

# Disharmony Arrangement of Regional Owned Enterprises After the Enactment Regulation Government Number 54 Year 2017

1<sup>st</sup> Muh Ali Masnun

*Law Departement*

*Faculty of Social Sciences and Law*

*Universitas Negeri Surabaya*

Surabaya, Indonesia

[alimasnun@unesa.ac.id](mailto:alimasnun@unesa.ac.id)

2<sup>nd</sup> Mahendra Wardhana

*Law Departement*

*Faculty of Social Sciences and Law*

*Universitas Negeri Surabaya*

Surabaya, Indonesia

[mahendwardhana@unesa.ac.id](mailto:mahendwardhana@unesa.ac.id)

3<sup>rd</sup> Pudji Astuti

*Law Departement*

*Faculty of Social Sciences and Law*

*Universitas Negeri Surabaya*

Surabaya, Indonesia

[alimasnun@unesa.ac.id](mailto:alimasnun@unesa.ac.id)

**Abstract**—The purpose of this research is to identify the form of disharmony in the arrangement of Regional-Owned Enterprises (BUMD) and how to resolve the disharmony. This research method is normative juridical by using primary legal materials and secondary legal materials. The results of this study, the form of disharmony on BUMD regulation is vertical inconsistency in terms of the regulatory format. Vertical inconsistency in terms of the regulatory format means that lower hierarchical rules conflict with a higher regulatory hierarchy. The mechanism that can be made to overcome disharmony that has occurred are done by looking back at the principles of national law. Principle of *Lex Superiori Derogat Lege Inferiori*. Other mechanism are by removing or changing all provisions by way of executive review by the Government conducted by the Ministry of Home Affairs.

**Keywords** - Disharmony, Regulation, Regional Owned Enterprises

## I. INTRODUCTION

Act Number 23 of 2014 concerning Regional Government states that regions have the rights, authority, and regional obligations autonomously in order to manage and regulate their own governmental affairs and interests the community is in accordance with the laws and regulations. Based on this, this is an excellent opportunity for the local government to prove that its ability to regulate and implement the authority that is the right of each region.

Regarding this authority the local government has a wide opportunity to seek and obtain new sources of income to increase local revenue (PAD). Local revenue is one of the regional development capital, so that the region is expected to be able to make maximum use of its resources and potential through the management of Regionally Owned Enterprises.

In accordance with the mandate of Act No. 23 of 2014 Article 331 which contains Regional-Owned Enterprises, regions have the authority to establish Regional-Owned Enterprises (BUMD). BUMDs are business entities that all or most of their capital is owned by the Region. The establishment of this BUMD is expected to be one of the

ways to increase the source of regional income from the results of the management of regional assets that are separated, provide benefits for the development of the regional economy and obtain a return on the business carried out. The establishment of BUMD must be based on the needs of each region and the feasibility of the business sector to be established.

The elucidation of Article 331 of the Government has issued Government Regulation Number 54 of 2017 concerning Regionally Owned Enterprises (here in after abbreviated as PP BUMD). This PP BUMD regulates, among others, the authority of the Regional Head on BUMD, establishments, capital, organs and personnel, internal supervisory units, audit committees and other committees, planning, operations and reporting, Good Corporate Governance, procurement of goods and services, cooperation, loans, the use of profits, subsidiaries, government assignments to BUMD, evaluation, restructuring, changes in legal form, and privatization, merger, consolidation, acquisition and dissolution of BUMD, bankruptcy, coaching and supervision, as well as other provisions such as regulation concerning BUMD associations.

PP BUMD cannot stand alone, but is always related and must be in accordance with other laws, both vertically and horizontally. Provisions that are not in accordance with other regulations are commonly referred to as legal disharmony. The disharmony in the laws can lead to several legal issues, among others[1], it cannot provide guidelines for behavior to the community, social control, dispute resolution, and as a means of orderly and orderly social change. Second, there are the legislation is not implemented effectively and efficiently. and conflicts related to natural resources. The other negative impacts of the disharmony in laws and regulations on the implementation level cause various legal and social problems which eventually lead to riot in legal system, uncertainty and injustice to the.

In reality almost all regions (both provinces or districts /cities) already have BUMDs, one of which is Trenggalek Regency as one of the Regencies in East Java Province which has great potential to be developed by its BUMD. One

of them is the potential in the field of tourism development, natural resources and creative industries. The enactment of Special Economic Zones (SEZs) and the existence of the *GEMILANG* Movement (Shining Industrial Quality Movement) launched by the Regional Government of Trenggalek Regency encouraged the creation of new businesses.

Trenggalek Regency currently has four BUMDs engaged in banking, drinking water and various businesses. The existence of the existing BUMD is felt to be developed further considering the economic development in Trenggalek Regency which is increasing and to support regional government programs in improving regional economy. With the enactment of PP BUMD, whether the provisions contained in the BUMD owned by Trenggalek Regency are in accordance with these regulations.

## II. RESEARCH METHODS

The research method uses normative juridical legal research [2], the legal material collection method used is literature study. Legal materials are obtained from primary and secondary legal sources in the form of: primary legal materials obtained from legal provisions on Regional Owned Enterprises and related to the problems being studied; Secondary legal materials are obtained from literature, lecture materials, other library books or works from international legal experts who can provide explanations relating to the legal provisions.

In this normative legal research, legal material has been obtained. Qualitatively analyzed, that is, by giving an interpretation of legal material obtained from various sources and analysis of the legal material is assisted by using the prescriptive method.

## III. RESULT AND DISCUSSION

Indonesia as a rule of law as stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, that everything in the administration of the state must have a legal basis. The implementation of the state to realize the mandate of the 1945 Constitution of the Republic of Indonesia is not based on what the leader said, but must be based on law. Laws that are identical with the laws and regulations become instruments in all aspects. Actually, the legislation is only part of the law, because outside the laws and regulations, there is still much to be learned related to the law. Even within the legal system, legislation is only one part of the legal or sub-system legal substance. Another sub system is legal structure and legal culture [3].

Legislation consists of several types, which can be broadly divided into legislation at the central level and legislation at the regional level. One form of legislation at the regional level is regional regulation. One that can be used as a benchmark for the good or not quality of legislation in this case is the regional regulation, namely harmonization and synchronization of the formation of laws and regulations.

According to Moh. Hasan Wargakusumah, what is meant by legal harmonization are: [4] “scientific activities to lead to harmonization of written law that refers to both philosophical, sociological, economic and juridical values. In its implementation, harmonization activities are a comprehensive assessment of a draft legislation, with the aim of knowing whether the regulation, in various aspects, has reflected harmony or conformity with other national

legislation, with unwritten law living in the community or with international conventions and agreements. Both bilaterally and multilaterally, which has been approved by the Government of Indonesia.”

The provisions of laws and regulations that are not harmonized in the end are commonly known as legal disharmony. Ontologically the word disharmony is the opposite of harmony and thus disharmony as opposed to harmony, disharmony is inconsistency or incompatibility.

Regulations relating to the relatively new Indonesian BUMD mandated in Act Number 23 of 2014 concerning Regional Government are stated in PP 54 of 2017 concerning BUMD. Based the existing condition of existing BUMD regional regulations in Trenggalek Regency, it is necessary to conduct an evaluation and analysis of the relevant legislation. The business fields currently in the Regency of Trenggalek consist of three fields, only researchers take the focus of research on the field of clean water treatment business, namely the Regional Water Company (PDAM) in the District of Trenggalek.

For the sake of analysis, the relationship matrix between BUMD local regulations and PP No. 54 of 2017 as a benchmark / benchmark. This company was founded on the basis of the establishment of Regional Regulation No. 09 of 2015 Perda BUMD Trenggalek.

Table. 1

The Relation Matrix Comparison Between PP BUMD and Perda BUMD Trenggalek

<i>about</i>	<i>PP BUMD</i>	<i>Perda BUMD</i>
Head of District in BUMD	Article 3. 1. Perumda as the owner of the capital 2. Perseroda as a shareholder	Not set
Legal entity	Article 4 1. Perumda 2. Perseroda	Article 2 Perusahaan Daerah
The purpose of BUMD	Article 7. provide benefits, provide goods and services, and earn profits.	Article 5: Providing drinking water services to the whole community fairly ....
Capital Reduction	Article 24. Reduction of regional capital in BUMD can be done as long as it does not cause 51% ownership by 1 (one) district	Not Set
Internal Supervisory Unit, audit committee and other committees	Article 79. Each BUMD is formed by an internal supervisory unit Article 84. The Board of Trustees or Commissioners establishes Audit committees and other committees that assist the Supervisory Board or the Commissioner in carrying out supervisory duties.	Not Set
A Subsidiary BUMD	Article 107. BUMD can form a subsidiary	Not Set
Government	Article 108	Not Set

assignment to BUMD	Central Government, Provincial Government, District / Municipality Local Government may assign to the Regional Enterprise to support Regional Economy.	
Evaluation, Restructuring, Change of Law Form, And Privatization of BUMD	Articles 109 - 122. Regulates the Evaluation, Restructuring, Changes in Law Forms, and Privatization of State-Owned Enterprises	Not Set
BUMD Bankruptcy	Article 127 -128. Regulate about BUMD Bankruptcy	Not Set
Construction and supervision of BUMD	Article 129 – 135. Regulate about Construction and supervision of BUMD	Not Set

<sup>a</sup> Sample of a Table footnote. (Table footnote)

Looking at the table 1 of the relation matrix, it can be seen that the rules in the PP BUMD there are still many that have not / are not regulated in the regulations that currently exist. Not yet/not regulating some arrangements is one form of legal disharmony. The disharmony laws and regulations that occur because of inconsistencies in legal norms can cause legal problems. The form of disharmony in managing BUMD is vertical inconsistency in terms of the regulatory format. Vertical inconsistency in terms of the regulatory format means that lower hierarchical rules conflict with a higher regulatory hierarchy. According to Maria Farida, [5] in terms of the arrangement or hierarchy of the norm system, if the basic norms are changed, it will be damaged the norm system under it.

Mechanism to harmonize the occurrence of disharmony can be done by two methods, the first mechanism that can be made to overcome disharmony that has occurred are done by looking back at the principles of national law. Principle of *Lex Superiori Derogat Lege Inferiori*, it means which means that higher laws and regulations will lower the rules of law. The secondly preventive and repressive mechanism. Preventive mechanism can be interpreted as efforts that can be done before the occurrence of disharmony of laws and regulations. Repressive legal mechanism are legal harmonization that can be done to overcome the legal disharmony that has occurred. The disharmony problem in this case is more appropriate if it is done by repressive methods.

Harmonization of drafting legislation is needed in anticipating disharmony in the legislation. According to Kusnu Goesniadhie [6] there are five steps that must be done in harmonizing, these steps include "First, identify the location of legal disharmony in the application of legislation. Second, identify the causes of legal disharmony. Third, efforts to find law by using interpretation methods and legal construction methods to change the legal state of disharmony into harmony. Fourth, the effort of legal reasoning so that the results of interpretation and construction of the law make sense or fulfill the elements of logic. Fifth, the preparation of rational arguments using good governance understanding to support and explain the results of legal interpretation, legal construction, and legal reasoning.

So that based on these conditions, it is considered important to harmonize the arrangement of BUMD in Trenggalek Regency so that consistency is maintained with the regulation at the top.

The mechanism that can be made to overcome disharmony that has occurred are done by looking back at the principles of national law. Principle of *Lex Superiori Derogat Lege Inferiori*, it means which means that higher laws and regulations will lower the rules of law. Other mechanism are by removing or changing all provisions by way of executive review by the Government conducted by the Ministry of Home Affair.

Another way that can be used is by judicial review to the Supreme Court which has the authority to revoke the provisions of the legislation. judicial review must be done with an application attempt by giving reason for the implementation of such rules.

#### IV. CONCLUSION

The form of disharmony on the regulation of BUMD is vertical inconsistency in terms of the regulatory format. Vertical inconsistency in terms of the regulatory format means that lower hierarchical rules conflict with a higher regulatory hierarchy.

The mechanism that can be made to overcome disharmony that has occurred are done by looking back at the principles of national law. Principle of *Lex Superiori Derogat Lege Inferiori*, it means which means that higher laws and regulations will lower the rules of law. Other mechanism are by removing or changing all provisions by way of executive review by the Government conducted by the Ministry of Home Affair.

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Finally, the recommendation for this article in the end, the government Trenggalek Regency should pay more attention if there is a new rule to immediately adapt to new rules so that its implementation can be effective. in addition to the rule it does not conflict with rules with other rules. The government in this case the Ministry of Home Affairs should also make an executive review soon.

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