

# Transformation of Land Ownership with Reclamation Result Right to Manage (HPL) on Behalf of the Government of DKI Jakarta Through Capital Participation in BUMD PT Pembangunan Jaya Ancol Tbk

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## ABSTRACT

This paper will describe the transformation of land ownership resulting from the reclamation activities of the Ancol Project with the status of Right To Manage (HPL) on behalf of the DKI Jakarta Regional Government through the regional capital participation of the DKI Jakarta Regional Government in the Regional Owned Enterprise (BUMD) PT Pembangunan Jaya Ancol Tbk. Legal problems arose when one of the legal bases for PT Pembangunan Jaya Ancol Tbk was revoked to manage the HPL land in 2015. In addition, there are still different interpretations of state/regional assets separated by BUMN/BUMD. The revocation of the legal basis for managing and interpreting the separated state/regional assets creates legal uncertainty for PT Pembangunan Jaya Ancol as a BUMD in managing and recording HPL. It has become the regional capital participation because it is contrary to the provisions on the capital or assets of the Limited Liability Company, which is divided in the form of shares as regulated in Law Number 40 of 2007 concerning Limited Liability Companies.

**Keywords:** *DKI Jakarta Regional Government, PT Pembangunan Jaya Ancol, Right to Manage (HPL), Regional Owned Enterprises (BUMD), Separated Regional Assets.*

## 1. INTRODUCTION

PT Pembangunan Jaya Ancol Tbk as one of the Regional Owned Enterprises (BUMD) of the DKI Jakarta Regional Government, which is engaged in the real estate business and management of tourism areas, was formed based on DKI Jakarta Regional Regulation Number 4 of 1991 concerning DKI Jakarta Regional Equity Participation in the Establishment of Limited Liability Companies PT Pembangunan Jaya Ancol. Through the Regional Regulation, it is stipulated that the DKI Jakarta Regional Government shall participate in the regional capital in the establishment of the BUMD PT Pembangunan Jaya Ancol in the form of immovable property in the form of several parcels of land and buildings, one of which is the land parcel resulting from reclamation activities that have been carried out continuously since the early 1960s decade. The status of

land with Right To Manage (HPL) covering an area of 4,779,120 m<sup>2</sup> by HPL certificate Nomor 1/Ancol of 1987 on behalf of the Regional Government of the "Special Capital Region of Jakarta," 1 which was followed later by the issuance of implementing regulations/derivatives of these Regional Regulations through the Decree of the Governor of DKI Jakarta Number 1107 of 1993 concerning Guidelines for Development in the Ancol Area, which regulates the authority of PT Pembangunan Jaya Ancol in managing the HPL and non-HPL land parcels that are in the Ancol area that has been *inbreng* .2. There are two legal problems. First, the DKI Jakarta Governor Decree Nomor 1107/1993 was revoked in 2015 by the DKI Jakarta Regional Government through the DKI Jakarta Provincial Governor Regulation Nomor 239/2015 concerning Procedures for Providing Recommendations for Applications for Rights on Land with Right to Manage (HPL).

The Ex-Village Land and Ex-City Praja Land are Owned/Controlled by the Provincial Government of the Special Capital Region of Jakarta, 3 which causes the status of the capital participation of the DKI Jakarta Regional Government in PT Pembangunan Jaya Ancol Tbk to be unclear. The Decree of the Governor of DKI Jakarta Number 1107 of 1993 concerning Guidelines for Development in the Ancol area, among others, regulates the following matters:

- The Governor of the Regional Head determines the use of Ancol land after a recommendation from PT Pembangunan Jaya Ancol;4
- Before each development activity in the Ancol area obtains a permit from the relevant agency, and it must obtain written approval/recommendation from PT Pembangunan Jaya Ancol;5
- Applications for and rights to land above HPL and land, not HPL Ancol must obtain written approval/recommendation from PT Pembangunan Jaya Ancol;6
- Administration fee for written approval/recommendation of music application and additional land permit, determined by PT Pembangunan Jaya Ancol and represents revenue from PT Pembangunan Jaya Ancol;7
- Land rights that have expired on HPL land can be extended by applying PT Pembangunan Jaya Ancol;8
- Requirements and procedures for application to participate in building in the Ancol area;9
- Additional area in the Ancol area because reclamation is an integral part of the Ancol area and its development activities follow the provisions stipulated in this decree.10

With the revocation of the Governor's Decree as intended<sup>11</sup>, PT Pembangunan Jaya Ancol Tbk loses all of its authority in managing HPL, which has become a regional capital investment, so that in the end, the status of regional capital participation in the form of HPL is unclear. Second, there is a difference in interpretation between the laws and regulations governing the interpretation of separated state/regional assets and the 2014 RI Constitutional Court (MK) decision on state/regional assets separated in BUMN/BUMD. Article 1 number 21 Government Regulation Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State/Regional Property, stipulates that Central/Regional Government Equity Participation is the transfer of ownership of BMN/BMD, which was originally an unseparated wealth into separated assets to be calculated as state-owned capital/shares/net assets/net assets. Alternatively, regions in BUMN/BUMD,<sup>12</sup> however, the Decision of the Constitutional Court (MK) RI Number 62/PUU-XI/2013 dated February 13, 2014, in the Court's consideration interprets that state assets that have been

transformed into BUMN/BUMD capital but the separation of state assets does not turn into BUMN/BUMD assets independent of state assets, because from the perspective of transactions that occur it is clear that only separation cannot be constructed as a transfer of ownership. <sup>13</sup> The revocation of the legal basis for managing and interpreting the separated state/regional assets creates legal uncertainty for PT Pembangunan Jaya Ancol as a BUMD in carrying out its authority in managing and recording HPL, which has become a regional capital investment because it is contrary to the provisions on the capital or assets of the Limited Liability Company which is divided in the form of shares as regulated in Law Number 40 of 2007 concerning Limited Liability Companies.

The legal issues proposed in this study are as follows:

1. What is the legal status of ownership/control of the right to manage (HPL) resulting from reclamation on behalf of the DKI Jakarta Regional Government, which has become part of the equity participation in PT Pembangunan Jaya Ancol BUMD in terms of related laws and jurisprudence?
2. What legal solutions can be taken to provide legal certainty and restore full authority to PT Pembangunan Jaya Ancol in managing the HPL?

## **2. METHODS**

To answer this problem, the researcher uses a normative juridical research method

## **3. RESULT AND DISCUSSION**

### ***3.1 The Transformation of Ancol Land HPL as a Limited Liability Company Capital***

Ancol land from the beginning was a land that had been designated and used by the President of the Republic of Indonesia at that time, namely Ir. Soekarno, through Government Regulation Number 51 of 1960 as development land covering an area of approximately 552 hectares, stretching from east to west bordering the Fish Market Port, and to the south of the Ancol Canal, 14, therefore, those who have land rights in Tanah Ancol and the people in Tanah Ancol must give full opportunity to the authorities to take the necessary actions. The loss suffered by the person referred to due to the authorities' actions is reimbursed by the State.<sup>15</sup> In the implementation of later development, the first phase of construction on the Ancol land began in 1962 and was completed in 1966 through the release, stockpiling, and spraying of swamps and ponds<sup>16</sup> or in other terms, it can be said as reclamation activities. More specifically, the designation and use were determined through a Decree The Governor of DKI Jakarta Number DC.7/1/6/1967 concerning the Basic Guidelines for Participation in the Antjol Project Development Activities, which in Article

2 is more specific than the Antjol Project aims to create a modern trading, industrial, housing, social and recreational area. In line with the Governor's Decree, the Governor of DKI Jakarta's application to the Minister of Home Affairs stated that the HPL application for the Ancol Land would be used for the Industrial, Housing, and Recreational Areas.

Land reclamation in DKI Jakarta Province is given the status of Right to Manage (HPL).<sup>17</sup> The development of the term and understanding of the right to manage (HPL), starting from the terms "in beheer," "control," "in management" and only after the enactment of the Regulation of the Minister of Agrarian Affairs Number 9 of 1965 known the terms "Treasury Rights" and "right to manage" as a type of right on land, but not sourced or not rooted in the Basic Agrarian Law. The State's right to control land is regulated in Article 2 paragraph (2) of the UUPA, which contains the authority to control the State, namely:<sup>18</sup>

1. regulate and administer the designation, use, supply, and maintenance of earth, water, and space;
2. determine and regulate legal relations between people and the earth, water, and space;
3. determine and regulate legal relations between people and legal actions regarding the earth, water, and space.

### **3.2 Provisions for Reclamation in DKI Jakarta Province**

1. Presidential Decree Number 52 of 1995 concerning the reclamation of the North Coast of Jakarta:
  - a. Article 9 paragraph (1): the reclamation area of the North Coast of Jakarta is granted the status of Right to Manage (HPL) to the Government of the Special Capital Region of Jakarta.
  - b. Article 9 paragraph (2): the area resulting from the reclamation of the North Coast is utilized by the plan to divide the zone of the Pantura Area as set out in Attachment II to this Presidential Decree.
2. Article 30 of DKI Jakarta Regional Regulation Number 8 of 1995 concerning the Implementation of Reclamation and Spatial Planning for the North Coast of Jakarta:
  - a. The land area resulting from the reclamation of the North Coast of Jakarta is granted the status of Right to Manage (HPL) to the Regional Government.
  - b. The exploitation of Right to Manage (HPL), as referred to in paragraph (1) of this article, is delegated by the Governor of the Regional Head to the Implementing Agency with the boundaries of its working area determined by the Governor of the Regional Head.
  - c. By delegating the right to manage (HPL) as referred to in paragraph (2) of this article, the

Implementing Body is authorized to use the reclamation land for its cultivation and transfer the rights to the reclamation land to other parties by the prevailing laws and regulations.

### **3.3 Definition of State Asset Land**

Asset Land is State/Regional Owned Property and/or State/Regional Owned Enterprise assets by the provisions of laws and regulations. The definition of *State Assets Land* is land that is controlled or not controlled, both registered and unrecorded in the balance sheet books of BMN/BMD and BUMN/BUMD obtained through purchases at the expense of the APBN/APBD, state-owned enterprises budget/BUMD, Nationalization, grants/donations, implementation of agreements/contracts, Inkracht court decisions, and land acquisition by applicable laws and regulations.

### **3.4 Definition of Central/Regional Equity Participation**

Article 1 number 21 of Government Regulation Number 28 of 2020 concerning amendments to Government Regulation Number 2 of 2014 concerning Management of State/Regional Property:<sup>19</sup>

*“Central/Regional Government Equity Participation is the transfer of ownership of State/Regional Owned Goods which were originally assets that were not separated into separate assets to be calculated as capital/shares/net assets/net assets belonging to the State or region to state-owned enterprises, business entities owned by the region, or other legal entities owned by the state.”*

### **3.5 Transfer of State/Regional Owned Land**

Article 54 of Government Regulation Number 27 of 2014:<sup>20</sup>

- (1) *State/regional property that is not required for the implementation of the tasks of the state/regional government can be transferred.*
- (2) *The transfer of State/Regional Property as referred to in paragraph (1) shall be carried out by:*
  - a. Sales;
  - b. Exchange;
  - c. Grant; or
  - d. *Central/Regional Government Equity Participation.*

Article 1 number 17 of Government Regulation Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 concerning Management of State/Regional Property:

*“Transfer is the transfer of ownership of State/Regional Property.”*

Based on the provisions described above, it can be seen that the Ancol land as a land parcel with Right to

Manage (HPL) Number 1/Ancol situation map Number 12/1987 dated February 2, 1987, covering an area of 4,779,120 m<sup>2</sup>, located in Ancol Village, North Jakarta, registered under the name of the “Jakarta Special Capital Region Government” when the HPL was given to the DKI Jakarta Regional Government in 1987 in principle it is a state asset area in the form of BMD DKI Jakarta Regional Government. However, its status changed when the HPL was used as regional capital to establish PT Pembangunan Jaya Ancol. Based on the DKI Jakarta Regional Regulation Number 10 of 1988 concerning DKI Jakarta Regional Capital Participation in Third Parties, which is the Applicable law and the basis for regional capital participation by the DKI Jakarta Regional Government in the establishment of a joint venture company PT Pembangunan Jaya Ancol at that time, Article 6 paragraph (4) stipulates that Regional Assets embedded in a Limited Liability Company are separated Regional assets.<sup>21</sup>.

### ***3.6 The decision of the Constitutional Court of the Republic of Indonesia***

#### Page 231 item [3.23] paragraphs 3 and 4:22

*“The question is whether the separated state assets, which later become the business capital of the BUMN and BUMD, are still state finances, and thus, the BPK has the authority to examine it. Another question is whether the system and mechanism of Article 23 of the 1945 Constitution generally apply, even though the BUMN or BUMD are business entities. Thus the separated state assets are transformed into no longer state finances, which constitutionally the BPK is no longer authorized to examine its management, but the authorized examiner (internal audit).”*

*“That, according to the Court, the separation of state assets, seen from the perspective of the transaction, is not a transaction that transfers a right, so as a legal consequence, there is no transfer of rights from the State to BUMN, BUMD, or other similar names. Thus, the separated state assets will remain state assets. According to the Court, regarding the authority of BPK to examine, because it is still state finance and BUMN or BUMD belongs to the State and, as considered above, is also an extension of the State. There is no reason that BPK is no longer authorized to examine it. However, so that BUMN and BUMD can operate by the principles of good corporate governance, internal supervisors, other than the Board of Commissioners or the Supervisory Board, are still relevant.”*

#### Page 233 item [3.25] paragraphs 1 and 2:23

*“Considering that apart from the constitutional issues as considered above, it turns out that there are still other issues that must be considered, namely regarding the paradigm of the function of BUMN or BUMD as an extension of the State, which is carried out based on the business judgment rules which are completely different from those of the State. The administration of*

*Government is carried out based on the paradigm of Government (government judgment rules)”;*

*“That is true, the State’s wealth has been transformed into BUMN or BUMD capital as business capital whose management is subject to the business paradigm (business judgment rules), but the separation of state assets does not make it turn into BUMD or BUMD wealth which is independent of state wealth, because From the perspective of the transaction that occurs, it is clear that only separation cannot be constructed as a transfer of ownership. Therefore it remains as state property, and thus the State’s authority in the field of supervision remains in effect. However, the paradigm of state supervision in question must change, which is no longer based on the management of state assets in the administration of Government (government judgment rules), but based on the business paradigm (business judgment rules).”*

The legal problems being faced by PT Pembangunan Jaya Ancol above are in line with the legal opinion presented by Prof. Hikmahanto Juwana, S.H., LL.M., Ph.D. to the Court in his opportunity as an expert at the trial of the Constitutional Court as referred to above as follows:

- *“I was asked by the Petitioner, what about doctrinally if state money is used as capital for BUMN? Is it still state money, or has it become BUMN money separate from state money? There are 3 (three) reasons for this question, and that is my opinion. The first is state money that has been deposited with BUMN, so it will no longer be state money because the State has obtained “proof” of the paid-up capital in the form of shares. It has already been mentioned in the description, visualization. If the State does not deposit in the form of money, but in the form of land (in brenng), it will be easy to see it in real terms. When the State owns an asset in the form of land and then enters it as capital, the BUMN can reverse the name on the land in the name of the BUMN, and as compensation, the State will get shares. It is strange if the land that has become the property of the BUMN is then claimed as the property of the State. This means that there have been two calculations. The first is the shares owned by the State. The second is the land originally from the State but has been included as capital in BUMN.”*
- *“Finally, in my opinion, doctrinally categorizing BUMN finances as state finances are contrary to the concept of public money and private money. It was conveyed by my senior, my colleague, Prof. Erman Rajagukguk, that when he received a pension that originally came from the APBN, the money could not be treated as public money so that when a pickpocket took*

*the money, the pickpocket was accused of having harmed the State's finances. Public money has an end, and public money ends when private money begins. In the context of BUMN, when public money is entered into the capital of BUMN, it becomes private money. This concept of public and private money is followed in the procurement of goods and services provisions. Let us look at the Presidential Regulation on the Procurement of Goods and Services.*

Based on the description above, it can be clearly understood that the capital participation of HPL on behalf of the DKI Jakarta Regional Government by the DKI Jakarta Government to PT Pembangunan Jaya Ancol is a transfer of ownership from the previous BMD, which is regional wealth which is not separated into regional assets which are then separated into business capital assets. PT Pembangunan Jaya Ancol. Therefore, it is necessary to make adjustments to conflicting laws and regulations, namely revising and/or revoking the Regulation of the Governor of DKI Jakarta Province Number 239 of 2015 concerning Procedures for Providing Recommendations for Applications for Rights over Land Sector with Rights to Manage (HPL) for Ex-Village Land and Ex-Village Land. Kota Praja Belongs to / Controlled by the Provincial Government of the Special Capital Region of Jakarta, and the following amendments.

#### **4. CONCLUSION**

The position of the HPL Ancol Land p.p. The Regional Government of the "Jakarta Special Capital Region," which was used as equity participation in the establishment of PT Pembangunan Jaya Ancol Tbk (HPL Number 1/Ancol Year 1987), has transformed into the assets of the BUMD PT Pembangunan Jaya Ancol Tbk. by Article 1 number 21 Government Regulation Number 28 of 2020 concerning Amendments to G. Therefore, regulation Number 27 of 2014 c, concerning Management of State/Regional Property, this is evidenced by the registration of the HPL as the capital or wealth of PT Pembangunan Jaya Ancol in the form of shares of the DKI Jakarta Regional Government by provisions of Law Number 40 of 2007 concerning Limited Liability Companies.

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