

**LIABILITY OF BOARD OF DIRECTORS (BOD) TOWARD
POTABLE WATER QUALITY REQUIREMENTS IN
REGIONAL-OWNED ENTERPRISES (BUMD)**

(A CASE STUDY OF PD. XYZ FROM 2018 TO 2019)

A BACHELOR DEGREE THESIS



By:

WILDAN MAULANA
Student Number: 14410352

**INTERNATIONAL PROGRAM
UNDERGRADUATE STUDY
PROGRAM IN LAW
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA
2020**

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Submitted in Partial Fulfillment of the Requirement to Obtain Bachelor's Degree
(Tier-1) at Faculty of Law

Universitas Islam Indonesia

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APPROVAL PAGE

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Has been examined and approved by the Thesis Supervisor submitted before the
Board of Examiners in Final Thesis Examination

Dated on, 15 June 2020

Yogyakarta, 15 June 2020

Thesis Advisor,



Dr. Siti Anisah, S.H., M.Hum

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

LANGUAGE ADVISOR THESIS APPROVAL PAGE

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Has been examined and approved by the Language Advisor to be submitted
before the Board of Examiners in Final Thesis Examination

Dated on 15 June 2020

Yogyakarta, 15 June 2020

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Annida Nurul F. Asni, S. Pd., M. Pd.



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FINAL THESIS APPROVAL PAGE

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Defended before the Board of Examiners

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MOTTO

“The world is a tragedy to those who feel, but a comedy to those who think”
— Horace Walpole



DEDICATION



With gratitude to Allah S.W.T

The author this thesis to:

Papa, Mama, Abang and all of my family

Who always support me in every aspect of my life

SURAT PERNYATAAN
ORISINALITAS KARYA TULIS ILMIAH/TUGAS AKHIR MAHASISWA
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**LIABILITY OF BOARD OF DIRECTORS (BOD) TOWARD
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ENTERPRISES (BUMD)**

(A CASE STUDY OF PD. XYZ FROM 2018 TO 2019)

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Wildan Maulana

14410352

ACKNOWLEDGMENT

Assalamualaikum Warahmatullahi Wabarakatuh,

Alhamdulillahirabbil'amin, all praises and thanks to Allah *Subhanawata'ala.*, The almighty of all, the reason of everything happen on all the entire galaxy, who has given me all the love and mercy to complete this thesis. All thanks to our beloved Prophet, Muhammad *Sallallahu'alaihi Wassalam*, who has brought us from the darkness to the brightness future.

All grateful and thanks also belongs to:

1. **Allah SWT**, the Almighty God. My Life, my death, my love and my prayers are only for you
2. **Muhammad SAW**, The lights of the universe, whose personality, love and leadership changes million lives. It is my wish that I can meet you in hereafter
3. **Papa and Mama**, *Drs. Ahdi Mirza and Hj. Elis Margawati, A.md* the love of my life, the reason of all the motivations that I had, the reason why this beautiful life, and the reason to all education and knowledge that I have. This thesis completed just for the smile in their faces. I know, this thesis is a bit too late, but it's better late than never. Sorry.
4. **Praditya Eka Putra, S.Psi**, the coolest Brother on earth. Thank you for all the goods, all the motivations and your words of wisdom, also the support. I love you. May God Bless You Heart.
5. **Mutia Triamanda, M.Psi, Psikolog**, my sister from another mother. Thank you for all your help. You are the person whom I talk to beside my family, it really meant a lot to me. And thank you for giving me opportunity as your co-tester.
6. **Dr. Siti Anisah, S.H., M.Hum**, who have been my lecturer since day one which finally become my supervisor. Thank you for your patience. Thank you for your encouragement.
7. **Mr. Prof. Fathul Wahid, S.T., M.Sc., Ph.D.**, as the Rector of Universitas Islam Indonesia, for the permission to write this thesis.
8. **Mr. Dr. Abdul Jamil, S.H., M.H.**, as the Dean of Faculty of Law of Universitas Islam Indonesia, for the permission to write this thesis.

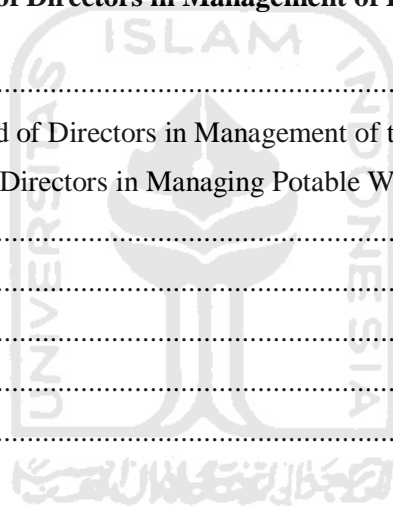
9. **Mr. Dodik Nur Heryanto, S.H., M.H., Ph.D**, as the Secretary of International Program Faculty of Law Universitas Islam Indonesia, for the permission to write this thesis.
10. All of the Lecturers that have given me a lots of knowledge and experiences.
11. **Juridical council of International Program**, Thanks For the organization experiences have gone further because of them
12. **My IP 2014 friends**. Bella, Wira, Dila, Alin, Amalina, Irfan, Julian, Piete, Bima, Dian, Galih, Garin, Ilham, Inka, Iqbal, Karin, Astari, Ratu, Renggi, Cahyadi, Memey, Saufa, Awan, Pras, Bayu, Maulana, Budi, and Fijan, Abel, Fifi. Thanks for all those funny yet wonderful days and years.
13. **Kosan Al-Kisol**, especially Edu and Afan. Thank you for always helping and supporting me. Thank you bro.
14. **KKN Unit 36**, Gunung Condong: Za Reza, Ki Rizki, Gis Logis, Bi Febi, Lit Lita, Dang Indang, Ra Tyara, and Ca Visca. Thank you for helping me in KKN.
15. **All of IP Family**. Miss Vera and Mbak Gita who has helped all those Campus things, Thank you.

There are many more friends who help me improving my self during my college life who cannot mention one by one.

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ABSTRACT

In carrying out its business activities, Regional-owned enterprise (BUMD) has several objectives. One of which is meeting the needs of many people. In this research, PD. XYZ, as the object of the research, gained a lot of complaints made by residents about the condition of the water received by the customers. In response to the complaint, PD. XYZ, in its Article of Association, has a goal to provide services to facilitate and distribute potable water to fulfill the basic needs of the community, support the implementation of economic development and improve the welfare of community. Furthermore, in this thesis, the authors formulated the problem formulation, i.e. what kind of legal test that has to be fulfilled by the Board of Directors in potable water management in PD XYZ? and how does the legal consequences of the Board of Directors in the violation of regulations cases related to the potable water in PD XYZ? The data obtained from library studies and interviews were analyzed using descriptive qualitative method. It is a data analysis method that groups data, selects data, and illustrates the meaning of the collected data by paying attention to all aspects of the study to obtain the general picture of the condition. The results show that there are several parameters that are not fulfilled by PD. XYZ as mandated by the Permenkes 492 of 2010. As a result, The Board of Directors must be responsible for the complaints reported by the consumers related to the potable water management. This research provides recommendations and intensifies the development and supervision of water quality in PD. XYZ. In addition, Regional Government has to be more active in terms of Supervision because the Regional Government also has the obligation to conduct external supervision as mandated by the regulation.

Keywords:

BUMD, Board of Directors, Potable Water

CHAPTER I

INTRODUCTION

A. Context of the Study

The enactment of Law No. 23 of 2014 about Regional Government is one of the legal bases of regional autonomy era. The implementation of regional autonomy era implied that the Regional Government is required to manage the regional finances effectively, efficiently and accountably.¹ Regional Government should strive to manage the local revenue carefully, precisely, and prudently. The Regional Government must ensure that all potential revenue that has been collected by the regional government enters into the accounting system. The main aspect in local revenue management that needs to be paid attention seriously is the management of local revenue (PAD). PAD should be part of the largest financial resources for the implementation of regional autonomy. This shows that PAD is the most important benchmark for regional capability in organizing and realizing regional autonomy so that PAD reflects the independence of the region itself.²

PAD can be derived from local taxes, regional levies, result of separated regional wealth management, and other legitimate PAD. It is derived from the result of separated regional wealth management whose income is derived from Regional

¹ Ambar Budhisulistiyawati, *et.al.*, “Strategi Pengelolaan Badan Usaha Milik Daerah (BUMD) Persero Untuk Mewujudkan Prinsip Tata Kelola Perusahaan Yang Baik”, *Privat Law*, Vol. III No. 2, Juli-Desember 2015, p. 59.

² Bayu Purnomo Aji, *et.al.*, “Analisis Sumber Pendapatan Asli Daerah (PAD) Dalam Pelaksanaan Otonomi Daerah Di Kabupaten Buleleng”, *e-Journal Bisma Universitas Pendidikan Ganeshha Jurusan Manajemen*, Volume 3, Tahun 2015.

Owned Enterprise (BUMD). BUMD has a role in realizing regional prosperity by contributing to PAD revenue either in the form of dividends or taxes. The challenge of increasing PAD, one of them can be answered by increasing the role or contribution of BUMD.³

Regional Enterprises managed by Regional Government are called Regional Owned Enterprises (BUMD). A regional owned enterprise is a company established by Regional Governments whose capital is fully/partly owned by Regional Governments. Law No. 23 of 2014 about Regional Government has not provided a clear definition of BUMD, however Article 331 of this law states that the Regional Government has the possibility to establish BUMD by Regional Regulation guided by the law. Article 6 of Law No 17 of 2003 about State Finance which states that a BUMD is a business entity wholly or partly owned by Regional Government.

The main purpose of establishing a BUMD is for the development and development of economic potential in the concerned area therefore BUMD has a very important and strategic position in supporting the implementation of autonomy.⁴ Therefore, the business activity needs to be optimized by BUMD management in order to really become a reliable economic power that can play an active role, both in carrying out its functions and duties as well as the strength of the regional economy. If we look at the position of PAD, PAD can be the instrument

³ *Peranan Badan Usaha Milik Daerah sebagai Salah Satu Sumber Pendapatan Daerah*, on <http://banten.bpk.go.id/?p=9272>. accessed December 4, 2017

⁴ Nindya Prillianti, "Strategi Peningkatan Perolehan Pendapatan Badan Usaha Milik Daerah (Studi Kasus : Perusahaan Daerah Air Minum Kabupaten Semarang Tahun 2008 – 2013).", *Journal of Politic and Government Studies*, Volume 3 No. 3, 2014.

of the reflection of the independence of a Region.⁵ Profit from the BUMD is expected to become one of the biggest contributions to the Local Revenue. Regional autonomy has considerable consequences for playing the role of BUMD and supporting PAD.

Indeed, regional economic activities sourced from the BUMD have been running since long before the law on regional autonomy was passed. To achieve the objectives of BUMD as one of the means of PAD, it is necessary to optimize BUMD efforts by improving the professionalism in terms of management.⁶ Human resources, adequate facilities and infrastructure become in parallel position to the strength of other economic sectors.

However in running the BUMD itself, there are many obstacles faced by BUMD in order to run its business activities. Barriers or problems faced by BUMD in running business activities usually are the accumulation of many problems that have been occurred before. One of the BUMDs in West Aceh which experienced this problem is PD. XYZ.

The form of the company that will be discussed in this research is the Regional Company. Regional companies consist of Regional Public Company (Perumda) and Regional Liability Company (Perseroda). A brief explanation of the types of Regional Government Enterprises are discussed in the next chapter. Form of PD XYZ discussed in this research is Perumda. Perumda can be said to be a new form

⁵ Rosmiaty Tarmizi, "Pendapatan Asli Daerah Berdampak Pada Kemandirian Keuangan Daerah", *JURNAL Akuntansi dan Keuangan*, Volume 1 Nomor 1, September 2010, p. 125.

⁶ Ambar Budhisulistiyawati, *et. al.*, "Strategi Pengelolaan Badan Usaha Milik Daerah (BUMD) Persero Untuk Mewujudkan Prinsip Tata Kelola Perusahaan Yang Baik", *Privat Law*, Vol. III No. 2 Juli-Desember 2015, p. 56.

of company. Therefore, it should be clarified whether PD XYZ is a legal person or not.

Black's Law Dictionary gives the understanding of legal persons as "An entity such as corporation, created by law given certain legal rights and duties of a human being; a being, real or imaginary, who for the purpose of legal reasoning is treated more or less as a human being."⁷

Furthermore, according to R. Subekti, legal person is essentially a body or an association that can have rights and perform actions like a human being, as well as having his own wealth, which can sue or be sued in before the court. This elements include:⁸

1. to be a body or association;
2. has the right and perform like human being;
3. has his own wealth; and
4. has the right to sue and be sued.

Based on the criteria that have been explained, it can be concluded that PD XYZ in the form of Perumda is a legal person. PD XYZ is a legal subject that has rights and obligations and can be sued and sued in court.

PD XYZ is one company that has a vital role in the area of West Aceh. This is because the natural conditions in Aceh Barat which have the majority of peatland therefore so many parties who expect PD XYZ to run the business properly and without any constraints or any serious problem. Instead of the availability of water

⁷ Garner, Bryan A., and Henry Campbell Black, *Black's Law Dictionary*. 9th ed. Westm St. Paul, MN: 2009. p.1258

⁸ Chidir Ali, *Badan Hukum*, Bandung, Alumni, 1999, p. 18.

that can be used for every household activity in the West Aceh region, the natural condition becomes a challenge for PD XYZ to run their activity in this geographical condition.

Long before the complaints that came from their customers, in 1994 PD XYZ borrowed to the Central Government of Rp. 4,000,000,000; (Four Billion Rupiahs) in order to develop their business activities. In fact, in that year, the loan of Rp. 4,000,000,000; is not a small number. However, until 2016, the debt and interest have reached Rp. 23,000,000,000; (Twenty Three Billion) and not yet able to be paid by PD XYZ.⁹

However, by the end of 2016, the Ministry of Home Affairs issued Regulation of the Minister of Home Affairs No. 48 of 2016 which contains the Guidelines for the Acceptance of Grants from the Central Government to the Regional Government, and Capital Participation of Regional Government to Regional Water Company in the context of Debt Settlement of Regional Water Company to the Central Government in a Non-Cash.¹⁰ Through Permendagri, all debts and interest from PD XYZ have been abolished and all grants in the form of debt from PD XYZ have been converted into Equity Participation from the Central Government.

As well as to keep the company alive, the Regional Government always provides regular capital participation and on the other hand PD XYZ almost never

⁹ Profil Ringkas PD XYZ.

¹⁰182 PDAM di Indonesia Terjerat Utang,on

<http://www.liputan6.com/bisnis/read/2628125/182-pdam-di-indonesia-terjerat-utang> accessed July, 24 2019

recorded profits, which serves as the local revenue which sourced from Regional Owned Enterprises¹¹

Based on the various problems that exist, the role of the Board of Director is not seen to take action properly in the case of PD XYZ in order to run his function to manage this company in operational activities. From all the problems that have arisen above, it supposes to be a big question for the Board of Directors. In fact, the Regional Government continues to provide capital participation to PD XYZ, and the Company holds a vital business activity that is water, while the company never gives significant Local Revenue to the Regional Government.¹²

This also came from the regulation itself since the regulation which relates to Regional Enterprises is not relevant enough.¹³ The latest regulation related to Regional Enterprises is Law No. 5 of 1962 which merely talks about the formulation of regional enterprises, the function of regional, the role of the director, the shares of regional enterprises, the allocation of profit, and the responsibility of Board of Directors. There are so many regulations which become consideration of this law which have been amended. Therefore, they are no longer relevant with current condition.

This becomes a dilemma for the Regional Government since it is stated in Article 33 paragraph 3 of the Indonesian Constitution of 1945 that: "Earth, water

¹¹Dewan Nilai Pelayanan PDAM Tirta Meulaboh Jelek, on <https://aceh.antaranews.com/berita/35836/dewan-nilai-pelayanan-pdam-tirta-meulaboh-jelek>, accessed December 10, 2017

¹²Dewan Tidak Persoalkan Kenaikan Tarif PDAM Meulaboh, on <https://aceh.antaranews.com/berita/37274/dewan-tidak-persoalkan-kenaikan-tarif-pdam-meulaboh>, accessed December 10, 2017

¹³ Khopiatuziadah, "Landasan Hukum Pengelolaan Badan Usaha Milik Daerah: Antara Ada dan Tiada", *Jurnal Legilasi Indonesia*, Vol. 11 No. 3 - September 2014, p. 227.

and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".

It gives the obligation of the Regional Government to manage the Resources for the welfare of the people. However rarely the Regional Government gain profit. They tend not to get profit from their business activity while at the same time, they continue to do equity participation to company caused by the lack of implementation of Good Corporate Governance.

The lack of regulation related to Good Corporate Governance can be part of the failures of PD XYZ's performance. The failure can be reflected by the failure of PD XYZ to become the income of regional revenue of the government. One the parliaments of West Aceh stated that every year regional government must be give equity participation. Furthermore, it also stated that this company do not give contribution to local revenue.¹⁴

Even though that general provision especially Law No. 5 of 1962 about Regional Enterprises states that there is no obligation to apply Good Corporate Governance, however in Law No. 23 of 2014 about Regional Government states that there is an article stating that the obligation of BUMD in running their business activity complies with Good Corporate Governance, this law becomes sources of the establishment of BUMD. The regulation of Good Corporate Governance in BUMD is regulated in Article 343 Law No. 23 of 2014 stipulating that

- “Management of BUMD must at least meet the following elements:
- a. procedures for capital investment;
 - b. organ and staff;

¹⁴*Dewan: PDAM Meulaboh Tak Berkontribusi PAD, on <https://aceh.antaranews.com/berita/22379/dewan-pdam-meulaboh-tak-berkontribusi-pad>, accessed December 11, 2017*

- c. evaluation procedures;
- d. good corporate governance;
- e. planning, reporting, training, supervision;
- f. cooperation;
- g. profit utilization;
- h. assignment of Regional Government;
- i. loans;
- j. internal watchdog unit, the audit committee and other committees;
- k. assessment of health level, restructuring, privatization;
- l. change of legal form;
- m. bankruptcy; and
- n. merger, consolidation, and takeover”

However, there were a lot of complaints from customers who began to complain that the water coming from PD XYZ taste salty and sometimes water flowing into the customer's home is very dirty.¹⁵ There was also a complaint that said that, the water was insufficient and often did not even flow to the home of customer.¹⁶ As a result of this obstacle which conducted by the company, there was an incident where a customer hit the employee of PD XYZ because the customer felt that so far the water never flowed to his house, but the customer was still billed by the dues from PD XYZ.¹⁷

However, there is no customer who asking any compensation to the company or sue the company before the court related to the losses or damages related to the potable water violation requirement which mandated by Permenkes 492 of 2010 which will be discussed in next chapter. This thesis is talking about the projected

¹⁵Air PDAM Tirta Meulaboh Keruh, Bupati Minta Benahi PDAM, on <https://www.harianaceh.co.id/2017/12/19/air-pdam-tirta-meulaboh-keruh-bupati-minta-benahi-pdam/>, accessed December 10, 2017

¹⁶Sepekan, Air PDAM di Aceh Barat Tak Mengalir on <http://www.ajnn.net/news/sepekan-air-pdam-di-aceh-barat-tak-mengalir/index.html>, accessed December 10, 2017

¹⁷Salah Jumlah Tagihan, Karyawan Pencatat Meteran Air PDAM Tirta Meulaboh Dihajar Pelanggan on <http://aceh.tribunnews.com/2017/07/06/salah-jumlah-tagihan-karyawan-pencatat-meteran-air-pdam-tirta-meulaboh-dihajar-pelanggan>, accessed December 10, 2017

legal consequences if there is any legal effort from the customer and the legal test of Director related his responsibility in operating the company.

Ministry of Health Regulation (Permenkes) No. 492 of 2010 about Potable Water Quality Requirements regulates a parameter which becomes an obligation of company to control the water. There are 2 (two) parameters which must be followed by the company, i.e. mandatory parameter and additional parameter. The mandatory parameter consists of physical and chemical parameter. The physical parameter including turbidity, smell and colour of water. The condition of water from PD XYZ which described above describes some clear requirements that cannot be fulfilled by the company.

B. Problem Formulation

Based on context of study, the problem formulations of this thesis are:

1. What is the legal test that has to be fulfilled by the Board of Directors in managing the potable water in PD XYZ?
2. How the legal consequences of Board of Directors in the case of violation of regulation related to the potable water in PD XYZ?

C. Research Objectives

Based on the problem statement, therefore the objectives of this thesis are:

1. To analyse the legal test that has to be fulfilled by the Board of Directors in the management of potable water in PD XYZ.

2. To get better understanding of the legal consequences of Board of Directors in the case of violation of regulation related to potable water in PD XYZ.

D. Theoretical Reviews

1. Regional Owned Enterprises

Regional-Owned Enterprise is an organization owned by Regional Governments with equity participation of 50% or more. BUMDs are under the top managerial government which includes the right to appoint top management and determine the basic policy. BUMD is established to achieve the specified public purpose which has multi-dimensional nature that consequently exists in the system of public accountability.

From the definition above, it shows that BUMD is an activity that has the nature of business, which involves the idea of investment and profit by marketing products produced in the form of goods/services. BUMN/ BUMD is a tangible form of state investment in the business field, the goal is to encourage and develop regional economic activities.¹⁸

This means BUMN / BUMD is part of the economic activity that has the function to support the state finances and provide services to the community in accordance with the field of business. There are many objectives of BUMD: ¹⁹

- a. pursuit of profit;

¹⁸ I Made Asu Dana Yoga Arta, "Status Kepemilikan Badan Usaha Milik Negara (BUMN) Persero Setelah dikuasai Pihak Swasta," *Jurnal IUS*, Vol V Nomor 2 Agustus 2017, p. 183.

¹⁹ Badan Pembinaan Hukum Nasional, *Pengelolaan BUMD Berdasarkan Prinsip Tata Kelola Perusahaan Yang Baik (Good Corporate Governance)*, (Jakarta: Badan Pembinaan Hukum Nasional, 2013), p. 4.

- b. fulfilment of the livelihood of the people;
- c. public benefit, and local revenue improvement;

BUMD in this case, is not much different from the purpose of BUMN, which aims to support economic development, provide sufficient supply of goods for the livelihood of the people, be able to give profits and support the implementation of development plans.

The Regional Government establishes a regional company on the basis of considerations, i.e. to carry out its ideology that means of production which belong to the community to protect consumers in the event of a natural monopoly, create jobs or encourage regional economic development, consider an efficient way to provide community services, and/or redeem costs, and generate revenue for Regional Government.

2. Board of Directors of Water Supply Company

Minister of Home Affairs in Regulation No. 2 of 2007 states that Water Supply Company Organ and Employment becomes one of the important factors that must be fulfilled by the company in order to create positive reputation. Human resources are the element which become the key factors of the increase of Water Supply Company's performance. According to this regulation, the Board of Directors must come from professionals in the field of Water Supply Company in 10 years or other field company within 15 years.

One that is attached to the Board of Directors is the fiduciary duties regulated in Article 92 paragraph 2 of Law No.40 of 2007 about Limited Liability Companies. Fiduciary duty is interpreted by Yahya Harahap as "must be trusted". According to

Yahya, "must be trusted" means that every member of the Board of Directors and the Board of Commissioners is "trustworthy" and must always be honest in carrying out their duties.²⁰ While Ridwan Khairandy stated that in carrying out fiduciary duties, a Board of Directors must perform the following tasks:²¹

- a. Having good faith;
- b. Showing proper purposes; and
- c. Not having a conflict of interest

In carrying out the duties as a Director, there is a Business Judgment Rule that can remove the fiduciary duty principle. The Board of Directors in which carrying out its duties in managing the company will be responsible toward the action which is conducted on behalf of the company. The parameter of Business Judgment Rule is good faith standards, duty of care, and duty of loyalty.

3. Supervisory of Potable Water

A good water supply is an essential part of human society, not only as potable water, but also providing personal and domestic hygiene, such as bathing and washing. Good personal and domestic hygiene is a primary condition for good public health. However, a water supply can also present a great danger as a vehicle through which contagious diseases can be easily spread. Through a large-scale water supply, a large group of people come in contact with water from the same single source. Infections can strike vast numbers of people in a very short time. The condition of water which does not fulfill health condition can be very dangerous for

²⁰ M. Yahya Harahap, *Hukum Perseroan Terbatas*, (Jakarta: Sinar Grafika, 2009), p. 374

²¹ Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia*, FH UII Press, Yogyakarta, 2013, p. 109

the society. The spreading of pathogenic microorganism may cause cholera, typhoid and diarrhea.

In this case of a central water supply, the health risks of life-long exposure to the distributed water have to be considered. Especially, that one has to take into account including the weaker members of society, such as babies, sick people, and senior citizens. The major goal for a proper water supply system is to have distributed water that can be drunk safely, without utilizing extra treatment devices, such as filters, or without having to do anything extra at all.

Law No. 4 of 1984 about Epidemic of Contagious Diseases, the authority of Government has to take preventive measures that can be taken to prevent the spread of Epidemic of contagious diseases. In matters relating to potable water, the Government can carry out monitoring of the quality of potable water from the company concerned. Law No. 11 of 1974 about Water Resources Development gave tasks to the Government which has the authority in the management of water resources that the Government has the duty to prevent water pollution and to control the quality of potable water, therefore the Government has to carry out its supervisory functions properly.

Regulation of the Minister of Health No. 492 of 2010 and Regulation of the Minister of Health No. 736 of 2010 are the regulations which become the basis to apply quality control of water. In Regulation of the Minister of Health No. 492 of 2010, the quality of potable water must fulfill 3 aspects, i.e.

- a. Physical Parameter

The water used to drink is water that is colourless, tasteless, odourless, clean with the temperatures below room temperature. Terms of turbidity and colour must be met by each type of potable water where screening is carried out in the process.

b. Chemical Parameter

Potable water should not contain toxic, mineral substances or certain chemicals in amounts exceeding the prescribed limit.

c. Bacteriological Parameter

Potable water should not contain bacteria (pathogens) at all and should not contain coli bacteria exceeding the prescribed limits of 1 Coli / 100 ml water.

E. Definition of Terms

A conceptual framework is a research that describes the relationship between the concepts specifically to be observed. The writing of this thesis uses an operational definition as follows:

1. Board of Directors based on Cambridge Dictionaries means:

A group of people who shareholders choose to manage a company or organization²²

A group of people who manage or direct a company or organization²³

²² *Cambridge Dictionary*, on <https://dictionary.cambridge.org/dictionary/english/board-of-directors>, accessed July 24, 2019

²³ Merriam Webster, on <https://www.merriam-webster.com/dictionary/board%20of%20directors>, accessed July 15, 2020

2. Potable water is water that goes through a treatment process or without a treatment process that meets health requirements and can be drunk directly.

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3. BUMD is a business entity whose capital is wholly or partially owned by the Local Government.²⁵

F. Research Method

The method of writing used in this research is as follows:

1. Research Approach

The approach in this research is empirical approach. The type of research is conducted in the field in order to review the applicable law and a case happening in reality in the society, such as potable water in PD XYZ and legal consequences of Board of Directors in the case of regulation violation related to potable water in PD XYZ

2. Focus of Research

- a. Legal tests that have to be fulfilled by Board of Directors in management of potable water in PD XYZ, and
- b. Legal consequences of Board of Directors in the case of regulation violation related to potable water in PD XYZ.

3. Data Resources

- a. Primary data

²⁴ Article 1 verse 1 Minister of Health Regulation No.492 of 2010 about Potable Water Quality Requirements

²⁵ Article 1 verse 40 Law No. 32 of 2014 about Local Government

Primary data are collected in the form of interviews with informants and obtained directly in the field.

b. Secondary Data

Secondary data are data obtained from primary, secondary and tertiary legal materials.

1) Primary legal material is material that has juridical binding power, such as laws and regulations, court decisions, and agreements. The legal materials include:

- a) Law No. 23 of 2014 about Regional Government, Law No. 40 of 2007 about Limited Liability Company
- b) Law No. 5 of 1962 about Regional Enterprises
- c) Government Regulation No. 54 of 2017 about Regional Owned Enterprises,
- d) Ministry of Health Regulation (Permenkes) No.492 of 2010 about Potable Water Quality Requirements.

2) Secondary legal material is material that does not have juridical binding power, such as: laws and regulations, literature, and journals.

3) Tertiary legal material is a complement to primary and secondary data, such as dictionaries and encyclopedias.

4. Data Collection Techniques

The legal materials were collected using the following techniques.

- a. In-depth interviews (in-depth, intensive interviews)

In this case, the researcher learns interview techniques so that in-depth interviews can be conducted. This technique requires researchers to be able to ask questions as much as possible with the acquisition of certain types of data in order to obtain detailed data or information. Interviews were conducted by researchers with speakers, i.e. the Director of PD XYZ

b. Literature review

It is conducted by studying the journals, the results of legal research, and the literature from several books relating to the problem of writing this thesis. Describing and citing the essence of the legal material for later can be set forth in this paper.

5. Data Collection Method

In order to complete data of the research, the authors of this thesis conducted interview and also literature research. Those were examining the books, literatures, books and related materials which examine the law and regulation which are related to legal test that have to be fulfilled by Board of Directors in the management of potable water in PD XYZ and legal consequences of Board of Directors in the case of regulation violation related to potable water in PD XYZ

6. Data analysis

The data which were obtained from library studies and interviews were then analyzed in descriptive qualitative analysis. Descriptive qualitative analysis is a data analysis method that groups data, selects data, and illustrates the meaning of the data collected by paying attention to aspects studied to obtain a general picture of the condition.

G. Structure of Writing

To have better understanding and to facilitate the reader in getting the figure of the thesis result, then the following will explain the discussion briefly from Chapter I to IV.

Chapter I is the introduction of this research which contains the context of study, problem formulation, research objective, theoretical review, research method and structure of writing about legal test that have to be fulfilled by Board of Directors in management of potable water in PD XYZ and legal consequences of Board of Directors in the case of violation of regulation related to potable water in PD XYZ.

Chapter II contains a general overview on company and BUMD covering history of BUMD, legal basis of BUMD, common problems which happened in BUMD, types of BUMD and organ of BUMD and general preview about quality control of potable water.

Chapter III contains the profile company of PD XYZ that becomes the object of research results of the research and discussion that describes the results of the analysis to answer the question on the problem formulation and also public opinion related to quality of water of the Company. The legal test that have to be fulfilled by Board of Directors in management of potable water in PD XYZ and legal consequences of Board of Directors in the case of violation of regulation related to potable water in PD XYZ

Chapter IV is the closure covering the conclusions and suggestions, which explains the conclusions of the authors on the problems.

CHAPTER II

GENERAL OVERVIEW OF COMPANY, BUMD AND POTABLE WATER

A. General Overview of Company

1. Definition and Legal Basis of Company

In order to find out the understanding of the company based on Indonesian Commercial Code (KUHD) as the main source of company law, the definition of company can be traced based on the history of its formation since KUHD does not give clear definition about company.²⁶ The formulation of the company as outlined in *Memorie van Toelichting* or explanation of the law, elaborates the following statement.

The Dutch Government (Minister of Justice of the Netherlands), which at that time read the *Memorie van Toelichting* from the Draft of *Wetboek van Koophandel* (Commercial Code) in front of the parliament, explained that, company is the whole act carried out continuously and undisguised in a certain position and for looking for profit (for himself).²⁷

The opinions of experts who are always a reference in providing understanding about the company should also be put forward. One expert who deserves attention to this opinion is Willem Molengraaff:²⁸ Company is the whole act carried out continuously, acting outward, to obtain profit by trading or handing over goods, or entering into trade agreements. He has the understanding of the company from an

²⁶ Chidir Ali, *Badan Hukum*, Bandung, Alumni, 1987, p. 79.

²⁷ Ridwan Khairandy, *Pokok-pokok Hukum Dagang Indonesia*, Yogyakarta, FH UII Press, 2014, p. 15.

²⁸ Abdulkadir Muhammad, *Hukum Perusahaan Indonesia*, Bandung: Citra Aditya Bakti, 2002, p. 7.

economic perspective because the purpose of earning income elaborates in certain ways, i.e.²⁹

- a. Trading goods, meaning buying goods and selling them again by calculating earning income in the form of profits;
- b. Submitting goods, meaning releasing control of goods by calculating earning income, for example renting out goods;
- c. Trade agreements, namely connecting one party with another party by calculating earning income in the form of profit for the authorizer, and wages for the recipient of the power of attorney, for example a broker, commissioner, company agent. These economic actions are livelihoods, meaning that they are carried out continuously, not incidentally, acting out against other parties (third parties). Here comes the legal aspect of the company, namely an agreement with another party which becomes the basis of the obligations and rights of each party.

However it needs to be pointed out that Molengraaff's formulation does not talk about the company as a business entity. What is stated is the company as an act, so there is an impression that it only covers business activities.³⁰

Based on the understanding of Molengraaff, at least in the company there are elements that must be met, namely:

- a. Performing continuously;
- b. Acting out;
- c. Earning income;

²⁹ Abdul R. Salaiman *Hukum Bisnis Untuk Perusahaan* Jakarta: Kencana, 2005. p.90

³⁰ Abdulkadir Muhammad, *Op.cit*, p. 8.

- d. Selling or Trading goods;
- e. Submitting goods; and
- f. Entering into a trade agreement.

Other expert opinions that can also be used as references in interpreting the company are stated by Polak. Polak, who provides a different definition of Molengraaff, states the following:³¹

Polak views the company from a commercial point of view, meaning that it can be categorized as company if there is element to calculate profit and loss which can be estimated and recorded in accounting.

Polak added bookkeeping element to other elements as already stated by Molengraaff. Polak acknowledged that there were other elements as the evident from his explanation that whether a company was run according to the usual methods or not, it could be seen from the regularity of running the company and not running it in illegal way. If these elements do not exist, the nature of the company is lost from the legal aspects of the company.

With the element of profit and loss accounting, the formulation of the understanding of the company is more emphasized, because the accounting for profit and loss is an absolute element that must exist in the company according to the provisions of Article 6 KUHD. Profit is the main goal of every company, if not so, it is not a company. However, in the formulation of the company according to Polak it was still not mentioned about the company as a business entity.

Willem Molengraaff tries to separates the definition of the company into six elements, the definition of the company proposed by Polak as described above is

³¹ Chidir Ali, *op.cit*, p. 105

only separated into two elements, namely the calculation of profit and loss and recorded in accounting system. The existence of other elements of a company in the form of recording profit and loss in bookkeeping as explained by Polak is closer to the provisions as stated in Article 6 paragraph (1) KUHD which states as follows:

“Every person who runs the company is obliged to carry out records according to the terms of his company about the condition of his wealth and about what is related to his company, in such a way that from the records held at any time can be known all the rights and obligations.”

In Indonesia legal system, juridical definition of a company exists after the issuance of Law No. 3 of 1982 about Obligatory Registration of Company. In Article 1 letter (b) Law No. 3 of 1982 about Obligatory Registration of Company formulated that:

“Company is any form of business that runs every type of business that is permanent and continuous and which is established, works and domiciled within the territory of the Republic of Indonesia, for the purpose of obtaining profits.”

For further elaboration of the provisions above, it should be noted also that the provisions governing the definition of business in Article 1 letter (d) of Law No. 3 of 1982 about Obligatory Registration of Company states as follows: “Business is any action or activity in the economic field, which is carried out by entrepreneur for the purpose of obtaining profits.”

Law No. 3 of 1982 about Obligatory Registration of Company also provides a formula regarding what is meant by entrepreneurs. The provisions of Article 1 letter (c) of Law No. 3 of 1982 about Obligatory Registration of Company referred to as entrepreneurs states as follows: “An entrepreneur is any individual or partnership or legal entity that runs a type of company.”

Based on the provisions of the aforementioned articles, it can be concluded that in terms of the company there are two things, namely:³²

- a. The form of business in the form of an organization or business entity (Company)
- b. Types of business in the form of activities in the field of the economy that are carried out continuously by entrepreneurs to obtain profits and or profits, (Business).

If we look at comparison of definition of the company as mentioned in the provisions of the law above which is compared with the definition of the company stated by Molengraaff and Polak, then the formula stated in Law No. 3 of 1982 about the Obligatory List of Company is more perfect. This is as stated by Abdulkadir Muhammad as follows:³³

This formula is compared with the formula of Molengraaff and Polak, it turns out that this formula is more perfect. By fulfilling the elements of business (business entity) and types of business (economic activities), the other elements are fulfilled as well. Under current law, even though activities in the economic field are carried out continuously, openly, against other parties (third parties), with the goal of obtaining profits, if it is not run by a business entity, it is not a company, but only work.”

The definition of company is also contained in Article 1 paragraph (1) Law No. 8 of 1997 about Company Document. The provisions of the article stated that:

“A company is any form of business that carries out activities permanently and continuously by obtaining profits and or profits, whether organized by individuals or business entities in the form of legal entities or non-legal

³² Abdulkadir Muhammad, *op. cit.*, p.8

³³ Abdulkadir Muhammad, *op. cit.*, p.9

entities, established and domiciled within the territory of the Republic of Indonesia.”

The understanding of a company as formulated in Law No. 3 of 1982 about Obligatory Registration of Company and Law No. 8 of 1997 about Company Documents does not have significant difference. Both of them provide a definition of a company in which two things are things, namely a company as a business entity and a company as a type of business. The difference is only in the person holding the company. Law No. 8 of 1997 about Company Documents explicitly separates legal entities or non-legal entities compared to the provisions in Law No. 3 of 1982 about Obligatory Registration of Company.

Based on the definition of company as stated by experts and mentioned in the history of law formation and in the provisions of the law above, it can be concluded that the elements contained in the definition of the company include:

a. Business entity

Business entities that carry out activities in the economic field have a certain form, such as Individual Company, Firm, CV, or Limited Liability Company that can be known through its deed of establishment or business license. Various forms of business entities can be classified based on the number of owners and legal form.

b. Activities in the economic field

If we look at the definition which stated by Molengraaff, economic activities carried out by company in obtaining profits are by trading goods such as buying and reselling, handing over goods such as renting, and conducting trade agreements such as connecting one party to another. The economic

activities intended by Molengraaff above are too narrow, because the economic activities of the company are not only covering activities in the form of trade.

Further, Abdulkadir Muhammad explained that the object of activity in the economic field is wealth, with the aim of obtaining profits which include the following activities:

- 1) Trade, including the sale and purchase of movable and immovable goods such as exports, imports, stock exchanges, restaurants, supermarkets, housing, foreign exchange;
- 2) Services, including the provision of services such as travel agencies, consulting bureaus, beauty salons, sewing, clothing, transportation, workshops;
- 3) Industry, including seeking and processing, and holding resources and wealth, for example oil exploration and drilling, fishing, agricultural or timber business, handicrafts, medicines, motorized vehicles, recordings and films, printing and publishing.

c. Continuously

The opinions of experts and the provisions of the law provide a similar understanding of what is meant by continuously. Continuous elements in the company have the following meanings:

Both Molengraaff, Polak, and the legislators determined that activities in the economic field were carried out continuously as livelihoods, meaning that they were not intermittent, not incidental, and not as part-time.

d. Permanent

Both Molengraaff and Polak do not include elements that are permanent as elements in a company. Regarding this element, it can be seen in the formula given by the law which has the following meanings: Permanent means that the activity does not change or change in a short time, but for a long period of time. The period is specified in the company's deed of establishment or business permit, for example 5 (five) years, 10 (ten) years, or 20 (twenty) years.³⁴

e. Undisguised

Undisguised is an element derived from the formulation of the company's understanding as contained in the *memorie van toelichting* of the *Wetboek van Koophandel* or KUHD which means as follows: Undisguised means known by the public, free to relate to other parties, be recognized and justified by the government under the law. This blatant form can be found from the company's deed of establishment, company name and brand, business license, place of business permit, and company registration certificate.

Regarding this element, Molengraaff gives a different opinion because using the term acts out in another sense. This is as stated as follows: Molengraaff uses the term acting out, which means dealing with other parties (third parties), but it is not questioned whether openly or smuggled. If they act out it openly, it is also not questionable about the undisguised form. The law regulates about undisguised. If this element does not exist, the company is said to be illegal and violates the law.

f. Profits

³⁴ Abdulkadir Muhammad, *op. cit.* p. 48.

In mentioning this element, Molengraaff uses the term income, Polak uses the term profit, while the provisions of the law use the terms profit. Profit is an economic term that shows more value obtained from the capital run. Every activity running the company is certainly based on a number of capital. With company capital, profits can be obtained. This is the main goal of a company.

g. Bookkeeping

There is a necessity for each company to make bookkeeping not only the obligations specified as regulated in Article 6 KUHD. The provisions of Article 8 paragraph (1) of Law No. 8 of 1997 about Company Documents also require every company to make a note. As stated in Article 5 of Law No. 8 of 1997 about Company Document, the records consist of annual balance sheets, annual profit and loss accounts, daily transaction journals, or any writing containing information regarding other obligations and rights relating with the business activities of a company.

2. Types and Form of Company

Company can be classified based on number of owners, owner status, and legal form. Based on the number of owners, company can be separated into the following company:

First is an individual company, it is a commercial business owned by an individual. One person is a member and the owner is directly responsible for the day-to-day operational activities of his business. One person is also responsible for business assets which also includes personal assets if there is a loss or obligation to creditors, third parties or other interested parties. Second is CV which stands for

Comanditaire Venootschaap. It is a business activity carried out by the two people or more to gather together to conduct business activities.³⁵

Based on the owner status, a company can be separated into state company and private company. State company is company whose ownership status is owned by the state or often referred to as State Owned Enterprises (BUMN), while private company is a company whose ownership status is privately owned. If classified according to its legal form, a company can be separated into a legal entity and a company which is not a legal entity. The definition of a company based on its legal form can be explained as follows:

There are legal entities, those are privately owned, namely Limited Liability Company, hereinafter referred to as PT and cooperatives, some are owned by the state, namely General Business Entity (Perum) and Business Entity of the Company (Persero). Limited liability company (PT) and cooperatives are always partnerships, while non-legal entities can be individual business and partnership company and are only privately owned.³⁶

Based on the classification of the company which has already mentioned, it can be concluded that a company consists of three types, namely:

a. Individual company

As explained, what is meant by an individual company is a private company that is established and owned by an individual entrepreneur.

³⁵ Sujud Margono, *Hukum Perusahaan Indonesia (Catatan atas UU Perseroan Terbatas)*, (Jakarta: CV. Novindo Pustaka Mandiri, 2008), p. 4.

³⁶ Abdulkadir Muhammad, *loc.cit.*

Individual company can have legal forms according to their business fields, namely industrial company, service company, and trading company.

b. Non Legal Entity Company

Non Legal Entity Company is a private company in the form of a partnership, established and owned by two or more entrepreneurs who come together to conduct business activities. The form can be in the form of a firm or CV.

c. Legal Entity Company

Legal entity company in this part is referred to private company in the form of a partnership, established and owned by two or more entrepreneurs who come together to conduct business activities or company that are established and owned by the state. The form can be in the form of cooperatives or limited liability company for privately owned company or Perum and Persero for company owned by the state.

B. General Overview of BUMD

1. Definition of BUMD

BUMD stands for *Badan Usaha Milik Daerah* or in English it is called Regionally-Owned Enterprise. It is a business entity which fully or partly of its capital is owned by the Regional Government. BUMD was established with the aim of

- a. Providing benefits for regional economic development in general;
- b. Carrying out public benefits in the form of providing goods and / or services for the fulfilment of people's livelihoods according to the

conditions, characteristics and potential of the region concerned based on good corporate governance; and

c. Obtaining profits.

Based on the definition and purpose of the establishment of BUMD, it can be concluded that the nature of the BUMD is to provide economic benefits to the region, as well as seeking profits. The characteristics of BUMD generally have social and commercial aspect. The dualism of the nature applied by the BUMD in a way causes the performance to be not optimal.

One of the main objectives of BUMD is to seek profits in the field of business in order to increase local revenue from dividends that are deposited to the regional treasury. The dividends obtained from the BUMD will then be the revenue of the Regional Government which will increase the capacity of the Regional Budget in financing regional development. The success of BUMD performance is based on the ability to contribute dividends to the Regional Expenditure Budget. The greater regional income in the form of profits made from BUMD in the form of money deposited in the regional treasury and can increase capital, the better the performance of the BUMD.

Law No.23 of 2014 about Regional Governments relating to BUMD as a whole regulates several basic provisions about BUMD, such as general provisions, Regional Public Company (Perumda), Regional Liability Company (Perseroda), and management of BUMD. Substantially, this matter has actually been accommodated in Law No.5 of 1962 about Regional Company. The fundamental difference stated in the aspect of capital ownership which has implications for the

legal status of the BUMD. Law No. 5 of 1962 about Regional Company emphasizes the status or legal form of BUMD which automatically affects the capital ownership of Regional Government.

Based on the definition of Regional Owned Enterprises stated above, Regional Owned Enterprises itself has the following elements:³⁷

1) Business Entity

According to Molengraaf, the company is an entire act carried out continuously, acting out to earn income, by way of trading goods or entering into a trade agreement. Polak believes that there is only a company if there is a need to estimate the estimated profit and loss and everything which is recorded in the books.

The development of the understanding of the company can be found in Law no. 3 of 1992 on Compulsory Registration of Company, and Law no. 8 of 1997 about Company Document. According to Article 1 letter b of Law No. 3 of 1992 about Compulsory Registration of Company, the company is any form of business that is permanent and continuously established, works and domiciled in the territory of the Republic of Indonesia for the purpose of obtaining profits. Article 1 point 2 of Law no. 8 of 1997 about Company Document, Company is a form of business that carries out activities continuously and continuously with the aim of obtaining profits and or profits that are either held by individuals or business entities domiciled in the territory of the Republic of Indonesia.

³⁷ Ridwan Khairandy, *Op.cit* p.160-162.

If the meaning of the company refers to activities that ultimately seek profit, then the business entity is a business organization or organization established to manage or carry out activities that intend to seek these benefits. Therefore, Regional-Owned Enterprises is a business organization that aims to manage business and seek profits.

2) All or Part of Its Capital is Owned by the Region

A business entity can be categorized as a Regional-Owned Enterprises, if the capital of the business entity is entirely (100%) owned by the Region or the majority of its capital is owned by the State. If the region is not entirely controlled by the Region, then in order to remain categorized as a Regional-Owned Enterprises, the state must have a minimum of 51% of the capital. If the participation of the Region capital is less than 51%, it cannot be referred to as a State-Owned Enterprises.

3) Direct Participation

Considering that there is direct participation here, the Region is involved in taking the risk of profit and loss of the company.

For example, PT. Pengembangan Investasi Riau is a Regional Owned Enterprises because part of the company's capital comes from direct investment capital in the Provincial Government of Riau, however PT. Riau Power cannot be categorized as a Regional Owned Enterprises, because its investment capital comes from PT. Pengembangan Investasi Riau, PT. Dalle Gas Energy and PT. PLN Batam. The company is a subsidiary of PT. Pengembangan Investasi Riau

4) Equity Capital Comes from Separated Regional Assets

The wealth that is separated here is the separation of Region assets from the Regional Budget (APBD) to be used as the Regional capital participation in Regional Owned Enterprises to be used as Regional Owned Enterprises capital. After the guidance and management are no longer based on the Regional Budget (APBD) system, but the guidance and management of the principles of a healthy company.

This separation is a characteristic of legal entities. The concept of a company as a legal entity whose wealth is separate from its shareholders or members is a characteristic that is considered important for the status of the corporation as a legal entity that distinguishes it from other forms of company. The nature of the limited liability in a nutshell is the inclusion of the principle that shareholders are not personally responsible for the company's obligations.

As a consequence of the separation of wealth, then once the Regional has entered into participation in Regional Owned Enterprises, the wealth has become the property of Regional Owned Enterprises, not the wealth of the Regional as the founder of the Regional Owned Enterprises.

2. Legal Basis of BUMD

a. Law No. 5 of 1962 about Regional Company

Conceptually the establishment of a BUMD in the Regional Government is inseparable from the provisions of Law No. 5 of 1962 about Regional Company which are the forerunner to the emergence of BUMD. Previously before the existence of Law No. 32 of 2004 about Regional Government as

amended by the provisions of Law No. 23 of 2014 the term used was Regional Company. According Article 2 Law No. 5 of 1962 about Regional Company, regional company are: "All company established under this Law whose capital is for the whole or for part of it are regional assets which are separated, unless otherwise specified by or based on the Law"

The provisions of Law No. 5 of 1962 does not explicitly regulate the form, construction and type of a BUMD, although this has been answered in the regulation of the Minister of Home Affairs No. 3 of 1998. Law No. 5 of 1962 only explains the terms of the establishment of a regional company with a Regional Regulation. In the formation of a Regional Regulation, it cannot be separated from the elements of the Regional Government and the Regional House of Representative (DPRD) as the stakeholders in the Regional Government. Due to this condition, it will be vulnerable to the political element and the interests of the parties involved in the formation of a Regional Regulation in regional company.

In the field of supervision, there will be a potential conflict of interest related to the supervision of the performance of a regional company (BUMD). This reminds us that the supervision in regional company is under the authority of the Head of Region with all their duties, but on the other hand in determining the directors or managers of regional company (BUMD), it still involves DPRD elements as a consideration for Regional Governments in deciding policies related to BUMD.

b. Regulation of Home Minister Affairs No 3 of 1998 about from of BUMD

The provisions of this regulation which is simply stated in article 2 and article 3 Regulation of Home Minister Affairs No 3 of 1998 only regulates the form of BUMD consisting of Regional Public Company (Perumda) and Regional Liability Company (Perseroda). BUMDs in the form of Perumda are formed based on local regulations while Perseroda (BUMD) in the form of company are formed based on the provisions of Law No. 40 of 2007 about Limited Liability Company

c. Decision of Minister of Home Affairs No 50 of 1999 about Management of BUMD

In article 2 stated that the BUMD management consists of directors and supervisory bodies. Related to the duties, authority, and responsibilities of the directors are regulated in articles 3 to 8. While related to the duties, functions, responsibilities and authorities of the supervisory body are regulated in articles 18 to 22

d. Government Regulation No. 54 of 2017 about Regional Owned Enterprises

This regulation is one of the derivative regulations in Law No. 23 of 2014 about Regional Government, there are many regulations in Law No. 23 of 2014 which not regulate BUMD for example: there is no regulation which govern the role and authority of Board of Director.

e. Law No. 40 of 2007 about Limited Liability Company

The law of limited liability company specifically only regulates the construction of the form, the process of establishment and all matters relating

to the status of the business entity in the form of a company. In the Regulation of Home Minister Affair No 3 of 1998, it explained about the form of BUMD that can be in the form of Perumda and Perseroda. This means that the construction of BUMD in the form of a limited liability company (PT) must comply with the provisions of this law.

f. Law No. 23 of 2014 about Regional Government

The legal form of BUMD is regulated in Article 331 paragraph (3) which states that BUMD consists of Perumda and Perseroda, where the establishment is adjusted to the needs of the Region and the feasibility of the business sector of the BUMD to be formed. Perumda as the executor of the public interest and the livelihood of many people. Perseroda as a Business Entity that has the scope of business as a Limited Liability Company, and Perseroda as a BUMD, then Perseroda can conduct business activities in all business fields, which means that all Regional Company can change into Perseroda.

3. Types of BUMD

a. Perumda

Law No. 23 of 2014 also explained that the legal form of BUMD consists of Perumda and Perseroda. Characteristics of Perumda as stipulated in articles 334 to article 338 are stated as follows:³⁸

1) Capital

³⁸ Undang-Undang No. 23 Tahun 2014 Pasal 334-338.

Perumda is a BUMD whose capital is owned by one region and not divided into shares. In this case the regional regulation is owned by more than one region, the regulation must change the form of law into a scheme. Regional regulations can also form subsidiaries and / or own shares in other company.

2) Organization

Organizations within the Perumda consist of Head of Region as regional representatives as capital owners, Board of Directors, and supervisory boards.

3) Profits

The Perumda profit is determined by the head of region as the regional representative. Profits which are the regional rights are deposited to the regional treasury after being approved by the head of region as the capital owner. The profit can be held with the approval of the regional head, with the aim of reinvestment in the form of adding, increasing and expanding the infrastructure and facilities for physical and non-physical services and to increase the quantity, quality and continuity of public services, basic services and pioneering efforts.

4) Restructurisation

Perumda can restructure its body to make Perumda healthy, therefore they can operate efficiently, accountably, transparently and professionally.

5) Dissolution of Perumda.

The dissolution of Perumda was stipulated by a Regional Regulation. The wealth of the Perumda which was dissolved became regional rights and was returned to the regions.

a) Perseroda

Whereas Perseroda is regulated in Articles 339 through Article 342 which are as follows

(1) Capital

Perseroda is a BUMD in the form of PT whose capital is divided into shares which are wholly or at least 51% of the shares owned by one region. After its establishment is stipulated by a Regional Regulation, then the establishment of a legal entity is carried out based on the provisions about the company.

Perseroda capital consists of shares, in the case of a Perseroda shareholder consist of several regions and not regions, one of the regions is the majority shareholder. Perseroda can form subsidiaries and / or own shares in other company. The establishment of the subsidiary is based on an investment feasibility analysis by a professional and independent investment analyst.

(2) Organization

Organizations in the system consist of General Meeting of Shareholders, Board of Directors and Board of Commissioners.

(3) Dissolution of Perseroda

Perseroda can be dissolved and the wealth of the units dissolved into regional rights and returned to the regions.

4. Procedure of Establishment of BUMD

When the Regional Government tries to establish Perumda, they must subject the regulation to Law No.5 1962 about Regional Company. Regional Company has been established by Regional Regulations under the power of Law No. 5 of 1962. Regional Company will get the status of Legal Entity after enactment of Regional Regulation which comes into force after obtaining approval from the superior Agency. Therefore, Perumda does not need a notary deed of establishment. Furthermore, the Regional Government establishes Regional Regulation concerning about capital participation in Perumda.

- 1) Procedure of establishment of Perumda:
 - a) Article 10 (1) The Head of Region shall submit a proposal for the plan to establishment of BUMD to the Minister,
 - b) Paragraph 3, The Minister evaluates the proposed plan to establishment of BUMD,
 - c) Paragraph 5, based on the results of the assessment as referred to in paragraph (3), the Region may decide on a draft Regional Regulation that regulates the establishment of BUMD, and
 - d) Article 11 paragraph 3, In the event that the establishment of Perumda is carried out by transferring the duties and functions of the Regional apparatus or work units, the Regional Regulation also includes provisions concerning:

- (1) the transfer of all or part of the Regional wealth into the Wealth of the Separated Area; and / or
- (2) the transfer of all or part of the rights and obligations of the Regional apparatus or work units becomes the rights and obligations of the Regional public company established.

2) Procedure of establishment of Perseroda:

If the BUMD is incorporated as a Limited Liability Company, the establishment must subject to Law 40/2007 about Limited Liability Company:

- a) the Regional Government sets a Regional Regulation about the Establishment of PT XYZ. The things that need to be regulated in the regulation are:
 - (1) The name of the PT and the alternative name of the PT, because it is very possible that PT XYZ, which will be registered in the Minister of Law and Human Rights, has been registered by another party. If necessary, this matter is further regulated in regional head regulations,
 - (2) The composition of the board of PT, including the full name, place and date of birth, occupation, place of residence, citizenship of the members of the Board of Directors and Board of Commissioners who were first appointed,
 - (3) The amount of authorized capital, issued capital, and paid up capital, and

- (4) other data and information needed by the Notary.
- b) Next to the Notary, it compiles the articles of association of PT, then by a Notary to be submitted to Menkumham. If it is approved, then there will be a deed of establishment for the PT.
 - c) After the PT has received approval from Menkumham, the Regional Government sets a Regional Regulation on capital participation in the PT XYZ. The thing that needs to be highlighted is that the amount of capital participation should be adjusted to the investment analysis prepared by the investment manager assisted by an investment advisor. This is as stipulated in Article 15-16 of the Regulation of the Minister of Home Affairs No.52 of 2012 about Guidelines for Management of Regional Investment. In the investment analysis, it will be seen how much capital is needed and how long it will be fulfilled. For example, a capital of 25 M is needed which will be fulfilled for 4 years budget.
 - d) Furthermore, based on the Regional Regulation regarding capital participation, the Regional government allocates capital participation in the regional budget to financing expenditures.

5. Organs in BUMD

As a legal subject that has a status as legal entity and has rights and obligations, Regional Owned Enterprises does not carry out its own legal actions, but is always represented by the organs of the company acting on behalf of the company. Decisions or legal actions carried out by the organ of the company insofar as they

are carried out in accordance with the authorities specified in the laws and articles of association, are binding on the company. Regional Liability Company (Perseroda) subjects the regulation to Law No. 40 of 2007 about Limited Liability Company. Meanwhile Regional Public Company (Perumda) subject to Government Regulation No. 54 of 2017 about Regional Owned Enterprise. The organs are General Meeting of Shareholders (GMS)/Capital Owners (KPM), Board of Directors, and Board of Commissioners/Supervisory Board, each of which will be explained as follows: General Meeting Shareholder (GMS)/Capital Owners (KPM).

Based on Article 1 paragraph (4) Law No. 40 of 2007 about Limited Liability Company, terminology of GMS will be suitable for Regional Liability Company (Perseroda), meanwhile Capital Owners (KPM) will be suitable for Regional Public Company (Perumda), as regulated in Article 31 Government Regulation No. 54 of 2017 about Regional Owned Enterprises. The meaning of the General Meeting Shareholders (GMS) is as follows:

GMS is a corporate organ that has authority not given to the Board of Directors or the Board of Commissioners within the limits specified in this law and / or articles of association.

According to Ahmad Yani and Gunawan Widjaja, the purpose of these provisions is as follows:

“The GMS has all the authority not given to the Board of Directors and Board of Commissioners, meaning that the GMS has the right to obtain all kinds of information needed relating to the interests and running of the company. This authority is an exclusive authority that cannot be handed over to other organs stipulated in the Limited Liability Company Law and Articles of Association. The exclusive authority stipulated in the law will be available as long as the law has not been amended, while the exclusive authority in the articles of association authorized or approved by the

Minister can be amended through amendments to the Articles of Association as long as there is no conflict with the provisions of the law”³⁹.

Some of the exclusive authorities possessed by the GMS as determined in Law No. 40 of 2007 about Limited Liability Company is as follows:

- a. Determining the amendments of Articles of Association as determined in Article 19 paragraph (1);
- b. Determining capital additions and deductions as determined in Article 41 paragraph (1) and Article 44 paragraph (1);
- c. Making appointment, replacement and dismissal of the Board of Directors and Board of Commissioners as determined in Article 94 paragraph (1) and paragraph (5) and Article 111 paragraph (1) and paragraph (5); and
- d. Deciding the dissolution of the company as determined in Article 142 paragraph (1) letter a.

With the exclusive authority possessed by the GMS that is different from the Board of Directors and the Board of Commissioners, it can be said that the GMS has the essence of being the organ with the highest authority in the company. Actually there are two views that explain the position of the GMS in Limited Liability Company in relation to other organs as can be described based on the opinions expressed by Henry R. Cheesman in Sujud Margono as follows:

³⁹Ahmad Yani, *et. al.*, *Seri Hukum Bisnis Perseroan Terbatas*, (Jakarta: PT Raja Grafindo Persada, 2006), p. 78.

- a. Classic view, which holds that the GMS institution is the highest authority in a Limited Liability Company, in the sense that all sources of power in the Limited Liability Company are sourced from the GMS.
- b. Institutional understanding, which holds that the three organs of a Limited Liability Company whom each of them has an autonomous position with its own authority as provided by laws and articles of association, without the authority of one organ to be carried out by another organ.⁴⁰

1) Board of Directors

Based on Article 1 paragraph (5) Law No. 40 of 2007 about Limited Liability Company which regulated Board of Director which is suitable for Regional Liability Company (Perseroda), and meanwhile for Regional Public Company (Perumda) regulated in Article 55 Government Regulation No. 54 of 2017 about Regional Owned Enterprises. The definition of Board of Directors is as follows:

The Board of Directors is the organ of the company that is authorized and fully responsible for managing the company in the interests of the company, in accordance with the aims and objectives of the company and representing the company, both inside and outside the court in accordance with the articles of association.

Based on the provisions of the article above, it can be concluded that there are two authorities and responsibilities held by the Board of Directors. First, it is the authority and full responsibility to conduct management of the company for the benefit of the company, and secondly, it is the authority and responsibility to represent the company both inside and outside the court. The authority and

⁴⁰ Sujud Margono, *Op. Cit*, p. 60.

responsibility possessed by the Board of Directors must be carried out in good faith and responsibly in accordance with the provisions of the laws and articles of association.

Based on Article 92 paragraph (3) Law No. 40 of 2007 about Limited Liability Company, the Board of Directors of the company consists of one or more members of the Board of Directors. However, there are exceptions to this provision, namely that requires a company to have at least two members of the Board of Directors in terms of company whose business activities are related to collecting and/or managing public funds, the company that issues debt recognition to the public, or a type of public company. In the event that a company has two or more people, the division of duties and management authority among the members of the Board of Directors is determined based on the resolution of the GMS.

The law also imposes an obligation of the Board of Directors in addition to their authority and responsibility. It can be concluded that the obligations can be separated into the obligations of the Board of Directors relating to the company and the directors' obligations relating to the GMS. Obligations relating to the company include the obligation to make a list of shareholders, a special list, minutes of the GMS and minutes of the Board of Directors meeting, making an annual report as referred to in Article 66 of Law No. 40 of 2007 about Limited Liability Company and corporate financial documents as in the Law about Company Documents, as well as maintaining all lists, minutes, corporate financial documents and other corporate documents, while the Board of Directors' obligations relating to the GMS include the obligation to seek approval from the GMS to transfer the company or

to make the company's debt security collateral which is more than 50% of the company's net worth in one transaction or better related to each other or not related.

2) Board of Commissioners / Supervisory Board

The words of the commissioner contain two meanings, both as organs and as individuals. As an organ, the Commissioner is commonly referred to as the Board of Commissioners, while as an individual it is called a Member of the Commissioner.⁴¹ Term of Board of Commissioner will be suitable for Regional Liability Company (Perseroda), Based on Article 1 paragraph (6) Law No. 40 of 2007 about Limited Liability Company, which interpret the Commissioner as an organ explaining the following: The Board of Commissioners is a corporate organ that is tasked with conducting supervision in general and / or specifically in accordance with the articles of association and providing advice to the Board of Directors. Meanwhile term of Supervisory Board will be suitable for Regional Public Company (Perumda), as regulated in Article 35 government Regulation No. 54 of 2017 about Regional Owned Enterprises.

According to R.T. Sutantya R. Hadhikusuma and Sumantoro, the main task of the Commissioners is to oversee or supervise the work of the Board of Directors which includes supervision as follows:

- 1) Preventive supervision, which is to keep things that are not desirable beforehand, which can harm the company carried out by the Board of Directors.

⁴¹ Chatamarrasjid, *Menyikapi Tabir Perseroan Terbatas (Piercing The Corporate Veil) Kapita Selektta Hukum Perusahaan*, (Bandung: Citra Aditya, Bandung, 2000), p. 48.

- 2) Repressive supervision, which is to control the actions of the Board of Directors, whether all actions that have been carried out do not harm the company or do not conflict with the deed of establishment or articles of association, and whether everything that has been determined in the GMS has been carried out.⁴²

Similar to the Board of Directors, the Board of Commissioners also consists of one or more members, with the exception of the obligations of members of the Board of Commissioners who must have at least two people as well as the Directors. The Board of Commissioners consisting of more than one member is an assembly, each of which cannot act individually, but based on the decision of the Board of Commissioners.

There are several things as the obligations of the Board of Commissioners, among others, making minutes of Board of Commissioners meetings and keeping copies, reporting to the company regarding its share ownership and / or family to the company and other company, or providing reports on supervisory duties carried out during the financial year recently passed to the GMS. The Board of Commissioners also applies all provisions concerning the rights, authority, and obligations of the Board of Directors to the company and third parties when taking actions to manage the company under certain conditions for a certain period of time.

The company's articles of association can regulate the presence of one or more Independent Commissioners and one Commissioner come from Board of

⁴² Hadhikusuma, *et. al.*, *Pengertian Pokok Hukum Perusahaan: Bentuk-Bentuk Perusahaan yang Berlaku di Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 1995), p. 77.

Commissioners. The Independent Commissioner is appointed based on a GMS decision from an unaffiliated party with the major shareholders, members of the Board of Directors and / or other Commissioners, while other type of Commissioner come from Board of Commissioners appointed based on the decision of the Board of Commissioners meeting. Duties and authorities of the Commissioners are stipulated in the articles of association of the company with provisions that do not conflict with the duties and authorities of the Board of Commissioners and do not reduce the management duties carried out by the Board of Directors.

To complete the content material stipulated in Law No. 40 of 2007 about Limited Liability Company, it was also agreed to added content material regarding the company based on sharia principles. It is firmly stated that the company based on sharia principles in addition to its corporate organs has a Board of Commissioners, is also required to have a Sharia Board of Commissioners whose duty is to oversee the company's activities in accordance with sharia principles.

6. Islamic Perspective about Syirkah (Partnership) and Liability

Syirkah literally means al-ikhtilath (mixing) or the union of two or more things, therefore that between each is difficult to distinguish. Whereas according to the term syirkah is an agreement that stipulates the existence of joint property rights between two or more people who are allied / joint. The definition of shirkah according to the Maliki school is an official permit for each party who is certified. According to the Hambali school, shirkah is a partnership in terms of rights and tasharruf. According to Shafi'i, syirkah is the validity of the rights to something for two or more parties with the aim of alliance.

Based on the understanding of syirkah, syirkah is a collaboration between two or more people in an agreement business to conduct business together and the profits and losses are also determined in accordance with the agreement.

These are legal basis of syirkah (Partnership)

1. Al-Quran

Q.S. Shad: 24

قَالَ لَقَدْ ظَلَمَكَ بِسُؤَالِ نَعْجِكَ إِلَىٰ نِعَاجِهِ ۗ وَإِنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي
بَعْضُهُمْ عَلَىٰ بَعْضٍ إِلَّا الَّذِينَ ءَامَنُوا وَعَمِلُوا الصَّالِحَاتِ وَقَلِيلٌ مَّا هُمْ
وَوَظَنَّ دَاوُدُ أَنَّمَا فَتَنَّاهُ فَاسْتَغْفَرَ رَبَّهُ، وَخَرَّ رَاكِعًا وَأَنَابَ ﴿٢٤﴾

“[David] said, “He has certainly wronged you in demanding your ewe [in addition] to his ewes. And indeed, many associates oppress one another, except for those who believe and do righteous deeds – and few are they.” And David became certain that We had tried him, and he asked forgiveness of his Lord and fell down bowing [in prostration] and turned in repentance [to Allah].”

The verse shows the acknowledgment of Allah SWT, there will be a union in the ownership of property in Shad: 24 occurs on the basis of the contract (ikhtiyar)

2. Hadith

The hadith narrated by Abu Dawud:

“From Abu Hurairah RA told, that the Messenger of Allah SAW said, "Allah SWT said: I am the third of two unionized people, as long as I do not betray their friends, if he betrays, then I must get out of both of them". (Narrated by Abu Dawud)”

This hadith explains, that if two people work together in one business, then Allah will accompany and give His blessings, as long as there are no party who betrayed him. The cooperative will fall in value if there is misuse by its management. This is what Allah SWT warned, that in cooperatives there are still many ways and possible ways to betray fellow members. That is the cooperative that is shunned or raised by God Almighty, then honesty must be re-applied.

Therefore, by looking at the hadith it is known that the ally (cooperatives) is well known and contained in Islamic jurisprudence books. Where cooperatives are included as permissible economic businesses and included as one of the business branches.

3. Ijma'

Ibn Qudamah in his book *Al Mughni* quoted by Muhammad Syafi'i Antonio in his book *Shari'ah Bank from Theory to Practice*, has said: "Muslims have consented to the legitimacy of the *musharaka* globally despite differences in some elements of it.

The requirements for the *Syirkah* contract are as follows:

1. Associated with two people who entered into an agreement
2. Related to *shighat*
3. Related to assets and capital
4. Related to profit

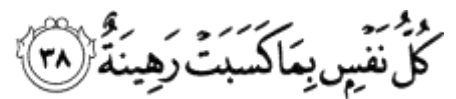
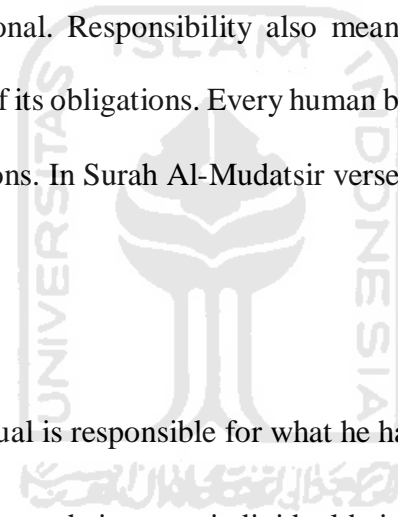
The pillars of *syirkah* are as follows:

1. Two people who make an agreement
2. *Shighat*
3. Object, there are two type: wealth and service.

According to scholars Hanafiyah syirkah only has one pillar, namely: consent and qabul. While people who have the intention and object are not included in harmony, but are included as a condition.

The purpose of the syirkah itself is: to provide benefits to its employees, provide financial assistance from some of the results of cooperative efforts to establish worship, schools and so on.

Liability can be interpreted as human awareness of behavior or acts both intentional and unintentional. Responsibility also means to do something as an expression of awareness of its obligations. Every human being as a creature of Allah is responsible for his actions. In Surah Al-Mudatsir verse 38:



كُلُّ نَفْسٍ بِمَا كَسَبَتْ رَهِينَةٌ

"Each individual is responsible for what he has done."

It can be seen that human beings are individual beings and also social beings who are God's creatures. As a form of responsibility to God, humans have the obligation to serve Him. Obligations are things that are imposed on someone. On the other hand, God will not give a burden to his servants beyond his ability.

As Allah's commandment in the Al-Baqarah verse 286:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا
 اكْتَسَبَتْ رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ
 عَلَيْنَا إَصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا
 مَا لَا طَاقَةَ لَنَا بِهِ ۗ وَاعْفُ عَنَّا وَارْحَمْنَا أَنْتَ مَوْلَانَا
 فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ

“Allah does not charge a soul except [with that within] its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned. "Our Lord, do not impose blame upon us if we have forgotten or erred. Our Lord, and lay not upon us a burden like that which You laid upon those before us. Our Lord, and burden us not with that which we have no ability to bear. And pardon us; and forgive us; and have mercy upon us. You are our protector, so give us victory over the disbelieving people.”

The meaning of responsibility in Islam and in general is almost the same, there are just some basic differences between the two meanings. Responsibility in Islam is related to reciprocity, it will be in form of reward and punishment. Not one ounce of the Muslims is exempt from this responsibility, except those who are; immature or unreasonable. Because he does not meet the requirements of the cover, such as considered as baligh and has capacity of thinking. While as long as a Muslim is still living, he is responsible for every word and silence, doing or leaving his job, jihad or abandoning his jihad against all the needs of Islam as long as he can.

God created and placed human in the world, and make everything in the world to human, and it gives possibility to enjoy what is good and lawful in it and commanding man to worship him and every single action which conducted by human there will be impact for them. As stated in Al-Zalzalah verse 7-8:

فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ،^٧

وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ،^٨

“Whoever has done an atom's weight of good will see it. And whoever has done an atom's weight of evil will see it.”

C. Potable Water

1. Theoretical Review about Potable Water

Potable water is one of the basic needs for living things in the world for the ongoing metabolism of the body, both for humans and other living things, theoretically on earth there are three types source of water, namely surface water, rainwater and groundwater.⁴³ As human, we do not see water as a commercial commodity, which can be explored over and over again, this mind-set will bring disaster to our life.⁴⁴ These sources do not always fit all for human needs, because they must meet good requirements in term of Chemical, Physical, Bacteriology and Radioactivity. The pollution happened in water caused by the increasing the number of people and by human activities.⁴⁵

The meaning of potable water is water that meets the requirements for consumption by humans. Adjusting to the title of this study, the researcher used Regulation of Minister of Health No. 492 of 2010 as the basis of research. The regulation explains the definition of potable water in Article 1 which stated that:

⁴³ Supirin, *Pelestarian Sumber Daya Tanah dan Air*, (Yogyakarta: CV. Andi Offset, 2004), p. 135.

⁴⁴ Robert J. Kodoatie, *et al.*, *Pengelolaan Sumber Daya Air dalam Otonomi Daerah*, CV. (Yogyakarta: Andi Offset, 2002), p. 28.

⁴⁵ Trie M. Sunaryo, *et.al.*, *Pengelolaan Sumber Daya Air, Konsep & Penerapannya*, (Malang: Banyumedia Publishing, 2005), p. 41

"Water through a process of processing or without processing that meets health requirements and can be drunk directly".

Potable water consumed by humans comes from various sources. Based on the location of the source, water can be divided into:

a. Rainwater

In areas where the groundwater was too salty or where there was peat in the ground, and in areas where there was no surface water, rainwater was used as a source of potable water.⁴⁶ Rainwater is the main source of water on earth. Although when precipitation is the cleanest water, it tends to pollute the environment when it exists in the atmosphere. Pollution that takes place in the atmosphere can be caused by dust particles, microorganisms, and gases, for example, carbon dioxide, nitrogen and ammonia.

b. Surface Water

Surface water which includes rivers, lakes, ponds, reservoirs, swamps, waterfalls and surface wells, mostly comes from rainwater that falls to the surface of the earth.⁴⁷ Then the rainwater will be polluted by soil, garbage, and others.⁴⁸

c. Groundwater

⁴⁶ P.J. de Moel, *et. al.*, *Drinking Water, Principle and Practice*, World Scientific Publishing Co. Pte. Ltd., Singapore, 2006, p. 21.

⁴⁷ Robert J. Kodoatie, *et. al.*, *Pengelolaan Sumber Daya Air Terpadu*, CV. Andi Offset, Yogyakarta, 2008, p. 12.

⁴⁸ T.H.Y. Tebbutt, *Prinsip-prinsip Pengendalian Kualitas Air (Principles of Water Quality Control)*, Mohajit (diterjemahkan), (Karlsruhe: University of Birmingham, 1990), p. 96.

Groundwater comes from rainwater that falls to the surface of the earth which will be absorbed into the soil and filtration process will go naturally. The processes that have been experienced by the rainwater, will go to underground, make groundwater better and purer than surface water. Groundwater is usually free from germs and does not need to be purified by purification processes and supplies are sufficient throughout the year, even during the summer season. However groundwater also contains minerals - substances in high concentrations such as magnesium, calcium, and heavy metals.

Based on the understanding of potable water sources from experts, the authors conclude that water comes from various sources, but before potable water can be consumed needs knowledge from the community regarding the quality of potable water taken from clear water sources and meeting water quality requirements so that the community those who consume feel safe.

2. Purposes of Supervision the Quality of Potable Water

The purposes of supervision of the quality of potable water is to maintain the quality of water which fulfil health requirements. Specifically the purpose of supervision of potable water quality is as preventive efforts and forms of legal protection for the community as consumers of potable water. If the potable water does not meet the requirements and not safe for health, the Water Supply Company will be imposed by punishment in form of prohibiting the distribution of potable

water.⁴⁹ In addition, customers who suffer some losses or damages which come from the water can bring into Civil or Administrative.

Management of Supervision is an effort to implement implementation standard, design feedback information systems, compare real activities with existing standard, determine and measure deviations and take corrective actions needed to ensure that the business or activity has been carried out properly in achieving its objectives.

The presence of the state in water management as a form of controlling right contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is a form of protection of the human rights so that it can be accessed for all people, which cannot be eliminated by anyone because of the right to access potable water, so that it is clear that water as a human need is a right that must be fulfilled by the state as a form of recognition of the right to life itself. In this research, the presence of the state is represented by PD XYZ in which its AD / ART of the company is required to provide or provide potable water that meets the health aspects that have been regulated in Minister of Health Regulation 492 of 2010.

Generally the fulfilment of the right to water stated in the ICESCR and in the ICESCR is only about fulfilling an adequate standard of living as stated in Article 11 paragraph 1 of ICESCR:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate

⁴⁹ Janus Sidabalok, *Hukum Perlindungan Konsumen di Indonesia*, (Bandung: PT. Citra Aditya Bakti, 2014) p. 173. (Sidabalok, 2014)

steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent”

The *Committee on Economic, Social and Cultural Rights* released general comment No. 15 on the Right to Water which states that the right to water gives everyone the right to adequate, safe, physically and financially affordable water for personal use and household. This general comment reinforces the recognition that the right to water cannot be separated from other human rights. Indonesia itself, through Law No. 11 of 2005 about ratification of International Covenant on Economic, Social and Cultural Rights, therefore that Indonesia already has a formal obligation to implement the covenant along with all supporting documents, including the right to water, and bring consequences to the Indonesian government to respect, protect and fulfil the rights for water for all its people.

3. Quality Control of Potable Water

Supervision of potable water quality in this case includes:

- a. Potable water produced by a company, both government and private, is distributed to the community with a piping system.
- b. Potable water produced by a company, both government and private, is distributed to the public with packaging and/or refill.

Potable water quality requirements include physical, chemical, microbiological and radioactive requirements as stated in the Regulation of the Minister of Health No. 492 of 2010. Potable water as referred to in this regulation is water that goes through a process of processing or without processing that meets health requirements and can be drunk directly. In order for potable water to be safe

for the health of the people who consume it, the potable water must meet the requirements of Chemical, Physical, Bacteriology and Radioactivity.

Raw water quality requirements, stipulated in the Decree of the Minister of Health, pursuant to Minister of Health Regulation 492 of 2010, about Potable Water Quality Requirements, include parameters as potable water quality standards, including physical, bacteriological, chemical and radioactive. Bacteriological and chemical (inorganic) parameters are parameters that are directly related to health, while other physical and chemical parameters are parameters that are not directly related to health. In the regulation, the requirements for potable water can be reviewed from several parameters, namely:

a) Physical parameters

Physical parameters include odor, turbidity, taste, temperature, colour and amount of dissolved solids.

- a. Odorless: Smelly water can be caused by the decomposition of organic matter contained in water.
- b. Turbidity: Unclear water is water containing solid particles, which can be a substance that are harmful to health. Besides that is turbid water is difficult to disinfect, because of pathogenic microbes can be protected by these particles.
- c. Tasteless: Non-tasteless water indicates the presence of certain substances in the water.
- d. Temperature: Good water should not have a noticeable temperature difference with ambient air. In Indonesia, the temperature of potable

water ideally $\pm 3^{\circ}$ C from air temperatures above or below air temperature means that it contains certain substances (such as dissolved phenols) or biochemical processes are occurring that secrete or absorb water energy.

- e. TDS: Total Dissolved Solid / TDS, are dissolved materials (diameters $<10^{-6}$ - 10^{-3} mm) in the form of chemical compounds and other materials. If TDS increases, hardness will increase. Hardness results in sediment / crust on the piping system.

b) Chemical Parameters

Chemical parameters are grouped into organic chemistry and inorganic chemistry. Inorganic chemicals can be metals, reactive substances, dangerous and toxic substances and acidity (pH). Organic chemicals can be in the form of insecticides and herbicides, volatile organic chemicals and toxic oxygen binding agents. Metal sources in water can come from industrial activities, mining or natural weathering processes, or because of corrosion from water pipes. Organic chemicals in potable water can be divided into 3 categories. 1st Category is a chemical that may be carcinogenic to humans. 2nd Category is a chemical that are not carcinogenic to humans. 3rd Category is a chemical that can cause chronic diseases without the fact of carcinogen.

c) Microbiological parameters

Indicators of organisms used as microbiological parameters are used coliform bacteria (indicator organism). Bacteria (types of pathogens) are part of microorganisms that can cause diseases, such as digestive tract diseases.

This agent can live in a variety of media, animals, and humans and live their life cycle, so that it is a mechanism to sustain life.

d) Radioactivity parameters

Radioactivity can cause cell damage. The damage can be in the form of death and changes in genetic composition. The changes can cause diseases such as cancer or cell mutations.

In management of quality potable water, it is necessary to have guidance and supervision both from the managerial side as well as the quality aspects of production. To guide and supervise in the aspect of production of refill potable water depots can be done with some public information about potable water quality requirements:

1. The eligibility requirement for potable water that is safe for health is if it meets the requirements contained in the parameters as stipulated in Regulation of Minister of Health No. 492 of 2010 about Water Quality Requirements.
2. The mechanism for monitoring the quality of potable water and its implementation includes internal supervision by the operators of potable water and external supervision by the Health Agency in District or Municipal with guidance from the Health Agency in Provincial as stipulated in Regulation of Minister of Health No. 736 of 2010 about Quality Supervision Management Potable water.

3. Potable water quality testing can be carried out in the field with water test kits and laboratories with provisions in accordance with the management of potable water quality control.
4. The most dominant type of disease infected with water sources around the paper industry due to the bacteria *Serratia marcescens* is skin disease and diarrhea. The types of pollutants contained in water around the paper industry contain the most is lignin and cellulose and Adsorbable Organic Halide which have toxic, bioaccumulative, carcinogenic, and persistent characteristics, *Organic Halide Adsorbable* can be accumulated in the body of the fish, so it can pose a risk to human health if consuming large quantities of contaminated fish.

Based on the Minister of Health Regulation No. 492 of 2010 about Potable Water Quality Requirements, to maintain the quality of potable water consumed by the public, potable water quality is monitored externally and internally. Those are explained as follows.

- a. Monitoring the quality of potable water externally is the supervision carried out by the Health Agency in District or Municipal.
- b. Monitoring the quality of potable water internally is the supervision carried out by the operators of potable water to ensure the quality of potable water produced meets the requirements as stipulated in Law No.492 of 2010.

- c. The activities related monitoring quality of water include: sanitation inspections, water sampling, water quality testing, analysis of laboratory examination results, recommendations and follow-up.
- d. Further provisions regarding the management of potable water quality control are stipulated by the minister.

Based on the types of technique, there are several types namely:

1. Direct supervision and indirect supervision
 - a. Direct supervision is supervision carried out personally by the leader or supervisor by observing, researching, checking "on the spot" at work, and receiving reports directly from the executor. This is done by inspection.
 - b. Indirect supervision is carried out by studying reports received from implementers both verbally and in writing, learning community opinions and so on, without "on the spot" supervision
2. Preventive and repressive supervision
 - a. Preventive supervision is carried out through a pre-audit before work begins. For example, by supervising preparations, work plans, budget plans, energy use plans and other sources.
 - b. Repressive supervision, carried out through post-audit, with an examination of the implementation on site (inspection), requesting an implementation report and so on.
3. Internal supervision and external supervision

- a. Internal supervision is carried out by the apparatus in the organization itself. Basically, supervision must be carried out by the top leaders themselves. Each unit leader in the organization is basically obliged to assist the top leadership to conduct functional supervision in accordance with their respective fields of duty.
- b. External supervision is a supervision carried out by officials from outside the organization itself.⁵⁰

Siagian revealed that the supervision process was basically carried out by administration and management using two types of techniques, namely:

- a. Direct control is when the organization's leaders conduct their own supervision of activities that are being carried out.

This direct supervision can take the forms of:

- 1) direct inspection,
 - 2) on the spot observation,
 - 3) on the spot report, which also means on-spot decision making if needed. However, because of many complex tasks of a leader, especially in an agency, a leader cannot always carry out direct supervision. Because of that, he often has to carry out indirect supervision.
- b. Indirect supervision is remote supervision. This supervision is carried out through reports submitted by subordinates. The report can take the forms of:
 - 1) Written,
 - 2) Oral.

⁵⁰ Victor, M. Situmorang, *et. al.*, *Aspek Hukum Pengawasan Melekat*, (Yogyakarta: Rineka Cipta, 1994), p. 27.

The disadvantage of indirect supervision is that it often subordinates only on positive things report. In other words, the subordinates have a tendency to only report the things they expect to please the leader.

State Agency which has responsibility on Potable Water Quality, namely Minister of Health, The National Agency of Drug and Food Control (BPOM), Head of Health Agency in Provincial, District, Municipal level conduct supervision and guidance on the implementation of regulations on quality of potable water in accordance with their respective duties and functions. The Minister of Health, BPOM, Head of Health Agency in Provincial, District, Municipal can order producers to withdraw potable water products from public or prohibit the distribution of potable water in certain areas that do not meet the recommended quality requirements for potable water and the Government may sanction potable water operators, that do not meet the recommended potable water quality requirements.

The Procedure for Quality Control of Potable Water stated in Minister of Health Regulation No. 736 of 2010, aims to achieves the quality of potable water that meets health requirements, then supervision is carried out, both internally and externally. Both of these controls are carried out through 2 (two) ways, namely periodic supervision and supervision of indications of pollution.

CHAPTER III

LIABILITY OF BOARD OF DIRECTOR (BOD) TOWARD POTABLE WATER QUALITY REQUIREMENTS IN REGIONAL OWNED ENTERPRISES (BUMD)

A. Legal test of Board of Directors in Management of Potable Water in PD XYZ

1. Company Profile

a. Basis of Establishment of the Company

- 1) The Water Supply Company was established in 1983 which was originally in the form of a Regional Owned Enterprise of West Aceh Regional Government under the name Badan Pengelolaan XYZ (BP. XYZ), and began its operations in 1984.
- 2) Based on the Regional Regulation No. 11 of 1993, it changed its name to Perusahaan Daerah XYZ (PD XYZ).

b. Objectives, Tasks and Functions

1) Objectives

It aims to provide services to facilitate and distribute potable water in the framework of the basic needs of the community and support the implementation of economic development and improve the welfare of community

2) Tasks

It carries out the management of potable water to improve community welfare which includes social, health and public services aspects

3) Functions

It has several functions, i.e.

- a) carrying out public services, organize public interest and increase Local Revenue;
- b) planning and controlling the management of potable water according to the Head of Region's policy and the provisions of the applicable laws and regulations;
- c) carrying out the production and distribution of potable water that meets health requirements and affordable prices; and
- d) providing adequate potable water services to the community.

c. Vision and Mission

1) Visions : "Excellent, Healthy and Independent Services"

2) Mission

The missions are:

- a) improving service quality and coverage;
- b) improving efficiency in cost and billing;
- c) reducing water loss;
- d) enhancing professionalism and welfare; and
- e) contributing to development.

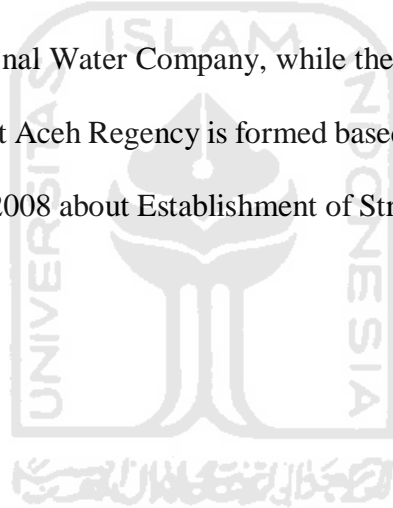
d. Location and Position of PD XYZ

PD XYZ is located in West Aceh, until 2017 it has several places, i.e.

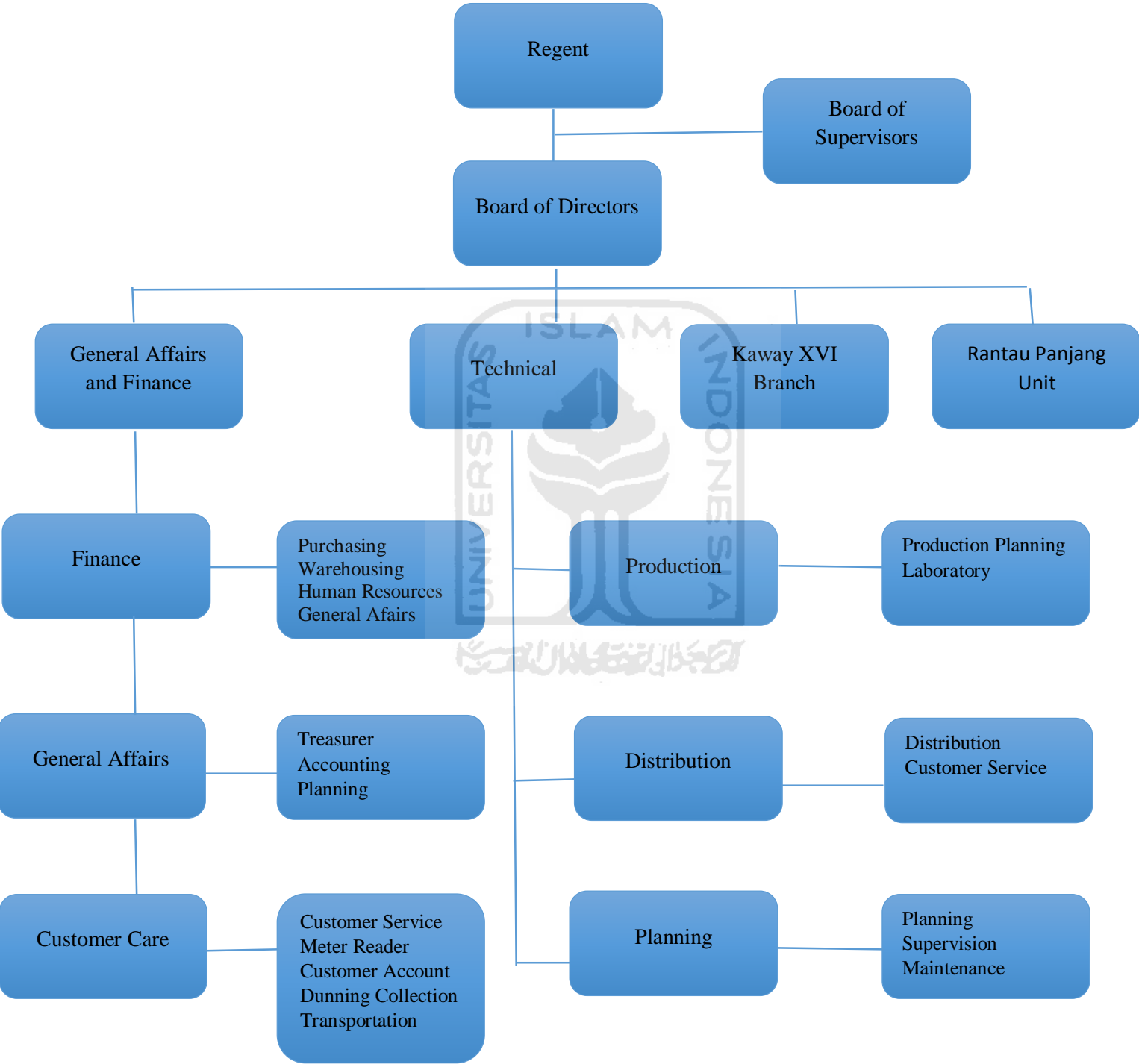
- 1) Headquarters in Meulaboh with IPA (Water Treatment Plant) in Lapang and Intake at Pasié Masjid.
- 2) Kaway XVI with IPA (Water Treatment Plant) and Intake at Beuregang
- 3) Ranto Panjang with IPA (Water Treatment Plant) in Ranto Panjang

e. Organizational Structure

The structure of organization of PD XYZ is regulated in the Regulation Minister of Home Affairs No. 2 of 2007 about Structure and Personnel of Regional Water Company, while the Organizational Structure of PD XYZ in West Aceh Regency is formed based on Qanun of West Aceh Regency No. 8 of 2008 about Establishment of Structure of Organization of PD XYZ.



Organizational Structure of PD. XYZ



2. Legal Test of Board of Directors in Management of the Company

The Result of Quality control of Potable Water in PD.XYZ in 2019

Parameter	Unit	Maximum		Result
		Potable Water	Raw Water	
I. Physical Parameter				
Color	TCU	15	50	55
Taste	-	-	-	-
Temperature	°C	±3°C	±3°C	-
Turbidity	NTU	5	25	145
II. Chemical Parameter				
Manganese (Mn ²⁺)	Mg/l	0,3	0,5	0,71
Nitrate (No ³⁻)	Mg/l	10	10	0,25
Nitrite (No ₂₋)	Mg/l	10	10	1,05
Iron (Fe ³⁺)	Mg/l	0,3	1	1
Aluminum (Al ³⁺)	Mg/l	0,2	0,2	0,21
pH	-	6,5-8,5	6,5-9,0	7,0
Salinity	-	0,1	0,1	0,01
Conductivity	-	250	250	201
TDS (Total Dispended Solid)	-	1000	1500	1500
Water Hardness	Mg/l	500	500	445
III. Bacteriology				
E.coli	100 ml Sample	0	0	-

The final result of Quality Control of Potable water in PD.XYZ in 2019 shows that the water quality of this company is not fully compliance with Permenkes 492

of 2010, there are some elements which not fulfilled the standard of Permenkes 492 of 2010 such as in term of color and turbidity. If we look at the attachment of Permenkes 492 of 2009 which stated about standard of potable water, there are some parameter which not fulfilled by PD.XYZ. The parameter are Additional Parameter and Inorganic Chemistry Parameter, this parameter is one the parameter which must fulfilled by the company or Mandatory Parameter in order to comply with Permenkes 492 of 2010 besides: Microbiology Parameter, Physical Parameter and Chemical Parameter, as stated in Article 3 section 2 Permenkes 492 of 2010.

The standard of good faith of Board of Directors of Company will be explained in this section based on Law No. 40 of 2007 about Limited Liability Company (UUPT). The UUPT has set the standards of good faith of directors in carrying out the management of the company related to the implementation of the responsibility of directors. Standards implementation of good faith are sometimes in practice also adjusted to the prevalence of the company's business, in addition to good faith standards that have been determined in the law. Therefore, it is necessary to discuss the provisions of the standard of good faith of directors in this sub-chapter.

Standards of good faith of Board of Directors in the management of the company are required to carry out the management carefully (the duty of the due care). The good faith of the directors is fully forced in carrying out the management of the company for the benefit of the company in accordance with the aims and objectives of the company. The good faith of the directors in carrying out the management of the company is closely related to the provisions of Article 92 paragraph (1) about Limited Liability Company that determines, "The Board of

Directors runs the management of the company for the benefit of the company and in accordance with the aims and objectives of the company".

Article 92 paragraph (1) of Limited Liability Company is concluded that the loyalty of directors is only addressed to the interests of the company in accordance with the aims and objectives of the company. These provisions are further emphasized in Article 97 of the Limited Liability Company relating to the directors' obligation to have good faith to run the management of company. Article 97 of the Limited Liability Company determines as follows:

- a. Directors are responsible for managing the company as referred to in Article 92 paragraph (1).
- b. Management as referred to in paragraph (1) shall be carried out by each member of the board of directors in good faith and with full responsibility.
- c. Each member of the board of directors is fully responsible personally for the company's loss if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions referred to in paragraph (2).
- d. In the case of directors consisting of 2 (two) or more directors, the responsibilities referred to in paragraph (3) shall apply jointly responsible to each member of the directors.
- e. Members of the board of directors cannot be held responsible for losses as referred to in paragraph (3) if they can prove:
 - 1) he loss is not due to an error or negligence;

- 2) to carried out the management in good faith and prudence for the benefit and in accordance with the aims and objectives of the company;
 - 3) to not having a conflict of interest either directly or indirectly for the management actions that result in losses; and
 - 4) to have taken action to prevent the loss arising or continuing.
- f. On behalf of the company, shareholders who represent at least 1/10 (one tenth) of the total number of shares with voting rights can file a lawsuit through a district court against a member of the board of directors who due to an error or negligence has caused a loss to the company.
- g. The provisions referred to in paragraph (5) do not reduce the rights of other members of the board of directors and / or members of the board of commissioners to file a lawsuit on behalf of the company.

According to the explanation of Article 97 paragraph (2) of the Limited Liability Company, what is meant by full responsibility is to pay attention about management to the company carefully and diligently. Starting from the explanation of Article 97 paragraph (2) of the Limited Liability Company, the standard of good faith of directors in carrying out company management is the director obligation to carry out the management with the duty of the care. Good faith as an obligation of the Board of Directors is determined in Article 97 paragraph (2) about Limited Liability Company, namely the management of the company must be carried out by each member of the board of directors in good faith and with full responsibility.

Members of the board of directors in carrying out the management of the company must be careful (the duty of due care) or duty care or prudential duty.⁵¹ Each member of the Board of Directors must not be carelessly and negligently. If directors are careless and negligent in carrying out the management, according to the law, the directors have violated the duty of care or violated the prudential duty. The standard of duty of the duty care that is generally applied in practice is the standard of prudence commonly practiced by ordinary people (the kind of care that an ordinary prudent person) is in the same positions and conditions.⁵² The prudential standards of directors include the following:⁵³

- a. The Board of Directors may not carry out activities at the expense of the company if it does not give benefits or give very small benefits to the company compared to personal benefits obtained by the concerned director. The exception is if it is carried out at the expense of the position representation of the member of the Board of Directors concerned based on the resolution of the GMS.
- b. The Board of Directors may not be a competitor for the company that he leads, for example taking business opportunities that should be given to and by the company he leads, but the business opportunity is given to other companies in which there are personal interests of the directors.
- c. The Board of Directors have the obligation to refuse to make decisions regarding something that he knows or deserves to know may result in the

⁵¹ M. Yahya Harahap, *Op. cit* p. 378.

⁵² Walter Woon, *Company Law*, (Longman Singapore, Publisher Pte. Ltd., 1998), p. 215.

⁵³ Gunawan Widjaja, *Tanggung Jawab Direksi Atas Kepailitan Perseroan*, (Jakarta: PT. RajaGrafindo Persada, 2005), p. 35-36.

violating the applicable laws and regulations so that the company is threatened with sanctions by the competent authority, for example revoked its business license or being sued by another party.

- d. The Board of Directors makes an effort or action that needs to be taken to prevent the company's losses.
- e. Directors make efforts to increase company profits.

The obligation to be careful to emphasize to members of the Board of Directors must comply with applicable laws, articles of association, implementing GCG principles including professionalism, efficiency, transparency, independence, accountability, responsibility, and fairness. The principle of prudence in carrying out the duties of directors must devote their energy, thoughts and full attention to the tasks, obligations, and achievement of the company's goals. The Board of Directors cannot be punished because it has taken decisions or policies that are in line with its duties and authority as referred to in law and the articles of association in force as long as they are carried out in good faith. Decision making can be considered to have fulfilled good faith if:

- a. performed with the intention of not seeking profit for oneself, family, own group, and or other actions that indicate corruption, collusion and nepotism;
- b. performed based on in-depth analysis and positive impact;
- c. followed by a preventive action plan if the decision taken turns out to be inappropriate;
- d. equipped with a monitoring (control) system.

This prudent benchmark if ignored by members of the Board of Directors in carrying out the management of the company, the Board of Directors is considered guilty of violating their obligations that should carry out the management of the company with full responsibility and good faith. The Giving emphasis on the importance of the directors' care in managing the company is done because the directors occupy strategic positions with good salaries and benefits, and great responsibilities as well, so that if the directors are not careful in carrying out the management of the company, the legal consequences and demands of the related party are waiting for him.

Requirement of a person who can be appointed as a member of the Board of Directors (reasonable director) is pointing a person who is trusted and prudent. It is difficult to measure reasonable director's standards, but what generally becomes a guideline is the qualifications of a member of the board of directors who are able to show a level of prudence that is reasonable or appropriate for someone in accordance with their experience and qualifications as a director, as well as any company management actions to be carried out reasonable consideration (reasonable judgment).⁵⁴

The Board of Directors in making judgments must not ignore and ignorant to the legal provisions and the articles of association of the company. Any violation of the law committed by members of the board of directors cannot be excused and tolerated even though the policy was made based on careful consideration but

⁵⁴ *Ibid.*, p. 216.

himself knew that the basis of the consideration was contrary to legal provisions or the company's articles of association.

The application of duty care is the example regarding the expenditure of company money. Members of the board of directors must ask reasonable questions as to why the company must spend this amount of money. Is the price paid is really decent and worth.

If a member of the Board of Directors want to delegate or authorize another person, he must carefully choose or appoint a reasonable person to carry out the delegation or power of attorney. Those party receiving power to represent the company must be honest and trustworthy people. Directors are not only categorized as negligent, but it becomes his responsibility if they delegate or represent a management of the company to someone who is not competent.

If a member of the board of directors is deceived by someone he trusts, whereas from the beginning that the board of directors knew that the person was not competent, then all risks arising from the delegation or granting of the power of attorney were fully transferred to the member of board of directors, there are requirement that need to be fulfilled reasonable man requirements, then to ensure that the person is truly reasonable man must be carried out based on sufficient and serious research, so that the board of directors does not carry the risk and responsibility for losses arising from such delegation.⁵⁵

The obligations of application of prudent (duty care) and good faith in the management of company, which are called business judgment rule. If the members

⁵⁵ *Ibid.*, p. 218.

of the board of directors are truly honest (in good faith) in carrying out the company's responsibilities, and the good faith is accompanied by reasonable judgment that is reasonable in accordance with experience and knowledge and the prevalence of business practices (common business practice), even though these considerations are wrong (error judgment), then the members of the board of directors cannot be held responsible for an error of judgment that made honestly (does not liable for honest mistakes of judgment) or not liable for any error judgment.⁵⁶

Such incidents are included in the business judgment rule principle, and some even argue that inadvertence is not a mistake, as long as it is done honestly.⁵⁷ In this event, the good faith (honesty) standards of the directors apply in managing the company. The good faith standard confirms that members of the board of directors cannot be held responsible for the company's losses if they can prove it as determined in Article 97 paragraph (5) about Limited Liability Company.

These elements have a strong attachment that is inseparable from one another as indicators to determine whether a director has a good faith or not. That the loss of the company is not due to an error or negligence of the board of directors because he has made arrangements in good faith and carefully for the interests and in accordance with the aims and objectives of the company, the directors do not have a conflict of interest either directly or indirectly for the management actions that

⁵⁶ M. Yahya Harahap, *Op. cit.*, p. 381.

⁵⁷ *Ibid.*

result in losses, and the actions of director have been taken to prevent arising or continues the losses.

Provisions on standard of good faith of directors in the event of a loss to the company stated in Article 97 paragraph (5) of the Limited Liability Company may become a guideline to determine whether the directors have managed the company in good faith or not. Good faith standards based on Article 97 paragraph (5) of the Limited Liability Company cannot only be measured by the final results, which are in accordance with the objectives for the interests of the company and according to the aims and objectives of the company. However, the standard of good faith is cumulative with other elements such as whether or not there is an element of errors or negligence), conflict of interest between personal interests and the interests of the company, and the presence of preventive action to anticipate or reduce continuing losses.

The standard of good faith is emphasized that the members of the board of directors cannot be held responsible for the company's losses if it can prove (1) the loss is not due to an error or negligence, (2) has carried out the management in good faith and prudence for the interests according to the company's goals and objectives, (3) does not have a conflict of interest either directly or indirectly for the management action that results in the loss, and (4) has taken action to prevent the loss arising or continuing.

All elements of the formula specified in Article 97 paragraph (5) of the Limited Liability Company if fulfilled and can be proven by the board of directors that they have carried out the elements as specified in Article 97 paragraph (5) of the Limited

Liability Company, then the directors can be said to have done in good faith and must be released from legal liability for the loss of the company. However, in good corporate practice the standards of good faith vary, adjusted for the prevalence of similar businesses. For this reason, to reduce this difference, every corporation must also be based on SOP.

Based on the provisions of Article 97 paragraph (5) letter b about Limited Liability Company, it clearly seen that between good faith and prudent are two terms that are used differently, or are not the same. Article 97 paragraph (5) letter b about Limited Liability Company stipulates "Having conducted arrangements in good faith and prudence for the interests and in accordance with the aims and objectives of the company". People who are careful are not necessarily in good faith, but people in good faith are theoretically certain to be careful in carrying out all matters, including in managing the company.

Standard of good faith if they only adhere to the provisions of Article 97 paragraph (5) about Limited Liability Company, it will become a problem that it is not easy to determine when and how the directors are considered to have violated the standards of good faith. Therefore, the principles of good corporate governance can also be used as guidelines and more importantly are the provisions of applicable procedures or mechanisms for example in the form of Standard Operating Procedures (SOPs) within the company itself. This is what is meant by the prevalence of a company's business.

People with good faith are sure to be careful, but in practice based on the norm if someone has a good faith, he is not necessarily careful, because there are times

when a boss or leader like a director actually does not have bad intentions but he does not be careful, for example, not reading or checking according to the prevailing mechanism so that the policy that sign a letter or check can result in losses for the company.

Carefully there are times when it is done in two meanings, positive or negative, namely being careful in doing good (truth) and being careful in doing bad (evil). The prudence required by Article 97 paragraph (2) and paragraph (5) letter b of the Limited Liability Company is to do good and benefit the company. Good faith are not contained in negative actions, but good intentions are definitely bound in positive actions. Therefore, the Limited Liability Company Law distinguishes between good faith and prudence, so every element mentioned in Article 97 paragraph (5) of the Limited Liability Company must be cumulative and cannot be separated from one another.

The Board of Directors in making judgments, must not ignore and be ignorant to the legal provisions and the articles of association of the company and SOP. Any violation of the law committed by members of the board of directors cannot be excused and tolerated even though the policy was made on the basis of careful consideration but he himself knew that the basis of the consideration was contrary to legal provisions or contrary to the company's articles of association or SOP.

Good faith cannot be measured, because this element is related to someone mind. The Board of Directors in managing a company based on good faith must carry out its responsibilities based on legal and moral responsibilities.⁵⁸ This space

⁵⁸ Theo Huijbers, *Filsafat Hukum*, (Yogyakarta: Kanisius, 1995), p. 63.

is very abstract. However, to know someone has a good faith or not, it can be identified apart from the forms of behavior and legal actions that he did, whether in accordance with the provisions of the legislation in force or not, whether in accordance with the mechanism (SOP) or not. There must be a combination between intentions (means rea) with his actions.

According to Gunawan Widjaja, good faith is full of responsibility in carrying out tasks for the interests and business of the company.⁵⁹ Good faith is actually in an abstract space, but good faith will be concrete if the act is accompanied by several attitudes such as doing the things mentioned in Article 97 paragraph (5) about Limited Liability Company. The Board of Directors in carrying out its duties and authority must pay attention and implement the principles of good corporate governance. Good faith applied by directors in managing the company reflecting the existence of the company can live sustainably and provide benefits to the company's stakeholders.⁶⁰ In addition, directors must pay attention to the provisions of the applicable legislation, also must pay attention to procedures or mechanisms that apply, for example the company's SOP.

What if there is no SOP? In this case the directors must at least pay attention and implement the principles of good corporate governance principles, and in particular the provisions in Article 97 paragraph (5) about Limited Liability Company. Proving whether the directors have an error or negligence, has carried

⁵⁹ Gunawan Widjaja, *Tanggung Jawab Direksi Atas Kepailitan Perseroan*, (Jakarta: PT. Raja Grafindo Persada, 2005), p. 23-24.

⁶⁰ *Membangun Tatakelola Perusahaan Menurut Prinsip-Prinsip GCG*, on <http://businessenvironment.wordpress.com/2007/04/30/membangun-tatakelola-perusahaan-menurut-prinsip-prinsip-gcg/>, accessed 19 August 2019.

out the management in good faith and been being prudent for the interests and according to the purpose and objectives of the company or not, has a conflict of interest either directly or indirectly for its actions or not, has taken action to prevent continued losses or let at all the losses.

Directors in managing the company in good faith may include:⁶¹

- a. being trusted;
- b. doing obligation to carry out management for a reasonable purpose (duty to act for a proper purpose);
- c. complying with statutory duty;
- d. being loyal to the company (loyalty duty); and
- e. avoiding conflict of interest.

Good faith as has been explained, that directors in carrying out the management of the company, must do so in good faith which means it must be trusted (fiduciary duty) that is trustworthy and must always be honest. Obligated to carry out the management of the company for a reasonable purpose and reasonable goals. Must obey the laws and regulations. They must be loyal to the company, do not use the company's funds and assets for personal gain, and must keep all information confidential.

Avoiding conflicts of personal interests with the interests of the company, which in this case directors are prohibited from using company assets, are prohibited from using company information for personal interests, not using positions for personal interests, not taking or holding part of the company's profits

⁶¹ M. Yahya Harahap, *Op. cit* p. 374-377.

for personal use, not conducting transactions between privately with the company, and do not compete with the company.

The Board of Directors must carry out the management of the company and must be careful in carrying out the management, that is, the prudent that is normally carried out by people in such conditions and positions accompanied by reasonable considerations. The Board of Directors is obliged to carry out diligent management, that is, continuously, naturally, and pay attention to events affecting the company. Perseverance and tenacity must be accompanied by skills and expertise in accordance with the knowledge that they have.

The mandate of good faith and prudence obligations for directors in carrying out full responsibility is intended because the directors in carrying out the management of the company have the potential to commit negligence and error, then this norm is stipulated in Article 97 paragraph (2) about Limited Liability Company that, "Management as referred to in paragraph (1), each member of the board of directors must be carried out in good faith and with full responsibility."

Directors in good faith must be trusted, must carry out management for a reasonable purpose, must obey the laws and regulations, must be loyal to the company, and must avoid conflicts of interest. Good faith is an obligation of Board of Directors that is primarily addressed to the company itself as a whole and not to shareholders.⁶² In accordance with its position as a trustee in the company, so this position requires that the directors do not act recklessly in carrying out their duties

⁶² Bismar Nasution, "Tanggung Jawab Direksi dan Komisaris Dalam Pengelolaan Perseroan Terbatas Bank", p. 7.

or are required to be careful (duty of care).⁶³ The implementation of the good faith obligation for example is directors may not take advantage for themselves but institutionally they must be loyal to the company (duty of loyalty).⁶⁴

The directors' responsibility in carrying out the management of the company is not enough to only be carried out in the interests of the company in accordance with the aims and objectives of the company stipulated in the Limited Liability Company or in the articles of association, but the management must be carried out by the directors in good faith and full responsibility.⁶⁵ The company's management actions are carried out within the framework of sincere business decisions and are based on honest business decisions made in good faith.

Full responsibility as explained in Article 97 paragraph (2) of the Limited Liability Company that what is meant by full responsibility is to pay attention to the company carefully and diligently. The obligation to carry out the management of the company carefully and cautiously has been explained and the next thing to be explained next is the obligation to carry out the management of the company diligently. The obligation to persevere in corporate legal doctrine is called duty to be diligent or due diligent or it can also be called obligatory diligent and tenacious.⁶⁶

In general, the mandatory and persevering aspects are always associated with expertise. Thus, members of the board of directors in carrying out the management of the company must demonstrate proficiency (duty to display skills). Benchmark,

⁶³ Denis Keenan dan Josephine Biscare, *Smith & Keenan's Company Law For Students*, (Financial Times: Pitman Publishing, 1999), p. 317.

⁶⁴ Joel Seligman, *Corporations Cases and Materials*, (Boston & Toronto: Little, Brown and Company, 1995),

⁶⁵ M. Yahya Harahap, *Op. cit*, p. 373.

⁶⁶ *Ibid.*, p. 374.

skills and expertise must be in accordance with the position of directors in his lap (reasonable skills for the post). The skills and expertise that he must demonstrate must be based on his knowledge and experience (according to his knowledge and experience).

The standard of perseverance and tenacity of directors demanded from a legal and business perspective is a resonance diligent in all circumstances, but keep in mind that there is no complete definition of the definition of duty to persevere to diligent. This is the same as duty of care, it is difficult to build a complete definition. At least the diligent and tenacious notions that are often put forward are obliged to be bound continuously, naturally and deserve to pay attention to events that afflict the company (the affair of the company), and must be bound naturally to attend all directors' meetings.⁶⁷

The good faith standard requires each member of the board of directors to carry out the management of the company with reasonable diligence. Members of the board of directors are not enough to only be competent and honest (skill and honest), but must be competent, honest, diligent, and resilient (skill, honest, and diligent) naturally in all circumstances and conditions faced by the company. Thus, good faith and at the same time caution will be taken in managing the company.

The Board of Directors consists of members with a division of tasks, the portion of the skills, honesty, and perseverance that must be carried out by each of them is in accordance with the field of duties entrusted to him. Members of the

⁶⁷ Walter Woon, *Company Law*, (Singapore: Longman Singapore Publisher Pte. Ltd., 1998), p. 218.

board of directors who are assigned to take care of certain fields are not required to be bound by continuing to pursue the field of duties of other members of the board of directors. On the basis of this principle, it is not wrong to think that a member of the board of directors does not assume responsibility for negligence by other members of the board of directors who occur outside their area of duty. Supervision of the implementation of the management that must be practiced, only supervising their duties, and a director is not obliged to pursue the supervision of other members of the board of directors.

B. Liability of Board of Directors in Managing Potable Water Company

If we look at the result of water quality, there are some aspects which are not fulfilled by the Company. The company obliged to subject to the applicable law and carry out activities by being responsible to all stakeholders and to the community, by not taking actions that harm these stakeholders.

Based on the results of interviews to the director of PDXYZ, one of PD XYZ obligations is to provide PDXYZ's consumers potable water that fulfills the requirement for consumption. Therefore, as the Director of Company, this company that has a vital role in the area of West Aceh. This is because the natural conditions in West Aceh which have the majority of peatland.

Operating this company is very tricky because they have to deal with the condition of nature and also condition of the tools. They also admitted that they were accepting complaints from customers in term of water coming from PD XYZ taste which is salty and sometimes the water flowing into the customer's home is

very dirty. There is also a complaint that says that the water is insufficient and often does not even flow to the home of customer. Therefore, it becomes the obligations of Directors of PD XYZ in managing potable water companies (in the Company's AD-ART).

During the rainy season, water sources that are usually managed by PD XYZ are exposed to overflowing water so that it becomes flooded and turbid. This will result in disrupted supply of clean water, such as changing the color of water distributed to customers. This kind of thing makes people less satisfied with the services provided by PD.XYZ

Meanwhile, during the dry season, water debit in each source of raw water will go down, this can also disrupt water distribution, the thing that can be done by PD. XYZ is to do water distribution in rotation. For this reason, it is necessary to add additional sources of raw water, this must be considered by the government and PD. XYZ because raw water sources are now unable to meet the needs of clean water to customers while the number of PD. XYZ customers is increasing year by year.

The quality and quantity of facilities and infrastructure owned by PD. XYZ are still quite low, so there is still a need to add facilities and infrastructure to improve services. However, to revitalize the facilities and infrastructure, a significant amount of funds is needed and this is a factor that inhibits PD. XYZ

To be able to achieve the objectives of the responsiveness element, it is necessary to clarify responsibilities, including clarity of responsibilities between companies with individual responsibility. Principally, Board of Director of a company must be personally responsible not only for actions carried out in their

capacity as individuals, but also in certain matters for actions that they do in their position as leaders of the company. When doing a certain act legally in his position as a director of the company, in the sense that it is not in his capacity as a person, then the leader has taken the company's actions, then any juridical consequences of the company's actions, good or bad will have an impact on the company.

The appearance of the responsibility role in Regional Owned Enterprises is in order to protect stakeholders including customers from irresponsible actions taken by them, when the obligation is handed over to the company, it means the same as imposing things that stakeholders do not do to all stakeholders. Considering that company losses will have an impact on the parties at the company.

In Article 343 Law No. 23 of 2014 about Regional Government, it stated that: “the management of public enterprises must at least meet the following elements:

1. procedures for capital investment;
2. organ and staffing;
3. evaluation procedures;
4. good corporate governance;
5. planning, reporting, training, supervision;
6. cooperation;
7. profit utilization;
8. assignment of Regional Government;
9. loans;
10. internal watchdog unit, the audit committee and other committees;
11. assessment of health level, restructuring, privatization;

12. change of legal form;
13. bankruptcy; and
14. merger, consolidation, and takeover.

One of the management aspects in Regional Owned Enterprise is Good Corporate Governance (GCG). There are many aspects of GCG:⁶⁸

1. Transparency

This concept is needed to maintain the objectivity of an organization or company in carrying out a business by providing clear, accurate, easily accessible and understandable information and can be accounted for by all stakeholders in the organization or company. With the development of technology today, it does not become an excuse for an organization or company not to be able to take the initiative to disclose various information relating to decision-making processes or policies that are needed by stakeholders.

2. Accountability

This concept is needed to see how far the performance has been produced by an organization and company. In this case, a performance must be managed appropriately and measurably to see how far the continuity between the planning process, organization, implementation and evaluation is carried out with the purposes of the organization or the company itself. In this concept, organizations and companies must be able to answer all

⁶⁸ Penerapan Konsep Good Corporate Governance (GCG) Dalam Budaya Indonesia, on <https://medium.com/@muhammadfrayogi/penerapan-konsep-good-corporate-governance-gcg-dalam-budaya-indonesia-d8cef61009df>, accessed July 24, 2019

questions that will be asked by stakeholders for what has been done and the results achieved by the organization or the company itself.

3. Responsibility

This concept reflects the responsibility of each individual or organization or company in complying with all tasks in the work, government rules and policies relating to the business activities of an organization or company. In this case, it is not only limited to responsibility in carrying out work among the employee, but the responsibility of the organization or company of stakeholders to the surrounding community. So that in this concept, the organization or company must be able to account for everything that relates to the rules, laws and regulations that apply as a contribution to the relationship between the company's internal hierarchy, stakeholders, society and other stakeholders.

4. Independency

This concept can be used as self-actualization for organizations and companies that can stand alone and have competitiveness with their business environment. In this case, the organization or company must have effective and efficient governance and be able to do it themselves without any dominance or intervention from other parties, and be able to use and utilize the values that exist in the organization or the company itself to be able to used as a unique point between organizations and other companies, so they can compete in similar business fields.

5. Fairness

This concept is needed to maintain the stability of the company by maintaining fairness and equality for each member, stakeholder and other stakeholders in an organization or company with their respective portions.

As we discussed in another part, there are possibility to transfer the responsibility to the person itself. There are certain condition or situation that Board of Director cannot be transferred to the person:

- a. carry out tasks with full responsibility and carefully;
- b. determine decisions in accordance with applicable law;
- c. the determination of the decision is carried out with the right purpose, in accordance with the purpose and objectives of the company;
- d. all actions are intended for the interests and objectives of the company;
and
- e. acting in accordance with the direction of the GMS, as the highest controlling company.

In Article 68 Government Regulation No. 54 of 2017 about Regional Owned Enterprises, it regulates the possibility of transferring responsibility to the person itself:

- a. Board of Directors must be in good faith and have the responsibility to carry out duties for the interests and business of BUMD.
- b. Every member of the Board of Directors take full personal responsibility if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions referred to in paragraph (1)

Regulation of the Minister of Health No. 492 of 2010 has already mentioned certain criteria that must be fulfilled by the company. However it seems that the company does not fulfil certain parameter which does not meet the requirement in that regulation. Actually there is sanction that will be imposed to the company which not conducting the follow up of improvement suggestion related to the quality of water. Article 7 Permenkes No. 492 of 2010 regulated that:

According to their authority, Government or Regional Government will impose administrative sanction to the operator or company which run their activity in potable water and does not fulfil certain requirement that has already mentioned in this law.

The examples of taking legal effort have been done as follow. There is 1 case which can be an example of this issue: The Indonesian Legal Aid Foundation (YLBHI) is preparing a draft lawsuit related to the poor service of clean water in Jakarta. The lawsuit was directed to the Provincial Government of DKI Jakarta, PAM Jaya, and two of its operators, Palyja and Aetra. Civil and criminal claims. Civil related to community losses allegedly due to poor clean water services. Water is a basic right of citizens and the Provincial Government of DKI Jakarta is unable to fulfil its obligations. Criminally, the defendant is alleged to have violated the Consumer Protection Law,⁶⁹ but in this research we will not talk about the legal

⁶⁹YLBHI Bakal Gugat Pengelola Air Bersih, on <https://properti.kompas.com/read/2010/01/26/03335433/yldbhi.bakal.gugat.pengelola.air.bersih> accessed July 24, 2019

effort in term of Criminal. Besides, those 2 efforts there is another legal effort, namely administrative.⁷⁰

According to Article 1365 of Indonesian Civil Code, what is meant by civil wrongdoing, civil wrongdoing is an illegal act carried out by someone who conducting civil wrongdoing which caused harm to others.

Civil wrongdoing not only related violation law, but also do or do not violate the rights of others, or conflict with the obligation of those who parties required to carry out obligations, contrary to decency and carelessly, appropriateness and propriety in the values of society.

In civil wrongdoing, there are elements in an illegal act, namely:

- a. Illegitimate acts; It is said that acts against the law are not just things contrary to the law, but also if doing or not doing something that meets one of the following elements:
 - 1) Contrary to the rights of others;
 - 2) Contrary to the obligation of others;
 - 3) Contrary to decency;
 - 4) Contrary to necessity (prudence, appropriateness, propriety) that must be held in community relations, regarding other people or objects.
- b. Culpa-fact; Culpa-fact is intended as an act and consequences that can be accounted for to the perpetrator.

⁷⁰ Shidarta, *Hukum Perlindungan Konsumen Indonesia*, (Jakarta:PT. Grasindo, 2000), p. 117

- c. Damages; Namely losses arising from illegal acts. Every act against the law does not only result in a loss of money, but can also cause moral loss
- d. Causality between act and damages. The causal element intended to examine is the causal relationship between unlawful acts and losses incurred so that the perpetrator can be accounted for.

Article 82 of Law No. 40 of 2007 about Limited Liability Company is stated that the Directors are fully responsible for the management of the Company for the interests and objectives of the Company and represent the Company both inside and outside the court. Whereas Article 85 of Law No. 40 of 2007 about Limited Liability Companies stipulates that each member of the Board of Directors must be in good faith and responsible in carrying out duties for the interests and business of the Company. Violations of this matter can cause the Board of Directors to take full personal responsibility if the person concerned is guilty or negligent in carrying out his duties.

To be referred to as a limited liability company, a business entity must have characteristics, including having its own wealth, there are shareholders as suppliers of capital whose responsibilities do not exceed the value of shares taken (deposited capital) and there must be management organized to represent the company in carrying out its activities in legal action, both outside and inside the court and is not personally responsible for agreements made by limited liability companies.

Furthermore, initially administrative sanctions were only connoted as revocation of permits granted by the Government to business actors. In Article 60 of Law No. 8 of 1999 about Consumer Protection Law, the forms of administrative

sanctions are extended, namely in the form of compensation.⁷¹ Administrative sanctions are aimed at business actors, both producers and other business actors who distribute their products.

Revocation of licenses is only intended to stop the production process and producers/distributors. Thus, the impact indirectly means protecting consumers, namely preventing more victims. The recovery of victims' rights is no longer the task of the state administrative legal instrument. The rights of consumers in term of losses can be part of civil.



⁷¹ Yusuf Shofie, *Penyelesaian Sengketa Konsumen Menurut Undang-Undang Perlindungan Konsumen (UUPK) Teori dan Praktek Penegakan Hukum*, (Bandung: PT. Citra Aditya Bakti,2003), p. 10.

CHAPTER IV

CLOSING

A. Conclusion

Proceeded from the all-inclusive explanation above, there are two points of conclusion that can be illustrated:

1. Eventhough there is provision which not fulfilled by PD.XYZ regarding water quality requirement in Permenkes 492 of 2010, that is not automatically make Director responsible toward the legal consequences, however there are other legal test that have to be fulfilled in order to make the Director responsible toward legal consquences as stated in Article 97 paragraph (5) Law No. 40 of 2007 about Limited Liability Company , i.e.

- a. carry out tasks with full responsibility and carefully;
- b. determine decisions in accordance with applicable law;
- c. the determination of the decision is carried out with the right purpose, in accordance with the purpose and objectives of the company;
- d. all actions are intended for the interests and objectives of the company;
and
- e. avoiding further damages and losses continue.

2. If we look at the condition of PD.XYZ, Director does not fulfill legal test which already mentioned above, because he is not doing his obligation according to the law regarding water quality requirement which mandated by Article of

Association and do not take any preventive action regarding this matter to prevent any damages that will happen. In case there is customer which suffer losses from this matter, they can sue PD. XYZ through Article 1365 Indonesian Civil Code about Civil Wrongdoing and to the Company itself there is Permenkes 736 of 2010 which give the authority to the Government or Regional Government to stop the operation of the company.

B. Recommendation

In response to the two laid out problems, recognizing the close relation between the two, recommendation can be offered:

1. Legal test which contain in Limited Liability Company will not be an easy problem to determine when and how the directors are considered to have violated the good faith standard. Therefore the standard provisions must describe in the principles of good corporate governance which can also be used as guidelines and are based on procedures or mechanisms as contained in the SOP of each company in the norms of similar business ventures.

2. If there is any damages or losses which suffered by the customer of company, they have the rights to sue or asking any compensation to the company related any harm which faced by the customer. One of the legal effort that can done by the customer is through Article 1365 Indonesian Civil Code related to Civil Wrongdoing, and if all the elements in Article 1365 Indonesian Civil Code, the Director will responsible toward the damages which suffered by the customer.

REFERENCES

Books:

- Ali, C. (1987). *Badan Hukum*. Bandung: Alumni.
- Biscare, D. K. (1999). *Smith & Keenan's Company Law For Students*. Financial Times: Pitman Publishing.
- Garner, Bryan A, et.al., (2009). *Black Law's Dictionary. 9th Ed*. St. Paul. MN: West.
- Hadhikusuma. (1995). *Pengertian Pokok Hukum Perusahaan: Bentuk-Bentuk Perusahaan yang Berlaku di Indonesia*. Jakarta: PT. Raja Grafindo Persada.
- Harahap, M. Y. (2009). *Hukum Perseroan Terbatas*. Jakarta: Sinar Grafika.
- Huijbers, T. (1995). *Filsafat Hukum*. Yogyakarta: Kanisius .
- Khairandy, R. (2013). *Pokok-Pokok Hukum Dagang Indonesia*. Yogyakarta: FH UII Press.
- Kodoatie, R. J. (2008). *Pengelolaan Sumber Daya Air Terpadu*. Yogyakarta: CV. Andi Offset.
- M.A.S.C.E., T. T. (1990). *T.H.Y. TEBBUTT Principles of Water Quality Control*. Karlsruhe: University of Birmingham.
- Margono, S. (2008). *Hukum Perusahaan Indonesia (Catatan Atas UU Perseroan Terbatas)*. Jakarta: CV. Novindo Pustaka Mandiri.
- Moel, P. d. (2006). *Drinking Water, Principle and Practice*. Singapore: World Scientific Publishing Co. Pte. Ltd.
- Muhammad, A. (2002). *Hukum Perusahaan Indonesia*. Bandung: Citra Aditya Bakti.
- Nasional, B. P. (2013). *Pengelolaan BUMD Berdasarkan Prinsip Tata Kelola Perusahaan Yang Baik (Good Corporate Governance)*. Jakarta: Badan Pembinaan Hukum Nasional.
- Nasution, B. (2008). Tanggung Jawab Direksi dan Komisaris Dalam Pengelolaan Perseroan Terbatas Bank. *Seminar Sehari Tanggung Jawab Pengurus Bank dalam Penegakan dan Penanganan* (p. 7). Surabaya: Bsimar Nasution.
- Perusahaan, M. T. (2000). *Menyikapi Tabir Perseroan Terbatas (Piercing The Corporate Viel) Kapita Selektu Hukum Perusahaan*. Bandung: Citra Aditya, Bandung.
- Salaiman, A. R. (2005). *Hukum Bisnis Untuk Perusahaan*. Jakarta: Kencana.
- Seligman, J. (1995). *Corporations Cases and Materials*. Boston & Toronto: Little, Brown and Company.
- Shidarta. (2000). *Hukum Perlindungan Konsumen Indonesia*. Jakarta: PT. Grasindo.

- Shofie, Y. (2003). *Penyelesaian Sengketa Konsumen Menurut Undang-Undang Perlindungan Konsumen (UUPK) Teori dan Praktek Penegakan Hukum*. Bandung: PT. Citra Aditya Bakti.
- Sidabalok, J. (2014). *Hukum Perlindungan Konsumen di Indonesia*. Bandung: PT. Citra Aditya Bakti.
- Sunaryo, T. M. (2005). *Pengelolaan Sumber Daya Air, Konsep & Penerapannya*. Malang: Banyumedia Publishing.
- Supirin. (2004). *Pelestarian Sumber Daya Tanah dan Air*. Yogyakarta: CV. Andi Offset.
- Victor, M. S. (1994). *Aspek Hukum Pengawasan Melekat*. Yogyakarta: Rineka Cipta.
- Widjaja, G. (2005). *Tanggung Jawab Direksi Atas Kepailitan Perseroan*. Jakarta: PT. Raja Grafindo Persada.
- Woon, W. (1998). *Company Law*. Singapore: Longman Singapore, Publisher Pte.
- Yani, A. (2006). *Seri Hukum Bisnis Perseroan Terbatas*. Jakarta: PT Raja Grafindo Persada .

Journals:

- Aji, B. P. (2015). Analisis Sumber Pendapatan Asli Daerah (PAD) Dalam Pelaksanaan Otonomi Daerah Di Kabupaten Buleleng. *e-Journal Bisma Universitas Pendidikan Ganesha Jurusan Manajemen, Volume 3*.
- Arta, I. M. (2017). Status Kepemilikan Badan Usaha Milik Negara (BUMN) Persero Setelah dikuasai Pihak Swasta. *Jurnal IUS, Vol V Nomor 2*
- Budhisulistiyawati, A. (2015). Strategi Pengelolaan Badan Usaha Milik Daerah (BUMD) Persero Untuk Mewujudkan Prinsip Tata Kelola Perusahaan Yang Baik. *Privat Law Vol. III No. 2 Juli-Desember*
- Khopiatuziadah. (2014). Landasan Hukum Pengelolaan Badan Usaha Milik Daerah: Antara Ada dan Tiada. *Jurnal Legilasi Indonesia, Vol. 11 No. 3 - September*
- Prillianti, N. (2014). Strategi Peningkatan Perolehan Pendapatan Badan Usaha Milik Daerah (Studi Kasus : Perusahaan Daerah Air Minum Kabupaten Semarang Tahun 2008 – 2013). *Journal of Politic and Government Studies, Volume 3 No. 3*.
- Tarmizi, R. (2010). Pendapatan Asli Daerah Berdampak Pada Kemandirian Keuangan Daerah. *JURNAL Akuntansi dan Keuangan, Volume 1 Nomor 1, September*

Electronic Data:

- 6, L. (n.d.). *182 PDAM di Indonesia Terjerat Utang*. Retrieved from Liputan 6: <http://www.liputan6.com/bisnis/read/2628125/182-pdam-di-indonesia-terjerat-utang>
- Aceh, H. (2017, December 19). *Air PDAM Tirta Meulaboh Keruh, Bupati Minta Benahi PDAM*. Retrieved from Harian Aceh: Air PDAM Tirta Meulaboh <https://www.harianaceh.co.id/2017/12/19/air-pdam-tirta-meulaboh-keruh-bupati-minta-benahi-pdam/>
- Antaranews. (n.d.). *Dewan Nilai Pelayanan PDAM Tirta Meulaboh Jelek*. Retrieved from Antaranews: <https://aceh.antaranews.com/berita/35836/dewan-nilai-pelayanan-pdam-tirta-meulaboh-jelek>,
- Antaranews. (n.d.). *Dewan Tidak Persoalkan Kenaikan Tarif PDAM Meulaboh*. Retrieved from Antaranews: <https://aceh.antaranews.com/berita/37274/dewan-tidak-persoalkan-kenaikan-tarif-pdam-meulaboh>
- Antaranews. (n.d.). *Dewan: PDAM Meulaboh Tak Berkontribusi PAD*. Retrieved from Antaranews: <https://aceh.antaranews.com/berita/22379/dewan-pdam-meulaboh-tak-berkontribusi-pad>,
- BPK. (n.d.). *BPK Banten*. Retrieved from Peranan Badan Usaha Milik Daerah sebagai Salah Satu Sumber Pendapatan Daerah: <http://banten.bpk.go.id/?p=9272>.
- Chandrawan, A. (2007, April 30). *Membangun Tatakelola Perusahaan Menurut Prinsip-Prinsip GCG*. Retrieved from Business Environment: <http://businessenvironment.wordpress.com/2007/04/30/membangun-tatakelola-perusahaan-menurut-prinsip-prinsip-gcg/>
- Dictionary, C. (n.d.). *Cambridge Dictionary*. Retrieved from Cambridge Dictionary: <https://dictionary.cambridge.org/dictionary/english/board-of-directors>
- Frayogi, M. (12, March 2017). *Penerapan Konsep Good Corporate Governance (GCG) Dalam Budaya Indonesia*. Retrieved from Medium: <https://medium.com/@muhammadfrayogi/penerapan-konsep-good-corporate-governance-gcg-dalam-budaya-indonesia-d8cef61009df>
- Iskandar, D. (2017, July 6). *Salah Jumlah Tagihan, Karyawan Pencatat Meteran Air PDAM Tirta Meulaboh Dihajar Pelanggan*. Retrieved from Aceh Tribunnews: <http://aceh.tribunnews.com/2017/07/06/salah-jumlah-tagihan-karyawan-pencatat-meteran-air-pdam-tirta-meulaboh-dihajar-pelanggan>
- Kompas. (2010, January 26). *YLBHI Bakal Gugat Pengelola Air Bersih*. Retrieved from Kompas: <https://properti.kompas.com/read/2010/01/26/03335433/yldbhi.bakal.gugat.pengelola.air.bersih>
- Muda, D. (2011, January 11). *Sepekan, Air PDAM di Aceh Barat Tak Mengalir*. Retrieved from Ajnn: <https://www.ajnn.net/news/sepekan-air-pdam-di-aceh-barat-tak-mengalir/index.html>

Webster, M. (n.d). *Miriam Webster*. Retrieved from Merriam-Webster:
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Submission ID: 1344045409

File name: 2-Wildan_Maulana-
LIABILITY_OF_BOARD_OF_DIRECTORS_BOD_TOWARD.docx (148.51K)

Word count: 23247

Character count: 120642

**LIABILITY OF BOARD OF DIRECTORS (BOD) TOWARD
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(A CASE STUDY OF PD. XYZ FROM 2018 TO 2019)

A BACHELOR DEGREE THESIS



**INTERNATIONAL PROGRAM
DEPARTMENT OF LAW
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
2020**

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