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Regional State-Owned Enterprises, Regional Heads, and The Pancasila Welfare State in A Deconstructive Perspective

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ABSTRACT
This research addresses the ongoing debate regarding the legal status of Regional Companies (*Perusahaan Daerah*) and the legal position of regional heads in their management. By applying a legal deconstruction approach, the study seeks to uncover the fundamental meaning behind the formation of a Regional Company as a legal entity, with the goal of providing legal certainty for local governments, communities, and third parties engaging in collaboration. The research uses normative legal methods, focusing on the discovery of law in concreto, which involves analyzing previous legal norms and their practical applications. Observations of the management of Regional Companies are conducted to examine the dynamics between the legal status of these companies, the role of regional heads, and the principles of the welfare state in the context of economic development. The findings aim to clarify the legal dilemma faced by Regional Companies, which exist in a legal space between public and private law, and to assess their impact on the institutional, financial, and managerial responsibilities of regional heads. Through a systematized and descriptive analysis of legal materials, this study offers prescriptive recommendations for improving the legal framework surrounding Regional Companies, ensuring greater clarity and effectiveness in their governance.
Keywords: Deconstruction; Regional Head; Pancasila Welfare State; Regional Companies.

INTRODUCTION

One of the instruments that is often used by local governments to achieve development goals is the establishment of Regional Companies because it is expected to be a driving force for local economic development (Westra, 2012). According to data from the Central Statistics Agency of the Republic of Indonesia, which will be released in 2024, the number of Regional Companies is 1,133, with a total total of assets of IDR 899.45 trillion and a total dividend of IDR 13.02 trillion (Corporate Governance of State-Owned Enterprises in Asia, 2024). However, the dynamics of the development of the management of Regional Companies show that Regional Companies cannot be said to be business entities that provide profits (Nasution & Sirait, 2017; Dian Cahyaningrum, 2018).

Data released by the Indonesian National Strategy Team for Corruption Prevention explains that, of the total number of Regional Companies, there are 239 that do not have an Internal Supervisory Unit, 186 Regional Companies have more Supervisory Board positions than the Board of Directors, 17 Regional Companies have less assets than their liabilities, and currently there are 274 losers and sick (losses with negative equity) totaling 291 (Ilmar, 2012).

This is still added to the record of cases handled by the KPK RI, where there were 93 cases of corruption in Regional Companies, the suspects coming from the board of directors of Regional Companies (Koto, 2021).

Regional Companies have a dilemmatic legal position as a business entity because they involve two sets of laws: private law and public law (Soeria Atmadja, 2011). Regional Companies should be managed in accordance with the private law regime based on the Law of PT (Lubis & Oktarina, 2018). However, because the local government plays the role of the founder, owner, and majority shareholder, the control and regulation related to the capital, management, and legal standing of the Regional Company remains in the realm of public law (Clarke, 2017). The challenges faced by Regional Companies in Indonesia are similar to those in other transition economies, where corporate governance and market orientation significantly impact performance (Guo, 2012; Heo, 2018).

Internationally, studies have shown that state-owned enterprises (SOEs) face structural inefficiencies due to overlapping regulatory roles and political interference (Kim, 2020). For instance, research in China highlights how regional SOEs experience constraints in innovation and profitability compared to private entities (Han & Hu, 2013; Hao & Kotz, 2024; Liao & Wei, 2024). These findings emphasize the importance of reforming SOE governance frameworks to ensure better accountability and efficiency (Clarke, 2017). Therefore, strengthening corporate governance and implementing good corporate practices are crucial steps to improve the competitiveness of Regional Companies (Nasution & Sirait, 2017).

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Data released by the Indonesian National Strategy Team for Corruption Prevention, explains that, of the total number of Regional Companies, there are 239 that do not have an Internal Supervisory Unit, 186 Regional Companies have more Supervisory Board positions than the Board of Directors, 17 Regional Companies have less assets than their liabilities and currently there are 274 losers and sick (losses with negative equity) totaling 291. This is still added to the record of cases handled by the KPK RI, there were 93 cases of corruption in Regional Companies, the suspects coming from the board of directors of Regional Companies. Regional Companies have a dilemmatic legal position as a business entity, because they involve two sets of laws: private law and public law. Regional Companies should be managed in accordance with the private law regime based on the Law of PT. However, because the local government plays the role of the founder, owner, and majority shareholder, the control and regulation related to the capital, management, and legal standing of the Regional Company remains in the realm of public law.

Several studies have explored the problems of Regional Companies from various aspects. Dian Cahyaningrum, examines the implications of the legal form of BUMD on its management. I Ketut Wiestra, highlighted that the convergence between private and public law creates obstacles in the management of Regional Companies. Meanwhile, Darwin Nasution, explained the importance of managing Regional Companies in accordance with the principles of Good Corporate Governance, by minimizing local government interference. Several studies have discussed the legal framework of Regional Companies. Susanto, emphasized the importance of legal clarity to ensure effective management. Siregar conducted a comparative analysis of regional regulations related to Regional Companies in various provinces, revealing challenges in their implementation. Other research also examines the role of regional heads, such as Nugroho, who explains the influence of political dynamics on decision-making, and Wibowo, who examines the impact of leadership style on the performance of regional companies. Sri Widyastuti, discussed how the management of Regional Companies can improve social welfare, emphasizing the meaning of business as a tool to achieve community welfare. Setiawan, examined the importance of aligning the goals of Regional Companies with the principles of Pancasila, while Prasetyo, explained the contribution of Regional Companies to welfare development in the context of Pancasila Welfare.

This study uses studies in several other countries as comparative materials. Thai Ha Le et al, comparing the performance of state-owned and private enterprises in developing countries in Asia, emphasized the importance of governments improving the business environment for all companies. Stein Kuhnle examines the challenges of welfare states in Europe and North America related to cultural, economic, and political issues, as well as providing policy advice. Clarke J., deconstructs the problem of the welfare state to think about how to reconstruct it.

The literature review explains that countries in Asia also provide valuable insights into the development of regional company management. Research on the role of Regional Enterprises in the context of local economic development is also of concern to several countries, including China, South Korea, and other Southeast Asian countries. The research aims to understand the conditions of reform in developing countries in reducing friction caused by government policies in encouraging economic growth in these countries. For example, research by Yi Han and Mingqin Wu, which outlines the barriers between regional enterprises and economic growth is a lesson learned from China. Meanwhile, Liu and Sun, in their research, explained that regional regional companies have a significant impact on economic growth in China. Likewise, research by Kim and Lee, which highlights the role of regional regional enterprises in South Korea, where challenges and opportunities faced in the context of local economic development are identified.

The research conducted by Felix Haifeng Liao and Yehua Dennis Wei, conducted an econometric analysis where it was revealed that the inequality of Regional Enterprises in China is influenced by various mechanisms, namely the influence of decentralization, marketization, and globalization. Hao Qi and David M. Kotz, meanwhile, explain the impact of state-owned enterprises on economic growth in the PRC, where it is possible for state-owned enterprises to

play a pro-growth role. In addition, Li and Liu, in their research, conducted an analysis of the governance mechanism of regional regional companies in China. Meanwhile, research by Han and Hu, explains the impact of technological innovation in high industry on regional regional companies. In addition, research on internal factors such as leadership style also plays an important role in the performance of Regional Companies. Li's research highlights the importance of regional leaders' leadership styles in shaping organizational performance, while Smith, conducts a comparative study of the role of regional leaders in various international contexts. Research by Zhang and Wang, reveals that ownership structures have an effect on the financial performance of regional regional companies in China, while Guo X's research, explains the performance of regional regional companies in the transition economy.

Research on good corporate governance is an important aspect in the management of regional companies in various countries. Heo Kyoungsun pointed out that good corporate governance has a positive impact on the performance of business entities, while Wang stated the same for regional companies in Southeast Asia. The World Bank Group emphasizes the importance of accurate disclosure of information, protection of minority shareholders, and the size and performance of the board. According to the OECD, the corporate governance of countries in Asia aims to advance governance reform and promote the use of the OECD Guidelines on Corporate Governance.

The role of the government in the welfare of citizens is a manifestation of the concept of the modern state of law, namely the theory of the welfare state. According to Mustamim Matutu, to realize a welfare state, legal reform, increased role of the constitution, and the development of social policies are needed. According to Darmawan Triwibowo and Sugeng Bahagijo, the welfare state places the role of the state not only as a guardian of order, but also as an organizer of people's welfare. In Indonesia, this concept refers to the development of social welfare that aims to improve the standard and quality of life, in accordance with the economic vision in the 1945 Constitution which is based on sovereignty and social welfare.

This research aims to analyze the legal status of Regional Companies and the role of Regional Heads in the context of the Pancasila Welfare State. With a more comprehensive understanding of the legal framework that governs Regional Companies, it is hoped that solutions can be identified to improve the effectiveness and efficiency of Regional Company management in order to achieve community welfare. The focus of this research is limited to the legal aspect without discussing in depth non-legal issues such as finance and managerial. The main objective is to identify the legal status and role of the Regional Head, as well as to prepare recommendations that are in line with legal principles and development goals.

METHOD

The research method used in this study is normative legal research with a focus on the discovery of law in concreto. Data sources include laws, regional regulations, regional head decisions, and related documents related to the legal status of Regional Companies and the role of Regional Heads in the context of the Pancasila Welfare State. Data processing is carried out

by identifying relevant theories, such as welfare state theory and administrative law theory, and holding group discussions with stakeholders. The deconstruction of the concept is carried out by identifying and analyzing the main concepts, such as the legal status of the Regional Company and the authority of the Regional Head, to uncover the assumptions and contradictions contained in it. Data analysis is carried out comprehensively on primary and secondary data to understand the existing dynamics. The interpretation of the results of the study uses the method of interpretation of the findings from data analysis and concept deconstruction.

RESULTS AND DISCUSSION

Pancasila serves as a philosophical basis for the activities of the nation and the state in Indonesia, containing principles to achieve the goals of the state, especially social justice for all people. In the context of the Pancasila welfare state, the government has an obligation to regulate and direct the community for development, functioning as a provider of public welfare, entrepreneurship, and mediator in the economy. The basis for the formation of Regional Companies includes Pancasila, the 1945 Constitution, Regional Government Law Number 23 of 2014, and Government Regulation Number 54 of 2017. This regulation changes the paradigm of local government implementation and strengthens the Limited Liability Company Law as the foundation of legal entities. Regional Companies, as private legal entities, have an element of regional capital that gives authority to regional heads to be involved in their management. This has led to a legal interpretation of the position of Regional Companies which is between the realms of public and private law. The Regulation of the Minister of Home Affairs related to the appointment of members of the board of directors and business planning, as well as the Regional Regulation on the formation of Regional Companies, are a means to express and concretize higher laws and regulations.

Legal Politics of Regional Company Formation

The legal politics of the implementation of local government is the implementation of the mandate of the third and fourth paragraphs of the 1945 Constitution. The third paragraph contains the declaration of Indonesian independence, while the fourth paragraph affirms the establishment of the Indonesian State Government which is responsible for regulating the nation, protecting the people, promoting welfare, educating the nation's life, and maintaining world order. To carry out this task, the concept of regional autonomy was born. Regional autonomy means that the central government no longer takes care of the interests of regional households, and the authority is handed over to the people in the regions.

According to Rahayu Sulistiowati, the central government only acts as a supervisor, monitor, supervisor, and assessor, except in certain fields such as finance, monetary, foreign policy, justice, defense, religion, and national strategic policy. Regional autonomy reflects trust in local governments, with the delegation of broad, real, and responsible authority to regulate, utilize, and explore regional potential to empower the local economy according to the concept

of decentralization. The vision of regional autonomy in the economic field emphasizes that there are vital and strategic areas that must be mastered by the state, especially those related to the livelihood of the people. The function of the state is not only as a regulator or controller, but also as a provider of public welfare, entrepreneurs, and intermediaries in the economy, which cannot be handed over to the private sector or cooperatives. Therefore, the state establishes companies in the form of State Companies and Regional Companies as part of the implementation of political and economic policies.

The establishment of a Regional Company can be justified from the perspective of state administrative law, because the government can carry out activities in the fields of public law and civil law. As a subject of law, the government has rights and obligations, so that it can take factual actions and legal actions. The basis for government action based on public law is authority, while the basis for action based on civil law is rights. The authority is obtained through public law regulations to carry out government duties, while the right is obtained through civil law regulations to enjoy certain property.

According to Muhammad Adiguna Bimasakti, when the government acts under authority, it is subject to public law, but if it acts to defend its rights, it is subject to civil law. According to Indroharto, government actions are divided into two: Factual Actions (Feitelijk Handelingen) and Legal Actions (Rechtshandelingen). Factual actions are administrative actions carried out by state officials or administrators in the context of government administration, which are always unilateral (eenzijdige). Legal Actions, on the other hand, are actions that give rise to legal consequences, namely creating rights and obligations. Legal Actions are divided into

Regional Companies through regional autonomy. However, the analysis shows that business entities established by the state should be in the realm of public law. Riduan Syahrani, distinguishes between a public legal entity, established by the government for the public interest, and a private legal entity, established by an individual for private interest. This separation causes ambiguity in the legal standing of the Regional Company as a business entity, which is trapped in two legal domains without a clear regulation in the regulations.

The consequence of the selection of the legal form of a Limited Liability Company (PT) as a business forum for the management of a Regional Company is that the PT must comply with all mechanisms stipulated in the PT regulation, which is included in the realm of private law. PT has a legal status as a business entity that is independent and independent of its founder. According to Article 55 Paragraph (2) of the Government Regulation concerning Regionally Owned Enterprises, the management of Regional Companies must follow the provisions of the Limited Liability Company Law. In such management, the Board of Directors is in control, under the supervision of the Commissioner, and is accountable to shareholders through the GMS. The management carried out by the Board of Directors must be in line with the principles of good corporate governance, which are important to maintain consistency and professionalism in the company's decision-making. Thus, the Board of Directors is responsible for the control of Regional Companies This is in accordance with the Constitutional Court

Decision Number 62/PUU-XI/2013, which states that the financial management of SOEs/BUMDs must be based on the Business Judgement Rule paradigm, shifting management from government actions to business decisions. In this principle, managers cannot be directly sued if their decisions cause losses, as long as actions are taken based on prudence and good faith. According to Ikhsan Lubis and Neneng Oktarina, the losses that occur are considered business losses which are a consequence of business activities.

According to Madaskolay Viktoris Dahoklory, the financial position of the Regional Company as a legal entity is not included in the state's wealth, because the separated wealth is in the form of shares, which means that it does not become regional wealth. Erman Rajagukguk also emphasized that regional capital in State Companies is not considered as regional wealth. Although the Corruption Law states that all state wealth is part of state finances, Erman argues that losses from transactions do not automatically become state losses. Thus, the management of Regional Companies follows private law. By paying attention to the authority of the Regional Head in the company's law, the duties and authorities (taak en bevoegdheid) as the head of public institutions turn into rights and obligations (rechten en plichten) in private law. As a result of this change, the local government cannot intervene with the Regional Company as a subject of civil law and does not have the authority to intervene in the management of the Regional Company. This is important so that Regional Companies remain independent and able to compete with other private companies. According to Peter Drucker, the government should focus on its government duties and not get involved in matters beyond its competence, as government involvement in business is considered an anomaly. Bureaucrats, who have a mission to serve fairly, cannot run their business well. The presence of local governments can actually hinder the creativity and professionalism of Regional Companies, which should operate independently within the Limited Liability Company mechanism. This interferes with the achievement of the goal of establishing a Regional Company as a source of regional income. Arifin Soeria Atmadja, added that the change in status and transformation of the legal function of local government from duties and authorities to rights and obligations resulted in the regions losing public authority over the Regional Companies.

Legal Deconturktion, the legal status of Regional Companies and the legal position of Regional Heads in the Concept of the Pancasila Welfare State

The relationship of legal deconstruction to the legal status of the Regional Company and the legal position of the Regional Head in the Pancasila Welfare State Concept shows that the business run by the Regional Company must be understood as the obligation of the local government as a representative of the central government. In the establishment of a Regional Company, business activities managed by regional heads must be seen as part of the government's duties. Clear motivation in the formation of a Regional Company is important, considering that the main responsibility of the regional head is to carry out development and provide services to the community. The presence of Regional Companies must support development and public services and provide benefits without harming regional finances.

Social welfare indicators according to Article 1 Number 1 of Law Number 11 of 2009 concerning Social Welfare include: 1) the fulfillment of citizens' material needs, 2) the ability to live a decent life and develop themselves, and 3) the ability to carry out social functions. From this indicator, the role of the government in the welfare of the community can be identified in the concept of welfare economics, which emphasizes the government's strategy to defend the interests of the community as an agent of social change. The success of the role of Regional Companies in the economy and regional development can be measured through several indicators, such as increasing production, job availability, and increasing regional income. Regional Companies have various roles and functions, including: implementing government policies in the economic and regional development sectors, providing funds for development, encouraging community participation in economic activities, meeting the needs of goods and services, and being a driving force for business activities that have not been in demand by the private sector. To explain the concept of legal deconstruction of the legal status of regional companies in the concept of the Pancasila welfare state according to social welfare indicators.

Based on data from the National Socio-Economic Survey (Susenas) by the Indonesian Central Statistics Agency (BPS) in 2023, only 21.9% of the Indonesian population feels economic well-being. In addition, the number of poor people reached 9.4%, vulnerable residents 20.6%, middle-class groups 48.2%, middle class 21.5%, and high-income people only 0.5%. This shows that the welfare of the community nationally is inadequate. Improving social welfare is a development goal set out in the Social Welfare Law, where the government is responsible for achieving it. According to Article 24 Paragraph (3) of the Law, the Governor has the responsibility to administer social welfare at the provincial level, including distributing the budget in the Regional Revenue and Expenditure Budget. Therefore, the establishment of Regional Companies as a business entity is expected to help realize the social welfare of the community through business activities that bring profits and increase Regional Original Revenue (PAD). PAD is an important indicator of a region's financial independence, which plays a role in the implementation of regional autonomy in a real, broad, and responsible manner. The larger the PAD obtained, the greater the regional independence from the central government. This is due to PAD which is a source of regional revenue from resource management in its own region, in accordance with Law Number 33 of 2004 concerning Financial Balance Between Central and Regional Governments, which defines PAD as income obtained based on local regulations in accordance with applicable laws and regulations. Increasing Regional Original Revenue (PAD) is the key to success in achieving regional development goals, because PAD determines the ability of local governments to carry out public services and development. The development of regional potential contributes to the increase in PAD, which is critical to achieving development goals. PAD management must be carried out effectively and efficiently, taking into account regional economic conditions and the national economy. PAD's contribution can be seen from the amount of revenue allocated for regional development and improving community welfare. To provide an overview of the

regional revenue posture, PAD is sourced from three main parts: PAD itself, the Balance Fund (transfer income from the central government), and the Legitimate Regional Revenue Miscellaneous Fund. Furthermore, the Regional Original Revenue data consists of four main parts: Regional Taxes, Regional Levies, Separated Regional Wealth Management Results, and Other Legitimate Regional Revenues.

Based on the results of the study, it was found that, in 2024. Regional revenue sourced from regional taxes is the highest source of revenue from Regional Original Revenue (PAD), followed by Other Legitimate Regional Revenue. Meanwhile, the revenue from the Levy and the Results of Segregated Regional Wealth Management (Regional Companies) is the smallest. The measurement of the role of Regional Companies in improving the regional economic system can be seen from the contribution of their profits to the Gross Regional Domestic Income (GDP) and the potential for job creation. The calculation of GDP helps in the development of regional policies, evaluation of development results, and provides information on regional economic performance (Susanto, 2018; Wang H., 2021; Wibowo D., 2021; Yi Han, 2024; Zainal Asikin, 2019; Zhang, 2015.

Certainty regarding the form of a legal entity of a Regional Company allows this entity to quickly seize innovation opportunities and improve the quality and competence of Human Resources. By applying the principles of transparency, accountability, responsibility, independence, and fairness in accordance with good corporate governance, Regional Companies can function optimally to achieve profits. The application of these principles is carried out by the board of directors and management, followed by all employees, thus creating a positive company culture. The management of Regional Companies that follow the principles of good corporate governance not only aims to generate profits for the region, but also create jobs through various business fields that are the core of the company's business. This shows that the existence of Regional Companies has a positive impact on the local economy. So that an analysis can be carried out that: 1) The formation of a Regional Company must be based on the feasibility of the business field and regional needs, ensuring that this establishment is a profitable investment for the region; 2) The feasibility study includes economic analysis, market conditions, financial capabilities, as well as the availability of technology and human resources, aiming to increase regional income and create jobs for the welfare of the community; 3) The establishment of Regional Companies is part of the RPJMD policy and is funded by the APBD, emphasizing the need for careful planning by local governments so that Regional Companies can function as profitable business entities. Thus, there are three main factors that affect the professionalism of the Regional Company, namely: 1) Legal Status: As a private legal entity, the legal relationship between the Regional Company and the Regional Company is civil in nature, limited to the relationship between the Limited Liability Company and the shareholders; 2) Independence: The independence of Regional Companies in carrying out their operations is very important to maintain professionalism; 3) Freedom from Interference: Regional Companies must be free from interference from other parties in order to carry out their functions properly. These three factors support the goal of improving the social welfare of the community through increasing Regional Original Income.

The deconstruction of the authority of the Regional Head in the context of the company's law shows that his duties and authority as the leader of public institutions have changed into rights and obligations in private law (Madaskolay, 2020). This change results in local governments being unable to intervene with Regional Companies as the subject of civil law, so that Regional Companies cannot be independent and compete like private companies (Siregar, 2020; Rahayu, 2014). The government should focus on government tasks and not get involved in business, as bureaucrats tend to be ineffective in running businesses (Smith, 2020; Stein, 2023). The presence of local governments can actually hinder the creativity and professionalism of Regional Companies, making it difficult to achieve the goal of its formation as a source of regional income (Prasetyo, 2020; Setiawan, 2017). Thus, the establishment of a clear Regional Company, namely separating capital, management, and control between the local government and corporate organs, can increase Regional Revenue (Liu & Sun, 2023; Li & Liu, 2018). The Board of Directors should be given the freedom to run the company based on the principles of the Business Judgement Rule (BJR), which protects them in responsible decision-making (Li, 2016; Sri Widyastuti, 2019). The deconstruction of the legal status of Regional Companies is carried out by separating the management of public and private legal entities so that they do not affect each other (Nugroho, 2019; Mustamim, n.d.; Muhammad Adiguna Bimasakti, 2023). Such a governance model aligns with global practices of state-owned enterprise reform that prioritize efficiency and competitiveness (Liu & Sun, 2023; Stein, 2023). Regional Companies, as Limited Liability Companies, require legal affirmation regarding their status as public or private legal entities and their accountability mechanisms. It is important to make laws that regulate the position and functions of Regional Companies so that the directors can make business decisions quickly. The authority of the local government as the majority shareholder must also be clear in management. By applying the principles of Good Corporate Governance (GCG), the profits of Regional Companies will increase, which in turn will increase dividends and Regional Original Revenue to improve the welfare of the community.

CONCLUSION

The legal status of the Regional Company and the legal position of the Regional Head are trapped between the realm of public and private law, making it difficult for the company to achieve the purpose of its formation. The dividends generated have not contributed to increasing Regional Original Revenue, which should be used for the welfare of the community according to the principle of regional autonomy. The legal deconstruction emphasizes the independence of Regional Companies as private legal entities and clarifies the authority of local governments. Special regulations must be made to regulate the management of Regional Companies, following the principles of Business Judgement Rule and Good Corporate Governance (GCG), in order to increase profits and benefits for the community. Professional management can support small and medium enterprises, expand employment, and ensure that dividends of Regional Companies become a source of Regional Original Revenue that

contributes to the Regional Revenue and Expenditure Budget for the welfare of the community in accordance with the mandate of Pancasila and the 1945 Constitution.

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