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From Public Assets to Corporate Capital: Rethinking the Legal Status of Regional Assets Used as Capital and Collateral in Regional State-Owned Enterprises (BUMD)

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Abstract

The legal position of regional assets utilised as capital participation in Regional State-Owned Enterprises (BUMD) engenders legal ambiguity, especially concerning their categorisation as state finances and their application as collateral in collaboration with third parties. This problem is crucial because different interpretations could make BUMD management criminally responsible if company losses are seen as state losses. This study investigates the status of regional assets designated for capital involvement within state finances and their potential use as collateral. The study utilises a normative legal methodology encompassing legislative, conceptual, and analytical frameworks. The findings indicate that regional assets conveyed as capital participation represent a legitimate transfer to the business as an independent legal entity and ought not to be regarded as state losses. However, assets that are classified as usage rights are still regional property and cannot be used as collateral. This study suggests that the laws of state finance, corporate law, and anti-corruption law should all be made to work together. It also states that clearer legal regulations should be established on the management of regional assets in BUMD to ensure the law is unambiguous.

I. Introduction

The normative underpinning of a country's economy is crucial for ensuring that its goals, policies, and programs are effectively aligned, preventing decision-makers from relying on the "preferences" of power (Dewantara, 2014a, pp. 195-209). Article 33 of the 1945 Constitution outlines the legal basis and philosophy of Indonesia's economic system. Paragraph (1) states that the economy is organized as a joint effort based on the principle of kinship; (2) Branches of production that are important to the state and

control the basic needs of the people are controlled by the state; and (3) Land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The founding fathers drafted this article with a socialist view, prioritising kinship, community, and collective values over competition. Nonetheless, it does not negate the requirement for the implementation of market economy principles. Paragraph 4 articulates that the national economy is structured upon the values of solidarity, equity, sustainability, environmental consciousness, autonomy, and the preservation of progress alongside national economic cohesion.

Post-amendment, Indonesia's economic system is defined by economic democracy. Economic democracy, as articulated by Abraham Lincoln, is governed by the populace, for the populace, and in the interest of the populace. In that economic democracy, the ideal of unity is upheld, although it is executed alongside the principle of equitable efficiency. Togetherness serves as a crucial normative foundation, as the core of social and economic existence in society is rooted in common living. The fundamental premise of economic operation is efficiency, which entails the production of goods and services that fulfil human requirements in a cost-effective, high-quality manner. By implementing this principle of efficiency, we can expedite economic progress. Consequently, the government, tasked with the formulation and execution of policies from the Central Government to Regional Governments, should ideally cooperate to actualise the constitutional goals articulated in the fourth paragraph of the 1945 Constitution. The Constitution safeguards all Indonesian citizens, advances the common good, and fosters the education of the nation's populace (Dewantara, 2014).

This means that one of the objectives for the formation of the Indonesian state is to achieve the well-being of the populace. Consequently, Indonesia advocates for the welfare state. In a welfare state, the government is not only the protector of public safety and order but also the primary entity accountable for achieving social justice, overall well-being, and maximal prosperity for its citizens. To achieve this circumstance, synergy is needed in the era of regional autonomy, starting after the second amendment, which is outlined in Articles 18, 18A, and 18B. These articles explicitly recognise the existence of regional governments, both provincial and district/city, with the principle of decentralisation in each autonomous region. Then, in addition to being reaffirmed in the constitution, it was reiterated in Law Number 32 of 1999, which was then replaced by Law Number 32 of 2004 and finally by Law Number 23 of 2014 concerning Regional Government, which substantially grants provincial and district regional autonomy as well as city governments broader authority and autonomy compared to previous eras. This law provides local governments with the power to control infrastructure, the economy, education, and other areas of development, but it also limits their power. Mudrajad Kuncoro argues that one of the purposes of decentralisation and regional autonomy policies is to make the government more accessible to its citizens so that it can work better and more efficiently. The decentralisation system will keep being used to make it easier for the

government and power to work together, as well as to better fit the needs of Indonesia's many different areas. (Fitrahady et al., 2020).

In the context of regional economic development, local governments can engage in business activities by establishing Regional State-Owned Enterprises (hereinafter referred to as *BUMD* or *Badan Usaha Milik Daerah*) as stipulated in Article 331 of Law Number 23 of 2014, which states that local governments can establish *BUMD* in the form of Regional Public Companies (hereinafter referred to as *PERUMDA* or *Perusahaan Umum Daerah*) and Regional Limited Companies (hereinafter referred to as *PERSERODA*). Government Regulation Number 54 of 2017 about Regional State-Owned Enterprises delineates that the capital of PERUMDA is not partitioned into shares. In contrast, BUMD, in conjunction with PERSERODA, possesses capital that is divided into shares, with a minimum of 51% ownership by a single area. Regional State-Owned Enterprises, whether structured as PERUMDA or PERSERODA, must possess legal entity status. With legal entity status, the capital of regional companies cannot be entirely dependent on separate regional wealth but can also seek other sources based on business concepts and is subject to civil law. With this system, the improvement of community welfare and regional economic growth will be able to reduce the burden on the Regional Revenue and Expenditure Budget (hereinafter referred to as *APBD* or *Anggaran Pendapatan dan Belanja Daerah*) (Yani, 56).

Historically, as time progressed, to guarantee legal certainty and enforcement, there was a duality in the regulation of Limited Liability Companies, established by the Commercial Code (*Staatsblad* 1847 Number 23) and the Indonesian Share Company Ordinance (*Ordonnatie op de Indonesische Maatschappij op Aandeelen, Staatsblad* 1939: 569 jo. 717). The Government issued Law Number 1 of 1995 concerning Limited Liability Companies as a replacement for Book One, Title Three, Part Three, Articles 36 to 56 of the Commercial Code (*Wetboek van Koophandel, Staatsblaad* 1847:23), which regulated Limited Liability Companies and their amendments, most recently with Law Number 4 of 1971 and the Indonesian Share Company Ordinance (*Ordonnatie op de Indonesische Maatschappij op Aandeelen, Staatblad* 1939:569 jo 717). Then there is Law Number 1 of 1995 and most recently amended by Law Number 40 of 2007 concerning Limited Liability Companies, which then became the legal basis for managing *BUMD* from the aspect of Legal Entity, while the legal basis for its Business Entity follows the form of the *BUMD's* business entity as mandated in regional regulations regarding the form and business activities of *BUMD*. If a *BUMD* takes the form of a Bank, the regulations and licensing mechanisms outlined in the Banking Law serve as the reference for conducting business activities with the Limited Liability Company as the legal entity (Fitrahady et al., 2020).

The Regional Government, as the owner of the capital of the *BUMD*, as explained above, can cooperate by utilizing or investing capital in *BUMD* established for investment purposes, either in the form of money or goods (*inbreng*) owned by the Region, provided that the *BUMD* is established through the mechanism of Regional Regulations and the capital investment is also regulated in Regional Regulations. This

type of cooperation is regulated in Article 41, paragraph (5) of Law Number 1 of 2014 concerning the State Treasury.

Law Number 23 of 2014 specifies in its basic provisions that BUMD are business entities that are largely or totally owned by the Region, with capital contributions from the Regional Government derived from specific Regional Assets. This concept parallels the notion of state capital involvement in State-Owned Enterprises (hereinafter referred to as *Badan Usaha Milik Negara/BUMN* or SOEs), as defined in Law Number 19 of 2003 regarding State-Owned Enterprises, most recently revised by Law Number 1 of 2025, which constitutes the Third Amendment to Law Number 19 of 2003 concerning *BUMN*.

Disagreement exists about the notion of separated assets utilised as capital for *BUMD*, as articulated by Erman Rajagukuk at the National Conference entitled "Issues of State Financial Law Viewed from Applicable Legal Provisions." The governance theory and practice in Indonesia assert that the assets of SOEs are not regarded as state assets. This rationale is based on the Limited Liability Company Law, which stipulates that SOEs be recognised as legal entities by the Minister of Law, thereby rendering their assets distinct from state assets.

The concept of separate property becomes obvious when referring to Government Regulation Number 27 of 2014 on the Management of State/Regional Property. The regulation includes three models for managing state or regional property: use, utilisation, and transfer. In the usage model, government agencies normally utilise it at their offices, but third parties can also use it to support the agency's services. The second model is utilisation, which can take the form of leasing, borrowing and lending, borrowing for use, collaboration in utilisation, Build Operate Transfer (BOT), and infrastructure utilisation cooperation. Meanwhile, the third model is transfer. In this third model, there are several methods, namely Sales, Bartering, Grants, and Central/Regional Government Equity Participation (Government Regulation Number 27 of 2014 concerning Management of State/Regional Property on the Management of State/Regional Property, 2014).

Based on the expert opinions mentioned above and the Government Regulation, capital participation by local governments falls under the regime of regional asset transfer. This is closely related to investment, which indeed has the concept of high risk, high gain, or a high-risk option on one hand, but also the potential for high profits on the other. Because this is a high-risk option, this transfer regime has stricter procedures, namely obtaining approval from the Regional People's Representative Council (hereinafter referred to as *DPRD or Dewan Perwakilan Rakyat Daerah*) if the object is land/buildings or non-land objects with a value exceeding 5 (five) billion (Government Regulation Number 27 of 2014 concerning Management of State/Regional Property on the Management of State/Regional Property, 2014).

A different concept is found in Law Number 31 of 1999, as amended by Law Number 20 of 2001 on Corruption Crimes, which states that all public assets, whether

separated or not, are considered part of state finances. This concept has aroused disagreement among academics and practitioners, raising the question of whether losses incurred by *BUMN* are considered state losses. Observing this subject from only one perspective leads to dispute. Furthermore, if we look at the concept of state losses according to Article 1, point 22 of Law Number 1 of 2004 on the State Treasury, which states, "State/Regional Losses are shortages of money, securities, and goods, whose amounts are definite and certain as a result of unlawful acts, whether intentional or negligent."(Ghinarahmatina, 2018).

The same viewpoint is illustrated in Law Number 17 of 2003 on State Finance, which defines state finances as state assets apart from capital participation in state-owned companies. Article 2, point g, specifies that "State assets/regional assets that are managed independently or by other parties in the form of money, securities, debts, goods, and other rights that can be valued in money, including assets separated in state-owned enterprises/regional-owned enterprises." Reading Article 2 (point g) of Law Number 17 of 2003 on State Finances reveals that the term of state finances includes assets that are independent from state-owned firms. As a result, distinct state assets that are included as state capital participation in limited liability corporations remain recognised as state assets (Ghinarahmatina, 2018).

One of the District Governments in West Nusa Tenggara, West Lombok Regency, established a *BUMD* with the expectation that it would increase regional revenue from non-tax sectors. *PT Patuh Patut Patju ("PT Tripat")* is a regional government-owned enterprise (*BUMD*) under the ownership of the West Lombok Regency Government. The establishment of *PT. Tripat* was carried out through the mechanism of Regional Regulation Number 7 of 2010 on the Amendment of the Legal Form of the *BUMD Patuh Patut Patju*, where Article 6 states that the company operates in the fields of services, trading, development, contracting, industry, import-export, and other business sectors that do not conflict with applicable laws and regulations. In the amended Regional Regulation, it is stated that the capital contribution from the local government is in the form of cash amounting to Rp. 360,000,000, (three hundred and sixty million rupiah) and land with an area of 8 hectares, which was then increased to 8.4 hectares based on West Lombok Regency Regulation Number 8 of 2010 concerning Capital Participation of the West Lombok Regency Government in Regional Owned Enterprises and other legal entities. In the course of its business operations, the *BUMD* entered into an operational cooperation agreement with a Third Party to develop its business, during which the land used as capital was pledged at a bank, and this period was indicated as an act of corruption due to the business incurring losses (RadarLombok.co.id, 2025).

The study aims to tackle a concept that continues to be open to biased interpretation. On the one hand, *BUMDs* continue to consider segregated state assets as part of their capital structure. Therefore, any losses incurred are classified as state losses. This study investigates whether regional assets employed as capital in *BUMDs* in partnership with third parties continue to be classified as state assets. Moreover, it

seeks to analyse the interpretation of regional assets converted into capital within BUMD during partnerships with other entities. The study employs a normative legal framework, incorporating regulatory, conceptual, and analytical approaches.

II. Discussion

A. Legal Certainty Impact on Foreign Direct Investment

Legal certainty is an essential factor in attracting foreign direct investment (FDI) within the framework of modern economic globalisation. A consistent and reliable legal framework is crucial for foreign investors to make long-term investment decisions. Empirical studies conducted by experts in both developing and developed countries indicate that legal clarity affects both the volume of foreign direct investment inflows and the sustainability and quality of these investments (Kaul, 2024; Taduri, 2021). The concept of legal certainty in the context of FDI includes various interrelated dimensions, ranging from property rights protection, contract enforcement, regulatory transparency, and the availability of effective dispute resolution mechanisms. Research conducted by Bellani (2014) on OECD countries shows that the efficiency of the judicial system has a greater impact on FDI patterns than the combination of skilled labor and capital (Bellani, 2014). This confirmed that foreign investors are very concerned about legal-institutional aspects when assessing potential investment locations.

In addition, property rights protection and contract enforcement are key pillars of legal certainty that affect FDI. A comprehensive study (Ahlquist & Prakash, 2010) of 98 developing countries using the World Bank's Lex Mundi dataset reveals that FDI is strongly correlated with lower contract enforcement costs, especially when the host country has a high degree of dependence on foreign capital markets. These findings suggest that multinational investors are not only seeking environments with low transaction costs but also considering the ability of the local legal system to protect their business interests.

An independent and effective judiciary is essential for ensuring legal certainty for foreign businesses. An academic team did research employing the system-GMM estimate method, analysing 150 countries from 2000 to 2016. The results indicate a robust correlation between judicial independence, impartiality, and foreign direct investment (FDI) inflows (Tag, 2021). This study determined that judicial independence and impartiality are more significant than judicial contract enforcement in attracting foreign investment.

Regulatory transparency and institutional integrity are vital because they provide legal certainty to foreign investors. A research of 28 lower-middle-income countries from 2002 to 2018, which used dynamic panel estimation (two-step system GMM), found that effective corruption control and excellent regulatory quality encourage FDI inflows. In contrast, a strict rule of law and high levels of voice and responsibility tend to impede foreign direct investment (Saha et al., 2022). The contradicting findings suggest that international investors prefer states with weaker voice and accountability mechanisms and less stringent law enforcement, possibly due to the additional operational freedom this provides.

The presence of proficient dispute resolution systems is also critical in establishing legal certainty, which influences FDI. According to research, foreign investors care about not just the availability of dispute resolution venues, but also their quality and reliability. Frenkel and Walter's (2018) study of 2,571 Bilateral Investment Treaties (BITs) found that greater international dispute resolution provisions in BITs have a significant beneficial influence on FDI activity (Frenkel & Walter, 2019).

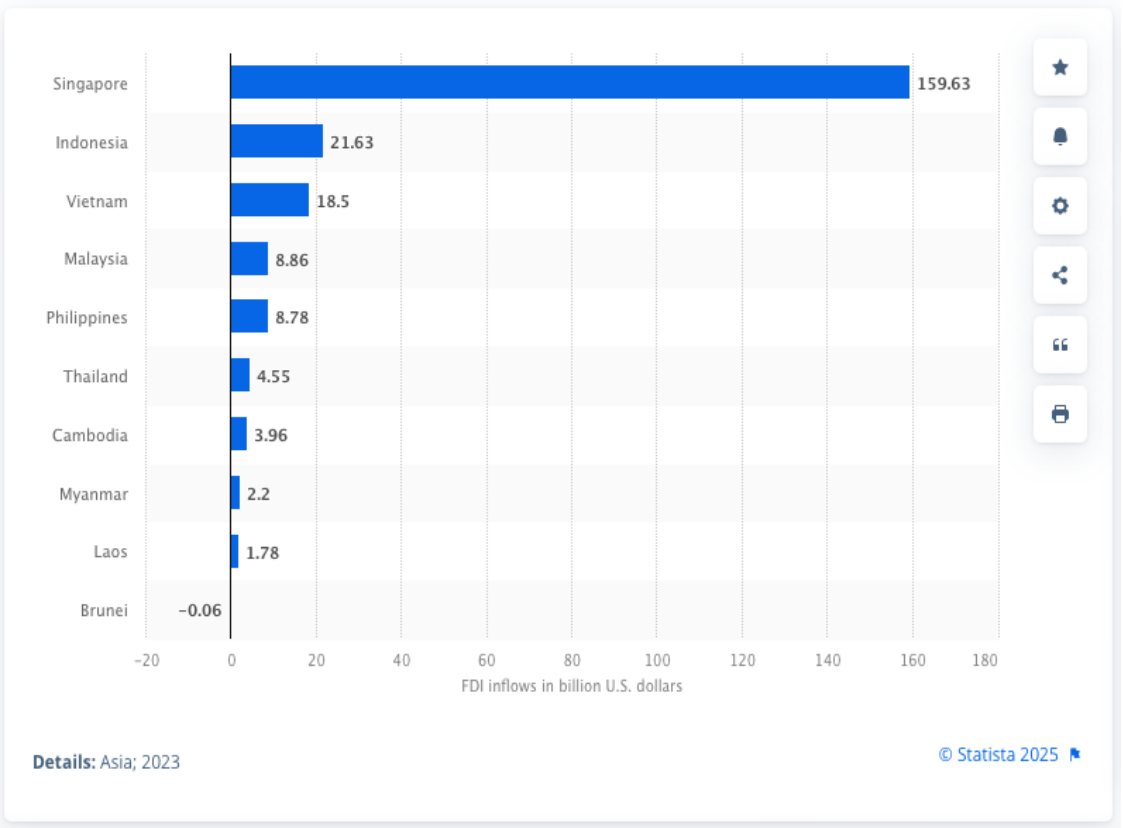
The political stability and corruption controls are essential elements of legal certainty that affect foreign direct investment (FDI). Research conducted on 25 Asia-Pacific countries from 1990 to 2020 revealed surprising findings: political stability may actually deter FDI inflows in these countries (Le et al., 2023). These results are consistent with regulatory risk theory, which suggests that political stability can hinder FDI when accompanied by unfavorable regulatory policies or excessive government intervention.

In 2023, foreign direct investment (FDI) in ASEAN amounted to approximately 234 billion U.S. dollars, marking a 1.6-fold increase compared to 2018. FDI in the region steadily increased from 2018 to 2023, except for a dip in 2020.

Graph 1. Foreign Direct Investment (FDI) inflow in ASEAN from 2018 to 2023
Source: (ASEAN, 2025)

The graph illustrates the inflow of Foreign Direct Investment (FDI) in ASEAN from 2018 to 2023, quantified in billions of U.S. dollars. The data indicate a consistent rise in foreign direct investment inflows throughout the period. In 2018, the influx amounted to $145.13 billion, increasing to $164.37 billion in 2019. Nonetheless, a significant decline occurred in 2020, resulting in a reduction to $121.03 billion, perhaps attributable to the global ramifications of the COVID-19 pandemic. In 2021, the investment rebounded to $207.96 billion and further increased to $229.78 billion in 2022. In 2023, foreign direct investment inflow rose to $234.01 billion, indicating a favourable growth trajectory in ASEAN's economic interactions with global investors.

Foreign Direct Investment (FDI) in ASEAN is influenced by policy quality, political stability, economic integration, infrastructure, and market size. Countries with excellent policies and stable political environments typically attract more investment. ASEAN has a modest level of economic integration, with varied degrees of relationship between member nations, which affects the region's overall attractiveness for foreign direct investment. Furthermore, infrastructure facilities and market size are critical variables, particularly in more established ASEAN countries such as Singapore and Malaysia (Mansor et al., 2023; Priyadi et al., 2024; Xaypanya et al., 2015). Singapore stood out as the main recipient, attracting more than half of the FDI inflows in the region in 2023, amounting to approximately US$159.6 billion (ASEAN, 2024):



(Graph 2. FDI to ASEAN member countries in 2023, by country (in billion US dollars) Source: ASEAN, 2024)

Legal certainty influences the increase in FDI to several of ASEAN's top countries. In Singapore, Indonesia, Vietnam, Malaysia, and Thailand, legal certainty is measured using at least three criteria: regulatory quality, rule of law, and control of corruption. Empirical evidence shows a favourable relationship between these three indicators and foreign direct investment (FDI) flows (The Global Economy.com, 2023f, 2023b, 2023c, 2023e, 2023g, 2023a, 2023d). Here are the countries:

Table 1 - Legal Certainty Scores of Singapore, Indonesia, Malaysia, Vietnam, and Thailand

State	Regulatory Quality (–2,5 s.d. +2,5)	Rule of Law (–2,5 s.d. +2,5)	Control of Corruption (–2,5 s.d. +2,5)
Singapore	2,31	1,75	2,04
Malaysia	0,66	0,57	0,30
Vietnam	-0,38	-0,09	-0,42
Thailand	0,16	0,24	-0,49
Indonesia	0,30	-0,15	-0,42
Note: A score close to +2.5 indicates very satisfactory regulatory quality, strong law enforcement, or effective control of corruption; a score close to –2.5 indicates the opposite.			

(Source: The Global Economy, 2023)

Singapore has the highest level of legal certainty in ASEAN. The highest Regulatory Quality (2.31) demonstrates pro-business policies and extremely favourable regulations, whereas Rule of Law (1.75) and Control of Corruption (2.04) confirm transparent law enforcement and low corruption. Singapore is a regional FDI hub with the highest FDI/GDP ratio (≈19.2%), since investors seek a stable legal environment and strong asset protection. Malaysia is ranked second in terms of regulatory quality (0.66), rule of law (0.57), and corruption control (0.30). Sectoral regulatory reforms and independent commercial dispute resolution processes have increased investor confidence, allowing Malaysia to attract FDI worth approximately 3.2% of its GDP, which is consistent with its institutional quality rating. Indonesia has seen a moderate improvement in Regulatory Quality (0.30) since the Omnibus Law, although Rule of Law (-0.15) and Corruption Control (-0.42) remain very low. Investor decisions are influenced by inconsistent regulation execution and corruption levels, resulting in a low FDI/GDP ratio of approximately 1.8%. To increase investment attractiveness, law enforcement must be strengthened, and corruption must be combated.

Thailand has a medium score for Regulatory Quality (0.16) and Rule of Law (0.24), while Control of Corruption (-0.49) is low. Despite advances in the commercial adjudication system, FDI growth (about 1.7% of GDP) is hindered by restrictions on some sectors under the Foreign Business Act and strong perceptions of corruption. Despite receiving bad marks for Regulatory Quality (-0.38) and Control of Corruption (-0.42), Vietnam has effectively drawn FDI of approximately 6.0% of GDP due to competitive labour prices and 2020 investment reforms. However, improvements in

legal clarity, notably contract enforcement and corruption eradication, will boost international investor trust.

Foreign direct investors in Indonesia face various legal uncertainties that lower its attractiveness compared to other ASEAN countries such as Singapore, Malaysia, Cambodia, and Vietnam. These legal issues considerably obstruct the investment environment, reducing Indonesia's attractiveness to prospective foreign investors (Adam, 2025; Dewi et al., 2023; Suroso et al., 2024). The regulatory environment in Indonesia, combined with inconsistent enforcement of laws, leads to a deficiency in legal predictability, which is essential for investors who prioritize stability and certainty within the markets they engage in. This ambiguity diminishes investor confidence and discourages sustained capital inflows into the nation.

Furthermore, the existence of hyperregulations and overlapping authorities complicate Indonesia's legal framework, leading to a complex and frequently contradictory regulatory environment. This circumstance not only impedes investors' ability to navigate effectively but also elevates the costs and duration necessary to fulfil various legal obligations. The interplay of excessive regulations and ambiguous jurisdictional authority creates a difficult landscape for foreign investors, who often favour markets characterised by straightforward and more transparent legal frameworks. The licensing procedure in Indonesia also functions as a considerable obstacle to foreign direct investment. The process is laborious, time-intensive, and frequently hindered by delays, which deters prospective investors. Although measures have been undertaken to streamline the process through the enactment of the Job Creation Law, these reforms have not yet entirely resolved the systemic issues inherent in the licensing system. Consequently, Indonesia persists in encountering challenges in establishing an effective and investor-friendly environment (Dewi et al., 2023; Suroso et al., 2024).

Corruption remains a challenge to Indonesia's legal structure, notwithstanding recent measures aimed at reducing corrupt activities. Corruption persists and is not effectively addressed by the current regulatory framework. This persistent issue undercuts investor trust and produces an unpredictable business climate, further decreasing Indonesia's desirability as an investment destination (Suroso et al., 2024).

Compared to other ASEAN countries, Indonesia's legal system provides substantial obstacles, in stark contrast to the more stable and predictable frameworks witnessed in Singapore and Malaysia. Singapore, for example, is well-known for its robust legal system and political stability, as well as its highly effective and open regulatory framework, which makes it an ideal location for foreign direct investment. Malaysia, having a more stable legislative framework, continues to face similar regulatory complexity difficulties to Indonesia, but has typically been more effective in establishing an investor-friendly climate (Adam, 2025; Pham et al., 2023; Priyadi et al., 2024).

Vietnam has gradually emerged as a desirable destination for foreign investors, owing primarily to government efforts to simplify procedures and increase legal clarity. Despite ongoing challenges with policy quality and political stability, Vietnam has made significant progress in removing the legal barriers that prevent international investment. Cambodia, on the other hand, has proved that, while being less developed, infrastructure improvements and a more liberalised economy have resulted in increased foreign direct investment inflows. However, Cambodia continues to face obstacles such as inflation and different economic hardships, which may affect its long-term investment prospects (Adam, 2025; Priyadi et al., 2024; Xaypanya et al., 2015).

To increase its competitiveness and establish a more favourable business climate, Indonesia must execute substantial law reforms. These reforms should streamline regulations, match local laws with international norms, and provide legal protections for investors. Enhancing the legal framework to encourage greater transparency and uniformity will help Indonesia become a more appealing investment destination. Furthermore, addressing corruption within the legal system is critical to restoring investor confidence. Effective anti-corruption methods should be included in the legal framework to provide a more stable and dependable environment for international investors. Furthermore, additional refinement and simplification of the licensing process are required to remove entry barriers and facilitate a more seamless and efficient experience for international investors looking to start operations in Indonesia (Adam, 2025; Dewi et al., 2023; Suroso et al., 2024). For this reason, legal certainty is very important and influential in foreign direct investment.

B. The Cross- Interpretation of Capital Participation in Corporations

The corporation, whether privately owned or publicly owned, requires capital to achieve its profit goals. However, capital provided by the region to support BUMD or other corporations is subject to specific regulations due to its designation as Regional Property (hereinafter referred to as to *BMD* or *Barang Milik Daerah*). This status differs significantly from capital issued by individuals or private entities. This situation presents a dilemma for local governments, as the interpretation of capital from local governments—even when contributed to local corporations—leads to the understanding that it is still local government property. Consequently, any losses incurred would be viewed as losses to the state.

Conflicting viewpoints exacerbate the complexities of situations involving distinct state assets and finances. On the one hand, separated state assets are no longer considered part of the state budget, which means that capital contributions to state-owned firms are categorised as separated state assets. On the other hand, these segregated public assets, including capital contributions, are still considered part of state finances; so, if losses occur, the state bears the consequences.

Erman Rajagukguk holds the expert opinion that regional capital contributions used as capital in state-owned enterprises are no longer state assets. This conclusion was stated at a national conference entitled "State Financial Law Issues Reviewed from

the Perspective of Applicable Legislation." The theory and practice of governance in Indonesia state that the assets of *BUMN* are not state assets; as per the Limited Liability Companies Act, *BUMN* are granted legal entity status by the Minister of Law and thus cannot be considered state assets (Fitrahady et al., 2020).

Arifin P. Soerja Atmadja, who analyses state finances according to Article 23 of the 1945 Constitution, agrees with Erman Rajagukguk's viewpoint. This article claims that the state budget is the sole source of state funding. Furthermore, Atmadja defines state finances through the lens of government accountability, stating that the government must account for funds from the state budget. Thus, state finances refer specifically to funds that derive from the state budget (Sorik & Dwiatmoko, 2022). Atmadja further explained that the separation of state assets carries major responsibilities and consequences. For instance, it allows the government to allocate state assets as capital to establish public or limited liability companies, thereby enhancing their business activities (Atmadja, 2009).

M. Ichwan also stated that state finances are quantitative plans expressed in currency amounts that will be implemented in the future, usually within the coming year. Geodhart described state finances as the complete collection of laws that are established periodically, which grant the government the authority to execute expenditures for a specific period and specify the financing instruments required to cover those expenditures. John F. The state budget is defined as a financial plan for a specific time frame. Harun Al-Rasyid emphasised that state finances originate solely from the State Budget (*APBN*).

According to analysts, capital participation by regional governments is a transfer of regional assets. This phrase is frequently related to investment, which represents a high-risk/high-reward scenario. This indicates that it is a high-risk option on the one hand, but also has the potential for big gains on the other. Given the high risk of such investments, the transfer regime mandates stringent requirements. Approval from the Regional People's Representative Council (hereinafter referred to as *DPRD* or *Dewan Perwakilan Rakyat Daerah*) is necessary when the asset in question is land, buildings, or non-land assets valued at over $5 billion (Sorik & Dwiatmoko, 2022).

Several experts, including Dian Puji N. Simatupang, articulate the contrary view, which considers regional capital participation in *BUMDs* as part of state finances. She notes that certain articles in Law Number 17 of 2003 on State Finances appear static and highlight the conservative nature of the law. Consequently, state finances, which encompass separate state assets, such as capital participation in *BUMN* or *BUMD* companies, fall under the purview of state finances that can be audited by the Supreme Audit Agency (hereinafter referred to as *BPK* or *Badan Pemeriksa Keuangan*). If there is a loss, the *BPK* may classify these losses as state financial losses (Simatupang, 2021).

The argument is also affirmed by A. Hamid S. Attamimi, who states that state finances include not only the state budget but also regional budgets, *BUMN, BUMD,* and essentially all state assets. According to Mulia Panusuan Nasution, the scope of state financial management as an elaboration of the provisions of the 1945 Constitution

of the Republic of Indonesia includes not only the state budget but also the management of all state rights and obligations that can be valued in monetary terms, as well as everything, whether in the form of money or goods, that can become state property in connection with the exercise of those rights and obligations. Meanwhile, according to Saldi Isra, if the wording of Article 23 Paragraph (1) is read superficially without considering the spirit contained within it, then it is true that the meaning of state finances is very narrow: state finances only concern the *APBN*. However, if analyzed more thoroughly, the true meaning and intent of Article 23(1) of the 1945 Constitution is not as limited as it may seem. The state finances referred to are not as simple and narrow as understood but have a broader meaning than that (Sorik & Dwiatmoko, 2022a, p. 410).

The statement, based on Dian Puji N. Simatupang, is a consequence of the expansion of the meaning of state finances as stated in Article 2 of Law Number 17 of 2003 on State Finances, which is influenced by what Simatupang refers to as "the rigidity of thinking" (Sorik & Dwiatmoko, 2022a, p. 486) regarding the meaning of state finances in Law Number 17 of 1965 on Stipulation of Government Regulation of Substitute Law Number 6 of 1964 on the Establishment of the Supreme Audit Agency (Law Number 17 of 1965). In the Explanation of Article 3 of Law Number 17 of 1965, it is stated:

"*State finances do not only refer to state funds but also to all state assets, including all parts of those assets and all rights and obligations arising therefrom, whether those assets are under the control and management of officials and/or institutions belonging to the General Government or under the control and management of Government Banks, Government foundations (whether public or private in legal status), State-owned enterprises, and companies and businesses in which the Government has a special interest, as well as those under the control and management of any other party based on an agreement involving Government participation or designation by the Government. In addition to auditing, supervising, and investigating the control and management of state assets, the Audit Board also audits, supervises, and investigates the assets of third parties entrusted and/or controlled and/or managed by the state.*"

Article 2 of Law Number 17 of 2003 broadens the scope of state finances, resulting in a legal dilemma. State finances encompass the budgets of regional governments, state-owned or regional enterprises, and legal entities that use state services. Nonetheless, the methodologies employed to administer and account for these state monies vary significantly. Legislators have overlooked the current laws regulating public financial management due to their evident discrepancies (Simatupang, 2021a, p. 482).

The perspective discussed aligns with Law Number 31 of 1999, as amended by Law Number 20 of 2001 on Corruption Crimes. This law explains that state finances include all state assets in any form, whether separated or not. This interpretation has ignited debate among experts and practitioners regarding whether losses incurred by *BUMN* and *BUMD* should be considered state losses. Examining this issue from a

single standpoint leads to further discussion. For example, the definition of "state treasury" in Article 1, point 1 of Law Number 1 of 2004 on State Treasury states that "State Treasury is the management and accountability of state finances, including investments and separated assets, as outlined in the *APBN* and Regional Budget (*APBD*)." Additionally, this law defines losses in Article 1, point 22, which states that "State/Regional Losses are shortages of money, securities, and goods, whose amounts are definite and certain, resulting from unlawful acts, whether intentional or negligent."(Ghinarahmatina, 2018a, p. 5).

According to Law Number 17 of 2003 on State Finances, state finances include state assets acquired through capital involvement in limited liability corporations. This clause is defined in Article 2, point g, which states that "state assets/regional assets managed independently or by other parties in the form of money, securities, debts, goods, and other rights that can be valued in money, including assets separated in state-owned enterprises/regional-owned enterprises." A deeper look at Article 2, point g of Law Number 17 of 2003, reveals that the term of public finances includes assets divided among state-owned firms. As a result, these segregated state assets, classified as state capital involvement in limited liability corporations, remain state assets. As a result, any losses incurred by them are seen as losses to the state's budget (Ghinarahmatina, 2018, p. 6).

In the application of law enforcement, this is what law enforcement officers use to pursue everyone, even company leaders who use funds obtained from state or regional resources. This reasoning is consistent with Soepomo's perspective that state control can be understood as regulating and/or organising, particularly to improve and increase production. This contradicts the concept of a firm as a legal entity (*rechtspersoon*) and an independent legal subject.

C. **The Regulation on the Management of Regional-Owned Assets in Indonesia**

The management of regionally owned assets is governed by Law Number 1 of 2004 on State Treasury. According to Article 1 point 11, *BMD* include all assets purchased or acquired using the *APBD* or gained from other lawful sources. The State Treasury Law also governs the management of State and Regional Investments. Article 41(1) provides that the government may make long-term investments for economic, social, and/or other purposes; Article 41(2) stipulates that such investments may take the form of shares, bonds, or direct investments. Then, with regard to regional capital involvement, Article 41 paragraph (5) specifies that regional government capital participation in state/regional/private firms is defined by regional legislation. This indicates that by referring to Article 41 paragraph (5), regional governments can participate in the capital *of BUMN, BUMD*, and private firms..

Chapter VII The state Treasury law regulates the management of state- or regional-owned assets. Article 45(1) states that state/regional assets required for the performance of state/regional government duties may not be transferred; Article 45(2) states that the transfer of state/regional assets may be carried out by means of sale, exchange, donation, or inclusion as government capital after obtaining the approval of

the DPR/DPRD. Based on these provisions, there are two types of management of state/regional assets: First, state/regional assets that cannot be transferred, and Second, state/regional assets that can be transferred. Under Article 47(1)(a), the approval of the *DPRD* referred to in Article 45(2) is granted for: a. the transfer of land and/or buildings.

Technical regulations on the management of state/regional-owned assets as attributed by the State Treasury Law stipulate that provisions on technical and administrative guidelines for the management of state/regional-owned assets are regulated by Government Regulations. Thus, Government Regulation Number 27 of 2014 on the Management of State/Regional Owned Assets was issued. This Government Regulation replaces Government Regulation Number 6 of 2006 and Government Regulation Number 38 of 2008 on Amendments to Government Regulation Number 6 of 2006 on the Management of State/Regional Assets. In this Government Regulation, there are three regimes for the management of regional assets, namely use, utilization, and transfer. In the use model, it is usually used by government agencies in the form of office use or can be used by other parties to support the services of the relevant government agency(Government Regulation Number 27 of 2014 concerning Management of State/Regional Property, 2014). The second model is utilization, which can take the form of leasing, borrowing, lending, utilization cooperation, Build-Operate-Transfer (BOT), and Infrastructure Utilization Cooperation *(Build Operate Transfer)* (Government Regulation Number 27 of 2014 concerning Management of State/Regional Property, 2014). Therefore, the third model is the transfer of ownership.

The Transfer of Ownership refers to the transfer of ownership of State or Regional Owned Assets. There are several types of transfers of these assets, including sales, exchanges, grants, and government central or regional capital contributions. Consequently, this capital contribution is categorized under the transfer regime. Central or Regional Government Capital Participation involves the transfer of ownership of State or Regional Property, which were originally inseparable assets, into separate assets that are calculated as state or regional capital or shares in state-owned enterprises, regionally owned enterprises, or other legal entities owned by the state (Government Regulation Number 27 of 2014 concerning Management of State/Regional Property, 2014), Given that this process is a transfer model, the regulations are more stringent, necessitating approval from the *DPRD* if the object is land and/or buildings or other assets valued at 5 billion or more (Law Number 1 of 2004 concerning State Treasury, 2004). The Governor, Regent, or Mayor submits the proposal to obtain this approval from the DPRD (Government Regulation (PP) Number 27 of 2014 concerning Management of State/Regional Property, 2014,).

Article 72(1) of Government Regulation Number 28 of 2020 concerning Amendments to Government Regulation Number 27 of 2014 on the Management of State/Regional Owned Assets ("Government Regulation Number 28 of 2010 on the Management of State/Regional Owned Assets") states: "Capital participation of the

Central/Regional Government in State/Regional Owned Assets is carried out in the context of establishing, improving the capital structure, and/or increasing the business capacity of state-owned enterprises, regional-owned enterprises, or other legal entities owned by the state, in accordance with the provisions of laws and regulations. Then paragraph (2) states that the Capital Participation of the Central/Regional Government as referred to in paragraph (1) can be carried out with consideration of a. State/Regional Owned Assets, which from the beginning of their procurement according to the budgeting documents are intended for state-owned enterprises, regionally-owned enterprises, or other legal entities owned by the state in the context of government assignments; or b. State/Regional Owned Assets are more optimally managed by state-owned enterprises, regionally-owned enterprises, or other legal entities owned by the state, both existing and those to be established.

The amendment to the regulations on the Management of State/Regional Owned Assets Number 28 of 2020, as stated in Article 75, emphasizes that "The implementation of the management of Regional Owned Assets in the context of Regional Government Capital Participation shall comply with the provisions of laws and regulations in the field of regional Government and laws and regulations in the field of Regional Owned Asset Management." This provision has undergone significant changes; it previously outlined the procedures for local Government capital contributions in a more rigid manner under Government Regulation Number 27 of 2014. With the amendment, the provision now directly references regulations pertaining to local Government and the management of local Government assets.

The more detailed regulations governing local Government capital contributions are detailed in Minister of Home Affairs Regulation Number 19 of 2016 on Guidelines for the Management of Local Government Assets, which has been amended by Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 7 of 2024 on the Guidelines for Management of Regional Property (Regulation of the Minister of Home Affairs Number 7 of 2024 concerning Amendments to Regulation of the Minister of Home Affairs Number 19 of 2016 concerning Guidelines for Management of Regional Property, 2024). Article 1, point 40's general provisions define "transfer of ownership" as the process of transferring ownership of regional assets. Additionally, Article 1 point 44 states that "Regional Government Capital Participation is the transfer of ownership of regional assets that were originally inseparable assets to separate assets to be accounted for as regional capital/shares in state-owned enterprises, regionally-owned enterprises, or other legal entities owned by the state."

According to the Minister of Home Affairs Regulation, regional Government assets encompass those purchased or acquired at the expense of the *APBD* or obtained from other lawful sources (Regulation of the Minister of Home Affairs Number 7 of 2024) Furthermore, Article 4(1) specifies that regional Government assets referred to in Article 3 shall not be pledged or mortgaged to secure loans, nor may they be transferred to third parties as payment for claims against the regional Government.

Paragraph (2) clarifies that regional Government assets referred to in Article 3 may not be seized under applicable laws and regulations. These provisions in Article 4 clearly indicate the prohibition against pledging or mortgaging regional Government assets, as well as their immunity from seizure.

Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 7 of 2024 regulates the transfer of ownership in Chapter X, Article 329 paragraph (1) Regional -owned assets that are not necessary for the implementation of regional government tasks may be transferred. Paragraph (2) The forms of transfer of regional government assets include: a. selling; b. exchanging; d. grants; or e. regional government capital participation. The regulation on regional capital participation is regulated in Article 411, which stated that;

i. Regional government capital participation in regional assets is carried out in the context of establishing, developing, and improving the performance of State/Regional Owned Enterprises or other legal entities owned by the State in accordance with the provisions of laws and regulations.
ii. Regional government capital participation as referred to in paragraph (1) shall be carried out with the following considerations:
    a. Assets that have been allocated since their acquisition, as specified in budgetary documents, for State/Regional Owned Enterprises or other state-owned legal entities related to governmental mandates; or
    b. The management of regional assets is more effectively conducted by State/Regional Owned Enterprises or other legal entities owned by the State, regardless of their operational status, whether they are currently active or still in the process of being established.
iii. Regional Government capital participation is regulated by Regional Regulation.
iv. Regional assets as stated in paragraph (2) that have been included in the regional government's capital participation in State/Regional Owned Enterprises or other legal entities owned by the State shall become separate assets in accordance with the provisions of laws and regulations.

The assets of regional government capital participation may consist of land and/or buildings, or may take the form of other movable assets (Regulation of the Minister of Home Affairs Number 7 of 2024 concerning Amendments to Regulation of the Minister of Home Affairs Number 19 of 2016 concerning Guidelines for Management of Regional Property, 2024). The process of involving regional government capital requires approval from the governor, regent, or mayor. If such participation necessitates the approval of *DPRD*, the Governor, Regent, or Mayor must first submit a request to the *DPRD*. Upon approval of the request for Regional government participation in capital assets by the Governor, Regent, Mayor, or the *DPRD*, the Governor, Regent, or Mayor shall issue a decision regarding the local government assets designated for capital participation. The Asset Manager formulates a preliminary Regional Regulation concerning local government capital participation,

engaging the pertinent regional work unit (Article 16 of Regulation of the Minister of Home Affairs Number 7 of 2024). At this point, it is clear that the regulations on local government capital participation are more stringent, as they must have legal legitimacy through a Regional Regulation (*Peraturan Daerah*).

According to this Regional Regulation, the Handover Event and Asset Management submitted a proposal for the disposal of regional property used as a regional government capital investment. As a result, after getting approval from the Regional House of Representatives through a Regional Regulation, regional assets, whether in the form of products (*inbreng*) or monetary resources classified as corporate capital, must be removed from the inventory of *BMD*. Due to its demise, the region no longer has the regional government's capital involvement in regional assets. As a result, the scenario demonstrates that corporate capital is the wealth of the corporation itself, as opposed to that of the capital owner.

D. Analysis of Mataram District Court Decision Number 25/Pid.Sus-TPK/2025/PN Mtr

Decision Number 25/Pid.Sus-TPK/2025/PN Mtr is a decision that attracted significant attention because it involves a business-to-business (B2B) issue that subsequently became the domain of corruption. Why is this happening? Because L. Azril Sopandi, the director of *PT. Patut Patuh Patju* (hereinafter abbreviated as *PT. Tripat*), agreed on an operational cooperation with *PT. Bliss Pembangunan Sejahtera* (hereinafter abbreviated as *PT. BPS*). Then, this object of collaboration experienced losses as a result of the Lombok City Centre mall not being built and closing, which was deemed a financial loss by the state. As a result, this decision is highly exciting to analyse, to determine when a business becomes an act of corruption.

The prosecutor's statement, as stated in the decision, argues that the selection of *PT. BPS* as a partner for *PT. Tripat* did not comply with the proper selection process. This is inconsistent with Article 26, paragraph (1), letter b of Government Regulation Number 6 of 2006 on the Management of State/Regional Property, as amended by Government Regulation Number 38 of 2008 concerning Amendments to Government Regulation Number 6 of 2006 on the Management of State/Regional Property, which states that the utilization cooperation for state/regional property is carried out under the provisions that the utilization cooperation partner is determined through a tender involving at least 5 (five) participants/interested parties. Article 38, paragraph (1), letter b of the Minister of Home Affairs Regulation Number 17 of 2007 on Technical Guidelines for the Management of Regional Property states that the utilization cooperation partner is determined through a tender/auction involving at least 5 (five) participants/interested parties, except for special activities where direct appointment can be made (Mataram District Court Decision Number 25/Pid.Sus-TPK/2025/PN Mtr, 2025, p. 35).

The construction of the indictment indicates that the prosecutor misunderstands the model for managing state/regional property. Because in the management of

state/regional property, there are three types of state/regional property management as stated in Government Regulation Number 38 of 2008 on Amendments to Government Regulation Number 6 of 2006 on the Management of State/Regional Property, namely Use, Utilization, and Transfer of ownership. State/regional assets managed under the "use or management" type still retain their status as state/regional assets. The ownership transfer type includes management under the equity participation model. Therefore, there must be approval from the House of Representatives/Regional House of Representatives to write off assets that are part of the capital investment. This agreement was previously executed by the West Lombok District Government through West Lombok District Regulation Number 8 of 2010 as amended by Regulation Number 5 of 2014 on the West Lombok District Government's Capital Participation in Regional Owned Enterprises and Other Legal Entities. This legislation was followed up by Decision of the West Lombok Regency Regional House of Representatives Number 07/KEP./DPRD/2013 dated May 7, 2013, regarding the Approval for the Disposal of West Lombok Regency-owned Land Covering 8.4 Hectares (84,000 m2) Located in *Gerimak Indah Village*, *Narmada* District, in the Form of Capital Participation in *PT. Tripat* and the Removal of Land Owned.

In addition, there is the Decision of the Head of the Regional Office of the National Land Agency of West Nusa Tenggara Province Number SK.07/HGB/BPN-52/2/07-08/2013 dated October 30, 2013, about the Granting of Building Use Rights in the Name of *PT. Tripat* for land in West Lombok Regency, West Nusa Tenggara Province. This information indicates that the 8.4-hectare land, which was the capital contribution from the West Lombok Regency Government, has been transferred to Therefore, its management model cannot be equated with the management of *PT. Tripat* state assets, which focuses on use and utilization. The project is a business-to-business collaboration, so there is no need for a tender, as the assets are still considered regional assets. Therefore, this is a mistake in understanding the concept of capital participation in a public company.

Another factor to consider is that it's purely a business venture full of risks. The land used as a guarantee for the development of Lombok City Centre Mall is 8.4 hectares in size, and the certificate is divided into two: SHGB 01 with an area of 47,921 m² and SHGB 02 with an area of 36,079 m², both in the name of *PT. Tripat* (Mataram District Court Decision Number 25/Pid.Sus-TPK/2025/PN Mtr, 2025. p. 6). The price is based on the 2011 asset valuation summary by Public Appraiser Suherman & Rekan, which was valued at Rp. 22,337,000,000 (Mataram District Court Decision Number 25/Pid.Sus-TPK/2025/PN Mtr, 2025, p. 4). Subsequently, the land was appraised based on the recommendation of PT. BPS in 2014, with a value of 95 billion (Mataram District Court Decision Number 25/Pid.Sus-TPK/2025/PN Mtr, 2025, p. 100). However, the certificate used as collateral is only one, namely SHGB 01 with an area of 47,921 m², located on *Ahmad Yani* road, *Gerimak Indah* Village, *Narmada* District, West Lombok Regency, West Nusa Tenggara Province, and the personal guarantor is Isaac Bliss Tanihaha, resulting in a loan of Rp. 264,000,000,000 (Mataram District Court Decision Number 25/Pid.Sus-TPK/2025/PN Mtr, 2025, p. 101). This means that this is

not just a credit, and *Sinar Mas* Bank definitely does not simply offer credit facilities, where generally the credit must be lower than the value of the collateral. However, this transaction far exceeds the value of the collateral, because *Sinar Mas* Bank looked at the track record of the personal guaranty from Isaac Bliss Tanihaha, who has a good history or track record in doing business. We must also consider the losses he has suffered, because reputation must also be valued, which in this context far exceeds the value of *PT. Tripat's* material assets. He was certainly very disadvantaged by the joint project with *PT. Tripat* because losses did occur, not only in capital but also in his trust as a customer with a very favourable personal brand. However, such behaviour is not seen as good faith in business cooperation. Law enforcement agencies, in this case, prosecutors, are focusing on the losses of *PT. Tripat* in its collaboration with *PT. BPS*. However, in business, the ultimate goal is always profit or loss. Therefore, if a loss occurs, it certainly cannot be immediately considered a financial loss to the state as alleged above, because the legal nature of the matter had already shifted from public law to private law at the time of the capital investment.

Therefore, in the Court's Considerations, the judges stated that they disagreed with the Prosecutor's indictment and declared that "It has been previously considered above that the object of the land measuring 47,921 m² with SHGB No. 01/2013 in the name of *PT. BPS* is part of the land that has been handed over by the West Lombok Government as capital participation, which has been valued in money to *PT. Tripat*. It is no longer state/regional property but has become an asset of the Regional-Owned Enterprise *(PT. Tripat)* and is not governed by the regulations for managing state/regional property. "The panel of judges further explained that even though it is no longer regional property and is not bound by the rules regarding the management of state/regional property, the utilization or use of the Regional-Owned Enterprise's assets must still adhere to Law Number 17 of 2003 concerning State Finance, which is the responsibility of the Regional-Owned Enterprise (*PT. Tripat*) in the form of annual financial reports. Since the land has become an asset of the Regional State-Owned Enterprise (*PT. Tripat*), its utilization and management as contributed capital are subject to the Law on State-Owned Enterprises/Regional State-Owned Enterprises and the Business Judgment Rule outlined in Law Number 40 of 2007 on Limited Liability Companies regarding the operations of the Regional State-Owned Enterprise (Mataram District Court Decision Number 25/Pid.Sus-TPK/2025/PN Mtr, 2025, p. 266).

However, in that decision, the indictment took a turn after Lalu Azril Sopandi became a whistleblower, stating that he conveyed orders from Zaini Arony, the Regent of West Lombok Regency, to obtain a fee from the collaborative project. The fact of the trial is that as director, he brought the fee to the *Bupati's* office and gave it all without keeping any for himself. Therefore, in this case, as director, he should not be charged with being the perpetrator of the crime of corruption, but rather, Zaini Arony, the Regent of West Lombok, as the one who gave the order, should be held responsible for it. This certainly creates injustice for the *BUMD* Director because, as the person appointed as Director, they are certainly not free to make decisions, leaving them with

no choice but to follow the orders of the person who appointed them as director. In legal parlance, the adage "*Lex non cogit ad impossibilia*" means that the law does not compel a person to do the impossible. In this case, it means that if a subordinate is physically or psychologically unable to refuse a superior's order (coercion), the law can't force them to do the impossible.

Considering the judge's suggestions above, it is clear that there is already an element of hope that regional capital participation is no longer in the category of public law and cannot be prosecuted by the prosecutor but has moved into the category of private law. This move is in accordance with the concept of a limited liability company as a legal entity, where it is a legal subject with rights and obligations and possesses assets separate from its owners or shareholders. Therefore, this refers back to the Limited Liability Company Law. If the guarantee used to obtain capital is intended for the company's profit, then its position is not an issue. Therefore, if there is an abuse of authority by the ranks of *BUMD* companies, the legal instrument that can be used to sue is civil law (Pramono, 2024, p. 115). Although correct from a corporate law perspective, the decision still convicts the President Director of *PT. Tripat* because the prosecutor's indictment used a "sweeping" approach, namely by diverting the indictment toward bribery. Therefore, this is what led to the judge's consideration in handing down the verdict against the president's director of *PT. Tripat*. However, in reality, if there is a fee between businesses, it certainly wouldn't be an issue that falls under the legal area of criminal corruption.

E. Legal Certainty of Regional Capital Participation Used as Collateral by Third Parties

The regional capital participation used as collateral is uncertain. Article 4, paragraph (1) of the Ministry of Home Affairs Regulation on the Management of Regional Property states that regional property acquired through the Regional Budget or other legitimate means may not be pledged as collateral for loans or transferred to third parties as settlement for claims against the regional government. Regional property, as previously noted, cannot be taken under the present laws and regulations.

The regional capital participation system, which falls under the transfer regime, is analogous to sales, exchanges, and grants. As a result, transfer regulations differ from usage and utilisation regulations. Does Article 4 of the Ministry of Home Affairs' Regulation on the Management of Regional Property cover all aspects, including consumption, utilisation, and transfer? Is this transfer excluded from the provision? Article 4 expressly prohibits the mortgaging or pledging of regional property, and it cannot be seized. Furthermore, Article 50 of Law Number 1 of 2004, concerning the State Treasury, expressly prohibits the confiscation of state or regional property, as well as property under state or regional management.

However, the question remains: is this capital participation still a regional asset now that the region's clearance process for asset release or removal has been completed? If we return to the definition of transfer, which is the transfer of ownership of regional property, all regional property included in the transfer will be delisted as

regional assets. As a result, when we look at the regulations governing regional capital participation in enterprises, these assets, whether in the form of money or products (inherited), are no longer regional assets because they have been withdrawn, exactly as if they had been sold or given away. The simple rationale is that something that has been removed is no longer owned (ownership) or has disappeared. According to the author, regional capital participation in corporations is no longer a regional asset, but rather has been transferred to the Company or Corporation in which it has made a capital investment. The next question is whether the asset is lost after being relinquished, such as in a sale or grant.

To answer this topic, consider the nature of the Perseroan, which is a legal entity. A legal entity is an independent legal topic (*recht persoon*) with assets distinct from its owners. In other words, it possesses independent assets, exactly as a human legal subject (natural person). As a result, in the case of a loss, the shareholders' capital contribution acts as a limit. This means that the loss does not include the stockholders' personal assets. In contrast, if the owners or shareholders suffer a loss, the corporation's assets are unaffected. This demonstrates the concept of independence for a Limited Liability Company (hence referred to as *Perseroan Terbatas or PT*), distinguishing it from business entities with no legal standing and unlimited liability..

If we reconsider the separation of assets from the *Perseroan* using reverse logic, we might ask: if the Perseroan incurs a loss and the government, having invested capital in the Perseroan, is unable to cover that loss, can it then be considered a regional debt? The answer is no. We must return to the concept of a *Perseroan Terbatas* as an independent legal entity, with its assets distinctly separate from those of its owners. Thus, if a loss occurs, it can be blamed on the shareholders, who are considered the owners. However, legally speaking, there are no individual owners of a PT, as it functions as a legal entity akin to a person.

Under what conditions can a region, as a shareholder, be considered to possess assets or wealth in relation to the Perseroan? The governance framework of a PT includes the General Meeting of Shareholders (hereinafter referred to as *Rapat Umum Pemegang Saham or RUPS*), which conducts annual meetings, elections of company officials, and other necessary assemblies. During the *RUPS*, if the report from the *PT's* executives, specifically the Board of Directors, indicates that the company has generated profits or dividends, the *RUPS* will receive these proceeds. When the region assumes the role of the RUPS, it acquires these dividends as regional assets, referred to as Non-Tax State Revenue (hereinafter referred to as *Penerimaan Negara Bukan Pajak* or *PNBP*). Furthermore, the capital invested in the company may be returned to the region if it chooses to forfeit its status as *RUPS*, consequently divesting its shares. The capital withdrawn after the termination of shareholding will subsequently return to regional assets.

This is comparable to a husband and wife using their joint assets as capital in a *Perseroan Terbatas*. If joint assets have been transformed into shares, they are no longer considered joint assets. If the couple divorces, the company's capital cannot instantly be claimed as joint property. When may it be shared between the separated spouses? If they agree to withdraw their capital from the company or stop being shareholders, the

joint property can be divided. If they opt to remain shareholders, they can divide the joint assets as long as they receive dividends from the relevant company.

Can the regional government, acting as the General Meeting of Shareholders, control the contributed capital to prevent its exploitation by the Perseroan? As the General Meeting of Shareholders, the regional government has the right to designate a board of directors and commissioners who are trusted to handle the capital appropriately and supervise it through the appointment of trustworthy commissioners. This board serves as the government's representative in the Company, so if the directors abuse their authority in carrying out their duties as executives in the Perseroan, this will be noted or evaluated, and a recommendation will be made, or the directors may be sued if it is detrimental to the Perseroan but beneficial to them personally. The Business Judgement Rule (BJR) can be used to determine whether the directors made their judgments in good faith.

Consequently, competing interpretations persist about this capital participation due to ambiguities in the governing positive legislation, necessitating legal certainty to prevent confusion. Legal certainty will ensure favourable predictability for all stakeholders, including the general public and investors in the region. A method to accomplish this is by instituting explicit regulations concerning local government involvement, particularly in relation to the new *BUMN* legal framework, which asserts that losses are not considered state financial losses. The new *BUMN* Law does not apply mutatis mutandis to *BUMD*. Nonetheless, a systematic reading reveals that *BUMD* can be equated with *BUMN*, as both derive from the state capital. Alternatively, according to the principle of legal validity articulated in Article 1(2) of the Criminal Code, when the law is amended, the most advantageous provisions should be implemented. This theory is applicable to instances involving directors overseeing regional capital investments who, despite acting in good faith while executing their responsibilities, experience losses in the process. In such instances, they cannot be held accountable for inflicting financial harm on the state.

III. Conclusion

There are different viewpoints among experts about the status of participation of the capital of regional governments in regional and private firms. This circumstance is due to contradictory rules. Rules prevent regional assets from being used as collateral. This perspective include in prosecutor's indictment, although it denied by panel of judge in Decision Number 25/Pid.Sus-TPK/2025/PN Mataram .Assets having capital participation status must be removed from regional assets to facilitate their utilisation for any company-beneficial purpose, due to their altered status. Should a profit be realised, it is classified as regional profit upon dividend distribution; conversely, if a loss transpires, the state does not suffer a loss. As a result, directors of *BUMDs* or affiliated third-party corporations are immune from prosecution. Unlike grants or sales, regional assets used as capital do not lose their value. They revert to state assets when dividends are distributed or when the region ceases or withdraws its shares from the corporation. Since the *BUMN* Law does not apply mutatis mutandis to

BUMDs, a legal instrument needs to be established that includes a clause stating that losses incurred by *BUMDs* are the losses of the *BUMD* itself and do not constitute financial losses for the state, in line with the principles of a legal entity, similar to BUMNs under the new amendment law.

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References:

Adam, R. C. (2025). Between Attraction and Evasion: Legal Factors Shaping FDI in Indonesia and Neighboring Countries. *Indonesia Law Review*, *15*(1), 87–100. https://doi.org/10.15742/ilrev.v15n1.6

Ahlquist, J. S., & Prakash, A. (2010). FDI and the costs of contract enforcement in developing countries. *Policy Sciences*, *43*(2), 181–200. https://doi.org/10.1007/s11077-009-9093-3

ASEAN. (2024). *Foreign direct investment (FDI) inflows to the ASEAN member countries in 2024, by country* [Research]. Statista. https://www-statista-com.unpad.idm.oclc.org/statistics/1008281/asean-foreign-direct-investment-inflows-by-country/

ASEAN. (2025, July 10). *Foreign direct investment (FDI) inflow in ASEAN from 2018 to 2023* [Research]. Statista. https://www-statista-com.unpad.idm.oclc.org/statistics/746720/-fdi-inflow-asean/

Atmadja, A. P. S. (2009). *Keuangan Publik dalam Perspektif Hukum: Teori, Kritik dan Praktik* (Universitas Indonesia; 1st edn). Badan Penerbit Fakultas Hukum UI; Universitas Indonesia. https://simpus.mkri.id/opac/detail-opac?id=8877

Bellani, M. M. (2014). Judicial efficiency and foreign direct investments: Evidence from OECD countries. *European Trade Study Group*, 1–36.

Dewantara, R. (2014). Rekonseptualisasi Asas Demokrasi Ekonomi dalam Konstitusi Indonesia. *Arena Hukum*, *7*(2), 195–209. https://doi.org/10.21776/ub.arenahukum.2014.00702.3

Dewi, A. A. S. L., Rahayu, M. I. F., Ujianti, N. M. P., Saripan, H., & Wibisana, A. A. N. A. (2023). The Urgency of Indonesian Omnibus Law Implementation Related to Foreign Investment. *Substantive Justice International Journal of Law*, *6*(2), 83. https://doi.org/10.56087/substantivejustice.v6i2.239

Fitrahady, K. F., Zuhairi, A., & Riadhussyah, M. (2020). Recovery Aset Daerah yang Dijadikan Agunan oleh Pihak Ketiga dalam Perjanjian Kerjasama dengan BUMD. *Arena Hukum*, *13*(3), 550–567. https://doi.org/10.21776/ub.arenahukum.2020.01303.8

Frenkel, M., & Walter, B. (2019). Do bilateral investment treaties attract foreign direct investment? The role of international dispute settlement provisions. *The World Economy*, *42*(5), 1316–1342. https://doi.org/10.1111/twec.12743

Ghinarahmatina, A. (2018). Akibat Hukum Pemisahan Kekayaan Negara Melalui Penyertaan Modal. *Lex Journal: Kajian Hukum & Keadilan*, *2*(2). https://doi.org/10.25139/lex.v2i2.1414

Kaul, D. (2024). Rule of Law as a Law of Rules: A Template for a Sustainable Foreign Investment Protection System. *SSRN Electronic Journal*, *20*(2), 1–22. https://doi.org/10.2139/ssrn.5009149

Le, A. N. N., Pham, H., Pham, D. T. N., & Duong, K. D. (2023). Political stability and foreign direct investment inflows in 25 Asia-Pacific countries: The moderating role of trade openness. *Humanities and Social Sciences Communications*, *10*(1), 606. https://doi.org/10.1057/s41599-023-02075-1

Mansor, M. M., Ibrahim, N., Yeo, I., Abu Bakar, M. A., Kaur, S., & Razak, F. A. (2023). Correlation Network Analysis of ASEAN Foreign Direct Investment. *2023 IEEE International Conference on Computing (ICOCO)*, 142–147. https://doi.org/10.1109/ICOCO59262.2023.10398118

Peraturan Menteri Dalam Negeri Nomor 7 Tahun 2024, No. Nomor 7 (2024).

Peraturan Menteri Dalam Negeri Nomor 7 Tahun 2024 tentang Perubahan atas Peraturan Menteri Dalam Negeri Nomor 19 Tahun 2016 Tentang Pedoman Pengelolaan Barang Milik Daerah, Pub. L. No. 7, BN 2024 (350) 80 (2024). https://peraturan.bpk.go.id/Details/300030/permendagri-no-7-tahun-2024

Peraturan Pemerintah (PP) Nomor 27 Tahun 2014 tentang Pengelolaan Barang Milik Negara / Daerah, Pub. L. No. 27, LN. 2014 No. 92 TLN No. 5533 77 (2014). https://peraturan.bpk.go.id/Details/5464/pp-no-27-tahun-2014

Pham, M. H., Pham, A. D., & Dang, C. V. P. (2023). Determinants of FDI inflows: Aggregate versus country-specific evidence from ASEAN-6. *The Economics and Finance Letters*, *10*(1), 111–121. https://doi.org/10.18488/29.v10i1.3319

Pramono, N. (2024). *Hukum Perseroan Terbatas* (1st edn). Sinar Grafika.

Priyadi, U., Susantun, I., & Shidiqie, J. S. A. (2024). The Impact of Policy Quality and Political Stability on Foreign Direct Investment in ASEAN Countries: An Institutional Economics Analysis. *Journal of Ecohumanism*, *3*(6), 1561–1572. https://doi.org/10.62754/joe.v3i6.4104

Putusan PN MATARAM Nomor 25/Pid.Sus-TPK/2025/PN Mtr, Pub. L. No. 25/Pid.Sus-TPK/2025/PN Mtr, 317 (2025). https://putusan3.mahkamahagung.go.id/direktori/putusan/zaf0aa49629362c688f0313133343231.html

RadarLombok.co.id. (2025, February 1). *Kasus Korupsi LCC, Mantan Direktur PT Tripat dan PT Bliss Ditahan* [News]. Radar Lombok. https://radarlombok.co.id/kasus-korupsi-lcc-mantan-direktur-pt-tripat-dan-pt-bliss-ditahan.html

Saha, S., Sadekin, Md. N., & Saha, S. K. (2022). Effects of institutional quality on foreign direct investment inflow in lower-middle income countries. *Heliyon*, *8*(10), e10828. https://doi.org/10.1016/j.heliyon.2022.e10828

Simatupang, D. P. N. (2021). Determinasi Keuangan Negara Guna Mewujudkan Keadilan Sosial (Social Equity) Bagi Seluruhrakyat Indonesia. *Jurnal Hukum & Pembangunan*, *51*(2), 472–491. https://doi.org/10.21143/jhp.vol51.no2.3061

Sorik, S., & Dwiatmoko, A. (2022). Perdebatan Teoritis Terhadap Perluasan Ruang Lingkup Keuangan Negara di Indonesia. *Jurnal Hukum & Pembangunan*, *52*(2), 406–428.

Suroso, J. T., Durahman, D., & Budi, I. (2024). The simplification of licensing procedure in job creation law: The effectiveness to attract foreign investor. *Cogent Social Sciences*, *10*(1), 2414509. https://doi.org/10.1080/23311886.2024.2414509

Taduri, J. N. A. (2021). The Legal Certainty and Protection of Foreign Investment Againsts Investment Practices in Indonesia. *Lex Scientia Law Review*, *5*(1). https://doi.org/10.15294/lesrev.v5i1.46286

Tag, M. N. (2021). Judicial institutions of property rights protection and foreign direct investment inflows. *International Review of Law and Economics*, *65*, 1–14. https://doi.org/10.1016/j.irle.2020.105975

The Global Economy.com. (2023a). *Control of corruption – Country rankings* [Research]. The Global Economy.Com. https://www.theglobaleconomy.com/rankings/wb_corruption/ASEAN/

The Global Economy.com. (2023b). *Indonesia: Regulatory quality* [Research]. The Global Economy.Com. https://www.theglobaleconomy.com/Indonesia/wb_regulatory_quality/

The Global Economy.com. (2023c). *Malaysia: Rule of law* [Research]. The Global Economy.Com. https://www.theglobaleconomy.com/Malaysia/wb_ruleoflaw/

The Global Economy.com. (2023d). *Regulatory quality – Country rankings* [Research]. The Global Economy.Com. https://www.theglobaleconomy.com/rankings/wb_regulatory_quality/ASEAN/

The Global Economy.com. (2023e). *Singapore: Regulatory quality* [Research]. The Global Economy.Com. https://www.theglobaleconomy.com/Singapore/wb_regulatory_quality/

The Global Economy.com. (2023f). *Thailand: Rule of law* [Research]. The Global Economy.Com. https://www.theglobaleconomy.com/Thailand/wb_ruleoflaw/

The Global Economy.com. (2023g). *Vietnam: Control of corruption* [Research]. The Global Economy.Com. https://www.theglobaleconomy.com/Vietnam/wb_corruption/

Undang-undang (UU) Nomor 1 Tahun 2004 tentang Perbendaharaan Negara, Pub. L. No. 1, LN. 2004/ No. 5, TLN NO. 4355 LN. 2004/ No. 5, TLN NO. 4355 55 (2004). https://peraturan.bpk.go.id/Details/40446/uu-no-1-tahun-2004

Xaypanya, P., Rangkakulnuwat, P., & Paweenawat, S. W. (2015). The determinants of foreign direct investment in ASEAN: The first differencing panel data analysis. *International Journal of Social Economics*, *42*(3), 239–250. https://doi.org/10.1108/IJSE-10-2013-0238

Yani, T. A. (2012). Peran Badan Usaha Milik Daerah dalam Meningkatkan Kesejahteraan Masyarakat (Studi Pembentukan Perusahaan Daerah di Aceh). *KANUN: Jurnal Ilmu Hukum*, *14*(1), 56.