

# THE AUTHORITY OF THE SUPERVISORY BOARD GIVES WARNING TO THE BOARD OF DIRECTORS OF PERUMDA PADANG SEJAHTERA MANDIRI

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**Abstract:** Agency for managing business by regional governments (BUMD) are businesses owned by the regional government as one of governmental revenues from regional sources (PAD). Characteristics and classification of BUMD as a business entity according to the regulation of Article 331 paragraph (3) of Law No. 23 of 2014 concerning Regional Government divides BUMD into two forms, namely the form of a Regional Public Corporation (Perumda) and form of a Regional Corporation Company (Perseroda). Padang City also has a BUMD in the form of PERUMDA, which was established with the Regulation of Padang City Number 10 of 2014 concerning the Padang Sejahtera Mandiri Regional Public Company. The management of PERUMDA Padang Sejahtera Mandiri is carried out by a structure consist of the Capital Investment Authority (KPM), the Board of Directors, and the Board of Supervisor. In October 2018 the Board of Directors received a warning letter from the Board of Supervisor. The authority to issue warning by the supervisory board is contained in Article 30 letter d of Perda No. 10 of 2014 concerning the Perumda PSM which states that the Supervisory Board has the authority to give a warning to Directors who do not carry out their duties in accordance with the work program that has been set. But this is not contained in the higher statutory regulations governing BUMD such as Law No. 23 of 2014 concerning Regional Government and Government Regulation Number 54 of 2017 concerning BUMD.

**Key Words:** BUMD, PERUMDA, Organ.

## 1. INTRODUCTION:

BUMD or formerly known as regional companies in Indonesia began to exist in the days of the Dutch East Indies (Nederlandsch-Indie) with the emergence of Provinciale-bedrijven, Gemeetebedrijven regulated according to the regulations of ICW (Indische Compabiliteit) and IBW (Indische Bedrijvenwet). [1] There are two aspects related to BUMD as a business entity established under the laws and regulations. First, relating to aspects of legality (legality entity). Second, as a business entity. The characteristics of BUMD in general have social and commercial characteristics which are strengthened by the opinion of M. Natzir Said who stated that BUMD on one hand is commercial (Commercial Corporation) and on the other hand is social (Corporation Service). Thus, this dualistic characteristics need to be reviewed in the form of BUMD in accordance with its line of business. [2]

Regulations of Law No. 23 of 2014 concerning Regional Government which divides BUMD into two types namely Regional Public Corporation and Regional Government Corporation have emphasized the role, function and existence of BUMD and to facilitate the management of BUMD. BUMD management is inseparable from problems, one of them is the legal standard and propriety between laws and regulations governing BUMD is also a separate problem. Functional and consistent relationships that are in harmony (in line and harmonious) between laws and regulations governing BUMD management affect the effectiveness of the application of laws and regulations (norms). Hans Kelsen with his validity theory says that a norm (law) is considered valid if accepted in full effective order. Effectiveness is a condition of validity. A norm is said to be valid not because the norm is effective; but if the order that surrounds the norm is entirely effective. [3]

Discrepancies or overlaps between one law related to the management of BUMD cannot be conducted judicial review. The Constitutional Court stated that laws cannot be tested with other laws because of their equal position. The law which is used as a basis for testing can turn into an object of testing.

## 2. CONCEPTUAL FRAMEWORK:

- Authority

According to the Indonesian dictionary (KBBI) Authority is the power to make decisions to govern and

delegate responsibilities to others. Authority comes from attribution, delegation and mandate. In the organizational function, a boss base on his position has the right or authority to carry out or give orders to his subordinates to carry out his authority.

- Agency for managing Business by Regional Governments  
Agency for managing Business by Regional Governments (BUMD) are businesses owned by the regional government as governmental revenues from regional sources (PAD). BUMD can be in the form of Regional Public Company (Perumda) and Regional Business Company (Pereroda). These two forms of BUMD differ only in capital ownership. Perumda is a BUMD in which the entire capital is owned by one region and not in the form of shares, while Perseroda is a BUMD where the capital is divided into shares whicj owned by several regions.
- PERUMDA Organ  
Perumda management is carried out by KPM, the Board of Supervisor, and the Board of Directors. KPM is the highest organ in a regional public company and holds all authority that is not left to the Directors or Supervisory Board. Article 1 number 16 Government Regulation Number 54 Year 2017 concerning Agency for managing Business by Regional Governments (BUMD) states that the Board of Supervisor is an organ of a regional public corporation whose duty is to supervise and provide advice to the Directors in carrying out the management activities of the regional public companies. [4] Article 1 number 18 Government Regulation Number 54 Year 2017 concerning Regionally Owned Enterprises states that the Board of Directors is a BUMD organ responsible for the management of BUMD for the interests and purposes of BUMD and represents BUMD both inside and outside the court in accordance with the regulations of the articles of association . [5]

### 3. THEORITICAL FRAMEWORK:

- Organ Theory  
This theory was put forward by Otto von Gierke. According to this theory the legal entity is like a human being, becoming a truly incarnation in the association of law that is 'eine Leiblichgeistige Lebenseinheit'. The legal entity becomes a "verbandpersoblich keit" which is a body that forms its will by means of the organs or organs of the body. Thus according to the theory of legal entity organ is not an abstract thing, but actually exists. A legal entity is not an objectless property, but a legal entity is a real organism, which lives and works like an ordinary human. [6]
- Theory of Authority  
H.D.Stout said that, authority is an understanding derived from the law of government organizations, which can be explained as a whole of rules relating to the acquisition and applying of government authority by public law subjects in public law relations. [7] Without legal authority, an official or state administrative body cannot carry out a government action. Legitimate authority is an attribute of every official or entity.

### 4. LITERATURE REVIEW:

Agency for managing Business by Regional Governments (BUMD) are businesses owned by the regional government as governmental revenues from regional sources (PAD). The legal standard governing BUMD can be seen in Law Number 23 of 2014 concerning Regional Government also regulates BUMD. In Law Number 23 of 2014 concerning Regional Government this is regulated regarding the form, objectives of establishment, sources of capital, and management of BUMD. In 2017, a more complete regulation was established concerning BUMD, namely Government Regulation Number 54 of 2017 Regarding Regional-Owned Enterprises.

Government Regulation Number 54 Year 2017 Concerning Regional Government-Owned Enterprises regulates BUMD policies, BUMD establishment, BUMD capital, BUMD organs and employees, supervisory units, audit committees, planning, operations, reporting, use of profits, subsidiaries, government assignments to BUMDs , evaluation, merger, consolidation, dissolution, bankruptcy of BUMD, and guidance and supervision of BUMD. The latest regulation related to BUMD is Permendagri Number 37 of 2018 concerning Appointment and Dismissal of Members of the Supervisory Board or Commissioners and Members of the Board of Directors of Regionally Owned Enterprises and Regulation of the Minister of Home Affairs Number 118 of 2018 Regarding Business Plans, Work Plans and Budgets, Cooperation, Reporting and Evaluation Regional owned enterprises. Regions can establish BUMDs that are determined through local regulations. Establishment of BUMD is based on regional needs and the feasibility of BUMD business fields to be formed. Establishment of BUMD based on regional needs is examined through studies that

cover aspects of public services and community needs. Whereas based on Article 9 Government Regulation Number 54 Year 2017 regarding Regionally Owned Enterprises states that the establishment of BUMDs based on the feasibility of the business field is examined through analysis of economic feasibility, market analysis and marketing, financial feasibility analysis, legislation, availability of technology, availability of resources human power. [8]

Article 7 Government Regulation Number 54 Year 2017 concerning Regionally Owned Enterprises states that the establishment of BUMD aims to:

- a. Providing benefits for regional economic development;
- b. Carrying out public benefits in the form of providing quality goods and or services for the fulfillment of the livelihoods of the people according to the conditions, characteristics and potential of the area concerned based on good corporate governance; and
- c. Earn profits and / or benefit. [9]

## 5. METHOD:

This research uses normative legal research. Normative legal research is library law research. [10] In this normative study, the approaches used are:

- 1) Statutory Approach, is carried out by examining the statutory regulations from the highest to the lowest norm
- 2) Case Approach, is carried out by examining cases related to the legal issues at hand. The cases examined are cases that have obtained a court decision of permanent legal force.
- 3) Conceptual Approach, this approach moves from the views and doctrines that develop in the science of law.

## 6. DISCUSSION:

Perumda management is carried out by KPM, the Board of Directors and the Board of Supervisor. Each Perumda organ has duties and authorities that are regulated in the statutory regulations and Perumda Statutes. Perumda Organizations have different positions within the corporate governance structure. KPM is the highest authority in Perumda and holds all authority that is not left to the Directors or Supervisory Board. KPM in managing the company is assisted by the Supervisory Board and Directors.

The Board of Directors is the BUMD organ responsible for the management of the BUMD for the interests and purposes of the BUMD and represents the BUMD both inside and outside the court in accordance with the regulations of the articles of association. Directors are appointed for a maximum term of 5 (five) years and can be reappointed for 1 (one) term of office. The Directors are also responsible for BUMD planning, operations and reporting. BUMD planning consists of making business plans, work plans and BUMD budgets. BUMD operations consist of standard operating procedures prepared by the Directors, good corporate governance, procurement of goods and services, cooperation, and loans. After planning and operating, the Board of Directors is also required to make a report consisting of annual reports, quarterly reports and monthly reports.

The supervisory board is an organ of a regional general corporation whose task is to supervise and advise the Board of Directors in carrying out the management activities of the regional general companies. The Supervisory Board is appointed by KPM after going through a selection that at least covers the stages of due diligence and propriety conducted by a team or professional institution. Prospective members of the Supervisory Board must sign a performance contract before being appointed as a member of the Supervisory Board. Article 27 Regulation of the Minister of Home Affairs Number 37 of 2018 concerning Appointment and Dismissal of Members of the Supervisory Board or Members of the Board of Commissioners and Members of the Board of Directors of Regional Government Enterprises stipulating that the Supervisory Board members be appointed for a maximum term of 4 (four) four years and can be reappointed for 1 (one) term of office. [11] Article 43 Government Regulation Number 54 Year 2017 concerning Regional Government Enterprises states that the Supervisory Board has the following duties:

1. Supervising Regional Public Companies; and
2. Oversee and advise the Directors in running the management of regional public companies.

The BUMD Supervisory Board in carrying out its duties is required to make a report. The Board of Supervisor report consists of quarterly reports and annual reports submitted and approved by KPM. Article 27 paragraph 2 of the Regulation of the Minister of Home Affairs Number 118 of 2018 concerning Business Plans, Work Plans and budgets, Cooperation, Reporting and Evaluation of Regionally Owned Enterprises states that the Dewas Supervisory Report shall at least contain:

- a. Implementation of the Business Plan and RKA BUMD;
- b. Factors affecting the performance of BUMD;
- c. Efforts to improve the performance of BUMD.

Article 30 of the Padang City Regional Regulation Number 10 of 2014 concerning the Padang Sejahtera Mandiri Regional Public Company stipulates that the Supervisory Board in carrying out its duties shall be authorized:

- a. Assessing the performance of Directors in managing Regional Public Companies;
- b. Assessing Quarterly Reports and Annual reports submitted by Directors to get Mayor's endorsement;
- c. Requesting information from the Board of Directors regarding the management and development of regional public companies; and
- d. Give warnings to Directors who do not carry out their duties in accordance with established work programs.

Article 30 letter d of the Padang City Regional Regulation Number 10 of 2014 concerning the Independent General Prosperous Padang Regional Company in October 2018 the Supervisory Board gave a warning letter to the President Director of Perumda. If seen from Article 7 paragraph (1) of Law 12 of 2011 concerning the Formation of Legislation which states that the type and hierarchy of legislation consists of:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Laws / Government Regulations in lieu of laws;
- d. Government regulations;
- e. Presidential decree
- f. Provincial Regional Regulations; and
- g. Regency / City Regulations.

Based on the hierarchy of the applicable laws and regulations, the Padang City Regulation Number 10 of 2014 concerning the Padang Sejahtera Mandiri Regional Public Company follows the rules in Government Regulation Number 54 of 2017 concerning Regional Government Enterprises in the management of Regional Public Enterprises, this is also in accordance with the principle of legal interpretation namely *lex superior derogat legi inferior* which states that high law overrides low law.

## 7. ANALYSIS:

The Supervisory Board authority granted by the Padang City Regulation Number 10 of 2014 concerning the Padang Sejahtera Mandiri Perumda cannot be found in the higher statutory regulations governing Regional Public Enterprises, namely Law Number 23 of 2014 concerning Regional Government and Government Regulations number 54 of 2017 concerning Regional Government Enterprises. This has led to the problems described above.

The rules regarding the Supervisory Board are regulated in Chapter V about BUMD Organs and Employees paragraph 4. In paragraph 4 it regulates the terms and appointments, the selection process, the number of members, duties, obligations, termination, prohibition, income, and decision making. There is no authority to give a warning to the Directors therein. Although there are no rules regarding the authority of the Supervisory Board to warn the Directors, article 140 states that all implementing regulations relating to BUMD are declared to remain valid as long as they have not been replaced and do not contradict with the provisions in this Government Regulation. Based on this article, it can be concluded that the Decree of the Minister of Interior Number 50 of 1999 concerning Agency for managing business by regional governments is still valid as long as it has not been replaced and does not contradict with the provisions in Government Regulation Number 54 of 2017 concerning Agency for managing business by regional company.

Not all of the rules contained in Decree of the Minister of Interior Number 50 of 1999 concerning Agency for managing business by regional governments are still valid, especially regarding the Supervisory Board. There are provisions regarding the Supervisory Board in the Decree of the Minister of Interior Number 50 of 1999 concerning Agency for managing business by regional governments that contradict to the provisions of Government Regulation Number 54 of 2017 concerning Regionally Owned Enterprises such as name, term of office and number of members.

Regional Regulation No. 10 of 2014 concerning Perumda Padang Sejahtera Mandiri which is the articles of association of Perumda Padang Sejahtera Mandiri also gives this authority to the Supervisory Board. Article 16 Government Regulation Number 54 Year 2017 concerning Agency for managing business by regional company stipulates that the articles of association of a regional general corporation are regulated and constitute part of a Regional Regulation. It means, the articles of association of the company can regulate provisions that are not regulated yet in the higher laws and regulations as long as they do not contradict with these higher regulations.

The authority possessed by the Supervisory Board although it is not regulated in the higher statutory regulations that also supported by the theory of authority. In the theory of authority there are three categories of sources of authority that originate. One of the categories is known as attributive authority. This attributive authority is usually outlined or derived from the distribution of power by statutory regulations. In carrying out this attributive authority the

implementation is carried out by the official or agency stated in the basic regulation. This is what happens in the authority to issue a warning from the Supervisory Board to the Board of Directors of the Perumda Padang Sejahtera Mandiri.

#### 8. CONCLUSION:

Based on the description above it can be concluded that although the rules regarding the authority of the Supervisory Board are not regulated in higher rules, namely Law Number 23 of 2014 concerning Regional Government and the implementing regulations in the form of Government Regulation number 54 of 2017 concerning Regionally Owned Enterprises and can only be found in its basic rules, namely Padang City Regulation Number 10 of 2014 concerning the General Company of the Padang Sejahtera Mandiri, based on that, the Supervisory Board can give a warning to the Directors having a legal basis. This is also strengthened by the theory of attributive authority which states that authority can be sourced from the basic rules.

#### 9. SUGGESTIONS:

The suggestions given by researchers are as follows:

The related parties that have duty to educate BUMD in this case are the Minister, Ministries / Institutions, Regional Governments in order to internalize and synchronize the perception of the rules related to the duties and authority of organs in corporate governance so that there is no difference in interpretation that will cause problems that interfere with the company operation.

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