

Legal Analysis of the Legal Responsibility of Regional Governments in the Management of Regional-Owned Enterprises (BUMD)

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Abstract

Regional-Owned Enterprises (*Badan Usaha Milik Daerah*, BUMD) are business entities owned by regional governments and intended to serve as a source of locally generated revenue. In practice, however, many BUMD contribute little to regional revenue and receive more capital injections from the regional government than the profits they return. This article examines two problems: first, the legal responsibility of regional governments in managing BUMD; and second, the implications of the legal form of BUMD for their management. It uses normative juridical research with a statute approach and a conceptual approach, and analyses primary, secondary and tertiary legal materials through descriptive, evaluative, interpretative and argumentative techniques. The analysis shows that the legal responsibility of the regional government is that of a capital owner, supervisor and guide, exercised through the regional head who represents separated regional wealth. The regional government sets policy direction, provides guidance, and accounts for management to the Regional House of Representatives (DPRD), as regulated in Government Regulation No. 54 of 2017. The legal form matters. In a Perumda, management is burdened by the dual mandate of prioritising public benefit while also earning profit, and by the extensive authority of the regional head as capital owner. A Perseroda is profit-oriented and therefore depends on competent directors and commissioners, whose recruitment must follow the applicable laws and regulations.

Keywords: legal liability; regional government; regional-owned enterprises (BUMD); Perumda; Perseroda; good corporate governance

INTRODUCTION

Indonesia is a unitary state whose territory is divided into provinces, regencies and municipalities, each of which has a regional government regulated by law (Article 18(1) of the 1945 Constitution). Regional governments exercise the widest possible autonomy, except for governmental affairs that the law reserves to the central government (Article 18(5)). Law No. 23 of 2014 on Regional Government (Law 23/2014) defines regional autonomy as the right, authority and obligation of an autonomous region to regulate and manage its own governmental affairs and local interests within the unitary state (Article 1(6)). Autonomy of this kind is meaningful only when it is backed by adequate financial resources, and for that reason regions have established business entities of their own as one source of regional revenue (Pradhana, 2019; Cahyaningrum, 2018).

Article 285(1) of Law 23/2014 lists the sources of regional revenue: locally generated revenue, which includes regional taxes, regional levies, proceeds from the management of separated regional wealth and other legitimate PAD; transfer revenue; and other legitimate regional revenue. Regional-

Owned Enterprises (BUMD), defined in Article 1(40) as business entities whose capital is wholly or mostly owned by the region, are therefore expected to contribute to PAD. In practice, however, BUMD have not made a significant contribution, and they often receive more capital injections from the regional government than the profits they return (Maryanto & Djuwityastuti, 2014). BUMD finances have also been entangled in corruption cases involving regional heads (Agustina, 2020), which is why the management of BUMD needs to be optimised so that they become a reliable economic force (Lubis, 2018).

The legal framework has changed considerably. Law No. 5 of 1962 on Regional Companies, formerly the legal basis of BUMD, ceased to apply once Law 23/2014 regulated the matter, and Government Regulation No. 54 of 2017 on BUMD (PP 54/2017) followed as its implementing regulation (Resen & Muryanto, 2014). Article 331(3) of Law 23/2014 recognises two forms, the regional public company and the regional limited liability company, yet the regulations leave several matters unclear, including the purposes of these forms after a change of legal form. A further difficulty concerns the status of separated regional wealth. Sutedi (2012) argues that the imperfection of state finance law after the constitutional amendments has set aside the independence of legal entities and regional autonomy, and that Law No. 17 of 2003 on State Finance pays little attention to the position and public financial function of separate legal entities.

Against this background, the regional head holds the power of regional financial management and represents the regional government in owning separated regional wealth. That power is exercised through policies on capital participation, subsidies, assignments, the use of proceeds from separated regional wealth, and guidance and supervision of capital participation in BUMD. Two questions follow. First, what is the legal responsibility of regional governments in managing BUMD? Second, what are the implications of the legal form of BUMD for their management? This article answers both through normative legal analysis. It contributes to the study of regional government law by placing the responsibilities of the regional head, the supervisory organs and the board of directors within one analytical frame, and it offers practical guidance for preventing legal problems in BUMD governance.

LITERATURE REVIEW

Regional government, authority and decentralisation

Under Article 1(2) of Law 23/2014, regional government is the administration of governmental affairs by the regional government and the Regional House of Representatives (DPRD) according to the principle of the widest autonomy within the unitary state. Article 1(3) defines the regional government as the regional head, as an element of regional administration, who leads the exercise of affairs under the authority of the autonomous region. As a sub-system of national government, a region

has authority to regulate and manage its own household. Setya Retnami (2001) identifies three elements of that authority: the assignment of tasks and powers already transferred to the region; the trust to take initiative and decide how those tasks are completed; and the involvement of the community, directly or through the DPRD. Sarundajang (2013) adds that regional government exists in two forms: local self-government, which handles autonomous affairs and co-administration tasks, and local state government, which is administrative and staffed by officials appointed by the central government.

In a state governed by law, the principle of legality is the cornerstone of governance, so governmental authority (*bestuursbevoegdheid*) originates from legislation (Ridwan HR, 2011), and it is obtained through attribution, delegation or mandate. Authority has at least three components, namely influence, legal basis and legal conformity (Hadjon, 2008). Following Bagir Manan, authority differs from power: power describes only the right to act or not to act, whereas authority means both a right and an obligation (Nurmayani, 2009). Authority is granted to regions through decentralisation, understood as the establishment of autonomous regions and/or the transfer of certain powers to them (Hoessein, 2013). Rondinelli, cited in Mugabi (2004), describes decentralisation as the assignment, transfer or delegation of political, administrative and fiscal responsibility to lower levels of government. Regional autonomy can accordingly be viewed as administrative decentralisation, a transfer of authority, or as political decentralisation, a devolution of power (Situmorang & Sitanggang, 2004).

Regional-Owned Enterprises (BUMD)

BUMD were formerly known as regional companies under Law 5/1962. Under Law 23/2014 and PP 54/2017, a BUMD is a business entity whose capital is wholly or mostly owned by the region. Article 177 of Law 23/2014 allows a regional government to own BUMD whose establishment, merger, divestment and dissolution are determined by regional regulation. The purposes of BUMD are to benefit regional economic development in general; to provide public benefit through quality goods and services that meet local needs, based on good corporate governance; and to earn profit. BUMD thus play a dual role as service providers and as profit-seeking units expected to return dividends (Halim, 2017), and they are both profit-oriented and social-benefit-oriented (Santosa, 2011). Their capital may come from regional capital participation (from the regional budget, APBD, and/or conversion of loans), loans, grants and other sources such as capitalisation of reserves, asset revaluation gains and share agio (Article 332 of Law 23/2014; Article 19(1) of PP 54/2017).

Two legal forms exist. A Perumda is a BUMD whose capital is wholly owned by one region and is not divided into shares. A Perseroda is a limited liability company whose capital is divided into

shares, of which at least 51% are held by one region (Articles 334 and 339 of Law 23/2014; Article 5 of PP 54/2017). Both are legal entities, treated as legal persons with rights and obligations, their own wealth and the capacity to perform legal acts (Asikin & Suhartana, 2016; Muhammad, 2010).

Theoretical framework

Three legal theories frame the analysis. The first is the theory of the state based on law. Article 1(3) of the 1945 Constitution declares Indonesia a state of law, meaning that all powers and acts of state organs rest on law. Following Burkens, a *rechtsstaat* requires legality of government action, separation of powers, fundamental rights and judicial review (Burkens et al., 1990). The concept is close to the rule of law of the Anglo-Saxon tradition and has moved from the passive liberal state towards the welfare state, in which government actively promotes the welfare of citizens (Termorshuizen, 2004; Sumali, 2002). A constitution is regarded as the primary source of legal authority within a state (de Smith & Brazier, 1994).

The second is the theory of legal responsibility. For Kelsen (2006), a person is legally responsible for an act when he is subject to a sanction for conduct contrary to the law; Kelsen distinguishes individual, collective, fault-based and absolute responsibility. Legal terminology separates *liability*, legal accountability for wrongdoing by a legal subject, from *responsibility*, which refers to political accountability, and the theory adopted here concerns liability arising from legislation (Azheri, 2011). Muhammad (2010) divides tort liability into intentional torts, negligence and strict liability. The third is Friedman's theory of law enforcement (2009), under which the success of law depends on three elements: legal structure, legal substance and legal culture.

Two supporting concepts complete the frame. Agency theory describes the relationship between a principal and an agent. The people, represented by the DPRD, entrust regional wealth to the regional government as their agent, and the regional government in turn entrusts it to the BUMD as its agent, so that it acts as an agent in one relationship and as a principal in the other. Corporate governance is the set of rules governing the relations among shareholders, managers, creditors, government, employees and other stakeholders with respect to their rights and obligations, or, in short, the system that directs and controls the company (Iswara, 2014).

METHODS

This study is normative juridical (doctrinal) legal research, in which positive legal norms are examined and compared with the concepts found in the literature (Soekanto & Mamudji, 2006; Marzuki, 2006). Two approaches are used. The statute approach inventories and examines the legislation relating to BUMD and regional government. The conceptual approach draws on the views of legal scholars about the concepts related to the legal responsibility of regional governments and the

management of BUMD.

The data are secondary and consist of legal materials. The primary materials are the 1945 Constitution; Law No. 17 of 2003 on State Finance; Law No. 19 of 2003 on State-Owned Enterprises; Law No. 15 of 2006 on the Audit Board (BPK); Law 23/2014; PP 54/2017; and Government Regulation No. 12 of 2019 on Regional Financial Management. Law No. 40 of 2007 on Limited Liability Companies (UUPT) is also analysed, because a Perseroda is subject to it. The secondary materials are textbooks, journal articles and research results relating to the topic, and the tertiary materials are legal dictionaries and encyclopaedias.

The materials were collected using the snowball technique, in which sources are traced from one work to another, together with systematic library research; for statutes, compilations of legislation were traced. The materials were then classified so that they could be read and understood systematically (Hadjon, 1997). The analysis combines four techniques: descriptive analysis, which describes legal conditions as they are; evaluative analysis, which assesses views, statements and norm formulations in the primary and secondary materials; interpretative analysis, used where norms on the legal responsibility of regional governments in BUMD management are vague; and argumentative analysis, which evaluates on the basis of legal reasoning.

RESULTS AND DISCUSSION

The legal framework governing BUMD

Law 23/2014 gave regions an opportunity to strengthen the regional economy by earning profit through the establishment, management and utilisation of BUMD. Regulating BUMD in the regional government law, which Law No. 32 of 2004 had not done, was appropriate, although it also produced significant juridical implications (Santosa, 2011; Resen & Muryanto, 2014). Article 402(2) of Law 23/2014 required BUMD that existed before the Law to adjust to it within three years. The change of statute also brought substantive shifts in the management of BUMD, beyond the mere replacement of the legal basis.

PP 54/2017 implements Law 23/2014 and is detailed enough to serve as the main guide for establishing and running BUMD. It covers the authority and position of the regional head, establishment, capital, organs and personnel, the internal audit unit and audit committee, planning, operations and reporting, good corporate governance, procurement, cooperation, loans, use of profit, subsidiaries, government assignments, evaluation, restructuring, change of legal form, privatisation, merger, consolidation, takeover, dissolution, bankruptcy, and guidance and supervision. Regional regulations on Perumda must therefore conform to it and may not deviate from it, even where the enterprise was established long before the Regulation was issued. Establishment requires a regional

regulation and rests on regional need and on business feasibility, assessed through economic, market, financial, legal, technological and human-resource analysis.

The relationship with state finance remains a source of uncertainty. Article 2(i) of Law 17/2003 covers the assets of other parties obtained through facilities granted by the government, and its explanation refers to assets managed under government policy, including those of state or regional companies. Read in this way, it can extend to BUMD (Sutedi, 2012). Consistent with this, Article 9(1) of Law 15/2006 empowers the BPK, under its attributed authority, to request information and documents from regional governments and BUMD and to examine those who manage state finances (Raba, 2017). Separated regional wealth therefore keeps a public accountability dimension even though it sits in a separate legal entity.

The legal responsibility of the regional government

The regional head holds the power to manage regional finances and represents the regional government in owning separated regional wealth. In BUMD policy this power is exercised through capital participation, subsidies, assignments, the use of proceeds from separated regional wealth, and guidance and supervision of capital participation (Article 3 of PP 54/2017). In a Perumda the regional head acts as the capital owner, the organ with the highest authority. In a Perseroda the regional head acts as a shareholder in the General Meeting of Shareholders (GMS, *RUPS*). Because of this position, the regional head takes decisions that can be delegated to regional apparatus officials, namely amendments to the articles of association; transfer of fixed assets; cooperation; investment and financing, including the formation of subsidiaries and capital participation; appointment, dismissal and remuneration of supervisory board members, commissioners and directors; the use of profit; approval of annual reports; merger, split, consolidation, takeover and dissolution; and guarantees of assets exceeding 50% of the company's net wealth in one or more transactions.

From these provisions the legal responsibility of the regional government can be grouped into three roles. As a capital owner, the region invests capital that originates from the regional budget (APBD). As a supervisor, the regional head ensures that the BUMD operates in line with its purposes and the applicable rules. As a guide, the regional government gives direction so that the BUMD can develop well. Accordingly, the regional government formulates policy direction, provides guidance, and accounts for management to the DPRD. This is responsibility in the sense of liability, that is, responsibility that arises from statutory provisions (Azheri, 2011), and not merely political responsibility. Seen through agency theory, the regional government must also be able to analyse the financial reports produced by its own agent, the BUMD, and its accountability to the DPRD is the link that closes the chain of delegation from the people.

Supervision is the most visible dimension. According to Suriansyah (2019), supervision by the regional government serves efficient and effective governance and prevents the abuse of authority. Applied to BUMD, it has four dimensions. The first is regulation and oversight: setting policies on capital participation and governance, ensuring compliance, and monitoring financial and non-financial performance. The second is guidance and development: promoting efficiency, the quality of products and services, and organisational capacity. The third is coordination and facilitation: coordinating with the relevant agencies and facilitating resources such as infrastructure and licensing. The fourth is evaluation and accountability: systematic evaluation of programmes, including corporate social responsibility (CSR), and prevention of overlapping programmes. PP 54/2017 adds a formal annual evaluation that compares targets with realisation and assesses performance, soundness and service. It also requires each BUMD to establish an internal audit unit, and the supervisory board or commissioners to form an audit committee.

This responsibility is not unlimited. The regional head, whether acting as KPM in a Perumda or as a shareholder in a Perseroda, is not liable for the company's losses if able to prove three things: no personal interest, direct or indirect; no involvement in unlawful acts by the company; and no direct or indirect unlawful use of the company's wealth. The liability of the region for BUMD losses, including those of subsidiaries, is limited to the capital originating from regional capital participation, which is consistent with the limited liability principle that applies to shares. The effectiveness of this design still depends on legal structure and legal culture as much as on legal substance (Friedman, 2009): well-drafted rules such as PP 54/2017 will not work if supervisors are weak, appointments are not transparent, or the culture tolerates conflicts of interest.

The responsibility of the board of directors and good corporate governance

The supervision of the regional government works through the organs of the BUMD, of which the board of directors is the principal. Directors bear full responsibility for managing the company in its interest and for its purposes, and they represent it inside and outside court (Article 92 UUPT). This applies to BUMD established as a Perseroda and, by extension, to a Perumda (Wahyudi, 2020). Their responsibility is not only administrative and financial but also moral and social towards the public interest. The principles of good corporate governance (GCG), namely transparency, accountability, responsibility, independence and fairness, serve as the reference, and PP 54/2017 states that GCG is meant to achieve the purposes of the BUMD, to optimise its value and to encourage professional, efficient and effective management (Article 92(3); Tricker, 2021). The implementation of GCG in BUMD nevertheless still meets obstacles such as weak supervision, conflicts of interest and unprofessional management practices (Wahyudi, 2020). Good governance also needs the commitment

and involvement of both government and society (Sedarmayanti, 2012).

If directors do not apply these principles, three kinds of consequences may follow. First, civil liability: directors can be sued for losses caused by their fault or negligence (Article 97(3) UUPT). Second, criminal liability: where conduct amounts to a crime, such as corruption in the management of regional assets (Article 3 of the Anti-Corruption Law), and Article 155 UUPT confirms that the company law does not displace criminal law. Third, administrative liability: directors may be dismissed by the shareholder if they breach GCG or fail to meet performance targets. Where directors act in bad faith and use company assets for personal gain, the court may apply the doctrine of *piercing the corporate veil*, set aside the limited liability of the legal entity and impose full personal responsibility for the loss (Widjaja, 2005; Garner, 2004).

Implications of the Perumda form

The two legal forms differ in several respects, summarised in Table 1. The differences explain why the same regional government faces different management problems depending on the form of its BUMD.

Table 1. Comparison of Perumda and Perseroda

Aspect	Perumda (regional public company)	Perseroda (regional limited liability company)
Capital	Wholly owned by one region; not divided into shares	Divided into shares; at least 51% held by one region
Legal entity status	Acquired when the regional regulation on its establishment takes effect (Art. 4(4) PP 54/2017)	Acquired under the limited liability company law (Art. 4(5) PP 54/2017; Art. 7(4) Law 40/2007)
Primary orientation	Public benefit is prioritised (Art. 8 PP 54/2017), while profit must still be pursued	Profit orientation
Position of the regional head	Capital owner (KPM), the highest organ	Shareholder representing the region in the GMS (RUPS)
Organs	KPM, Supervisory Board, Board of Directors	GMS, Board of Commissioners, Board of Directors
Governing law	Law 23/2014 and PP 54/2017	Law 23/2014, PP 54/2017 and the Limited Liability Company Law (Law 40/2007)

The first implication is the dual mandate. Article 8 of PP 54/2017 states that a Perumda is established with priority on public benefit, and its explanation gives as examples pioneering businesses that supply affordable, quality goods and services, and drinking water services that are more efficient

than provision by regional apparatus. Tariffs are therefore kept as low as possible so that all layers of society can afford them, and sometimes they fall below production cost. At the same time, although it is not the priority, a Perumda must still meet the PAD target. It has to stand on two legs, giving optimal public service on one side and pursuing the PAD target on the other, and this is a heavy burden. The requirement of ownership by a single region has a rationale: by owning all the capital, the region can steer the policy direction of the Perumda towards public benefit.

The second implication concerns capital. Additional capital comes from regional capital participation, loans, grants and other sources, but participation and loans cannot be obtained immediately, since they need the approval of the regional head and the DPRD when capital participation must be determined by a regional regulation. Participation in kind must be valued at its real value at the time it is contributed. The third concerns change of legal form. Article 114(2) of PP 54/2017 allows a Perumda to become a Perseroda, and Article 334(2) of Law 23/2014 requires it where a Perumda is to be owned by more than one region. Neither instrument says whether the purposes change as well. Article 114(2) only states that the change is made to achieve the purposes and to restructure, without saying what purposes are to be achieved. It is therefore unclear whether a Perseroda that results from conversion moves away from public service towards a business orientation, which would be natural given that a company limited by shares exists to earn economic profit. Even though the regulations are silent, conversion should not harm the public.

The fourth implication is the extensive authority of the regional head as KPM. The KPM appoints and dismisses directors and supervisory board members and determines their remuneration (Article 3(4) of PP 54/2017), and it may reappoint directors for a second term without a new selection process if they perform well (Article 59(2)). A third term is possible for directors with special expertise or outstanding achievements (Article 61(b)), but the Regulation does not define these criteria, so there is no clear parameter for third-term appointments. Directors and supervisory board members are organs through which the Perumda, as a legal entity, acts. According to the organ theory of Von Gierke, a legal entity is a reality, not a fiction, and it is represented by its organs, as opposed to the fiction theory of Von Savigny, which treats it as a construct that is treated as if it were human (Muhammad, 2010). Because organs carry the entity's will, GCG demands that they work independently and free from unlawful pressure, including from the KPM. Such pressure is nonetheless possible when the same person appoints, dismisses and pays them. Directors then become less free and less bold in business actions and expansion, since strategic decisions require prior consultation with, and approval from, the KPM. The resulting bureaucracy slows the performance of the Perumda.

The fifth implication concerns personnel. Article 74 of PP 54/2017 provides that BUMD

employees are appointed and dismissed under employment agreements in accordance with labour law. In a Perumda, collusion, corruption and nepotism can enter recruitment, especially when candidates are related to local officials or when vacancies are not announced and only existing staff know about them. That practice contradicts the GCG principle of transparency, closes job opportunities to the public, and harms the Perumda itself by producing employees with low quality and work culture. Article 77 of PP 54/2017 requires capacity-building programmes for employees, which fits a view of employees as human capital, an asset to be maintained and developed, rather than as mere workers (Saefuloh, 2010).

Implications of the Perseroda form

Unlike a Perumda, a Perseroda is established to manage regional potential, to drive the regional economy and to make a profit, which then becomes a source of PAD. Its directors are therefore expected to make business breakthroughs, some of which can lead to losses. Directors need not fear blame so long as they manage in good faith and with responsibility, in line with the company's purposes as stated in its articles of association. This follows from their fiduciary duties, which arise by operation of law from the relationship between directors and the company and require a high degree of care and skill, good faith, loyalty and honesty (Fuady, 2003). The UUPT states that directors manage the company for its interest and purposes (Article 92(1)), that they have authority to manage as they deem appropriate within the limits of the law and the articles (Article 92(2)), that they are responsible for management (Article 97(1)), and that management must be carried out in good faith and with full responsibility (Article 97(2)).

Under Article 97(5), a director is not liable for the company's loss if he can prove that the loss was not caused by his fault or negligence; that he managed in good faith and with prudence for the company's interest and purposes; that he had no direct or indirect conflict of interest in the management act that caused the loss; and that he took action to prevent the loss from arising or continuing. This is the business judgment rule as positivised in Indonesian law. Conversely, when directors act in bad faith, are at fault or negligent, or commit *ultra vires* acts, each director is fully and personally liable for the loss (Article 97(3)), and where there are two or more directors the liability is joint and several (Article 97(4)). *Ultra vires* acts are of two kinds: acts outside the purposes of the company, and acts beyond the authority given to directors by law and the articles of association (Widjaja, 2005; Sjawie, 2017).

The second implication concerns the position of the regional head as majority shareholder. Because at least 51% of the shares are held by the region, and each share carries one vote unless the articles provide otherwise (Article 84(1) UUPT), the regional head can take decisions at the GMS. As

Tobing (2015) notes, whoever controls the most shares determines the policy of the company. Article 3(3) and (4) of PP 54/2017 confirm this authority over the matters listed in Section 4.2, including the appointment of directors and commissioners. It follows that directors and commissioners must be genuinely professional and meet the qualifications required by PP 54/2017, and that they must be selected in compliance with the law and free from collusion, corruption and nepotism. The vision, mission and good faith of the regional head also affect how a Perseroda develops: it grows well when the regional head supports it and struggles when that support is lacking.

Decisions of the regional head must not harm minority shareholders. Under the UUPT, minority shareholders are those holding no more than 10% of the shares (Sari et al., 2017). The GCG principle of fairness requires attention to all stakeholders, particularly minority shareholders, and the law protects them: a shareholder who feels harmed by an unfair act of the company, resulting from a decision of the GMS, directors or commissioners, may sue the company in the district court (Article 61), and a shareholder who does not agree with harmful acts such as amendment of the articles, transfer or pledge of assets worth more than 50% of net wealth, or merger, consolidation, takeover or split, may demand that the company buy back its shares at a fair price (Article 62) (Usman, 2004). In practice, minority shareholders of a Perseroda seldom use these remedies. That may mean that the Perseroda is well managed, or that minority shareholders lack the courage to act, since they are usually other regency or municipal governments in the same province or civil servant cooperatives. To strengthen supervision, it would be better for a Perseroda's shares to be held also by the local community, so that many parties watch the company and its value, and with it the region's own benefit, can grow.

Two further points complete the picture. Article 114(3)(b) of PP 54/2017 allows a Perseroda to be converted into a Perumda, but, as with the opposite conversion, the Regulation does not say what kind of Perseroda may convert or whether its purposes change from profit to public service. Second, a BUMD, whether Perumda or Perseroda, may form subsidiaries, partnering with state-owned enterprises, other BUMD or private Indonesian legal entities. Formation requires approval by the KPM or the GMS, ownership of at least 70% of the shares with controlling shareholder status, sound financial statements for the past three years, a business line that supports the parent's main business, and no capital contribution in the form of land that originates from regional capital participation. The region's liability for losses in the parent and its subsidiaries remains limited to the capital originating from regional participation (Article 101 of PP 54/2017; Sulistiowati, 2013).

CONCLUSION

This article has addressed two problems. On the first, the legal responsibility of the regional

government in managing BUMD is that of a capital owner and supervisor, exercised through the regional head who represents separated regional wealth. The regional government is responsible for setting policy direction, providing guidance and accounting for management to the DPRD, and PP 54/2017 divides that responsibility into three principal roles: capital owner, supervisor and guide. The responsibility is limited: the region is answerable for losses only up to the capital it has invested, and the regional head is not liable if he can prove the absence of personal interest and unlawful involvement.

On the second, the legal form of BUMD has real implications for management. In a Perumda, management is burdened because PP 54/2017 prioritises public benefit yet the company must also generate profit, and the KPM holds wide authority over strategic decisions, appointments and remuneration, which can undermine the independence of the organs and slow decision-making. In a Perseroda, the orientation is towards profit, so reliable directors and commissioners are needed to manage the company well under PP 54/2017 and the UUPT. Their recruitment must follow the applicable laws and regulations.

Four recommendations follow. First, regional governments should strengthen supervision, clarify accountability structures and build a managerial culture free of conflicts of interest, through consistent GCG reform: transparent policy, independent supervision and better professional capacity of directors. Second, lawmakers and regulators should clarify what happens to the purposes of a BUMD upon a change of legal form, and define the criteria for third-term reappointment of directors. Third, BUMD administrators (directors, supervisory boards, GMS or regional heads), particularly of BUMD in the banking sector that still have the form of a regional company, should prepare to transform into a Perseroda. Fourth, the recruitment of directors, commissioners and employees should be open and merit-based, and broader local ownership of Perseroda shares should be considered to strengthen supervision. Because the study is normative, future empirical research on the practice of specific BUMD would test how far these findings hold in the field.

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