



## ANALYSIS OF MERGER OF PERUM PPD INTO PERUM DAMRI BASED ON REGULATIONS IN INDONESIA

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### ABSTRACT

In Indonesia, SOE has a strategic role as a pioneer for business activities that cannot yet be carried out by the private sector, providing public benefits in the form of providing adequate goods and/or services to meet the needs of many people and actively providing assistance and guidance to the community. However, the challenges faced by SOEs are that there are too many SOEs, some SOEs have poor financial, operational and governance performance, and the roles and functions of SOEs themselves are still not efficient in supporting the national economy. Therefore, restructuring SOE has been carried out in an effort to streamline the number of SOEs in Indonesia, one of which is through a Merger. There are two road transport SOEs that currently play a role in the development and operation of national road transportation and have equivalent core businesses, namely Perum DAMRI and Perum PPD. Perum DAMRI and Perum PPD were both affected by the Covid-19 Pandemic so that both their financial and operational performance deteriorated. The Ministry of SOEs together with the Ministry of Finance initiated the merger of the two companies as a strategic effort to nourish the two companies. This study aims to analyze the legal aspects of the Merger of Perum PPD into Perum DAMRI. This research seeks to answer the following questions: what is the legal process for the merger of Perum DAMRI and Perum PPD based on regulations in force in Indonesia. The research method used is normative juridical. This study concludes that the merger of Perum with Perum has not been regulated directly in the existing laws and regulations in Indonesia. The merger of Perum PPD into Perum DAMRI currently still refers to regulations regarding the merger of SOE Companies. Several regulations related to the Merger of Public Corporations in Indonesia, especially regarding the Merger of Perum PPD into Perum DAMRI, including Law No. 19 of 2003 on SOE, GR No. 43 of 2005 concerning Mergers, Consolidations, Acquisitions, Changes in Legal Entity Forms of State-Owned Enterprises, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, Law No. 13 of 2003 concerning Manpower as amended by Perppu No. 2/2022, Law no. 22 of 2009 concerning Road Traffic and Transportation as amended by Perppu No. 2/2022, and Government Regulation No. 30 of 2021 concerning Implementation of the Road Traffic and Transportation Sector.

**Keywords:** SOE, Merger, DAMRI Public Housing, PPD Public Housing.

## INTRODUCTION

In the structure of the national economy, in general there are five major groups, namely households, families, communities, companies, government and the state. The five economic actors synergize in carrying out various economic activities with the aim of creating national economic growth. State-Owned Enterprises ("SOE") as one of the actors in the national economy, are business entities whose capital is wholly or mostly owned by the state through direct participation originating from separated state assets.<sup>1</sup>

In carrying out economic activities, the role of SOE is very large, the impact and benefits of which can be felt in everyday life, such as in the banking sector there are HIMBARA (BRI Bank, Mandiri Bank, and BTN Bank), in the transportation sector (PT KAI, Perum DAMRI, Perum PPD, PT PELNI, PT ASDP Indonesia Ferry and others), in the infrastructure sector, in the energy and gas sector, in the health sector, and several other sectors. It can be understood that SOE is a tool of the Government in realizing the general welfare of the community, but in parallel it also performs its function as a company for profit. SOE as mandated in Law No. 19 of 2003 concerning State Owned Enterprises as amended by Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation ("Perppu 2/2022") ("Law 19/2003"), has a strategic role such as being able to become a pioneer for business activities that cannot be carried out by the private sector, providing public benefits in the form of providing adequate goods and/or services to meet the needs of many people and actively provide assistance and guidance to the community, especially those included in the economic actors of Micro, Small and Medium Enterprises and those who cannot afford it.

However, while carrying out business activities to date, SOEs in Indonesia have had the challenge of developing their own businesses. The main challenge is that there are too many SOEs, some SOEs have poor financial, operational and governance performance, and the roles and functions of SOEs themselves are still not efficient in supporting the national economy. Therefore, SOE restructuring has been carried out to streamline the number of SOEs in Indonesia. The restructuring was carried out using the holding company concept by grouping SOEs into each of their respective industries<sup>2</sup> and the Merger of Companies that have similarities from a business standpoint.

In the logistics industry cluster, especially road transportation, there are Perum DAMRI and Perum PPD which have equivalent core businesses. In addition, Perum DAMRI and Perum PPD were both affected by the Covid-19 Pandemic so that both their financial and operational performance deteriorated. The Ministry of SOE initiated the merger of the two companies as a strategic effort to nourish the two companies. The merger of Perum DAMRI and Perum PPD can be a good effort so that the roles of SOE in road transportation do not overlap because they have

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<sup>1</sup>Indonesia, Law of State-Owned Enterprises, Law Number 19 Year 2003, LN No. 70 of 2003 TLN 4297, Art. 1 number 1.

<sup>2</sup>Ardan Adhi Chandra, *"The Origins of the Establishment of SOE Holding ,"* <https://finance.detik.com/berita-ekonomi-bisnis/d-3740436/asal-usul-pembenan-holding-bumn>, accessed on 26 October 2022.

the same core business. <sup>3</sup>The merger of Perum PPD and Perum DAMRI will strengthen the condition of the companies, where the companies resulting from the merger can focus more on maximum efforts to improve performance and expand the market going forward. <sup>4</sup>The merger of Perum PPD and Perum DAMRI is one of the programs for drafting the 2023 Government Regulation as stipulated through Presidential Decree Number 25 of 2022 dated December 23 rd , 2022 <sup>concerning</sup> the 2023 Government Regulation Preparation Program (“Presidential Decree 25/2022”).

Merger is a business combination between one company and another company so that the merging companies will end by law. <sup>5</sup>Furthermore, according to Law No. 40 of 2007 concerning Companies, the definition of a merger is regulated in Article 1 number 9, stated “Merger is a legal act performed by one Company or more to merge themselves with another existing Company which results in the assets and liabilities of the absorbed Company become transferred due to law to the surviving Company, and afterward the legal entity status of the absorbed Company became terminated due to law.”

The objectives of the merger of Perum DAMRI and Perum PPD include increasing national connectivity through road transportation to support national economic growth and equity, (2) standardized and superior road transportation services to increase customer satisfaction, (3) increase business scale and value creation of SOE Services Road Transportation through operational and commercial and financial excellence, and (4) increasing the positive impact on the environment by contributing to climate change. <sup>6</sup>

However, the implementation of the merger process is not as easy as imagined because it requires a mature strategy and the combined SOEs must obtain approval from the Government as Capital Owners or Shareholders. In the case of the merger of Perum DAMRI and Perum PPD, the Minister of SOEs as Capital Owners and the Minister of Finance initiated the merger of the two Perums. As stated in the Appendix to Presidential Decree 25/2022, arrangements regarding the merger of Perum PPD into Perum DAMRI by the Minister of SOE and the Minister of Finance are in accordance with their respective authorities based on provisions of laws and regulations. However, in the existing laws and regulations in Indonesia, it has not directly regulated the merger of Perums. The current existing regulations regarding the merger of SOE companies, namely Government Regulation No. 43 of 2005 concerning Mergers, Consolidations, Acquisitions, Changes in the Form of Legal Entities for State-Owned Enterprises (“GR 43/2005”). Based on this background, the formulation of the problem raised in this study is how

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<sup>3</sup> Based on the results of an interview with Mrs. Desty Arlaini, Assistant Deputy for Logistics Services at the Ministry of SOE, January 16 2023.

<sup>4</sup>Romys Bineksari, “*The Story Behind the Merger of 'Legend' PPD & Damri Buses*” <https://www.cnbcindonesia.com/market/20221227135629-17-400504/cerita-di-balik-penggulungan-bus-legend-ppd-damri>, accessed 12 March 2023.

<sup>5</sup>Anggunsuri, U., & Hijriya, S. (2021). *Merger Strategy in Improving Economic Stability during the Covid-19 Pandemic*. Nagari Law Review, 4(2), p. 142.

<sup>6</sup> Based on the results of an interview with Mrs. Desty Arlaini, Assistant Deputy for Logistics Services at the Ministry of SOE, January 16, 2023.

the legal process for the merger of Perum DAMRI and Perum PPD is based on regulations in force in Indonesia.

## RESEARCH METHODS

The method of approaching normative juridical problems is to approach the problem through legal research by looking at legal norms that discuss legal issues regarding the merger of Perum PPD and Perum DAMRI. The primary legal materials used are Laws, Government Regulations (GR) and other related regulations. Secondary legal materials used include textbooks, scientific journals, and scientific articles on the internet. In addition, interviews were also conducted with parties from the Ministry of SOEs who intensely participated in the process of merging Perum PPD and Perum DAMRI.

Primary and secondary legal materials are then analyzed to find relevance and suitability with the problem formulation. The problem approach method in this research is the statutory approach and the case approach. The statutory approach is carried out by examining all laws and regulations related to the merger of SOEs. While the case approach is carried out by examining cases related to the legal issues raised, namely the Merger of Perum DAMRI and Perum PPD.

## RESULTS AND DISCUSSION

### Regulations for Merger of Public Company with Public Company under the Law

In the case of a merger of companies, especially SOEs, and in this case the Merger of Perum DAMRI and Perum PPD follows the provisions in Article 63 paragraph (1) of Law 19/2003, the merger of a SOE can be carried out with other existing SOEs. The elucidation of Article 63 paragraph (1) emphasizes that the merger of SOE (Persero or Perum) can be carried out without prior liquidation and with the merger, the merged Persero or Perum becomes dissolved. The issuance of government regulation on the merger becomes an effective condition for the merger of SOEs.

Further provisions regarding the merger of SOEs are regulated in GR 43/2005. The definition of merger as stipulated in Article 1 number 4 of GR 43/2005 states "Merger is a legal action undertaken by one or more SOEs to merge with another existing SOE and afterward the merged SOE becomes dissolved." The aims and objectives of the merger of SOEs based on Article 2 of GR 43/2005 are to achieve, among others:

1. to increase efficiency, transparency and professionalism in order to nourish the SOE;
2. to improve the performance and value of SOEs;
3. providing optimal benefits to the state in the form of dividends and taxes; and
4. producing products and services of competitive quality and price to consumers.

The merger of SOEs is subject to the conditions for the merger of SOEs stipulated in GR 43/2005 as follows:

1. Merger of SOEs is carried out without prior liquidation based on Article 3 of GR 43/2005;
2. The merger of SOEs is stipulated by Government Regulation based on Article 4 of GR 43/2005;

3. Mergers of SOEs are taking place under the condition that the merger is taking place between a Perum and another Perum, or Persero and another Persero based on Article 5 letter (a) of GR 43/2005;
4. Mergers of SOEs can only be carried out with the approval of the General Meeting of Shareholders for Persero and the approval of the Minister of SOE for Perum based on Article 6 of GR 43/2005;
5. Mergers of SOEs shall be carried out due regard to the matters set out in Article 7 of GR 43/2005, namely:
  - a. the interests of the Persero and/or Perum concerned, minority shareholders and employees of the Persero and/or Perum concerned;
  - b. the principle of fair business competition and the principle of public interest; and
  - c. taking into account the interests of creditors.

The procedures for the merger by Perum DAMRI and Perum PPD based on GR 43/2005 are:

1. The merger of SOEs was proposed by the Minister of SOE to the President along with the basic considerations after being reviewed together with the Minister of Finance.
2. The Board of Directors of the Perum which will carry out the Merger prepares the Merger Plan.
3. The Merger Plan as referred to above is signed by the Board of Directors and the Supervisory Board of the Perum that will carry out the merger.
4. After the Merger Plan is approved, the Perum is obliged to prepare a Summary of the Merger Plan which must be announced by the Directors of the Perum that will conduct the Merger in at least 1 (one) newspaper and announced in writing to the employees of the Perum that will conduct the Merger at the latest 7 (seven) days after the Merger Plan is signed.
5. The announcement as referred to above also contains a notification that interested parties may obtain the Merger Plan at the Perum head office starting from the date of the announcement.
6. Creditors may file objections to the Directors of the Perum that will conduct the merger no later than 14 (fourteen) days after the announcement.
7. The Merger Plan must be submitted to the Minister of SOE for approval no later than 30 (thirty) days from the date of the announcement.
8. The Minister of SOE's approval of the Merger Plan as referred to above is given if the Merger Plan is in accordance with the results of the assessment and there are no objections from creditors or creditors' objections have been resolved.
9. In the event that the Minister of SOE approves the Merger Plan, the Minister of SOE shall propose a draft government regulation regarding the Merger of Perum to the President no later than 14 (fourteen) days as of the date of approval of the Merger Plan by the Minister of SOE.
10. The Merger shall come into effect as of the date on which the government regulation regarding the Merger of Perum comes into effect.



11. The Board of Directors of the Perum resulting from the Merger or Consolidation must announce the results of the Merger or Consolidation in at least 1 (one) newspaper no later than 30 (thirty) days as of the date the Merger or Consolidation takes effect.
12. Based on Article 12 of GR 43/2005, the Merger Plan should at least contain:
  - a. the name and domicile of the Perum that will conduct the Merger;
  - b. the reasons and explanations from the Directors of the Perum who will conduct the Merger and the requirements of the Mergers;
  - c. draft amendment to the articles of association of the Merged Perum ;
  - d. balance sheet, profit and loss calculation covering the last 3 (three) financial years of the Perum that will result in the Merger; and
  - e. matters that the Minister of SOE needs to know, among others:
    - 1) the pro forma balance sheet of the Perum resulting from the Merger in accordance with financial accounting standards, as well as estimates regarding legal matters relating to profits and losses and the future of the Perum that can be obtained from the Merger based on the results of an independent expert's assessment;
    - 2) how to settle the status of employees who will merge;
    - 3) the settlement of Perum's rights and obligations to third parties;
    - 4) composition, salary and other benefits for the Board of Directors and Supervisory Board resulting from the Merger;
    - 5) the estimated timeframe for implementing the Merger;
    - 6) report on the conditions and operations of Perum and the results that have been achieved;
    - 7) the main activities of Perum and its changes during the current financial year;
    - 8) details of problems arising during the current financial year that affected the Perum 's activities;
    - 9) names of members of the Board of Directors and members of the Perum Supervisory Board; And
    - 10) salaries and other benefits for members of the Board of Directors and members of the Supervisory Board of the Perum .

### **Regulations for the Merger of Public Company with Public Company from the perspective of Business Competition Law**

Article 29 of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, as amended by Perppu 2/2022 ("Law 5/1999") regulates the notification obligation for companies that will merge, stating that "Merger or consolidation of business entities, or acquisition of shares which results in the asset value and or sales value exceeding a certain amount, no later than 30 days from the date of the merger, consolidation or acquisition must be notified to KPPU." The notification system adhered to in Law 5/1999 is a post-merger

notification to KPPU.<sup>7</sup> However, through Government Regulation No. 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Company Shares that May Result in Monopolistic Practices and Unfair Business Competition (“GR 57/2010”), an opportunity is given to the Company that will conduct a merger to conduct prior consultation. The purpose of this consultation is to obtain an opinion from KPPU so that the merger is not contrary to Law 5/1999 and to avoid sanctions if in the future it turns out that the merger is considered contrary to Law 5/1999.<sup>8</sup>

Based on the current laws and regulations related to notification obligations to KPPU, namely Law 5/1999, GR 57/2010, Government Regulation No. 44 of 2021 concerning Implementation of the Prohibition of Monopolistic Practices and Unfair Business Competition (“GR 44/2021”), KPPU Regulation No. 3 of 2023 on Assessments of Mergers, Consolidations and Acquisitions of Shares and/or Assets Which May Result in Monopolistic and/or Unfair Business Competition Practices (“KPPU Regulation 3/2023”) and Guidelines for Assessment of Mergers, Consolidations, or Acquisitions of KPPU issued on dated 6 October 2020 (“Guidelines for Mergers”) (hereinafter collectively referred to as “KPPU Merger Regulations”), only transactions in the form of mergers, consolidations, acquisition of shares or transfer of assets that meet the criteria may be subject to notification of obligations to KPPU (hereinafter referred to as the “transaction”). In this regard, the Merger of Perum PPD into Perum DAMRI is a domestic transaction considering that both parties, both the surviving entity and the merging entity, are domestic business entities. In determining whether a domestic transaction creates a notification obligation, the domestic transaction must fulfill all the criteria stipulated in the KPPU's Merger Regulations, including:<sup>9</sup>

1. Transactions are conducted between Unaffiliated Business Entities,
2. Transactions between Business Actors who own assets and/or sales in Indonesia,
3. The transaction causes a change in control, and
4. The transaction meets the value limitations, namely for non-banking business entities as follows:
  - a. The total asset value based on the financial statements (regardless of where the assets are located or world assets) of the merged business entity exceeds IDR2,500,000,000,000; or
  - b. The total sales or revenues in Indonesia of the combined business entity exceeds IDR 5,000,000,000,000.

Therefore, if a domestic transaction meets the 4 criteria above, the transaction must be notified to KPPU within 30 working days of its effective date. Delays in submitting this notification may result in an administrative fine of IDR 1,000,000,000 per day of delay, provided that the overall administrative fine is a maximum of IDR 25,000,000,000. If a domestic transaction does not meet one or more of these criteria, then the transaction is not required to be notified to KPPU.

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<sup>7</sup> Anggunsuri, U., & Hijriya, S, *Inner Merger Strategy Enhancing Economic Stability during the Covid-19 Pandemic*, p. 150.

<sup>8</sup> *Ibid.*

<sup>9</sup> KPPU Regulation 3/2023, art. 3 and 6.

In this case, the Merger of Perum PPD into Perum DAMRI does not fulfill these 4 criteria. First, based on the KPPU's Merger Regulations, particularly the Merger Guidelines, the Merger of Perum PPD into Perum DAMRI is not conducted between affiliated parties where each Perum DAMRI and Perum PPD should be considered as the Ultimate Parent Business Entity ("BUI")<sup>10</sup> since none of the shareholders of Perum DAMRI or Perum PPD are business entities. This is also supported by KPPU Decision No. 07/KPPU-L/2007 which states that the Government of Indonesia ("GoI") cannot be considered as a business entity. Second, since GoI through the Capital Owner's Representative, namely the Minister of SOEs, the Merger of Perum PPD into Perum DAMRI is not an Asset Merger conducted between Business Actors who own Assets and/or Sales either directly or indirectly in Indonesia, because the assets owned belong to the GoI. Third, the Merger of Perum PPD into Perum DAMRI does not cause a change in control, because both before and after the transaction, each party is fully controlled by the GoI through State Capital Participation. Fourth, the Merger of Perum PPD into Perum DAMRI does not meet the Value Limit criteria, both in terms of sales value in Indonesia and worldwide asset value based on the respective financial statements of Perum DAMRI and Perum PPD. It can be concluded that the Merger of Perum PPD into Perum DAMRI is not included in domestic transactions that must be notified to KPPU. Law 5/1999 also stipulates an exception to the obligation to notify KPPU, as regulated in Article 50 letter a, which states that exempted from the provisions of Law 5/1999 are "actions and/or agreements aimed at implementing applicable laws and regulations." Thus, in the event that the merger is based on the prevailing laws and regulations, the entire provisions regarding the notification obligation to KPPU as described previously became inapplicable. Meanwhile, the merger of Perum PPD into Perum DAMRI is based on Presidential Decree 25/2022.

As explained earlier, all the criteria related to the notification obligation are not met and in particular the Value Limit criteria are not met, therefore the Merger transaction of Perum PPD into Perum DAMRI is not included in domestic transactions that must be notified to KPPU. Consultations between Perum DAMRI, Perum PPD and KPPU have also been conducted during the Focus Group Discussion (FGD) on the Merger of Road Transportation SOEs held on July 27, 2022.<sup>11</sup>

### **Regulations for the Merger of Public Company with Public Company in the Manpower Sector**

In the event of a merger, it is necessary to pay attention to the provisions of Article 154A of Law No.13/2003 on Manpower, as amended by Perppu 2/2022 ("Manpower Law"). Article 154A of the Manpower Law stipulates that termination of employment can occur for reasons the company is merging and the worker/labor is not willing to continue the employment relationship or the employer is not willing to accept the worker/labor. Based on Article 41 of Government

<sup>10</sup> BUI based on the KPPU Merger Regulations is a business entity that is considered as the highest controller in a group of business actors.

<sup>11</sup> Based on the results of an interview with Mrs. Desty Arlaini, Assistant Deputy for Logistics Services at the Ministry of SOE, January 16, 2023.



Regulation No. 35 of 2021 on Specific Time Work Agreements, Outsourcing, Working Time and Rest Time and Termination of Employment (“GR 35/2021”), if a company merges and workers are not willing to continue the employment relationship or employers are not willing to accept workers/laborers, then workers/laborers are entitled to:

1. severance pay of 1 times the amount determined based on the length of service of the workers/laborers concerned in accordance with the provisions of the law on manpower,
2. long service pay of 1 times the amount determined based on the length of service of the workers/laborers concerned in accordance with the provisions of the law on manpower, and
3. compensation for the following rights:
  - a. annual leave that has not been taken and has not been forfeited;
  - b. return costs or fees for the worker and his/her family to the place where the worker was hired; and
  - c. other matters stipulated in the Work Agreement, Company Regulations or Collective Labor Agreement.

### **Technical Regulations related to Public Transportation Companies**

Provisions governing Public Transportation Companies are contained in:

1. Law No. 22 of 2009 on Road Traffic and Transportation as amended by Perppu 2/2022 (“Law 22/2009”);
2. Government Regulation No. 30 of 2021 on the Implementation of Road Traffic and Transportation (“GR 30/2021”);
3. Minister of Transportation Regulation No. 117 of 2018 on the Implementation of Non-Transit Transportation of Persons as last amended by Minister of Transportation Regulation No. 25/2021 on the Implementation of the Road Transport Sector (“MoT Regulation 117/2018”); and
4. Minister of Transportation Regulation No. 15 of 2019 on the Implementation of Transportation of Persons by Public Motor Vehicles on Tracks as last amended by Minister of Transportation Regulation No. 25/2021 on the Implementation of the Road Transport Sector (“MoT Regulation 15/2019”).

Based on Law 22/2009, GR 30/2021, MoT Regulation 117/2018, and MoT Regulation 15/2019, there are no definitions of terms related to technical regulations in the field of road transportation, including the definition of the term "Public Transport Company", stated "Public Transport Company is a legal entity that provides transportation services for people and/or goods with Public Motor Vehicles."

In relation to licensing provisions in the field of road transportation, based on Article 140 of Law 22/2009, the service of transportation of people with Public Motor Vehicles consists of transportation of people with Public Motor Vehicles on routes and transportation of people with Public Motor Vehicles not on routes, as follows:

1. Transportation of people with Public Motorized Vehicles on routes

Based on Law 22/2009 and MoT Regulation 15/2019, transportation of people with Public Motor Vehicles on routes consists of:

- a. cross-border transportation;
- b. interprovincial intercity transportation;
- c. intercity transportation within the province;
- d. urban transportation; or
- e. rural transportation.

Furthermore, Article 65 paragraph (1) jo. Article 69 paragraph (1) of the MoT Regulation 15/2019 regulates the permit requirements that must be owned by a Public Transport Company that organizes transportation of people with Public Motorized Vehicles on routes in the form of a "Permit for the Implementation of Transportation of People with Public Motorized Vehicles on Routes" consisting of a decree on the transportation operation permit and a supervision card in the form of an electronic card. In connection with the merger transaction, MoT Regulation 15/2019 requires Public Transport Companies with Permits to Operate Public Transport of Persons with Public Motorized Vehicles on Routes to:

- a. report in the event of a change in the management structure of the legal entity or the domicile of the legal entity;
- b. apply for a permit in the event of changes to the license document consisting of changes to the identity of the Public Transport Company, the mechanism for which is regulated in the laws and regulations regarding electronically integrated business permit services (online single submission) ; and
- c. return the operating permit decree and/or supervision card after a change in permit.

In connection with the Merger of Road Transportation SOEs between Perum DAMRI and Perum PPD, then:

- a. Permits for the Transport of People with Public Motorized Vehicles on Routes owned by Perum DAMRI remain valid as before. However, Perum DAMRI needs to report in connection with changes in the management structure of legal entities that occur in connection with the merger;
- b. Perum PPD is required to apply for a new permit in connection with the change in identity of Perum PPD that occurs in connection with the merger, which is conducted after the signing and promulgation of the Government Regulation on the Merger of Perum PPD and Perum DAMRI by the President. Furthermore, Perum PPD is required to return the operating permit decree document and/or supervision card after the change of permit, in other words, after the new permit has been issued.

Based on the above matters, if the Government Regulation regarding the merger of Perum PPD into Perum DAMRI has been stipulated by the Government, Perum DAMRI is obliged to make adjustments to Perum PPD's permits in accordance with laws and regulations, including, among others , conducting the required reporting in the context of such adjustments.

## 2. Transportation of people with Public Motorized Vehicles not on routes

Based on Law 22/2009 and MoT Regulation 117/2018, transportation of people by public motor vehicles not on a route consists of:

- a. transportation of people using taxis;
- b. transportation of people for a specific destination;
- c. transportation of people for tourism purposes; and
- d. transportation of people in certain areas.

Furthermore, Article 35 paragraph (1) jo. Article 39 paragraph (1) of the MoT Regulation 117/2018 regulates the permit requirements that must be owned by a Public Transport Company that organizes transportation of people with Public Motorized Vehicles not on a route is a "Permit for the Implementation of Transportation of People with Public Motorized Vehicles not on a Route" which consists of a decree on the permit for the implementation of transportation of people with Public Motorized Vehicles not on a Route and a Service Standard Electronic Card.

In connection with the merger transaction, MoT Regulation 117/2018 requires Public Transport Company with a Permit to Operate Public Transport of Persons by Public Motor Vehicles Not on a Route to:

- a. report in the event of a change in the management structure of the legal entity or the domicile of the legal entity;
- b. apply for a permit in the event of changes to the permit document consisting of changes to the company's identity, the mechanism of which is regulated in the laws and regulations regarding electronically integrated business permit services (online single submission); and
- c. return the operating permit decree and/or supervision card after a change in the operating permit for the transportation of persons by public motorized vehicles not on a route.
- d. In connection with the Merger of Road Transportation SOEs between Perum DAMRI and Perum PPD:
  - 1) The Permit to Operate Transportation of Persons by Public Motorized Vehicles Not on a Route owned by Perum DAMRI remains valid as before. However, Perum DAMRI needs to report in connection with the changes in the management structure of the legal entity that occurs in connection with the merger;
  - 2) Perum PPD is required to apply for a new permit in connection with the change in Perum identity that occurs in connection with the merger, which is carried out after the signing and promulgation of the Government Regulation concerning the Merger of Perum PPD and Perum DAMRI by the President. Furthermore, Perum PPD is required to return the operating permit decree document and/or supervision card after the change of permit occurs, in other words, after the new permit has been issued.

Based on the above matters, if the Government Regulation regarding the merger of Perum PPD into Perum DAMRI has been stipulated by the Government, Perum DAMRI is obliged to make adjustments to Perum PPD's permits in accordance with laws and regulations, including among others, conducting the required reporting in the context of such adjustments.

**Restrictive Provisions in Agreements with Creditors and Notifications to Third Parties in Agreements with Perum PPD**

In connection with the merger transaction, it is necessary to pay further attention to the provisions that require each Perum PPD and Perum DAMRI to notify and/or obtain prior approval from creditors stipulated in the agreements made by each Perum PPD and Perum DAMRI. Such agreements may be in the form of credit agreements or agreements related to company operations that bind each company. Regarding credit agreements, considering that the merger requires approval from creditors, prior to the implementation of the merger, communication with creditors is required to obtain approval and to avoid potential objections from creditors that may hinder the implementation of the merger. For Operational Agreements owned by Perum PPD and/or Perum DAMRI, in order to conduct a merger, prior approval from the relevant parties is required. Meanwhile, regarding the Agreements with Third Parties owned by Perum PPD, to ensure that all third parties are aware that the Merger of Perum PPD into Perum DAMRI has become effective, Perum PPD as the merging Perum, needs to notify all third parties that have agreements with Perum PPD. In the notification, Perum PPD states that it will merge with Perum DAMRI, thus all rights and obligations of the third parties must be fulfilled to Perum DAMRI after the Merger of Perum PPD into Perum DAMRI takes effect.

**CONCLUSION**

There are two state-owned road transportation companies currently playing a role in the development and operation of national road transportation, namely Perum PPD and Perum DAMRI. Perum DAMRI as a state-owned road transportation company provides transportation services with coverage throughout Indonesia. Meanwhile, PPD as a state-owned road transportation company provides bus transportation services with coverage of Jabodetabek. These conditions have the potential to cause challenges in the road transportation sector. The merger of Perum PPD into Perum DAMRI is one of the strategies undertaken by the Government of Indonesia to develop business and maintain the continuity of Perum DAMRI and Perum PPD road transportation businesses affected by the Covid-19 Pandemic. The merger is carried out to improve national connectivity to support national economic growth and equity, improve and develop the capacity of sustainable road transportation service providers, and provide standardized transportation services to increase customer satisfaction.

The Merger of Public Company/Perum has not been directly regulated in the existing laws and regulations in Indonesia. The merger of Perum PPD into Perum DAMRI currently still refers to regulations related to the merger of state-owned companies, namely Government Regulation No. 43 of 2005 concerning Merger, Consolidation, Acquisition, Change of Legal Entity Form of State-Owned Enterprises. Therefore, the author advises the regulator to revise the Government Regulation regarding the Merger of SOE Companies which accommodates the Merger of Public Company/Perum.

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