

**JLPH:**
**Journal of Law, Politic
and Humanities**

<https://dinastires.org/JLPH> dinasti.info@gmail.com +62 811 7404 455

E-ISSN: 2962-2816
P-ISSN: 2747-1985

DOI: <https://doi.org/10.38035/jlph.v5i4>
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The Legal Status of MoU as a Contract in BUMN Cooperation Agreements (Study of Denpasar Court Decision Number 419/PDT.G/2012/PN.DPS)

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Abstract: Performance is an obligation where one or both parties have the responsibility to fulfill a condition that has been agreed upon in the agreement. However, if a performance is not performed or even violated, it can lead to default. In some instances, default might occur on the basis of a breach to a document that is generally considered non-binding, such as an MoU which turns out to be legally enforceable if it fulfills the elements of a valid agreement. In Denpasar Court Decision Number 419/PDT.G/2012/PN.DPS, the Defendant, a State-owned enterprise (BUMN), was proven to have committed a default. Therefore, there is a need to strengthen regulation and supervision to ensure the accountability of BUMN without hampering their operational independence. This paper uses a normative-empirical research method that examines the practical implementation of legal provisions and observes legal interactions that occur in society. Therefore, The Legal Status of MoU as a Contract in BUMN Cooperation Agreements (Study of Denpasar Court Decision Number 419/PDT.G/PN/DPS) is written.

Keyword: Default, MoU, Agreement, BUMN.

INTRODUCTION

The term agreement is often referred to as an agreement, this word comes from the Dutch *overeenkomst*. In everyday life, humans are always involved in various forms of agreements, both written and oral. According to the Civil Code (“KUHPerdata”), agreements are the source of obligations. Article 1313 of KUHPerdata essentially establishes that an agreement is a legal act where parties create binding obligations between themselves. In the provisions contained in Article 1313 and Article 1320 KUHPerdata, agreements are generally considered as valid evidence that creates legal obligations between the parties. Consensual

agreement establishes the understanding within the agreement, ensuring freedom from duress by involved or uninvolved parties.

In social life, agreements become a very crucial part of the law in regulating reciprocal relationships between individuals or legal entities. Legal certainty for the parties involved is achieved through agreements. This is in accordance with the 4 conditions of a valid agreement listed in article 1320 of the KUHPerdata: agreement of those involved, the capacity to do so, a specific object to which the agreement pertains, and a permissible cause. Thus, there are several principles underpin the formation and execution of agreements, ensuring fairness and adherence to applicable law.

One of the fundamental principles is the principle of consensualism, outlining the conditions for a valid agreement, requiring the parties to have reached an agreement on the subject matter of the agreement. In addition, the principle of freedom of contract empowers parties the right to determine the content, form, and object of the agreement according to their respective interests, provided it aligns with legal provisions. This principle is regulated in Article 1338 KUHPerdata mandating that agreements, when legally established, function as laws for those involved. The principle of *pacta sunt servanda* underscores the necessity of fulfilling agreed-upon agreements with complete responsibility. As a legal consequence of this principle, if there is a denial of the agreement, it will be referred to as default. Beyond that, the principle of good faith demands honesty and proper conduct during agreement implementation, and the personality principle confines the agreement's effects solely to those parties who entered into it. With the application of these principles, it is expected that treaty law will ensure justice and provide optimal legal protection for all involved parties (Tim Hukumonline, 2022).

From the formation of a binding agreement between 2 or more parties, a performance is born that must be fulfilled which becomes the responsibility of each party, so if one party fails or does not fulfill the predetermined performance, then this is called a default (Tanaya, 2021). Default is a condition where one party fails to carry out the performance of obligations as agreed in a contract imposed by the debtor in the contract. Default can include this such as negligence, breaking promises, to violations of the contents of the agreement. According to Subekti, default itself has various forms including (Tim Hukumonline, 2024):

1. The debtor or creditor fails to do what is promised to be done.
2. The debtor or creditor does what is promised, but not as promised.
3. The debtor or creditor party does what is promised but not in accordance with the agreed time period or late.
4. The debtor or creditor does something that is not allowed or specified in an agreed agreement.

For an achievement to be considered a default, there are conditions that must be met first such as (Renata, 2024) :

1. Material condition = this condition contains conditions such as intent and negligence.
2. Form requirements = a warning or summons of negligence given to the debtor by the debtor.

There are 3 factors why a default can occur. The first factor is negligence (Populix, 2023). Based on Article 1238 KUHPerdata, the element of negligence is explained as a condition where it is considered negligent if it has been warned or in accordance with what is contained within the agreement.

Negligence by a debtor occurs when they fail to fulfill certain obligations, these are:

1. Obligation of the debtor to give the agreed upon items;
2. Obligation of the debtor to carry out the agreed upon actions;
3. Obligation of the debtor to not carry out the agreed upon actions.

The second factor is due to the occurrence of a force majeure. Force majeure describes a scenario where a debtor cannot meet their contractual obligations due to unavoidable circumstances, but the debtor fails to fulfill its obligations because the debtor experiences an unexpected or predictable event or condition that allows the debtor to be unable to fulfill its

obligations. There are several elements that are considered as elements of force majeure such as :

1. The performance cannot be fulfilled due to cognition or event that eliminate or destroy the object of the engagement;
2. The performance becomes unachievable when the debtor's capacity to perform is obstructed by events or circumstances;
3. The event that occurred could not be known to have occurred at the time the debtor wanted to perform the performance

And lastly, the last factor that why a default can occur is the party intentionally violates the agreement. In the event of default, there are legal consequences that will be given to the debtor if the debtor has made a default, these legal consequences are the obligation to compensate, cancel the agreement, and transfer the risk. Based on Article 1246 KUHPerdata, the obligation to compensate is a legal consequence where the debtor is obliged to pay an amount or all losses from losses suffered by the creditor because the debtor made a default which resulted in losses to the creditor in an agreement

Based on Article 1266 KUHPerdata, the legal consequence of a debtor's default is the creditor's right to cancel the agreement. Finally, by virtue of Article 1237 KUHPerdata, the legal effect of risk transfer is a condition where the risk of an item/object is still in the hand of the buyer until the item is delivered to the buyer.

In Denpasar Court Decision Number 419/PDT.G/2012/PN.DPS (“Denpasar Court Decision”), the Plaintiff PT Jaya Makmur Bersama a company in the Accommodation, Recreation, and Entertainment sector, which has entered into a cooperation agreement with the Defendant, namely PT Bali Tourism Development Corporation (BTDC), a a government-owned enterprise (“BUMN”) providing facilities and infrastructure in Bali's Nusa Dua Tourism Area; and Co-Defendant the Government of the Republic of Indonesia through the Ministry of State-Owned Enterprises (“Ministry of BUMN”).

In order to fulfill the Defendant's purpose of establishment, pursuant to a letter issued by the Defendant dated August 15, 2008, the Defendant then appointed the Plaintiff as a potential investor with the intention of developing the Lot C-5 area on the land under Hak Pengelolaan Certificate No.4/Desa Benoa. On September 19, 2008, the two parties then signed a Memorandum of Understanding (“MoU”) which provided:

1. It was agreed by the parties that they would prepare to sign the Land Utilization and Land Development Agreement (“LUDA”), in order to develop Lot C-5;
2. For future collaboration, the parties agreed to complete their internal procedures, with no transfer to third parties allowed;
3. The agreement was valid from the MoU signing until the LUDA with a deadline of no later than December 31, 2008.

Previously, it was written in the MoU that the amount of compensation that had been determined was Rp. 58,699,999,999. However, after the signing of the MoU, the Defendant submitted a request for an addition to the previously agreed compensation. As a result, the deadline that had been set was passed. Then, the Plaintiff had proposed to extend the MoU. However, the Defendant then issued a letter stating its rejection of the extension of the MoU period on the grounds that the LUDA concept submitted by the Defendant was a standard form of LUDA that had been approved and used in other agreements.

In this regard, in a letter dated July 9, 2009, the Co-Defendant agreed to the cooperation plan, including the renegotiation and extension of the agreement between the Plaintiff and the Defendant. Following up on the letter, on September 27, 2010, the Plaintiff again submitted a request for an extension of time to sign the MoU. However, the Defendant responded by letter dated May 10, 2010 stating that the MoU period had expired. With this rejection, the Defendant unilaterally terminated the MoU. Meanwhile, the Co-Defendants did not take any action, even though the Defendant's actions were not in line with the Co-Defendants.

Ernst Utrecht, a legal expert, identified two classifications of legal entities: public and private (Ernst Utrecht, 1956). Legal entities created by the state or government to carry out government functions and public interest are considered public legal entities. Meanwhile, private legal entities formed by individuals, as well as groups, usually in the economic, social, or commercial fields.

Based on Constitutional Court Decisions Number 48 and 62/PUU-XI/2013, it is stated that even though state assets have been separated into BUMN capital, it is still considered part of state finances. As a result, even though the BUMNs are audited by independent auditors, the Supreme Audit Agency (“BPK”) is still authorized to audit the BUMNs. The management of BUMNs is also overseen by the House of Representatives (“DPR”), indicating state intervention in their operations. In that sense, BUMNs can be regarded as public legal entities.

However, from the perspective of a private legal entity, Article 4A paragraph (5) of Law Number 1 Year 2025 on the Third Amendment to Law Number 19 Year 2003 on State-Owned Enterprises (“UU BUMN”) emphasizes that when the state injects capital into an BUMN, either when establishing a new BUMN or in order to increase capital, the capital will change its status to become the property of the BUMN. In this context, the state acts as a shareholder, just like shareholders in other private companies. As a shareholder, the state can receive dividends and determine company direction through the General Meeting of Shareholders, but it avoids involvement in day-to-day operations.

In the Indonesian legal system, contractual obligations are crucial for fair business practices. Breach of contract can lead to legal disputes, as seen in Denpasar Court Decision. Understanding its forms and legal consequences helps clarify judicial interpretations of default. Additionally, examining the legal position of BUMN is important, as they operate under distinct regulations. This raises the question: What are the forms and legal consequences of default in the case of Denpasar Court Decision, what are the legal implications of contractual breach concerning a MoU, and how does this relate to the legal position of BUMN in Indonesia?

METHOD

The study utilized a normative-empirical research method, specifically a judicial case study approach. The normative-empirical, or applied normative law, approach examines the practical implementation of legal provisions and observes actual legal interactions within society (Muhammad, 2004).

While the judicial case study approach is a legal study approach based on the existence of a conflict, so that there is court intervention in providing decisions as a settlement (Wahyuni, 2023). To enrich the analysis, the study also included an interview with Manahan Sitompul on Friday, 21 March 2025. Manahan Sitompul was a former judge of the Indonesian Constitutional Court from 28 April 2015 - 8 December 2023, regarding the role of the Ministry BUMN as the supervisory authority over all BUMN entities.

There are several papers that write on similar topics such as “The Legal Power of Memorandum of Understanding (MOU) in Indonesian Law Agreements” that was written by Gita Pratama in 2016, in which the article states that MoU can be considered to have legal force if it fulfills the conditions for the validity of the agreement as stipulated in Article 1320 KUHPerdata, and “The Position and Legal Power of Memorandum of Understanding (MOU) Viewed from the Legal Aspect of Bonds in KUHPerdata” that was written by Muhhammad Ali Mabhan in 2019, where MoU are considered to have legal force because of the *Pacta Sunt Servanda* principles. What sets this paper apart is its unique approach and analysis, which have not been addressed in previously published articles.

This paper not only explores the reasons the MoU is deemed to have legal force under the Civil Code, but also includes a case study that illustrates this by examining how the Denpasar District Court's decision demonstrates the MoU's legal impact and its consequences.

RESULTS AND DISCUSSION

Forms and Legal Consequences of Default in The Case of Denpasar Court Decision

In the legal world, performance or implementation is defined as an implementation that has been stated in a contract that has been formed by the parties, with the presence of a performance, the legal consequences that occur result in the parties binding themselves to fulfill their rights and obligations following the agreement's terms. Performance is formed in an agreement where one party can demand something from the party concerned in the agreement.

In Article 1234 KUHPerdata, performance has been stated to have 3 types, namely giving something, doing something, and not doing something. The performance of giving something is a type of performance where one party to the agreement is obliged to give something to the entitled party, for the object agreed upon, which is typically the debtor's duty to provide something to the creditor. This type of performance has been mentioned and explained in Article 1237 KUHPerdata,. An example of a form of performance giving something is a sale and purchase agreement, in a sale and purchase agreement the debtor is obliged to hand over a sum of money to the creditor for the goods that the debtor wants to buy, on the other hand the creditor is obliged to deliver the goods that have become an agreement in the sale and purchase agreement, in this agreement it is categorized as an performance of giving something

The second type of performance is doing something, this performance occurs when one of the parties in accordance with the agreed agreement has an obligation to do something as a form of fulfillment of its performance, this is a positive performance where this performance is not in the form of material. This type of performance has been mentioned and explained in Article 1239 KUHPerdata, an example of a form of performance is a housing complex development agreement, where for example, one of the parties to the agreement from the construction of a housing complex is a contractor, the contractor in this agreement has an obligation to build a house in the complex that has been agreed upon in the agreement, then the performance of doing something owned by the contractor is to build a house in the complex that has been agreed upon in the agreement.

The last type of performance is the performance of not doing something, this type of performance occurs when one party has the obligation not to do some things as a form of fulfillment of their performance in compliance with the agreement, this is a performance where the debtor is obliged not to do something. This type of performance has been mentioned in Article 1239 KUHPerdata, a simple example of this presentation is a distributor agreement with a business actor, where perhaps the business actor and distributor form an agreement where the distributor is only obliged or allowed to distribute certain products he owns only to certain business actors that have been agreed upon.

Looking back, the involved parties in Denpasar Court Decision have their respective performances with the following explanation:

1. Plaintiff's Performance:

- a. To sign LUDA for the development of Lot C-5;
- b. Paid Rp 1,500,000,000 as bid security which was converted into a deposit for compensation payment;
- c. Conducted internal process (coordination);
- d. Approved the compensation value of Rp. 58,699,999,999;
- e. It is not allowed to transfer the agreement to a third party;
- f. The period for the signing of LUDA is until December 31, 2008 or extended by agreement of both parties.

4. Defendant's Performance:

- a. To sign LUDA for the development of Lot C-5;
- b. Conducted internal process (coordination);
- c. Approved the compensation value of Rp. 58,699,999,999;

- d. It is not allowed to transfer the agreement to a third party;
 - e. The period of the MoU a quo until December 31, 2008;
 - f. The period for the signing of LUDA is until December 31, 2008 or extended by agreement of both parties.
5. Co-defendant Performance:
- a. Responsible for the defendant's MoU.

In this case, both the Plaintiff, the Defendant, and the Co-Defendant have their respective performance in accordance with the agreement that has been made.

So in accordance with the theory and explanation of the performance itself, several performance contained in Denpasar Court Decision, have been violated by the Defendant, the performance violated by the Defendant are:

1. The Defendant requested a compensation amount greater than Rp.58,699,999,999 from what was agreed in the MoU;
2. The Defendant did not agree on the form of LUDA agreed by the parties in accordance with what was set out in the MoU, the Defendant set the LUDA standard which according to the Defendant is a form of LUDA that is in accordance with standard in general, but the LUDA standard agreed by the Defendant is not in accordance with the form of LUDA agreed with the Plaintiff;
3. The Defendant unilaterally terminated the MoU agreement without any coordination or discussion with the Plaintiff.

So in line with the facts and achievements of the parties in Denpasar Court Decision, it was found that the Defendant had committed a default against the Plaintiff. In accordance with the performance owned by the Parties, the types of defaults that have been committed by the Defendant to the Plaintiff are not doing what was promised to be done, executing the obligations, but with deviations from the agreed terms, and undertaking actions contractually prohibited.

First not doing what was promised in the MoU. From the case position of Denpasar Court Decision, it has been stated that the Plaintiff felt aggrieved because in the context of the developing Lot C-5 the Defendant and the Plaintiff agreed and agreed to prepare for the signing of the LUDA, however based on the case position, the Defendant proposed an amount of compensation that was not in accordance with what has been agreed in the MoU where the amount of compensation agreed in the MoU was Rp. 58,699,999,999 however the Defendant proposed a different and greater amount of compensation than what had been agreed in the MoU. Second, doing what was promised in the MoU but not in accordance with what was promised in the MoU. Then based on the Denpasar Court Decision, the Defendant also showed indications that the Defendant wanted to move or transfer the LUDA cooperation with the Plaintiff. The Defendant also breached its obligations under the MoU regarding the signing of the LUDA itself. Lastly, Doing something that according to the MoU that has been agreed, should not be done. The Defendant unilaterally terminated the MoU agreement without an agreement to terminate the MoU with the Plaintiff, where one of the obligations of the Defendant was to conduct an internal process, but the Defendant did not carry out its internal obligations with the Plaintiff in terminating the MoU agreement that had been mutually agreed upon.

With the action of the Defendant that caused several forms of default, the legal consequences of the default committed by the Defendant are:

1. The Plaintiff suffered a loss of Rp.1.500.000.00;
2. The Plaintiff filed a claim for a compensation against the Defendant for the loss he suffered;
3. The Plaintiff requests that the Defendant make payments of Rp.10,000,000 on a regular basis every day.

Legal Implication of Contractual Breach Concerning a MoU

It is important to understand that a contract and an agreement are the same thing. MoUs, on the other hand, are generally made as a preliminary or pre-contract or pre-agreement. Essentially, the MoU is a pre-contractual document that is non-binding in nature to provide flexibility for the parties to continue negotiating and exploring options, including the possibility of interacting with third parties. Although it is a pre-agreement, in a case where the MoU made has fulfilled the legal requirements of an agreement, the position of the MoU is equalized as a law that is binding and compelling to be obeyed by the parties (Munawaroh, 2024). In Denpasar Court Decision the parties have entered into a MoU agreement. themselves have never been prohibited in KUHPperdata, and comply with the legal requirements for agreements outlined in Article 1320 KUHPperdata.

An MoU utilized to set up understandings and participation targets in more detail. MoU can be official or non-binding depending on the understanding of the parties involved. A contract is utilized to form authoritative legitimate commitments between the parties included. Unlike a contract, in any case, an MoU does not contain lawfully enforceable promises. Whereas the parties to a contract must propose to form a legitimately official ascension, the parties to an MoU may propose something else. A MoU does not contain all the components required for a full contract. Whereas a contract offers a shared advantage, such as giving a benefit in trade for cash. An MoU fundamentally traces the common eagerly and key points of a future understanding. Ordinarily, an MoU is utilized to archive the most parts of an ascension earlier to the formal marking of a nitty gritty contract. It is additionally frequently utilized as a 'gentlemen's agreement', typifying a soul of goodwill without essentially including a trade of esteem. As the qualifications are vital, a contract must incorporate a clear offer and thought, while an MoU serves more as a key direct for transactions.

The anatomy of an MoU itself is divided into 9 important parts, namely Title, Preamble, Comparison, Premises or Recitals, the content of the MoU, Clauses, Closing, Signature, and Attachment (Edi Krisharyanto, 2005). Title in an MoU agreement must be in accordance with the contents of the agreement itself and must not be misleading. The contents of the MoU agreement do not need to be too long, but at the same time also do not need to be short, because if the title is too short, eventually it will become vague. Secondly, the opening of an MoU agreement. The opening is usually a sentence such as an example, on this day, date, month, year, then a statement of signing in front of a notary. Third, Comparison. So, the comparison contains several functions, namely explaining the identity of the parties who make the MoU agreement, the position of the parties in the MoU agreement based on what the parties have authority in that position, the parties to the MoU agreement must be capable and authorized to carry out legal actions that have been mentioned in the MoU agreement and the parties have the right to take action in accordance with the MoU. Fourth, Premises or Recitals. This aspect is used as a sentence that shows what the main purpose of the parties in the MoU agreement is or the main reason why the MoU was created.

Fifth, the content of the MoU. This aspect is an important part because this part covers the subject matter of the MoU agreement, the provisions, and the terms of the MoU. This section must include all matters that are the subject of the MoU agreement. Sixth, Clauses. Clauses need to be included in the agreement when the MoU parties want to formulate an agreement content. Seventh, Closing. Every written MoU agreement is always closed with words stating that the MoU agreement has been closed. Eight, Signature. The last one is the Attachment. Attachments are needed to ensure and provide validity to datta, statements, or other documents that are an important part of the MoU agreement

In conclusion, based on the Denpasar Court Decision, the court has concluded that the MoU in this case was a binding contract. First, the parties have fulfilled the requirements of article 1320 KUHPperdata for the validity of an agreement. Second, the MoU has fulfilled the principle of Pacta Sunt Servanda in accordance with article 1338 KUHPperdata. Finally, the

judges accepted the expert opinion expressed by Prof. Ridwan Khairandy which states that the MoU is binding if the substances in the MoU have regulated the rights and obligations in detail, and violations of the clauses in the MoU agreement can be considered as default.

Legal position of BUMN in the Indonesian Legal System

Recently, UU BUMN has been enacted, article 1 paragraph 1 of the UU BUMN defines BUMN as a business entity where the Republic of Indonesia directly owns all or the majority of the capital, and may also hold special rights. Article 2 of Law Number 30 Year 2014 on Government Administration (“UU AP”) clarifies that the purpose of establishing BUMN is differentiated based on their type, namely Persero and Perum. To provide high quality and competitive goods and services, BUMN is formed as Persero. To ensure goods and services are available that benefit the public interest, and meet the basic needs of society and strategic interests, BUMN is formed as Perum.

Although BUMN acts as an extension or representation of the state, in legal form, BUMN are still civil legal entities (Ardiansyah & Erliyana, 2022). As a civil legal entity organized as a Limited Liability Company, As a *persona standi in judicio*, the Defendant is legally considered a person who can carry out rights and obligations, even though it is not a human being by nature, but rather an entity (Sari, 2020).

UU AP defines government administration as decision-making procedures and also actions undertaken by government entities. In addition, the general explanation in the UU AP outlines that decisions and actions taken or carried out by government agencies or officials, as well as other state administrators, including institutions outside the executive, judiciary, and legislature that carry out government functions are also included as a government administration. The meaning that has been outlined in this law makes it possible for BUMN to be included as subjects of state administration law.

Also explained in Article 2, Law Number 28 of 1999 concerning Clean and Free State Administration from Corruption, Collusion and Nepotism, other officials who have strategic functions with state administration are considered state administrators. The article was further explained, where other officials who have strategic functions as referred to in Article 2 include Directors, Commissioners, as well as other structural roles at BUMN and enterprises owned by regional governments. The enactment of these two arrangements has a consequence, namely the enactment of BUMN as a state organizer.

However, the presence of Article 9G of the UU BUMN which states that “Members of the Board of Directors, members of the Board of Commissioners, and members of the Supervisory Board are not state officials.” creates legal uncertainty over the status of BUMN as state officials. Manahan Sitompul, explains that BUMN can be considered as a state organizing body. This is because the establishment of BUMN originates from the state capital (modal), and in its implementation aims not only to solely generate profits, but also for the benefit or prosperity of the people.

The position of the BUMN, which distinguishes public and private legal entities, can be explained through various legal theories. First, according to the theory of protected interests, BUMN should be included in public legal entities because they aim for public welfare. However, in practice, they lack general regulatory authority, placing them closer to private legal entities. Second, according to subject theory BUMN is considered part of public legal entities if the government as the main shareholder plays a role in management, but Article 4A paragraph (5) of the UU BUMN states that after state capital enters BUMN, it becomes an independent entity subject to private legal entities. In addition, the legal relationship theory emphasizes that BUMN are better suited to public legal entities, as the state and BUMN maintain a horizontal relationship, mirroring the interactions between individuals in civil law. Even though the theory of protected interests can validate BUMNs as public legal entities, the pursuit of public interest

is common to both public and private entities, so in practice, the management of BUMN is more appropriate to use the private legal entities perspective (Yoyo, 2019).

Article 11 of the AP Law sets out the rules for how state officials acquire authority, which consists of attribution, delegation, and mandate. Attribution involves the legislature granting government authority to a government organ. Delegation is the transfer of government authority from one government organ to another. A mandate occurs when a government organ authorizes another to exercise its authority on its behalf. These terms establish the framework for the state's transfer of authority to conduct government functions in line with constitutional aims, but there are significant differences between the three (Moh Gandara, 2020).

First, lawmakers attribute authority to government bodies or institutions, enabling them to make decisions (*beschikking*) that directly stem from legal statutes. This authority includes the establishment and granting of authority to certain bodies or institutions. Second, delegation is the delegation of authority based on existing attribution from one government agency to another. Finally, a mandate is when a government agency or institution authorizeauthorizes another to act on its behalf, with the permission of the authority holder (Sovia Hasanah, S.H., 2016). Unless legally prohibited, mandates are commonly issued within the regular superior-subordinate work hierarchy. Optimal community service requires government agencies and officials to apply the principles of attribution, delegation, and mandate, in conjunction with relevant laws and regulations, when using their authority.

The Ministry of BUMN's mandate, as outlined in Presidential Regulation Number 41 of 2015, is to organize government activities related to BUMNs, thereby assisting the President in state governance. As defined by Ministerial Regulation PER-01/MBU/03/2020, the Ministry of BUMN is responsible for overseeing BUMN to support the President in state administration. The Ministry's functions are::

1. Formulating and establishing policy implementation for BUMN development;
2. Coordinating and synchronizing policy implementation for BUMN development;
3. Coordinating guidance tasks and providing administrative support within the Ministry of BUMN;
4. Managing state property under the Ministry of BUMN's responsibility; and
5. Supervising task implementation within the Ministry of BUMN.

The objectives of BUMN establishment include contributing to national economic growth, pursuing profits, delivering public benefits through quality goods and/or services, initiating businesses the private sector cannot, and actively guiding and assisting vulnerable economic groups, cooperatives, and the wider community.

The strategic policy direction of the Ministry of BUMN is to realize the ministry of BUMN as a professional supervisor and supervisor of BUMN where the development of BUMN must be supported by strengthening professional supervisory and supervisory organizations which result in professional talent and integrity through high-quality human resources. The form of supervision and steps taken by the Ministry of BUMN is to create an inclusive environment and ensure comprehensive, transparent, structured and integrated BUMN reporting. In order to aid the president with state government management, the Ministry of BUMN organizes government affairs in the BUMN sector. According to applicable laws, BUMN development includes entities controlled by BUMN either directly or indirectly (Kementerian Badan Usaha Milik Negara Republik Indonesia, 2022). Thus, the Ministry of BUMN has an important role in fostering and supervising BUMN, ensuring professional, transparent and accountable management, and supporting BUMN in achieving national development goals.

If the Ministry of BUMN has given attribution to BUMN to run their operations, but if the ministry's supervision does not run well, then BUMN are at risk of misusing that authority. This can be seen in Denpasar Court Decision, where the Ministry of BUMN as co-defendant was deemed not to have performed its supervisory function optimally. In that case, the

defendant unilaterally terminated the MoU, which should have been subject to intervention by the Ministry of BUMN as the party responsible for the supervision and development of BUMN. However, because the ministry did not take decisive action, the termination of the MoU led to a legal dispute. This reflects that although authority has been granted through attribution, if control and supervision are not effective, BUMN can act outside the limits of their authority.

This misalignment contradicts the Strategic Plan of the Ministry of BUMN, which aims to ensure sound, professional and transparent management of BUMN. The ministry should not only authorize BUMN but also ensure that BUMN does not deviate from established regulations. Lack of supervision leads to potential abuse of authority, inefficiency, and even legal conflicts, as occurred in this decision. Presidential Regulation No. 41/2015 and Minister of BUMN Regulation No. PER-01/MBU/03/2020 grants the Ministry of BUMN attributive authority for the guidance and supervision of BUMNs. This authority is granted directly by law and is not a delegation from another institution. With this attribution, the Ministry of BUMN has the legal basis to formulate policies, coordinate and supervise the operations of BUMN.

If supervision by the Ministry of BUMN does not work properly, there is a risk of abuse of authority by the BUMN, as seen in Denpasar Court Decision. In this case, the BUMN acted unilaterally in terminating an agreement without effective intervention from the Ministry of BUMN. This shows that although the ministry has the attribution to supervise, negligence in the implementation of supervision can lead to actions beyond the limits of the authority granted in article 18 of UU AP. Thus, the relationship between attribution and mandate in the context of the Ministry of BUMN is that the ministry has the attributable authority to supervise, foster and control BUMNs as specified in article 12 of UU AP, while BUMNs are authorized and perform their duties based on the mandate given by the Ministry of BUMN as stated in article 14 of Law 20 of 2014. However, the effectiveness of this system depends on the extent to which the Ministry of BUMN carries out its supervisory function strictly and professionally to avoid irregularities in the management of BUMN.

CONCLUSION

In Denpasar Court Decision the judge has ruled that the Defendant and the Co-Defendant have committed a default. There were several forms of default committed by the Defendant, firstly the Defendant did not do what was promised in the MoU where the Defendant had an obligation to agree to a compensation value of Rp. 58,699,999,999 as agreed in the MoU, but instead requested a greater amount of compensation. Secondly, the Defendant did something not in accordance with the agreement, namely the Defendant changed the LUDA standard without coordinating with the Plaintiff, even though the initial agreement was set out in the MoU. Also, the Plaintiff did something prohibited in the MoU, the Defendant unilaterally terminated the MoU without the Plaintiff's consent, and failed to carry out internal processes that should have been carried out prior to the termination of the agreement.

Due to the default, the Plaintiff incurred a loss of Rp1,500,000, filed a claim for compensation, and demanded that the Defendant pay Rp10,000,000 per day as compensation for the default that occurred. Therefore, the act of default committed by the BUMN in this case not only has civil legal consequences, but also highlights potential governance and supervision problems in BUMNs, viewed through the lens of state administrative law. To further understand the legal implications of the default, it is important to examine the nature of the underlying agreement, specifically whether the MoU involved carries legal weight.

An MoU is generally a non-binding, pre-contractual document intended to provide flexibility for parties to negotiate and explore potential agreements. However, when an MoU meets the legal requirements of a valid contract as stated in Article 1320 KUHPerdata, it can be legally binding. While MoUs typically outline general intentions and cooperation goals without enforceable promises, they may be considered contracts if they clearly regulate the rights and obligations of the parties involved. This was affirmed in the Denpasar Court

Decision, where the court ruled the MoU was a binding contract because it satisfied the elements of a valid agreement and aligned with the principle of Pacta Sunt Servanda under Article 1338 KUHPerdata. The structure of an MoU, comprising elements such as the title, preamble, party identity, purpose, content, clauses, closing, signatures, and attachments that can contribute to its legal enforceability when the content is sufficiently detailed and precise.

This intersection between contractual obligations and governance becomes even more complex in the context of BUMNs. Under state administrative law, problems concerning the governance and supervision of BUMNs as entities that are at the intersection of public and private legal entities. Although legally BUMNs are limited liability companies and subject to civil law, the role of the state as the main shareholder and the existence of policy intervention from the Ministry of BUMN makes BUMNs still have the character of public legal entities. The Defendant's decision to unilaterally terminate the MoU without going through the appropriate administrative process reflects a potential abuse of power.

In the state administration system, the attribution of authority from the government to BUMNs must be balanced with effective supervision by the Ministry of BUMN as an institution that has the function of guidance and control over BUMN. Therefore, in this case, the Ministry of BUMN as the Co-Defendant is deemed to have failed to perform its role optimally, resulting in a default by the Defendant without adequate intervention from the government. This case shows that the attribution of authority to BUMNs must be balanced with active supervision to prevent abuse of power.

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