

The Role of Notaries in BUMD Agreements with Work Partners: Efforts to Ensure Legal Certainty

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Abstract. *BUMD, on the one hand, is a business entity that is driven to gain profit. But on the other hand, it is an extension of the state in serving the community. The existence of antinomy in the characteristics of BUMD creates a gray area that is not clearly defined between the administrative law realm and the civil law realm. And one of those gray areas is the BUMD agreement with its partners. The agreements of PT RBSJ with a number of partners using underhanded deeds have the potential to become a means of corrupt acts that harm state finances. The agreement of the BUMD owned by the Rembang Regency Government contains deviations from the principles of agreements, including: the subject of the agreement does not have the legality to act, the date of the agreement document is unclear, the contents of the agreement do not reflect the principles of equality and balance, and there is a conflict of interest. Such things result in legal uncertainty in the agreement. Notaries as an extension of the state have the authority to guarantee legal certainty in authentic deeds (notaries) that they make. In the context of the agreement of PT. RBSJ with partners who do not have legality, the Notary will check and ensure the identity of the person appearing. Regarding the date of the agreement, the Notary provides a guarantee for the date of the deed by storing the minutes of the deed as part of the notary protocol. For unbalanced agreements and conflicts of interest, a Notary is authorized to provide legal advice and considerations to the parties to reconsider the contents of the agreement and even suggest canceling the agreement with the work partner because there is a violation of the legal principles of the agreement that can lead to actions that are detrimental to state finances. Of course, the role of a Notary can only be carried out if there is a legal norm that requires BUMD to use a notarial deed in a cooperation agreement with a work partner. Therefore, it is recommended that stakeholders form such legal norms so that BUMD agreements are in line with the principles of the agreement.*

Keywords: Agreement; BUMD; Notary.

1. Introduction

One of the issues of the reform movement in Indonesia in 1998 was the granting of broad autonomy to regions. The role of the central government was seen as too strong and dominant through centralization politics that had hampered regional independence in both politics and economics.¹Therefore, autonomy is considered as an answer to regional dissatisfaction because it provides space for regions to regulate their regional government on their own initiative.²

Regional autonomy means giving freedom to regions to explore their own sources of regional income by optimizing the sources of regional original income (PAD). Meanwhile, for the central government, regional autonomy means reducing the dependence of the regional budget on the central government. Ideal autonomy expects reduced transfers to the regions, so that regional governments inevitably have to explore and optimize the sources of regional original income (PAD) because PAD is part of the largest financial source for the implementation of regional autonomy.³ PAD is seen as the most important benchmark for a region's ability to organize and realize regional autonomy because PAD reflects the independence of a region.⁴PAD comes from regional companies or what are commonly called Regionally-Owned Enterprises (BUMD).

The definition of a BUMD according to statutory regulations is a business entity whose capital is wholly or mostly owned by the regional government through regional assets that are separated to be used as BUMD capital participation.⁵Meanwhile, the establishment of a BUMD aims to provide benefits in the development of the regional economy, provide general benefits for fulfilling the needs of the community, and to obtain profits and/or benefits.⁶

¹ <https://www.kompas.com/skola/read/2022/06/06/180000669/politik-factor-yang-memengaruhi-otonomi-region> accessed on 10/21/2023 at 21.29 WIB

²Implementation of the Restructuring of Regional Apparatus Organizations at the Karo Regency Regional Secretariat based on Government Regulation Number 41 of 2007 concerning Regional Apparatus Organizations, <https://e-journal.uajy.ac.id/325/2/1MIH01722.pdf> accessed on 10/21/2023 at 21.14 WIB

³Chabib Soleh and Heru Rocmansjah, 2010, Regional Financial and Asset Management, Jakarta: Fokusmedia, p. 68.

⁴ <https://jateng.bpk.go.id/wp-content/uploads/2020/02/TH-kewerahan-Kada-terhadap-BUMD.pdf> accessed on 10/21/2023 at 21.30 WIB

⁵Chapter I General Provisions Article 1 Law 23/2014 in conjunction with PP 54/2017

⁶Based on Article 331 paragraph (4) of Law No. 23 of 2014 in conjunction with Law No. 9 of 2015 in conjunction with Article 7 of PP No. 54 of 2017,

Ideally, the purpose of establishing a BUMD is a source of income for the regional government, but in its development, some BUMDs have failed to become sources of income and have instead become problems that burden regional finances. Various problems have been reported, from poor corporate governance to criminal acts of corruption.

Research conducted by Setyawan and Riyardi concluded that BUMD in several cities in Central Java were inefficient in their operations. The contribution they gave to the APBD was not comparable to the assets they owned.⁷ Likewise, a study conducted by Suwardi and Prasetyo in 2018 concluded that the level of efficiency of BUMD in Central Java was classified as very low, even very inefficient, only reaching 33.19% in 2015 and 35.22% in 2016. The amount of input factors (paid-in capital, total costs and number of workers) was not comparable to the output achieved.⁸ Nationally, the average contribution of BUMD in Indonesia to PAD is less than 1%.⁹

The gloomy portrait of BUMD was also reported by the Ministry of Home Affairs (Kemendagri). As of 2022, there were 1056 BUMDs spread across the country with total assets of Rp854.9 trillion, but 274 of them experienced losses and 291 BUMDs were in a sick or loss condition with negative equity.¹⁰ In response to the unhealthy condition of BUMD, Indarto Waluyo suggested that the regional company should be closed or sold or included as part of the regional apparatus/department (not as a business entity).¹¹

The Corruption Eradication Commission (KPK) also noted that BUMD/BUMN are still the state institutions where corruption cases occur the most after district/city governments, institutions/ministries, and provincial governments. Based on data on case handling handled by the KPK in the period 2004 to March 2021, 93 of the

⁷Setiawan et al., 2008, Model of Fair Public Service: Empirical Study on PDAM Surakarta City: Research Report, (Surakarta: Institute of the Faculty of Economics, Muhammadiyah University of Surakarta), p. 2. https://publikasiilmiah.ums.ac.id/handle/11617/2442/browse?rpp=20&sort_by=1&type=title&offset=36&etal=-1&order=ASC accessed on 02/03/2023 at 20.54 WIB.

⁸Maskun Suwardi & P. Eko Prasetyo. (2018) Technical Efficiency of Regionally-Owned Enterprises (BUMD) in the Production Services Sector of Central Java Province. *Journal of Economics & Development Studies*: Vol. 19, No. 1, April 2018, p. 19 <https://journal.umy.ac.id/index.php/esp/article/download/4111/3567> accessed on 02/03/2023 at 13.44 WIB.

⁹Ibid.

¹⁰<https://stranaspk.id/publikasi/berita/bumd-di-medan-mati-segan-live-tak-mampu>

¹¹Indarto Waluyo. (2004). Responding to Unhealthy State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD). *Indonesian Journal of Accounting Education*: Vol 3, No. 1. p. 54. <https://journal.uny.ac.id/index.php/jpakun/article/view/834> accessed on 02/03/2023 at 21.20 WIB.

1,140 suspects or 8.12% were BUMN/BUMD officials.¹² Deputy Chairman of the Corruption Eradication Committee (KPK) Alexander Marwata suspects that in addition to corruption, this condition is caused by the incompetence of BUMD managers at the commissioner, director, internal supervisory unit levels, as well as the large amount of interference from other parties.¹³

The characteristics of BUMD are quite unique. On the one hand, it is a business entity that is driven to gain profit. However, on the other hand, it is an extension of the state in serving the community. The existence of antinomy in the management of BUMD results in a clash between the state element that is identical to public service with the business element whose characteristics are pursuing profit. According to Sri Widiyastuti, this situation must be addressed with a change in the regional government paradigm in interpreting BUMD profits. This new paradigm regarding profits does not see the value of PAD deposits that enter the regional treasury, but the success of organizing public interests (public services) as a new parameter in the concept of profit for the regional government.¹⁴

In response to the above opinion, the author sees the need to see the performance of BUMD, especially regional limited companies (perseroda) still measured from the performance standards of a company including the profits and losses it generates. If perseroda is only seen from the implementation of public interests without clear performance standards, the performance of the BUMD in question can be manipulated to always be positive. The losses incurred are stated as if due to business decisions alone, not because of corruption and rent seeking that erode the body of the BUMD.

The description of the utilization of antinomy in the characteristics of BUMD, can be seen in the cooperation agreement of PT. Rembang Bangkit Sejahtera Jaya (PT. RBSJ) owned by the Rembang Regency Government (Pemkab) with PT Sangga Arta Buana (PT. SAB). In an effort to pursue profits, PT. RBSJ collaborated in sugarcane planting investment worth Rp 14 billion from 2006 to 2010. However, the agreement contained corrupt motives by utilizing underhand deeds as a formal form of agreement. The court ruled that the cooperation had harmed

¹² <https://www.kpk.go.id/id/statistik/penindakan/tpk-dasar-intansi> accessed on 10/21/2023 at 21.14 WIB.

¹³ <https://jogjaprovo.go.id/berita/bumnbumd-merugi-tak-perlu-diperlahan> accessed on 10/21/2023 at 21.35 WIB.

¹⁴ Sri Widiyastuti. (2019). Legal Policy of Regional-Owned Enterprises (BUMD) in Business Activities to Realize Social Welfare. Journal: Law and Justice: Vol. 4 No. 1 April. Page 21. <https://journals.ums.ac.id/index.php/laj/article/view/8050/4640> accessed on 02/03/2023 at 21.01 WIB.

state finances through Decision Number 1243 K/PID.SUS/2014 dated October 29, 2014.¹⁵

The panel of judges stated that the cooperation between the two companies had caused regional finances a loss of Rp 4.2 billion. The verdict upheld the verdict of the Semarang High Court (PT) and the verdict of the Semarang District Court (PN). Imam Sudjono as Director of PT. SAB was found guilty of committing or participating in an unlawful act of enriching himself or another person or a corporation that could harm state finances or the state economy. He was sentenced to six years in prison and a fine of Rp 300 million.¹⁶

In addition to PT. SAB, through a search on the Supreme Court Decision Directory page,¹⁷The author found a number of decisions where the main case came from a cooperation agreement between PT. RBSJ and another company that took place between 2006 and 2010. The agreements were cooperation agreements between PT. RBSJ and PT. BRTK regarding coastal reclamation for port construction.¹⁸Then the cooperation agreement between PT. RBSJ and PT. AHK is also about the same object, namely about coastal reclamation for public ports.¹⁹The last is an agreement with PT. AHK, namely regarding the land sale and purchase agreement and the operation of the Public Fuel Filling Station (SPBU).²⁰

Based on the phenomenon of corrupt practices at PT. RBSJ through underhand agreements, the formulation of the problem in this study is: how is the deviation of the underhand deed of the PT. RBSJ agreement reviewed from the legal principles of the agreement and how is the role of the notary to prevent deviations from the agreement. The results of the discussion and analysis of the formulation of the problem are directed to find a recommendation to stakeholders in improving BUMD governance.

¹⁵ Supreme Court Cassation Decision No. 1243 K/PID.SUS/2014 <https://bangunan3.mahkamahagung.go.id/direktori/bangunan/8bbc51e4aba8328bf981fc5fc7c89abc.html> accessed on 06/01/2024, 16.40 WIB.

¹⁶Ibid p. 131

¹⁷ <https://bangunan3.mahkamahagung.go.id/> accessed on 10/22/2023 at 21.46 WIB.

¹⁸ Supreme Court Cassation Decision No. 3055 K/Pdt/2021 <https://bangunan3.mahkamahagung.go.id/direktori/bangunan/zaecb097a144165a9228303930393433.html> accessed on 10/06/2023, at 20.40 WIB.

¹⁹ Decision of PT. TUN Surabaya No. 85/B/TF/2022/PT.TUN.SBY <https://angkatan3.mahkamahagung.go.id/direktori/angkatan/zaed16bfeec73d38b43c303931353131.html>

²⁰ Supreme Court Review Decision No.mor 98 PK/Pid.Sus/2015 <https://bangunan3.mahkamahagung.go.id/direktori/bangunan/cd8b7b4e9accd4d67068672a6a6077e2.html> accessed on 11/12/2023, at 19.40 WIB.

2. Research Methods

This research uses a normative legal approach²¹with the research specification being analytical descriptive which aims to provide a description of a law that applies to a particular society or group of people or a description of a symptom or between two or more symptoms.²². This type of research is qualitative research.²³and using secondary data sources. Secondary Data is an indirect source that can provide additional and strengthening research data.

Data sources are obtained through library research with the help of print media and electronic media. Sources of secondary data are: 1) primary legal materials in the form of laws, government regulations, ministerial regulations, and regional regulations, 2) secondary legal materials in the form of law books, journals and theses, 3) tertiary legal materials in the form of legal materials obtained from dictionaries, encyclopedias and so on, which are considered to have the potential to provide relevant information.²⁴.

This study uses library research data collection techniques. After the data is collected, data analysis is carried out by systematically compiling the data obtained by organizing the data into categories, describing them into units, synthesizing them, compiling them into patterns, and making conclusions so that they are easily understood by the reader. According to Miles and Huberman, the steps taken are as follows²⁵: data collection, data reduction, data presentation and drawing conclusions.

3. Results and Discussion

This research uses a normative legal approach²⁶with the research specification being analytical descriptive which aims to provide a description of a law that applies to a particular society or group of people or a description of a symptom or between two or more symptoms.²⁷. This type of research is qualitative research.²⁸and using secondary data sources. Secondary Data is an indirect source that can provide additional and strengthening research data.

²¹Johnny Ibrahim, 2005, *Theory and Methodology of Normative Legal Research*, Surabaya: Bayumedia, p.1

²²Faisal, 2010, *Breaking Through Legal Positivism*, Yogyakarta: Rangkang Education, p. 70

²³Ibid.

²⁴Ibid., p. 39

²⁵Suharsimi Arikunto, 2002, *Research Procedures*, Jakarta: PT Rineka Cipta, p. 206

²⁶Johnny Ibrahim, 2005, *Theory and Methodology of Normative Legal Research*, Surabaya: Bayumedia, p.1

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4. Conclusion

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³²Faisal, 2010, *Breaking Through Legal Positivism*, Yogyakarta: Rangkang Education, p. 70

³³Ibid.

³⁴Ibid., p. 39

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