

***CHANGE OF BUSINESS ENTITY TO THE EXISTENCE OF BUSINESS
LICENSE IN REALIZING LEGAL GUARANTEE AND
EASY BUSINESS IN INDONESIA.***

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ABSTRACT

The laws and regulations in Indonesia recognize various legal forms of companies; however, the legal form of a Limited Liability Company is considered to have better business prospects. Limited Liability Company also becomes a legal form of a company that can conduct business in all business fields. This condition has led to the practice of changing the legal form of companies in Indonesia from companies with certain legal forms to the legal form of Limited Liability Companies. This change in the legal form of the company is not covered by a special law that can combine the needs of changing the legal form of the company. In practice, this change in legal form is carried out in various ways that may result in legal uncertainty on one hand, and licensing difficulties as a result of change in legal form on the other hand. Therefore, a new concept that can create legal certainty and ease doing of bussiness in changing the legal form of companies in Indonesia is really needed.

Keywords: Legal certainty; ease doing; business

A. INTRODUCTION

Humans are recognized as social beings who always try to fulfill their needs. These needs sometimes can be fulfilled by themselves and the help of

the others. The occurrence of dependency on other people in meeting human needs has lead to various human activities, such as trading activities.

These trading activities basically can be divided into 2 (two) major groups, goods trading activities and service trading activities (Article 1 point 1 of Law Number 7 of 2014 concerning Trade). Trading in goods is an activity that trades goods as its activity, while trade in services is an activity that provides services as an object of its trade. Trading activities cannot be separated from legal rules that govern them, both written and unwritten law based on development of human life. Today, almost all human activities are regulated in the form of written law.

The regulations that regulate trading activities do not only regulate trading activities, but also the institutions that carry out trading activities which are called companies (Law Number 3 of 1982 concerning Company List). Based on company's structure, companies in Indonesia are divided into several forms of company, namely non-legal company entities and legal company entities (Law Number 8 of 1997 concerning Company Documents). The existence of this division is in line with the existence of two legal subjects as stated in legal theory, namely person and legal entity company.

In other various laws, it is also found various companies which are not legal entities, namely *Usaha Dagang* (hereinafter referred to as UD), firms and *Comanditaire Venootschap* (hereinafter referred to as CV). Whereas the companies that have legal entities are cooperative, limited liability company (hereinafter referred to as PT), Regional Public Company (hereinafter referred to as *Perumda*), Regional Government Company (hereinafter referred to as *Perseroda*), Public Company (hereinafter referred to as *Perum*) and Company (hereinafter referred to as *Persero*).

There are diversities of legal forms of the companies because each legal form has its own characteristics, both with regard to its establishment, management, liability, and changes in the legal form. Legal entities established by individuals or private legal entities (Chidir Ali, 1987) are known as PT and

Cooperative. Meanwhile, legal entities established by a public legal entity (Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia) are the state, region and village.

Companies established by the State are known as Public Companies and Limited Liability Companies (Article 9 of Law Number 19 of 2003 concerning State-Owned Enterprises). Companies established by regions are known as Regional Companies (Perumda) and Regional Public Companies (Perseroda) (Article 331 paragraph (3) of Law Number 23 of 2014 concerning Regional Government). Meanwhile, villages which are the lowest government organizations in Indonesia are also authorized to establish companies known as village-owned enterprises (Article 87 paragraph (1) of Law Number 6 of 2014 concerning Villages) and Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises. Although the legal form of company has slightly different characteristics from a limited liability company, basically these two legal forms are also a limited liability company, because the legislation that forms the basis for their formation refers to Law Number 40 of 2007 concerning Limited Liability Company (hereinafter referred to as the Limited Liability Company Law) as the basis for the formation of a legal entity.

In accordance with the legal form of the company, the business fields that can be run by these companies are limited by the state. Companies with legal forms such as UD, firm, and CV are prohibited from running a business in several business fields, for example in the field of general passenger transportation, banking, insurance and several other fields. There are also some business fields that were previously allowed to be carried out by companies in the legal form of UD, firm and CV, now with the promulgation of Law Number 22 of 2009 concerning Road Traffic and Transportation, are not allowed anymore. These businesses are only allowed to be carried out by companies legally incorporated as PT and cooperative. This condition requires company owners to change the legal form of their company to be a legal form of PT or

cooperatives. This change in legal form is aimed to maintain business continuity (Murni, 1998).

The change in the legal form from firm and CV to a legal form of PT not only because of the necessity of the law; it is also because of the motivation for business development by the owner of the company. This is the view that PT is the most perfect and ideal business entity in carrying out all activities because the existence of PT is not affected by the transfer of share ownership, either due to death or shares transferred to other parties (Simon Goulding, 1999).

Changes in the legal form, especially from CV to legal form of PT in the future will continue to increase. Apart from the limitation of several business fields that can be run by companies in the form of PT and cooperatives, it is also related to the Indonesian government's efforts to empower micro and small business groups and medium-sized enterprises (MSMEs) to have competitiveness in national and global markets (Tumar Sumihardjo, 2008). Global competitiveness is the key to be able to survive in the face of competition. This is an argument for the enactment of Law Number 11 of 2020 concerning Job Creation.

The existence of MSMEs in Indonesia, according to the 2016 economic census (Central Bureau of Statistics, 2019) is dominant in number, reaching 26.26 million companies or having a contribution up to 98.33 percent of the total number of companies and most of them are established in the form CV (Yetty Komalasari Dewi, 2011). In this case, the Government of Indonesia has the responsibility to encourage micro-enterprises to be small businesses, and small-scale enterprises are encouraged to be medium-sized enterprises, and medium-sized enterprises are encouraged to be large enterprises. The most change of business form occurs from CV to PT. With this change, it will affect the trust of business relations, banks, and other parties.

The tendency to change the legal form does not only occur from changes from companies that are not legal entities to companies that are legal

entities (from CV to PT), but also from companies that have certain legal entities to companies that are legal entities of other types. This change occurred in State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD). At the state level, changes are made to be State-Owned Enterprises (BUMN). Then changes are also made from the legal form of Public Company (Perum) to the legal form of Limited Liability Companies (Persero). At the Regional level most changes are made to be Regional-Owned Enterprises (BUMD). Most local company is established in the legal form of Perseroda. The status of Perseroda according to Article 339 paragraph (2) of the Regional Government Law is a PT. This is because the existence of a limited liability company refers to the Company Law. Likewise, the status of Persero according to the BUMN Law is also a legal entity of PT.

Change in the legal form of BUMN and BUMD, apart from being required by the law in accordance with the line of business run by the company, it also occurs due to the changes in state and regional policies regarding the pattern of management of the company to increase the company's professionalism or because of the transfer of part of its ownership to the company. Private parties, in the context of capital, as regulated in Article 107 paragraph (4) letter e Government Regulation Number 54 of 2017 concerning Regional Owned Enterprises are also known as capital owners.

Change in the legal form does not occur by itself, but there is a certain process (*corporate action*) that must be passed. On one hand, the change in legal form is seen as an activity to develop its business, but the laws and regulations view it as an activity to end the business from the old legal form, which is continued by another legal form, namely PT. This context creates inconsistencies in the application of the law, even though the law must be able to create certainty. Legal certainty, according to Peter Mahmud Marzuki (2009) can be realized with the consistency of various rules for the same legal act.

The legal facts also show that several Regional Regulations that regulate the change of legal form from PD to PT also have different practices

in order to ensure the business continuity of companies that change the legal form. This dissimilarity in practice is due to the fact that there are no special rules regarding the change in the legal form, so that it has made it difficult to implement the change in the legal form. While on the other hand, the Limited Liability Company Law also does not explicitly regulate changes in legal forms from other legal forms. The Limited Liability Company Law only regulates the establishment of a new PT, the merger of the PT, the takeover of the PT, and the consolidation of the PT. In this regard, it has raised questions: how is the pattern of changing the legal form from CV, PD/Perumda and Perum to PT?

Changes in the legal form of the company must also guarantee the business license of the company that changes the legal form, because the business license determines the business continuity of the PT resulting from the change in legal form. This is because in Indonesia the rules regarding business entities are not related to licensing, but are regulated separately. Each business activity is always related to various types of permits that must be fulfilled. The unfinished handling of the legal aspects of business entities and smooth licensing, Bank Indonesia has mentioned it as one of the obstacles or obstacles in the development of MSMEs in Indonesia (Indonesian Banking Development Institute, 2015). This has also placed Indonesia in a country with a low level of *ease of doing business (EODB)* (Budi SP Nababan, 2018). Based on this condition the question becomes what are the efforts that can be taken to provide ease of licensing in changing the legal form of the company to be a PT?

B. RESEARCH METHODS

To answer the research questions above, normative juridical research methods are used, so that answers to research questions can be presented from various sources of legal material, both primary, secondary and tertiary.

Through this research, it is expected to be able to find the legal basis for changing the legal form of a particular company to a company in the form

of a Limited Liability Company based on the principles of legal certainty and ease of doing business in Indonesia, both from a theoretical point of view and from a practical point of view. In the end, this research is intended to enrich legal knowledge related to business entities in Indonesia.

C. RESULTS AND DISCUSSION

1. Setting the legal form of the company

The State of Indonesia is explicitly mentioned in Article 1 paragraph (3) of the 1945 Constitution as a state of law, so that there is no aspect of life that is not regulated in law, whether it is included in the public law group or private law group. Historically, law in Indonesia was influenced by law in the Netherlands based on the principle of concordance (Soetandyo, 2014). This is in accordance with the reality that the territory of Indonesia, which was formerly called Nusantara, was a Dutch colony for a long period of up to 350 years. At the time of Indonesia's independence, the founders of this country aspired to establish a national law, as explicitly stated in the Transitional Rules of the 1945 Constitution.

The will to change it became a national legal politics (Moh. Mahfud MD, 2012) because the founders of the country viewed that colonial law had a different philosophy from the philosophy of the Indonesian state which was declared on August 17, 1945. The founders of the country wanted law in the country of Indonesia are formed based on the philosophy of Pancasila.

Efforts to replace colonial law with national law based on the Pancasila philosophy have not been fully successful. Based on the inventory of the National Law Development Agency (there are 380 colonial regulations still in force in Indonesia (Maroni, 2012). The legal form of the company, as regulated in the Civil Code (hereinafter referred to as the KUH Perdata) and the Commercial Code (hereinafter referred to as the KUHD).

The provisions regarding the form of company in the Civil Code are contained in Book III, Chapter VIII regarding Civil Partnership, starting from

Article 1618 to Article 1652. This Civil Partnership is known as *maatschap*, and it is a genus of firm and CV (Rudhi Prasetya, 2002) so that in its development civil partnerships can also change its legal form into firm and CVs.

Firms and CVs are specifically regulated in the KHUD, namely Book I, Chapter III, starting from Articles 16 to 35. Even though firms have their own regulations in the KUHD, the firm's provisions must also refer to the provisions contained in the KUH Perdata because between the KUHD and the KUH Perdata are two interrelated provisions. It is even stated that the KUH Perdata is a general provision regarding firms, while the specific provisions are contained in the KUHD.

The relationship between the KUHD and the KUH Perdata is expressly regulated in Article 1 of the KUHD. So that the provisions regarding the legal form of a firm still apply the provisions in the KUH Perdata if they are not specifically regulated in the KUHD. In many literatures, firms are mentioned as special civil partnerships (Soekardono, 1985) based on the definition of firm contained in Article 16 of the KUHD.

Another company legal form regulated in the KUHD is CV. This legal form is basically a firm in a special form. It is said so, because the rules regarding CV are among the rules governing firms, namely in Article 19, Article 20 and Article 21 of the KUHD. The difference between a firm and a CV lies in the presence of a type of passive partner in the CV, in which the firm is unknown. A CV legal form company recognizes two types of partners, namely active partners and passive partners. Active partners are partners who run the company with the same responsibilities as a firm partner, while passive partners are partners who only provide capital, do not run the business, but act as supervisors. A passive partner has the same position and responsibility as a shareholder in a PT, namely the liability is limited, limited to capital only.

Previously, the provisions for PT were also regulated in the KUHD, namely from Articles 36-56, but since 1995 the rules regarding limited liability companies have been outside the KUHD, namely regulated by Law Number 1

of 1995 concerning Limited Liability Companies. With the enactment of this law, the provisions of Article 36-56 of the KUHD are officially revoked and declared no longer valid. Article 1 of this Law expressly recognizes that a limited liability company is a legal entity.

This law was revoked in 2007, which was later regulated by Law Number 40 of 2007 concerning Limited Liability Companies. In Article 1 point 1 of Law Number 40 of 2007 it is emphasized that PT is a legal entity, which at the same time emphasizes that PT is different from other legal forms of companies, including companies that are legal entities.

Other legal entities are in question, such as cooperatives and State-Owned Enterprises. Cooperatives are regulated by a separate law, namely Law Number 25 of 1992 concerning Cooperatives. Cooperatives as legal entities can be seen from the provisions of Article 9 of this law, with status as a legal entity obtained after the deed of establishment is legalized by the government. Cooperatives as legal entities have a special position in carrying out business activities, because just like PT, all business fields can be run by cooperatives. This is because cooperatives have a business principle based on the principle of kinship as referred to in Article 33 paragraph (1) of the 1945 Constitution.

The statutory provisions in Indonesia also recognize State-Owned Enterprises. This business entity can only be established by the State. Based on its history it is divided into three forms, namely Service Company (*Perjan*), Public Company (*Perum*), and Limited Liability Company (*Persero*). The last two forms of state-owned companies are legal entities, but have different characteristics. The difference between the two lies in the ownership of the BUMN and the line of business they run. *Perum* is wholly owned by the state, while in a state-owned company, the state can only own 51% of the total capital ownership in the company. *Perum* runs a business for public services, while *Persero* is oriented to seek the maximum profit.

Regional Governments also have the same authority as the State in establishing business entities, namely the Provincial Government and Regency

or City Governments called BUMD, as regulated in Article 331 paragraph (2) of Law Number 23 of 2014 concerning Regional Government (UU Pemda). This law confirms that BUMD is divided into two, namely *Perumda* and *Perseroda*. With this law, Law Number 5 of 1962 has been revoked concerning Regional Enterprises. With the Regional Government Law, the nomenclature of Regional Companies was replaced with Regional Public Companies. The difference between a Regional Company/*Perumda* and a *Perseroda* lies in the ownership of the BUMD. *Perumda* is wholly owned by one region of capital (Article 334 paragraph (1) of the Regional Government Law), while in a regional government regulation, one particular region can only own 51% of the total capital ownership in the company (Article 339 paragraph (1) of the Regional Government Law).

The laws and regulations also allow for Villages to establish village owned companies known as *BUMDES* (Article 87 of Law Number 6 of 2014 concerning Villages). This *BUMDES* can be wholly or partly owned by one village (Article 1 point 1 of the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 4 of 2015 concerning the Establishment, Management and Management, and Dissolution of Village-Owned Enterprises. Currently based on Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises has been established.

2. The pattern of changing the legal form of the company into a Limited Liability Company.

The existence of PT as the most perfect legal form of business entity among the legal forms of *maatschap*, Firm and CV; however, its existence cannot be separated from these forms of business entity, because usually in Indonesia there are some PT as a result of changes in the form of the CV.

The change in the legal form of CV to PT has the motivation to develop its business from the owner of the company, because CV is considered

no longer able to meet the needs of its business development, both because of internal factors from allies in CV and external relations with the company. Externally, the change in the legal form of a limited partnership to a limited liability company also occurs because it is required by laws and regulations.

The law has required that certain business fields can only be carried out by companies that are legal entities, both limited liability companies and cooperative legal entities. For example, based on the report of the Regional Leadership Council of the Aceh Province Land Transportation Organization, that a number of 138 (one hundred and thirty eight) public passenger transport companies in Aceh both take inter-city inter-provincial (AKP) and inter-city-in-province (AKDP) routes. must change the legal form from CV to PT or Cooperative.

The need to make changes to the legal entity form is obliged by Law Number 22 of 2009 concerning Road Traffic and Transportation. This law requires the transportation of general passengers to be carried out by companies with the legal form of PT or cooperatives. While the previous law (Law Number 14 of 1992) which regulates the transportation of public passengers, justifies the business of transporting public passengers to be carried out by companies in the form of firm, CV or PD legal form, as well as Perum.

The owners of the CV legal form company changes the legal form, because they still want to continue to run their business in the field of public passenger transportation. In the sense that if the legal form is not changed from CV to legal form of PT or cooperative, then the company can be declared as an unofficial public passenger transportation company because it does not have a business license as required (Article 80 of Law Number 22 of 2009). Likewise, motorized vehicles used as passenger transport fleets are illegal, because in the transportation of general passengers, route permits for motorized vehicles for public passenger transport are only granted to vehicles under a licensed public passenger transport company.

The practice of changing the legal form of the CV to the legal form of PT, normatively the rules are not found in the KUH Perdata and KUHD as the legal basis of the CV. The provisions of Civil Code only regulate the expiration period of the CV (Pure, 1998: 9), that is chapter 31 until 35 of KUHD and article 1646 until 1652 of Civil Code. Therefore, the activity of changing the legal form of the company from CV to the legal form of PT, in the view of the KUH Perdata and KUHD is the termination of the business of the CV by dissolution followed by the settlement of the dissolution (Murni, 1998: 11).

This kind of practice certainly requires costs for settlement, even if it is only a formality, because the dissolution is not intended to end its business activities materially. The change in the legal form of the CV to the legal form of PT is defined as a legal act of transferring all the assets of the CV to the PT to be formed. Therefore, the PT that was formed as the recipient of the change of form, in its articles of association, must be stated that the existence of the PT that was formed was to continue the business of the changed CV (Juniarti Baryadi, 2011:54)

The practice of changing the legal form also occurs for BUMD, from regional companies (PD) to *Perseroda*. With the enactment of the Regional Government Law, the name PD was replaced with *Perumda*. According to the Regional Government Law, *Perseroda* is also basically PT. The change from PD or *Perumda* to *Perseroda* is carried out due to business considerations or because it is required by laws and regulations governing the line of business run by them.

In the Regional Company Law, which forms the basis of PD, there is unknown change in the legal form to become a PT, although it was practiced at the time the law was still in force. The term change in the legal form of law has only been found in Government Regulation (PP) Number 54 of 2017 which specifically regulates BUMD. The provisions of Article 114 confirms that *Perumda* can be changed in its legal form. The change is made in order to

achieve the objectives of BUMD and restructuring. The change in legal form is stipulated by a Regional Regulation (Perda) or a special Qanun in Aceh Province. Unfortunately this PP does not regulate in detail about the change in the legal form, so that the practice of regulating the change in the legal form of a PD to a PT has resulted in diversity in its norms in several local regulations governing changes in the legal form. The difference in the norm of changing the legal form has had a business and juridical impact on legal actions for changing the legal form of PD to PT.

Changes in the legal form from PD or Perumda to PT are based on the company orientation of the BUMD. Orientation of PD or Perumda is carried out to provide public service such as to provide food, goods, and service for public based on local characteristics and local companies. Meanwhile, *Perseroda* is more oriented to get profit (Article 7 and Article 8 of Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises).

Prior to the enactment of PP Number 54 of 2017, many BUMDs were formed in Indonesia, amounting to 1,700 BUMDs, both PD and Perseroda (Dian Cahyaningrum: 2018, 60). BUMD that is oriented to the implementation of public benefits is still maintained in the form of PD, while companies with business fields that are oriented to seek profit can be converted into a legal form of Persero, but it is hoped that it will not harm the community.

Companies that remain oriented towards public benefits, such as serving the community's drinking water needs, but in the event that this company is planned to be jointly managed by several regions, the law provides an alternative as an option to change the legal form from PD to Perseroda, as regulated in the provisions of Article 334. paragraph (2) of the Regional Government Law.

The change in the legal form in the field of drinking water services for the community has been practiced by the East Java Regional Government by establishing East Java Provincial Regulation Number 10 of 2019 concerning Changes in the Legal Form of East Java Regional Clean Water Company to

East Java Regional Clean Water Company. The purpose of this change in legal form according to the provisions of Article 4 of the Regional Regulation is to increase the role and function of providing clean water services for the community, while the aim is to increase capital by providing opportunities for third parties to invest their capital.

Based on these aims and objectives, to fulfill the authorized capital of PT Air Bersih Jatim (*Perseroda*) of IDR500,000,000.00 (five hundred billion rupiah), the ownership of shares is not only the East Java Provincial Government, but also the private sector, namely PT Petrogas East Java (*Perseroda*) and the Regency/City Government in the Province. However, to ensure that this *Perseroda* remains committed to the East Java regional policy, the Regional Government is required to control shares of at least 90% (Ninety percent) of the *Perseroda*'s shares.

Outside the field of drinking water services, generally BUMD business activities are required to change the form from *Perumda* to *Perseroda*. Changes in the form are more common in the banking sector, although they are also found in other fields. This is in accordance with the characteristics of the banking business which emphasizes more on profit orientation.

In the field of Sharia banking, the change in the legal form is due to the necessity of the Law governing Sharia Banking (Law Number 21 of 2008). The provisions of Article 7 of this law confirms that the legal entity form of a Sharia Bank is PT. Thus, sharia people's credit banks in the form of *Perumda* must change the form of PT.

The practice of changing the legal form of BUMD which is engaged in banking from a Regional Company to a PT, including the change in the form of a Regional Company Legal Entity of Makassar City Rural Bank to a Makassar City Rural Bank Limited Liability Company based on Makassar City Regional Regulation Number 7 of 2016. Other changes can also be seen in the change in the legal form of the Regional Company of Bank Mustaqim Sukamakmur to become a Limited Liability Company for the Bank Mustaqim

Syariah as implemented by the Aceh Qanun Number 5 of 2015 Regarding the Change of Legal Form of PD Bank Mustaqim Sukamakmur into a Limited Liability Company of Bank Mustaqim Syariah.

Based on the perseroda orientation, outside the banking, changes in the legal form of the law also occur from PD to the legal form of PT in other business fields, and occur in several PDs from various regions. In Aceh Province, the change in legal form occurred in companies whose main business was in the oil and gas sector, namely the Aceh Regional Development Company (PDPA) into Aceh Development Limited Liability Company (PTPA). This change is regulated by Aceh Qanun Number 16 of 2017 concerning Changes in the Legal Form of Aceh Development Company to Aceh Development Limited Liability Company.

Based on examples from several Regional Regulations relating to changes in the legal form of PD to PT, it seems that the title of the regional regulation used is the change of legal form from Regional Company to Limited Liability Company. This change of form is intended to continue the previous effort, as it can be seen in the regional regulations governing the change in the legal form. Although not all regional regulations clearly explain the consequences of the change in form, both for PDs that are changed and PTs that change their form. However, in all regional regulations can be found that the change in legal form is a dissolution of PD legal entity by allowing the formation of a new legal entity that will continue the business license and assets of the dissolved PD. This can be seen from several regional regulations that change the form of the law.

The provisions of Article 2 of the East Java Provincial Regulation Number 10 of 2019 entitled "Changes in the legal form of East Java Regional Clean Water Company to become East Java Regional Clean Water Company", confirms that the East Java Regional Clean Water Company has changed its legal form to PT Air Clean East Java (Perseroda). This change is implemented through amendments to the deed of establishment. As a result of the change in

legal form, according to the provisions of Article 2 paragraph (3) of this regional regulation, all assets, company businesses, permits, rights and obligations and/or engagements, and employees owned by the East Java Regional Clean Water Company are transferred to PT Air Clean East Java (Perseroda). This regional regulation does not regulate the transfer of assets and licensing of the PD to PT, but is completely left to other regulations, as other laws regulate it, for example the law on limited liability companies, the law on regional assets, the law on permits, and so on.

Other regional regulation is Makassar City Regional Regulations Number 7 of 2016. According to this regulation, the change in legal form also means the dissolution of a legal entity. According to Article 29, the dissolution is carried out after the establishment of a Limited Liability Company for the Makassar City Rural Bank.

The provisions confirm that the change in legal form as well as dissolution can also be found in Article 7 and Article 30 of Aceh Qanun Number 5 of 2015 concerning Changes in the Legal Form of Regional Company Rural Bank of Mustaqim Sukamakmur to become a Limited Liability Company of Mustaqim Syariah. The provisions of Article 7 paragraph (1) emphasize the formation of PT Bank Mustaqim Syariah resulting in all assets and liabilities of PD BPR Sukamakmur are legally transferred to PT BPRS Mustaqim Syariah, but it does not specify what are included in the assets and liabilities meant.

Likewise, in this regulation, the legal form of PD BPR Mustaqim does not require its dissolution to be carried out after obtaining a permit for PT BPRS Mustaqim Syariah from the Financial Services Authority. On the contrary, in this qanun, the consequences of changing the legal form of PD Mustaqim immediately occur. The provisions of Article 30 of this qanun, expressly stipulates that with the entry into force of this qanun to change the legal form, this qanun of the legal form of Regional Enterprises is revoked and declared invalid.

The revocation of the legal basis resulted in this PD being legally dissolved, consequently the PD operating in the banking sector lost its legality, so that the impact on the business license could be revoked. The consequence of such a change of form arrangement has required that the PD must be liquidated. This pattern has changed the legal form of PD Mustaqim to PT Mustaqim. In contrast to the Aceh Qanun, although both regulations come from the same Regional Government, namely the Aceh Government, the other arrangements in Aceh Qanun relating to changes in the legal form of PD have different patterns although there are also similar, namely changes in the legal form means ending the business of the existing regional company, then continuing the business by the company in another legal form.

The difference in the pattern of changes in the form of the two PDs can be seen in Aceh Qanun Number 16 of 2017 concerning Changes in the Legal Form of Aceh Regional Development Companies into Aceh Development Limited Liability Companies (PTPA). It is also the dissolution of a business entity that has changed its form. The provisions of Article 7 of the Aceh Qanun confirms that all PDPA assets consisting of assets and liabilities, permits, and agreements/cooperations are legally transferred to PTPA.

The business continuity of PTPA towards the business previously run by PDPA is clearly seen in the regulation in this qanun, as is the assignment in Article 7 paragraph (2), that assets originating from PDPA must be regulated in the articles of association of the company resulting from the change in legal form, namely PTPA. According to this qanun, the change in legal form is not preceded by the liquidation of the PDPA, but only by a final audit by a public accountant of the PDPA.

The practice of changing the legal form of the company also occurs in companies in the form of BUMN, namely from Perum to the legal form of Persero. The law distinguishes between the purposes and objectives of the establishment of a Perum, which differs from the purpose of the establishment of a Persero. According to this law, Persero is equal to PT. Perum runs a

business that aims for the public benefit in the form of providing quality goods and /or services at affordable prices by the public based on the principles of good corporate management (Article 36 of the BUMN Law). Meanwhile, the Persero conducts business to provide goods and/or services of high quality and strong competitiveness and pursue the pursuit of profit in order to increase the value of the company.

Changes in the legal form between SOEs , currently occur from Perum to Persero, while the opposite has not happened. In contrast to BUMD, the change in the form of Perum to Persero is carried out by legislation in the form of Government Regulation. Changes in the legal form of Perum to Persero can be found in several cases. Based on Government Regulation Number 51 of 2011, there has been a change in the legal entity form of a Public Company (Perum) Pegadaian to become a Limited Liability Company (Persero). Article 1 paragraph of this Government Regulation confirms that Perum Pegadaian has changed its legal form to become a Limited Liability Company (Persero).

The change in the legal form in this Government Regulation also means ending the pawnshop business by Perum Pegadaian, which was then continued by Persero Pegadaian. This can be seen from the provisions of Article 2 of this Government Regulation which emphasizes that due to this change in legal form, all assets, rights and obligations of Perum Pegadaian, become the assets, rights and obligations of the Company (Persero). Therefore, assets originating from Perum *Pegadaian* are recorded as assets in the company as a result of the change in form, namely Persero Pegadaian. The amount of the transferred assets is calculated based on the notes in the closing balance sheet of Perum Pegadaian, and otherwise it is recorded in the opening balance sheet of the Company (Persero) as the assets of the Persero Pegadaian.

Changes in the form of Perum to Persero can also be seen in another Government Regulation, namely Government Regulation No. 11 of 2020. This Government Regulation regulates the title Change of Legal Entity of a Public Company (PERUM) of Indonesian Credit Guarantee to a Limited Liability

Company (PERSERO). This Government Regulation adheres to the same pattern as Government Regulation No. 5 of 2011 above, in the sense that it also means ending the Perum Usaha which was changed to be continued by the Persero which is the result of the change in form. The change in legal form according to this Government Regulation also means taking all the company's assets from the previous company, so that in changing the form of Perum to Persero there is no liquidation activity. The pattern of changing the legal form of Perum to become a Limited Liability Company further clarifies the relationship between Perum which is transformed into a Company Company that was born as a result of the change in legal form.

3. Efforts to Realize Business Ease of Changing the Legal Form of the Company into a Limited Liability Company

The position of PT as a type of business entity is a pillar for national development (BPHN, 2018: 26) so that the legal form of PT has become the main choice of laws governing various business activities. The legal form of a PT legal entity is regulated by Law Number 40 of 2007. The practice of changing the form of a company in the form of CV, PD, Perum to PT, in addition to referring to the rules governing the legal form of companies that are changed in shape, as previously explained, also must follow the rules governing the legal form of the company resulting from the change, namely the Law on PT.

Legal practice acknowledges the diction to change the legal form, both from CV to PT, from PD to Perseroda, as well as from Perum to Perseroda, but the UUPT does not recognize the diction to change the legal form of a company from another legal form to PT. Therefore, the Company Law does not regulate changes in the legal form of the company from another legal form to the legal form of PT. The UUPT only regulates the establishment of a new Limited Liability Company (Article 7 paragraph (1)).

Law Number 40 of 2007 considers the change in the legal form from CV to PT, from PD to Perseroda, and from Perum to Persero as the

establishment of a new PT, so that legally, the newly formed PT with the legal form of the previous company has no legal relationship. The PT formed is a legal entity and a company with a previous legal form is also a legal entity. This has a consequence that the change in legal form must begin with the making of a deed of establishment of a PT as required in the Company Law, followed by an application for a legal entity from the Ministry of Law and Human Rights (Article 7 paragraph (4)).

The common thread between the PT that was formed and the company that was previously legal can only be seen in the assets listed in the deed of establishment of the newly formed PT. This is because one of the requirements to obtain a legal entity is the deed of establishment must state the authorized capital, issued capital, and paid-up capital. In the case of this change in legal form, the paid-up capital of the PT resulting from the change in legal form must be stated as a transfer of assets from the company with the previous legal form (see Article 12 of the Company Law).

The absence of the inclusion of the source of paid-up capital for the PT that was formed from the previous company, it could result in a legal act of transferring wealth from the previous company to the PT, not giving rise to rights and obligations and not binding on the PT that was formed. The engagement of PT as a legal entity resulting from changes to the rights and obligations of the previous company also requires the shareholders of the new PT through its first General Meeting of Shareholders to express state accepting or taking over all rights and obligations arising from legal actions originating from the previous company (Article 13 UUPT).

The legalization of a PT legal entity is only given by the State of Indonesia based on a request from the founder of the PT, in the case of a change in the form of a CV to become the founders of the former CV partners, both active and passive partners, because they are all founders. Meanwhile, in the case of a change of form from a PD to a Perseroda, the founder is the Regional Head who has a PD or an official appointed by the Regional Head, while in the

case of a change from Perum to a Persero, the founder is the President or an official appointed by the President.

The ratification of a PT legal entity does not necessarily mean that the PT can continue to continue the business license of the previous company. Even though the purpose of the change of form is to continue the business license, it must apply for a permit to continue business activities that have previously been carried out by the company whose legal form is changed. This is because the newly formed PT and the previous company are different entities.

The ratification of a legal entity by the State through the Minister of Law and Human Rights does not coincide with the granting of a business license, therefore a business license must be followed by an application to a government agency in accordance with the type of each business. This is a consequence of the bureaucratic system in Indonesia, where the legalization of PT legal entities and the granting of permits are not in one government agency. Likewise, the authority to grant business licenses rests with several government agencies, both at the ministry and at the local government, namely the provincial or district/city governments.

The separation of legal entity ratification and licensing bureaucracy, which has been hampering doing business in Indonesia (Sulasi Rongiyati, 2019: 2) is not only faced by new companies, but also becomes an obstacle for PTs resulting from changes in legal form, even though newly formed PTs it is a continuation of the business activities of the previous company. Ideally, there needs to be integration between government agencies that ratify legal entities with business licenses, so that ease of *doing business* can run as expected.

The occurrence of the inconsistency between the licensing bureaucracy and the legal entity legalization bureaucracy is because licensing arrangements are not part of the regulation in the Company Law, not to mention that one business license is different from another by the laws governing it. Officials who grant permits are also different, and between government agencies do not

yet have a common view of the *ease of doing business* (Budi SP Nababan, 2018). This is what causes the ease of investment in Indonesia to be low. The World Bank (World Bank), puts Indonesia in 73rd rank out of 190 countries (Muhammad Miradi, 2019). The integration of licensing and legalization of legal entities is not only intended to encourage foreign investment from multinational companies, but rather as an effort to encourage the empowerment of MSMEs. It is realized that economic globalization and trade liberalization have given rise to high level of dependence between countries in the world (Fajr Sugianto, 2013).

Companies that are in the form of CV, PD, and Perum that change form to PT, in terms of capital can be said to be included in the MSME group as intended in the legislation in Indonesia, even though they do not get facilitation as MSMEs. There are three arguments why MSMEs need to be empowered, *first*, MSMEs are engaged in various business fields, while multinational companies entering Indonesia are generally engaged in natural resources (Shah M. Tarzi, 2003), *second*, MSMEs can absorb more workers, *third*, MSMEs are much more able to survive in crisis conditions, while multinational companies in conditions of economic crisis in Indonesia actually relocate their businesses to other countries.

The Indonesian government's efforts to achieve ease of doing business are still at the stage of integrating licensing which is placed at one door, between local government agencies and central government agencies, which was introduced with *One Single Submission* (OSS) as regulated in Presidential Regulation of the Republic of Indonesia Number 91 of 2017 concerning Acceleration of Business Implementation. While the integration of licensing with legal entity ratification has not occurred, this can be seen in the business licenses of Rural Banks, according to Article 66 of the Financial Services Authority Regulation Number 20/POJK.03/2014 concerning Rural Banks. A business license from a PT granted by the Financial Services Authority can only be applied for after obtaining a legal entity, because it must attach the deed

of establishment of the PT resulting from the change in legal form and the Decree of the Minister of Law and Human Rights concerning the legalization of the legal entity of PT.

The complexity of the bureaucracy in Indonesia has become a complaint for President Joko Widodo, because it is caused by the many laws in Indonesia and between laws not being well integrated. In Indonesia, it is estimated that there are 42,000 (fourty two thousand) regulations covering laws, government regulations, presidential regulations, ministerial regulations, governor regulations, mayor regulations and regency regulatios (Agnes Fitryantica, 2019). The impact of the existence of this legislation can be said that legislation in Indonesia has failed to fulfill one of the principles of its formation, namely the principle of efficiency and effectiveness (Article 5 of Law Number 12 of 2011), and harmony and harmony between the contents of the legislation product (Article 6 of Law Number 12 of 2011) .

The business licensing bureaucracy with the legalization of a legal entity from a PT that has been changed should not be equated with the legalization of a legal entity of a newly formed PT, because the PT resulting from the change of form is to continue the business that has been run previously, the legalization of the legal entity and the licensing can be completed simultaneously. Legal entity ratification and licensing of companies that change form must have special rules, which are not equated with new PT, which is not a continuation of the previous business license. This also gives meaning to the change in the form of the law as an effort to encourage community empowerment.

Legal integration for business development is an effort to create integration between legal theory with political theory and social theory so that legal science is more relevant, although integration is actually needed from the law itself. This is because the law must also always evolve which is constantly developing and its relevance to the actual situation. Therefore the law must

respond flexibly to new problems and demands (Philippe Nonet and Philip Selznick, 2013).

Along with the academic view (Yuliandri, 2011), the demand for the birth of new provisions for changes in the legal form of companies that are responsive to community business development also has a juridical basis, because the government of the Republic of Indonesia has included a regulatory restructuring strategy as part of the National Medium-Term Development Plan as regulated in the Presidential Regulation of the Republic of Indonesia Number 18 of 2020 concerning the 2020-2024 National Mid-Term Development Plan.

The regulation arrangement referred to is called the *Omnibus Law approach* (Appendix 1 to Presidential Regulation Number 18 of 2020 concerning the 2020-2024 National Medium-Term Development Plan: IX-3-IX.4), which is a concept that consolidates various themes, materials, subjects. and laws and regulations in each different sector to become one large and holistic legal product (Agnes Fitryantica, 2019). Then it gave birth to Law Number 11 of 2020 concerning Job Creation. With this concept, the problem of inconsistency of norms which results in many laws can be overcome.

However, the concept of *omnibus law* in the field of business licensing and legalization of PT legal entities as a change in the legal form are two things that are closely related, and urgently require integration in the field (Jimly Asshidiqie, 2020). It should also have become part of the omnibus law in the field of creation of employment opportunities initiated by the government of the Republic of Indonesia. This condition occurs because licensing and legalization of legal entities as a result of changes in legal form are basically the effort to create job opportunities that the government of the Republic of Indonesia aspires to.

D. CONCLUSION

The change in the legal form of the company from the legal form of CV, PD, and Perum to the legal form of PT has become a common legal act in Indonesia. Changes in the legal form of the company from various legal forms to the legal form of a Limited Liability Company are not specifically regulated in one rule regarding the company, but are subject to various laws and regulations. This condition has resulted in different patterns in changing the legal form, which has an impact on the legal certainty aspect of the legal act of changing the legal form, so that the goal of changing the legal form is not optimally achieved, both in terms of sustainability and in terms of business development. Another aspect of the change in the legal form of this company is the inconsistency between the legalization of a PT legal entity as a result of the change in legal form and the continuation of business licensing. The change in the legal form of the company is equated with the formation of a new PT legal entity. The pattern of handling the legalization of the legal entity of PT and the continuation of the license separately can be one of the obstacles in the legal action of changing the legal form to become a legal entity of PT. In this regard, in order to create legal certainty and the realization of *EODB* in the change of legal forms from various legal forms of companies to legal forms of PT, is appropriate to stipulate a law that regulates companies. In addition, it also needs to establish an integrated system between legalization of PT legal entities and business license from PT resulting from changes in legal form.

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