

The Position of Village Owned Enterprises (BUMDes) Which Are Incorporated According To Law No. 11 of 2020 Copyright Work

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The Position of Village Owned Enterprises (BUMDes) Which Are Incorporated According To Law No. 11 of 2020 Copyright Work

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Abstract

Currently, the presence of business entities in Indonesia continues to increase in terms of quantity and form, and some are legal entities or not. Village-Owned Enterprises (BUMDes) are expected to improve the economy and public services to the community in the village. Law Number 6 of 2014 concerning Villages (UU Desa) mentions BUMDes as a business entity. The Business Entity in question is not specifically specified in the Village Law. This study aims to analyze the status of BUMDes as legal subjects and after the enactment of Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) and its implications because Article 117 of the Job Creation Law changed article 1 number 6 of the Village Law which previously referred to BUMDes as an agency business is converted into a legal entity.

Keywords

BUMDes; business entity;
legal entity



I. Introduction

Regional Autonomy is the authority of autonomous regions to organize and manage local communities according to their own initiatives based on community aspirations, in accordance with the laws and regulations. Regional autonomy given to district and city level areas is considered not to support significantly in the progress of national development because of various obstacles that one of the obstacles is not evenly distributed development in villages in the area, it is felt that there is a need for wider autonomy and closer to the community. Regional Autonomy is the authority of autonomous regions to organize and manage local communities according to their own initiatives based on community aspirations, in accordance with the laws and regulations. Regional autonomy given to district and city level areas is considered not to support significantly in the progress of national development because of various obstacles that one of the obstacles is not evenly distributed development in villages in the area, it is felt that there is a need for wider autonomy and closer to the community. Answering these problems, law No. 6 of 2014 on villages (village law), which began a new round of national development from the government unit closest to the community, namely the village.

Village according to Article 1 number 1 of the Village Law is a unitary legal community that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, origin rights, and/ or traditional rights that are recognized and respected in the system of government of the Unitary State of the Republic of Indonesia. The village already has its own system of government and social norms each managed in a swaprja without a hierarchical-systematic relationship with a higher system. Village government that structurally remains under the district / city remains part of the district / city regional

government, but the management of the village is carried out independently, the local government only as supervisors and builders in achieving regional development goals through village empowerment. One of the village development efforts begins with the development of village resources and finances so that the implementation of village government can be realized independently.

To support village development efforts, village finances according to Article 72 of the Village Law can be sourced from the following sources:

- a. The original income of the village consists of business results, asset results, self-help and participation, gotong-royong, and other village income;
- b. Allocation of state revenue and spending budget;
- c. Part of the local tax proceeds and district/city levy;
- d. Allocation of Village funds that are part of the balance fund received by the Regency / city;
- e. Financial assistance from provincial revenue and spending budgets and district/city revenue and spending budgets;
- f. Non-binding grants and donations from third parties; and
- g. Other legitimate village income.

The original income of the village as referred to by letter a above becomes one of the village's most vital financial sources because with high village income will become a better village economy and make the village become dependent without having to hang on from the local government. To support the original income of the village, the village is authorized to form a Village Owned Enterprise (BUMDes). BUMDes is like a Regional Owned Enterprise (BUMD), which is a company owned by the local government, in this case the village government.

In essence BUMDes is not a new thing, BUMDes has existed and is regulated in laws related to villages local governments before the Village Law was published in 2014. BUMDes has been regulated in Article 213 paragraph (1) of Law No. 32 of 2004 on Local Government which has now been amended by Law No. 23 of 2014, namely villages can establish village-owned business entities in accordance with the needs and potential of the village.

The Village Law and all its implementing regulations are considered to still have weaknesses regarding bumdes, one of which is about the type of business entity owned by BUMDes. Article 1 number 6 of the Village Law reads Village Owned Enterprises, hereinafter referred to as BUM Desa, is a business entity that is all or Most of its capital is owned by the Village through direct participation derived from the wealth of the village separated to manage assets, services, and other businesses for the maximum welfare of the village community.

In Article 1 number 6, BUMDes is only referred to as a business entity that makes bumdes position not strong like legal entities such as limited liability companies that make BUMDes have difficulty getting capital from banks and cooperation with other parties, and after the enactment of Law No. 11 of 2020 Cipta Kerja, how the form of responsibility of BUMDes that has been incorporated.

The Government with the House of Representatives (DPR) in 2020 made Law No. 11 of 2020 on Work Copyright (Work Copyright Law). The Copyright Law regulates various sectors and changes various articles in various laws, one of which is the Village Law. Article 117 of the Work Copyright Law amends Article 1 number 6 of the Village Law which was previously in the Village Law, BUMDes is referred to as a business entity, then in the Work Copyright Law, BUMDes is referred to as a legal entity.

The change is based, among others, by the problems that have been outlined before and with the change it will make changes in the status of BUMDes and their implications in the community.

II. Review of Literature

The theory used by researchers to analyze the legality and responsibility process of Village Owned Enterprises (BUMDes) to analyze legal certainty of the Establishment of BUMDes Legal Entity and its responsibility is a theory from Hans Kelsen who analyzes legal responsibility, which he calls traditional theory. In traditional theory, responsibility is divided into two types:

1. Responsibility based on errors; and
2. Absolute responsibility

Responsibility based on error is a responsibility that is distinguished to the subject of law or the perpetrator who committed an act against the law because of error or negligence (negligence or negligence). Negligence is a situation in which the subject of the law or the perpetrator is caught off guard, lacks caution, does not heed his obligations or forgets to carry out his obligations. The principle of absolute responsibility (strict liability) itself can be interpreted that business actors must be responsible for consumer losses without having to prove the absence of fault in him. Radbruch taught: "That we must use the principle of priority where the first priority always falls on justice, then expediency and lastly legal certainty".

Previous studies about the focus of research results and the difference between previously done research, so that later the results of previous research in the future will be able to be used as one of the foundations to make the right analysis. The first title of the previous study taken by the researcher was about "Establishment of BUMDes with Deed of Notary Incorporated Association". The conclusion of the author in the study mentions that the Village Law that has confirmed that the establishment of BUMDes was agreed through village deliberation and determined based on village regulations, which do not require the existence of notary deeds let alone bumdes deeds incorporated with association law.

The second previous research was titled "Status of Village Owned Enterprises as Legal Entities Upon the Promulging of The Work Copyright Law". In the research discussed the legality of BUMDes before the issuance of the Copyright Law and after the enacting of the Work Copyright Law where the status of BUMDes before the Copyright Law characteristically, BUMDes has been categorized as an incorporated business entity because it has fulfilled the characteristics of a separate property, has a specific purpose, has its own interests and the existence of an organized organization, but in the Village Law mentions that BUMDes is a separate entity. This is an attempt to cause obscurity in its legal certainty.

2 III. Research Methods

The research method used by the author in this legal research is normative juridical research, namely: it is a literature study of secondary data. Normative Juridical research methods, conducted by researching library materials or secondary data. The nature of this study is descriptive, i.e. a method used to describe or analyze a research result but not used to make broader conclusions.

IV. Results and Discussion

4.1 Bumdes Position as a Legal Entity in The Copyright Law

a. Settings on BUMDes in the Copyright Law

Article 1 number 1 of Law No. 11 of 2020 on Work Copyright (Work Copyright Law) describes the definition of work copyright, namely job creation efforts through the efforts of convenience, protection, and empowerment of cooperatives and micro, small, and medium enterprises, improving the investment ecosystem and ease of effort, and investment of the central government and acceleration of national strategic projects.

The purpose of promulgating the Copyright Law is as contained in the consideration section. The Copyright Law is expected to be able to absorb Indonesia's widest workforce amid increasingly competitive competition and the demands of economic globalization. Arrangements related to the amenity, protection, and empowerment of cooperatives and micro, small, and medium enterprises, the improvement of investment ecosystems, and the acceleration of national strategic projects, including increased protection and welfare of workers spread across various sector laws are currently unable to meet the legal need for accelerated work creation so changes need to be made.

The philosophical basis for the promulgation of the Copyright Law is based on Article 4, Article 5 paragraph (1), Article 18, Article 18A, Article 18B, Article 20, Article 22D paragraph (2), Article 27 paragraph (2), Article 28D paragraph (1) and paragraph (2), and Article 33 of the Constitution of the Republic of Indonesia year 1945. There are arrangements regarding BUMDes in the Ciptaker Law as stipulated in Article 117 of the Copyright Law which changes the provisions in Law No. 6 of 2014 on Villages Article 1 number 6 of Village Owned Enterprises, hereinafter referred to as BUM Desa, is a Legal Entity established by villages and/or together with villages to manage businesses, utilize assets, develop investments and productivity, providing services, and/or providing other types businesses for the maximum welfare of the village community.

As well as The Provisions of Article 87 of Law No.6 of 2014 on Villages which also regulates BUMDes amended in Law No. 11 of 2020 Cipta Kerja, so that it reads as follows:

Article 87

- (1) The village can establish BUM Village.
- (2) BUM Village as referred to in paragraph (1) is managed with a family spirit and togetherness.
- (3) BUM Village can conduct business in the field of economy and / or public services in accordance with the provisions of the laws and regulations.
- (4) BUM Village as referred to in paragraph (1) can form an incorporated business unit in accordance with the needs and objectives.
- (5) Further provisions regarding BUM Desa as referred to in paragraph (1), paragraph (2) paragraph (3), and paragraph (4) are regulated by government regulation.

Explanation of Article 117 paragraph (1) of the Ciptaker Law which changes the provisions in Article 87 of the Village Law explaining that bum village is formed by The Village Government to utilize all economic potential, economic institutions, and the potential of natural resources and human resources in order to improve the welfare of the village community. BUMDes specifically cannot be equated with legal entities such as limited liability companies, or cooperatives. Therefore, BUMDes is a business entity characterized by the Village which in the implementation of its activities in addition to helping the implementation of village government, as well as to meet the needs of the

village community. BUMDes can also carry out service functions, trade, and other economic development.

In increasing the village's source of income, BUMDes can collect savings on a local scale of the village community, among others through the management of revolving funds and savings and loans. BUMDes in its activities is not only oriented towards financial benefits, but also oriented to support the improvement of the welfare of the village community. BUMDes is expected to develop business units in using economic potential. In the event that business activities can run and develop properly, it is possible in time bumdes follow the legal entity that has been stipulated in the provisions of the laws and regulations.

b. Implications of Legal Entity Status on BUMDes

It is affirmed in the constitution that Indonesia has declared itself a state of law, which can be interpreted that in every carrying out state-run activities by the government, as well as in solving problems that occur in the community must be based on the applicable rule of law (*rule of the game*), and for all parties both the government and the community must comply with the existing rule of law. This is because in a country the laws of the community and the government are bound by the provisions of the laws and regulations because it has a binding nature and forces for the whole community to obey it.

Based on the Village Law and its implementation regulations, the establishment of BUMDes is only enough with the results of village deliberations which are then established based on village regulations. There is no requirement in the establishment of BUMDes made with notary deeds, but there is a linkage of the two rules, namely there is a notary authority to make deeds related to the establishment of bumdes business units that are incorporated such as limited liability companies and microfinance institutions and other authorities such as making deeds of cooperation agreement between villages and with third parties if desired by both parties.

The establishment of BUMDes cannot be equated with the establishment of other legal entities such as Limited Liability Companies (PT), Commanditaire Vennootschap (CV), Foundations and Cooperatives. This is because BUMDes is a legal entity that has its own characteristics and peculiarities that in the operation of its business activities in addition to for the implementation of village government, also to meet the needs of the village community through business in the field of economy (services, manufacturing and trade) through the placement of capital included by the Village Government and community statements with a ratio of 51% (fifty-one percent) and 49% (forty-nine percent).

The same is also explained in the explanation of Article 87 of the Village Law which states that:

"BUM Village specifically cannot be equated with legal entities such as Limited Liability Companies (PT), Commanditaire Vennootschap (CV), or Cooperatives. Therefore, BUM Desa is a village-characterized business entity that in the implementation of its activities in addition to helping the implementation of village government, as well as to meet the needs of the village community. BUMDes can also carry out service functions, trade, and other economic development..."

A legal entity is a body that can have the right and obligations to do its own deeds. Legal entities are legal subjects like people. Conditions that a body can be categorized as a legal entity, among others; The existence of wealth with a specific purpose that is separate from the personal wealth of allies or founders, interests that are the purpose is the

common interest, the existence of some people as administrators of the body. Legal entities can be classified into two major parts, namely public legal entities and civil law entities. Article 1653 of the Civil Code states that legal entities can be held by public power; legal entities recognized by the general power; and legal entities permitted and established for a specific purpose, which do not conflict with the law or decency.

In addition, BUMDes is also a central means of economic activity of the local village community and becomes one of the sources of village income by involving community entities to provide services to the village community. Therefore, although BUMDes in its business activities in the field of business, but its orientation is not solely for profit, but has the goal to provide services and empower the village community through the economic movement of the village by utilizing natural resources and human resources, in order to improve the level of welfare of the village community.

²⁶ The components in the village deliberation forum in the establishment of BUMDes consist of the Village Government, Village Consultative Agency, and Village Community Institute and other village institutions that include community leaders such as religious figures, indigenous, educators, communities, representatives of farmers groups, fishermen, craftsmen, representatives of women's groups, representatives of observer and child protection groups, as well as representatives of poor community groups.

BUMDes has characteristics as a legal entity not limited to business entities. This is reflected in Article 1 number 6 of the Village Law, Article 1 number 7 of Government Regulation No. 43 of 2014, and Article 1 number 2 of Permendes PDTT Number 4 of 2015 concerning the Establishment, Management and Management, and Dissolution of Village Owned Enterprises (Permendes PDTT), there are sentences of capital participation that are separated.

Therefore, to overcome the problem of bumdes status in bumdes village law as a business entity, through omnibus law in law no. 11 of 2020 on copyright work in Article 117 of the tenth part of the village owned enterprises changed the definition of Article 1 Number 6 of the Village Law:

"Village Owned Enterprises, hereinafter referred to as BUM Desa, is a Legal Entity established by villages and/or together with villages to manage businesses, utilize assets, develop investment and productivity, provide services, and/or provide other types of business for the maximum welfare of the village community.."

In the change has made it clear that BUMDes as a legal entity whose establishment is sufficient with village deliberation with the ratification of village regulations. Since the government issued Law No. 11 of 2020 on Copyright Work, the problem of BUMDes status as a legal entity has become clear bumdes as a legal entity.

Bumdes position after the Copyright Law as a New Entity Legal Entity whose position is equivalent to a Limited Liability Company (PT) is equivalent to a state-owned enterprise at the national level and BUMD at the regional level as described in The Explanation of Article 117 of the Work Copyright Law which amends Article 787 of the Village Law that bumdes position as a legal entity cannot be equated with the Company and Cooperative. The expected Positive Impact on BUMDes' status as a legal entity includes:

1. Simplify village partnerships
2. Make it easier to promote the potential of the region
3. Accelerate regional economic improvement
4. Accelerate the success of the National SDGs.

4.2 Form of Responsible BUMDes Incorporated

With the enactment of Law No. 11 of 2020 on Copyright Work, the status of BUMDes automatically becomes a legal entity that has special characteristics that cannot be equated with other legal entities. Such as the status of SOEs is an incorporated company established based on laws and regulations that have been regulated by themselves

SOEs can be PT whose establishment refers to Law No. 40 of 2007 on Limited Liability Companies (UU PT) and Public Companies established based on government regulations. Likewise, BUMD has the status of a legal entity which if in the form of PT, then its establishment refers to the LAW of PT and regional companies established based on local regulations.

BUMDes who have been incorporated is a subject of its own law before the law and its responsibility is the responsibility of the company or the responsibility of BUMDes, as long as bumdes managers do not take actions beyond their responsibilities (ultra vires). If BUMDes is not an incorporated body, then the organization in BUMDes, namely Advisors, Operational Implementers, and Supervisors together have a role to participate in the responsibility to third parties with rent responsibility if BUMDes is unable to pay. This must be seen from the village regulations of each BUMDes studied.

BUMDes as a corporate organization requires a management organization that aims to carry out the functions and objectives of BUMDes itself. Therefore, BUMDes are also important to have a Management Organization structure chart. The Organization Chart is a visual aid on structural frameworks, which provides information about organizational patterns and details the responsibilities of each organ.

Bumdes Management Organization is separate from the Village Government organization. In Permendesa BUMDes it is said that the Operational Implementer has a responsibility to take care of and manage BUMDes in accordance with AD / ART. The responsibility signifies that the operational implementer must carry out his duties and roles in accordance with the limits of his authority (*intra vires*).

If reviewed based on the Village Asset Management Regulation, Article 4 paragraph (1) states that the Village Head as the holder of the village asset management power is authorized and responsible for the management of village assets. Furthermore, Article 4 paragraph (2) of the Permendagri explained that the Village Head as the holder of village asset management power has several authorities and responsibilities, one of which is to establish the use, utilization or transfer of village assets.

In the legal entity the actions of the manager cannot be equated with ordinary representatives or representatives with power of attorney. In legal entities are always represented by organs, in BUMDes, represented by operational implementers. The organ may bind the legal entity, if its actions are still within the limits of the authority specified by the articles of association. Legal actions taken by an organ outside the limits of its authority will cause the following problems:

1. The extent to which legal entities can be held accountable for the consequences that occur.
2. If the legal entity cannot account for it, it can be personally accounted for by the board of directors.

In legal acts committed outside the authority of the organ (*ultra vires*), the legal entity is not bound and irresponsible. So it is clear that bumdes management in hal This is an operational implementer who must be personally responsible if it is proven that his actions are beyond his authority.

The liability that an incorporated business entity may impose is the overall responsibility of each complementary ally specified in its basic budget. The legal term in the enactment of the principle of liability of this legal entity is limited by the separation of the company's property with the personal property of the owner or manager in the federal company's federal legal entity.

V. Conclusion

The purpose of the enacting of the Copyright Law is expected to be able to absorb indonesia's widest workforce amid increasingl competitive competition and the demands of economic globalization. Arrangements related to the amenity, protection, and empowerment of cooperatives and micro, small, and medium enterprises, the improvement of investment ecosystems, and the acceleration of national strategic projects, including increased protection and welfare of workers spread across various sector laws are currently unable to meet the legal need for accelerated work creation so changes need to be made.

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Based on the Village Law and its implementation regulations, the establishment of BUMDes is only enough with the results of village deliberations which are then established based on village regulations. The components in the village deliberation forum in the establishment of BUMDes consist of the Village Government, Village Consultative Agency, and Village Community Institute and other village institutions that include community leaders such as religious figures, indigenous, educators, communities, representatives of farmers groups, fishermen, craftsmen, representatives of women's groups, representatives of observer and child protection groups, as well as representatives of poor community groups.

Since the government issued Law No. 11 of 2020 on Copyright Work, the problem of BUMDes is whether in the form of business entities or incorporated entities has become clear bumdes as a legal entity. The form of bumdes accountability is incorporated, then the responsibility in the management of BUMDes in its legal actions in running bumdes company is the responsibility of BUMDes with the condition that the operational implementation is in accordance with the rules, namely getting approval from advisors and supervisory boards in accordance with their respective authorities (intra vires).

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