



# CONSTRUCTION OF REGIONAL OWNED ENTERPRISES AFTER THE ENACTMENT OF LAW NUMBER 23 OF 2014 CONCERNING REGIONAL GOVERNMENT AND GOVERNMENT REGULATION NUMBER 54 OF 2017 CONCERNING REGIONAL OWNED ENTERPRISES

Muhtadli<sup>1</sup>

Faculty of Law, Sekolah Tinggi Ilmu Hukum Muhammadiyah Kalianda

Email : [perjuanganrakyat69@gmail.com](mailto:perjuanganrakyat69@gmail.com)

---

**Abstract:** *This article discusses the juridical analysis of the regulation of Regional Owned Enterprises (BUMD) after the enactment of Law Number 23 of 2014 concerning Regional Government and its application to the regulation of BUMD in the South Lampung Regency. The research method used is normative juridical with statutory approach. Based on the results of the study it is known, the enactment of the 2014 Regional Government Law has implications for the existence and regulation of BUMDs both existing and to be established, namely in terms of legal form and naming of BUMDs; requirements for the establishment and feasibility of BUMD businesses; regional capital participation and capital ownership in BUMD; BUMD organ; terms of office of the Directors and Dewas / Deris; and DPRD interference in BUMD operations. The results of the study also showed that none of the Regional Governments in Lampung Province, including South Lampung Regency, were following up on the mandate of Article 402 paragraph (1) of the 2014 Regional Government Law to adjust BUMD regulations, and thus potentially conflict with the 2014 Regional Government Law and central government policy.*

**Keywords:** *BUMD; Existence, Construction; Regional Government.*

---

## I. INTRODUCTION

The regulation of Regional Owned Enterprises (BUMD) after the enactment of Law Number 23 of 2014 concerning Regional Government in the perspective of economic democracy as a consequence of carrying out the constitutional mandate contained in Article 33 of the 1945 Constitution of the Republic of Indonesia still leaves problems in its implementation, therefore it is necessary to deepen in analyzing from various aspects, especially in the juridical aspect. In discussing this juridical analysis, this article takes BUMD regulations in Lampung Regency as material for its study. With this discussion, it will be known what the juridical analysis of the 2014 Regional Government Law on BUMD is, especially related to

its existence and how the current regulations for BUMD are compatible with what is desired by the 2014 Regional Government Law.

The existence of BUMD in the regions in various perspectives still raises problems, both from a juridical and objective perspective. From a juridical perspective, the regulation regarding BUMD essentially still refers to Law Number 5 of 1962 concerning Regional Companies (UU Perusda) which was officially revoked along with the passage of the 2014 Regional Government Law.<sup>1</sup> In terms of objectives, many BUMDs that have been established do not contribute positively to the region, both in terms of added value to regional income and their impact on society.

BUMD legally, economically and governancely still faces various problems so that they are unable to achieve the expected goals. According to the Director General of Regional Financial Development of the Ministry of Home Affairs, there are four fundamental problems faced by BUMD in Indonesia, namely the basis for BUMD regulation; the principle of BUMD management is still contaminated with the bureaucratic system (amount of bureaucratic interference in BUMD); BUMD operations are generally inefficient; and not yet optimal BUMD in providing public services.<sup>2</sup>

The main problems related to BUMD include inefficient management; its establishment which is generally not preceded by a planned feasibility study; control and supervision; and there is bureaucratic and political intervention in the DPRD (DPRD also participates in being a supervisor and even determines technical issues that interfere with BUMD management).<sup>3</sup> According to Rustian Kamaluddin, the special problems of BUMD are the lack of specialization and main concentration in the BUMD business sector, resulting in low efficiency and high operational costs, and even losses.<sup>4</sup>

Basic policies in BUMD arrangements are the focus of study in writing this article. This is motivated by, among others, first, research and studies on the basis of BUMD regulation in the regions, which greatly determines the position and function of BUMD. The Perusda Law is very incomplete in regulating BUMD regulations that are able to build healthy BUMD and play a role in regional economic development, according to the mandate of Law Number 23 of 2014. Second, Law Number 23 of 2014 Article 402 paragraph (2) mandates that a maximum of three years from since its promulgation, all existing and future BUMD regulations are required to comply with the provisions in Law No. 23 of 2014. The

---

<sup>1</sup> Pasal 409 huruf a yang mencabut dan tidak memberlakukan Undang-undang Nomor 5 Tahun 1962 Tentang Perusahaan Daerah.

<sup>2</sup> Reydonnyzar Moenek, *Problematika, Peluang, Tantangan dan Strategi Pengelolaan BUMD, BLUD dan BMD*, paparan pada *Rakernas Revitalisasi BUMD, Pemantapan Penerapan PPK-BLUD, dan Optimalisasi Pengelolaan Barang Milik Daerah*, 20/10/2015, <http://keuda.kemendagri.go.id>, diakses 20/3/2021.

<sup>3</sup> Hareva, Mandala, "Pengelolaan BUMD/Perusahaan Daerah di Provinsi Sumatera Barat, Nusa Tenggara Barat, dan Kalimantan Selatan". *Jurnal Kajian*, 11, 3, 2010, hlm:16.

<sup>4</sup> Rustian Kamaludin, "Peran dan Pemberdayaan BUMD dalam Rangka Peningkatan Ekonomi Daerah", *Majalah Perencanaan Pembangunan*, 23 (2001), hlm. 11.

obligation to adjust BUMD regulations fell on September 30 2017. Third, the Ministry of Home Affairs in June 2016 canceled eight regional regulations. related to BUMD.<sup>5</sup> The cancellation of the Regional Regulations regarding BUMD carried out by the Indonesian Ministry of Home Affairs made the legal issues in this study urgent and relevant. Fourth, although several BUMD regional regulations have been canceled by the Indonesian Ministry of Home Affairs, most local governments, especially in Lampung Province in particular, have not made efforts to adjust the existence and regulations of BUMD as ordered by Law No. 23 of 2014 as a whole. it is possible that this is because the Regional Government does not know or is aware of it, or considers it appropriate or not contradictory, or it is difficult to make adjustments because the new PP on BUMD was issued in 2017 after the deadline, namely through PP No. 54 of 2017 concerning BUMD.<sup>6</sup>

Studies related to the basis for BUMD regulation based on Law No. 23 of 2014 have been carried out by Made Gde Subha Karma Resen<sup>7</sup> and Dhimas Teruko Kesumo et al,<sup>8</sup> however, different legal issues are mainly related to the existence and legal construction or regulation of BUMD in South Lampung Regency. In this article, we examine Regional Regulations and other regional legal products in South Lampung which regulate BUMDs of several types or forms of existing BUMDs, namely PT. Bank Lampung and PDAM Tirta Jasa.

The existence of BUMD in the state or regional economic system is a national goal in an effort to improve the welfare of the people and is a pillar of the constitutional economy. This is based on the system of the Republic of Indonesia which adheres to a welfare state (a combination of the concepts of a rule of law and a welfare state). In the welfare state system, the main task of the government is to provide public services or seek welfare for its citizens, as stated in the goal of being a state in the Preamble of the 1945 Constitution.

The strategic role of the state through BUMD gains very strong legitimacy as emphasized in Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that:

“The branches of production which are important for the state and affect the livelihood of the people at large are controlled by the state.”

---

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

<sup>6</sup> Dalam beberapa media, Dirjen Keuangan Daerah Kemendagri yang memprakarsai PP tentang BUMD sangat optimis bahwa PP ini akan diterbitkan paling lambat tanggal 1 Oktober 2016 sesuai dengan amanat Pasal 410 UU No.23/ 2014.

<sup>7</sup> Resen, Made Gde Subha Karma, Implikasi Yuridis Diundangkannya Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah terhadap Pengaturan Badan Usaha Milik Daerah di Indonesia, *Jurnal Yustisia*, 3, 3, 2014

<sup>8</sup> Kusumo, Dhimas Tetuko, Munawar Kholis, dan Sentot Sudarwanto. “Kajian Yuridis Bentuk Hukum Badan Usaha Milik Daerah (BUMD) di Bidang Perbankan Pasca Berlakunya Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah. *Jurnal Privat Law*, 4, 1, 2016.

Constitutionally, this was strengthened by the Constitutional Court of the Republic of Indonesia (MK RI) through Decision Number 62/PUU-XI/2013:<sup>9</sup>

Considering that based on the constitutional provisions, BUMN, BUMD, or other similar names are part of the actors in the national economic system which are structured as a joint venture based on the principle of kinship (vide Article 33 paragraph [1] of the 1945 Constitution). BUMN, BUMD, or other similar names that are at different levels and in different administrative areas manage businesses whose objects are branches of production that are important to the state and which affect the livelihoods of many people or manage businesses whose objects originate from earth and water and natural wealth contained therein. These two kinds of objects, in accordance with the ideals of the economic system desired when forming a state, are controlled by the state and used for the greatest possible prosperity of the people (vide Article 33 paragraph [2] and paragraph [3] of the 1945 Constitution). Thus, the business of these two objects, which are the functions of BUMN, BUMD, or other similar names, is a derivation of state control over these two objects as part of state functions. That is a more technical understanding of BUMN, BUMD, or other similar names as representatives of the state.

Based on the consideration of the Ruling of the Constitutional Court of the Republic of Indonesia, the basic arguments built in this study are, First, BUMD essentially has the same position, namely companies established by regions whose shares are wholly or mostly owned by the region which are representatives of the region originating from provisions of the Constitution Article 33. Thus, BUMD is part of the actors in the national economic system.

Second, BUMD essentially has the same goal, namely carrying out the function of public services (public services) by organizing a business aimed at public benefit (See Article 36 paragraph (1) of the BUMN Law), in the form of providing quality goods and/or services at prices that are affordable to the public. society based on the principles of sound corporate management; as well as pursuing profits (profit oriented) or obtaining profits and/or profits that are utilized for the development of the national and regional economy (See Article 12 letter b of the BUMN Law and Article 331 paragraph (4) letter c of Law No. 23 of 2014).

Third, normatively, the difference between BUMN and BUMD is not principled. According to Mandala Hareva, the main difference between BUMN and BUMD is only in the scale of business activities and the range of goods and services for the people.<sup>10</sup> or as MK said only at the level and in a different administrative area, BUMD is more local in scale while BUMN is national in nature.

---

<sup>9</sup> Putusan MK Nomor 62/PUU-XI/2013, dalam perkara Pengujian Undang-Undang Nomor 17 Tahun 2003 tentang Keuangan Negara dan Undang-Undang Nomor 15 Tahun 2006 tentang Badan Pemeriksa Keuangan terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, hlm. 228.

<sup>10</sup> Hareva, Mandala. "Pengelolaan BUMD/Perusahaan Daerah di Provinsi Sumatera Barat, Nusa Tenggara Barat, dan Kalimantan Selatan". *Jurnal Kajian*, 11, 3, 2010, hlm: 7.

Fourth, because the positions and functions of BUMN and BUMD are essentially the same, the principles of good corporate governance contained in the provisions of Law Number 19 of 2003 concerning BUMN and its implementing regulations can be applied to the regulatory principles in BUMD, as long as they are not regulated specifically in Law No. 23 of 2014. Thus, the testing criteria used in this study, as long as they are not regulated in Law No. 23 of 2014 and PP Number 54 of 2017, will use the principles contained in the BUMN Law and regulations implementer.

The existence of BUMD is a necessity as the implementation of the constitutional mandate of Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which states that the national economy is organized based on economic democracy with the principles of togetherness, efficiency-fairness, sustainability, environmental insight, independence and by maintaining a balance of progress and national economic unity. . Based on Article 33 paragraph (4) there are several concepts that need to be understood that the national economy is structured on the basis of economic democracy with the principles of:

1. Togetherness,
2. Efficiency – fairness,
3. Sustainable,
4. Environmentally sound,
5. Independence,
6. Progress balance,
7. National economic union.

The principles of economic democracy are the framework of reference in managing the national economy, including the regions to manage the regional economy, in the form of exercising regional authority to make BUMD a pillar of the regional economy. Apart from referring to the constitution, it must also refer to laws and regulations governing economic governance or in other words the financial relationship between the central government and regional governments.

This article was written and analyzed using normative legal research methods. Therefore, the source of the data used in this article is the relevant laws and regulations, especially those concerning Regional Owned Enterprises.

## **II. DISCUSSION**

### **The existence of BUMD in the National and Regional Economic System**

The existence of BUMD in the state or regional economic system is a national goal in an effort to improve the welfare of the people and is a pillar of the constitutional economy. This is based on the system of the Republic of Indonesia which adheres to a welfare state (a combination of the concepts of a rule of law and a welfare state). In the welfare state system, the main task of the government is to provide public services or seek welfare for its citizens, as stated in the goal of being a state in the Preamble of the 1945 Constitution.

The strategic role of the state through BUMD gains very strong legitimacy as emphasized in Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that:

“The branches of production which are important for the state and affect the livelihood of the people at large are controlled by the state”

Constitutionally, this was strengthened by the Constitutional Court of the Republic of Indonesia (MK RI) through Decision Number 62/PUU-XI/2013:<sup>11</sup>

Considering that based on the constitutional provisions, BUMN, BUMD, or other similar names are part of the actors in the national economic system which are structured as a joint venture based on the principle of kinship (vide Article 33 paragraph [1] of the 1945 Constitution). BUMN, BUMD, or other similar names that are at different levels and in different administrative areas manage businesses whose objects are branches of production that are important for the state and which affect the livelihoods of many people or manage businesses whose objects originate from earth and water and wealth. nature contained therein. These two kinds of objects, in accordance with the ideals of the economic system desired when forming a state, are controlled by the state and used for the greatest possible prosperity of the people (vide Article 33 paragraph [2] and paragraph [3] of the 1945 Constitution). Thus, the business of these two objects, which are the functions of BUMN, BUMD, or other similar names, is a derivation of state control over these two objects as part of state functions. That is a more technical understanding of BUMN, BUMD, or other similar names as representatives of the state.

Based on the consideration of the Ruling of the Constitutional Court of the Republic of Indonesia, the basic argument built in this research is, First, BUMD essentially has the same position, namely companies established by the regions whose shares are wholly or most of the shares belonging to the regions which are representatives of the regions originating from provisions Article 33 of the Constitution. Thus, BUMD is part of the actors in the national economic system.

Second, BUMD essentially has the same goal, namely to carry out the function of public services by carrying out a business aimed at public benefit, in the form of providing quality goods and/or services at prices that are affordable to the community based on the principles of sound corporate management; as well as pursuing profits (profit oriented) or obtaining profits and/or profits that are utilized for the development of the national and regional economy. Third, normatively, the difference between BUMN and BUMD is not principled. According to Mandala Hareva, the main difference between BUMN and BUMD is only in the scale of business activities and the range of goods and services for the community (See Article 36 paragraph (1) of the BUMN Law), or as the Constitutional Court said, only at different administrative levels and areas. .BUMD is more local in scale while BUMN is national. Fourth, because the position and function of BUMN and BUMD are essentially the same, the principles of good corporate governance

---

<sup>11</sup> Putusan MK Nomor 62/PUU-XI/2013.

regulations contained in the provisions of Law Number 19 of 2003 concerning BUMN and its implementing regulations can be applied to regulatory principles in BUMD, as long as they are not specifically regulated in Law Number 23 of 2014. Thus, the testing criteria used in this research, as long as they are not regulated in Law No.23 of 2014 and PP Number 54 of 2017, will use the principles contained in the BUMN Law and its implementing regulations.

The existence of BUMD is a necessity as the implementation of the constitutional mandate of Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia which states that the national economy is organized based on economic democracy with the principles of togetherness, efficiency-fairness, sustainability, environmental insight, independence and by maintaining a balance of progress and national economic unity.<sup>12</sup> Based on Article 33 paragraph (4) there are several concepts that need to be understood that the national economy is structured on the basis of economic democracy with the principles of:

1. Togetherness,
2. Efficiency – fairness,
3. Sustainable,
4. Environmentally sound,
5. Independence,
6. Progress balance,
7. National economic union.

The principles of economic democracy are the framework of reference in managing the national economy, including the regions to manage the regional economy, in the form of exercising regional authority to make BUMD a pillar of the regional economy. Apart from referring to the constitution, it must also refer to laws and regulations governing economic governance or in other words the financial relationship between the central government and regional governments.

### **BUMD in South Lampung Regency**

South Lampung Regency consists of 17 Districts and 256 Villages/wards, (BPS Lampung Selatan, 2019) Overall, the number of BUMDs in South Lampung Regency is 2 (two) BUMDs, namely PDAM Tirta Jasa and BUMD Lampung Selatan Maju (. Seen from the legal form, there is 1 (one) Regional Company and 1 (one) Limited Company. From the point of view of the business field, it can be distinguished into several groups, namely BUMDs engaged in general trading, agribusiness and tourism, as well as BUMDs engaged in drinking water, the profile of BUMD in South Lampung Regency, is presented in the following table:

---

<sup>12</sup> Putusan MK Nomor 62/PUU-XI/2013, dalam perkara Pengujian Undang-Undang Nomor 17 Tahun 2003 tentang Keuangan Negara dan Undang-Undang Nomor 15 Tahun 2006 tentang Badan Pemeriksa Keuangan terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, hlm. 228.

**Table 1 BUMD nomenclature in South Lampung after Law Number 23 of 2014**

No.	Area	BUMD name and abbreviation	BUMD name and abbreviation (Post 2014 Local Government Law)
1	South Lampung	BUMD South Lampung Maju	Perseroda
2	South Lampung	Regional Drinking Water Company Tirta Jasa (PDAM)	PDAM Tirta Jasa

Source: Author, 2023.

Some notes related to the data in the table are, first, every region generally has a BUMD Water Supply, including South Lampung Regency, namely PDAM Tirta Jasa. Second, the establishment of BUMD Water Supply was generally established during the enactment of the 1974 Local Government Law.

### **Juridical Implications for BUMD Arrangements After Law No. 23 of 2014 and PP No. 54 of 2017 Come into force**

#### **1. BUMD Legal Form and Nomenclature**

When compared to the provisions of the Perusda Law and Law No. 23 of 2014 there have been many shifts or differences in the arrangements related to the existence of BUMD, Law No. 23 of 2014 has clearly distinguished the legal form of BUMD as in Article 331 paragraph 3 which states that:

The legal form of BUMD is in two forms, namely the Regional Public Company (Perumda) and the Regional Public Company (Perseroda).

This then raises the question, what steps should the Regional Government choose or decide to form a BUMD Perumda or BUMD Perseroda. Referring to the BUMN Law and Government Regulation Number 45 of 2017, the distinction between State-Owned Enterprises and State Owned Enterprises depends on the purpose and nature of the business. SOE Perum business objectives are more on services for the benefit of the public (public service obligation), both services and the provision of goods and services. However, as a business entity, efforts are made to remain independent and for this Perum needs to earn profits in order to live sustainably (Article 36 of the BUMN Law), so that it can cover operational costs. Perum organizes a business that aims to benefit the public in the form of providing quality goods and services at affordable prices based on the principles of sound corporate management (Mulhadi, 2010).

According to Christine S.T Kansil, the purpose of a public company is to engage in vital services or public utilities.<sup>13</sup> According to the Big Indonesian Dictionary, vital can be interpreted as very important (people's lives) or concerning the needs of many people.<sup>14</sup> Vital means very important and its function cannot be replaced by

<sup>13</sup> Kansil, Christine S.T. 2010, *Hukum Perusahaan Indonesia (Aspek Hukum Dalam Ekonomi)*, Pradnya Paramita, Jakarta, hlm: 57-58.

<sup>14</sup> Kamus Besar Bahasa Indonesia, 2011, Kementerian Pendidikan Nasional, Jakarta.



other organs. Vital logic, if it is analogous to the concept of company law, is that this type of business is very strategic in nature and may not be handed over to the private sector because it involves the interests of the public and is monopolistic in nature.<sup>15</sup>

The specific objectives of Perum SOEs are different from the special objectives of Persero BUMN which pursue profit or (profit oriented) to increase corporate value with the nature of the business to provide high quality and highly competitive goods and/or services in both national and global markets. Thus, it can increase the profits and added value of the Persero concerned so that it will provide optimal benefits for related parties, (Explanation of Article 12 of the BUMN Law). Based on this specific purpose, BUMN Persero in its operations is subject to the provisions of the BUMN Law and Law Number 40 of 2007 concerning Limited Liability Companies.

In the provisions of Law No. 23 of 2014 Article 331 paragraph (4) only regulates in general the purpose of establishing a BUMD, namely to:

- a. provide benefits for regional economic development in general;
- b. organizing public benefits in the form of providing quality goods and/or services to fulfill the people's livelihood in accordance with the conditions, characteristics and potential of the area concerned based on good corporate governance; and
- c. earn profits and/or profits.

Observing the legal form of BUMD and the purpose of establishing BUMD in Law No. 23 of 2014, there is no clear distinction of specific objectives that distinguishes the characteristics of Perumda and Perseroda. This raises the question whether the objectives of Perumda and Perseroda should be the same or need to be differentiated. If it is necessary to differentiate, how to determine specific objectives between Perumda and Perseroda.

In the case of the establishment of a BUMD related to its objectives, it is necessary to distinguish between the specific objectives of establishing a Perumda and a Perseroda, on the basis of: First, the formation of clear regulations or clear legal formulations, regarding the objectives of establishing Perumda and the purpose of establishing a Perseroda, legislators do not need to distinguish between the two forms BUMD (Perumda and Perseroda). It is enough to use the single legal form of Regional Company as has been used or enacted in the Perusda Law. Second, in terms of substance, it is necessary to distinguish between Perumda and Perseroda, both in terms of the legal basis of establishment, company ownership and company organs. Third, prevent legal confusion in the future, where global currents are getting stronger, so clear regulations are needed.

---

<sup>15</sup> Kusumo, Dhimas Tetuko, Munawar Kholis, dan Sentot Sudarwan-to. "Kajian Yuridis Bentuk Hukum Badan Usaha Milik Daerah (BUMD) di Bidang Perbankan Pasca Berlakunya Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah". *Jurnal Privat Law*, 4, 1, 2016.

With the issuance of PP No. 54 of 2017, the general objectives and specific objectives of BUMD establishment have been distinguished. According to Article 8 paragraph and explanation states that:

The establishment of Perumda BUMD is prioritized in the context of providing public benefits in the form of providing high quality goods and/or services to fulfill the community's livelihood in accordance with the conditions, characteristics and potential of the area concerned based on good corporate governance.

What is meant by the provision of public benefits include:

- a. Pioneering business in the form of providing quality goods and/or services that are affordable to the community; and
- b. Efforts to provide drinking water services are more efficient when compared to the provision by regional apparatus. While the specific objectives of Perseroda aim (emphasis on) to cultivate profits and fully comply with the provisions of the Company Law so that it can provide benefits to the regional economy in general (Explanation of Article 12 of the BUMN Law).

The implications of the legal form of BUMD mentioned above, the naming of BUMD after the enactment of Law No. 23 of 2014 should also change. However, Law No. 23 of 2014 does not provide clear instructions on how the BUMD should be named. The new naming provisions are regulated in PP Number 54 of 2017 Article 12 paragraph (3) and Article 14 paragraph (4) which states that:

1. The name of the Regional Public Company is preceded by the words Regional Public Company or abbreviated as Perumda which is listed before the company name.
2. In the case of writing the name of a Regional Company company, it is done in full, preceded by the words Regional Company Company followed by the company name.
3. In the case of writing the name of a Regional Liability Company company in brief, the word (Perseroda) is listed after the abbreviation PT and the company name (PP 57 of 2017).

Starting from the general and specific objectives of Perumda and Perseroda as well as the naming of BUMD, the legal principles for the legal form and naming of BUMD are:

All BUMDs in the field of drinking water in the form of Perusda have maintained their existence, but the name has changed, which was preceded by the title Regional Public Company (Perumda). This is because the management of drinking water based on the Constitutional Court decision is a continuation of the right to control by the state and because water is something that really affects the lives of many people, the main priority given to the exploitation of water is BUMN or BUMD.<sup>16</sup>

---

<sup>16</sup> Putusan MK RI Nomor 62/PUU-XI/2013.

The most appropriate legal form of BUMD to manage the livelihood of many people (public service obligation) is BUMD Perumda, as referred to in Article 8 PP Number 54 of 2017.

All BUMDs in the form of Limited Liability Companies, their existence can still be maintained, but the name has changed which is preceded by the title "Regional Company (Perseroda)."

Unlike the legal form of BUMD, in terms of naming, all existing BUMD are not in accordance with the 2014 Regional Government Law. Assuming that their existence is maintained, the naming of BUMD is shown in the following table:

**Table 2 Changes in BUMD Nomenclature in South Lampung**

No.	Area	BUMD name and abbreviation	BUMD name and abbreviation (Post 2014 Local Government Law)
1	South Lampung	BUMD South Lampung Maju	Perseroda South Lampung Forward
2	South Lampung	Regional Drinking Water Company Tirta Jasa (PDAM)	PDAM Tirta Jasa

Source: Regional Government of South Lampung Regency, 2021.

## 2. Juridical Aspects of Regional Equity Participation and BUMD Ownership

Law Number 5 of 1962 concerning Perusda does not regulate the legal basis (legal form) used in equity participation in BUMD. Likewise, the Regional Government Law that was once in effect did not regulate the legal basis (legal form) used in equity participation in BUMD. Unlike the Perusda Law and the Regional Government Law which were in effect, Law No. 23 of 2014 Article 331 paragraph 1 states that:

Article 333 paragraph 2 stipulates that:

Regional Equity Participation (PMD), both in the framework of establishing and adding capital to BUMD, must be stipulated in a regional regulation.

However, Law Number 23 of 2014 does not explain what the definition of PMD is. In Article 1 number 7 PP Number 44 of 2005 concerning Procedures for State Capital Participation in SOEs and Limited Liability Companies it is stated that:

State Equity Participation is the separation of state assets from the State Expenditure Budget and Revenue or the determination of company reserves or other sources to be used as capital for BUMN and/or other Limited Liability Companies, and managed in a corporate manner.

Almost the same provisions are contained in Article 1 number 4 PP Number 27 of 2014 concerning Management of BMN/BMD, which states that:

Central/Regional Government Equity Participation is the transfer of ownership of State/Regional Property which was originally not segregated

wealth into segregated wealth to be counted as state or regional capital/shares in state-owned enterprises, regionally-owned enterprises, or other legal entities that state owned.

Based on the above understanding, PMD is actually a transfer of ownership in the form of money or regional property which was originally a wealth that was not separated into separated wealth to be accounted for as state/regional capital/shares in BUMN or BUMD or other legal entities owned by the state. /area.

Based on this conception, the legal principles for PMD for BUMD are:

1. PMD to BUMD must be stipulated in a regional regulation. This PMD can be in the form of money or regional property (Article 21 paragraph 1 (3) PP Number 54 of 2017).
2. The regional regulation on the establishment or regional regulation on changes to the legal form of a BUMD must include the amount of PMD (Article 331 paragraph (1) and Article 332 paragraph (2) of Law Number 23 of 2014). Thus, if the BUMD does not include the amount of PMD, then the regional regulation is not in accordance with the 2014 Regional Government Law.
3. PMD to BUMD can be added, subtracted, sold to other parties, and/or transferred to BUMN and/or BUMD (Article 304 paragraph 2 of Law Number 23 of 2014).
4. For BUMD Perumda, all capital (100%) must be owned by one region and not divided into shares. In the event that Perumda will be owned by more than one region, Perumda must change the legal form to become a Perseroda (Article 334 of Law Number 23 of 2014).
5. For BUMD Perseroda, the capital is divided into shares which must be entirely or at least 51% owned by one region (Article 339 of Law Number 23 of 2014).

There is a difference in terms of the inclusion of capital related to the establishment of BUMD which is regulated in Law No. 23 of 2014 with the provisions of Article 11 paragraph (1) PP Number 54 of 2017 confirms that:

In the regional regulation on the establishment of BUMD Perumda must include the amount of authorized capital and paid-up capital.

Article 22 paragraph 3) states that:

The paid-up capital must be met no later than two years after its establishment.

The question is why for BUMD Perumda the terms authorized capital and paid-up capital are used. The mention of authorized capital and paid-up capital is not in accordance with Law Number 23 of 2014 and applicable practices. First, authorized capital and paid-up capital are the terms used in companies in the form of PT (BUMD Perseroda). According to Sentosa Sembiring, what is meant by authorized capital is the capital mentioned in the Articles of Association of PT. Article 1 of the Company Law states that:

The company's authorized capital consists of the entire share value.

Furthermore, Article 32 of the Company Law states that:

The authorized capital of the company is at least Rp. 50,000,000 (fifty million rupiah).

Meanwhile, what is meant by paid-up capital is capital that is already in the company's treasury. This capital is paid up by the shareholders. All shares that have been issued must be paid in full at the time of legalization of the company with valid proof of deposit.<sup>17</sup> Second, in practice, regional governments have never used the designation of authorized capital or paid-up capital in the regional regulations for the establishment of BUMD Perumda or in the regional regulations for the addition of PMD to Perumda. The term used is only Regional Equity Participation.

Then it can also be studied the implications of the enactment of the 2014 Regional Government Law when it is associated with the PMD principle and BUMD ownership in the Regional Government of South Lampung Regency. Based on data analysis, there is a discrepancy with the principles of the 2014 Regional Government Law, namely: first, the Regional Regulation on the Establishment of BUMD does not include the amount of regional capital investment (Perda on Water Supply Companies in South Lampung, (South Lampung Regional Regulation No. 2 of 1987 concerning South Lampung Level II Regional Company), Second, the legal basis for increasing equity participation is not stipulated by regional regulations but by a District Head Decree). Third, Perumda BUMD capital is in the form of BUMD shares). Fourth, Perusda BUMD capital can be owned by Parties (2 BUMDs). Fifth, the amount of capital participation included by regional governments into BUMDs is very small or irrational (4 BUMDs)

### **3. BUMD Organ According to Law Number 23 of 2014**

The composition of BUMD organs has been regulated in the provisions of Law No. 23 of 2014 Article 335 paragraph 1, Article 340 paragraph 1, Article 343 paragraph 1 letter j which stipulates new principles in BUMD organs, namely that there is a requirement for BUMD to contain the completeness of the main organs and organs supporters. For the main organs of BUMD Perumda, the composition consists of (a) the regional head who represents the regional government in the ownership of regional assets separated from Perumda (KPM); (b) directors; and (c) supervisory board. For BUMD Perseroda, the composition consists of (a) GMS; (b) directors; and (c) the board of commissioners.<sup>18</sup>

Meanwhile, the supporting organs that must exist in BUMD according to Article 79-87 PP Number 54 of 2017 are:

- a. Internal Supervisory Unit (SPI) as a support for the directors who are responsible to the President Director;
- b. Audit Committee (KA) as a support for Dewas/Deris; And
- c. other committees.

---

<sup>17</sup> Sembiring, Sentosa, 2012, *Hukum Perusahaan tentang Perseroan Terbatas*, Nuansa Aulia, cetakan ketiga Jakarta,, hlm: 12-13.

<sup>18</sup> Peraturan Daerah Lampung Selatan No.1 Tahun 2016 Tentang Peyeraan modal.

How is the implementation of Law No. 23 of 2014 and Government Regulation Number 54 of 2017 when connected to the principle of the necessity of having main and supporting organs in BUMD in South Lampung Regency. Based on data analysis, there are discrepancies, namely first, the arrangement of the main organs of BUMD: (a) has not included KDH as KPM in BUMD Perumda (1 BUMD); (b) still using the term Supervisory Body which was removed by the 2014 Regional Government Law (1 BUMD); (c) there are still regional regulations that have not included the composition of BUMD Perseroda organs (1 BUMD). Second, the BUMD regional regulations studied (100%) do not yet have supporting organs in the form of SPI and KA.

### **Term of Office of Directors and Dewas/Deris according to Law Number 23 of 2014**

Law No. 23 of 2014 does not regulate the term of office for the Board of Directors and the term of office for the Dewas/Deris. The term of office will be further regulated by PP. This is different from the Perusda Law, which stipulates the term of office of the Board of Directors is 4 (four) years. However, the Perusda Law does not stipulate the tenure of Dewas/Deris. Various laws and regulations issued as a follow-up to the Perusda Law stipulate that the term of office of the Dewas/Deris is 3 (three) years (Article 20 paragraph (3) of Kepmendagri Number 50/1999 concerning BUMD Management).

Before PP Number 54 of 2017 was passed, central government policies in the context of implementing Law No. 23 of 2014 determined that the term of office for directors was set at 5 (five years) and could be reappointed for one more term (Central Government Policy, in the Decree of the Minister of Home Affairs Number.188.34 .9083 of 2016 concerning Cancellation of Article 15 paragraph (1) East Java Provincial Regulation Number 14/2012 concerning BUMD). This policy is then confirmed in Article 61 PP Number 54 of 2017 which states that:

- Members of the Board of Directors are appointed for a maximum term of 5 (five) years and can be reappointed for 1 (one) term of office unless:
- a. determined otherwise in accordance with the provisions of the legislation; and
  - b. in the event that members of the Board of Directors have special skills and/or excellent achievements, they may be appointed for a third term of office.

However, unlike the term of office for the Board of Directors, the term of office for the Supervisory Board/Board of Commissioners is set at four years and can be reappointed for one term (Article 48 paragraph (4) and Article 57 paragraph (4) of the BUMN Law). The terms of office for the Board of Directors or Dewas/Deris must be stipulated in a regional regulation. What are the implications of the enactment of Law No. 23 of 2014 and Government Regulation Number 54 of 2017 when it is related to the regulation of the term of office of Directors and Dewas/Deris of BUMD in South Lampung Regency. Based on data analysis, there is a conflict with Law No. 23 of 2014 and Central Government policies, namely, first,

the term of office of the Board of Directors is not set for five years but four years (BUMD) South Lampung Regional Regulation No. 44/2000).

### **The Potential of DPRD Interference in BUMD Operations**

There are implications for the enactment of the 2014 Regional Government Law and central government policies when connected with the prohibition of DPRD interference in BUMD operations in South Lampung Regency. There is a potential conflict with Law No. 23 of 2014 and central government policies, namely in the first case, the regulation of the election, appointment and dismissal of Directors and Dewas/Deris. Second, setting the salary/benefits for Directors and Dewas/Deris as well as employees. Third, cooperative arrangements for the use of BUMD assets and approval of equity participation.

### **III. CONCLUSION**

Based on the discussion in the previous section, this article concludes, first, the juridical implications of BUMD regulation after the enactment of Law No. 23 of 2014 includes the legal form and the name of BUMD; BUMD establishment requirements and business feasibility; regional capital participation and capital ownership in BUMD; BUMD organs; tenure of the Board of Directors and Dewas/Deris; and DPRD interference in BUMD operations. Second, the Regional Government of South Lampung has not followed up on the mandate of Law No. 23 of 2014 Article 402 paragraph (1) to adjust BUMD regulations in accordance with the regulatory principles in the 2014 Regional Government Law, especially for BUMD PDAM Tirta Jasa. Based on an analysis of the local regulations that were the object of study, most of the BUMD regional regulations were not in accordance with and/or contradictory to Law No. 23 of 2014 and Central Government policies in terms of: the legal form and naming of BUMD; BUMD establishment requirements and business feasibility; regional capital participation and capital ownership in BUMD; BUMD organs; tenure of the Board of Directors and Dewas/Deris; and DPRD interference in BUMD operations.

### **REFERENCES**

- Afandi, Arif. 2015, "Pengelolaan BUMD Harus Profesional". *Majalah Kabupaten Report*, 5, 1.
- Bako, Ronny Sautma Hotma. 2010, "Permasalahan Hukum atas Bentuk Badan Hukum pada Badan Usaha Milik Daerah". *Jurnal Kajian*, 15, 4.
- Hareva, Mandala, 2010, Pengelolaan BUMD/Perusahaan Daerah di Provinsi Sumatera Barat, Nusa Tenggara Barat, dan Kalimantan Selatan". *Jurnal Kajian*, 11, 3.
- Jimly Asshidiqie, 2010, *Konstitusi Ekonomi*, Jakarta, Penerbit Buku Kompas.
- Kamaludin, Rustian, 2001, Peran dan Pemberdayaan BUMD dalam Rangka Peningkatan Ekonomi Daerah. *Majalah Perencanaan Pembangunan*,.

- Kansil, Christine S.T. 2010, *Hukum Perusahaan Indonesia (Aspek Hukum Dalam Ekonomi)*. Jakarta: Pradnya Paramita.
- Kementerian Dalam Negeri Republik Indonesia, Daftar Perda/Perkada dan Peraturan Menteri Dalam Negeri yang Dibatalkan/Direvisi, <http://www.kemendagri.go.id> 2016 /06/21/b/a/batal\_perda21\_juni\_2016.pdf. Diakses 20 Maret 2021.
- Khopiatuziadah, 2014, Landasan Hukum Pengelolaan Badan Usaha Milik Daerah: Antara Ada dan Tiada". *Jurnal Legislasi Indonesia*, 11, 3.
- Kusumo, Dhimas Tetuko, Munawar Kholis, dan Sentot Sudarwanto. 2016, Kajian Yuridis Bentuk Hukum Badan Usaha Milik Daerah (BUMD) di Bidang Perbankan Pasca Berlakunya Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah". *Jurnal Privat Law*, 4, 1.
- Moenek, Reydonnyzar. "Problematika, Peluang, Tantangan dan Strategi Pengelolaan BUMD, BLUD dan BMD" dari <http://keuda.kemendagri.go.id>. Diakses Diakses 20 Maret 2021.
- Mulhadi., 2010, *Hukum Perusahaan, Bentuk-Bentuk Badan Usaha di Indonesia*. Bogor: Ghalia Indonesia.
- Resen, Made Gde Subha Karma, 2014, Implikasi Yuridis diundangkannya Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah terhadap Pengaturan Badan Usaha Milik Daerah di Indonesia, *Jurnal Yustisia*, 3, 3.
- Sembiring, Sentosa. 2012, *Hukum Perusahaan tentang Perseroan Terbatas*. Jakarta: Nuansa Aulia.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah
- Peraturan Pemerintah Nomor 18 Tahun 2018 tentang Perangkat Daerah
- Peraturan Pemerintah Nomor 54 Tahun 2017 tentang Badan Usaha Milik Daerah
- Peraturan Menteri Dalam Negeri Nomor 90 Tahun 2019 tentang Klasifikasi, Kodefikiasi, dan Nomenklatur Perencanaan Pembangunan dan Keuangan Daerah.
- Peraturan Daerah Lampung Selatan Nomor 44 Tahun 2000 tentang Perusahaan Daerah Air Minum Tirta Jasa Lampung Selatan.
- Peraturan Daerah Lampung Selatan Nomor 1 Tahun 2004 tentang Penyertaan Modal Pemerintah Daerah Kabupaten Lampung Selatan pada PT. Bank Lampung dan PDAM Tirta Jasa
- Peraturan Daerah Lampung Selatan Nomor 5 Tahun 2016 tentang Perubahan Pertama atas Peraturan Daerah Lampung Selatan Nomor 1 Tahun 2004 Tentang Penyertaan Modal Pemerintah Daerah Kabupaten Lampung Selatan pada PT. Bank Lampung dan PDAM Tirta Jasa



Keputusan Menteri Dalam Negeri Republik Indonesia Nomor 188.34.9083 Tahun 2016 tentang Pembatalan Pasal 15 ayat (1) Perda Provinsi Jawa Timur Nomor 14/2012 tentang BUMD.

Putusan Mahkamah Konstitusi Republik Indonesia Nomor 62/ PUU-XI/2013