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## The Law Principles for Village-Owned Enterprises (BUMDes) Management in Indonesia to Improve the Village's Economy

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### Abstract

Toward the increase in village revenue sources, a post of published Law No. 6/2014 concerning Village, it is confirmed that the village can establish village-owned enterprises (BUMDes) based on family spirit and cooperativeness. Besides, BUMDes can run a business in the field of economic and/or public service in accordance with the provisions of the legislation. BUMDes is established by the village government to utilize all potential economic, institutional, natural, and human resources in order to improve the welfare of the villagers. In fact, implementation of the BUMDes management in some areas is not fully optimized, in many cases the problem is corruption. Therefore, we need a good management or governance practices to improving the livelihoods of the village. The study used statute approach, conceptual approach, and case approach. The conclusions of this study are directed to apply the concepts of strengthening national laws relating to the management of BUMDes in order to strengthen the village's economy in Indonesia and to achieve empowerment of rural community and reduce corruption that often occurs and harm the economy of the village.

**Keywords:** BUMDes; Village; Economic Empowerment Village

### I. INTRODUCTION

The course of government reform in Indonesia has led to shifts in the governance paradigm concerning theregional formation and community empowerment. It is motivated by the idea that Indonesia as a unitary state based on the principle of decentralization providing opportunities and flexibility for regions to organize their regional autonomy. Regional autonomy as a response to the changing demands of a centralized state policy pattern and authoritarian government is expected to empower the region to be better optimized. Thus, the burdens and activities in the region will be greater than it was in the past<sup>1</sup>.

In addition to affirming that the Unitary State of the Republic of is held in a decentralized manner, Article 18/1945 of the Constitution of the Republic of Indonesia 1945 (old version) also states that the implementation of decentralization should consider the diversity of social culture and the existence of native government units, such as village and *Nagari*, which prior to the establishment of NKRI has been living as an autonomous government based on customary laws<sup>2</sup>. On the basis of this recognition, a term of autonomy of the original exists. For instance, the authority of the village to regulate and manage their own household affairs, which are the right of origins/*hakasal-usul* sourced from customs that were attached to since the formation of the village<sup>3</sup>.

The struggle for the country's true sovereignty goes hand-in-hand with a less-apparent struggle of the

1. Bayu Surianingrat, 1992, *Pemerintahan Administrasi Desa dan Kelurahan*, Cet.IV, Jakarta: Rineka Cipta, p. 140.
2. Philipus M. Hadjon, *et.al*, 2001, *Pengantar Hukum Administrasi*, cetakan ketujuh, Yogyakarta: Gadjah Mada University Press, p.111
3. Bayu Surianingrat, 1992, *Pemerintahan Administrasi Desa dan Kelurahan*, Cet.IV, Jakarta: Rineka Cipta, p.140.

university's autonomy (Osipian, 2017). Exercising the autonomy implies assuming responsibility (Maier, 2014). The positive effect of autonomy on product innovation is highest for innovations that are new to the subsidiary and lowest for product innovations but are new to the world (Beugelsdijk & Jindra, 2018). Crown land governments are the main organs of self-government by regional groups within the empire, capitalized on this opportunity, as are the members of the psychiatric profession who were based in the regions (Topp, 2007).

Disregulation of autonomic control often develops with advancing age, favoring a chronic state of heightened sympathetic outflow with parasympathetic withdrawal. However, the mechanisms of this age in relation to autonomic impairment are not known (Wood, Badrov, Speechley & Shoemaker, 2017).

Based on the provisions of Article 1 Paragraph 1 of Law no. 6 /2016, what is included as a villages are villages and traditional villages or called by other names, hereinafter called the villages, that is to say a unit of community that has boundaries with the authority to regulate and manage the affairs of government, the interests of local community based on community initiatives, the right of the origin, and/or traditional rights recognized and respected in the system of government of the Republic of Indonesia".

In the provisions of Article 1 Point 6 of Law No. 6/2014, it is stated that BUMDes is a business entity of all or most of the capital that is owned by the village through direct participation from the wealth of the village separately in order to manage assets, services, and other business for the greatest welfare of the villagers. In Article 87 of Law No. 6/2014, it is stipulated that a village can establish BUMDes, which is managed by the family spirit and mutual cooperation. In addition, BUMDes may conduct business in the economic and/or public services in accordance with the provisions of the legislation. Results of operations of the BUMDes are utilized for: (a) business development; and (b) rural development; rural community development, and the provision of assistance to the poor through grants, social assistance, and revolving fund activities set out in the budget of the village {*Anggaran Pendapatan dan Belanja Desa* (APBDes).

In order to improve the sources of revenue for villages, BUMDes can collect savings at the local level of the village community, for instance through the management of revolving funds, savings, and loans. BUMDes' activities are not only oriented to profits but are also to support the improvement of the villagers' welfare. BUMDes is expected to develop business units in utilizing economic potentials. In order to maintain business activities to a proper performance and development, it is possible that BUMDes follows the legal entities which have been established in the provisions of the legislation.

The management of BUMDes is not an easy matter. There are many problematic cases that have occurred due to lack of understanding on the work flow and management of governance the BUMDes itself. The prevalence case occurred is corruption, such as alleged criminal act of corruption in the BUMDes of Barakat Joint Save Four, Banjar District. Briefly, the case was about embezzlement of Social Assistance funds amounting to Rp. 113.241.000,00 and Bansos funds amounting to Rp154.000.000,00. In Trenggalek city, there was also an alleged criminal act of corruption in the BUMDes of Wonocoyo, which had resulted in the state loss amounting to Rp. 900,000,000.00.

Based on the phenomena described above, we set out a plan to investigate the principles in terms of governance of BUMDes in regard to empowerment of the village's economy, as an effort to increase the income of the village community.

## **II. METHOD**

This study employed empirical law research design. The method used in this study is statute approach, conceptual approach, and case approach.

## **III. DISCUSSION**

### ***Characteristics of BUMDes in Indonesia's Legal System***

Village governance is a sub-system government within the national government administration. Apparently, a village has the authority to organize and manage the interests of the community. The foundations of thinking in the governance of village are diversity, participation, real autonomy and

community empowerment. The Nation's efforts to ensure the survival of the village can be seen through the legal products of the village itself, namely Law no. 22/1948 concerning Stipulation of the Main Rules Concerning Self-Governance in Areas Eligibility in Arranging and Maintaining Its Own Affairs, Law No. 1/1957 concerning Principles of Regional Government, Law No. 18/1965 concerning Principles of Regional Government, Law No. 19/1965 concerning Village as a Transitional Entity Accelerating the Implementation of Level III Regions throughout the Republic of Indonesia, Law No. 5/1974 concerning Principles of Government in the Region, Law No. 5/1979 on Village Government, Law No. 22/1999 concerning Regional Government, Law No. 32/2004 concerning Regional Government, and Law No. 6/2014 concerning Village.

The presence of the Ministry of Village, the Development of Under developed Regions, and Transmigration has obtained the mandate to run NAWACITA in reign of Jokowi and Jusuf Kalla, the president and vice president of the Republic of Indonesia in the term of 2014-2015, particularly the Third NAWACITA "Building Indonesia from the edge by strengthening the regions and villages." One of the major agendas is to preserve the implementation of Law No. 6/2014 concerning the Village systematically, consistently and sustainably with facilitation, supervision, and assistance. Village assistance is not merely a mandate of Law No. 6/2014, but also an important modality for guarding the village change to create an independent and innovative village<sup>4</sup>. The Ministry of Village, PDT (Ministry of Development of Underdeveloped Regions), and Transmigration is committed to realizing the expectations of the Law and NAWACITA. In this context, the establishment of BUMDes is positioned as one of the policies to realize the First, Third, Fifth, and Seventh NAWACITA, with the following meanings<sup>5</sup>: (1) BUMDes is one of the policy strategies to present state institutions (the Ministry of Village Development of Underdeveloped Regions and Transmigration) in the village community (hereinafter is referred to as Tradition of Village); (2) BUMDes is one of the policy strategies to build Indonesia from the periphery through the development of collective economic enterprises of the village; (3) BUMDes is one of the policy strategies to improve the quality of life of Indonesian nations in the village; (4) BUMDes is one form of village's economy's independence by mobilizing strategic business units for the collective economic enterprises of the Village.

BUMDes is formed by the village Government to utilize all economic potentials, economic institutions, as well as the potential of natural resources and human resources in order to improve welfare in the village community. BUMDes specifically cannot be equated with legal entities such as Limited Liability Company, *Commanditaire Vennotschap* (CV) or cooperative. Therefore, BUMDes is a business entity characterized by the village of which in addition to assisting the implementation of the village government, it also meets the needs of the village community. Moreover, BUMDes can carry out the functions of services, trade, and other economic developments.

BUMD (Regional-owned Enterprises) is a business entity that is wholly or partly owned by the region. With its regional autonomy in an effort to improve its economy, it can establish its own regional-owned enterprise, whether for the purpose of public service, profit-oriented or for the combination of both. In English, the form of business or legal form of company is called company or corporation<sup>6</sup>. In the provision of Article 3 of the Regulation of the Minister of Home Affairs No. 3/1998 concerning Legal Form of Regional-owned Enterprises, the form of BUMD may be Regional Enterprise (PD) or Limited Liability Company (PT). BUMD in the form of a Regional Company is subject to the prevailing laws and regulations governing the Regional Company. BUMD in the form of a Limited Liability Company, is subject to the Law of Limited Liability Company and its regulations.

Each of the legal forms of business entity has their own characteristics. It is important to be considered by the region in the selection of the legal entity according to the purpose of its formation. In establishing BUMD, the region is assessed based on the potential, characteristics, and needs of the area<sup>7</sup>.

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4. Anom Surya Putra, 2015, *Badan Usaha Milik Desa: Spirit Usaha Kolektif Desa*, Jakarta: Kementerian Desa, Pembangunan Daerah Tertinggal, Dan Transmigrasi Republik Indonesia, p. 4

5. *Ibid.*, p.8-10

6. Abdulkadir Muhammad, 2010, *Hukum Perusahaan Indonesia*, Bandung: PT. Citra Aditya Bakti, p. 1

7. Dhimas Tetuko Kusumo, 2016, "Kajian Yuridis Bentuk Hukum Badan Usaha Milik Daerah (BUMD) di Bidang Perbankan Pasca Berlakunya Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah", *Jurnal Prival Law*, Vol. IV, No. 1 Januari-Juni 2016, p. 22

A Village-Owned Enterprise is a business entity which is wholly or partly owned by the Village through direct participation derived from the wealth of the village separated to manage assets, services and other businesses for the greatest welfare in the village community. In the provisions of Law No. 6/2014, villages can establish BUMDes that are managed with the spirit of family and mutual cooperation, running a business in the economy and/or public service sector, not only oriented to profits but is also support the improvement of welfare. Results from the business process are used for the development of business and village, village community empowerment, and provision of assistance to the poor through grants, social assistance, and revolving fund activities.

BUMDes represents the role of village government in developing local economic potentials and in providing public services for the village community. The village as a unit of law society has placed itself as a hybrid organization between the self-governing community and local self-government. Village government differs from local government. Local government does not contain elements of society, but rather a bureaucratic device. The village is not only identical with the village government and the head of the village. It includes both local government and community elements, all of which form a unity of law<sup>8</sup>.

Villagers through the village deliberation organization are actively involved in the process of initiation, establishment (including the establishment of management of the organization, business capital, and Article s of Association and Bylaws), and receiving progress reports at least 2 times a year. Villagers are involved through the citizen representation mechanism in the Village Consultative Board, in the case of the establishment of village regulations, establishment of BUMDes and supervision of the Village Government's responsibility in conducting the development of BUMDes.

#### ***Implementation of Good Corporate Governance principles in the governance of BUMDes***

The term Good Governance is so often spoken but rarely understood. Even the translation in Indonesian is debatable. In Malaysia, for example, Good Governance is translated into *Penadbiran Yang Baik*. In Indonesia, the State Administration Institute (LAN) translates it as *Kepemerintahan Yang Baik*. Good Governance becomes the leading issue in the implementation of the life of the community, the nation, and the state, especially with the decreasing role of government as an institution that 'run everything' and the increasing capability of the community in participating in managing the affairs together. The insistence that comes along with the increasing level of knowledge and competence of the society increasingly demands the government to organize good governance, not just the clean governance. Old patterns are no longer able to respond to the interests of society. Furthermore, good governance is the urgency of globalization<sup>9</sup>.

One of the simplest facts is that the concept itself comes from international institutions, such as the United Nations, the *International Monetary Fund*, and the World Bank. One of the most widely used definitions is the United Nations' version through the United Nations Development Programme (UNDP) that defines good governance as<sup>10</sup> the exercise of economic, political and administrative authority to manage a country's affairs at all levels. Good governance comprises the existence of effective mechanisms, processes, and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations, and mediate their differences".

The UNDP further specifies that good governance must contain a set of characteristics that must be met, namely participation, rule of law, transparency, responsiveness, consensus orientation, equality, effectiveness and efficiency, accountability, and strategic vision<sup>11</sup>. Good governance is generally interpreted as a consensus achieved by government, citizens, and private sectors in the administration of good and responsible government. However, a more comprehensive and contextualized view at the village-level is explained by Dwipayana and Eko. They suggest that the mainstream of good governance

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8. Staf Ahli Bidang Pengembangan Ekonomi Lokal, Kementerian Desa, Pembangunan Daerah Tertinggal dan Transmigrasi, "Pendekatan utuh Penguatan Kelembagaan Ekonomi Desa", *Forum Group Discussion* 'Mendorong BUMDes Menjadi Kekuatan Baru Ekonomi di Desa, Grand Cemara, 14 April 2016, p. 4

9. Zaenal Soedjais, "Good Governance, Daya Saing dan Investasi Global", *Jurnal Ilmu Sosial dan Ilmu Politik*, Vol. 6 No. 3 Maret 2003, ISSN: 1410-4946, p. 309-328

10. Ari Dwipayana dan Sutoro Eko, 2003, *Membangun Good Governance di Desa*, Yogyakarta: IRE Press.

11. *Ibid.*

discourse has so far emphasized three main points covering the country, civil society, and the market<sup>12</sup>. Thus, village governance mapping consists of four main elements: the state (village government), the political community (the Regional Representative Council, the civil society (institutions and social organizations), and the economic community (socio-economic organizations, arena of production and distribution perpetrated by the perpetrator and the village economic organizations)<sup>13</sup>.

Good Corporate Governance itself has several definitions according to some experts. According to Forum for Corporate Governance in Indonesia (FCGI), Good Corporate Governance is a set of rules governing relationships between shareholders, managers of companies, creditors, government, employees, and other internal and external interests related to their rights and obligations or in other words a system that controls the company. The purpose of Good Corporate Governance is to create added value for stakeholders<sup>14</sup>. According to the Organization of Economic Cooperation and Development (OECD), Good Corporate Governance is a set of relationships between the management company, board, shareholders, and other parties who have interests in the company. Good Corporate Governance also implies the existence of a device structure to achieve goals and supervisions over performance. Good Corporate Governance can provide incentives for board and management to achieve goals that put the company's interest ahead. Likewise, shareholders must facilitate effective oversight in order to encourage companies to use more efficient resources<sup>15</sup>.

Historically, the village was the forerunner to the formation of political and governmental society in Indonesia long before the nation-state was formed. A social structure similar to the village is traditional society (*masyarakat adat*) which has become a social institution with a very important position<sup>16</sup>. The government has ratified Law No. 6/2014 concerning Village (*UU Desa*). The purpose of the stipulation of village regulations in this Law is to elaborate the provisions as meant in Article 18 Paragraph (7) and Article 18B Paragraph (2) of the Constitution of the Republic of Indonesia 1945, namely: (a) to provide recognition and respect to the village that has been existed with its diversity before and after the formation of the Unitary State of the Republic of Indonesia (NKRI); (b) to clarify the legal status and certainty of the village in the constitutional system of the Republic of Indonesia in order to bring about justice for all Indonesian people; (c) to preserve and promote the customs, traditions, and culture of rural communities; (d) to foster initiatives, movements, and participation of village community for the village potential development and assets for mutual prosperity; (e) to establish a professional, efficient and effective, open, and accountable village administration; (f) to improve public services for rural people to accelerate the realization of welfare in general; (g) to enhance socio-cultural resilience of village community in order to create community which is capable of maintaining social unity as part of national security; (h) to promote the rural community' economy and to overcome the national development gap; and (i) to strengthen the village community as a subject of development.

Developed villages need protection and empowerment to become: (a) strong village; (b) growing villages; (c) independent villages; and (d) democratic villages. The implication of village formation with such natures is expected to be a strong foundation for implementing governance and development towards a just and prosperous society. The strong impression that can be seen from the consideration in the formation of the regional regulation is the government's desire to form more advanced village institutions, one of which is in the economic aspect. The regional regulation in the context of the development in the economic aspect of the village regulates the existence of a business entity owned by the village. Although the substance concerning BUMDes is not something tramontane in the regulations

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12. Ari Dwipayana dan SutoroEko, 2003, *Membangun Good Governance di Desa*, Yogyakarta: IRE Press.

13. Fajar Sidik, "Menggali Potensi Lokal Mewujudkan Kemandirian Desa", *Jurnal Kebijakan dan Administrasi Publik*, Vol. 19 No. 2 November 2015, p-ISSN: 0852-9213, e-ISSN: 2477-4693, p. 115-131

14. Hinuri Hindarmojo, 2002, *The Essence of Good Corporate Governance "Konsep dan Implementasi Perusahaan Publik dan Korporasi Indonesia"*, Jakarta: Yayasan Pendidikan Pasar Modal Indonesia & Sinergy Communication, dalam Lukas William Andypratama dan Ronny H. Mustamu, 2013, "Penerapan Prinsip-Prinsip *Good Corporate Governance* Pada Perusahaan Keluarga : Studi Deskriptif Pada Distributor Makanan", *Jurnal Agora*, Vol. I, No. 1, p. 2

15. Indra Surya dan Ivan Yustiavandana, 2006, *Penerapan Good Corporate Governance Mengesampingkan Hak-Hak Istimewa demi Kelangsungan Usaha*. Jakarta : Prenada Media Group, dalam Lukas William Andypratama, *Loc.cit*.

16. Indra Surya dan Ivan Yustiavandana, 2006, *Penerapan Good Corporate Governance Mengesampingkan Hak-Hak Istimewa demi Kelangsungan Usaha*. Jakarta : Prenada Media Group, dalam Lukas William Andypratama, *Loc.cit*.

on village governance and<sup>17</sup> in the aspect of independence, the Village Law gives more emphasis. Moreover, the independence aspect means a process undertaken by the village government and the village community to conduct an activity in order to meet their needs with their own abilities.

The experience of village governance provides a lesson for village relation management, a new approach that is expected to stimulate and drive the wheels of the economy in the countryside. The stimuli in question are created through the establishment of economic institutions that are fully managed by villagers. These economic institutions are no longer established on the basis of government instructions. Therefore, it must be based on the wishes of the village community departing from the potentials that if properly managed it will generate demands in the market. In order to keep the existence of these economic institutions away from the control of particular groups with large capital in the countryside, the ownership of the institution must be held by the village and jointly controlled in which the main objective is to improve the living standards of the people's economy.

The establishment of this institutions is intended to reduce the role of middlemen which often leads to increased transaction costs between the product price from producers to final consumers. Through this institution, it is expected that every producer in the countryside can enjoy the net profit and the consumers do not have to bear the expensive purchase price. Consequently, it will help the producers to respond to the consumptive needs of the people, be productive, and become the main distributor to meet the needs of nine basic commodities (*sembako*). In addition, it can support the growth of suburban economic activities in rural areas<sup>18</sup>.

#### IV. CONCLUSION

The existence and governance of BUMDes will be returned to the purpose of the establishment of such business entity, which is aimed to improve the village's economy, to optimize village's assets to be useful for the welfare of the village community, to improve community's efforts in managing the economic potentials of the village, to develop business cooperation plans between villages and/or with third parties, to create market opportunities and networks that support citizen's needs in public service, to create opportunities of open employment, to improve welfare in the community through improvements in public service, growth, and equality of the village's economy, and to increase income of the village community and the Regional Original Income (PAD).

With the governance of BUMDes under the principles of corporate governance and accountability that refers to the management of village finance, the number of cases that occur in management-level of BUMDes due to lack of understanding concerning the governance of BUMDes management itself CAN BE minimized. For instance, the type of case that often occurs in Indonesia is criminal act of corruption. In relation to the governance of BUMDes, it is better for the relevant ministries to set up implementation guidelines of BUMDes governance, which is not much different from the business entities in general. Thus, it will help to improve the welfare of the villagers both in particular and general. In addition, basic training can be undertaken by relevant ministries and local governments to address the lack of understanding related to the governance of BUMDes management that can help to minimize corruption in Indonesia.

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17. Ari Dwipayana dan Sutoro Eko, 2003, *Membangun Good Governance di Desa*, Yogyakarta: IRE Press.

18. *Ibid*.



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