Law Development Journal
SINTA 2 Degree No. 0228/DTS/C3/DT.05.00/2026
ISSN: 2747-2604
Volume 8 No. 2, June 2026

Legal Certainty Regarding Mandatory Legal Entity Adjustment for Regional Enterprises

Amelia Sri Kusuma Dewi[1] & Fairial Fatimah[2]
[1] Faculty of Law, Universitas Brawijaya, Indonesia, E-mail: amelia_dewi@ub.ac.id
[2] Land deed official/notary of Malang Regency, E-mail: farial_fatimah@yahoo.com

Abstract. *This study aims to analyze the realization of legal certainty in the regulation concerning the obligation to adjust the legal entity form of Regionally Owned Enterprises (Badan Usaha Milik Daerah/BUMD), particularly those owned by the Provincial Government of East Java, as mandated under Article 402 paragraph (2) of Law Number 23 of 2014 concerning Regional Government. The research problem focuses on the fact that a number of BUMDs have not yet adjusted their legal entity forms despite the expiration of the statutory transitional period, thereby raising issues concerning legal standing, adjustment mechanisms, and the legal status of such enterprises. The research employs a normative juridical (dogmatic) method using both statutory and conceptual approaches. The study was conducted through library research on primary, secondary, and tertiary legal materials, which were analyzed descriptively and qualitatively using the theories of legal certainty advanced by Gustav Radbruch, Hans Kelsen, and Utrecht. The novelty of this research lies in its comprehensive analysis of the disharmony and normative vacuum within the regulation of the obligation to adjust the legal entity forms of BUMDs at the levels of legislation, government regulations, and regional regulations of East Java Province, particularly regarding adjustment mechanisms, legal sanctions, and the juridical status of BUMDs that have failed to comply with the adjustment requirement. The study concludes that the regulatory framework concerning the obligation to adjust the legal entity forms of BUMDs under the Regional Government Law, Government Regulation Number 54 of 2017, and the Regional Regulations of East Java Province on BUMDs and their amendments has not fully realized legal certainty due to the persistence of legal vacuums, normative conflicts, and unclear juridical consequences for BUMDs that have not undertaken the required legal entity adjustment in accordance with statutory mandates.*

Keywords: *Adjustment; Certainty; Governance; Regulation.*

1. Introduction

Regional economic development constitutes one of the principal instruments for realizing the objectives of the welfare state as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia(Manan, 1996, p. 16) Within this framework, regional governments are granted authority to manage regional economic potential through the establishment of Regionally Owned Enterprises (Badan Usaha Milik Daerah/BUMD). The existence of BUMDs is not merely intended to function as an instrument of public service and provider of public necessities(Risnain, 2016, p. 300), but also as a mechanism for increasing Regional Original Revenue (*Pendapatan Asli Daerah/PAD*) through professional business management and the implementation of good corporate governance principles.(Elviandri, 2019) Accordingly, BUMDs occupy a strategic position in supporting both national and regional economic development.

The regulation of BUMDs underwent significant transformation following the enactment of Law Number 23 of 2014 concerning Regional Government. Under this law, the legal entity forms of BUMDs are limited to two categories, namely Regional Public Companies (*Perumda*) and Regional Limited Liability Companies (*Perseroda*). Through the Transitional Provision of Article 402 paragraph (2), all BUMDs established prior to the enactment of the law are required to adjust their legal entity forms within a maximum period of three years from the promulgation of the law. Fundamentally, this provision aims to create regulatory harmonization, legal certainty, and institutional restructuring of BUMDs in order to strengthen professionalism and accountability in regional business governance.("Mendagri Ungkap Peran Krusial BUMD Dalam Perkuat Pendapatan Asli Daerah (PAD) Dan Tantangannya," 2025)

In practice, however, until 2026 several BUMDs across various regions, including East Java Province, have yet to comply with the legal entity adjustment mandated by the legislation. This condition demonstrates that the implementation of the transitional provisions has not operated effectively. A number of BUMDs continue to retain their previous nomenclature as Regional Companies (Perusahaan Daerah/PD) or Limited Liability Companies (*Perseroan Terbatas/PT*), despite the normative requirement to transform into *Perumda* or *Perseroda*. This situation raises juridical issues concerning legal status, legal standing, authority to undertake legal acts, and the validity of legal relations conducted by BUMDs that have failed to undertake the required adjustment.

The problem becomes increasingly complex because neither Law Number 23 of 2014 nor Government Regulation Number 54 of 2017 concerning BUMDs clearly regulates the mechanism for legal entity adjustment, sanctions for non-compliance, or the legal consequences for BUMDs that fail to fulfill such obligations. Furthermore, a normative inconsistency exists between Article 402 paragraph (2) of the Regional Government Law, which employs the mandatory term “shall,” and Article 139 paragraph (1) of the Government Regulation on BUMDs, which uses the discretionary term “may.” This inconsistency potentially creates multiple interpretations and undermines legal certainty in the implementation of the obligation to adjust the legal entity forms of BUMDs.(“Sampaikan Jawaban Gubernur Terhadap Pandangan Umum Fraksi Terhadap Pelaksanaan APBD 2023, Pj. Gubernur Adhy Optimistis BUMD Sumbang Pendapatan Daerah,” 2026)

At the regional level, the Provincial Government of East Java enacted Regional Regulation Number 8 of 2019 concerning Regionally Owned Enterprises, which was subsequently amended through Regional Regulation Number 7 of 2025. Nevertheless, these regulations remain insufficient to address the existing legal issues comprehensively. The adjustment of legal entity forms under these regional regulations tends to be interpreted merely as an administrative change of nomenclature in official documents, whereas substantively such adjustment constitutes institutional restructuring with implications for capital structure, asset management, corporate governance, and the juridical status of BUMDs. Consequently, the regional regulations have not yet fully provided legal certainty regarding the existence and operations of BUMDs in East Java Province.(*Perubahan Nomenklatur BPR Jatim, Pj. Gubernur Adhy: Optimalisasi Peran BUMD*, 2024)

Previous studies have generally focused on the transformation of BUMD legal entity forms from the perspectives of corporate governance, institutional restructuring, and business implications for increasing regional revenue. Earlier research has also predominantly emphasized the distinctions between *Perumda* and *Perseroda* or the mechanisms of legal entity transformation from the standpoint of corporate law. However, prior studies have not specifically examined the issue of legal certainty concerning the obligation to adjust the legal entity forms of BUMDs, particularly regarding normative vacuums, conflicts of laws and regulations, and the juridical implications for BUMDs that fail to comply within the statutory timeframe. Accordingly, a significant research gap exists in the absence of comprehensive studies integrating transitional provisions, legal certainty theory, and the implementation of BUMD regulations at both the national and regional levels.

Based on the foregoing discussion, this study is essential to analyze the realization of legal certainty in the regulation concerning the obligation to adjust the legal entity forms of BUMDs, particularly those owned by the Provincial Government of East Java. This research is expected to contribute academically to the development of administrative law and regional corporate law, while also providing normative

Law Development Journal
SINTA 2 Degree No. 0228/DTS/C3/DT.05.00/2026
ISSN: 2747-2604
Volume 8 No. 2, June 2026

recommendations for the formulation of more harmonized, systematic, and legally certain regulations governing BUMDs in carrying out both their public service and economic functions.

The regulation concerning the obligation to adjust the legal entity forms of Regionally Owned Enterprises (Badan Usaha Milik Daerah/BUMD), as mandated under Law Number 23 of 2014 concerning Regional Government, has not yet fully realized legal certainty. This condition is reflected in the continued existence of BUMDs that have failed to undertake the required legal entity adjustment despite the expiration of the statutory transitional period. Furthermore, there remains a normative vacuum regarding the mechanisms for legal entity adjustment, sanctions for non-compliance, and the legal status of BUMDs that have not fulfilled such obligations. Consequently, these circumstances give rise to juridical issues concerning legal standing, authority to undertake legal acts, and the validity of legal actions carried out by BUMDs in conducting their business activities.

The problem becomes increasingly complex due to the existence of regulatory disharmony between Law Number 23 of 2014 concerning Regional Government and Government Regulation Number 54 of 2017 concerning BUMDs, particularly with respect to the mandatory nature of the legal entity adjustment obligation. At the regional level, the Regional Regulations of East Java Province concerning BUMDs have likewise failed to provide comprehensive regulation, as the adjustment of legal entity forms is still predominantly interpreted merely as an administrative change of nomenclature. As a result, there remains no clear legal framework governing the juridical implications concerning the legal standing and operational validity of BUMDs that have not undertaken the required adjustment of their legal entity forms in accordance with statutory mandates.

The objective of this research is to analyze the realization of legal certainty in the regulation concerning the obligation to adjust the legal entity form of Regional-Owned Enterprises (BUMD), particularly those owned by the Government of East Java Province. This study specifically examines the harmonization and consistency between Law Number 23 of 2014 concerning Regional Government, Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises, and the Regional Regulation of East Java Province concerning BUMD and its amendments in regulating the obligation to transform the legal entity forms of BUMD into *Perumda* or *Perseroda*.

In addition, this research aims to identify and evaluate the existing legal vacuums, normative conflicts, and ambiguities related to the mechanisms, sanctions, and legal consequences for BUMD that fail to implement legal entity adjustments within the transitional period stipulated by legislation. Through this analysis, the study seeks to provide legal recommendations for strengthening legal certainty, institutional legitimacy, and the implementation of good corporate governance in the management of Regional-Owned Enterprises within the Indonesian legal system.

2. Research Methods

This study employs normative legal research using statutory and conceptual approaches to examine legal norms concerning the adjustment of the legal entity forms of Regionally Owned Enterprises (BUMD), particularly in relation to legal certainty, regulatory disharmony, and normative vacuums(McLeod, 2002). The statutory approach was used to analyze the consistency and synchronization of relevant regulations, including Law Number 23 of 2014 concerning Regional Government, Government Regulation Number 54 of 2017 concerning BUMDs, Law Number 12 of 2011 concerning the Formulation of Laws and Regulations, and regional regulations concerning BUMDs in East Java Province. The conceptual approach(P. D. M. Marzuki, 2017, pp. 133–177.) was applied to examine the concept of legal certainty through the theories of Gustav Radbruch, Hans Kelsen, Utrecht, and Jan Michiel Otto. The research relied on primary, secondary, and tertiary legal materials collected through library research and analyzed descriptively and qualitatively through legal interpretation, norm synchronization, and deductive reasoning to identify normative conflicts, legal vacuums, and regulatory inconsistencies related to the institutional adjustment of BUMDs.(Soekanto & Mamudji, 2015)

3. Result and Discussion

3.1. Regulation on the Duty to Alter the Form of Legal Entity of Regional-Owned Enterprises 23 of 2014 on Regional Government.

1) Regulation No. 23 of 2014

Regional government was introduced by the Government and was promulgated on 2 October 2014. The Juridical and normative basis of the existence of the BUMD is rooted in the Article 304 paragraph (1) of the Regional Government Law regulating regional authorities in capital participation as well as the extensive provisions in Chapter XII (Articles 331- 343) along with Government Regulations concerning BUMD. In form of finance the capital composition of BUMD is based on regional capital participation in the form of money and regional assets and other sources such as loans, grants, reserve capitalization, asset revaluation profits and share premiums. To ensure accountability and legal certainty vis-à-vis segregated regional resources, Article 333 paragraph (2) of the Regional Government Law imposes an enforceable requirement for the stipulation of all regional capital participation via a Regional Regulation (Perda).(Lubis, 2018)

As a result, regional capital involvement in BUMD as limited liability companies separate these assets from regional financing, and therefore their administration will be under the law of limited liability companies and not the regional budgetary system (APBD). Accordingly, referring to the instruction of Article 331 of the Regional Government Law paragraph (3), the legislator restricts the legal forms of BUMD into only two aspects: the Regional Public Companies (*Perumda*) and Regional Limited Liability Companies (*Perseroda*). Regional Public Companies refer to BUMD whose full capital shares are in each region and not broken down into shares as prescribed under Article 334 paragraph (1). On the other hand, Regional Limited Liability Companies are companies in the form of limited liability entities where 51% of their shares must be owned by the regional government according to Article 339 paragraph (1). Specifically for Regional Limited Liability Companies, for one thing, the formation of the legal entity is first decided by a regional regulation; on a later stage, it must be held in the light of limited liability company law, and amendments in the Job Creation Law.

The legal framework of *Perumda* and *Perseroda* in principles, on the basis of separate institutional characteristics and the respective comparative advantages and disadvantages for each, is different. *Perumda* has a relatively simplified establishment process, a centralized decision-making authority under the regional head, the focus on public service and regional development, and the safeguarding of its assets from seizure or bankruptcy. On the other hand, *Perseroda* is profit-driven for growing regional income, more exposed to private sector capital, relatively more independent and operates in a competitive corporate environment as the staff is in Private employment.(Cahyaningrum, 2018)

Perumda and *Perseroda*, on the other hand they have weaknesses too. The limitations at *Perumda* are also largely the result of its local political environment and, above all, the tendency to be politically active and politically vulnerable, bureaucratic management structures and the degree of dependence on regional capital to which the direct losses of the company burden the financial resources in the region. On the other hand, *Perseroda*’s weaknesses consist of a more complex and long legal process, a lack of regional facilities, and liabilities associated with bankruptcy risks and judicially-appropriated assets because it is clear that the company’s property is distinct from its regional assets. For such kind of legal form of BUMD, whether *Perumda* or *Perseroda*, the consideration of its respective advantages and disadvantages should be given considering the basic purpose of the enterprise - whether for public service or generation of profit.

Further, the effects of such a legal transition on capital structure, service features, asset management, organization, employees and stakeholder reaction on corporate continuity must be taken into-account by local enterprises also. However, from the perspective of governance, the importance of the strengths and weaknesses of both *Perumda* and *Perseroda* must be contextualized with the factual institutional conditions of the existing Regional Enterprise(Indana et al., 2025). If the Regional Enterprise chooses the *Perumda* mode, its primary benefit would be that this means the traditional institutional structure, so the change could not be very impactful on the current organizational practices.

But in this particular condition, the risk is stagnation and managerial monotony. Such limitations develop due to the fact that the system's management system continues to be largely reliant on Regional Head policies while the business area and field is confined exactly to predefined public service activities. In contrast, the major advantage of *Perseroda* is its autonomy in profit-making, flexibility in capital supply, assets management, and the management of competent human resources. However, its major drawback and challenge is that changing those habits, traditions, and work ethics with which one is already embedded in the current Regional Enterprise will take a long time and be difficult as the long transition process. The Regional Government Law, which has been enacted, requires that:

Article 402 paragraph (2) of the Transitional Provisions, "BUMD established prior to enactment of this Law shall adjust to provisions of this Law within a maximum period of three (3) years from the promulgation of this Law." BUMD remaining before enactment of this Law, namely those that were still formed in the form of Regional Enterprise and/or Limited Liability Company, were obliged to adjust their legal status and institutional form in accordance with this regulation within a period of transition, at the latest no later than three (3) years after the promulgation of the Law." Hence, regional authorities were required to implement this transition immediately, including to overhaul all modes of legal BUMD in their respective regions no later than 2 October 2017.(Fitrahady et al., 2024)

The Regional Government Law does not regulate, leading to a void in the law concerning the following legal constructions(Rakia et al., 2021); The transitional provisions regulate several important matters related to Regional-Owned Enterprises (BUMD) established prior to the enactment of the Regional Government Act, namely: initiatives and mechanisms for the legal transition of existing BUMD entities; legal consequences and sanctions for BUMD entities that fail to complete the required legal conversion within the three-year transitional period stipulated after the promulgation of the Regional Government Law; and legal certainty regarding the legal form and status of any entity or institution that remains unnamed and fails to adjust its institutional form beyond the prescribed transitional period. In essence, transitional provisions within legislation are intended to eliminate legal vacuums in order to ensure legal certainty and legal protection for parties affected by regulatory changes.

2) Government Regulation Number 54 of 2017

Further provisions concerning BUMD are regulated under Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprises. Regional Heads possess full authority over the management of regional finances and represent Regional Governments in ownership of separated regional assets. This authority encompasses capital participation, subsidies, assignments, utilization of management outcomes, as well as supervision and guidance of BUMD. In practice, the position of the Regional Head is adjusted according to the legal form of the enterprise, namely as owner of capital in *Perumda* and as shareholder in *Perseroda*. The issuance of Government Regulation Number 54 of 2017 fundamentally served as a response to the legal vacuum arising after the Regional Government Law revoked Law Number 5 of 1962 concerning Regional Enterprises, thereby providing a comprehensive regulatory framework for BUMD.(Sumadiyono, 2019)

Regarding the obligation to adjust legal entity forms, Article 139 paragraph (1) of the Government Regulation concerning BUMD stipulates that "Regional enterprises established prior to the enactment of this Government Regulation may be transformed into BUMD." The regulation concerning adjustment of legal entity forms is characterized by a conflict of norms. On the one hand, Article 402 paragraph (2) of the Regional Government Law employs the imperative phrase "shall," whereas Article 139 paragraph (1) of the Government Regulation utilizes the facultative phrase "may." This inconsistency constitutes a manifestation of vertical normative conflict between statutory law and implementing regulations, which under the hierarchy of legislation theory must be resolved through the principle of lex superior derogat legi inferiori. Consequently, the provisions of the Regional Government Law as the higher norm should prevail over the facultative phrase "may" contained in the Government Regulation.(Irfani, 2020)

Similar to the Regional Government Law, the Government Regulation concerning BUMD also fails to regulate mechanisms and sanctions applicable to BUMD that fail to comply with the obligation to undertake legal adjustments within the three-year transitional period following the promulgation of the Law. The Government Regulation merely regulates the alteration of BUMD legal forms under Article 114. BUMD may alter their legal forms, either from *Perumda* to *Perseroda* or vice versa, within the context of restructuring efforts to achieve corporate objectives more effectively. Procedurally, every legal form alteration must be stipulated through a Regional Regulation, with further implementing provisions to be regulated by Ministerial Regulation. However, such Ministerial Regulation has not yet been enacted.(Abrianto, 2026)

Based on the wording of Article 114, it can be concluded that alteration of BUMD legal form possesses a different scope from adjustment of legal entity form. Adjustment of legal entity form constitutes an administrative transition process intended to transform BUMD status previously based on Minister of Home Affairs Regulation Number 3 of 1998 (Regional Enterprises and Limited Liability Companies) into forms compatible with the Regional Government Law, namely *Perumda* and *Perseroda*. Transformation of Regional Enterprises into limited liability companies represents a legal transformation from public legal entities into private legal entities, characterized by the separation of assets and the principle of limited shareholder liability.(Abrianto, 2026)

Between the legal forms of Regional Enterprises and *Perumda*, substantial differences exist. Initially, the legal form of Regional Enterprises was not distinguished according to ownership or capital composition. Such classification only began to be specifically regulated following the issuance of Minister of Home Affairs Regulation Number 3 of 1998, Article 2 of which stipulated that BUMD legal forms could consist of either Regional Enterprises or Limited Liability Companies. In contrast, the Regional Government Law clearly differentiates the characteristics of *Perumda* and *Perseroda*.

Similarly, although both Limited Liability Companies and *Perseroda* share characteristics as corporate legal entities with share-based capital structures and adherence to modern corporate governance principles, they differ in terms of shareholder composition. In ordinary Limited Liability Companies, there is no regional government capital participation, whereas *Perseroda* specifically constitutes BUMD in the form of limited liability companies with all or at least 51% of shares owned by one region. Nevertheless, despite regional government capital participation, *Perseroda* operational activities remain subject to legislation governing limited liability companies.

Based on the foregoing analysis, legal compliance must be restored in accordance with Article 402 paragraph (2) of the Regional Government Law. Although PT and *Perseroda* essentially share similar corporate structures, the involvement of regional government capital participation necessitates a specific adjustment mechanism in fulfilling the mandate of the Regional Government Law. The legal consequence for BUMD that fail to undertake legal form adjustments is the limitation of their capacity to perform legal acts, thereby rendering their legal standing vulnerable.(Ainiyyah, 2022)

The Provincial Government of East Java responded to the obligation of BUMD adjustment under the Regional Government Law by enacting Regional Regulation of East Java Province Number 8 of 2019 concerning Regional-Owned Enterprises. Under Article 25 of the Transitional Provisions, the Regulation stipulates that all

BUMD in the form of Regional Enterprises and Limited Liability Companies existing prior to the enactment of the Regulation shall be interpreted as *Perumda* and *Perseroda*. Furthermore, such BUMD are obligated to undertake adjustments within one year following the enactment of the Regulation. The adjustment process is stipulated to occur merely through changes in nomenclature within official documents without altering the corporate name of the BUMD.(Setiadi, 2019)

According to the researcher, several legal conflicts in the form of legal vacuums and inconsistencies remain evident within Article 25.(Aritonang, 2023) *First*, the provision stating that existing Regional Enterprises and Limited Liability Companies "shall be interpreted as" *Perumda* and *Perseroda* creates the impression that legal adjustment may occur automatically without requiring a specific mechanism. In fact, significant differences exist between ordinary Limited Liability Companies and *Perseroda*. Thus, a legal vacuum persists because the Regional Regulation also fails to regulate the mechanism for adjusting BUMD legal entity forms, similar to the deficiencies within the Regional Government Law and the Government Regulation concerning BUMD.

Second, the provision requiring adjustments within one year after the enactment of the Regional Regulation is inconsistent with Article 402 paragraph (2) of the Regional Government Law, which provides a transitional period of three years from the promulgation of the Law.

Third, the provision stating that adjustment shall occur merely through changes in nomenclature within official documents is insufficient. Adjustment of legal entity forms constitutes institutional restructuring rather than administrative modification. Procedurally, such adjustment should be stipulated through a Regional Regulation following comprehensive studies concerning the suitability of the selected legal form, corporate obligations, and the financial condition of the BUMD.

Harmonization between regional regulations and higher-level legislation constitutes an effort to minimize normative conflicts within the national legal system. Consequently, such inconsistencies should be avoided during legislative drafting processes. Fundamentally, alteration of BUMD legal forms represents an effort to enhance regional revenue through restructuring and therefore cannot merely be simplified as formal administrative changes.(Widodo, 2021)

Table Analysis of Regulations Concerning the Obligation to Adjust the Legal Entity Form of BUMD

Regulation	Adjustment Regulation	Normative Issues	Implications for Legal Certainty

Law Number 23 of 2014 concerning Regional Government	Article 402 paragraph (2) requires BUMD to adjust their legal entity form within a maximum period of 3 years from the promulgation of the Law.	Does not regulate adjustment mechanisms, sanctions, or the legal status of BUMD that fail to undertake adjustment.	Creates a legal vacuum and uncertainty regarding the legal standing of BUMD.
Government Regulation Number 54 of 2017 concerning BUMD	Article 139 paragraph (1) states that regional enterprises "may" be transformed into BUMD.	A conflict of norms occurs with the Regional Government Law because the phrase "may" contradict the phrase "shall."	Reduces legal certainty and creates multiple interpretations regarding the implementation of adjustment obligations.
Regional Regulation of East Java Province Number 8 of 2019	Article 25 regulates adjustment through changes in nomenclature within official documents.	Adjustment is narrowed into merely administrative changes without mechanisms for legal entity restructuring.	Does not provide certainty regarding the legal status and governance of BUMD.
Regional Regulation of East Java Province Number 7 of 2025	Removes the provision regarding the time limit for BUMD adjustment.	Still does not regulate mechanisms, sanctions, or legal consequences of delayed adjustment.	The legal vacuum continues to exist even though the normative conflict regarding the adjustment period has been removed.

Based on the table above, it can be observed that the primary issue concerning the regulation of the obligation to adjust the legal entity form of BUMD lies in the absence of synchronization and clarity of legal norms. The Regional Government Law indeed mandates the obligation of adjustment; however, it does not provide procedural mechanisms or legal consequences for noncompliance. On the other hand, the Government Regulation concerning BUMD employs optional terminology, thereby creating a vertical conflict of norms.

At the regional level, the Regional Regulation of East Java Province has likewise failed to provide legal certainty because the adjustment of legal entity forms is interpreted merely as a change in nomenclature. In fact, changes in the legal entity form of BUMD carry legal implications concerning the status of separated regional assets, corporate governance, legal standing, as well as the authority of BUMD to undertake legal actions.

The provisions contained in Regional Regulation Number 8 of 2019 concerning Regional-Owned Enterprises still contained deficiencies and had not adequately accommodated the regulatory needs of BUMD based upon the principles of good corporate governance. Consequently, the Regulation was subsequently amended through Regional Regulation of East Java Province Number 7 of 2025 concerning Amendments to Regional Regulation Number 8 of 2019 concerning Regional-Owned Enterprises. One of the amendments introduced was the removal of the provision regarding the time limit for adjustment of BUMD in the form of Regional Enterprises and Limited Liability Companies under Article 25 paragraph (2) of the

Regional Regulation concerning BUMD. Strategies for the management of BUMD must also be directed toward the realization of good corporate governance principles through improvements in corporate organs, management, and organizational structure in order to achieve the objective of regional autonomy and independence.(CN, 2016)

With the revocation of the provision concerning the adjustment period for Regional-Owned Enterprises (BUMD) in the form of Regional Enterprises and Limited Liability Companies under Article 25 paragraph (2) of the Regional Regulation of East Java Province concerning BUMD, the normative inconsistency with the Regional Government Law has formally ceased to exist. Nevertheless, similar to the regulatory framework established under the Regional Government Law and the Government Regulation concerning BUMD, a legal vacuum persists with respect to several fundamental juridical issues, particularly regarding the procedures and mechanisms for the institutional transformation of BUMD entities established prior to the enactment of the Regional Government Law, the construction of sanctions and compliance instruments for failure to fulfill the obligation to restructure legal entity forms within the three-year transitional period following the promulgation of the Law, and the juridical implications concerning the legal standing and institutional legitimacy of BUMD entities that fail to undertake the mandated institutional adjustments beyond the legally prescribed transitional period.(Yanto, 2020, p. 27)

3.2. The Realization of Legal Certainty in the Regulation Concerning the Obligation to Adjust the Legal Entity Form of Regional-Owned Enterprises

As a state based on the rule of law, Indonesia bears the responsibility to realize the three fundamental objectives of law, namely legal certainty, justice, and expediency. Ideally, the implementation of state functions should accommodate these three elements in a balanced manner so that Indonesia's status as a constitutional state can be effectively realized. The principle of legal certainty within a rule of law system emphasizes the importance of statutory regulations, propriety, consistency, and fairness in every governmental policy and administrative action.(Muslih, 2017)

Gustav Radbruch posited that the realization of the objectives of law necessitates the application of a principle of priority among the three fundamental legal values, namely justice, expediency, and legal certainty. This proposition is grounded in the understanding that these values may, in certain circumstances, come into conflict with one another, thereby requiring the prioritization of one value over the others. Accordingly, Radbruch formulated a hierarchical order of legal values in which justice constitutes the primary objective of law, followed by expediency, while legal certainty occupies the third position.(Erwin, 2012, p. 123)

The prioritization of legal objectives is necessary in order to preserve the legal system from internal conflict. Historically, Gustav Radbruch initially placed legal certainty as the highest legal objective. However, after witnessing how formal legalism was used to legitimize the atrocities of the Nazi regime during World War II, he revised his theory. Radbruch subsequently positioned justice as the primary legal objective, superior to both legal certainty and expediency.(Fanani, 2011, p. 3)

According to Gustav Radbruch, legal certainty does not merely require compliance with the implementation of legal regulations, but also emphasizes the quality of the substance contained within such regulations. In other words, the norms embodied in legal products must genuinely reflect fundamental legal principles in order for the regulatory function to operate effectively. Within Indonesian legal politics, legal certainty places normative stability as an inseparable component in maintaining social order and justice within society.(Huijbers, 1982, p. 162)

Hans Kelsen viewed law as a system of norms emphasizing the aspect of das sollen (what ought to be), in which norms arise from conscious and deliberate human actions. The existence of general legal rules functions both as a guideline for behavior and as a limitation on actions within society toward individuals. Through the existence and enforcement of such rules, legal certainty in social life can be realized.(Andrianto, 2020)

The most realistic legal objectives to achieve are legal certainty and expediency, where positivist scholars emphasize certainty while functionalist scholars prioritize expediency. Nevertheless, there exists a principle that rigid law without the spirit of justice may ultimately injure society, as reflected in the maxim summum ius, summa injuria. Therefore, although justice is not the sole legal objective, it remains the most substantive and essential goal in balancing the implementation of law.(P. M. Marzuki, 2008, p. 158)

According to Utrecht, legal certainty encompasses two principal dimensions. *First*, the existence of general rules that provide clarity for individuals concerning actions that are permitted and prohibited. *Second*, legal certainty serves as a form of legal protection safeguarding individuals against arbitrary governmental actions, thereby enabling every person to predict the limits and lawful actions that the State may impose upon them.(Rato, 2010, p. 59)

The doctrine of legal certainty originates from the juridical-dogmatic perspective and the school of legal positivism, both of which regard law as an autonomous and independent entity.(Syahrani, 1999, p. 23) Within this perspective, law is understood merely as a collection of formal rules whose primary objective is to guarantee certainty. The general nature of legal rules is viewed as evidence that law does not principally aim to realize justice or expediency, but rather to create certainty within society.(Ali, 2002, pp. 82–83) Referring to the ideas of Jan Michiel Otto, indicators of legal certainty in a particular situation may be measured through five principal prerequisites; Legal certainty is reflected in the existence of clear, consistent, and state-recognized legal rules, accompanied by consistent implementation of the law by the government in compliance with those rules. It also requires the adaptation of citizens' behavior to prevailing legal norms, the independence of the judiciary in applying the law to dispute resolution, and the effective enforcement of judicial decisions in practice.(Soeroso, 2011, p. 3)

The establishment of legislation aims to fulfill national legal needs and realize dignified legal certainty in accordance with the principles of the rule of law. Its primary focus is to formulate comprehensive legal substance in order to prevent the occurrence of a legal vacuum (r*echtsvacuum*). However, due to the inherent limitations of legislation in accommodating all legal aspects, especially those intersecting with other regulations, transitional provisions are generally included as a solution to ensure legal continuity during periods of transition.

Based on Law Number 12 of 2011 concerning the Formation of Legislation, as amended by Law Number 15 of 2019, transitional provisions are operationally defined as Transitional Clauses. Their primary function is to regulate adjustments to existing legal statuses or legal relationships in order to align them with newly enacted regulations.

The legislative system in Indonesia recognizes two terms relating to transitional regulations, namely "Transitional Rules," specifically used in the 1945 Constitution of the Republic of Indonesia, and "Transitional Provisions," commonly used in statutory legislation. Although functionally both terms are intended to prevent legal vacuums, the distinction in terminology creates operational ambiguity because the Law on Legislative Drafting only provides a conceptual definition for "Transitional Provisions." This complexity is further intensified by the emergence of the term "Provisions of Transitional Rules" within the Comprehensive Manuscript of Amendments to the 1945 Constitution, which combines elements of Transitional Rules and Additional Rules.(1945, 2010, p. 169)

It should be understood that the mandate of the Regional Government Law concerning the obligation of BUMD established prior to the enactment of the Law, namely those still operating under the legal forms of Regional Enterprises and Limited Liability Companies, to adjust in accordance with the Regional Government Law within a maximum period of three years from the promulgation of the Law, is incorporated within the Transitional Provisions of Article 402 paragraph (2). The same applies to the Government Regulation concerning Regional Government as well as the Regional Regulation of East Java Province concerning BUMD and its amendments. Therefore, it is necessary to understand the concept and function of transitional provisions within the formation of legislative products.

A transitional provision within legislation may be formulated only when necessary. Consequently, transitional provisions are not mandatory and do not necessarily appear in every statutory regulation. Based on Appendix II of the Law on Legislative Drafting, the principal function of Transitional Provisions is to regulate the adjustment of existing legal actions or legal relationships to conform with newly enacted regulations, with the objectives of; Preventing the emergence of a legal vacuum (vacuum of norm); Ensuring the realization of legal certainty; Providing juridical protection for legal subjects affected by regulatory changes; and Regulating matters of a transitional or temporary nature.(Hariningsih, 2018)

However, from the perspective of legislative drafting techniques, such provisions are essentially facultative in nature. In other words, the inclusion of a transitional chapter is not an absolute systematic requirement, but rather a situational necessity that is formulated only when transitional urgency exists.

Based on the Appendix to the Law on Legislative Drafting, the placement of Transitional Provisions within the structure of legislation is specifically regulated. If a regulation contains chapters, the Transitional Provisions are placed in a separate chapter between Criminal Provisions and Closing Provisions. Conversely, if the regulation consists solely of a sequence of articles without chapter divisions, the article concerning Transitional Provisions is placed immediately before, or several articles before, the Closing Provisions(Rumawi et al., 2024).

Transitional Provisions may contain arrangements concerning temporary deviations or postponements relating to certain legal actions and legal relationships, including provisions for retroactively applicable regulations in order to clarify legal status and periods of validity explicitly and in detail. Despite their flexibility in regulating transitional periods and preventing legal vacuums, Transitional Provisions are functionally prohibited from containing material that covertly amends provisions within other statutory regulations.(Pratama, 2019)

Transitional provisions play a crucial role in the formation of legislation in order to preserve the legitimacy of legal implementation and enforcement. Regardless of differences in terminology, substantively these provisions function identically as instruments for overcoming legal vacuums (*rechtsvacuum*), namely situations characterized by the absence of legal rules governing certain aspects of social order. Although theoretically the claim concerning the total absence of legal instruments may be considered inaccurate, this is because the development of legal science continuously produces juridical innovations and alternatives responsive to societal needs, such as discretionary authority that enables public officials to undertake legal actions under certain circumstances for the public interest.(Rakia, 2020)

The benefit of transitional provisions lies in ensuring the realization of legal certainty as one of the fundamental objectives of law. This is consistent with the principle of legal certainty, which requires that every rule be clear, precise, stable, accessible, and capable of enabling society to accurately predict legal consequences. Transitional provisions function as references for legal events not yet accommodated within new regulations; however, their existence often creates legal dilemmas. Problems arise when the regulations referred to by transitional provisions prove inadequate, thereby indicating that issues concerning legal certainty actually originate from the slow pace of legislative processes rather than from the transitional provisions themselves. Accordingly, transitional provisions simultaneously function as emergency solutions during transitional periods while also reflecting weaknesses in the responsiveness of legislative formation.(Van Meerbeeck, 2016)

Based on the foregoing analysis, although the mandate of the Regional Government Law regarding the obligation of BUMD established prior to the enactment of the Law, namely those still operating under the legal forms of Regional Enterprises and Limited Liability Companies, to adjust in accordance with the Regional Government Law within a maximum period of three years from the promulgation of the Law, has been incorporated within the Transitional Provisions of Article 402 paragraph (2), and similarly regulated within the Government Regulation concerning Regional Government and the Regional Regulation of East Java Province concerning BUMD and its amendments, the realization of legal certainty has not yet been achieved. This is because the principle of legal certainty requires that every regulation not only exist formally, but also possess clarity, precision, stability, and predictability for legal subjects.

In other words, transitional provisions should ensure that regulatory transitions remain within a framework of legal certainty and do not generate confusion within society. Therefore, it may be concluded that the regulation concerning the obligation to adjust the legal entity form of Regional-Owned Enterprises, as stipulated in the Regional Government Law, the Government Regulation concerning BUMD, and the Regional Regulation of East Java Province concerning BUMD and its amendments, has not yet fully realized legal certainty.

4. Conclusion

This study concludes that the regulatory framework governing the obligation to adjust the legal entity form of Regionally Owned Enterprises (BUMD), as stipulated under Law Number 23 of 2014 concerning Regional Government, Government Regulation Number 54 of 2017 concerning BUMD, and the Regional Regulations of

East Java Province concerning BUMD and their amendments, has not yet fully realized legal certainty. This condition is attributable to the persistence of legal vacuums, normative conflicts, and ambiguities concerning the juridical consequences for BUMD that have failed to undertake the required legal entity adjustment in accordance with statutory mandates. As a result, uncertainties remain regarding the legal standing, authority to perform legal acts, and institutional legitimacy of such BUMD. Therefore, more harmonized, systematic, and comprehensive regulations are required, particularly with respect to adjustment mechanisms, sanctions for non-compliance, and the legal status of non-adjusted BUMD, in order to ensure legal certainty and effective corporate governance within the regional enterprise sector.

5. References

Journals:

Abrianto, B. O. (2026). Mekanisme Perubahan Badan Hukum Perusahaan Daerah Menjadi Perseroan Terbatas Menurut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas. *Locus Journal of Academic Literature Review*.

Ainiyyah, G. R. (2022). Badan Usaha Milik Daerah (BUMD) yang Belum Berubah Status Menjadi *Perumda* atau *Perseroda*. *Notary Law Journal*, 1(2), 176–203.

T. P. N. K. P. dan H. P. U. (2010). Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses, dan Hasil Andrianto, F. (2020). Kepastian Hukum Dalam Politik Hukum Di Indonesia. *Administrative Law and Governance Journal*, 3(1), 114–123. https://doi.org/10.14710/alj.v3i1.114-123

Aritonang, R. (2023). Harmonisasi Peraturan Daerah Guna Meminimalisir Konflik Norma. *Hangoluan Law Review*, 2(1).

Cahyaningrum, D. (2018). Implikasi Bentuk Hukum BUMD Terhadap Pengelolaan BUMD (The Implication of Regional Owned Enterprises Legal Form to its Management). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 9(1), 59–78. https://doi.org/10.22212/jnh.v9i1.997

CN, A. B. Y. T. M. A. S. (2016). Strategi Pengelolaan Badan Usaha Milik Daerah (BUMD) Persero Untuk Mewujudkan Prinsip Tata Kelola Perusahaan Yang Baik. *Privat Law*, 3(2).

Elviandri, E. (2019). Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia. *Mimbar Hukum*, 31(2), 252–266. https://doi.org/10.22146/jmh.32986

Fitrahady, K. F., Zuhairi, A., Hakim, A. R., & Setiawan, Y. (2024). Urgensi Perubahan Status Badan Hukum Bagi Perusahaan Daerah Pasca PP 54 Tahun 2017 Tentang BUMD. *Jurnal Hukum Mimbar Justitia*, 10(1), 81–100. https://doi.org/10.35194/jhmj.v10i1.4142

Hariningsih, S. (2018). Ketentuan Peralihan Dalam Peraturan Perundang-Undangan. *Jurnal Legislasi Indonesia*, 6(4), 595–602.

Indana, E. M., Waliden, I. A. S., Khalil, A. I. M., Rato, D., & Ohoiwutun, Y. A. T. (2025). Threats to Indonesia's Economic Sovereignty in the Appointment of Foreign Executives in State-Owned Enterprises. *Indonesian Journal of Law and Islamic Law (IJLIL)*, 7(2), 18–31. https://doi.org/10.35719/ijlil.v7i2.469

Irfani, N. (2020). Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, Problematika, dan Penggunaannya dalam Penalaran dan Argumentasi Hukum. *Jurnal Legislasi Indonesia*, 16(3), 305–325.

Lubis, M. R. (2018). Analisis Yuridis Terhadap Kedudukan Keuangan Negara Dalam Penyertaan Modal Daerah Pada BUMD Berbadan Hukum Perseroan Terbatas. *Jurnal Hukum Kaidah*, 18(1), 83–92.

Muslih, M. (2017). Negara Hukum Indonesia Dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum). Legalitas: *Jurnal Hukum*, 4(1). https://doi.org/10.33087/legalitas.v4i1.117

Pratama, F. S. (2019). Rechtsvacuum Phenomenon in Government Regulation of the Republic of Indonesia Number 51 of 2020 related to Passport Renewal Period to 10 Years. *Journal of Law and Border Protection*, 1(1), 51–58.

Rakia, A. S. R. S., Simanjuntak, K. W., Hidaya, W. A., & Darmawansya, A. (2021). Hakikat Ketentuan Transisional Dalam Pembentukan Peraturan Perundang-Undangan. *Amsir Law Journal,* 3(1), 30–38.

Risnain, Muh. (2016). Peningkatan Daya Saing Bangsa Melalui Reformasi Pembangunan Hukum Dalam Mewujudkan Cita Negara Kesejahteraan. *Jurnal Rechtsvinding*, 5(3), 300.

Rumawi, R., Ali, M., Syakur, A., & Supianto, S. (2024). The ratio decidendi of the decision of the Constitutional Court of the Republic of Indonesia from the perspective of legal positivism. *Вестник Санкт-Петербургского Университета. Право,* 15(2), 483–492. https://doi.org/10.21638/spbu14.2024.211

Setiadi. (2019). Urgensi Pengaturan Status Badan Hukum PDAM Tirta Pakuan Kota Bogor Menjadi Perusahaan Umum Daerah (*Perumda*). *PALAR (Pakuan Law Review*), 5(1).

Sumadiyono. (2019). Konstruksi Yuridis Badan Usaha Milik Daerah Menurut Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah. Legalitas: *Jurnal Hukum*, 11(1).

Van Meerbeeck, J. (2016). The Principle of Legal Certainty in the Case Law of the European Court of Justice: From Certainty to Trust. *European Law Review*, 41, 275.

Widodo, I. S. (2021). Perubahan Bentuk Badan Hukum Usaha Milik Daerah Berdasarkan Peraturan Pemerintah No. 54 Tahun 2017 Dalam Upaya Peningkatan

Pendapatan Asli Daerah. Yurispruden: *Jurnal Fakultas Hukum Universitas Islam Malang*, 4(1), 58–74.

Books:

Ali, A. (2002). *Menguak Tabir Hukum (Suatu Kajian Filosofis dan Sosiologis).* Toko Gunung Agung.

Erwin, M. (2012). *Filsafat Hukum*. Raja Grafindo.

Fanani, A. Z. (2011). *Berpikir Filsafat Dalam Putusan Hakim*. Fakultas Hukum Universitas Atmajaya.

Huijbers, T. (1982). *Filsafat Hukum Dalam Lintasan Sejarah*. Kanisius.

Marzuki, P. D. M. (2017). *Penelitian Hukum*: Edisi Revisi. Prenada Media.

Marzuki, P. M. (2008). *Pengantar Ilmu Hukum*. Kencana.

Manan, B. (1996). *Politik Perundang-undangan Dalam Rangka Mengantisipasi Liberalisasi Perekonomian*. FHUNILA.

Rakia, A. S. R. S. (2020). *Perundang-Undangan Indonesia: Kajian Mengenai Ilmu dan Teori Perundang-Undangan serta Pembentukannya*. Social Politic Genius (SIGn).

Rato, D. (2010). *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*. Laksbang Pressindo.

Soeroso. (2011). *Pengantar Ilmu Hukum*. Sinar Grafika.

Syahrani, R. (1999). *Rangkuman Intisari Ilmu Hukum*. Citra Aditya Bakti.

Yanto, O. (2020). *Negara Hukum: Kepastian, Keadilan dan Kemanfaatan Hukum (Dalam Sistem Peradilan Pidana Indonesia).* Pustaka Reka Cipta.

Regulation:

Pembahasan, 1999-2002, Buku X Perubahan UUD, Aturan Peralihan, dan Aturan Tambahan. Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi.

Perubahan Nomenklatur BPR Jatim, Pj. Gubernur Adhy: Optimalisasi Peran BUMD. (2024). Dinas P3AK Provinsi Jawa Timur.

Sampaikan Jawaban Gubernur Terhadap Pandangan Umum Fraksi Terhadap Pelaksanaan APBD 2023, Pj. Gubernur Adhy Optimistis BUMD Sumbang Pendapatan Daerah. (2026). In Bapenda Provinsi Jawa Timur.

Internet:

McLeod, T. I. (T I. (with Internet Archive). (2002). Legal method. Basingstoke : Palgrave. http://archive.org/details/legalmethod0000mcle_l9u4

Mendagri Ungkap Peran Krusial BUMD dalam Perkuat Pendapatan Asli Daerah (PAD) dan Tantangannya. (2025). In Merdeka.com.

Soekanto, S., & Mamudji, S. (2015). PENELITIAN HUKUM NORMATIF: SUATU Tinjauan Singkat. Https://Www.Semanticscholar.Org/Paper/Penelitian-Hukum-Normatif%3a-Suatu-Tinjauan-Singkat-Soekanto-Mamudji/D154030ce37128b38b0ee7a907ac68b7c720b4e4