

ELUCIDATION OF
LAW OF THE REPUBLIC OF INDONESIA
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ON
STATE-OWNED ENTERPRISES

GENERAL

- I. Improvement of the welfare of all people as mandated by the Preamble of the 1945 Constitution and as further elaborated by Article 33 of the 1945 Constitution constitutes the constitutional duty of all components of the nation. In relation to the above, it is deemed necessary to enhance the possession over all national economic powers either through sectoral regulation or state ownership on certain business units by means to give expediency as much as possible for the prosperity of the people.
State-Owned Enterprises (SOEs) which entire or most of their capital is derived from the restricted state assets constitutes one of the economic actors in the national economic system, in addition to private entities and cooperatives. In the performance of their business activities, SOEs, private entities, and cooperatives play the role which mutually support pursuant to economic democracy.
- II. In the national economic system, SOEs also contribute to the production of goods and/or services required in order to actualize prosperity of the people as much as possible. The role of SOEs is deemed to be more important as leader and/or pioneer in business sectors which private business has lack of interest. In addition, SOEs also have a strategic role as public service obligation performer, balancer of large private business powers, and contribute to the development of small-scale business/cooperatives. SOEs are also one of the significant sources of government revenues through various taxes, dividends, and privatization proceeds.

The performance of such role of SOEs is actualized in the business activities of almost all of economic sectors, such as sectors of agriculture, fisheries, plantation, forestry, manufacture, mining, finance, post and telecommunications, transportation, electricity, industry and trade as well as construction.

- III. In fact, although SOEs have achieved the initial objective as agents of development and motivators of the creation of corporations, however such objectives are achieved at a relatively high cost. The corporate performance is deemed to be insufficient, as demonstrated by the low profits obtain in comparison to the invested capital. Due to various obstructions, SOEs have not yet fully provide high-quality goods and/or services for the public at affordable prices and less competitive in global business competition. In addition, due to lack of resources, the function of SOEs, either as leader/pioneer or as balancer of power of large private business powers, also not yet fully actualized.

On the other hand, the world economic development has been running very dynamically, especially in relation to trade liberalization and globalization which have been agreed by the international world such as agreements regarding World Trade Organization (WTO), ASEAN Free Trade Area (AFTA), ASEAN Framework Agreement on Service, and Asia-Pacific Economic Cooperation (APEC).

- IV. In order to optimize their role and to enable survival of its existence in the world economic development which is more open and competitive, SOEs need to grow corporate culture and professionalism among others through the reorganization of their management and supervision. The management and supervision of SOEs must be performed under the principles of good corporate governance.

Enhancement of efficiency and productivity of SOEs must be performed through restructuring and privatization steps. Sectoral restructuring is performed to create a conducive business climate in order to achieve efficiency and optimal service.

While corporate restructuring which include reorganization of forms of entities, business activities, organization, management, and finance. Privatization is not solely meant as the sale of company, instead to be the tool and method to reorganize SOEs to achieve several targets at once, including to enhance corporate performance and added value, improved financial and management structure, the creation of sound and

competitive industrial structure, empowerment of SOEs which able to compete and global oriented, dissemination of public ownership as well as development of domestic capital market. By the performance of Privatization of SOEs, it does not mean the state control or sovereignty of the state on the respective SOEs become less or gone because of matters as stated above, the state continues to perform the function of control through sectoral regulation where the privatized SOEs perform their business activities.

The importance of sustainable organization of the role of SOEs in the national economic system, especially efforts to enhance corporate performance and value, has been also mandated by the People's Consultative Assembly through Decision Number IV/MPR/1999 on Major Guidelines of State Policy 1999- 2004. The decision has set the line whereas SOEs, particularly those engaged in the public interest, is required to be continuously organized and solvent through restructuring and for SOEs which business is not related to the public interest and existed in the sector which has become competitive are encouraged to be privatized.

- V. Organization of the management and supervision system of SOEs has been performed by the government in the past and expected to be sustainable. One of the steps that has been taken is the organization of the legislation which govern SOEs. In 1960 Law Number 19 Prp. of 1960 has been issued with the objective to establish the uniformity of the management and control as well as legal forms of the existing state enterprises. In 1969 Law Number 9 of 1969 was enacted. The Law simplifies the forms of SOEs into three forms of state enterprises, i.e., Service Company (*Perjan*) that is fully subject to the provisions of *Indonesische Bedrijvenwet* (State Gazette of 1927 : 419), (Public Corporation) *Perum* which is fully subject to the stipulations of Law Number 19 Prp. of 1960, and (State-Owned Limited Liability Company) *Persero* which is fully subject to the Commercial Code (State Gazette of 1847 : 23), especially articles which govern limited liability companies which at present has been replaced by Law Number 1 of year 1995 on Limited Liability Companies. In line with the mandate of Law Number 9 of 1969, the Government composed the guidelines of the governance of SOEs which provide in detail matters in connection with the mechanism of governance, management, and supervision as contained in Government Regulation Number 3 of 1983, as then revised by Government

Regulation Number 12 of 1998 on State-Owned Limited Liability Companies (PERSERO), Government Regulation Number 13 of 1998 on Public Corporation (PERUM), and Government Regulation Number 6 of 2000 on Service Enterprises (PERJAN). Those various Government Regulations provide a more definite direction regarding the system which adopted in the effort to enhance the performance of SOEs, that is through the application of corporate mechanism which performed clearly and expressly in the management of SOEs.

However, the existing various legislation have set out strong legal fundamentals in the development of state enterprises to keep in line of the development of the corporation world, as well as privatization efforts and the actualization of the principles of good corporate governance.

- VI. Pursuant to the foregoing facts and with due regard to mandate of the Decision of the People's Consultative Assembly Number IV/MPR/1999, therefore it is deemed necessary to determine a new Law which governs SOEs more comprehensively and in accordance with the development of business world.

The Law is intended to fulfill the visions of future development of SOEs and to set out fundamentals or principles of good corporate governance. Application of those principles is very important in performing management and supervision of SOEs. Experience has proven that the economic downturn in several countries including Indonesia among others is caused by companies in those countries is not performing the principles of good corporate governance consistently.

Law on SOEs is designed to create management and supervision system under the principles of efficiency and productivity for improvement of the performance and value of SOEs as well as to prevent SOEs from actions of exploitation other than the principles of good corporate governance. This Law is also designed to organize and affirm the role of the institution and position of government representatives as shareholders/owner of the capital in SOEs as well as to affirm and clarify the relation between SOEs as business operators and government institution as the regulator.

In addition, this Law also governs the stipulations on restructuring and privatization as tools and methods to re-organize SOEs in order to achieve their goals as well as other important issues which are supportive and able to be the fundamental on efforts to solvent SOEs.

Specifically concerning the privatization program, This law affirm whereas privatization may only be conducted by an SOE in the form of Persero to the extent that it is permitted by the legislation on business sector in which the Persero is engaged. SOEs in the form of Persero may be privatized because not only permitted by the stipulations of capital markets also because in general only SOEs in the form of Persero which has been engaged in the competitive sector. Privatization always considers the public service.

- VII. With due regard to the nature of business of SOEs, that is to gain profits and perform public service, in this Law SOE is simplified into two forms, those are State-Owned Limited Liability Company (Persero), which purpose is to gain profits and fully subject to the provisions of Law Number 1 of 1995 on Limited Liability Companies and Public Corporation (Perum) which is formed by the government to perform business as the implementation of the obligations of the government in order to provide certain goods and services fulfill the public needs. For the form of business as Perum, although its existence is to perform public service, nevertheless as an enterprise it is endeavored to remain independent and therefore Perum must also be endeavored to gain profit for its continuance.

VIII. ARTICLE BY ARTICLE

Article 1

Sufficiently clear.

Article 2

Section (1)

Point a

SOEs are expected to enhance their service quality for the public and at the same time contribute in the enhancement of national economic growth and support the state finance revenues.

Point b

Notwithstanding the purposes and objectives of Persero is to gain profit, however, in certain cases with respect to public service obligation, Persero may be assigned with specific duties with due regard to the principles of good corporate

governance. Therefore, assignment by the government must be accompanied with compensation pursuant to business or commercial calculation, while Perum which objective is to provide goods and services for public interest, in the performance must consider the principles of good corporate governance.

Point c

Under these purposes and objectives, any proceeds of SOEs, either goods or services, must fulfill the public needs.

Point d

Pioneering activities constitute a business activity to provide goods and/or services which are needed by the public, however such activities are not yet able to be performed by private and cooperative because of commercially not profitable. Therefore, such activities may be performed through assigning SOEs.

In terms of urgent public needs, the government may also assign an SOE which have the function of public service to perform partnership program with entrepreneurs of low economic group.

Point e

Sufficiently clear.

Section (2)

Sufficiently clear.

Article 3

The term “other legislation” means provisions of Law Number 1 of 1995 including its amendments if any and its implementing regulations and sectoral legislation which govern the business of SOEs and private which issued by department/non-department institutions.

Article 4

Section (1)

The term “restricted” means the restriction of state finance from the State Budget to be used for capital participation of the state in SOEs, and further the governance and management are no

longer based on the State Budget system, however the governance and management are based on the principles of good corporate governance.

Section (2)

Point a

The State Budget also includes projects which funded by State Budget-funded projects and managed by SOEs and/or state receivables in the which are used as state equity participation.

Point b

The term “capitalization of reserves” means addition to the paid-up capital deriving from the reserves.

Point c

The term “other sources” means, among others, asset revaluation proceeds.

Section (3)

Restriction of the state assets to be used for the state equity participation in an SOE may only be conducted by direct participation of the state in the capital of the SOE, so each participation requires to be determined by a Government Regulation.

Section (4)

To monitor and organize state finance which are invested in SOEs and limited liability companies including addition and reduction of the state assets as well as the change of state ownership structure as a result of transfer of state-owned shares or issuance of new shares that are not subscribed by the state, requires to be determined a by Government Regulation.

Section (5)

Addition to the participation deriving from capitalization of reserves and other sources is sufficient by Resolution of the GMS/Minister and is reported to the Minister of Finance because in principle those state assets have been restricted from the State Budget.

Section (6)

The Government Regulation governs, among others, the mechanism of relation between the Minister and the Minister of

Finance as well as the Technical Ministers in accordance with their respective positions and functions, that are the Minister of Finance as manager of the state finance, the Minister whom appointed to represent the government as shareholder, and the Technical Ministers as regulators.

Article 5

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

The Board of Directors in their capacity as an organ of SOEs which assigned to perform the management is subject to all regulations applicable to SOEs and remain to the application of the principles of good corporate governance which include:

- a) transparency, that is the openness in decision-making process and openness in disclosure of material and relevant information concerning the company;
- b) independence, that is a condition in which a company is managed professionally without any conflict of interest and influences/pressures from any party whatsoever which are not in accordance with the legislation and the principles of good corporate governance;
- c) accountability, that is the clearness of functions, performance and of the Organs with respect to the effective management of the company;
- d) responsibility, that is the consistency of the corporate management with legislation and the principles of good corporate governance.
- e) fairness, that is, the reasonableness of the corporate management against the legislation and the principles of good corporate governance.

Article 6

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Section (3)

See the elucidation of Article 5 Section (3).

Article 7

Taking personal benefit means to abuse his/her authority as a member of the Board of Directors or the Board of Commissioners or the Board of Supervisors of SOEs for the interest of his/her own, group, or class.

Article 8

Section (1)

Which intended by this provision is to prevent any conflict of interest arising among members of the Board of Directors or the Board of Commissioners or the Board of Supervisors of the SOEs they manage/supervise.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 9

Sufficiently clear.

Article 10

Section (1)

Assessment as referred to in this section is to determine whether or not the Persero is feasible for establishment through an assessment on the business plan and ability to be independent as well as to develop the business in the future. Assessment in this matter involves the Technical Ministers to the extent that sectoral policy is concerned.

Section (2)

Establishment of the Persero is conducted by the Minister in consideration that the Minister is the representative of the state as shareholder of the Persero by reference to the legislation.

Article 11

In consideration that Persero is basically a limited liability company, all the provisions of Law Number 1 of 1995 on Limited Liability Companies, including its implementing regulations are also applicable to Persero.

Article 12

A Persero as one of the national economic actors is demanded to meet the market demands through the provision of high-quality and highly competitive goods and/or services in both domestic and international markets. Therefore, it may increase the profits and value of the respective Persero and therefore will give optimal service to the relevant parties.

Article 13

Sufficiently clear.

Article 14

Section (1)

For Persero which entire equity (100%) is owned by the state, the Minister designated to represent the state as shareholder in any written resolution concerning Persero constitutes a resolution of the GMS. For Persero and a limited liability company which shares owned by the state are less than 100% (one hundred percent), the Minister has the capacity as shareholder and his/her resolution is made together with other shareholders in the GMS.

Section (2)

The term "individual" means a person who holds a position ranked under the Minister who technically has the duty to assist the Minister as shareholder of the respective Persero. However, if deemed necessary, it is possible to authorize a legal entity in accordance with the legislation.

Section (3)

Although the position of the Minister as government representative has been delegated to an individual or legal entity to represent him/her in GMS, for certain matters, the authorized

party is obligated to first obtain approval of the Minister before such matters are resolved in GMS. This matter requires prior approval from the Minister due to its strategic characteristics for the continuance of Persero.

Article 15

Section (1)

Sufficiently clear.

Section (2)

In his/her position as GMS, his/her appointment and dismissal by Ministerial Decision is sufficient. Such Ministerial Decision has the same force of law as the resolution validly made by the GMS.

Article 16

Section (1)

Sufficiently clear.

Section (2)

In consideration to the position of the Board of Directors as an organ of a Persero is strategic in the management of the company in order to achieve the purposes and objectives of the company, to fill the position requires a prospective member of the Board of Directors having expertise, integrity, honesty, leadership, experience, good behavior, and high dedication as well as vision of the company development.

In order to obtain the best prospective member of the Board of Directors, it is required to make a selection through a fit and proper test that is administered transparently, professionally, independently, and accountably.

The fit and proper test is administered by a team which appointed by the Minister as GMS in terms of all shares are owned by the state, and appointed by the Minister as shareholder in terms of shares are partially owned by the state, specifically for Board of Directors representing the elements of the government.

Members of the team as appointed by the Minister must meet the criteria of, among others, professionalism, comprehension of the

management and business of the respective SOEs, not having conflict of interest with the respective prospective member of the Board of Directors; and have a high integrity and dedication. The Minister may also appoint an independent professional institution to administer a fit and proper test to the prospective member of the Board of Directors of the Persero.

Section (3)

The term “management contract” means a statement of corporate intent (SCI) which, among others, contains promises or statements of the Board of Directors to meet all targets determined by the shareholders. The management contract is subject to renewal every year to be adjusted with the condition and development of the company.

Section (4)

Member of the Board of Directors who has completed his or her term of office may be taken into consideration for re-appointment under the performance assessment of the previous term.

Section (5)

Sufficiently clear.

Article 17

The term “dismissal at any time” means the dismissal before his or her term of office expires. Such dismissal is conducted if the Board of Directors, among others, fail to fulfil their obligations that have been agreed in the management contract, fail to perform their duties properly, violate the provisions of the articles of association and/or legislation; is declared guilty by a court decision that has permanent legal force, passed away, and resignation.

Article 18

Sufficiently clear.

Article 19

Sufficiently clear.

Article 20

A corporate secretary functions to ensure that the Persero is in compliance with the regulations on requirements for transparency in line with the application of the principles of good corporate governance, provide information to the Board of Directors and the Board of Commissioners periodically, if requested. A corporate secretary must meet the qualifications of adequate professionalism. A corporate secretary is appointed and dismissed by the Board of Directors and responsible to the Board of Directors.

Article 21

Section (1)

A draft long-term plan contains, among others:

- a. evaluation of the implementation of the previous long-term plan;
- b. current position of the company;
- c. assumptions that are made in the arrangement;
- d. determination of mission, targets, strategy, policy, and work program of the long-term plan.

Section (2)

The Board of Commissioners, before signing the draft long-term plan as delivered by the Board of Directors, is obligated to discuss it with the Board of Directors.

Upon the joint signing, all members of the Board of Directors and the Board of Commissioners are responsible for the contents of the respective draft long-term plans.

Article 22

Section (1)

A draft work plan and budget of the company contains, among others:

- a. the mission of the Persero, business targets, business strategy, policy of the company, and work/activity programs;
- b. the budget of the company detailed into every budget for work/activity programs;
- c. the financial projections of the Persero and its subsidiaries;
- d. other matters that require a resolution of GMS.

Section (2)

As a work plan and budget is ratified by GMS, any amendments thereof must also be ratified by GMS, except provided otherwise by a resolution of GMS concerning ratification of the work plan and budget of the company.

Article 23

Section (1)

An annual report contains, among others:

- a. Annual statements which consist of end of year balance sheet of proceeding year and profit/loss statement of the same proceeding year as well as the explanations of those documents;
- b. The consolidated balance sheet of the company of the same group, in addition to the respective balance sheet of each company of the same group;
- c. The report on the condition and operation of the company and the result which has been achieved;
- d. The main business activity of the company and changes during the relevant financial year;
- e. The details of issues arise during the financial year which affected the activities of the company;
- f. The names of members of the Board of Directors and the Board of Commissioners; and
- g. The salaries and other benefits of the members of the Board of Directors and honorarium as well as other benefits of the members of the Board of Commissioners.

Section (2)

The Board of Commissioners prior to signing the annual report submitted by the Board of Directors, must discuss it together with the Board of Directors. Upon the joint signing, all members of the Board of Directors and the Board of Commissioners are responsible for the contents of the annual report.

Section (3)

The reasons of the members of the Board of Directors not signing must be explained in writing to GMS so that GMS may use it as one of the considerations in the assessment of the report.

Article 24

In addition to organizing a long-term plan, work plan and budget, annual report, and annual statements, the Ministerial Decision govern, among others, the solvency level of the Persero.

Article 25

Prohibition from holding concurrent position is intended to allow the members of the Board of Directors to fully devote their energy and ideas and/or attention to the duties, obligations and achievement of the objectives of the Persero and prevent a conflict of interest from arising.

Article 26

The term “minutes of meeting” in this article means the minutes of meeting of the Board of Directors, the Board of Commissioners, and GMS. The Board of Directors is required to maintain the minutes of meetings because it constitutes a formal documents that contain matters discussed and resolved in the meeting and constitutes any evidence which become the background any action is taken, either by the Board of Directors, the Board of Commissioners, or shareholders in the management of the company. Bookkeeping of the Persero is prepared pursuant to the financial accounting standards which reflect the prevailing accounting principles.

Any change either caused by transactions or other events which occur in the Persero and affecting the asset, liabilities, capital, expenses, and income must be booked under an accountable accounting system and performed under the principles of internal control, especially restriction of functions in the management, recording, storage, and supervision.

Article 27

Section (1)

Sufficiently clear.

Section (2)

See elucidation of Article 15 section (2).

Article 28

Section (1)

Sufficiently clear.

Section (2)

The term “taking actions independently” means whereas the Board of Commissioners may not have an interest that may affect their ability in the performance of their duties independently and critical on relation with one another and the Board of Directors.

Section (3)

See elucidation of Article 16 section (4).

Section (4).

Sufficiently clear.

Section (5)

Appointment of member of the Board of Commissioners which is not at the same time with the Board of Directors is intended to prevent a vacant position if the term of office of the members of the Board of Commissioners and the Board of Directors has expired, except for initial appointment at the time of establishment of a Persero.

Article 29

See elucidation of Article 17.

Article 30

Sufficiently clear.

Article 31

The Board of Commissioners in performing its duties is obligated to:

- a. give advices and recommendations to GMS regarding work plan and budget of the company as proposed by the Board of Directors;
- b. follow the development of Persero’s business, to give advices and recommendations to GMS concerning any issues deemed important for the management of the Persero;
- c. promptly report to the shareholders if there is any occurrence of degradation of performance of the Persero;

- d. give advice to the Board of Directors in the performance of the management of the Persero;
- e. perform other supervisory duties as determined by the articles of association of the Persero and/or by the resolution of GMS. In addition, for the Board of Commissioners to be able to perform their duties properly in accordance with their duties and functions, the Board of Commissioners have the following authority:
 - a. inspect books, letters,; as well as other documents, examine cash position for verification purposes and other securities and examine the assets of the Company;
 - b. enter into premises, buildings, and offices which are used by Persero;
 - c. request for explanations from the Board of Directors and/or other officials with regard to all issues relating to the management of Persero;
 - d. request the Board of Directors and/or other officials, by acknowledgement of the Board of Directors, to attend the meetings of the Board of Commissioners;
 - e. attend the meetings of the Board of Directors and give advices on matters discussed;
 - f. suspend the Board of Directors by stating the reasons;
 - g. other authority which are deemed necessary as governed by the articles of association of the Persero.

Article 32

Section (1)

Sufficiently clear.

Section (2)

This provision grants an authorization to the Board of Commissioners to perform the management of Persero which actually may only be performed by the Board of Directors in terms of the Board of Directors is unavailable. If the Board of Directors is available, the Board of Commissioners may only perform certain actions as determined by GMS in the articles of association and legislation.

Article 33

Prohibition on holding concurrent position is intended for the member of the Board of Commissioners to fully devote his/her energy and ideas and/or attention on duties, obligations, and achievement of the objectives of the Persero as well as to prevent a conflict of interest from arising.

Article 34

Sufficiently clear.

Article 35

Section (1)

Establishment of Perum must meet the following criteria, among others:

- a. the business field or its activities are associated with the interest of many people;
- b. not solely established to gain profit (cost effectiveness/cost recovery);
- c. pursuant to an assessment has meet the economic condition which necessary for the establishment of an enterprise (independent).

Proposal for establishment of Perum to the President by the Minister may be conducted at the initiative of the Minister and may also at the initiative of the Technical Ministers and/or the Minister of Finance to the extent that it meets the aforesaid criteria.

See also elucidation of Article 10 section (1).

Section (2)

This Government Regulation contains, among others:

- a. determination of establishment of Perum;
- b. determination on amount of restricted state assets;
- c. articles of association;
- d. appointment of Minister as representative of the Government as the owner of the capital.

Section (3)

This Government Regulation, among others, governs the relation between the Minister, the Minister of Finance, and the Technical

Ministers with respect to the establishment, governance, management, and supervision of Perum.

Article 36

Section (1)

Perum differs from Persero because of their nature of business. Perum in the conduct of its business emphasizes on public service through the provision of either service or goods and services. However, as an entity it is endeavored to remain independent, and therefore, Perum needs to gain profit for its continuance.

Section (2)

The term “equity participation” in this section means direct participation of Perum in the share ownership in an entity in the form of a limited liability company, whether the existing or to be established.

Article 37

The Minister has the position as an organ with the highest authority in a Perum having all authority which are not delegated to the Board of Directors or the Board of Supervisors within limits as determined by this Law and/or Government Regulation on its Establishment.

Article 38

The Minister as the representative of the government and as the owner of the capital of Perum determines the development policy of Perum which objective is to set directions in achieving the objectives of the company that involves the policy on investment, business financing, sources of financing, use of proceeds of the company, and other development policy. In view of the Board of Supervisors will be supervising the implementation of the policy, proposal of the Board of Directors to the Minister must obtain prior approval from the Board of Supervisors.

The Minister has very high interest in the state capital invested in Perum to be developed. Accordingly, issues on investment, financing and use of business proceeds of Perum should be clearly directed through the development policy of the company. In order to grant

approval on the proposal of the Board of Directors, the Minister may hold a discussion at any time with the Technical Minister to discuss matters which related to sectoral policy.

Article 39

In view of capital of Perum is basically constitutes restricted state assets, the owner of the capital only be responsible up to the value of participation paid up and exclude the state assets other than such capital. If any actions other than the corporate mechanism occurred as governed by this article, such limited responsibility ceases.

Article 40

The Ministerial Decision governs, among others, actions of the Board of Directors which require approval of the Board of Supervisors and/or approval of the Minister, which includes, among others, approval for:

- a. loan withdrawal;
- b. loan granting;
- c. release of assets;
- d. write offs of bad debts and provision of goods.

Article 41

Section (1)

Government Regulation on Establishment of Perum, in addition to determination of establishment of Perum, at the same time also provides a decision to perform state equity participation in Perum and the articles of association of the respective Perum.

The articles of association of a Perum contain, among others:

- a. name and domicile of Perum;
- b. purposes and objectives of business of Perum;
- c. period of existence of Perum;
- d. composition and numbers of member of the Board of Directors and numbers of the member of the Board of Supervisors; and
- e. determination of the procedures for holding a meeting of the Board of Directors, meeting of the Board of Supervisors, meeting of the Board of Directors and/or the Board of Supervisors with the Minister and the Technical Ministers.

Section (2)

Since the Government Regulation on Establishment of Perum also contains the articles of association of Perum, any amendments to the articles of association of Perum are governed by Government Regulation.

Section (3)

Sufficiently clear.

Article 42

Sufficiently clear.

Article 43

Pursuant to this provision, the Minister may determine either partial or all of the net profits will be used for distribution of dividends to the owner of the capital , or other distribution, such as bonus (*tantiem*) for the Board of Directors and the Board of Supervisors, bonus for employees, social reserve funds, etc., or placement of the net profit as reserves of the Perum which may be used for, among others, business expansion of Perum.

Article 44

In order to appoint the Board of Directors, the Minister may request for input from the Technical Ministers, if deemed necessary.

Article 45

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

In view of the position of the Board of Directors as an organ of Perum is strategic in the management of the company in order to achieve the purposes and objectives of the company, to fill the position requires the prospective member of the Board of Directors to have expertise, integrity, honesty, leadership, experience, good behavior, and high dedication as well as vision for the development of the company.

In order to obtain the best prospective member of the Board of Directors, a selection through a fit and proper test is required which performed transparently, professionally, independently, and accountably.

A fit and proper test is performed by a team appointed by the Minister.

Members of the team as appointed by the Minister must meet the criteria of, among others, professionalism, comprehension of the management and business of the respective SOEs, not having conflict of interest with the respective prospective member of the Board of Directors; and have a high integrity and dedication. The Minister may also appoint an independent professional institution to administer a fit and proper test to the prospective member of the Board of Directors of the Perum.

Section (4)

See elucidation of Article 16 Section (3).

Section (5)

See elucidation of Article 16 Section (4).

Section (6)

Sufficiently clear.

Article 46

The term “dismissal at any time” means the dismissal before his or her term of office expires. Such dismissal is conducted if the Board of Directors, among others, fail to fulfil their obligations that have been agreed in the management contract, fail to perform their duties properly, violate the stipulations of the articles of association and/or legislation; is declared guilty by a court decision that has permanent legal force, passed away, and resignation.

Article 47

Sufficiently clear.

Article 48

Sufficiently clear.

Article 49

Section (1)

Sufficiently clear.

Section (2)

The Board of Supervisors before signing the draft long-term plan as delivered by the Board of Directors, is obligated to discuss with the Board of Directors. Upon the joint signing, all members of the Board of Directors and the Board of Supervisors is responsible for the contents of the draft long-term plan.

Article 50

See elucidation of Article 22 Section (1) and Section (2).

Article 51

Section (1)

See elucidation of Article 23 Section (1).

Section (2)

See elucidation of Article 23 Section (2).

Section (3)

See elucidation of Article 23 Section (3).

Article 52

See elucidation of Article 24.

Article 53

See elucidation of Article 25.

Article 54

See elucidation of Article 26.

Article 55

Section (1)

Sufficiently clear.

Section (2)

Error or negligence of the Board of Directors as referred to in this section is an error or negligence that is committed, for example, through violation of the terms of the articles of association of

Perum or the stipulations that have been outlined by the Board of Supervisors and the Minister and have been proven legally. In this matter, the process of proving is conducted by the Minister together with his or her apparatus. However, whether or not the respective member of the Board of Directors is guilty, is determined pursuant to the verdict of the competent court.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 56

Members of the Board of Supervisors may include the elements of officials of the Technical Ministers, the Minister of Finance, the Minister, and officials of department/non-department institutions, which activities are directly associated with Perum.

Also see elucidation of Article 44.

Article 57

Section (1) and (2)

Sufficiently clear.

Section (3)

See elucidation of Article 28 Section (2).

Section (4)

See elucidation of Article 16 Section (4).

Section (5)

Sufficiently clear.

Section (6)

See elucidation of Article 28 Section (5).

Article 58

The term “dismissal at any time” means the dismissal before his or her term of office expires. such dismissal is conducted if the Board of Supervisors, among others, fail to fulfil their obligations that have been agreed in the management contract, fail to perform their duties properly, violate the stipulations of the articles of association and/or legislation; is declared guilty by a court decision that has permanent legal force, passed away, and resignation.

Article 59

Sufficiently clear.

Article 60

See elucidation of Article 31.

Article 61

Section (1)

Sufficiently clear.

Section (2)

See elucidation of Article 32 section (2).

Article 62

See elucidation of Article 33.

Article 63

Section (1)

A Persero may perform a merger or consolidation with another existing Persero or Perum, and vice versa.

A merger and consolidation of SOEs may be conducted without firstly performing liquidation. By such merger, the merging Persero or Perum become dissolved. While by the merger of SOEs which mutually merging become dissolved and form a new SOE.

Section (2)

A legal action performed by SOEs to acquire another SOE or limited liability company, either all or most of shares/capital may result in a transfer of control of the SOEs or the limited liability company.

Article 64

Section (1)

Since the establishment of SOEs is conducted pursuant to Government Regulation which stated the amount of state equity participation in the establishment of the SOEs, the dissolution of the SOEs must also be performed by a Government Regulation.

Section (2)

In the Government Regulation on dissolution of SOEs may also determine so that the remaining proceeds from liquidation to be

used for the state equity participation in another existing SOE or used for participation to establish a new SOE. If not determined so, the remaining proceeds from liquidation is directly deposited into the State Treasury because it constitutes the right of the state as the shareholder or owner of the capital of the SOEs.

Article 65

Section (1)

As establishment of an SOE is performed pursuant to the Government Regulation, any changes in the SOEs as a result of a merger, consolidation, acquisition, or dissolution must also be performed pursuant to the Government Regulation.

Section (2)

Actions to perform a merger, consolidation, acquisition, and dissolution of an SOE will have immediate impacts on the interest of the SOE, its shareholders, third parties, and employees of the SOE. Basically, by performing those actions, it is expected that the surviving and newly-established SOEs will be better. The interest of the shareholders may not be harmed, so are the third parties that should be first notified so that their rights are settled properly. Employees which represent assets of the SOEs themselves are endeavored not to be subject to termination of employment; or if initiated, the termination of employment is the last alternative and must be settled in accordance with the legislation. Therefore, before the aforesaid actions are performed, the Board of Directors of an SOE conducting a merger, consolidation, acquisition, and dissolution is required to disseminate it first to their respective employees.

Article 66

Section (1)

Notwithstanding that an SOE is established with the purposes and objectives to gain profit, in case of urgency, SOE is assigned with a special duty by the government. If such assignment in accordance with scientific assessment is financially not feasible, the government must give compensation for all costs incurred by the SOEs, including the expected margin.

Section (2)

Given the assignment in principle changes the existing work plan and budget of the company, the assignment must be acknowledged and approved by GMS/the Minister.

Article 67

Internal supervisory unit is formed to assist the president director in conducting internal financial audit and operational audits of SOEs as well as to assess his or her control, management, and performance of the relevant SOEs, and to give recommendations for improvements. Since the internal supervisory unit is assigned with a duty to assist the president director, its accountability is reported to the president director.

Article 68

Sufficiently clear.

Article 69

Sufficiently clear.

Article 70

Section (1)

In order to actualize effective supervision in the performance of their duties, the Board of Commissioners and the Board of Supervisors need the assistance of an Audit Committee which duty is to assess the performance of activities and the audit results which conducted by the internal supervisory unit or external auditor, provide recommendations on the perfection of the management control system and the performance, ensuring that there is already a satisfactory review procedures for all information released by the SOEs; identifying matters that requires attention from the Board of Commissioners and the Board of Supervisors as well as other duties of the Board of Commissioners and the Board of Supervisors.

Section (2)

The chairman of the Audit Committee is an independent member of the Board of Commissioners who is appointed by the Board of Commissioners.

Section (3)

Other committees as intended herein, among others, a remuneration committee and nomination committee.

Section (4)

Sufficiently clear.

Article 71

Section (1)

A financial audit is intended to obtain the auditor's advices on the fairness of the financial statements and annual statements of the respective company. The auditor's advices on the respective financial statements and annual financial statements are required by the shareholders/the Minister to, among others, in order to give full discharge (*acquit et decharge*) to the Board of Directors and the Board of Supervisors in line with Law Number 1 of 1995 on Limited Liability Companies and Law Number 8 of 1995 on Capital Markets, an audit of financial statements and annual statements of a Limited Liability Company is conducted by a public accountant.

Section (2)

Sufficiently clear.

Article 72

As mandated by the People's Consultative Assembly, the government is obligated to maintain the enterprises solvency, especially enterprises which lines of business related to the public interest. Efforts to maintain these enterprises solvency may be performed through restructuring so that the enterprises may operate more efficiently, transparently, and professionally so the enterprises are able to provide the best product/service at competitive prices to the customers also to give benefit to the state. Prior to performing restructuring, the government will consider the cost and benefit of the restructuring.

Article 73

Sectoral restructuring is mainly designated for sectors which receive protection in the past or sectors that have natural monopolies.

Sectoral restructuring is intended to create a sound business climate for fair competition, efficiency, and optimal service. Such industrial restructuring is related to business regulation. Re-organization and arrangement of regulation is conducted jointly with the relevant departments.

Sectoral restructuring may be conducted through the following methods: separate sectoral segments to reduce the vertical integration of the sector; increase competition, introduction of competition from substitute industries, other suppliers of the same sector, and increase market competition as well as demonopolization through regulation. For companies with public service obligation, these companies are still in the restructuring process. Notwithstanding the public interest, the companies will apply business principles in order to better improve the efficiency and productivity of the company. This effort is to clarify the levels of the government subsidies to the cost of public service obligation.

Article 74

By performing privatization, it is expected that a change in the corporate culture occurs as a result of the entry of new shareholders, either through public offers (go public) or direct placement. Companies will face an obligation to meet the requirements of openness which represent the main requirements for a go-public process, or to meet the companies' targets that must be achieved as a result of the entry of new shareholders.

The changed corporate culture will encourage the improvement of performance of the company that will further increase the competitiveness of the companies in competing with the national, regional, and even with global competitors so that in the end will give a larger contribution to national economy in the form of goods and services which are better in its quality and at affordable prices, also state revenues in the form of tax will also increase. Therefore, the purposes and objectives of privatization are basically to improve the role of Persero in its efforts to increase public welfare by expansion of public ownership of Persero as well as to uphold the national economic stability.

Although privatization is intended to perform efficiency, such privatization whenever possible will not cause anxiety to the employees. Therefore, in performing privatization, to the extent possible to that no termination of employment is effected. Termination of employment may only be affected after a definite period of the privatization, except if the employees have committed actions in violation of the provisions of law. Further, if termination of employment occurs, will be conducted in accordance with the legislation. In relation thereto, in the effort so the employees and workers union or the public to be aware of the benefit of privatization, the government needs dissemination the benefit of privatization in a guided and consistent manner.

Article 75

Privatization is conducted transparently, either during its preparation process or its implementation. Privatization process is conducted by reference to the determined privatization procedures without intervention of other parties out of the corporate mechanism and prevailing legislation. Privatization process will also be conducted by intensive consultation with the relevant parties so that its process and implementation can be accountable to the public.

Article 76

Section (1)

The term “competitive industry/business sector” means industry/business sector which basically engaged by whomever, either by an SOE or private enterprise. In other words, there are no legislation (sectoral policy) that prohibit private enterprise from performing activities within that sector, or firmly speaking, that sector is not solely specialized for SOEs. The term “the industry/business sector has the technology element which is rapidly changing” means competitive industry/business sector that has the main characteristics of rapidly proliferating technology and requires very large investment to replace the technology.

Section (2)

Sufficiently clear.

Article 77

Sufficiently clear.

Article 78

Point a

The term “sale of shares under the provisions on capital markets” means, among others, sale of shares through a public offer (Initial Public Offering/go public), issuance of convertible bonds and other equity securities. This also means sale of shares to strategic partners (direct placement) by SOEs that have been listed in the stock exchange.

Point b

The term “direct sale of shares to investors” means sale of shares to strategic partners (direct placement) or other investors, including financial investors. This method is especially applicable to sale of shares by that have not been listed in the stock exchange.

Point c

The term “sale of shares to the management (Management Buy Out/MBO) and/or the employees (Employee Buy Out/EBO)” means direct sale of major part or all of shares of a company to the management and/or the employees of the relevant company.

Article 79

Section (1)

Sufficiently clear.

Section (2)

The Technical Minister as regulator of business sector in which an SOE is performing its business activity becomes a member of the privatization committee for privatization of SOEs only within his or her sector.

Section (3)

Sufficiently clear.

Article 80

Sufficiently clear.

Article 81

In order to perform the duties as referred to in this article, the Minister performs the following steps, among others to:

- a. determine the SOEs to be privatized;
- b. determine the method of privatization to be used;
- c. determine the type and range of amount of shares to be released;
- d. determine the range of share sale price;
- e. determine the estimated value to be obtained from the privatization program of SOEs.

Article 82

Sufficiently clear.

Article 83

This Government Regulation regulates among others:

- a. determination of SOEs which eligible for entry into a privatization program;
- b. submission of annual privatization program to the privatization committee;
- c. consultation with the House of Representatives and the relevant Department/Non-Department Institutions;
- d. performance of privatization.

Article 84

Which included in the definition of person and/or legal entity that has a conflict of interest are including parties that have affiliation relation, as follows:

- a. family relation due to marriage and offspring up to the second degree both horizontally and vertically;
- b. relation between a party and employees, Directors or Commissioners of the party;
- c. relation between 2 (two) companies in which there is one or more members of the same Board of Directors or Board of Commissioners;
- d. relation between a company and party that either directly or indirectly controls or is controlled by that company;

- e. relation between 2 (two) companies that are controlled either directly or indirectly by the same party; or
- f. relation between a company and its major shareholders.

Article 85

Section (1)

The term “information” means a material and relevant fact on a situation, event, or fact that may affect prices and/or decisions of investors, prospective investors, or any other interested parties that are affected by such information or fact.

With respect to such information or fact, to the extent that the information or fact has not been determined as open information or fact, or to the extent that the information or fact has not been announced by the Minister, all parties involved must maintain confidentiality of such information.

Section (2)

In terms of breach of this provision on confidentiality occurred in an SOEs which has not been listed in the stock exchange, and its privatization uses another method other than a privatization method through sale of shares in the stock exchange, such SOE is subject to sanctions pursuant to public criminal law, while in terms of breach is committed in the privatization of SOE that has been listed in the stock exchange, the SOE is subject to sanctions in accordance with the legislation in the field of capital markets

Article 86

Section (1)

The privatization proceeds deposited into the State Treasury is the proceeds of divestment of shares owned by the state. While, in terms of sale of new shares, the proceeds are deposited into the treasury of company. In terms of the privatization proceeds of subsidiaries of the SOEs, their privatization proceeds may be determined as interim dividends. Which intended as net proceeds of privatization is the net profit after deduction of performance of privatization costs. The cost of the privatization must have due regard to the principles of fairness, transparency, and accountability.

Section (2)

Sufficiently clear.

Article 87

Section (1)

With this kind of status of employment of SOEs, for SOEs all provisions of echelonment of position to civil officials is not applicable. The intended collective employment contract is entered into between the employees of SOEs and the employment provider, that is, the management of the SOEs.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 88

The term “small-scale businesses/cooperatives” includes small-scale businesses/cooperatives that meet the criteria as small-scale businesses in accordance with the legislation.

Article 89

Sufficiently clear.

Article 90

Sufficiently clear.

Article 91

For the Board of Directors to perform their duties independently, any parties other than the organs of the SOEs is prohibited from having interference to the management of the SOEs. Interference includes an action or direction which directly affect the management of the SOEs or on the decision making of the Board of Directors. This provision is intended to affirm the independence of SOEs as an enterprise in order to be managed professionally so it may develop properly in accordance with the business objective.

This also applies to other Departments and government institutions because the need of funds of other Departments and Government

institution has been regulated and determined separately. Departments and Government institution are not allowed to encumber with any form of expenses, and otherwise, SOEs are not allowed to defray the expenses of Departments and Government institutions in book-keeping.

Article 92

Sufficiently clear.

Article 93

Sufficiently clear.

Article 94

Sufficiently clear.

Article 95

Sufficiently clear.

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