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Optimizing Village-Owned Enterprises in Indonesia: Legal Scheme and Best Practices for Sustainable Performance

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In an effort to encourage economic growth, the village can establish a business entity named village-owned enterprises (BUMDes). BUMDes was founded on the initiative of the Government of the village and the villagers in accordance with the potential, and community needs of the village. This study was conducted to analyze the legal scheme of BUMDes in Indonesia based on current regulations as well as the factors that support the implementation of BUMDes. This study was design using qualitative method which include interview, direct observation, and statute approach. The research results that using limited partnership as BUMDes business unit is the best way to maintain BUMDes performances. The research about BUMDes recently only concerning the legality or policy, the article provide different perspective about BUMDes and how to manage.

Keywords: Village-owned enterprises, Economic growth, Legal scheme, Limited partnership, BUMDes management

INTRODUCTION

⁹ National development aims to create a just, prosperous, and thriving community with active participation from all components of the nation, including the smallest unit of government, the village or "desa" in Indonesian. The "desa" ⁶ is a legal community that has a defined boundary and is authorized to manage government affairs and community interests based on the initiative of the community. The purpose of village development, as stated in the ¹⁷ Indonesian Village Law No. 6 of 2014, is to improve the welfare and quality of life of the rural community, alleviate poverty by fulfilling basic needs, developing village infrastructure, expanding local economic potential, and utilizing natural resources and the environment in a sustainable manner [1].

The Village Law also provides the "desa" with the authority to establish a village-owned enterprise called the "BUMDes." The BUMDes ² is a business entity wholly or partially owned by the village through direct participation from the village's wealth, which is separated to manage assets, services, and other businesses for the maximum welfare of the community [1].

The establishment of the BUMDes is intended to encompass all economic and/or public service activities managed by the village and/or cooperation between villages. The purposes of the BUMDes are to increase the village's economy, optimize village assets for the welfare of the community, enhance community businesses in managing the village's economic potential, develop business cooperation plans between villages and/or with third parties, create opportunities and market networks to support the community's public service needs, create employment opportunities, improve public services, promote economic growth and distribution in the village, and increase the village's income and revenue [2].

When establishing a village-owned enterprise or "BUMDes," potential and needs of the rural community must be considered, and it should be initiated by the village government or community. The establishment of BUMDes that aligns with the village's potential and needs can accelerate achieving development goals and increase the community's economic income.

Implementing BUMDes requires optimizing communication and coordination among village institutions, namely the Village Consultative Body and the Village Head. The Village Consultative Body plays a critical role in gathering and formulating the aspirations of the community through the Musrenbang (Development Plan Deliberation) and is essential in creating village regulations that serve as legal foundations for BUMDes [3].

BUMDes is a legal business entity that can take on the form of a Limited Liability Company (PT) or Microfinance Institution (LKM). Although BUMDes is profit-oriented, its focus is on supporting the welfare of the rural community rather than solely pursuing profit, unlike other commercial entities [4]. Choosing the appropriate legal form for BUMDes is crucial in achieving its intended goals, whether in the form of a legal entity or not, as regulations state that a BUMDes can have business units with or without legal status. Thus, the legal construction of establishing BUMDes and the supporting factors are essential questions that need to be addressed.

LITERATURE REVIEW

Review on village

A village or "desa" in Indonesian is a legal community with defined borders authorized to govern and manage local government affairs and community interests based on community initiative, ancestral rights, and/or traditional rights recognized and respected in the system of government of the Republic of Indonesia. The village government consists of the Village Head,

Village Consultative Body, Village Community Institutions, and customary institutions. The Village Head, as stated in Article 26, paragraph (1) of Law No. 6 of 2014, has the task of organizing the village government, implementing village development, fostering community, and empowering the village community, while the village officials assist the Village Head in performing tasks and exercising authority. Village Consultative Body is a government body whose members are representatives of the village residents based on democratic representation, with functions such as discussing and agreeing on draft village regulations with the Village Head, gathering and channeling community aspirations, and monitoring the performance of the Village Head [1].

To strengthen the village-level institutional performance, promote community empowerment, and increase participation, the Village Government and/or Village Consultative Body facilitate village deliberations, a forum for the Village Consultative Body, Village Government, and village community elements to deliberate strategic matters related to village government.

According to Article 33 of Law No. 6 of 2014 concerning Villages, the village's authority includes governance, village development, community building, and community empowerment based on community initiative, ancestral rights, and village customs.

In summary, the "desa" is a legal community that is authorized to govern and manage local government affairs and community interests based on community initiative, ancestral rights, and/or traditional rights. The village government consists of the Village Head, Village Consultative Body, Village Community Institutions, and customary institutions. The Village Consultative Body is responsible for discussing and agreeing on draft village regulations with the Village Head, gathering and channeling community aspirations, and monitoring the performance of the Village Head. Village deliberations are facilitated by the Village Government and/or Village Consultative Body to strengthen institutional performance, promote community empowerment, and increase participation. The village's authority includes governance, village development, community building, and community empowerment based on community initiative, ancestral rights, and village customs.

Village Finance and Revenue

According to Article 71 of Law No. 6 of 2014, village finance encompasses all village rights and obligations that can be assessed with money, including all forms of money and goods

related to the implementation of village rights and obligations. These rights and obligations generate income, expenditure, financing, and management of village finance. Article 72 states that village income sources include:

- a. Village own-source revenue consisting of business profits, asset gains, self-help and participation, mutual aid, and other village own-source revenue;
- b. Allocation from the State Revenue and Expenditure Budget;
- c. Share of regional taxes and levies from the district/city;
- d. Village Fund allocation, which is part of the balance funds received by the district/city;
- e. Financial aid from the Provincial and District/City Revenue and Expenditure Budgets;
- f. Non-binding grants and donations from third parties; and
- g. Other valid village income.

In summary, village finance comprises all village rights and obligations that can be assessed with money. These generate income, expenditure, financing, and management of village finance. Village income sources include various revenue streams such as village own-source revenue, state budget allocation, regional taxes, and levies, village fund allocation, financial aid, grants, and donations.

Overview of Village-Owned Enterprises in Indonesia

According to the Village Law, a village can establish a Village-Owned Enterprise (BUMDes) with the agreement of the village institutions, including the Village Consultative Body (BPD) and the Village Government, in the form of a Village Regulation on BUMDes [5]. BUMDes is a business entity that is owned either wholly or largely by the village through direct participation, which is sourced from the village's assets, services, and other businesses, aimed at promoting the maximum welfare of the village community [1]. As an economic institution, BUMDes has its own distinctive features that set it apart from other economic institutions. These features include that the business entity is owned and managed jointly by the village, with 51% of the business capital coming from the village and 49% from the community through participation in capital, and its operations are based on local cultural business philosophy (local wisdom) and market potential [5].

The profits from BUMDes are used to develop businesses and village infrastructure, empower the village community, and provide assistance to the poor through grants, social aid, and revolving funds determined in the Village Budget [1]. The establishment of BUMDes is

based on a village deliberation agreement, which is documented in the Village Deliberation Agreement Minutes signed by the Chairman of the Village Consultative Body and the Village Head. The results of the village deliberation agreement serve as a guide for the Village Government and the Village Consultative Body to establish Village Regulations on BUMDes [4]. The initial capital of BUMDes comes from the Village Budget, and the wealth of BUMDes is separated and not divided into shares [6].

The BUMDes capital consists of two parts, including village participation and community participation, and is sourced from the Village Budget and other sources [7]. The management organization of BUMDes is separate from the village government organization. The BUMDes management organization consists of a supervisor who serves ex officio as the Village Head and operational staff who are appointed and dismissed by the Village Head. The operational staff are prohibited from holding positions that execute the functions of the village government institutions and village community institutions [7].

Concept of Business Entity and Legal Entity

In legal terms, a business entity can be classified as either a legal entity or a non-legal entity. A legal entity is an entity with its own distinct and separate assets from those of its founders, while a non-legal entity does not have separate assets from its founders. A legal entity is a legal subject according to the juridical concept, a human-created entity based on the law, with rights and obligations like a human being.

According to Wirjono Projodikoro, a legal entity is an entity that is considered capable of acting in law alongside individual human beings, and which has legal rights, obligations, and relationships with other persons or entities. Sri Soedewi [8] argues that a legal entity is a collection of people who together establish an entity (an association) and a collection of wealth that is separated for a specific purpose (a foundation). The experts in law [8] suggest that a legal entity should have separate wealth from individual wealth, a specific purpose, legal interest of a group of people, and an organized structure.

There are various forms of legal entities, such as Limited Liability Companies (LLCs), cooperatives, State-Owned Enterprises (SOEs), foundations, and Microfinance Institutions (MFIs). The Limited Liability Company is regulated by Law No. 40 of 2007, and it is a legal entity formed by an agreement among capital contributors with their shares wholly divided. Cooperatives are legal entities based on cooperative principles and serve as a people's

economic movement. SOEs are state-owned businesses with either direct or indirect investment by the government. Foundations are legal entities consisting of separated assets for a specific purpose in the areas of social, religious, and humanitarian issues. MFIs are financial institutions that are established to provide services to support and empower small-scale businesses and communities. The legal requirements and definitions of each type of legal entity are described in Indonesian legislation.

METHODS

The researcher used a socio-legal research approach in this study [9], which involves analyzing legal theories and regulations and examining their real-world application. The study focused on the legal framework for village-owned enterprises (BUMDes) within the context of local government [10]. The study was conducted in Kecamatan Candi, Kabupaten Sidoarjo, Provinsi Jawa Timur, based on the area's high number of villages, population, and proximity to Surabaya [11]. The sample for the study was chosen using purposive sampling based on the researcher's subjective evaluation of individuals with adequate knowledge and data on BUMDes and their implementation [12]. The data collected included ¹⁷ primary data obtained through documentation and interviews with relevant stakeholders and secondary data from legal regulations such as the 2014 Law on Villages and its implementing regulations [13].

RESULT AND DISCUSSION

The Legal Construction Of Bumdes

The laws governing BUMDes in Indonesia have changed since the enactment of the Village Law No. 6 of 2014 (UU Desa). These changes began with the passing of ¹⁹ Government Regulation No. 43 of 2014 on the Implementation of Village Law No. 6 of 2014 (PP Desa), which replaced Government Regulation No. 72 of 2005 on villages. PP Desa provided the foundation for the emergence of Ministerial Regulation ¹⁸ No. 4 of 2015 on the Establishment, Management and Dissolution of Village-Owned Enterprises (Permen Desa), which repealed Ministerial Regulation No. 39 of 2010 on Village-Owned Enterprises. Additionally, Ministerial Regulation No. ²⁴ 5 of 2015 on the Prioritization of the Use of Village Funds in 2015 was introduced.

These regulatory changes have led to a shift in the concept of the village from having limited autonomy in governing to having greater autonomy [14]. The emphasis on village

autonomy is more pronounced in the UU Desa, particularly with the increased funding for villages, which has allowed them to explore new programs. Issues related to the development of BUMDes, such as finance and space constraints [15], should have been resolved with the increase in funding for villages.

However, these changes have legal implications for village officials who need to understand the mechanisms for the preparation, discussion, approval, implementation, monitoring, and accountability of village finances [16]. Understanding these mechanisms is crucial because procedural errors in village governance can result in corruption charges for village officials, as village finances come from the national or regional budget [17].

Some of the capital for BUMDes comes from the village itself. Therefore, caution and compliance with existing legislation is necessary if a village intends to establish a BUMDes. Starting from the establishment process, the type of business, the management system, and the dissolution process.

The process of establishing a BUMDes begins with a Village Meeting [2], attended by the Village Consultative Body, the Village Government, and members of the community [18]. The result of this meeting is a Village Regulation that regulates the BUMDes and contains the Articles of Association and Bylaws [2]. The BUMDes can then have a legal business unit. This business unit is limited to a Limited Liability Company or a microfinance institution [2]. The term "can" in this regulation means that a BUMDes is not required to have a legal business unit. Therefore, the organizational structure will depend on the agreement reached in the Village Meeting at the time of its establishment. This allows a BUMDes to have a business unit that is not a legal entity, such as a general partnership or a limited partnership (CV).

From a business perspective, a BUMDes should not only focus on profit but also on meeting the needs of the village community [19]. For example, if a village needs clean drinking water, the primary business should be providing clean drinking water. However, this should be balanced with a profit-oriented business, such as acting as an intermediary for the sale of local agricultural produce. The regulations provide clear guidelines on the types of businesses that can be undertaken by a BUMDes, such as public service businesses (village water supply, village electricity, food reserves, etc.), rental businesses (multi-purpose buildings, shops, party equipment, etc.), intermediary businesses (intermediary for local products in the village market, intermediary for electricity payments, etc.), large-scale production or trading businesses (ice

factories, agricultural processing industries, rice mills, agricultural packaging factories, etc.), microfinance businesses (small-scale savings and loans, micro-credit facilities, etc.), and joint businesses with other villages or business units (holding companies) (tourist villages, creating noodle factories using raw materials from other unit).

The establishment of a BUMDes is determined through Musyawarah Desa and is regulated in the village regulations. The BUMDes organization includes a penasihat, a pelaksana operasional, and a pengawas. The penasihat, similar to a commissioner in a limited company, has a role in ensuring that the BUMDes remains within its AD/ART and providing advice to the pelaksana operasional. The pelaksana operasional is like a director who manages the BUMDes affairs and operates it according to its objectives, while the pengawas is like a general meeting of shareholders, which controls the appointment of the pelaksana operasional, the development of the BUMDes business, and evaluates it [2].

However, the requirement to become a pengawas is not clearly stated in the regulation, so it may cause a legal gap for outsiders to determine the BUMDes business direction. ²¹ The success of a BUMDes is largely determined by the policies of the village government, as the regulation states that BUMDes earnings are used for BUMDes business development, village development, community empowerment, and assistance to the poor. This regulation is controlled through AD/ART, which is decided during the BUMDes establishment. The BUMDes in China follows a similar model, where it is owned by villagers and controlled by the village government, with profits shared between the government and the villagers, and employees of the BUMDes also have a say in determining its direction [20]. The BUMDes should involve strong control by villagers, which will make them feel a sense of ownership over the BUMDes.

⁶ There is inconsistency regarding who is responsible for losses incurred by a Village-Owned Enterprise (BUMDes) between the Village Regulation and the Ministerial Regulation. According to the Village Regulation, the operational executive is responsible for losses, while the Ministerial Regulation states that BUMDes is accountable. The changes made to the Ministerial Regulation are beneficial since they position BUMDes as a legal entity, allowing bankruptcy laws to apply when it is dissolved. However, this contradiction creates a legal loophole that could cause problems if BUMDes experiences losses. Moreover, there is no clear

indication in the Articles of Association (AD/ART) about who represents BUMDes when dealing with legal matters, whether it is the village head or the operational executive [7].

Based on this information, several points can be summarized, including that BUMDes is a legal entity established by the Village Meeting through an AD/ART included in the Village Regulation. It is managed by an operational executive who is accountable to a supervisor and an advisor. BUMDes can have a separate legal entity for its business units and can use part of the village's finances from the government. If it becomes bankrupt or is dissolved, it can be subjected to bankruptcy laws.

Furthermore, it is not urgent for BUMDes to have a separate legal entity for its business units since BUMDes is already a legal entity. Therefore, it is recommended to focus on controlling the operational executive's actions. The limited partnership unit business model (CV) is suitable, with the operational executive as an active shareholder, as this can motivate them to perform their duties more effectively. As an active shareholder, they will be accountable for any losses, even if it means using their personal assets. However, they also have the right to a share of the profits.

Factors Supporting the Establishment of BUMDES

In Sidoarjo, which is one of the Indonesian districts with the most villages, the establishment of Village-Owned Enterprises (BUMDes) has significant potential. However, none of the villages in Sidoarjo have established BUMDes in compliance with the applicable legal regulations due to the lack of understanding among village officials regarding the Desa Regulation that governs BUMDes. Additionally, they do not fully understand the mechanism for formulating BUMDes in the Village Meeting and the legal structure of BUMDes according to regulations.

The fear of potential corruption charges that may arise if the BUMDes incurs losses or goes bankrupt is another issue. This fear is understandable, considering the rural culture of village communities that value their customs and traditions, and discussing the profits from their own needs is considered taboo. Therefore, legal education, especially corporate law, anti-corruption laws, and BUMDes regulations, is crucial.

Abundant resources are not the primary supporting factor. A village in Sidoarjo, Durung Bedug, proves that the provision of buildings and farmland from the government does

not necessarily lead to the establishment of BUMDes in the village. Motivation and knowledge of managing aid are also necessary, especially given the fear of experimenting with government assets. In this village, the residents have a thriving agricultural business, but the price is always manipulated by brokers because the village lacks effective management to purchase the residents' crops.

Thus, the primary supporting factors are knowledge of financial, human resource, and industrial management, as well as legal knowledge, including corporate law, anti-corruption laws, and BUMDes regulations.

CONCLUSION

As a legal entity, BUMDes can be maximized to improve the welfare of its citizens if it is managed with proper community control. Additionally, having a separate legal entity for business units may not be necessary, as BUMDes is already a legal entity. Therefore, it would be more beneficial to create a business unit in the form of a CV with active shareholders who are responsible for running the business.

However, one issue with BUMDes implementation in Indonesia, particularly in Sidoarjo, is the lack of legal education and awareness among village officials regarding corporate law, corruption, and BUMDes itself. More efforts are needed to provide proper education and information to improve BUMDes management and prevent legal issues.

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