

# THE EXISTENCE OF REGIONAL-OWNED LIABILITY COMPANIES AS A PROFIT-ORIENTED REGIONAL-OWNED ENTERPRISES

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## Abstract

Regional-Owned Enterprise (“BUMD”) is a business entity owned by the regional government as a source of local revenue, especially to provide benefits to the regional economy based on Good Corporate Governance. In addition to seeking profit, Regional Companies also carry out social functions for the residents of their regions. Before the era of regional autonomy, regional companies were regulated by Law No. 5 of 1962 concerning Regional Companies. Responding to this, the government together with the People's Representative Council (“DPR”) replaced the Law on Regional Companies with the Law on Regional Government and Government Regulations on BUMD. The two regulations were drafted to improve the performance of regional companies, as well as to fill the legal vacuum regarding regulations regarding BUMD. In practice, the purpose of establishing the BUMD has not been achieved because BUMD is required to have a social function in society, which makes it less focused on its main mission. Using a normative juridical research method and statutory approach as well as conceptual approach, this paper comprehensively examines Regional Liability Company (“Perseroda”) regulations and offers an ideal concept for the existence of profit-oriented Perseroda in Indonesia. The legal theories used are the Theory of Three Fundamental Legal Values (Gustav Radbruch) and the Legal Entity Theory. The results of the research show that the most appropriate solution is to have the management of BUMD separate from the Regional Government Law and that the issuance of Government Regulations regarding BUMD is proven yet to be able in addressing the problem of BUMD management. Therefore, it is recommended that the DPR and the Government immediately organize and harmonize regulations regarding BUMD management so as to realize good BUMD governance and performance, especially to support the strength of the regional economy.

**Keywords:** *Regional Liability Company; Regional-Owned Enterprise; Governance*

## 1. INTRODUCTION

The term Regional-Owned Enterprise (“BUMD”) emerged when the Minister of Home Affairs Regulation (“Permendagri”) No. 3 of 1998 on Regional-Owned Enterprises was issued. This regulation stipulates that the legal form of BUMD can be in a form of regional-owned company or a limited liability company. BUMD is a business entity whose capital is wholly or mostly owned by the Region.<sup>1</sup>

BUMD can take the form of a regional-owned liability company (“Perseroda”). Perseroda is a legal entity that plays a significant role in generating profits for the region. It is not surprising that business entities in the form of Perseroda have a significant contribution to the national economy.

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<sup>1</sup> Article 1 point 40 Law Number 23 of 2014 concerning Regional Government jo. Article 1 point 1 Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises.

BUMD is expected to operate effectively, efficiently and accountably, in order to provide quality and affordable vital products for the people. In addition, it is expected to be relied on as the main source of funding for regional governments.<sup>2</sup>

In order to encourage regional development, the role of BUMD is felt to be increasingly important as a pioneer in business sectors which has not yet attracted private enterprises. BUMD can act as executors of public services, counterbalances of market power, and help the development of small and medium-sized enterprises.

BUMD functions as one of the contributors to regional revenues, both in the form of taxes, dividends and proceeds from privatization. BUMDs were established with the aim of providing benefits for regional economic development in general, providing public benefits in the form of providing quality goods and/or services to fulfill the community's needs according to the conditions, characteristics and potential of the region concerned based on good corporate governance.<sup>3</sup>

There are 2 (two) fundamental problems that hinder the development of BUMD, namely management problems and capital problems:

1. Regarding management, BUMD State-owned enterprises are considered to still lack work ethic, too bureaucratic, inefficient, lack market orientation, do not have a good reputation, and have low professionalism.<sup>4</sup> Other issues include local governments being deemed to intervene too much in the management of state-owned enterprises, as well as a lack of clarity between generating profits. On the other hand, state-owned enterprises are required to have a social function towards the community.<sup>5</sup>
2. Regarding capital, regional companies are heavily dependent on regional government policies, as the majority of their capital comes from the regional budget and revenue. This means that the size of their capital is determined by the financial ability of the region.

The establishment of BUMD has a long history in Indonesia. Prior to the enactment of the Regional Government Law ("UU Pemda"), there was already a provision in the Minister of Home Affairs Regulation (Permendagri) No. 3 of 1998 concerning the Legal Form of Regional-Owned Enterprises. Article 2 of this regulation stipulated that the legal form of state-owned enterprises could be in the form of a regional company (PD) or a limited liability company (PT).

With changes in legislation, Permendagri No. 3 of 1998 was revoked through Minister of Home Affairs Regulation No. 11 of 2016 concerning the Revocation of Minister of Home Affairs Regulations in the Field of Regional Finance and Regional Development Phase II, as it contradicted the UU Pemda. Based on Article 402 paragraph (2) of Law No. 23 of 2014

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<sup>2</sup> BPS - Statistics Indonesia, *Statistik Keuangan Badan Usaha Milik Daerah* (Jakarta: Badan Pusat Statistik, 2019), 1.

<sup>3</sup> Supplement of State Gazette No. 6173, Elucidation of Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises, Part I General, paragraphs 2 and 3.

<sup>4</sup> General Elucidation on Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises.

<sup>5</sup> *Ibid.*

concerning Regional Government and Government Regulation (PP) No. 54 of 2017 concerning BUMD (“PP BUMD”), the regional head has a significant authority in determining policies, especially policies related to the establishment of regional regulations on changes in the legal form of BUMD. The changes in legal form referred to in Government Regulation No. 54 of 2017 concerning BUMD are:

- a. Changes in the legal form of regional public enterprises to Perseroda.<sup>6</sup>
- b. Regional companies that have been established before the enactment of Government Regulation Number 54 of 2017 can be changed to BUMD.<sup>7</sup>

Article 402 paragraph (2) of Law No. 23 of 2014 concerning Regional Government (“UU Pemda”) stipulates that BUMDs that existed before this law came into force must adjust to the provisions of this law within a maximum period of 3 (three) years since the promulgation of this law. Furthermore, BUMDs are formed to carry out business activities to support Regional Original Revenue (PAD) and in managing BUMD, local governments must have a business concept.<sup>8</sup> In the Perseroda regulation, the focus is more on profit, so the regional government as the majority shareholder of Perseroda is expected to have a roadmap for its management. In connection with the above issues, this research aims to examine the existence of regional liability company (Perseroda) as a profit-oriented regional-owned enterprise.

## 2. RESEARCH METHODS

This research uses a qualitative normative method supported by empirical juridical. Normative juridical research that is qualitative in nature is research that refers to legal norms contained in statutory regulations.

Based on the type of research, the researcher will use three approaches, namely:

1. Statute approach, normative research must use statute approach because it is the central theme of the research. The statute approach that will be studied is various legal rules that are the focus of the research by examining all laws and regulations related to the legal issues being addressed.
2. Conceptual approach, conducted by examining views and doctrines that have developed in legal science, especially related to legal entities in general, and specifically for companies.
3. Case approach, conducted by examining cases related to the issue being faced, which have become court decisions with permanent legal force.

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<sup>6</sup> Article 114 paragraph (3) letter (b) Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises.

<sup>7</sup> *Ibid.*, Article 139 paragraph (1).

<sup>8</sup> Business activity is defined as a business operations carried out by a person or business entity on a regular and continuous basis, namely in the form of activities involving the provision of goods or services, as well as facilities for sale or rent, with the aim of making a profit. Zaeni Asyhadie, *Hukum Bisnis Prinsip dan Pelaksanaan di Indonesia*, 11<sup>th</sup> ed. (Depok: Raja Grafindo, 2018), 154.

### 3. ANALYSIS AND DISCUSSION

According to the Great Indonesian Dictionary (Kamus Besar Bahasa Indonesia or KBBI), a business entity is a juridical (legal) and economic entity that uses capital and labor, with the aim of obtaining profit.<sup>9</sup> Business entities can take the form of limited liability companies, partnerships, associations, firms, and limited partnerships.<sup>10</sup> The forms of business entities in Indonesia include State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), and Private-Owned Enterprises (BUMS).<sup>11</sup>

Not all business entities are legal entities, so not all business entities can become legal subjects. This is implicitly regulated in Article 1 point 9 of Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja), which stipulates that “a Business Entity is a legal or non-legal entity established in the territory of the Unitary State of the Republic of Indonesia and engaged in certain fields of business and/or activities.”

The definition and purpose of establishing Regional-Owned Enterprises, based on Article 1 number 40 of Law Number 23 of 2014 concerning Regional Governments, as reiterated in Article 1 number 1 of Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises, stipulates that “Regional-Owned Enterprises, hereinafter referred to as BUMD, are business entities of which the majority or all of its capital is owned by the Region.” Based on Article 334 of Law Number 23 of 2014 concerning Regional Governments (UU Pemda), Regional Public Enterprises are BUMD that take the form of a limited liability company with their capital divided into shares, of which at least 51% are owned by one region. The establishment of a legal entity in the form of a regional liability company is carried out based on statutory provisions regarding limited liability companies. In the event that the shareholders of a Regional liability company consist of several regions and non-regional entities, one region is the majority shareholder.

With regard to the existence of BUMD, based on Article 331 paragraph (4) of the UU Pemda, the objectives of establishing BUMD are as follows:

1. To provide benefits for the development of the local economy in general. The main purpose of establishing BUMD is to provide benefits or advantages for the relevant region. The primary benefit of establishing BUMD, according to researchers, is economic benefits. Economic benefits for the region can be broadly defined as providing financial benefits for increasing the region's Regional Original Revenue (PAD) and improving the economy for the community where the BUMD is located.
2. To provide public benefits in the form of the provision of quality goods and/or services to fulfill the basic needs of the community in accordance with the conditions, characteristics, and potential of the relevant region based on good corporate governance. Article 331 of the UU Pemda states that the main purpose of BUMD is to provide public benefits in the form of the provision of quality goods and/or services to fulfill the basic needs of the wider community in accordance with the conditions, characteristics, and potential of the relevant region based on good

<sup>9</sup> "Badan Usaha," KBBI VI Daring, accessed August 3, 2021, <https://kbbi.kemdikbud.go.id/entri/Badan%20usaha>.

<sup>10</sup> M. Yahya Harahap, *Hukum Perseroan Terbatas* (Jakarta: Sinar Grafika, 2013), 1–32.

<sup>11</sup> "Badan Usaha: Pengertian, Jenis, Dan Bentuk Badan Usaha," Maxmonroe, accessed August 3, 2021, <https://www.maxmanroe.com/vid/bisnis/pengertian-badan-usaha.html>.

corporate governance. This condition reflects the function of BUMD as a public function.

3. To obtain profits and/or benefits.

In the regional economic system, BUMD is expected to play a role not only as a market force balancer but also to contribute to increasing regional income through the payment of dividends as part of BUMD's profits.

Based on Article 9 of Government Regulation Number 54 of 2017 concerning BUMD, the establishment of BUMD is based on the needs of the region and the feasibility of the business sector that will be established by BUMD.<sup>12</sup> The needs of the region as referred to are assessed through a study that covers aspects of public services and community needs.<sup>13</sup> The feasibility of the BUMD business sector is assessed through an analysis of economic feasibility, market and marketing analysis, financial feasibility analysis, and other aspects containing laws and regulations, technology availability, and human resources availability.<sup>14</sup>

Regional needs based on the results of the needs assessment and feasibility study of the BUMD business sector are part of the regional medium-term development plan (RPJMD) policy.<sup>15</sup> Funding for regional needs assessments and the feasibility study of the BUMD business sector comes from the Regional Budget (APBD).<sup>16</sup>

The establishment of a Regional-Owned Enterprise (BUMD) must meet the following requirements:<sup>17</sup>

- a. There is a study of the needs of the region and a feasibility study of the business sector that will be established by BUMD;
- b. The plan for the establishment of BUMD must obtain the approval of the Minister of Home Affairs;
- c. The establishment of BUMD is carried out based on a specific regional regulation (“Perda”) concerning BUMD
- d. There must be Articles of Association

The Perda on the establishment of BUMD contains the name and location, purpose and objectives, business activities, period of establishment, and the amount of authorized capital.<sup>18</sup> Regional liability company has its domicile in the region of the founder determined in the Perda on the establishment of the regional liability company. The domicile is also the headquarters of the regional liability company.<sup>19</sup>

Article 17 PP BUMD stipulates that the articles of association of regional liability company is stated in a notarial deed in accordance with statutory provisions. The Articles of Association of a regional liability company contain:

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<sup>12</sup> Article 9 paragraph (2) Government Regulation No. 54 of 2017 concerning BUMD.

<sup>13</sup> Article 9 paragraph (3) Government Regulation No. 54 of 2017 concerning BUMD.

<sup>14</sup> Article 9 paragraph (5) Government Regulation No. 54 of 2017 concerning BUMD.

<sup>15</sup> Article 9 paragraph (6) Government Regulation No. 54 of 2017 concerning BUMD.

<sup>16</sup> Article 10 paragraph (1) Government Regulation No. 54 of 2017 concerning BUMD.

<sup>17</sup> Article 9 to Article 17 of Government Regulation No. 54 of 2017 concerning BUMD.

<sup>18</sup> Article 11 paragraph (1) Government Regulation No. 54 of 2017 concerning BUMD.

<sup>19</sup> Article 13 Government Regulation No. 54 of 2017 concerning BUMD.

- a. Name and location/domicile.
- b. Purpose and objectives.
- c. Business activities.
- d. Duration of establishment.
- e. Amount of authorized and paid-up capital.
- f. Number of shares.
- g. Classification of shares and number of shares for each classification, as well as the rights attached to each share.
- h. Nominal value of each share.
- i. Name of position and number of members of the Board of Commissioners and Board of Directors.
- j. Determination of the place and procedures for holding the General Meeting of Shareholders (RUPS).
- k. Procedures for appointment, replacement, and dismissal of members of the Board of Commissioners and Board of Directors.
- l. Duties and authorities of the Board of Commissioners and Board of Directors.
- m. Use of profits and distribution of dividends.
- n. Other provisions in accordance with statutory provisions.

Based on Article 109 point 2 of Article 7 paragraph (4) of the Job Creation Law, the legal requirement for establishing a regional liability company is to obtain legal entity status. A legally established company as a legal entity (*rechtspersoon, legal entity or legal person*), must obtain "approval" from the Minister. Ratification is issued in the form of a ministerial decree called as the decision to ratify a company as legal entity.

To obtain legal entity status, a company must be founded by 2 (two) or more individuals. However, specifically for BUMDs, especially after the issuance of the Job Creation Law, BUMDs in the form of Perseroda are allowed to be owned solely by Regional Government, based on Article 109 number 2 and Article 7 paragraph (7) of the Job Creation Law.

The position and relationship of BUMD with regional governments, according to Article 331 paragraphs (1) and (2) of UU Pemda, is that regional governments do not have BUMD, but BUMD can be considered for regions to become a means of providing services to the community. BUMD can be established by the regional government and its establishment is stipulated in a regional regulations ("Perda"). BUMD is an organizational unit within the local government body that was established to generate income for the regional government. The performance of BUMD is measured by comparing the profit generated with the investment made by the regional government as an investor.<sup>20</sup> BUMD is formed based on Perda, having two aspects related to BUMD in the form of Perseroda as a business entity established according to the statutory provisions:

1. Relating to the legality aspect (*legal entity*);

<sup>20</sup> Ambar Budhisulistiyawati, Yudho Taruno Muryanto and Anjar Sri CN, "Strategi Pengelolaan BUMD Persero Untuk Mewujudkan Prinsip Tata Kelola Perusahaan Yang Baik," *Private Law* 3, no. 2 (July-December 2015): 59, <http://jurnal.hukum.uns.ac.id/index.php/PRIVATLAWII/article/view/882>.

2. As a business entity.<sup>21</sup>

Perseroda takes the form of limited liability company (*perseroan*) according to the classification of the type of company, because Perseroda is a collection of capital, people (legal subjects), established based on an agreement and subject to the provisions of Law Number 40 of 2007 concerning Limited Liability Companies (“UU PT”). Perseroda is a regional-owned enterprise in the form of a limited liability company whose capital is divided into shares that are wholly or partially owned by the regional government, with at least 51%. The latest regulation related to BUMD is the UU Pemda and Government Regulation No. 54 of 2017 concerning Regional-Owned Enterprise (PP No. 54/2017). The UU Pemda also explains that BUMD in a form of Perseroda has characteristics as stipulated in articles 339 to 342, which are as follows:<sup>22</sup>

1. Capital

The capital of Perseroda consists of shares. In the case of shareholders of a regional-owned corporation consisting of several regions and non-regions, one of the regions is the majority shareholder.<sup>23</sup> Perseroda can establish subsidiaries and/or own shares in other companies.<sup>24</sup>

2. Organs

Perseroda consists of 27 General Meeting of Shareholders (RUPS), Board of Directors and Board of Commissioners.

3. Dissolution

Perseroda can be dissolved.<sup>25</sup> In the event of dissolution, the assets of Perseroda that are dissolved become the property of the region and are returned to the region.<sup>26</sup>

Capital Sources of Regional-Owned Enterprises (BUMD) consist of:

- a. Regional capital participation, sourced from Regional Budget (APBD) and/or conversion from loans.
- b. Loans, sourced from the Region, other BUMD, and/or other sources in accordance with statutory provisions.
- c. Grants, sourced from the Central Government, Region, other BUMD in accordance with statutory provisions.
- d. Other capital sources, including reserve capital, revaluation profit of assets, and share premiums.

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<sup>21</sup> Sugiarto, *Pengantar Akuntansi I* (Jakarta: Universitas Terbuka Jakarta, 1999), 54.

<sup>22</sup> Article 339 paragraph (1) Law Number 23 of 2014 concerning Regional Government as amended by Law Number 9 of 2015 concerning the Second Amendment to the Law Number 23 of 2014 concerning Regional Government, as last amended by Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as UU Pemda).

<sup>23</sup> *Ibid.*

<sup>24</sup> Article 341 paragraph (1) UU Pemda.

<sup>25</sup> Article 340 paragraph (1) UU Pemda.

<sup>26</sup> Article 342 paragraph (1) UU Pemda.

The characteristics of Perseroda can be explained as follows:

1. BUMD in the form of Perseroda is a Limited Liability Company (Article 339 paragraph (1) of UU Pemda).
2. The capital is divided into shares, most of which (more than 51%) are owned by only one region (Article 339 paragraph (1) of UU Pemda).
3. Apart from the Regional Government, the ownership of Perseroda is open to external parties (Article 339 paragraph (1) of the UU Pemda).
4. Perseroda is a pure business entity established to obtain profits in order to increase Regional Original Revenue (Article 339 paragraph (1)).
5. The shareholders of Perseroda can consist of several regions and non-regions (Article 339 paragraph (3)).
6. Perseroda can establish subsidiaries or hold shares in other companies (Article 341 paragraph (1)).
7. The Head of the Region is the shareholder with the authority to make decisions (Article 3 paragraph (1) and Article 3 paragraph (2) of the PP BUMD).

The problem with changing the legal form of Regional Company (Perusda) into Regional Liability Company (Perseroda) has an impact on the governance of a BUMD, as regulated in Government Regulation No. 54 of 2017 concerning BUMD, stating that:

- a. Whereas BUMD in the form of Perseroda are subject to Law Number 40 of 2007 concerning Limited Liability Companies.
- b. If the legal form is not changed, the company will be stagnant and less developed.

According to the author, the consequences of changing the legal form of a regional company (*Perusahaan Daerah/Perusda*) to become a Perseroda lead to:

1. Changes in ownership of assets that were originally in the name of a regional company were transferred to be in the name of a Perseroda.
2. Name changes in the event of restructuring of the organizational structure.
3. Changes in corporate governance.

The background behind the change from Regional-Owned Enterprise to Regional-Owned Limited Liability Company is:

1. To obtain an optimal and reasonable profit (profit-oriented) in order to increase Regional Original Revenue (PAD).
2. To enhance the function and a greater role in developing their business professionally as well as increasing the potential Regional Original Revenue.
3. To optimize the company's performance in accordance with the principles of prudence and good corporate governance.
4. To achieve equal distribution of banking services in order to improve the businesses and living standards of the people, especially micro, small and medium enterprises (MSMEs).
5. To assist and promote economic growth and development in all fields.



BUMD Business Summit organizer data shows that 80% (eighty percent) of a total of 1,700 BUMD are still unhealthy.<sup>27</sup> Most BUMD throughout Indonesia still rely on the Regional Expenditure Budget (APBD) for company operations.<sup>28</sup> Only 340 BUMD (20% BUMD) are already independent and do not burden the regional budgets of each region.<sup>29</sup> BUMD production quality is still far from expectations so that it is still unable to compete with other companies in ASEAN.<sup>30</sup> There are 1,097 BUMD with total assets of Rp340,11 trillion is still unsatisfactory, because the profit achieved has only reached Rp10,372 trillion, so the ratio of profit to new assets is around 3.05 percents.<sup>31</sup> BUMD so far have not been able to make a significant contribution to the Regional Original Revenue (PAD), even more often requiring “injections” of government funding from the regions rather than generating profits, thus burdening the APBD. The construction of Perseroda is expected to be representative in accommodating the interests of investors or partners in collaboration with BUMD. If the region does not open up its investment opportunities, it will be difficult for the relevant regions to develop from a business approach perspective. Regional development financing should be explored through the success of BUMD as one of the "earning centers" of regional income by attracting investment, especially foreign investment.<sup>32</sup>

Based on the understanding of Perseroda as explained, it appears that regions can have all or 100% (one hundred percent) of Perseroda's shares. Owning 100% (one hundred percent) of the shares by the region does not violate the UU PT which requires the establishment of a company by two or more individuals. This does not violate the UU PT due to the exception as regulated in Article 7 paragraph (7) of the UU PT which stipulates that the provisions requiring a company to be established by two or more individuals do not apply to Persero where all of its shares are owned by the State.

With 100% (one hundred percent) share ownership, the only owner of Perseroda is automatically the relevant region. From the understanding of Perseroda, it is also possible for the region to own at least 51% (fifty-one percent) of the shares. This means that it is very open to the possibility for other parties to have shares in Perseroda, as long as at least 51% (fifty-one percent) of Perseroda's shares are owned by one region.

Based on the explanation above, Perseroda can be owned by:

1. One regional government which owns all of Perseroda's shares.
2. More than one local government, where one local government owns at least 51% of the shares.
3. One local government with non-local government actor(s), where the local government concerned owns at least 51% shares.

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<sup>27</sup> “BUMD Se-Indonesia Tidak Sehat,” Enciety, accessed August 8, 2021, <https://www.enciety.co/1360-bumd-se-indonesia-tidak-sehat/>.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> Rahmatul Fajri, "Kemendagri Kritik Perolehan Laba BUMD Sepanjang 2019," *Media Indonesia*, August 28, 2019, <https://mediaindonesia.com/politik-dan-hukum/255928/kemendagri-kritik-perolehan-laba-bumd-sepanjang-2019>.

<sup>32</sup> Nindyo Pramono, *Legal Due Diligence BUMD Sebagai Implementasi GCG*, in *Pengelolaan BUMD Sesuai Prinsip Tata Kelola Perusahaan Yang Baik (Good Corporate Governance)* (Tim Penelitian Hukum BPHN: 2012).

4. More than one local government with non-local government actor(s), where one local government owns at least 51% shares

Considering that one region must own at least 51% of shares, in the event that Perseroda is owned by more than one regional government, one of the regional governments must own more than 51% of Perseroda's shares.

Regarding the majority share ownership, Rudyanti Dorotea Tobing stated that whoever owns the most shares in a Limited Liability Company is the one who determines the policies of the of the Limited Liability Company.<sup>33</sup> The role of the Regional Head represents the local government as the sole shareholder and acts as the General Meeting of Shareholders (RUPS), having a 100% majority vote in decision making. This condition causes the Perseroda to have difficulty in facing business competition with agility and relying on the Regional Budget (APBD), so that the goal of changing the form of the regional company (perusahaan daerah) into a regional liability company (Perseroda), which is expected to be one of the sources of regional government revenue, cannot be achieved.<sup>34</sup>

There are two strategies that can be carried out by Perseroda in order to achieve the desired goals in the future, namely:<sup>35</sup>

1. Carrying out business expansion.
2. Restructuring the company.

In order to improve performance and optimize the role of Perseroda, restructuring is needed in its management. Perseroda restructuring can be carried out by conducting an inventory related to the grouping of forms, types, and profit-oriented characteristics in the framework of achieving Good Corporate Governance (GCG), so several adjustments are needed to the construction of legal structure.

Legal status from regional-owned company (Perusda) to regional-owned limited liability company (Perseroda), ideal arrangement as a profit-oriented BUMD, that Perseroda is in the form of a limited liability company. In the elucidation of Law Number 40 of 2007 concerning Limited Liability Companies, the development of the national economy is carried out based on economic democracy with the principles of togetherness, efficient justice, sustainability, environmental awareness, independence, and maintaining the balance of national economic progress and unity, as well as and maintaining a balance of progress and national economic unity aims to realize public welfare. The improvement of national economic development needs to be supported by a comprehensive law that regulates limited liability companies that can guarantee a conducive business climate. With a comprehensive regulation that covers various aspects of the company, the Limited Liability Company Law

<sup>33</sup> Rudyanto Dorotea Tobing, *Aspek-Aspek Hukum Bisnis: Pengertian, Asas, Teori, dan Praktik* (Surabaya: LaksBang Justitia, 2015), 268.

<sup>34</sup> P2 LIPI, *Revitalisasi BUMD Dalam Perekonomian Daerah* (Jakarta: Lembaga Ilmu Pengetahuan Indonesia, 2010).

<sup>35</sup> "Penjelasan Bentuk dan Alasan Melakukan Restrukturisasi Perusahaan," *Mekari Jurnal*, accessed August 9, 2021, <https://www.jurnal.id/id/blog/penjelasan-bentuk-dan-alasan-melakukan-restrukturisasi-perusahaan/>.

can meet the legal needs of the community and provide more legal certainty, especially for the business world.<sup>36</sup>

In the management of a Regional Liability Company (Perseroda) which aims to increase profits, it is mandatory to apply the Good Corporate Governance (GCG) Principles. OECD provides guidelines regarding matters that need to be considered in order to create Good Corporate Governance in a company, namely:<sup>37</sup>

1. Protection of rights in Good Corporate Governance must be able to protect the rights of shareholders, including minority shareholders.
2. Equal treatment of all shareholders (the equitable treatment of shareholders).
3. The role of stakeholders is related to the company (the rule of stakeholders).
4. Disclosure and transparency (disclosure transference).
5. The responsibilities of the board of commissioners or directors (the responsibilities of the board).

Good Corporate Governance arrangements in Indonesia based on Article 1 point 1 of the Regulation of the State Minister for State-Owned Enterprises Number: PER-01/MBU/2011 concerning the Implementation of Good Corporate Governance in State-Owned Enterprises, provides the definition of GCG as follows:

“Good Corporate Governance, hereinafter referred to as GCG, are the principles that underlie a process and mechanism for managing a company based on laws and regulations and business ethics.”

GCG implementation in Indonesia has been institutionalized through laws and regulations. Several regulations governing the implementation of GCG are as follows:

- a. Law of the Republic of Indonesia Number 19 of 2003 concerning State-Owned Enterprises;
- b. Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies;
- c. Regulation of the Minister of State-Owned Enterprises No. PER 01/MBU/2011 dated 1 August 2011 concerning Implementation of Good Corporate Governance in State-Owned Enterprises;
- d. Decree of the Minister of State-Owned Enterprises (BUMN) Number KEP-117/MBU/2002 concerning the Implementation of Good Corporate Governance Practices in State-Owned Enterprises;
- e. PM-PBUMN Ministerial Circular Letter No. S-106/MPM.PBUMN/2000 dated April 17, 2000 concerning the Policy of Implementing Good Corporate Governance in all BUMN.

The implementation of GCG principles in Indonesia is mandatory, especially for BUMN/BUMD. Article 2 paragraph (1) of the Regulation of the Minister of State-Owned

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<sup>36</sup> General Elucidation of Law No. 40 of 2007 concerning Limited Liability Companies.

<sup>37</sup> Komite Nasional Kebijakan Governance, *Pedoman Umum Good Corporate Governance Indonesia* (Jakarta: Komite Nasional Kebijakan Governance, 2006), i.

Enterprises (BUMN) No. PER01/MBU/2011 dated 1 August 2011 concerning the Implementation of Good Corporate Governance in State-Owned Enterprises stipulates that BUMN must implement GCG consistently and continuously while taking into account the provisions and norms that apply and the articles of association of BUMN.<sup>38</sup>

There are 5 (five) GCG principles that must be used as guidelines in managing State-Owned Enterprise (BUMN):<sup>39</sup>

1. Transparency;
2. Accountability;
3. Responsibility;
4. Independency;
5. Fairness.

Policy and Efforts of Perseroda in Realizing Good Corporate Governance (GCG), as a business organization, BUMD requires a governance mechanism in order to realize the principles of good corporate governance (GCG). The local government policies related to Perseroda should ideally synergize with the central government's policies, especially in the implementation of GCG. Local governments can apply GCG through legal products such as Regional Regulations (Perda) (Perda on the Establishment of Perseroda).

The implementation of GCG in Perseroda certainly needs to go through policies from the regional government which are coercive in nature, given that the authority of BUMD lies with the regional government. National policies related to good corporate governance (GCG) so far have not been imperative, but only optional, so there is no obligation for each Perseroda to implement it, except as required in statutory provisions.<sup>40</sup> Based on the principle of GCG, the important reason for implementing GCG in Perseroda is to provide protection for the rights of shareholders, including minority shareholders. The framework built in GCG ensures equal treatment for all shareholders, including minority and foreign shareholders.

Local governments always hold the largest shares in Perseroda, namely 51% (fifty one percent), or even 100% (one hundred percent). On the guarantees for BUMD that are legally incorporated Limited Liability Companies (PT), Law Number 40 of 2007 concerning Limited Liability Companies (UU PT) is fully applicable, so that all GCG principles contained in the UU PT must be implemented. Apart from that, there are also General Guidelines for Good Corporate Governance in Indonesia which were issued by the National Committee on Governance Policy in 2006, which is the minimum standard for implementing GCG in BUMD. For BUMD in the form of PT with its core business being in banking, in addition to the provisions of GCG in the UU PT and the General Guidelines for Good Corporate Governance in Indonesia, all regulations regarding the implementation of GCG issued by Bank Indonesia through Bank Indonesia Regulations (PBI) also apply. Meanwhile, for BUMD in the form of Regional Companies (PD), the implementation of GCG must be in

<sup>38</sup> Article 2 paragraph (2) of Regulation of Minister of State-Owned Enterprises No. PER 01/MBU/2011 concerning Implementation of Good Corporate Governance in State-Owned Enterprises.

<sup>39</sup> *Ibid.*

<sup>40</sup> Mas Achmad Daniri, *The Guidelines for Good Corporate Governance (Speech by the Chairman of the National Committee on Good Corporate Governance Policy)* (2006).

accordance with Law Number 5 of 1962 concerning Regional Companies, the General Guidelines for Good Corporate Governance in Indonesia, as well as GCG provisions regulated in the Regional Regulations that serve as the basis for the establishment of BUMD.

### **Strengthening the Joint Commitment of Regional-Owned Limited Liability Company (Perseroda) Organs to Increase Performance and Profit**

A strong and sustainable corporate organization must be supported by good management concepts. Careful planning and strategy development will have an impact on successful management, resulting in the effective and efficient achievement of organizational goals. In order to realize a strong organization, there needs to be a mutually agreed commitment between the main corporate organs, including the Board of Directors, Board of Commissioners/Supervisory Board, and Shareholders/General Meeting of Shareholders (GMS).<sup>41</sup>

According to Nindyo Pramono, the mutually agreed commitment between the main corporate organs, namely the Directors, Commissioners/Supervisory Board, Shareholders/GMS should include vision, mission, objectives, strategy selection, and performance evaluation. The commitment is then implemented by the Board of Directors in the form of company management through policy determination and the creation of a corporate culture and ethics that support the achievement of objectives. Nindyo Pramono explains that the joint commitment, in relation to Good Corporate Governance (GCG), is implemented by the Board of Directors as managers through company policies, which ideally should be codified in company regulations.<sup>42</sup>

The realization of the “Commitment” of stakeholders within the company or between the Company's organs is as follows:

1. Capital Owners/General Meeting of Capital Owners/General Meeting of Shareholders

With regard to the commitment of the parties, especially the shareholders of Perseroda, ideally the regional government as the majority shareholder should be able to synergize the vision and mission of the regional government in order to prosper its people, as stipulated in Article 331 paragraph (4) of UU Pemda. The commitment of the local government can be embodied in the Regional Regulation on the Establishment of Perseroda, which can support Perseroda in realizing the principles of good corporate governance.

2. Commissioners

The commitment in the field of corporate supervision is directed through the compliance of corporate supervision commissioners towards regulations related to corporate activities. In the context of business activities, supervision is embodied in

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<sup>41</sup> Darwin Nasution, "Analisis Hukum Penerapan Tata Kelola Perusahaan yang Baik (Good Corporate Governance) Pada Badan Usaha Milik Daerah (Studi pada PT. Perkebunan Sumatera Utara)" (Thesis, Universitas Sumatera Utara, 2012), 78–79, Repositori Institusi Universitas Sumatera Utara. <http://repositori.usu.ac.id/handle/123456789/39069>.

<sup>42</sup> Nindyo Pramono, *Loc. cit.*

the "code of conduct/code of corporate governance" and is one aspect of the commissioners' accountability in carrying out their duties.<sup>43</sup>

### 3. Directors

In connection with the commitment of the directors in realizing the principles of good corporate governance, this can be realized in a written "code of conduct" which is used as a guideline for good management in carrying out corporate/company activities as a form of accountability of the directors. In the elucidation of Article 92 paragraph (4) of Government Regulation Number 54 of 2017 concerning BUMD, the code of conduct is one of the good corporate governance manuals.

## 4. CONCLUSION

BUMD is a business entity in which all or most of the capital is owned by the regional government through the separation of regional wealth to be used as capital participation in BUMD. Therefore, it is necessary to reform the decision-making bureaucracy in submitting share capital in the context of business development in order to increase profits. In terms of corporate governance, Perseroda in business fields other than banking has not fully implemented Good Corporate Governance (GCG).

Based on the findings of this research, the author recommends a profitable option for the regional government to determine the utilization of BUMD capital is in the banking sector, particularly in Rural Banks (BPR). In terms of legal certainty, Perseroda in the banking sector has more specific regulations, which are regulated in the Banking Law and supervised by the Financial Services Authority Law, so that the organ of Perseroda will work professionally with maximum results, and its benefits will be directly felt by the community as Micro business actors.

The role of BUMD must begin to be considered by improving good governance arrangements for Perseroda, thus an integrated legal framework is needed. The legal aspect regulating BUMD needs to be strengthened with Governance Structure in BUMD, which is expected to create a balance in the distribution of roles and authority among organs in BUMD so that Good Corporate Governance can be achieved. The need for a legal umbrella for BUMD management separated from the UU Pemda is the most appropriate solution to obtain legal certainty. It is suggested that the DPR and the government immediately finalize the management arrangements of BUMD to form a special law regulating BUMD.

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<sup>43</sup> Sentot Harman Glendoh, "Fungsi Pengawasan dalam Penyelenggaraan Manajemen Korporasi," *Journal of Management and Entrepreneurship* 2, no. 1 (March 2000): 43–56, <https://jurnalmanajemen.petra.ac.id/index.php/man/article/view/15598>.

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