets, it essentially represents collective (public) ownership of the company. Meanwhile, the business concept that is identical to the private sector tends to individual ownership (Widiastuti, 2019). Therefore, if the business element dominates in regional state-owned companies, the value of benefits felt by the public is not fulfilled.

The amount of authority of the General Meeting of Shareholders as stipulated in the Limited Liability Company Law allows local governments to intervene in the management of regional companies considering their position as the majority shareholder or only shareholder. With regard to business activities carried out by BUMD, there must be an affirmation regarding the legal politics of BUMD regulation that business carried out by the local government is not a pure business activity, but a business activity in the context of its governmental duties in the region (Widiastuti, 2019).

Losses that occur in the management of regional state-owned companies are a fact caused by the large amount of intervention from the local government. The government's position as the majority shareholder (as company owner) causes local governments to tend to exploit regional companies. At the operational level, these roles and functions are carried out in a distorted manner (Nur, 2011). This is supported by the regional company capital that comes from separated regional assets. So even though the company does not get a profit, there is always a permanent investment of capital from the local government.

As a result, the position of the local government in the provisions of the Limited Liability Company cannot be said to represent the region for a public legal entity. This is because when the government, as a public legal entity, includes its capital in the form of shares in regional state-owned companies, at that time, the immunity of the public as a regional government is lost and its legal relationship is cut off. Likewise, regional finances originating from separated regional assets have changed in the form of shares of regional government companies (Jaidun, 2017). Regional company capital is obtained from regional assets separated from the Regional Revenue and Expenditure Budget. By being separated from the Regional Revenue and Expenditure Budget, regional capital/assets are separated from the Regional Revenue and Expenditure Budget, so that when the assets are entered/deposited to regional state-owned companies it results in the transfer of property rights to assets of Perseroda (Jafar,

2016). However, conflicts often occur if there is a loss in the management of Regional-Owned Enterprises, whether the company's loss is a business risk as a private legal entity and or is it a regional financial loss that is included in the domain of public law. In practice, losses to Regional Owned Enterprises are often referred to as regional losses that cause regional financial losses (Jaidun, 2017). So even though currently the management of regional state-owned companies is subject to the Limited Liability Company Law, it does not have an impact on the work model of regional company companies because as the majority shareholder the authority of the regional government remains large in the management of regional state-owned companies.

As a company owner who is represented in the shareholders, the vision, mission, and goodwill of the local government can influence the development of regional limited liability companies. Regional limited liability companies will develop well if the local government has the vision, mission and good faith to develop them. In addition, minority shareholders are expected to be able to carry out their role and function of control over regional state-owned companies. Therefore, in order to increase the role of regional limited liability companies, the presence of an independent and credible audit committee is important to oversee the management of regional state-owned companies. It is the same with increasing the professional oversight role of the Regional People's Representative Council. In addition, the position and authority of regional governments must be clearly regulated in their actions as government in their function as public servants and business actors. Regulations regarding the establishment and management of regional state-owned companies need to be revised by taking into account the regional company shares originating from the separated Regional Budget, when transferred as equity participation by the regional government to regional state-owned companies, into company assets so that the assets no longer belong to the region.

This is the case in the financial accountability system. The financial accountability of regional state-owned companies does not have to follow the pattern of state financial accountability but follows the pattern of financial accountability regulated by the Limited Liability Company Law (Jafar, 2016). A well-developed regional limited liability company will increase company value and increase the share value of regional state-owned companies which in turn will be able to benefit the region itself.

Closing

The legal implications of local government authority for the management of regional company companies in the Flobamor East Nusa Tenggara Limited Liability Company even though it is subject to the Limited Liability Company law, but it has not yet impacted the work model of regional company companies because because as the majority shareholder the local government still has authority that is not handed over to the directors and commissioners, even though there was a change in the legal status of the establishment of the Limited Liability Company, Flobamor, there was no coordination relationship between the majority shareholder and the Provincial Government of East Nusa Tenggara, there were still business efforts from the local government with capital participation even though there was no increase in original income regions from the separated regional expenditure budgets.

There is still a regulation that local governments have great authority in the management of Regional Owned Enterprises in their position as public servants and in their position as majority shareholder (as company owner) in the management of regional state-owned companies. This has resulted in local governments tending to be exploitative towards local companies. Regional company capital originating from separated regional assets results in losses even though the company does not get profit, but there is always a permanent investment of capital from the local government. form the role of the regional government through the regional regulations of the Province of East Nusa Tenggara by increasing the status of the Limited Liability Company Flobamor East Nusa Tenggara, but there are still often local government organs as the majority shareholder in the effort to realize the management of regional corporate companies that are not yet based on the principles of Good Corporate Governance. Flobamor East Nusa Tenggara Limited Liability Company. This can be measured by capital participation that is of no benefit to local governments. Even the business capital between the Limited Liability Company, Flobamor, is not separated, so it is difficult to know the profit after a general meeting of shareholders.

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