



## **Urgency of Regulation on Bankruptcy Applicants for Regional Public Companies**

### **Urgensi Pengaturan tentang Pemohon Kepailitan bagi Perusahaan Umum Daerah**

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**Abstract:** The absence of a clear legal framework governing the authority to initiate bankruptcy proceedings against Regional Public Companies (*Perusahaan Umum Daerah*, or *Perumda*) has resulted in a normative gap that undermines legal certainty and institutional accountability. This article explores the urgency of establishing a new normative order (*ius constituendum*) concerning eligible bankruptcy petitioners against *Perumda* by critically examining its legal standing within Indonesia's economic and public law system. Employing a normative juridical method that integrates statutory and conceptual approaches, this research applies systematic and grammatical interpretations to relevant primary and secondary legal sources. The findings reveal that the lack of explicit legal norms not only exposes *Perumda* to arbitrary actions and potential misuse of authority but also jeopardizes creditor protection and public service continuity. The study concludes by advocating for a firm regulatory framework that delineates clear procedural safeguards, thereby reinforcing the function of law as an instrument of justice and public interest protection.

**Keywords:** Bankruptcy; *Ius Constituendum*; Legal Vacancy; *Perumda*

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## **INTRODUCTION**

Regional Public Companies (*Perumda*) as a form of Regional Owned Enterprises (BUMD) have a strategic position in the Indonesian economic system, in line with the mandate of Article 33 of the 1945 Constitution which emphasizes that branches of production that are important to the state and that control the lives of many people must be controlled by the state (Syam et al., 2019, p. 300). *Perumda* is formed on the basis of ownership of separated regional assets, and aims not only to make a profit, but also to provide public services and improve the welfare of the community. However, in reality, many *Perumda* experience business failure due to poor governance, debt burden, or financial imbalance, which in extreme cases can lead

to bankruptcy. The issue becomes complex when legal regulations have not explicitly provided clear mechanisms and procedures related to bankruptcy petitions against Perumda, especially those that are not in the form of a company.

Previous research shows that bankruptcy studies of state or regionally owned enterprises are mostly focused on BUMN or BUMD in the form of limited liability companies. Study by I. Septiningsih, et al (2021) in a Normative Study on the Comparison of Bankruptcy Mechanisms of SOEs and BUMDs emphasizes that the bankruptcy of BUMD holding subsidiaries has implications for the need to reconstruct general confiscation arrangements, especially due to the complexity of the relationship between parent and subsidiary in the BUMD legal structure (Septiningsih et al., 2022, p. 5207). On the other hand, research by I. Prakas Karlesta, (2019) examines the legal aspects of bankruptcy objects, but its main focus lies on the status of intellectual property as an object of bankruptcy, without emphasizing the position of Regional Public Companies (Perumda) explicitly as debtors in the bankruptcy process (Ilham Prakas Karlesta, 2019, p. 21). The two studies have not directly discussed the urgency of forming norms regarding who is authorized to file a bankruptcy petition against Perumda, which does not have a corporate form and is fully owned by the local government. The research gap lies in the absence of a comprehensive analysis of the legal status of Perumda in national bankruptcy law, as well as the unavailability of a specific normative construction regarding who is a valid petitioner in bankruptcy cases against Perumda. This leads to confusion in legal practice, especially when a Perumda experiences serious liquidity difficulties but there is no definite legal mechanism to legally declare its bankruptcy in the commercial court. Thus, the novelty of this research is to offer a new legal approach in the form of a proposed positive norm (*ius constituendum*) that can specifically regulate the party authorized to file a bankruptcy petition against a Perumda. This research not only seeks to fill the void of bankruptcy law literature on local public enterprises, but also contributes to the formulation of legal norms that are fairer and more proportional to Perumda as regionally-owned autonomous entities.

The urgency of this research becomes even stronger when realizing that the legal vacuum regarding bankruptcy petition for Perumda can lead to serious legal uncertainty, both for creditors, local governments, and the public users of Perumda services. Potential losses to the local economy and loss of public services are direct consequences of this legal irregularity. In addition, the absence of positive norms governing such matters creates a wide room for interpretation and is prone to abuse, potentially undermining the integrity of local financial

governance and local economic stability. Thus, this research is important to encourage the formation of new norms (*ius constituendum*) that can provide clarity, certainty and fair legal protection.

The main legal problems to be studied in this research are: What is the urgency of regulation on bankruptcy petition for Regional Public Companies (Perumda)? and What is the ideal regulatory concept regarding bankruptcy petition for Perumda so as not to create a legal vacuum and still maintain public accountability and protection for related parties? These two questions will be the main focus in an effort to explain the legal position of Perumda within the framework of bankruptcy and the need for relevant regulatory reformulation.

This research aims to comprehensively analyze the urgency of legal arrangements related to bankruptcy petitions for Perumda and formulate the right concept and legal framework in regulating bankruptcy petitions against Perumda. This objective is expected to provide a theoretical basis and practical recommendations for the central government, local governments, and other stakeholders in designing bankruptcy legal policies that are inclusive and equitable for regional public entities.

## **RESULT AND DISCUSSION**

### **Implementation of the Prudential Principle in Credit Disbursement Based on Article 8 in Conjunction with Article 2 of the Banking Law**

A Regional Public Company (Perumda) is a form of Regional-Owned Enterprise (BUMD) designed to fulfill two main objectives: serving the public interest and promoting regional economic growth (Rustini, 2022, p. 434). Within the framework of the national economic system, the role of Perumda is crucial as it performs public service functions in strategic sectors that are not always attractive to private investors, such as clean water distribution, public transportation, and traditional market management (Rodiyah, 2018, p. 581). This function is in line with the mandate of Article 33 of the 1945 Constitution, which emphasizes that branches of production that are important to the state and that control the lives of many people must be controlled by the state or local governments (Hukumonline, 2024). Therefore, the existence of Perumda is not just an economic instrument, but also a tool of public policy at the local level.

Legally, the position of Perumda cannot be equated with a limited liability company (PT), the fundamental difference lies in the capital ownership and establishment orientation (Tempi.co, 2022). If a PT is profit-oriented and can be owned by individuals or other legal entities, then a Perumda is fully owned by the local government and established based on a

Regional Regulation (Perda). This shows that Perumda has a strong public nature, where its business decisions must also consider social aspects and community services, not solely profit (Herlindah & Darmawan, 2022, p. 19). This also has a direct impact on its forms of accountability, supervision mechanisms, and legal treatment, including in the event of disputes or bankruptcy.

These special characteristics cause Perumda to be subject to the principles of regional financial management and the principle of public accountability, as part of the separated regional assets, Perumda's financial management is within the scope of supervision of the regional legislature and executive (Vanny et al., 2024, p. 82). Therefore, when a Perumda faces a financial crisis that leads to the possibility of bankruptcy, the legal issues that arise not only concern business viability, but also public liability, potential state losses, and the sustainability of public services. In this context, the legal position of Perumda becomes complex and requires a different legal approach compared to ordinary private enterprises.

Unfortunately, until now there has been no positive legal regulation that specifically addresses the bankruptcy mechanism for Perumda. Law No. 37/2004 on Bankruptcy and PKPU only regulates business entities in general without recognizing the specificity of public enterprises such as Perumda (Indonesia, Pemerintah Pusat, 2004). This norm vacuum has serious implications for legal uncertainty, especially regarding who is authorized to file a bankruptcy petition, how the process is conducted, and how the protection of public interests is guaranteed. Regulations that do not differentiate the character of business entities will lead to unfairness in legal treatment and risk disrupting the public service functions carried out by perumda.

### **Legal Vacuum in Perumda Bankruptcy**

One of the main issues in Indonesia's bankruptcy legal system is the absence of an explicit regulation on the mechanism of bankruptcy petitions against Regional Public Companies (Perumda). Law No. 37/2004 on Bankruptcy and PKPU only mentions debtors in a general sense without providing exceptions or explanations about public business entities such as Perumda (Sukarja et al., 2020, p. 572). As a result, when a Perumda experiences insolvency and is unable to pay its debts, there is no definite legal path to resolve it through a bankruptcy mechanism (Wahyuni et al., 2024, p. 36). This creates legal uncertainty, both for internal Perumda parties and external creditors who have bills.

The legal characteristics of Perumda are indeed different from other business entities, such as Limited Liability Companies (PT), which are subject to the provisions of Law No. 40/2007 and can be made the subject of bankruptcy petitions without ambiguity (Indonesia, Pemerintahan Pusat, 2007). In contrast, Perumda is a public legal entity established by Regional Regulation and managed based on regional financial management principles. Therefore, Perumda's position in the legal structure is unique and has not been explicitly accommodated in the current bankruptcy legal regime (Indrayati & Lestari, 2021, p. 53). Perumda's legal status is in a gray area because on the one hand it operates like a corporation, but on the other hand it is subject to the principles of local government administration.

Due to the absence of positive norms governing who is authorized to file a bankruptcy petition against a Perumda, various interpretations arise. Is it the Regional Head as the full owner of the capital, or the director of Perumda on behalf of the legal entity? In practice, many bankruptcy petitions against Perumda have been rejected by the court because they do not fulfill the legal subject element in the Bankruptcy Law. This is a serious problem because creditors' rights can be neglected, and the Perumda itself has no certainty of debt settlement. This legal loophole risks opening up opportunities for abuse of authority and legal injustice in the resolution of commercial disputes involving regional public entities.

Furthermore, this situation also causes an imbalance between Perumda and other BUMDs in the form of limited liability companies. BUMDs in the form of PT can be bankrupted through generally applicable mechanisms, while Perumda cannot (Purwoko, 2021, p. 203). Both are entities that perform public service and economic functions. This difference in legal treatment creates discrimination that is not in line with the principle of equality before the law. In the long run, the absence of this regulation can also damage the regional investment climate, as investors or creditors do not have a clear guarantee of legal protection when transacting with Perumda.

Therefore, the establishment of a new legal norm (*ius constituendum*) that specifically regulates the bankruptcy mechanism for Perumda is urgent. This regulation should include affirmation of who is authorized to file a petition, the requirements and procedures, as well as the form of protection for the public interest carried out by Perumda. This legal reform is essential to create legal certainty and realize the principle of justice in modern and accountable local economic governance.

## **Relevance of Legal Certainty and Authority Theory in the Context of Perumda**

Legal certainty is a basic principle in the legal system that ensures that every legal action, right, and obligation must be predictable based on the applicable rules (Lestari, 2025, p. 177). In the context of Regional Public Companies (Perumda), the absence of norms that explicitly regulate who is authorized to file for bankruptcy has created a gray area that violates the principle of certainty. When legal mechanisms do not provide firm direction, creditors, courts, and local government officials are hesitant to act; the law should not make people hesitate, but rather should be a guiding light in social life.

In addition to legal certainty, the theory of authority is also very important in this issue. Perumda as a public entity is subject to management by the local government, so any legal action, including the filing of a bankruptcy petition, must be carried out by a party with legal authority. According to Philipus M. Hadjon (1987), authority is the basis of legality of legal actions, which must come from legal attribution, delegation, or mandate (Arum, 2023, p. 156). When this authority is not normatively regulated, there is a possibility of conflict of interest between the regional head, Perumda management, and external parties such as creditors. As a result, legal processes such as bankruptcy petitions can be used as political tools or forms of unobjective economic pressure.

Therefore, a firm regulation regarding the authority to file for bankruptcy against Perumda is urgent. The formulation of new norms (*ius constituendum*) is needed in order to provide legal certainty and prevent potential abuse of authority by unauthorized parties (Indraswari, 2024, p. 122). The norm should also take into account the principle of regional autonomy, so as not to disturb the balance between the central government's control function and the independence of local governments in managing their public wealth and assets. In the long run, fair and clear regulations will strengthen public trust and maintain the stability of services organized by policy instruments.

## **Urgency of Formulation of New Legal Norms (Ius Constituendum) Related to Bankruptcy Applicants of Perumda**

The absence of legal norms that explicitly regulate who is authorized to file a bankruptcy petition against a Perumda has created a significant legal vacuum (Syahrul et al., 2023, p. 218). This situation not only creates uncertainty in practice, but also creates potential conflicts between internal local government parties, creditors, and the courts. In fact, as public entities, Perumda can still experience financial failure like private business entities, and should have access to legal debt settlement mechanisms, including bankruptcy. Therefore, it is necessary to formulate new norms (*ius constituendum*) that specifically respond to the specificity of Perumda's legal status.

This new norm is important to answer the fundamental question: who is authorized to file for bankruptcy? Is it the regional head as the owner of the separated regional assets? Or the Perumda management based on legal mandate? Without clarity, such authority is vulnerable to being contested and abused, especially in dynamic local political situations. Highlighting that the absence of specific arrangements for public entities in bankruptcy law may open up space for non-legal intervention in the debt dispute resolution process. Therefore, the existence of a new norm will be an important legal filter in maintaining the neutrality and objectivity of the bankruptcy process against Perumda.

In formulating the norms, it is also necessary to consider technical arrangements governing insolvency criteria specific to Perumda. For example, it is necessary to distinguish between Perumda that are experiencing financial difficulties due to business mismanagement, and Perumda that are forced to lose money because they are performing social functions or public services. If equated with pure commercial enterprises, Perumda can be insolvent only due to short-term cash imbalances that should still be tolerated by local governments. Therefore, the norm formulation should also reflect the protection of the social mission carried out by Perumda.

Moreover, the new norms should also establish verification and supervision mechanisms to ensure that bankruptcy proceedings against Perumda are not abused by external parties or used as a tool of political pressure on local governments

(Anggara, 2024, p. 114). The regulation should ideally stipulate preventive procedures, such as prior mediation obligations, involvement of regional supervisory authorities, and special provisions on the protection of vital assets related to public services. That way, the norms not only provide legal certainty, but also prevent systemic damage to public services due to uncontrolled bankruptcy processes.

With specific new regulations in place, the national legal system will be better equipped to handle legal dynamics at the local level, particularly in relation to public enterprises. This more adaptive legal order will strengthen the principle of procedural justice and emphasize the boundaries of authority between public and private actors. Bankruptcy law reform for local entities is not only a matter of technical adjustments, but also strengthening the structure of state governance in favor of the interests of the people. Therefore, the establishment of this new norm is not just an option, but an urgent need in maintaining the integrity of public services run by *perumda*.

### **Realizing Legal Certainty and Protection through Regulatory Reformulation**

Problems related to the absence of clear normative arrangements regarding the parties authorized to file bankruptcy applications against *Perumda* are not just technical issues, but touch the strategic dimensions of local governance and protection of public services. *Perumda* is a state instrument that carries out a social function, so its sustainability does not only concern economic aspects, but also public welfare (Saputra & Jamaludin, 2023, p. 22). When regulations do not provide legal certainty, what is at stake is not only the continuity of the business entity, but also regional financial stability, government credibility, and public trust. The bankruptcy legal system needs to accommodate the specificity of public entities to ensure a balance between the principles of economic efficiency and social service functions (Saraya et al., 2025, p. 156).

Therefore, regulatory reformulation in the form of new norms (*ius constituendum*) is a crucial step in building a more responsive, fair and accountable legal system (Rahman et al., 2022, p. 241). The regulation needs to be drafted with an interdisciplinary approach that considers juridical, administrative, and socio-economic aspects, so as to be able to answer the complexity of *Perumda*'s position in the national legal system. This research is expected to provide a conceptual contribution as well as a practical reference for policy makers in formulating legal rules that favor legal certainty and sustainability of public services. Thus,



the law is no longer a source of confusion, but instead a reinforcing tool in realizing good regional governance and adaptive to changing times.

## CONCLUSION

This study finds that the lack of explicit legal provisions identifying the authorized parties to initiate bankruptcy proceedings against Regional Public Companies (*Perumda*) constitutes a significant normative gap within Indonesia's bankruptcy framework. This legal uncertainty risks unequal treatment between public and private entities and may create opportunities for misuse of authority that undermines public interest and regional economic resilience. Given *Perumda*'s distinct legal status and its function in delivering essential public services, it should not be treated under the same legal parameters as private enterprises. The principal contribution of this research lies in its normative proposal to formulate a *ius constituendum* that specifically addresses the insolvency framework for *Perumda*—clarifying procedural authorities, safeguarding public assets, and ensuring institutional accountability. This conclusion underscores the need for adaptive legal reforms that respond to the evolving nature of regional governance while reinforcing the protective role of law in balancing state duties and public welfare. These insights may serve as a foundation for future legislative developments and policy deliberations aimed at strengthening the legal architecture of public enterprises.

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