Reformulation of Regulation Concerning Share Ownership in Regional Development Bank by Regional Governments of Indonesia

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Abstract
The Regional Development Bank is an investment or realization of the regional government's commitment to carry out the objectives of the Act in terms of improving the area. Regional Development Banks have an important role in moving the regional economy, but obstacles arise from the regulatory side which experience conflicting norms in terms of regulating share ownership by regions so that synchronization is needed to realize legal certainty. The research in this cynical article aims to find regulatory reformulation regarding share ownership at the Regional Development Bank (BPD) with legal certainty. The research in this article uses a type of normative juridical law research. The approaches used are Statute Approaches, Conceptual Approaches and Analytical Approaches. The results of the study indicate that there are inconsistencies in the provisions governing share ownership in BPD. This gives juridical implications for the emergence of rights, obligations and legal relations as a result of the inconsistency of these arrangements. Regulatory reformulation regarding BPD share ownership by Regional Governments is carried out by adopting and efficacy of the concept of norms, resulting in a consistent regulation regarding BPD share ownership by regional governments.

Keywords: Reformulation; Share Ownership; Regional Development Banks.

Introduction
The existence of Regional Owned Enterprise (ROE) as one of the development pillars was based on the 1945 Constitution beside the existence of Private Owned Enterprise and Union. In the context of Article 54 of Act no. 7 of 1992 concerning Banking as amended by Act no. 10 of 1998 (hereinafter referred to as the Banking Law) stipulates that with the enactment of the Banking Act, the Law concerning Regional Development Banks (BPD) is declared to remain valid for a maximum
period of 1 (one) year from the entry into force of the Banking Act,¹ provided that within the period of one year, banks established under the BPD Act are required to comply with the provisions of this Banking Act. This is the basis for the legality of BPD.² BPD as a regional financial institution that uses regional budgets must be directed to create jobs/reduce unemployment and waste of resources, as well as increase efficiency and effectiveness of the economy.³

Regional Development Bank (RDB) is a manifestation and embodiment of Regional Government commitment to fulfil the objective of the Constitution in improving the Regional economic level. Article 2 of the Domestic Affairs Minister regulation number 62, year 1999 regarding organization guidelines and working procedure of Regional Development Bank (RDB) states that the main duty of RDB is to develop the regional economy and encourage the regional development through banking activities. Hereafter, article 3 of the same regulation stated that to conduct its main duty, RDB will conduct some functions as follow: The driving force of economic development and regional development in improving the economic level of the citizen; Regional Cash holder or regional cash saver; and One of the regional income sources.

Government Regulation number 54, year 2017 regarding Regional Owned Enterprise (ROE), stated that the establishment of Regional Owned Enterprise is meant to provide benefit for the regional economy development, implement the main benefit, and obtain profit. Regional owned Enterprise is established based on the region’s needs and the appropriateness of the enterprise. The regulation states that there are two forms of Regional owned enterprise namely the Regional Commercial Company and Regional Association Company. Regional Commercial company is a Regional Owned Enterprise whose capital owned by one region and does not divided by share. On the other hand, Regional Association Company is a

¹ Article 54 of Act no 7 of 1992 concerning Banking in conjunction with Act no 10 of 1998.
² Gunawan Widjaja, ‘Status Hukum Bank Pembangunan Daerah’ (2016) 2 Selisik.[29-30][29].
company whose capital is divided based on the share which the whole or at least 51% of its share is owned by one region.

Otoritas Jasa Keuangan (the Indonesia Financial Services Authority) has the authority to stipulate regulations related to sustainable finance because it is following their duties and functions in implementing banking arrangements. Sustainable finance is one of the activities required for all financial service industries, one of which is in the banking sector. Share ownership for banks is based on the Financial Authority (POJK) regulations. One of the features of a healthy and efficient banking system is that a bank can take care of the interests of its customers well as a pillar of the banking industry’s activities in addition to the owner of this country beside the country. BPD currently also has the legal status of an open PT and there are those who are not public. the shareholders who enter the capital in a limited liability company, meaning that the capital invested in the participation is no longer his and is separate from the shareholder’s assets for the shareholder. The regulation in this Regional-Owned Enterprise is similar to the State-Owned Enterprise whereas in the case of Association Company, what is mean by a Association Company is the one whose 100% or at least 51% of its capital is owned by one region or state. This means that this Association Company can be owned by more than one region.

These Government Regulations overlap with the regulations of Financial Service Authority, while Regional Development Bank as one of Regional-Owned Enterprise in banking must obey both regulations. For instance, in term of the share ownership which based on the Government Regulation number 54, year 2017 regarding Regional-Owned Enterprise must at least have 51% of share. Following the rule, the share of capital ownership of Regional Owned Enterprise with 51% which mean that the ROE has not fulfil the requirement of State Association Company. Whereas, the Regulation of the Financial Service Authority number

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5 Rudhi Prasetya, Kedudukan Mandiri Perseroan Terbatas (Citra Aditya Bakti 1996).[12].
56/PJOK 03/2016 regarding the Commercial Bank Ownership is stated that the maximum limit of share ownership by bank in every category of shareholders are established as follow: (a) 40% of the whole capital for legal banking entity of financial institution and non-banking entity of financial institution; (b) 30% of the whole capital for non-financial legal entity; and (c) 20% for Association company. This means that the Regulation of The Financial Service Authority regulate the bank ownership of up to 30% for non-financial institution, 40% for Banking financial institution, while the Government Regulation require the company to own at least 51% of the whole share. The main point regarding the share ownership mainly for banking is the overlapping regulation with the Regulation of Financial Service Authority. in regard to the importance of existence of the shareholders, this is very essential to be studied in order to find the right formulation for the shareholders of Regional Development Bank, mainly for the Regional Government. Therefore, the overlapping of regulation and interests between RDB and other shareholders of non-regional government can be avoided.

A side from the overlapping of these regulations, it is important to further study and explore the legal status of Regional Development Bank which is also categorized as Association company. Reformulation of legal arrangements related to the share ownership of the RDB is needed as an effort to achieve RDB Regional Champion where RDB as the main driving force of Regional economy. Considering that there are many legal regulations which obstruct the RDB for further development.

Refers to the description regarding the background of the legal issue discussed above, the researcher formulate three problem statements as the references to design the draft in this study as follow: 1) How is the inconsistency of the share ownership regulation of Regional Development Bank in Indonesia?; 2) what are the juridical implication of the inconsistency of regulation regarding the share ownership of Regional Development Bank by the Regional Government in Indonesia?; and 3) How does the reformulation of regulation regarding the share ownership of Regional Development Bank by the Regional Government in Indonesia with legal certainty?
Inconsistency of Regulation Regarding the Share Ownership of Regional Development Bank by the Regional Government.

The assets of the BPD in the form of a Limited Liability Company are the assets of the limited liability company itself. The assets of a limited liability company consist of assets which are objects belonging to the limited liability company which are located on the left side of the balance sheet; and debts or obligations that must be repaid, including to shareholders located on the right side of the balance sheet. Banking regulations require that in carrying out its activities in the form of providing credit as mentioned above, banks do not use their own capital, but from third party funds which are in the form of deposits in the form of demand deposits, time deposits, certificates of deposit, savings, and/or other equivalent forms. With that. To implement the prudential principle, the BPD is obliged to maintain health, including related to capital ownership by local governments. For this reason, it is necessary to have consistent arrangements regarding capital ownership with legal certainty.

1. Juridical Analysis of Act No. 7 Year 1992 Jo Regulation No. 10 Year 1998 Regarding Banking Seen from Legal Certainty Theory.

The Banking Act provides a fundamental legal umbrella for the banking industry in Indonesia. Seen from the ownership point of view, bank owner is whoever who own the bank. This ownership can be seen from the establishment document and control of the shares owned by the bank. Regional Government Bank (RDB) is a regional government-owned bank in which located in the first-level and second-level regions of each province. For example, Regional Government Bank of DKI Jakarta, Regional Government Bank of West Java, Regional Government Bank of Special Region of Yogyakarta, Regional Development Bank of Central Java and The Regional Government Bank of East Java. The context in Article 54 of the Banking Law states that with the enactment of the Banking Law, the Regional Government Bank Law is declared applicable for a maximum period of 1 (one) year after the Banking Law is

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* Gunawan Widjaja (n 2).[33].
effective. In accordance with the regulation that within a period of one year, the bank which was established under the Regional Government Bank Law must adjust to the regulation in the Banking Law. If the Regional Development Bank has adjusted to the regulation in this Banking Law before the one-year period, then the Regional Development Bank Law is declared to be no longer valid.

2. Juridical Analysis of Law No. 19 Year 2003 Regarding State-owned Enterprise Seen from Stufenbau Theory

Refers to the Stufenbau’s theory, the Constitution is the basic law which is used as a foundation in Country’s administration. Considerations of Law No. 19 of 2003 concerning the State-Owned Enterprises states that the State-Owned Enterprises has an important role in managing the national economy in order to achieve the society welfare. The existence of the State-Owned Enterprise Law provides an important foundation based on the constitution to regulate the State-Owned Enterprises based on economic democracy.

Association Company in this case is Regional Government Bank, whose capital is divided in shares in which the whole or at least 51% is owned by one region. This means that this Association company can be owned by more than one region. The Share ownership is design through capital participation by the Regional Government and set forth in the Company’s Basic Budget and stipulated by Regional Regulation. Further development by drawing the line with the Law Number 19 Year 2003 concerning State-Owned Enterprises, there is a similar binding condition for Regional-Owned Enterprise in Article 1 paragraph (2) which states that the Association Companies are State-Owned Enterprises in the form of Incorporated companies whose capital is divided into the whole or at least 51% (fifty one percent) of the shares shall be owned by the Republic of Indonesia whose main purpose is for profit.

3. Juridical Analysis of Law no. 40 Year 2007 Regarding Incorporated Companies Seen from Legal Certainty Theory

Referring to the theory of legal certainty, Peter Mahmud Marzuki explains in his book that legal certainty refers to the understanding of rules which are of a
general nature making the individual know what acts may or may not be done. The general principle of Law No. 40/2007 concerning Incorporated Companies (hereinafter referred to as the LPC Law) states that Incorporated company is a legal entity whose capitals are separate from the shareholders, directors and commissioners. As such, the obligation of the Regional Development Bank as a legal entity is the responsibility of the Regional Development Bank and is not the responsibility of the Province as the shareholder.

Regional Development Bank assets as Incorporated Company are the very assets of the incorporated company. In the case of Regional Development Bank, the source of its capital is the capital deposit from the Regional Government, both the Provincial Regional Government, the Regional Government of the Regency or the Regional Government of the City.8

4. Juridical Analysis of the Law No. 23 Year 2014 Jo Law No. 9 Year 2015 Regarding Regional Government Seen from Authority Theory.

The study regarding the position of the Regional Development Bank, should first review the profile of the Province as an autonomous region as regulated in Law Number 23 of 2014 concerning Regional Government (hereinafter referred to as the Local Government Law) which has been amended by adding Law Number 9 of 2015 concerning Regional Government. The Provincial Government is a legal subject, with Governor as the for every legal action. Regional autonomy is the right, authority, and duty of the regional autonomy to regulate and manage the governance affairs and local social interests in the Unity of the Republic of Indonesia system (vide Article 1 number 6 of the Local Government Law). Meanwhile, the Autonomous Region, hereinafter referred to as the Region, is the unity of the law society with territorial boundaries which are authorized to regulate and administer Governance affairs and Local Government interests according to local government initiatives based on the aspirations of the people in the system of Unity of the Republic of Indonesia

7 Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Kencana Pranada Media Group 2008).[158].
8 Gunawan Widjaja (n 2).[35].
(vides Article 1 of the Regional Government Law). The Autonomous Region is led by the Regional Government, which is divided into governors for the Provinces, and mayor for the 2nd level regions.

The legal arrangement of regional financial management using the instruments of decentralization, deconcentration, and co-administration should encourage the regions to further improve their service functions without exploiting Regional Original Income (ROI) resources exceed the normal / capability limits of the people. The strategy of structuring financial relations between the central and the regional, while for the government (central and regional) to develop the principles of good governance based on local wisdom, is a strategic step in implementing regional autonomy.⁹

5. Juridical Analysis of Government Regulation No. 54 Year 2017 Regarding Regional-Owned Enterprise Seen from Stufenbau Theory.

Law Number 23 Year 2014 concerning Regional Government has mandated the preparation of Government Regulations on Regional-Owned Enterprise. In addition, with the revocation of Law Number 5 of 1962 concerning Regional Enterprises after the promulgation of Law Number 23 year 2014 concerning Regional Government, the preparation of the Government Regulations herein need to be formulated to fill in the legal vacuum regarding the regulations of Regional-Owned Enterprise.

In accordance to the Stufenbau theory which states that the legal system is a ladder system with hierarchical steps where the lowest legal norms must uphold the higher legal norms, and the highest legal norms (such as the constitution) must uphold the most fundamental legal norms (ground norm). The background for the stipulation of the Government Regulation No. 54 year 2017 concerning Regional-Owned Enterprise is to implement the regulation of the 1945 Constitution of the Republic of Indonesia and the Regional Government Law. Regional Development Banks (RDB) as a form of legal entities of Regional

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Association Companies. As stated in the Government Regulation regarding Regional-Owned Enterprise as follow:

Article 5 Paragraph (2)
Regional Association Companies are Regional-owned Enterprise in the form of Incorporated whose capital divided in the share where the whole shares or at least 51% of its share is owned by 1 (one) region.


Starting December 31, 2012, the functions, duties, and authority of regulating and supervising non-bank financial service activities such as the Capital Market, Insurance, Pension Funds, Financing Institutions, and Other Financial Institutions are overseen by the Financial Services Authority (FSA). One year later (31 December 2013) the same transition was made to the regulation and supervision of financial service activities in the banking sector from Bank Indonesia (BI) to the Financial Services Authority (FSA). This means that with the effectiveness of Law Number 21 Year 2011, all supervision activities related to financial services, both for bank financial services and non-bank services, is conducted by the Financial Services Authority (FSA). Based on the authority theory of Philipus M. Hadjon who divided the method of obtaining authority over two ways, Attribution and Delegation and sometimes mandate, then the legislators appointed FSA as the manifestation of the theory, especially delegations.

Based on the provisions of FSA Regulation Number 56 / POJK.03 / 2016 concerning the share ownership of Commercial Bank, the maximum limit of share ownership for Bank in each category of shareholder is set at 40% (forty percent) of Bank Capital, for the category of shareholders in the form of a legal entity of Bank as financial institution and non-bank financial institutions.

7. Juridical Analysis of Regulation Of Bank Indonesia Number 14 Year 2012 Regarding Share ownership of Commercial Bank Seen from Legal certainty Theory.
Regulation of Bank Indonesia (BI) No. 14 year 2012 regarding the share ownership of commercial banks, chapter II regarding the maximum limit of share ownership states that:

Article 2 Paragraph (2)
The maximum limit of share ownership of bank in every category of shareholders is determined as follow: “40% (forty percent) of the whole bank capital, for category of shareholder in the form of legal entity financial institution and non-bank financial institution”.

As regulated in the regulation of Bank Indonesia No. 14 of 2012, it has been determined special requirements for shareholders who want to own shares exceeding the limit of share ownership. By regulating the requirements for shareholders who wish to own shares more than the maximum ownership limit as regulated in Article 2 and Article 4 of the Regulation of Bank Indonesia for Commercial Bank Ownership, shareholders must have a good level of GCG.

8. Juridical Analysis of The Regulation of Domestic Affairs Minister No. 13 Year 2006 Regarding Guidelines of Regional Financial Management Seen from Authority Theory

Capital participation by the Regional Government in this case the 1st Level of regional Governor separates part of the wealth or funds which is then included as shares in the Regional Development Bank. This capital investment cannot be withdrawn, thus the Provincial funds used as capital in the form of RDB’s shares legally change their status become the property of RDB, and for that reason, the Province is only entitled to receive profit from the capital investment of the RDB, which is affirmed in Article 26 (3) letter c Regulation of Domestic Affair Minister No. 13 of 2006. According to Article 16 paragraph (4) of Regulation of Domestic Affairs Minister No. 13 of 2006, the allocation as referred by Article 13 paragraph (3) implies that the regional budget must be directed to create jobs/reduce unemployment and waste of resources, and increase the efficiency and effectiveness of the economy. The capital participation by the 1st level of regional government to the RDB is set fort in the form of Regional Regulation regarding
the capital participation by the 1st Level and 2nd level of Regional Government to Regional Development Bank in each region in the whole Indonesia.\textsuperscript{10}

\textbf{Juridical Implication of Inconsistency of Regulation Regarding Share Ownership of Regional Development Bank by The Regional Government in Indonesia.}

1. Rights as the Result of Inconsistency of Regulation Regarding the Share Ownership of Regional Development Bank by Regional Government in Indonesia.

Inconsistency on which regulations should be obeyed by Regional Development Bank has given some dab impacts on Regional Development Bank. The rights which exist as the result of inconsistency of regulation regarding the share ownership of RDB can be explained as follow:

a. Regional Government in its category as the control shareholder with 25% of share ownership portion from the whole capital of RDB, therefore, it has the right to own, manage, monitor and/or has significant influence to the performance report of RDB and significant responsibility to maintain the wellbeing of RDB.

b. For some RDB in some remote provinces, regions/cities which share ownership is almost reaching 100% owned by the regional government, it will significantly influence the performance of RDB as in every taken business decision is highly depend on political policy of the local government. This will also affect in the wellbeing of the RDB.

c. The importance of reformulation of legal regulation regarding share ownership of regional development bank by the local government in Indonesia is an example of effort in avoiding rule of interpretation practice (which of course varies from person to person and attached to interest) is justification for discretionary practices that are unfounded. If the government

\textsuperscript{10} Hardyanto (n 3).
adhere to Government Regulation regarding Regional Development Bank and the Law of State-owned Enterprise, then with the capital ownership of up to 100%, it will grow the practice of discretion by the Regional Government which resulted in poor development of Regional Development bank cannot as a result of political interest.

2. Obligation as Result of Inconsistency of Regulation Regarding Share ownership of Regional Development Bank by The Regional Government in Indonesia.

Obligations arising from the inconsistency of regulations on Regional-Owned Enterprise encourage the need for legal basis for the management of ROE such as, Regional-Owned Enterprise is considered to be unable to conduct good working ethics, too bureaucratic, inefficient, lack of market orientation, lack of good reputation, lack of professionalism, and there are many over intervention from regional government and unclear objectives between profit oriented or social function for the people which can result in lack of focus to the main vision.

Other obligations arising from the inconsistency of regulations regarding share ownership of RDB by the Regional Government in Indonesia are obligations to maintain the well-being level of Regional Development Bank. The obligation for Regional Governments in their activities to intervene as controlling shareholders in Regional-owned Enterprise, with the inconsistency of this regulation will result in Legal uncertainty for capital participation in RDB especially by the local Regional Government. Whether or not it needs to be stated in the form of local regulations or the approval of the local Regional Representative Council is enough with legal considerations of the regulation that exist in Government Regulation regarding Regional-Owned Enterprise or Regulation of Financial Service Authority.

3. Legal Relation Emerging from Inconsistency of Regulation Regarding Share Ownership of Regional Development Bank by Regional Government in Indonesia.

Regional Development Bank is totally different from Regional Companies, hereinafter known or referred to as Regionally-Owned Enterprises (ROE). RDB
has its own assets sourced from the Regional Government of both the provincial as the 1st level of government and Regency / City as the 2nd level government, whose ownership has been transferred from the Regional Government to the RDB. The existence of Regional Development Banks is dependent on the Banking Law instead of the Local Government Law, as it conducts the functions of the bank according to the Banking Law. Since the release of Law Number 21 Year 2011 concerning the Financial Services Authority, all supervision related to financial services, both for bank financial services and non-bank services, has been conducted by the Financial Services Authority (FSA). In accordance with the Lex specialis derogat legi generali principle, it means that specific legal rules are considered valid although they are in conflict with general legal rules, Regulation of Financial Service Authority Number 56 / POJK.03 / 2016 is a legal reformulation which rightly regulate the ownership portion by the Regional Government in Regional Development Bank with maximum limit of 40%.

The regional government in its category as the controlling shareholder with ownership portion of at least 25% of RDB’s capital, then the Regional Government is legally entitled to own, manage, supervise and / or have a significant influence on the RDB’s Performance Report and has the responsibility of maintaining RDB’s well-being. For some Regional Development Banks in several slightly remote provinces, districts / cities where the share ownership is almost 100% owned by the Regional Government, it will greatly affect the performance of the RDB as every business decision is highly dependent on the political policies of the local government. This will also impact the well-being of the Regional Development Bank.

The importance of reformulating the legal regulation regarding the share ownership of Regional Development Banks by the Regional Government in Indonesia is an example of avoiding the rule of interpretation practice (which of course varies from person to person and is attached to interests) is the justification of unfounded discretionary practices. If the government adhere to Government Regulation regarding Regionally-Owned Enterprise and State-
owned Enterprise Law, with capital ownership reaching up to 100%, it will foster discretionary practices by the Regional Government resulted in the poor development of Regional Development Banks as a result of political practice and policy.

Reformulation of Legal Regulation Regarding Share Ownership of Regional Development Banks by Regional Government in Indonesia which Require Legal Certainty.

The role of the Regional Development Bank for regional community development is still very much needed, especially for local governments throughout Indonesia. The promulgation of Law No. 13s / 1962 concerning the Basic regulations of Regional Development Banks, Regional Development Bank provides an important role in the framework of regional development, especially as a driving force of the regional economy. However, with the enactment of Law Number 7 Year 1992 Jo Law No. 10 of 1998 concerning Banking, the existence of the Regional Development Banking Law was later abolished.11

The context of article 54 of the Banking Law states that with the enactment of the Banking Law, the Regional Development Bank’s Law is declared to be effective for a duration of 1 (one) year from the start of the enactment of the Banking Law. In accordance with the regulation that within a period of one year, the bank which was established under the Regional Development Bank Law must adjust to the regulations in the Banking Law. If the Regional Development Bank has adjusted to the regulations in this Banking Law before the one-year period, then the Regional Development Bank Law is declared to be no longer valid.

In accordance with several regulations of the Banking Law, regarding the share ownership of bank as an inseparable part of the requirements for the establishment of banks, as well as legal entities that wish to hold shares in commercial banks, are regulated and determined by Bank Indonesia. To avoid having a dominance of share

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11 Gunawan Widjaja (n 2).
ownership that resulted in a bad impact on bank’s operations, Bank Indonesia issued Bank Indonesia Regulation No. 8/14/2012 about share Ownership of commercial banks. The regulation issued by the Bank Indonesia is established to increase public trust in banking institutions, in this case commercial banks, through increasing the Good Corporate Governance of related banks.12

Starting 31st December 2012, function, duties and authority of regulating and supervising the financial service activities of non-bank such as Market Share, Insurance company, Pension Funds institutions, Funding Institutions, and other financial institutions are supervised by Financial service Authority. A year later in 31st December 2013 the same transition was conducted to regulate and supervise the financial service activities in banking sector from Bank Indonesia (BI) to Financial Service Authority. This means that with the establishment of Law Number 21 Year 2011, therefore, all the supervision regarding the financial service activities whether it is meant for financial service for bank or non-bank are conducted by the Financial Service Authority.

Considerations Number 56 / POJK.03 / 2016 concerning share ownership of Commercial Bank states: c. whereas to enhance the implementation of the principles of prudence and governance, it is necessary to restructure the share ownership structure of bank; d. whereas the structuring of the share ownership structure of bank is conducted through the application of the maximum limit of share ownership so as to reduce the dominance of ownership which can negatively impact bank operations; e. that the application of the maximum limit of share ownership will also have a positive impact in encouraging consolidation of banking in strengthening the sustainable of national banking industry. This matter is the background of the urgency of the regulation regarding the limitation of share ownership of commercial banks.

Capital participation by the Regional Government in this case the 1st Level of regional Governor separates part of the government’s wealth or funds which is then included as shares in the Regional Development Bank. This capital investment

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cannot be withdrawn, thus the Provincial Government funds used as capital Regional Development Bank’s shares legally change its status to belongs to Regional Development Bank’s capital, and for that reason, the Provincial Government is only entitled to receive profit on capital investment from the Bank, which is affirmed in Article 26 (3) letter c of The Regulation of Domestic Affairs Minister No. 13 of 2006. According to Article 16 paragraph (4) of Regulation of Domestic Affairs Minister No. 13 of 2006, the allocation referred by Article 13 paragraph (3) implies that the regional budget must be directed to create jobs / reduce unemployment and reduce waste resources, and improve economic efficiency and effectiveness.¹³

According to the regulations of Article 2 of the Minister of Domestic Affairs Regulation 1-98, the legal form of the Regional Development Bank can be in the form of a Regional Company or Incorporated Company. Article 3 of Regulations of Domestic Affairs Minister 1-98 further stated that the Regional Development Bank whose legal form is a Regional Company, the Regional Development Bank is subject to the prevailing laws and regulations that govern the Regional Company. The Regional Company Law was effective then. However, now that the Local Government Law is established and effective, it has replaced the term of Regional Company with Regional-owned Enterprise. Whereas if the Regional Development Bank is legally incorporated as a Incorporated Company, the Regional Development Bank is subjected to Law Number 1 of 1995 concerning Incorporated Companies and its implementing regulations. At present the Laws of Incorporated Company 1-95 have been replaced by Law Number 40 of 2007 concerning Incorporated Companies (State Gazette of the Republic of Indonesia year 2007 Number 106, Supplement to the State Gazette of the Republic of Indonesia Number 4756) (Law of Incorporated Company. 40-07).

This means that in accordance with Law of Incorporated Company 40-07, wherein said that a Incorporated Company, hereinafter referred to as a Company, is a legal entity with capital alliance, established based on an agreement, conducts business activities with authorized capital which is entirely divided into shares and

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¹³ Hardyanto (n 3).
meets the requirements regulated in the Law Number 40 year 2007 concerning Incorporated Companies and implementing regulations; then all rules relating to Regional Development Bank as Association company are subject to Law PT-07.14

Association in this case is Regional Development Bank, its capital is divided into shares that the whole or at least 51% of the shares is owned by one region. This means that this Association can be owned by more than one region. Shares Ownership through the inclusion of local government capital participation and stated in the Company’s Articles of Association and stipulated by Regional Regulation. Further developed and drawing of the line by the Laws of the Republic of Indonesia Number 19 of 2003 concerning State Owned Enterprises (SOEs), then there are the same binding conditions on Regionally-Owned Enterprises in Article 1 paragraph (2) which states that the Association Companies are SOEs in the form of incorporated companies with its capital divided into shares which are all or at least 51% (fifty one percent) of the shares is owned by the Republic of Indonesia whose main purpose is to pursue profits.

Regarding the legal entity form of Regionally-Owned Enterprise, both in the Regional Government Law and Government Regulation No. 54 year 2017 concerning Regionally-Owned Enterprises (hereinafter referred to as PP BUMD) implies an indication of guidelines for the Regionally-Owned Enterprises that existed before the enactment of the Local Government Law. The Regulations for Regional Development Bank as a Regional Company, in the event that a Regional public company will be owned by more than one Region, the Regional public company must change the legal form to a regional company (Article 334 paragraph (2) of the Regional Government Law). The position of regional company as a legal entity is obtained in accordance with the provisions of the law governing incorporated companies (Article 339 paragraph (2) of the Regional Government Law in conjunction with Article 4 paragraph (5) and Article 136 Government Regulation regarding Regionally-Owned Enterprise).

14 Gunawan Widjaja (n 2).[34].
Government Regulation Number 54 Year 2017 concerning Regionally Owned Enterprises has a story that Law number 5 of 1962 concerning Regional Enterprises was revoked and replaced by Law 23 of 2014 concerning Regional Government. Regional companies are regulated by the new government regulations and given new name of Regional-Owned Enterprises. This is a business entity that all or most of its capital is owned by the Region. This was established with the aim to provide benefits for the regional economic development in general, organizing public benefits in the form of providing good quality of goods and / or services to fulfill people’s lives according to the conditions, characteristics, and potential of the area based on good corporate governance.

Based on the description above, there are differences in the portion of share ownership in Regional Development Bank. Law No. 19 of 2003 concerning State-Owned Enterprise and Government Regulation Number 54 of 2017 concerning Regional-Owned Enterprise requires that the Company is a State-Owned Enterprise in the form of an incorporated company whose capital is divided into shares which are all or at least 51% (fifty one percent) of the shares is owned by The Republic of Indonesia, whose main purpose is to pursue profit. This regulation is similar to the Government Regulation Number 54 Year 2017 Article 5 paragraph (2) which states that a Regionally Owned Company is a Regional-Owned Enterprise in the form of incorporated company whose capital is divided into shares that are wholly or at least 51% (fifty one percent) of the shares is owned by 1 (one) Region.

Whereas Banking Law No. 7 of 1992 Jo Law No. 10 of 1998 strengthened by Bank Indonesia’s Regulation Number 14/8/2012 concerning Commercial Bank Share Ownership and Financial Services Authority Regulation Number 56 / POJK.03 / 2016 concerning Commercial Bank Share Ownership requires that the maximum limit of share ownership for each category of shareholders is 40% (forty percent) of the Bank’s capital, for the category of shareholders in the form of legal entities of bank financial institutions and non-bank financial institutions.

According to Apeldoorn, the legal standing has two facets. The first is about the establishment of law in the concrete matters. The points are those who seek
justice wants to be in the law in special matters, before he starts the case. The second is the certainty of law means the safety of law. That is, the protection of many parties to the arbitrariness of the judiciary. Law has to be certain as the certainty can be used to measure the truth and in order to achieve the objectives of the law which expect peace, safety, welfare, and order in the society as well as certainty of the law must provide guaranty of public welfare and guaranty of justice for the people. The theory of legal certainty reinforces the need for legal certainty regarding the limitation of share ownership in Regional Development Banks by regional governments in Indonesia to eliminate difference in perception for all local governments in Indonesia due to the overlap of existing legal regulations regarding these share ownerships.

The writer believes that Reformulation of regulations concerning Regional Development Bank share ownership by the Regional Government is important to be equalized. Regional Development Bank as Regional-Owned Company which is subject to incorporated Company Law No. 40 of 2007 and the regulation stated in the Government Regulation regarding Regional-Owned Enterprise, Banking Law, Regulation of Bank Indonesia, Regulation of Financial Service Authority should be given legal certainty in order to run its business to achieve rapid development in its objectives as the driving force of the regional economy and one source of Regional Original Revenue.

Stufenbau's theory is a theory of the legal system by Han Kelsen, which states that the legal system is a ladder system with a hierarchical rule where the lowest legal norms must uphold the higher legal norms, and the highest legal norms (such as the constitution) must uphold the most basic legal norms (ground norm). Establishment of Government Regulation of Regional-Owned Enterprise was born and based on the regulations contained in the Regional Government Law as the manifestation of the 1945 Constitution which regulates economic justice and regional autonomy. As subject to the Government Regulation of Regional-Owned Enterprise, the contents of Article 5 paragraph (2) which states that the Regionally Owned Company is a Regional-Owned Enterprise in the form of an incorporated
company whose capital is divided into shares with the whole or at least 51% (fifty one percent) of the shares is owned by 1 (one) Regions can be replaced with at least 40% (forty percent) of the shares owned by 1 (one) Region. This is meant to eliminate the inconsistency and confusion for both Regional Development Banks in developing their capital and Regional Governments throughout Indonesia as main shareholders. With the limitation of Regional Development Bank’s share ownership by the local governments, it is hoped to reduce the practice of discretion by the Regional Government and the development of Regional Development Banks will no longer be laden with politics.

**Implication Of The Policy**

The type of bank seen from ownership point of view can be seen from the certificate of establishment and control of shares ownership. Regional Development bank is a bank owned by the regional government which is located in the 1st and 2nd regional level of each province. There are inconsistencies in the provisions governing share ownership of the Regional Development Bank by the Regional Government in Indonesia in terms of several theories (legal certainty theory, authority theory, and stufenbau theory), as follow:

1. Law No. 7 Year 1992 Jo Law No. 10 Year 1998 Regarding Banking.
2. Law No. 19 Year 2003 regarding State-Owned Enterprise.
3. Law No. 40 Year 2007 regarding Incorporated Company.
4. Law No. 23 Year 2014 Jo Law No. 9 Year 2015 regarding Regional Government.
5. Government Regulation No. 54 Year 2017 regarding Regional-Owned Enterprise.
6. Regulation of Financial Service Authority (PJOK) No. 56/PJOK.03/ 2016 regarding Share Ownership of Commercial bank.
7. Regulation of Bank Indonesia No. 14 Year 2012 regarding Share Ownership of Commercial Bank.

The inconsistency regarding which regulations should be used by Regional Development Bank gives bad impact for the Regional Development Bank.

1. The Emerging Right as a result of inconsistency of regulation regarding the share ownership in Regional Development Bank by Regional Government in
Indonesia based on the above explanation are as follow:

a. Regional Government in Its category as the controlling shareholder with a minimum ownership portion of 25% of the whole Regional Development Bank’s capital, has the legal right to own, manage, monitor and / or significantly influent the performance report of the Bank and has the responsibility of managing the well-being of the Bank.

b. For some Regional Development Banks in slightly remote provinces, regions / cities whereas their share ownerships are almost 100% from the whole bank’s capital, will be greatly influence the Bank’s performance as in every business decision taken by the Bank, will be very dependent to the political policy of the Regional Government. This will also affect the well-being of the Banks.

c. The importance of reformulation of the legal regulation regarding the share ownership of Regional Development Bank by the Local Government in Indonesia is an example of avoiding the Rules of Interpretation practice (Which of course varies from one person to another and attached to certain interest) is justification of unlawful discretionary practices. Referring to the Government Regulation of Regional-owned Enterprise or State-owned Enterprise’s Law, with almost 100% of share ownership, the discretionary practices by the Regional Government will flourish and resulted in undeveloped Regional Development Bank due to the political policy.

2. The emerging obligations as a result of inconsistency of regulation regarding share ownership of Regional development Bank by the Local Government in Indonesia based on the explanations are as follow:

a. Encouraging the establishment of legal basis of Regional-Owned Enterprise management such as, Regional-Owned Enterprises are considered to be lack of work ethics, too much of bureaucracy, inefficient, lack of market oriented, lack of good reputation, lack of professionalism, and too many local government overly intervene the Regional-Owned Enterprise policy,
as well as unclear objectives between making profit and maintaining its social function to the society which resulted in lack of Regional development Bank’s focus to the main visions.
b. Other obligation emerging as the result of inconsistency of regulation regarding the share ownership in Regional Development Bank by the local government in Indonesia is the obligation to maintain the well being of the Bank. The lack of share ownership in Regional development bank whether it is by the local government or after the bank go public, will influence the CAR of the Bank and the well being of the Bank’s management in general. For that reason, this should also be the main focus of the policy makers to respond to the main juridical of the disharmony of the legal regulation regarding the share ownership of Regional development Bank by the local government in Indonesia.

3. The emerging legal relationships as the result of inconsistency of regulation regarding the share ownership of Regional Development Bank by the local government in Indonesia are explained as follow:
a. The relationship between principles, norms, and rules can also be seen that if a conflict of rules occurs it will be resolved by applying the principle as a meta rule. Samuel Meira Brasil Jr. states that in law argumentation theory there is a difference between rules and principles. Conflict of rules is resolved by principles as meta rules such as lex superior (based on the general hierarchy of the legal system structure), lex posterior (based on priority rules that apply later), lex specialist (based on rule specifications), and exceptions. Based on the principle of Lex specialit derogae legi generali, it means that specific legal rules are considered valid although they are contrast to general legal rules. The Regulation of Financial Service Authority provisions deviate from the Government Regulation’s provisions and the Regional Government Law as they are specific in accordance with the authority to bind the Regulations issued by the Financial Service Authority in accordance with the law.
b. The Regional Government in its category as the controlling shareholder with a portion of ownership of at least 25% of the Regional Development Bank’s capital, the Regional Government is legally entitled to own, manage, supervise and / or significantly influence the Regional Development Bank’s Performance Report and has the responsibility of maintaining the well-being of the Bank. For some Regional Development Banks in several slightly remote provinces, districts / cities where the shares ownership is almost 100% owned by the Local Government, it will greatly affect the performance of the Bank as every business decision taken by the bank is highly dependent on the political policies of the local government. This will also greatly impact the well-being level of the Bank. The importance of reformulation of the Shares ownership of Regional Development Bank by the Regional Government in Indonesia is an example of avoiding the rule of interpretation practice (which of course varies from person to person and is attached to interests) is the justification of unlawful discretionary practices. By referring to the Government Regulation regarding The Regional-owned Enterprise and the State-Owned Enterprise law, then with the capital ownership of up to 100% by the local government, then it will foster discretionary practices by the Regional Government and resulting in the poor development of the Bank as it is full of politics.

There are some portions of share ownerships in Regional Development Bank. Law No. 19 Year 2003 regarding State-owned Enterprise and Government Regulations No 54 Year 2017 regarding Regional-Owned Enterprise requires the association company is State-owned Enterprise in the form of incorporated company whose capitals are divided in shares which the whole or at least 51% (fifty one percent) of the shares are owned by the Republic of Indonesia with the main objective of gaining profit. This regulation is similar to the Government Regulation No 54 Year 2017 Article 5 Paragraph (2) which states that the Regional Association Company is a State-Owned Company in the form of incorporated company with the whole or at least 51% (fifty one percent) of its capital is owned by 1 (one) region.
Whereas, the Banking Law No 7 Year 1992 Jo Law No. 10 Year 1998 which is strengthened by The Regulation of Bank Indonesia Number 14/ 8/ 2012 regarding the share ownership of commercial bank and The Regulation of Financial Service Authority Number 15/PJOK.03/ 2016 regarding Share ownership of Commercial bank for each shareholders category is stated as 40% (forty percent) from the whole bank’s capital, for the shareholder category of Financial Institutions as Bank and non-Bank Financial Institutions.

The writer believes that Reformulation of regulations concerning Regional Development Bank shares ownership by the Regional Government is important to be equalized. Regional Development bank as Regional-Owned Enterprise which is subject to Incorporated Company Law No. 40 of 2007 and the Government Regulation of Regional-Owned Enterprise, Banking Law, Regulation of Bank Indonesia, Regulation of Financial Service Authority should be given legal certainty so that in running its business, the Bank can continue to flourish rapidly in its objective as a driving force of the regional economy and the source of Regional Original Revenue. As subject to the Government Regulation of Regional-Owned Enterprise, the contents of article 5 paragraph (2) which states that the Regionally Owned Company is a Regional-Owned Enterprise in the form of a Incorporated company whose capital is divided into shares with the whole or at least 51% (fifty one percent) of the shares is owned by 1 (one) Regions can be replaced with at least 40% (forty percent) of their shares owned by 1 (one) Region. This meant to avoid inconsistency and confusion of both Regional Development Bank in developing their capital and Regional Governments throughout Indonesia as the Bank’s shareholders. With the limitation of Regional Development Bank’s share ownership by local governments will reduce the practice of discretion by the Regional Government and the Bank will no longer be laden with politics in its development. In addition, the well-being level of the Bank is also well maintained as has been explained in the previous sub-chapter.
Conclusion

Juridical implications of the inconsistency of regulations regarding Regional Development Bank (RDB) shares ownership by regional governments in Indonesia have an unfavorable impact on the Bank and resulted in the existence of rights, obligations and legal relations arising from inconsistency of regulations regarding Regional Development Bank’s shares ownership by the Local Government in Indonesia. Answering the second problem statement, based on the principle of Lex specialit derogae legi generali, means that the specific legal rules are considered valid although contrast to general legal rules. The Regulation of Financial Service Authority provisions deviate from the Government Regulations provisions and the Regional Government Law as they are more specific in accordance with the authority to bind the Regulations issued by the Financial Service Authority in accordance with the law.

Reformulation of regulations regarding share ownership in Regional Development Banks (BPD) by Regional Governments in Indonesia with legal certainty in the form of the same legal provisions for all Regional Development Banks. Regional Development Banks as Regional-Owned Enterprise which is subjected to Incorporated Company Law No. 40 of 2007 and the provisions of Government Regulations of Regional-Owned Enterprise, Banking Law, Regulation of Bank Indonesia, Regulation of Financial Service Authority should be given legal certainty as to encourage the banks to rapidly grow in running the business to achieve the objective as the driving force of the regional economy and the source of Regional Original Revenue. As subject to the provisions of Government Regulation of Regional-Owned Enterprise the contents of article 5 paragraph (2) which states that the Regionally Owned Company is a Regional-Owned Enterprise in the form of a Incorporated company whose capital is divided into shares with the whole or at least 51% (fifty one percent) of shares is owned by 1 (one) Regions can be replaced with at least 40% (forty percent) of their shares should be owned by 1 (one) Region. This is meant to avoid inconsistency and confusion of both Regional Development Bank in developing their capital and Regional Governments throughout Indonesia.
as the Regional Development bank’s shareholders. Therefore, the limitation of Regional Development Bank’s share ownership by local governments will reduce the practice of discretion by the Regional Government and The Banks’ development will no longer be laden with politics. In addition, the level of the Bank’s well-being is also well maintained as explained in the previous sub-chapter. Thus, a common perception is needed for Regional Governments throughout Indonesia regarding the reformulation of legal arrangements of Regional Development Bank’s share ownership by Regional Governments throughout Indonesia with legal certainty.

**Bibliography**


*Article 54 of Act no 7 of 1992 concerning Banking in conjunction with Act no 10 of 1998.*

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