

Legal Aspects of Audit 10% Participating interest Management on Mahakam Block Working Area

**Sardjana Orba Manullang¹, Henry Kristian Siburian²,
Baren Sipayung^{3*}, Karnawi Kamar⁴, Febrina Nafasati Prihantini⁵**

¹ Universitas Krisnadwipayana, ² Universitas Budi Darma

³ Universitas Mulawarman, ⁴ Universitas Insan Pembangunan Indonesia

⁵ Universitas Semarang

*Corresponding Author: baren.sipayung@bpk.go.id

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Abstract

The efforts of the local government of East Kalimantan Province and Kutai Kartanegara Regency to increase local revenue by proactively taking part in receiving a 10% Participating Interest (PI) offer in the Mahakam Block working area have been successful based on Permen ESDM No. 37 of 2016. The ministerial regulation stipulates that the legal subject for managing the 10% PI has several alternative forms of business entity, namely the old BUMD, new BUMD, or Regional Public Company (Perseroda). Based on these administrative procedures, the legal subject deemed to fulfill the requirements as a legal subject for the 10% PI Manager at the Mahakam WK is PT MMPKM which was formed as a Perseroda business entity. However, this has implications for the emergence of new norms regarding the definition and composition of Perseroda share ownership, as well as the legal subject requirements for managing a 10% PI between the Permen ESDM No. 37 of 2016 and the Regional Government Law, PP BUMD, and PP No. 35 of 2004. Furthermore, because of the scope of state finances, the negative implication is that local governments do not get the maximum regional income from dividends from BUMD holding company PT MMPKM.

I. Introduction

Business companies containing Regional Owned Enterprises (BUMD) as well as everlasting formation in the upstream gas and oil (migas) management can be included through participating interest offers. Meanwhile, PT Pertamina Hulu Mahakam (PT PHM) as the contractor managing gas and oil exploration in

the gas and oil working area in the Mahakam Block (WK Mahakam) located in Kutai Kartanegara (Kukar) Regency and East Kalimantan Province (Kaltim) has offered a 10% PI to the Kalimantan Timur Provincial Government (East Kalimantan Provincial Government) which later declared (PT Migas Mandiri Pratama Kutai Mahakam, 2020) the readiness through coordination with the Kutai Kartanegara Regency Government (Kukar Regency) to fulfill the requirements for receiving 10% PI through the establishment of a BUMD subsidiary named PT Migas Mandiri Pratama Kutai Mahakam (PT MMPKM) whose shares were divided into 66,5% belong PT Migas Mandiri Pratama East Kalimantan (PT MMPKT) as the BUMD of the East Kalimantan Provincial Government and 33,5% of PT Mahakam Pintu Raja Migas (PT MGRM) as the BUMD of the Kukar Regency Government.

One of the amazing things is that PT MGRM, one of the BUMDs of the Kukar Regency Government, won the TOP BUMD Awards 2020 (Mi'raj News Agency, 2020) at the national level and its Director, Dr. Ir. Iwan Ratman, M.Sc, PE, also received an award as the Best CEO at the TOP BUMD Awards 2020. The advantage of the newly formed PT MGRM (Kate.id, 2020) compared to other Kukar Regency BUMDs lies in its business field which is only bounded to managing 10% PI in the Mahakam Block through the parent company's consolidated funds. However, this is in contrast to the fact (Sistem Informasi Penelusuran Perkara Pengadilan Negeri Samarinda, 2022) that there was a corruption fraud by the Director which was proven legally and convincingly resulting in a loss on the investment of a fictitious storage tank project of Rp49.4 billion in PT MGRM.

PT MMPKM is the manager of the 10% PI which was formed according to a joint policy of the East Kalimantan Provincial Administration and the Kukar Regency Government which refers to the ESDM Ministry No. 37 of 2016 Regulation (Terms of Offering 10% PI in Oil and Gas Working Areas Regulation of the Minister of Energy and Mineral Resources, 2016) (hereinafter referred to as 'Permen ESDM No. 37 of 2016'). Furthermore, Permen ESDM No. 37 of 2016 itself indicates that there is disharmony with Government Regulation (PP) No. 35 of 2004 (Upstream Oil and Gas Business Activities Government Regulation, 2004) on Business Activities of Upstream Oil and Gas as last amended by PP No. 55 of 2009 regarding the 2nd Amendment to PP No. 35 of 2004 concerning Upstream Oil and Gas Enterprise Activities ('PP No. 35 of 2004') juncto Law (UU) No. 23 of 2014 concerning Government of the region (Local Government Act, 2015) (hereinafter referred to as 'Law on Government of the region') junctis PP No. 54 of 2017 regarding Regional Possessed Companies (Regional Owned Enterprises Government Regulation, 2017) (hereinafter referred to as 'PP BUMD'). Art. 34 of PP No. 35 of 2004 stipulates that a 10% PI is offered to BUMD which is further explained in the Government of the region Law jo. PP BUMD that the BUMD's legal form is a Regional Public Company (Perumda) and Regional Public Company (Perseroda). Furthermore, Perseroda is categorized as BUMD in the form of a bounded accountability enterprise with evenly divided capital or not

less than 51% of the shares possessed by one region. However, Permen ESDM No. 37 of 2016 stipulates a different matter that the 10% PI manager can be a Perseroda, namely a bounded accountability enterprise formed by a BUMD whose capital is directly or indirectly divided into wholly possessed shares by the government of the province, the minimum of 99% (ninety-nine percent) and the remaining share possession is wholly fully incorporated with the government of the region.

In this paper, the interesting thing is that there are two treasures of legal knowledge that rub against each other, namely state finance law and corporate law. Besides that, the author explains the Provincial Government's efforts in the context of harmonization of rules and optimizing provincial revenues.

The previous research by Tamano (2020) in his research results explained about the legal protection of minority participating interest holders for the management of the Mahakam work area from the aspect of Islamic law. While the novelty of this research is related to further research on the management of 10% PI from the legal aspects of state financial administration and corporate law so that it becomes the novelty of this paper.

Concerning to the matters above, the main problem's formulations can be declared as follows:

1. How is Permen ESDM No. 37 of 2016 can reposition the legal form of the business entity managing the 10% PI in the Mahakam Block Work Area which is disharmonized with other laws and regulations?

2. What are the efforts of the local government in overcoming this disharmony problem in the context of increasing regional income related to the 10% PI?

2. Research Method

The research method used is normative research, namely legal research conducted to review legal literature, which includes primary data, namely audit results. While secondary data includes books, journals or related scientific essays, articles, online media, examination working papers. Sources of research material are then systematically compiled and analyzed so as to produce a conclusion regarding the main legal issues related to the management of the 10% Participating Interest in the Oil and Gas Working Area in the Mahakam Block

3. Results and Discussion

3.1. Permen ESDM No. 37 of 2016 Can Reposition the Legal Form of The Business Entity Managing The 10% PI In the Mahakam Block Work Area Which Is Disharmonized with Other Laws and Regulations

In Art. 1 No. 14 of PP No. 79 of 2010 on Refundable Operating Costs and Income Tax's treatment in the Upstream Oil and Gas Business Area it is declared that "Participating interest is a contractor's responsibilities and rights

as of agreements of cooperation, whether it is directly or indirectly under a work area." Furthermore, art. 33(1) PP No. 35 of 2004 declares that the Contractor may pass on, surrender, and pass on some or every single one of his responsibilities and rights (participating interest) to another party after gaining permission from the Ministry in relation to the Implementation of Agency's considerations.

Then, it is declared in the Art. 1(4) Permen ESDM No. 37 of 2016 regulation that "10% Participating (PI 10%) is the highest amount of 10% participating interest within the Contract of Cooperation which the Contractor has to recommended to the Regional or State-Possessed Enterprises.". Furthermore, the Regulation of the Indonesian Ministry of Finance No. 257/PMK.011/2011 Art. 1 point 4 which regulates Procedures for Withholding and Payment of Income Tax on Contractors' Other Earnings in the Form of Uplifts or Other Alike Profits and/or Contractor's Earnings from Transfer of Participating Interests states that participating interests are the Contractor's responsibilities and rights as of a contract of agreement under a work region, whether it is direct or indirect. Then, 10% PI offer is regulated in the regulation of Art. 12 Permen ESDM No. 37 of 2016 as follows:

- (1) *The offer of 10% PI to Regional-Possessed Enterprises or Regional-Possessed Companies is regulated from the plan of cooperation plan among Regional-Possessed Enterprises or Regional-Possessed Enterprises as well as Contractors.*
- (2) *The plan of cooperation with the Contractor, as pointed to in the first par., is implemented through pre-financing by the Contractor to the amount of the Regional Owned Enterprises or Regional Company's responsibilities.*

Within international references (United States, n.d. and Wright & Rebecca A. Gallun, 2008), participating interest is defined as follows:

- (1) *The participation's right in the oil or gas or the proceeds from the sale of oil or gas, produced from a certain track or tracts, or well(s), which right is not everlasting in time to the period of a current lease and is the subject to any part of expense or development, operation, or maintenance.*
- (2) *The costs and risks percentage in performing an operation below the party's Agreement, or else is obligated to pay and bear.*

It can be understood that the meaning of participating interest has shifted after the Permen ESDM No. 37 of 2016, which is elaborated below:

Table 1

Shifting the Meaning of Participating interest

Before Permen ESDM No. 37 of 2016	After Permen ESDM No. 37 of 2016
<i>Participating interest</i> is a production cost that was originally borne by the contractor in the oil and gas cooperation contract which is then transferred to the advance by the KKKS, the amount of the obligation of BUMD or government of the region so that the government of Perseroda managing PI is 10%. Henceforth, the return is taken the region can take part in gas and oil management. from the BUMD's production share results without being subject An example is the management of PI in the Masela Block.	<i>Participating interest</i> is offered to the regions even though they do not have very large capital because the financing is borne in cooperation contract which is then transferred to the advance by the KKKS, the amount of the obligation of BUMD or government of the region so that the government of Perseroda managing PI is 10%. Henceforth, the return is taken the region can take part in gas and oil management. from the BUMD's production share results without being subject An example is the management of PI in the Mahakam Block.

Source: Data processed by the author (2022)

From Permen ESDM No. 37 of 2016 regulation, on top of providing certainty of regional participation in the upstream gas and oil industry, there is also a 10% percentage provision, namely the maximum amount of PI funds distributed to local governments on a business-to-business foundation and comply with applicable regulations. This indicates that there is certainty from both parties, for the region it is the certainty of regional revenue receipts, while for contractors it is the amount that is a certainty of the costs that must be incurred in investing in oil and gas exploration and exploitation, thereby increasing investor interest in investing in oil and gas sectors.

According to the above definitions, it can be understood that participating interest is the responsibilities and rights of the parties in an agreement of cooperation in an oil and gas sector. 10% participating interest as stated by the Permen ESDM No. 37 of 2016 concerning Conditions for Offering PI 10% are the responsibilities and rights offered by contractors to BUMD or Regional Company Companies in one work area.

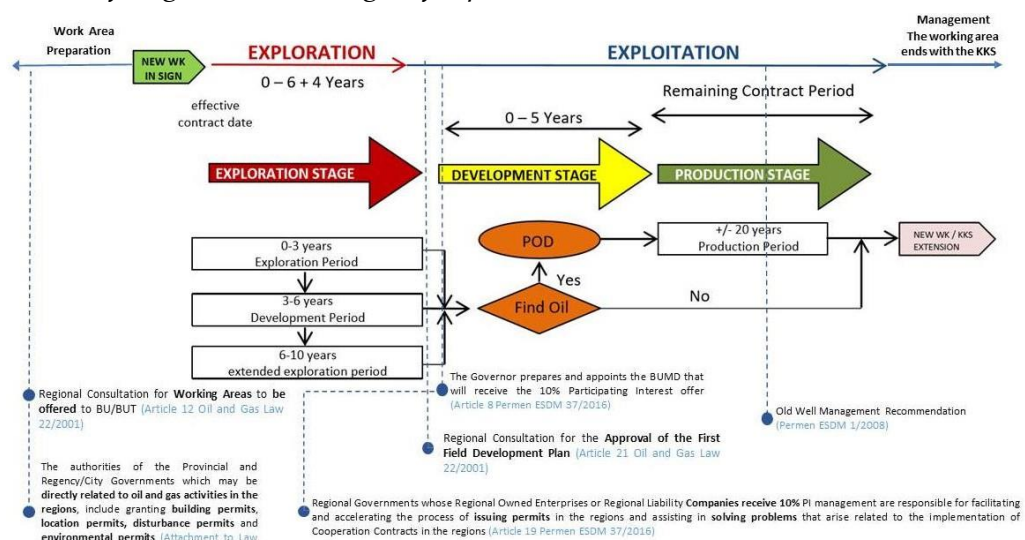
Oil and gas are among the most important production branches for the nation and controls many people's livelihood that supports national energy security, and it is a natural property from Indonesia's water and soil which must be managed by the government and utilized for the sake of the prosperity of the people. Art. 33(2) and (3) of in the 1945 Constitution. State control has been given meaning by the Constitutional Court in the 1945 Constitution Art. 33 (Putuhena, 2016), which says that control of state in the 1945 Constitution Art. 33 possess greater meaning than possession in the civil law concept.

Related to the definition of participating interest which has been explained previously, the subject of responsibilities and rights management is BUMD or regional bounded accountability company (perseroda) formed by BUMD according to a cooperation contract for the management of petroleum in one particular export area. While the object of its management is oil and gas which constitutes wealth of nature that has to be managed for the people's benefits as referred to in Art. 33 of the 1945 Constitution.

According to Sihite (2016), regional involvement is needed to take part in obtaining benefits in oil and gas management, one of the mechanisms is through participating interest which aims to provide a portion of the

management of producing local governments according to certain parts with a business to business (BoB) agreement through BUMD after obtaining approval from the ESDM Ministry. Furthermore, Sarifudin (2019) explained that the provincial government's authority to manage the PI which are the rights of the region must be ensured to be used by the area through BUMD which is wholly possessed by the region. However, Zen & Nurkholis (2014) also expressed different things that the role of local governments in PI is as an accelerator, regulator and mediator. Furthermore, after the Permen ESDM No. 37 of 2016, it is explained that the region's role in the stages of upstream oil and gas business is explained as follows:

Figure 1:
The Role of Regions in the Stages of Upstream Business Activities on Oil and Gas



Source: Directorate General of Oil and Gas (2020).

The role of BUMD in PI is a manager of separated regional assets which produces one source of Regional Original Income (PAD) which cannot be received directly by the Government of the region but through dividends after being approved by the GMS. Therefore, the Government of the region does not have a direct relationship with the management of PI so that it cannot demand the separation of books and the transfer of PI funds directly to the regional treasury because of the separation of regional finance, BUMD operations, and Perseroda as public and private entities as state from Sipayung (2017).

Thus, PI includes the scope of finances of state as being mentioned in Art. 1 point 1 of Law No. 17 of 2003 concerning State Finance ('State Finance Law'), as state responsibilities and rights rated with money and everything in form of money or goods that are possessed as state asset in relation to the execution of these responsibilities and rights. Besides, it fulfils the provisions of Art. 2 letter g of the State Finance Law as state properties/regional properties in the form of money, safety, receivables, goods, and other rights which are able to be rated in money managed by themselves or by other parties, including properties

separated from state/regional companies.

The results of the subsequent analysis show that PT MMPKM is a subsidiary of BUMD (PT MMPKT and PT MGRM). The following is the stockholder information of PT MMPKM as follows:

Table 2
Share Composition of PT MMPKM

Legal Foundation	Stock Composition
Deed of Establishment No. 54, December 19, 2017	PT MMPKM Rp.1,662,500,000.00 (66.5%) Regional Company Melati Bhakti Satya (Perusda MBS) as much to Rp. 837,500,000.00 (33.5%)
Deed of Amendment No. 16, April 22, 2020	PT MMPKM Rp.1,662,500,000.00 (66.5%) PT MGRM amounting to IDR 837,500,000 (33.5%)

Source: Data processed by the author (2022)

According to the letter from SKK Migas No. SRT 0412/SKKMI0000/2017/SO dated December 29, 2017 about the Response to the Offer of 10% PI to PT PHM, that the establishment of a special subsidiary to manage 10% PI Mahakam WK (dhi. PT MMPKM) by PT MMPKT was under Permen ESDM No. 37 of 2016. From this statement, it can be analyzed that PT MMPKT established a subsidiary in accordance with the authority as determined in Art. 341(1) of the Government of the region Law and Art. 107(1) of PP BUMD.

Furthermore, there was a change in the composition of stockholder from Perusda MBS to PT MRGM aligned with the Deed of Amendment to PT MMPKM No. 16 dated 22 April 2020 and then a follow-up to the approval of the repositioning of KKS from PT PHM with PT MMPKT to PT PHM to PT MMPKM according to the Letter of the Head of SKK Migas with No. 371/13/MEM.M/2019 dated September 12, 2019 which explains the legal standing of the management of 10% PI by PT MMPKM and the prevalence of the consolidation business of its subsidiaries.

Thus, it can be concluded that PT MMPKM fulfills the qualifications as a BUMD subsidiary, namely:

1. Established by BUMD (dhi. PT MMPKT) in accordance with its authority as arranged in Art. 341(1) of the Government of the region Law and Art. 107(1) of BUMD's PP;
2. 100% possessed by BUMD (dhi. PT MMPKT (66.5%) and PT MGRM (33.5%));
3. Set up according to the Deed of Establishment with a line of business that supports the main business, namely representing the both BUMDs in contracting with PT PHM and managing 10% PI funds.

The Ministerial Regulation does not contain in the laws and regulations hierarchy as referred to in Law No. 12 of 2011 (Audit Board of Representatives for the Province of East Kalimantan, 2019b) about the Formation of Legislations (hereinafter referred to as 'Law No. 12 of 2011'). However, the stipulations of

Art. 8 of Law No. 12 of 2011 state as follows:

- (1) *Types of Legislation besides the ones referred to in Art. 7 par. (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia Ministry, agency, institution, or commission of the same level established by law or by the Government on the orders of the Act, Provincial People's Representative Council, Governor, Regency/City Regional People's Representative Council, Regent/Mayor, Village Head or equivalent.*
- (2) *The statutory regulations as mentioned in par. (1) are known for their existence and have irrevocable legal force to the extent that they are commanded by a higher statutory regulation or are formed according to the authority.*

Along with the explanation of Art. 8 as follows:

- (1) *"Ministerial Regulation" is a regulation set by the ministry in the context of administering certain governmental affairs according to its content.*
- (2) *"According to authority" is the application of specific government affairs under the provisions of the Legislation.*

The Regulation of Permen ESDM No. 37 of 2016 is essentially a technical regulation of Art. 34 of PP No. 35 of 2004 which reads: "It is required for the contractor to offer 10% (ten percent) PI to the Regional Owned Enterprises since the plan for the field development that is going to be produced for the first time from a Contract Area has been agreed.". The authority of the ESDM Ministry in forming is according to the provisions of Art. 8(1) of Law No. 12 of 2011 because of its authority to regulate provisions regarding 10% (ten percent) PI to BUMD. However, the provisions of Art. 7 of the Permen ESDM No. 37 of 2016 do not only regulate BUMD as the manager of a 10% PI but also specifically regulates alternatives (subsiders) if the appointed BUMD does not fulfill the requirements with the alternative of appointing another BUMD or forming a Bounded Accountability Company. Region (Perseroda) with BUMD Equity Participation mechanism and negates Regional authority, namely the authority's foundation for its formation is declared in regional regulations, share possession is possessed by BUMD that fulfils the standard as declared in Art. 3 a and b, namely minimum 99% its shares are possessed by BUMD and the remaining share possession is affiliated entirely with the government of the region, no private element is in share possession, and PIs in other Work Areas are not managed.

As the legal system's theory developed by Kelsen (2019) that there is a legal norms' hierarchy and validity chains that form a legal pyramid (Stufenbautheorie). Later, a Hans Kelsen's student named Hans Nawiaskey

(Hamid & Attamimi, 1990) developed the theory namely *theorie von stufenbau der rechtsordnung* or *Nawiasky theory* that the norms arrangement, among others, are:

1. State fundamental norms (*staatsfundamentalnorm*);
2. Policy of state (*staatsgrundgesetz*);
3. Formal law (*formell gesetz*); and
4. Rules of implementation and autonomous regulations (*verordnung dan autonome satzung*).

According to the Nawiasky Theory, the Permen ESDM No. 37 of 2016 should be viewed as a form of verification (implementing rules) that contain specific arrangements regarding PI managers in anticipation of the absence of BUMDs that meet the requirements for managing a 10% PI and protect the interests of local governments in the context of sharing exploration results. oil in the area.

Considering the things above, Permen ESDM No. 37 of 2016 is a type of legislation that is stipulated by the ESDM Ministry according to the content in the context of regulating particular circumstances within the government and its existence is known and has irrevocable legal force as long as it is commanded by the applicable laws and regulations of the higher level or formed according to the authority and is domiciled as a supervisor for the implementation of PI management. Furthermore, Permen ESDM No. 37 of 2016 has been in effect since the date of its promulgation, namely November 29, 2016 and for that matter it may be utilized as a Supreme Court's object of review, if it is considered contrary to the law.

Alternative legal forms of business entities managing 10% PI in the Mahakam Block Working Area in the Permen ESDM No. 37 of 2016 are as follows:

Table 3
Alternative Form of Business Entity as PI Manager 10%

Alternative	Legal Subject	Condition
1	old BUMD	a. in the form of a bounded accountability company in which the minimum of 99% of the shares are possessed by the government of the region and the possession of the remaining share is entirely affiliated with the government of the region; b. only conduct PI management business activities
2	new BUMD	a. A 10% PI is offered to a new Regional Owned Enterprises if the old Provincial BUMD has carried out 10% PI in a Work Area or has operated another Work Area or carried out other business activities besides upstream oil and gas business activities. b. A new BUMD must fulfill the provisions not to conduct other business other than managing the participating interests in a Work Area.
3	Regional Company	a. the foundation of the authority for its forming is declared in the regional regulation; b. share possession is possessed by BUMD that fulfills the criteria as mentioned in Art. 3 letters a and b, the minimum of 99% of its shares are possessed by BUMD and the remaining share possession is fully affiliated with the government of the region; c. there is no non-public element in share possession; and d. does not manage PI in other Work Areas.

Source: Data processed by the author (2022)

Based on the alternative legal form of business entity subject to the 10% PI

management in the Permen ESDM No. 37 of 2016 above, namely the old BUMD or the new BUMD or Regional Company. Specifically, regarding the 10% PI management in Mahakam WK, the third alternative is used, namely PT MMPKM as a Government of the region Company which is in fact a legal form of a BUMD subsidiary as previously explained.

Permen ESDM No. 37 of 2016 is deemed to be disharmony with Art. 34 of PP No. 35 of 2004 which states that: *The contractor is required to offer 10% (ten percent) participating interest to the Regional Owned Enterprises since the plan for a field development that will be produced for the first time from a Contract Area has been approved.* Thus, Permen ESDM No. 37 of 2016 creates a new norm at a lower level of legislation than PP No. 35 of 2004.

In addition, there is disharmony for the definition of BUMD, especially the legal form of Regional Company Companies and BUMD Subsidiaries between the Permen ESDM No. 37 of 2016 and the Government of the region Law *jis*. PP BUMD which is explained as follows:

Table 4
Comparison of Local Government Law Arrangements, PP BUMD, and Permen ESDM No. 37 of 2016

Local Government Law	PP BUMD	Permen ESDM No. 37 of 2016
Art. 1 No. 40: Regional-Possessed Enterprises, hereinafter abbreviated as BUMD, are business entities whose entire or most of the capital is possessed by the Region.	Art. 1 No. 1: Regional-Possessed Enterprises, hereinafter abbreviated as BUMD, are business entities whose owner of the entire or most of the capital is the government of the region directly or indirectly.	Art. 1 No. 6: Government of the region Company is a business entity of a bounded accountability company formed by a Regional Owned Enterprises whose capital is divided into shares which are entirely possessed by the government of the region directly or indirectly.
Art. 331(3): BUMD as referred to in par. (1) consists of regional public companies and regional companies.	Art. 4(3) BUMD consists of: a. Regional public company; and b. Regional company	Art. 3 Regional Owned Enterprises as referred to in Art. 2 must comply with the following provisions: a. Regional Owned Enterprises can be in the form of: → a regional company whose entire share possession is possessed by the government of the region; or → a bounded accountability company in which the owner of the minimum of 99% of the shares is the government of the region and the remaining shares are fully affiliated with the government of the region; b. status ratification through regional regulations; and c. not conducting business besides managing participating interests.
Art. 339(1) Government of the region Company is a Regional-Possessed Enterprise in the form of a bounded accountability company whose capital is divided into shares which are entirely or the minimum of 51% (fifty one percent) of the shares are possessed by one Region.	Art. 5 Regional company is a BUMD in the form of a bounded accountability company whose capital is divided into shares which are entirely or the minimum of 51% (fifty one percent) of the shares are possessed by 1 (one) region.	Art. 7(4) The Regional Possessed Company as referred to in par. (3) is constructed by a Regional Owned Enterprises that does not manage a participating interest in a Work Area.

Source: Data processed by the author (2022)

According to Art. 1 No. 40 of the Government of the region Law and Art. 1

No. 1 of PP BUMD, Regional Owned Enterprisess, or BUMD, are business entities with capital that is mostly or entirely possessed by the Regions, while BUMD in Permen ESDM No. 37 of 2016 does not formulate the definition of BUMD in the the regulatory body. Thus, it can be analyzed that the definition of BUMD in Permen ESDM No. 37 of 2016 does not have a direct meaning but has a structural meaning. In Art. 2 of the Permen ESDM No. 37 of 2016, BUMD is a business entity in which the contractor who conducting exploration and exploitation in a Work Area offer a 10% PI according to a cooperation contract with the Special Task Force for Upstream Oil and Gas Business Activities.

Furthermore, the legal form of BUMD in Art. 331(3) of the Government of the region Law and Art. 4(3) clearly distinguishes between Regional Public Companies (Perumda) and Regional Public Companies (Perseroda). Meanwhile, in Permen ESDM No. 37 of 2016, the legal form is not explicitly interpreted as referred to in Art. 3 letters a.1 and a.2.

Furthermore, it can be analyzed related to the construction of the notion of Perseroda as one of the legal forms of BUMD as follows:

Table 5

Comparative Analysis of Local Government Law, PP BUMD, and Permen ESDM No. 37 of 2016

Local Government Law and Government of the region Regulations	Permen ESDM No. 37 of 2016	Comparative Analysis
Government of the region Company is a BUMD in the form of a bounded accountability company whose capital is divided into shares which are entirely or the minimum of 51% (fifty one percent) of the shares are possessed by 1 (one) Region.	Regional Public Company is a business entity in the form of a bounded accountability company formed by a Regional Owned Enterprises whose capital is divided into shares which are entirely affiliated with the government of the region directly or indirectly. 1) bounded accountability company in which the minimum of share possession by local governments which is 99% (ninety-nine percent) of the shares to increase PAD through the 10% PI fund. are possessed by the government of the region and the remaining share originally according to the Government of the region Law and PP possession is fully affiliated with the government of the region; 2) not conducting business activities other than managing participating interests.	The definition of Perseroda in Permen ESDM No. 37 of 2016 experiences a shift in meaning from the Government of the region Law and Government of the region Regulations. The first is the share possession which is the minimum of 51% to 99% possessed by the government of the region, and the remaining share possession is entirely affiliated with the government of the region. Second, the business sector of the company is bounded, that is, it only carries out business activities in managing participating interests. Thus, Perseroda in the context of offering 10% PI, negates the definition of Perseroda formed by BUMD is not in line with the Government of the region Law and Government of the region Regulations.

Source: Data processed by the author (2022)

Regulatory contradictions do not only occur in the Government of the region Law and Government of the region Regulations with the Permen ESDM No. 37 of 2016, but in the body of the MEMR Regulation there are also contradictions, namely in Art. 7(6) letter b, namely: *In terms of managing PI 10% is carried out through the formation of a separate Regional Possessed Company as being mentioned in par. (3), must fulfill the following provisions: share possession is*

possessed by a Regional Possessed Company that fulfills the criteria as mentioned in Art. 3 letters a and b, the minimum of 99% (ninety-nine percent) of its shares are possessed by Regional-Possessed Enterprises and the remaining shares are fully affiliated with the government of the region.

Contrary to Art. 3 letter a.2, namely: Regional-Possessed Enterprises as mentioned in Art. 2 must satisfy the stipulations as follows: the form of Regional-Possessed Enterprises can be in the form of: *a bounded accountability company whose shares are the minimum of 99% possessed by the government of the region and the remaining shareholdings are entirely affiliated with the local government.*

Then, in Art. 7(2) of Law No. 12 of 2011, the legal force of laws and regulations is in accordance with the hierarchy. Furthermore, in the Elucidation of Art. 7(2) of Law No. 12 of 2011, it is explained that "hierarchy" is the tiering of each legislation's type according to the principle that lower laws and regulations must not be in contrast with higher laws and regulations. Thus, the provisions in Art. 7(2) of Law No. 12 of 2011 and its explanations can be analogous to the understanding of the idea of *lex superior derogat legi inferior* (hierarchical principle).

According to Art. 33(2) of Law 30 of 2014 regarding Government Administration, Decisions and/or Actions determined and/or carried out by the competent Government Agency and/or Official still valid until the expiration or revocation of the Decision or termination of Action by the Agency and/or Authorized Government Official. Referring to these provisions, although the inconsistency between the MEMR Regulation and higher laws and regulations, namely the Government of the region Law and Government of the region Regulations, it means that the MEMR Regulation is not implemented according to the principle of establishing good laws and regulations, but also not necessarily eliminate the legal force irrevocable the ESDM Ministry, because it has not been revoked or a *judicial review* has been carried out to the Supreme Court.

Thus, although it can be concluded that there is something that is not in common between the Permen ESDM No. 37 of 2016 and the Government of the region Law and PP BUMD, PT MMPKM is always a Perseroa implementing PI even though it is not a BUMD because it did not formed by the Government of the region according to Regional Regulations but was formed by capital participation formed by PT MMPKT (BUMD Pemprov Kaltim) and PT MGRM (BUMD Pemkab Kukar) according to Art. 7(3), (4) and (6) of the Permen ESDM No. 37 of 2016 still have legal status and do not conflict with the provisions of the Government of the region Law and Art. 4 Par. (3) *jo.* Art. 5 Par. (2) PP BUMD.

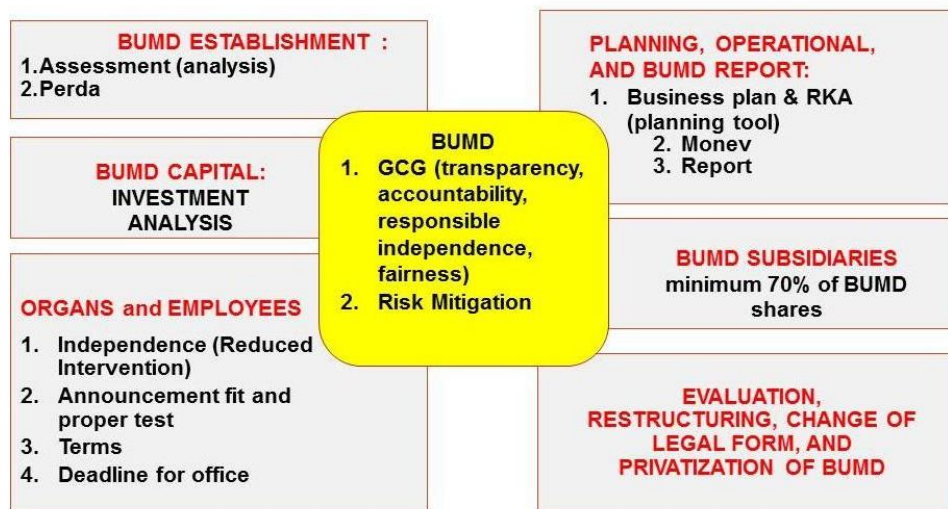
3.2.The Efforts of The Local Government in Overcoming This Disharmony Problem in The Context of Increasing Regional Income

Related to the 10% PI

Dwiyanto's research (2008) declared that the oil and gas management by BUMD through possession of PIs needs to be supported with the implementation of *good enterprise governance* considering that gas and oil are categorized as natural resources that are non-renewable and require sophisticated technology and qualified human resources. So, it is expected (Dwiyanto, 2008) that the management of PIs by the regions can be utilized well so that *good enterprise governance* implementation in BUMD may anticipate existing problems and establish good relations with stakeholders to intensify oil and gas production nationally. In addition, *good enterprise governance* also creates transparency or openness regarding information on lifting, reserves, costs and others. Likewise, research conducted by Belanusa et al. (2020) explains that due to the complexity of managing oil and gas, the application of *good enterprise governance* principles to support business activities by managing BUMD properly, correctly, and of course can provide maximum production results with its implementation since early and avoid unwanted problems in the future, especially after the signing of the KSO agreement by the parties. The following chart is related to the importance of BUMD in carrying out *good enterprise governance* as follows:

Figure 3

BUMD in Good enterprise governance



Source: Ministry of Human Affairs (2020)

However, the implementation of *good enterprise governance* in BUMD 10% PI management is not sufficiently regulated in the Permen ESDM No. 37 of 2016 since it only regulates the offering of 10% PI to oil and gas producing regions. Meanwhile, KKKS through the Indonesia Petroleum Association (IPA) have also declared the need for technical implementation regarding the transfer of 10% participation rights to BUMD as declared in the Permen ESDM No. 37 of

2016, but according to Tunggal, as Upstream Oil and Gas Business Development Director, KKKS still do not have a business mechanism related clauses to bear in advance the costs of BUMD in the development of oil and gas blocks, especially with a gross split profit sharing contract system and the Government will not issue new rules related to business mechanisms that must be carried out by KKKS in bearing the costs of BUMD holders of 10% participation rights in gas and oil blocks. Thus, the KKKS (Kontan.co.id, 2018) only need to discuss with SKK Migas and BUMD.

Initially PI was given to the Regions to take part in managing gas and oil which in its processing requires competent human resources and the latest technological equipment. However, the problem that often becomes a regional obstacle is related to funding problems (Hasan, 2010) which are the biggest challenges in the business of upstream oil and gas. The expectation of the producing regions of oil and gas is correlating with the development of the welfare of the surrounding community. However, not a few shows different things, meaning that the area is producing oil and gas but the level of community welfare is poor. For example, Kutai Kartanegara Regency as an oil and gas producing area, especially in the Mahakam Block, based on the data taken from the Central Statistics Agency (BPS) in 2019 (Audit Board of Representatives for the Province of East Kalimantan, 2019a) indicates that Kutai Kartanegara Regency has the highest No. of poor people in East Kalimantan, which is 56,340 people out of 219,920 people or 25.62%. In fact, poverty reduction policies at the regional level will affect the Sustainable Development Goals (SDGs) achievement so that local government efforts are needed to achieve poverty reduction targets according to the targets and standards set. One of the opportunities for oil and gas producing regions to get additional state revenue is through acceptance of the 10% PI offer through PAD contributions from their BUMD dividends. The following is data related to PI offers in a number of regions:

Graphic 1

Status Stages Participation Process Interest 10%



Source: Processed by SKK Migas (2020)

After the issuance of Permen ESDM No. 37 of 2016, the Working Areas that are in the process of fulfilling the PI obligations for the regions, include:

Table 6

Regions that are in the Process of Fulfilling the Requirements for Acceptance of 10% PI

No.	Working Area	Operator	Government of the region
1	Rapak	Chevron Rapak Ltd.	East Kalimantan
2	Ganal	Chevron Ganal Ltd.	East Kalimantan
3	Bontang	Salamander Energy (Bontang) Ltd.	East Kalimantan
4	Pasir	Pasir Petroleum Resources Ltd.	East Kalimantan
5	Muara Bakau (Offshore)	Eni Muara Bakau B.V.	North Kalimantan
6	Simenggaris	JOB Pertamina Medco Simenggaris	North Kalimantan
7	Bengara I	PT Medco E&P Bengara	North Kalimantan
8	Tarakan Offshore	Manhattan Kal.Investment Pte. Ltd.	North Kalimantan
9	Nunukan	PHE Nunukan Company	North Kalimantan
10	Bangkanai	Salamander Energy (Bangkanai) Ltd.	Central Kalimantan
11	Sebuku	Pearl Oil (Sebuku) Ltd.	South Borneo & West Sulawesi
12	Siak	PT PHE Siak	Riau
13	Kampar (Extention)	PT PHE Kampar	Riau
14	West Kampar	PT Sumatera Persada Energi	Riau
15	Bangko Area I & II	Petrochina International Bangko Ltd.	Riau
16	Korinci Baru	EMP Korinci Baru Ltd.	Riau
17	North West Natuna (> 12 mil)	Santos Northwest Natuna B.V.	Riau Islands
18	Rapak	Chevron Rapak Ltd.	East Kalimantan
19	Ganal	Chevron Ganal Ltd.	East Kalimantan
20	Ketapang	PC Ketapang Ltd.	East Java
21	Kangean	Kangean Energi Indonesia Ltd.	East Java
22	West Madura Offshore (WMO)	PT PHE WMO	East Java
23	Muriah (12 mil)	PG Muriah Ltd.	Central Java
24	Palmerah	Tately N.V.	South Sumatra
25	South Sumatra	PT Medco E&P Indonesia	South Sumatra
26	Merangin II	PT Sele Raya Merangin Dua	South Sumatra
27	Lematang (Extention)	PT Medco E&P Lematang	South Sumatra
28	West Air Komering	PT Tiarabumi Petroleum	South Sumatra
29	Pandan	PT Tropik Energi Pandan	South Sumatra
30	Belida	PT Sele Raya Belida	South Sumatra
31	Karang Agung	PT Odira Energy Karang Agung	South Sumatra
32	Kisaran	Pacific Oil & Gas (Kisaran) Ltd.	North Sumatra
33	Tonga	PT EMP Tonga	North Sumatra
34	Lemang	PT Hexindo Gemilang Jaya	Jambi
35	Bulu (> 12 mil)	KrisEnergy (Satria) Ltd.	East Java
36	Masela	Inpex (Masela) Ltd.	Maluku
37	Blok A Aceh (Extention)	PT Medco E&P Malaka	Aceh
38	West Salawati	Montdor Salawati Ltd.	West Papua

Source: Kemendagri (2020)

The regional legal basis in receiving a 10% PI is the Permen ESDM No. 37 of 2016. Permen ESDM No. 37 of 2016 together with the ESDM Ministry Regulation No. 15 of 2015 concerning Oil and Gas Management Working Areas whose Cooperation Contracts will come to an end, are legal products regulated by the ESDM Ministry in collaboration with the KPK. Initially, according to the elaboration of Art. 34 PP No. 35 of 2004 offering 10% PI to BUMD constructed by the Government of the Region whose administrative area covers the field in question. The BUMD must have sufficient financial capacity to take part and the

PI is carried out between the Contractor and the BUMD in the usual way of business. If there are more than 1 (one) BUMD in that area, the arrangement for the distribution of PIs is left to the Governor's policy. The background of the issuance (Dirjen Migas Kementerian ESDM, 2020) of the Permen ESDM No. 37 of 2016 is explained as follows:

Table 7

Impact Analysis of 10% PI before and after the Permen ESDM No. 37 of 2016

Impact of PP No. 35 of 2004	KPK Recommendations December 16, 2015	Impact of Permen ESDM No. 37 of 2016
- Does not have a direct impact on the contractor's economy - Bounded BUMD's financial capacity 10% PI is less attractive to regions - BUMD cooperates with the private sector for capital	- The government will immediately review the provisions of Arts 34 and 35 of Government Regulation no. 35 years which regulates the 10% PI. - The government prohibits BUMD from cooperating with the private sector to obtain the allocation of participating interests. - The government makes other policy alternatives, including using 10% profit-sharing formula - Local governments without having to spend operational funds for managing of oil and gas block working areas.	- BUMD is very interested in getting 10% PI - BUMD does not require the large capital - Fully 10% PI benefits for the region - Regions are required to assist with licensing/problems - Impact on the contractor's economy

Source: Data processed by the author (2022)

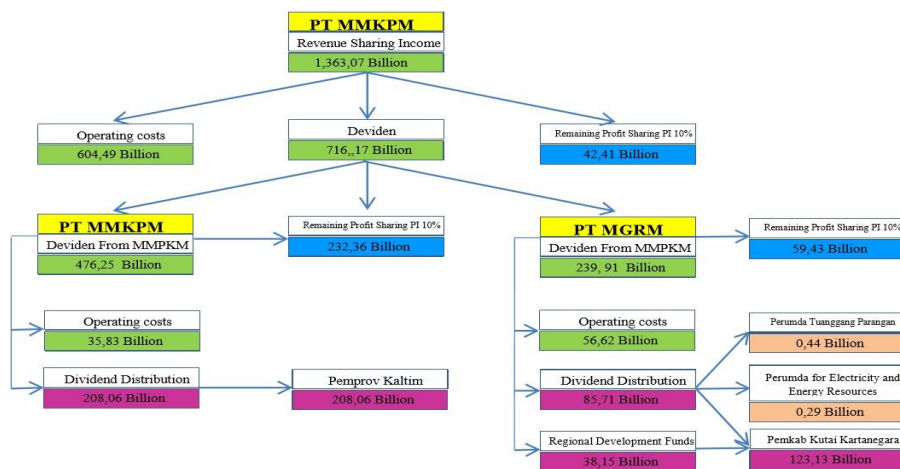
The benefits of participation for regions in PIs are to increase regional income from separated regional assets. In addition to this, there is knowledge management and sharing of BUMD experience in managing oil and gas blocks as the contractors. On the other hand, as part of the readiness to accept the 10% PI offered, it facilitates licensing services and accelerates administrative processes and seeks joint solutions to arising problems from the implementation of cooperation contracts in the regions, including coordinating with other parties in connection with the process.

Meanwhile, Permen ESDM No. 37 of 2016 is a derivative of PP No. 35 of 2004 which states that contractors are required to offer 10% PI to BUMDs and this is done in the usual way of business which is facilitated in the KKKS. As explained above, the Permen ESDM No. 37 of 2016 creates a new norm in the previously regulated legal rules, namely PP No. 35 of 2004 that the legal subject for managing PI is BUMD, but in the Permen ESDM No. 37 of 2016 it is not possible for BUMD, namely Perseroda as the legal subject to manage PI 10%. On the other side, there is a difficulty that the Government of the region receiving the PI offering through BUMD is the minimum of 99% of its shares possessed by the government of the region and the remaining share possession is fully affiliated with the government of the region and does not conduct business activities outside managing PIs. The difficulty is that it takes time, thought, and money for the Government of the region to prepare it in addition to preparing regional regulations for its formation which of course takes time and requires Regional People's Representative Assembly (DPRD) approval. On the other hand, there is convenience for local governments to form Perseroda which incidentally is a subsidiary of BUMD. It can be done easily through the legal mechanism of the company which also includes capital participation from

the BUMD of the East Kalimantan Provincial Government and the BUMD of the Kukar Regency.

With the ease of establishing PT MMPKM as the subject of PI management, the Government of the region gets funds from the 10% PI that has been offered by the PT PHM. However, in order to examine the management of 10% PI profit sharing fund effectiveness, economy, and efficiency, it can be explained in advance with the following chart:

Figure 4
Use of 10% PI Profit Sharing WK Mahakam by Business Entity (Company)



Source: Data processed by the author (2022)

The amount of PI received by local government through BUMD dividends on the results of the consolidation of the parent company with PT MMPKM when there is no more specific arrangement related to the management of the PI itself will certainly create an opportunity for unscrupulous parties to use the available opportunities to enrich themselves and others. One theory that supports this statement is the adage put forward by Acton on Taylor (2017) that *power tends to corrupt, and absolute power corrupts absolutely*. The adage was issued by Acton whose full name is John Emerich Edward Dahlberg Acton, a British historian who lived from 1834 to 1902 which revealed that power tends to corrupt, and absolute power corrupts absolutely which is a state power criticism at that time against a corrupt, socialist, and authoritarian government.

The connection between this theory and the constellation of oil and gas is the jurisdiction to manage PIs by local governments through BUMD is an attributive type of authority. Attribution authority is government authority given to government organs by legislators. According to Law no. 30 of 2014 on the Administration of Government (Government Administration Law), Attribution is the authority granted by the 1945 Constitution or Laws to Government Agencies and/or Officials.

With the obligation to offer 10% PI from the contractor to the region, it becomes the right of the producing region to receive the benefits of receiving

the PI. Attribution authority granted by laws and regulations to local governments without being followed by management rules, especially if only carried out with business habits, makes the entry point for arbitrary use of authority.

Corrupt behavior is currently not only bounded to the scope of government, but also to BUMD. Some of the legal facts that the oil and gas management have a very high level of corruption can be seen in several judges' decisions as follows:

1. Pertamina's former President Director was sentenced to 8 years in jail for being proven involved in corruption in the BMG Block investment (Setiaji, n.d.).
2. Director of PT ABS sentenced to 15 years in prison for being proven to be corrupt in the Cepu ADK Block (Laluhu, 2020).
3. The Bojonegoro's former regent was punished for 6 years in prison for being found guilty of corruption related to land acquisition for the Cepu Block contractor (Tempo.co, 2017).
4. Former Bangkalan Regent, Fuad Amin, was sentenced to 13 years in prison on cassation by the Supreme Court (MA) for the corruption related to accepting bribes from PT MKS in collaboration with Bangkalan BUMD, namely the Regional Resources Company (Merdeka.com, 2013).

The management of 10% PI as described above, a part from entering the realm of corporate law with the principle of business judgment rule or business judgment rule, also enters the realm of administrative law for regional financial management. So that the concept of responsibility for the consequences of the business implementing the business carried out also contains criminal accountability. As we know that corruption is an exceptional crime that threatens the goals of local governments in the welfare of their people. The concept of corruption does not only cover state administrators but has also penetrated across sectors to parties outside of state administrators who conduct government functions, one of which is the implementation of government functions as referenced in Art. 33(2) of the 1945 Constitution which is carried out by BUMD. This means that the work process in managing the funds resulting from the 10% PI, if it does not fulfill the rules of good governance and deviates from the purpose or intent in relation to the good governance general principles, can potentially lead to moral hazard for Local Governments/BUMDs.

The formation of Perseroda managing 10% PI as referred to by Permen ESDM No. 37 of 2016 does not mean separation from state finances' scope but is part of the state financial management system because it can be traced that all shareholdings of the Perseroda are 100% possessed by local government affiliates through The BUMD in addition to the PI offer is the contractor's

obligation which has been mandated by the laws and regulations. For example, the Tangka Timbun project carried out by PT Petro TNC as a subsidiary of PT MGRM has indications of *fraud* (Black's Law Dictionary, n.d.) which only causes losses to the company, but the judge (JM. *East Kalimantan High Attorney v. Iwan Ratman*, 2037 K/Pid.Sus/2022, 2022) also believes that it fulfills the element of enriching oneself and others, causing state losses due to unlawful acts negligently or intentionally.

According to the analysis result of the legal relationship, there are several problems including:

1. PT MMPKT and PT MMPKM as the parent of PT MMPKM through the usual business mechanism in the form of consolidation of the subsidiary companies to obtain PI funds through dividends that have been accepted at the General Meeting of Shareholders (GMS).
2. Dividends received by PT MMPKT and PT MMPKM are used as the foundation for calculating company profits, increasing operational costs, and increasing the income of employees who in fact do not conduct activities related to the management of the 10% PI.
3. Local governments are less than optimal in obtaining 10% PI funds because the funds are not directly transferred to the regional treasury even though they are included in the state finances' legal aspects, which are received through BUMD dividends whose value is significantly very small when compared to direct or inappropriate PI receipts with the aim of optimizing regional income through BUMD.

Art. 33(3) of the 1945 Constitution mentions that *the state manages the land, water and all the natural resources within and will make maximum use of it for the people's prosperity. For this matter, there is an emphasis on using it at the maximum level for the sake of people's benefits and managed by the state.*

In the Decision of Constitutional Court (MK) No. 3/PUU-VIII/2010 about the Law Review No. 27 of 2007 regarding the Coastal Areas and Small Islands Management against the 1945 Constitution (JM. *Management of Coastal Zone and Small Islands Act v. The Constitution of the Republic of Indonesia*, 3/PUU-VIII/2010, 2010), interpreting 4 benchmarks against the element of "people's prosperity", which becomes the objectives of the act of "control by the state" include:

1. the people's utilization of natural resources.
2. the natural resources' benefits distribution level for the people
3. people participation stage in deciding the natural resources benefits, and
4. an honor for rights of the people from one generation to another in taking advantage of the natural resources.

Furthermore, the Constitutional Court's Decision No. 36/PUU-X/2012 concerning the Review of Law No. 22 of 2001 concerning Oil and Gas against the 1945 Constitution, is of the opinion that to realize the state control's goal

(*JM. Oil and Gas Act v. The 1945 Constitution of the Republic of Indonesia*, 36/PUU-X/2012, 2012), namely "the people's preeminent prosperity". If the four forms of control by the state are not interpreted as a single action, they must be interpreted in effectiveness to achieve the people's preeminent prosperity. Furthermore, the form of "control by the state" is ranked according to the ability of the state to bring prosperity to the people. The very first form of control by the state is the natural resources' direct management. Control of the state in the second level is that the state regulates policies and management in achieving the goal of the preeminent prosperity for the people. State control's last level is that the state carries out the functions of regulatory and supervisory. In Zoelva's opinion (2019), the tiered construction of meaning shows the efforts of the Constitutional Court to comprehensively interpret Art. 33 of the 1945 Constitution, so that the state control's goal (Zoelva, 2019), "for the people's greatest prosperity" is well manifested.

In connection to the purpose of Art. 33(3) of the 1945 Constitution mentioned above, the state (dhi. East Kalimantan Provincial Government and Kukar Regency Government) has mastered the material for the people's livelihood which is directly controlled by the state through regional BUMDs. However, the embodiment of this authority has been regulated in laws and regulations, one of which is the regulation related to oil and gas.

With the existing business practice, the parent company gets funds from 10% PI because it is subject to private business processes. In the context of corporate law, the calculation and determination of net income for local governments for PI management obtained from PT MMPKM, PT MMP, and PT MGRM is valid if it has been decided in the GMS (the highest decision maker in a company). However, the management of BUMD is not entirely in the private sphere according to the provisions of Art. 33 parts (1) and (2) of PP BUMD that the Regional Head represents the Region as the shareholder of a regional company in the GMS and can grant power of attorney in the form of substitution rights to government officials. Area in accordance with the provisions.

According to Pradhana (2019), the meaning of the position of the GMS in Perseroda can be identified including 2 (two) legal actions, namely public legal actions as well as civil legal actions. Civil law actions can be seen from the position of the Government as a shareholder which results in an agreement with other shareholders in the GMS forum so as to produce the GMS Minutes which will later be declared in a Notary Deed, one example of which is the Amendment to the Articles of Association related to the Composition of the Board of Directors. Meanwhile, public action taken by the Government is when the Government on the results of the GMS issues a decision (bechikking) related to the results of the GMS. Indroharto (2004), declared that although public legal actions are unilateral, sometimes unilateral actions from a formal perspective,

still require approval or cooperation. Similarly, if the Law explicitly or implicitly requires the cooperation or consent of the parties concerned, then if it is not included in the TUN Decision, the situation can be a reason to file with the State Administrative Court.

Regarding the objective of the 10% PI acceptance, it is appropriate to form a Perseroda in accordance with Permen ESDM No. 37 of 2016, even though it is not in harmony with the Government of the region Law, PP BUMD, and PP No. 35 of 2004. In order to achieve the objectives of Art. 33(3) of the 1945 Constitution and to integrate the local governments jurisdiction in the managing separated regional assets, the steps that can be taken by the Government of the regions include:

1. Conduct a *judicial review* of the Permen ESDM No. 37 of 2016 on the Government of the region Law in conjunction with PP BUMD *junctis* PP No. 35 of 2004 because it contains indications of disharmony and even creates new norms in the order of legislation that are lower than the law;
2. Change the legal form of PT MMPKM into a BUMD in the form of a Perseroda if it fulfills the requirements for the establishment of a BUMD and the formation of a legal entity is carried out according to the law provisions and regulations regarding bounded accountability companies as regulated in Arts 331 and 339 of the Government of the region Law *jo.* Art. 4 PP BUMD. For example, this can happen in PT Bank Pembangunan Daerah Kalimantan Timur and North Kalimantan abbreviated as PT BPD Kaltim Kaltara (Irfan, 2021) which 100% of its shares are directly possessed by the Government of the region (East Kalimantan Provincial Government at 36.53%; Regency Governments throughout East Kalimantan by 33.12%; City Governments in East Kalimantan by 7.26%, North Kalimantan Provincial Government by 5.73%, Regency Governments in North Kalimantan by 15.16%, and City Governments throughout North Kalimantan by 2.19%. Meanwhile, the dissolution and/or change in the legal form of PT MMPKM to become a Perseroda may affect the implementation of the agreement related to the management of the 10% PI. In addition to repositioning the position of the 10% PI manager in the Transfer Agreement and Management of 10% Interest Participation in the Mahakam WK Production Sharing Contract, it also has an impact on the payment of dividend income by PT MMPKM which was originally through PT MMPKT and PT MGRM to be directly transferred to Kasda through dividends so that the income optimally used in the framework of the prosperity which is the greatest and welfare of the citizens as managed in Art. 33(3) of the 1945 Constitution.
3. Establishing laws and regulations due to a legal vacuum related to the management of revenue sharing for PI 10% which can guarantee that local governments can directly control the management of 10% PI by

business entities so that the regions obtain optimal results of managing PI 10% in their territory. One of the implementations of the follow-up to the BPK recommendation on the LHP LKPD of the East Kalimantan Provincial Government FY 2019 and the 10% PI Compliance LHP, it was explained that the Kukar Regency Government and the Kukar Regency DPRD had stipulated the Kukar Regency Regional Regulation No. 5 of 2021 (*Establishment of the Mahakam Gate of the King of Oil and Gas Kutai Kartanegara Regional Regulation*, 2021), which in Art. 16 parts (3) and (4) states that the revenue from 10% PI is not the company's operating income and is deposited into the regional general treasury account after being determined through the GMS taking into account all the management costs.

4. Conclusion

Regarding to the analysis results of the 10% participating interest management in the CA Mahakam, it can be described that the steps taken by the East Kalimantan Provincial Government and Kutai Kartanegara Regency Government through their respective BUMDs in forming a business entity in the form of a Perseroda named PT. MMPKM based on Permen ESDM No. 37 of 2016 solely for the purpose of accepting an offer from PT Pertamina Hulu Mahakam (PT PHM) as a contractor managing oil and gas exploration in the Mahakam Block work area in accordance with a predetermined time limit. Meanwhile, Permen ESDM No. 37 of 2016 applies as a type of legislation formed based on the authority of the Minister of Energy and Mineral Resources, its existence is recognized, and is still legally binding, however the formation and implementation of Permen ESDM No. 37 of 2016 in managing the 10% PI in the Mahakam Block Working Area has implications for disharmony with other laws and regulations, namely the Regional Government Law, PP 35 of 2004, and PP BUMD.

Suggestion

In order to harmonize the Minister of Energy and Mineral Resources No. 37 of 2016 as a basic component of the management of the 10% PI in the Mahakam Block Working Area with other relevant laws and regulations, the Regional Government in accordance with its authority can:

1. Conducted a *judicial review* of the Permen ESDM No. 37 of 2016 because the content indicated that it contradicted the Government of the region Law in conjunction with the Government of the region Regulation *juncto* PP *junctis* PP No. 35 of 2004 and created new norms in the statutory order which are lower than the law;
2. Change the legal form of PT MMPKM into a BUMD in the form of a Perseroda law according to the provisions of the laws and regulations on bounded accountability companies, the Government of the region Law, and

the Government of the region Regulation (PP) BUMD.

3. Establishing laws and regulations in accordance with their authority due to the legal vacuum related to the management of revenue sharing for the 10% PI which can guarantee direct control of the Government of the region and the optimization of revenues from the 10% PI management to the regional treasury.

If the local administration chooses the option in a point, it will have causality with b point and conversely c point is an alternative than a and b points.

References

- Audit Board of Representatives for the Province of East Kalimantan. (2019a). *Laporan Hasil Pemeriksaan Kinerja BPK atas Efektivitas Pengelolaan Program Penanggulangan Kemiskinan Tahun Anggaran 2016 - 2020 pada Pemerintah Kabupaten Kutai Kartanegara dan Instansi Terkait Lainnya di Tenggarong*.
- Audit Board of Representatives for the Province of East Kalimantan. (2019b). *Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan sebagaimana telah diubah dengan UUU Nomor 15 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan*. Kementerian Hukum dan HAM.
- Belanusa, Z. S., Kartikasari, R., & Cahyadi, A. (2020). Urgensi Penerapan Good Corporate Governance Pada Badan Usaha Milik Daerah Dalam Pengelolaan Minyak Dan Gas Bumi Di Indonesia. *Jurnal Jurisprudence*, 10(1), 1–14. <https://doi.org/10.23917/jjr.v1>
- Black's Law Dictionary. (n.d.). *Misrepresentation vs. Fraud: What's the Difference?* Retrieved February 3, 2022, from <https://www.ptonline.com/articles/how-to-get-better-mfi-results>
- Charlotte J. Wright; Rebecca A. Gallun. (1979). *Fundamentals of Oil & Gas Accounting*. In *Proceedings of the Gas Conditioning Conference* (5th editio). PennWell Corporation.
- Dirjen Migas Kementerian ESDM. (2020). *Bahan Pemaparan "Penawaran PI 10% pada Kegiatan Usaha Hulu Migas."*
- Dwiyanto, A. (2008). *Mewujudkan Good Corporate Governance Melalui Pelayanan Publik*. Gadjah Mada University Press.
- Establishment of the Mahakam Gate of the King of Oil and Gas Kutai Kartanegara Regional Regulation*. (2021). <https://peraturan.bpk.go.id/Home/Details/196250/perda-kab-kutai-kertanegara-no-5-tahun-2021>
- Hamid, A., & Attamimi, A. (1990). *Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintahan Negara; Suatu Studi Analisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan dalam Kurun Waktu Pelita I–Pelita IV*. Universitas Indonesia.
- Hasan, M. (2010). *Tinjauan Yuridis Kontrak Minyak dan Gas Bumi di Indonesia*. Makalah yang Disampaikan pada Training on The Oil and Gas.
- Indroharto. (2004). *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara: Buku I Beberapa Pengertian Dasar Hukum Tata Usaha Negara*. Pustaka Harapan.
- Irfan, Y. (2021). *Dugaan Bancakan Ratusan Miliar Kredit di Bankaltimtara (1): Temuan BPK*. <https://selasar.co/read/2021/03/22/4647/dugaan-bancakan-ratusan-miliar-kredit-di-bankaltimtara-1-temuan-bpk>

- JM. East Kalimantan High Attorney v. Iwan Ratman*, 2037 K/Pid.Sus/2022. (2022).
- JM. Management of Coastal Zone and Small Islands Act v. The Constitution of the Republic of Indonesia*, 3/PUU-VIII/2010. (2010).
- JM. Oil and Gas Act v. The 1945 Constitution of the Republic of Indonesia*, 36/PUU-X/2012. (2012).
- Kate.id. (2020). *Membanggakan Kutai Kartanegara, MGRM Jadi BUMD Terbaik 2020*.
<https://kate.id/2020/05/19/membanggakan-kutai-kartanegara-mgrm-jadi-bumd-terbaik-2020/>
- Kelsen, H. (2019). *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif*. Nusamedia.
- Kontan.co.id. (2018). *Penyerahan PI 10% terganjal Pemda*.
<https://industri.kontan.co.id/news/penyerahan-pi-10-terganjal-pemda>
- Laluhu, S. (2020). *Korupsi Blok ADK Cepu, Vonis Direktur PT ABS Diperberat Jadi 15 Tahun*.
<https://nasional.sindonews.com/read/116022/13/korupsi-blok-adk-cepu-vonis-direktur-pt-abs-diperberat-jadi-15-tahun-1595930851>
- Local Government Act*. (2015). <https://doi.org/10.1080/18324460.1914.10439351>
- Merdeka.com. (2013). *Fuad Amin divonis 13 tahun penjara oleh MA, ini reaksi keluarga*.
<https://www.merdeka.com/peristiwa/faud-amin-divonis-13-tahun-penjara-oleh-ma-ini-reaksi-keluarga.html>
- Mi'raj News Agency. (2020). *Mahakam Gerbang Raja Migas Kukar Raih Top BUMD Awards 2020*.
<https://minanews.net/mahakam-gerbang-raja-migas-kukar-raih-top-bumd-awards-2020/>
- Pradhana, R. S. (2019). *Wewenang Kepala Daerah dalam Pengelolaan Badan Usaha Milik Daerah*. *Jurnal Hukum Peratun*. *Jurnal Hukum Peratun*, 2(2), 235–258.
<https://doi.org/10.25216/peratun.222019.235-258>
- PT Migas Mandiri Pratama Kutai Mahakam. (2020). *Akta Perubahan Nomor 16 Tanggal 22 April 2020*. Notaris Bayu Adi Saputra, SH, M.Kn.
- Putuhena, M. I. F. (2016). *Politik Hukum Participating Interest dalam Pengelolaan Migas*. *Selisik Jurnal Hukum Dan Bisnis*, 2(2), 66–81.
- Regional Owned Enterprises Government Regulation*. (2017).
<https://peraturan.bpk.go.id/Home/Details/64765/pp-no-54-tahun-2017>
- Sarifudin, R. (2019). *Kewenangan Pemerintah Daerah Pengelolaan Partisipasi Interest (PI) Pada Sektor Migas*. *Jurnal Sosio Sains*, 5(2), 128–139.
- Setiaji, S. A. (n.d.). *Korupsi Investasi Blok BMG: Karen Agustiawan Divonis 8 Tahun Penjara*. 2020. Retrieved April 8, 2020, from
<https://kabar24.bisnis.com/read/20190610/16/932304/korupsi-investasi-blok-bmg-karen-agustiawan-divonis-8-tahun-penjara>
- Sihite, M. Y. (2016). *Kaji Ulang Penawaran Participating Interest Bagi Badan Usaha Milik Daerah (BUMD) Dalam Industri Hulu Minyak dan Gas Bumi (Migas)*. *Jurnal Rechtsvinding*, 5(1).
- Sipayung, B. (2017). *Penyesuaian Bentuk Hukum BUMD Pasca Pemberlakuan PP Nomor 54 Tahun 2017 Tentang BUMD*. <https://doi.org/10.13140/RG.2.2.31251.12326>
- Sistem Informasi Penelusuran Perkara Pengadilan Negeri Samarinda. (2022). *Putusan Banding Nomor: 14/PID.TPK/2021/PT SMR tanggal*.
- Tamano, M. A. (2020). *Perlindungan Hukum Pemegang Participating Interest Minoritas Pada Pengelolaan Minyak Dan Gas Di Wilayah Kerja Mahakam*. Universitas Islam Indonesia.
- Taylor, N. (2017). *The Dark Bloom of Entitlement*. *Nucl. Phys.*, 13(1), 104–116.
- Tempo.co. (2017). *Korupsi Dana Blok Cepu, Bekas Bupati Dibui 6 Tahun*.
<https://nasional.tempo.co/read/484254/korupsi-dana-blok-cepu-bekas-bupati-dibui-6-tahun>
- Terms of Offering 10% PI in Oil and Gas Working Areas Regulation of the Minister of Energy and*

- Mineral Resources*. (2016). [https://jdih.esdm.go.id/peraturan/Permen ESDM No. 37 Tahun 2016.pdf](https://jdih.esdm.go.id/peraturan/Permen%20ESDM%20No.%2037%20Tahun%202016.pdf)
- United States. (n.d.). *Code of Federal Regulations of the United States of America, Title 17, Commodity and Securities Exchange*.
- Upstream Oil and Gas Business Activities Government Regulation*. (2004).
- Zen & Nurkholis. (2014). Analisis Participating Interest (Pi) Dalam Kontrak Kerja Sama (Kks) Pemerintah Daerah Dan Swasta (Studi Kasus Pada Sektor Migas Blok Cepu Di Kabupaten Bojonegoro). *Jurnal Ilmiah Mahasiswa FEB*, 2(1), 890.
- Zoelva, H. (2019). *Materi presentasi terkait Memaknai Putusan MK No. 111/PUU-XIII/2015 tentang Ketenagalistrikan*. <https://pushep.or.id/wp-content/uploads/2020/04/Putusan-MK-UU-Listrik-Hamdan-Zulva.pdf>