

## **Responsibilities Of The Board Of Directors In Management Of Regionally-Owned Enterprises**

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### **ABSTRACT**

The regional government has the function and responsibility to improve people's welfare by implementing development in all fields. The source of PAD is a source of regional finance that is excavated in the relevant region, which can come from regional taxes and regional levies. So that PAD can become part of the largest source of finance for the implementation of regional autonomy. One of the important organs in a company is the board of directors. The board of directors who control the company in its daily activities has the authority to determine policies in exercising its powers and obligations in managing the company must have good intentions, be responsible, have integrity, be honest, and be highly dedicated to advancing and developing the company. The board of directors is fully responsible personally for the company's losses if the person concerned is guilty or negligent in carrying out his duties. The board of directors can take or take actions to facilitate his duties as long as it is within the scope of his duties and obligations and does not conflict with customs, fairness, and propriety.

**Keywords: Responsibilities, Regionally-Owned Enterprises.**

### **A. Introduction**

The Second and Fourth Paragraphs of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945) mandate that one of the goals of the state is to realize prosperity and general welfare for the people of Indonesia. The 1945 Constitution also grants authority to regional governments to regulate and manage their own government affairs according to the principles of autonomy and assistance tasks to accelerate the realization of community welfare through improving services, empowerment and community participation. The granting of authority to regional governments is also accompanied by the transfer and assignment of financing. The most important source of financing is local revenue (PAD).

PAD is regional income sourced from regional taxes, regional levies, results

from the management of separated regional assets, and other legitimate regional original income, which aims to provide regions with the freedom to raise funds in implementing regional autonomy as a manifestation of the principle of decentralization.<sup>1</sup>

The regional government has the function and responsibility to improve people's welfare by implementing development in all fields. The source of PAD is a source of regional finance that is excavated in the relevant region, which can come from regional taxes and regional levies. So that PAD can become part of the largest source of finance for the implementation of regional autonomy.<sup>2</sup>

Establishment of BUMD in order to support regional development and improve community welfare in the region. Purwadi said that the establishment of BUMD has a role in realizing regional prosperity by contributing to PAD revenues either in the form of dividends or taxes. One of the challenges of increasing PAD can be answered by increasing the role/contribution of BUMD. In macro terms, the role of regional companies (BUMD) in the regional economy can be measured through their added value contribution to gross regional domestic income and their ability to absorb labor.

## **B. Research Methods**

Legal research is a series of systematic mechanisms in conducting research.<sup>3</sup> In this case, legal research is conducted to find solutions and answers to a problem that has been determined in the legal issue that is used as the object of research. The research method used to answer the problem. This research is a type of normative legal research.<sup>4</sup> This study uses secondary data sources. Secondary data sources, This research data consists of secondary data. Secondary data is data obtained from

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<sup>1</sup> Rudy Badrudin, *Ekonomi Otonomi Daerah* (Yogyakarta: UPP STIM YKPN, 2011), hlm. 99.

<sup>2</sup> Chabib Soleh dan Heru Rocmansjah, *Pengelolaan Keuangan dan Aset Daerah* (Jakarta: Fokusmedia, 2010), hlm. 68.

<sup>3</sup> Abdulkadir Muhammad. *Hukum dan Penelitian Hukum*. Cetakan I. (Bandung: Citra Aditya Bakti, 2004), hlm. 57.

<sup>4</sup> Jhonny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*. (Malang: Bayumedia Publishing, 2008), hlm. 47

literature studies that are relevant to this study. Secondary data is "data sourced from literature studies (library research) related to publications, namely library data listed in official documents.

### **C. Analysis And Discussion**

Historically, BUMD is known as a regional company. In Indonesia, it began to exist during the Dutch East Indies (Nederlandsch-Indie) with the emergence of Provinciale-bedrijven, Gemeetebedrijven which were regulated according to the provisions of Indische Compabiliteit (ICW) and Indische Bedrijvenwet (IBW). Related to the historical factors of the establishment of regional companies before the enactment of Law Number 5 of 1962 concerning Regional Companies is the existence of Law Number 19 of 1960 concerning State-Owned Enterprises. Law Number 19 of 1960 is the nationalization of companies left over from the Dutch colonial era in accordance with the provisions of nationalization in Law Number 86 of 1958. The meaning contained in these provisions is the transfer or handover of business entities from the central government to the regional government. Following up on this, Law Number 5 of 1962 concerning Regional Companies was issued as the beginning of the establishment of government-owned business entities.

The term BUMD was inspired by the issuance of Government Regulation Number 12 of 1998 concerning Limited Liability Companies and Government Regulation Number 13 of 1998 concerning Public Companies. However, the definition of BUMD has not been standardized by statutory regulations. This is different from BUMN, whose definition has been stipulated in Law Number 19 of 2003 concerning BUMN. On the other hand, the term BUMD has been stated in the Regulation of the Minister of Home Affairs Number 3 of 1999 concerning the Legal Form of BUMD, Law Number 22 of 1999 which was replaced by Law Number 32 of 2004, and then replaced again by Law Number 23 of 2014 concerning Regional Government (hereinafter abbreviated as UUPD).

Legally based on the provisions of Article 1 number 40 UUPD in conjunction

with Article 1 number 1 of Government Regulation Number 54 of 2017 concerning Regionally-Owned Enterprises (PPBUMD) which is the implementing regulation of UUPD, it is emphasized that BUMD is a business entity whose capital is wholly or mostly owned by the region. The BUMD established by the regional government consists of regional public companies and regional limited liability companies. The position of a regional public company as a legal entity is obtained when the Regional Regulation governing the establishment of regional public companies comes into effect. Meanwhile, the position of a regional limited liability company as a legal entity is obtained in accordance with the provisions of the law governing limited liability companies.

Referring to Article 29 paragraph (3) of the PPBUMD, BUMD management is carried out by BUMD organs. BUMD organs in regional limited companies consist of a general meeting of shareholders (RUPS), commissioners, and directors. As a note, every person in BUMD management in 1 (one) region is prohibited from having family relationships up to the third degree based on a straight line up, down, or sideways, including relationships arising from marriage.

The general meeting of shareholders (GMS) is the highest decision-making institution compared to other corporate organs. The authority of the GMS is residual, meaning that all authority that is not given to the board of directors and board of commissioners. Article 1 number 15 of the PPBUMD stipulates that the GMS is a regional limited liability company organ that holds the highest power in the regional limited liability company and holds all authority that is not delegated to the board of directors or commissioners. Further provisions related to the GMS in this regional limited liability company refer to the UUPT as stipulated in Article 35 of the PPBUMD which confirms that the GMS is in accordance with the provisions of laws and regulations governing limited liability companies.

According to Mishardi Wilamarta, although in the company structure the GMS has the highest power, this does not mean that the GMS has the highest level

among the company's organs, but merely has the highest power if the authority is not delegated to other company organs, so each company organ has its own duties and authorities.<sup>5</sup>

Ridwan Khairandy said that commissioners in a company serve as a supervisory body. Commissioners are non-executive bodies who do not have the right to represent the company, except in certain cases stated in the UUPT and the company's articles of association. Mulyadi said that commissioners are representatives of shareholders in a limited liability company. These commissioners function to supervise the management of company data carried out by management (board of directors). Thus, commissioners who actively carry out their functions can prevent too much control in the hands of management (board of directors).

#### **D. Conclusion**

One of the important organs in a company is the board of directors. The board of directors who control the company in its daily activities has the authority to determine policies in exercising its powers and obligations in managing the company must have good intentions, be responsible, have integrity, be honest, and be highly dedicated to advancing and developing the company. The board of directors is fully responsible personally for the company's losses if the person concerned is guilty or negligent in carrying out his duties. The board of directors can take or take actions to facilitate his duties as long as it is within the scope of his duties and obligations and does not conflict with customs, fairness, and propriety.

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<sup>5</sup> Mishardi Wilamarta, *Hak Pemegang Saham Minoritas Dalam Rangka Good Corporate Governance* (Jakarta: Program Pascasarjana, Fakultas Hukum Universitas Indonesia, 2002), hlm. 54

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