



Legal Politics of Formation and Empowerment of Village-Owned Enterprises in the Perspective of the Village Law to Realize Community Welfare and Independence

Harmono¹

¹Postgraduate, Pasundan University

Corresponding Author : mashar.crb@gmail.com

Abstract

One of the objectives of establishing the Unitary State of the Republic of Indonesia as stated in the preamble to the 1945 Constitution is to realize the welfare of the community. To realize this goal in the village community, efforts are made both through the making of laws and regulations and social programs. The efforts made are the opening of opportunities for villages to have business entities whose capital can be taken from village funds, namely Village-Owned Enterprises (BUMDes) in the period 2005 to 2020, there are 51,134 villages that already have BUMDes with village funds disbursed around Rp. 4.2 trillion. This study aims to analyze and find matters related to the government's legal politics and formulate strategies in order to improve community welfare through Village-Owned Enterprises (BUMDes). The method in this study uses a qualitative approach with a descriptive type of writing. The selected data is the general public as informants and managers of selected BUMDes as samples, data analysis using data production steps, data presentation and drawing conclusions. The results showed that the establishment of Village-Owned Enterprises (BUMDes) has not been able to significantly realize the welfare of rural communities. This is due in addition to the low resources of the village community, especially the village elites in interpreting the government's legal political objectives regarding Village Owned Business Entities, as well as the lack of assistance in the formation and empowerment of Village-Owned Enterprises. It can be said that there are still weaknesses in the legal system as well as the lack of thinking ability and lack of legal awareness of stakeholders. BUMDes contribute to economic independence and one BUMDes in relation to aspects of compliance with laws and regulations have implications for the ability to manage village potential.





Keywords: Legal Politics; Village-Owned Enterprises; Welfare; independence of the Society.

1 INTRODUCTION

Villages, or so-called by other names (such as Nagari, Gampong, Dusun, Kuwu, and so on) existed long before the Unitary State of the Republic of Indonesia was formed. The diversity of characteristics and types of villages, or what is called by other names, did not become an obstacle for the *founding fathers* to drop their choice on the form of a unitary state. Although it is realized that in a unitary state there is homogeneity, the Unitary State of the Republic of Indonesia still provides recognition and guarantees for the existence of a unitary legal community and the unity of indigenous peoples and their traditional rights. The Village government unit is an inseparable part and is within the environment of Local Government, especially the District Government. So, the Village is not a separate unit of government with the Regional Government, as was the case during the New Order Government. At that time, villages were specifically regulated in Law No. 5 of 1979 concerning Village Government which was separate from Law No. 5 of 1974 concerning The Principles of Government in the Regions (Astawa:2009)

In the history of village arrangements, several arrangements have been established about the village, namely:

- a) Law No. 22 of 1948 on the Principles of Local Government;
- b) Law No. 1 of 1957 concerning Pokok – the main point of Local Government;
- c) Law No. 18 of 1965 concerning pokok - the main points of Regional Government;
- d) Law No. 19 of 1965 concerning Praja Village;
- e) Law No. 5 of 1974 concerning the Principles of Government in the Regions;
- f) Law No. 5 of 1979 on Village Government;
- g) Law No. 22 of 1999 on Local Government;
- h) Law No. 32 of 2004 on Local Government; and
- i) Law No. 23 of 2014 on Regional Government.

In practice, the regulation regarding the village has not been able to accommodate all the interests and needs of the village community which until now has numbered around 73,000 (seventy-three thousand) villages and around 8000 (eight thousand) villages. In addition, the implementation of village regulations that have been in effect is no longer in accordance with the times, especially regarding the position of indigenous peoples, democratization, diversity, community participation, as well as progress and equitable





development so as to cause gaps between regions, poverty, and socio-cultural problems that can interfere with the integrity of the Unitary State of the Republic of Indonesia.

With that background, Law No. 6 of 2014 concerning Villages was issued. With the issuance of *the Law a quo*, it is hoped that it will become a momentum in carrying out village renewal and / or development. One of the most important elements in carrying out renewal is joint efforts so that the traditional village government can carry out government functions and services, in line with the development and needs of the surrounding community (Village). The renewal in question is in terms of management, resource development (human and natural), government orientation and others.

One of the ways that can be taken by the Village Government to realize the development goals of the Village mentioned above is to form / establish Village-Owned Enterprises (BUMDes). The establishment of BUMDes by the Village Government is intended to utilize all economic potentials, economic institutions as well as the potential for natural resources and human resources, with the aim of improving the welfare and independence of the village community.

A country is said to be economically independent if it can survive various types of crises and is independent of other countries. In this regard, Aviliani explained the condition of Indonesia as follows: 1. Indonesia's natural resources (SDA) and human resources both have a lot of potential to drive the country's economy (HR). Agroindustry and real estate business are two examples in the field of natural resources. 40% of all workers work on farms, however, the competitiveness of agricultural products is poor. 2. Through strong economic growth, Indonesia managed to get through the global economic crisis (2008), comparable to the Republic of China (PRC) and India.

BUMDes can be said to be a pillar of village economic activity which has two functions, namely as a business institution (*commercial instituton*) as well as a social institution (*social institution*). As a business institution, of course, BUMDes are required to generate profits and as social institutions BUMDes are expected to provide benefits for rural communities. (BKDSP, 2007) A country is said to be eponly independent

The existence of BUMDes before it was officially promulgated through Law Number 6 of 2014 concerning Villages has actually been regulated in advance in Law Number 32 of 2004 jo Law Number 23 of 2014 concerning Local Government and Government Regulation Number 72 of 2005 concerning Villages. Article 213 of the Local Government Law states that "*Villages can establish village-owned enterprises in accordance with the needs and potential of the village*". Previously, BUMDes had also been regulated by the Minister of Home Affairs "Village-Owned Enterprises, hereinafter referred to as BUMDes, are village





businesses formed / established by the village government whose ownership of capital and management is carried out by the village government and the community."

BUMDes with the local political context have a reciprocal relationship. BUMDes is difficult to develop in the context of villages characterized by exclusive politics, on the contrary, inclusive politics supports BUMDes better. BUMDes means that rural people are learning to build inclusive politics, which is parallel to building social capital, democracy, and rural traditions.

The presence of the government is very important but not enough, it can even be mistaken. One of the important lessons and challenges is how to transform BUMDes from "Government projects" to "village-owned". The concept of belonging to the village contains social capital, democracy, technocracy, and rural traditions that are inherent in the village system and society. A handful of BUMDes government projects were successful because of the smooth transformation towards "village property" (Bram, 2014).

In order to achieve the goal of BUMDes, it is necessary to apply clearer legal politics. The discussion of legal politics begins to arise at a time when the law of an element in the subsystem of society cannot run purely and neutrally, both in the process of its formation and implementation. In other words, legal politics emerged as an alternative legal discipline amid a methodological impasse in understanding the complexity of the relationship between law and non-legal entities, which in this case is politics (Bram, 2014).

2. RESEARCH METHODS

This research will be compiled using the normatif juridical type of research and a comparative approach that is descriptive analytical, namely research that is focused on examining the application of legal rules or norms and comparisons with several countries related to the research title, by providing an overview or description of the problems in this study.

3. RESULTS AND DISCUSSION

3.1 Political Relations of Government Law through BUMDes Welfare and Independence of Village Communities

The village is the core structure of the formation of a political and governmental society in the Unitary State of the Republic of Indonesia. The existence of village development is also in line with the Nawacita program, one of which is building Indonesia from the periphery by strengthening regions and villages within the framework of the Republic of Indonesia. BUMDes is one of the Nawacita programs that aims to streamline the management





of existing village assets, revitalize the village economy and improve the welfare of rural communities. BUMDes business activities are for profit, where the governance of BUMDes is carried out with the principles of openness, integrity, participation and fairness.

BUMDes function as a generator of the village economy, as a business institution to generate original village income (PADes), and as a means to facilitate the acceleration of improving the welfare of rural communities. BUMDes was created in the spirit mandated by the Village Law with a political and constitutional commitment, and the state has strong power to protect and empower villages and lay a solid foundation for the establishment of village government with community development towards justice, progress and independence.

However, the fact is that from the findings of researchers conducted on 126 respondents from more than five provinces, it shows that the majority of respondents do not know BUMDes and all its regulations. The majority of respondents also argued that they knew about the existence of BUMDes not from the results of socialization carried out by the government. Likewise, in the process of its formation, respondents explained that the formation of BUMDes in their area has not involved all components of the community and its formation has not been in accordance with existing regulations. This has an impact on the work program and the quality of human resources owned by BUMDes, where the majority of respondents revealed that work programs, business forms, the quality of human resources and the management of BUMDes in their areas are not in accordance with applicable regulations, so that public trust in BUMDes is low. Then the importance of good management supported by the use of modern technology and management transparency has also not been implemented optimally by BUMDes in the respondents' areas, so that BUMDes in the respondents' area have not made a significant contribution to the original village income (PAD). In addition, the majority of respondents also revealed that economic activities in the village have not been fully coordinated by BUMDes. From the results of the respondents' answers, it was found that there were various BUMDes problems, one of which was caused by the incomprehension of the Village Head as a policy maker to the regulation, policy and management of BUMDes. Then, the majority of respondents also revealed that the role of the Village Head in the management of BUMDes was also too dominant and sometimes acted outside the agreed work program. In addition, the government also needs to take action on BUMDes problems, where based on respondents' answers, efforts to improve the ability of BUMDes management, supervision, regular monitoring and evaluation of BUMDes, giving rewards to villages that have superior BUMDes and sanctioning villages that violate BUMDes regulations have not been optimally carried out.





The problems of BUMDes that occur must be resolved immediately, because they will have an impact on the welfare of the community. The basic idea of the concept of the welfare state departs from the state's efforts to manage all existing resources in order to achieve one of the goals of the state, namely improving the welfare of its people. This ideal ideal is then translated into a policy that has been consulted to the public before and then it can be seen whether a country actually realizes the welfare of its citizens or not. The problems of poverty and public health are some of the many problems that must be responded to immediately by the government in the formulation of welfare policies(Sukmana,2016).

Improving welfare can be done with sustainable national development that has strong regulations or laws. The function of law in national development described by the expression "as a means of renewal of society" or as a means of development" can be briefly put forward the following points of thought: *first*, that law is a means of renewal of society based on the assumption that the existence of order or order in the effort of development or renewal is something that is desirable or even seen as (absolutely) necessary; *Second*, that law in the sense of legal rules or regulations can indeed function as a tool (regulator) or means of development in the sense of channeling the direction of human activities in the direction desired by development or renewal. Both functions are expected to be performed by law in addition to their traditional functions, namely to ensure certainty and order(Kusumaatmadja,2022).

The Village Government asa policy maker must have basic ideals based on ideology or commonly referred to as legal politics. Legal politics is the basic ideal designed by a group in this case the state to achieve the goals of the group, which must be based on the ideology and basis of the country. Moreover, legal politics is a guiding term for every individual in it whose nature is to regulate, protect and implement the laws and norms that apply therein. This legal politics includes the creation of laws that intrinsic the making and updating of legal materials so that they can be adjusted to the needs, and the implementation of existing legal provisions, including the enforcement of agency functions and the guidance of law enforcement. The legal politics of the formation of BUMDes is to depart from the spirit that the state wants to protect and empower villages to become strong, independent and advanced in order to create a sustainable village development towards a just, prosperous and prosperous society.

According to village law, BUMDes is a business entity whose entire or most of the capital is owned by the village. In practice, the capital in question comes from village property, and problematic property is set aside for the management of property, services, and other businesses for the benefit of the village community. In its implementation, the





capital in question is sourced from village wealth, which in the process, the wealth in question is separated with the purpose of asset management, service services, and other businesses for the benefit of the village community. According to the provisions of Article 87 paragraph (1) of the Village Law and in Law Number 6 of 2014 concerning Villages that there is no article regulating sanctions for villages that do not form Village-Owned Enterprises (BUMDes) and there is no legal impact. The consequences for villages that do not establish Village-Owned Enterprises are more about the economic impact of the village itself. Villages can establish village-owned enterprises if they are able and can, if they are unable and cannot there is no necessity for villages to form Village-Owned Enterprises as stated in Article 87 paragraph (1) of the Village Law. Village Law Number 6 of 2014 is accompanied by a paradigm shift and political attitudes towards the "new village" to which it aspires. Through the construction of "new villages" the central government actually gives authority to the regions, especially the village governments, to build villages according to their respective potentials. This authority is supported by the policy of distributing state money from the STATE BUDGET and APBD to villages. The Village Law is not only a budgetary issue but also carries the mission, principles, authority, governance and development of the new village.

Independent village communities are those who can meet their own needs and those who cannot fully rely on government support) define independent village communities as follows. If the government offers help, it is only a stimulant. The independence of village communities has a significant impact on the achievement of village independence because village communities are the main or crucial component in controlling the distribution of funding provided by central government and local government.

3.2 Management BUMDes Strategy to Be Able to Improve Community Welfare and Independence

a. Community ownership of BUMDes

BUMDes represents the role of the village government in developing local economic potential and providing public services for villagers. At first glance, the position and role of BUMDes are similar to SOEs and BUMDs at the national level and provincial or district/city governments.

The phrase "unity of the legal community" the definition of a village also places the village as a mixed organization between self-governing community and *local self-government*.

Village government is different from local government. Local government does not contain elements of society but bureaucratic tools. On the other hand, the village is not





synonymous with the village government and the village head. The village includes local government as well as containing communities that form a legal unity.

In SOEs, business entities are a tool of government intervention at the national economic level. Government ownership can be represented through the Minister of money appointed and authorized to represent the government as a shareholder of the state. The GMS is the organ that holds the highest power in decision making.

There is a very different correlation between BUMN / BUMD and BUMDes where village communities play a direct role in the management of BUMDes according to the regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 4 of 2015.

In accordance with the mapping of the stages of BUMDes management, village communities through village deliberation organs are actively involved in the initiation process, establishment (covering the determination of management organizations, business capital, AD / ART), receive progress reports at least 2 times a day, and provide bankruptcy statements.

In addition to direct involvement through village deliberations, village communities can also be involved through the mechanism of citizen representation at the village consultative body in terms of establishing village regulations for the establishment of BUMDes and supervising the responsibility of the village government to carry out guidance on BUMDes, especially supervision of the responsibility of the village head as an advisor to BUMDes.

The initial capital for the establishment of BUMDesa comes from the Village ABP, while the capital for bumdes business participation (in addition to the profit sharing of microfinance balances) comes from grants, donations, business cooperation, and the delivery of village assets which are channeled through the Village APB mechanism.

Grants, donations, and delivery of village assets can provide business capital for BUMDes without ownership participation. Ownership participation may occur in business cooperation schemes in the form of Limited liability companies at the business unit level below BUMDes (not ownership participation at the BUMDes level).

BUMDes business capital is obtained from the participation of village community capital such as community savings/savings to support the BUMDes business unit type of microfinance and incorporated lembaga microfinance with a contribution of BUMDes of 60%. Tactics used to increase village assets include: First, analyzing the surrounding environment to see what prospective commercial activities are appropriate for the implementation of BUMDes. BUMDes have access to a variety of tactics, including pricing,





finance, and product development plans. Second, three components go into the construction of the strategy: product development, pricing, and financial strategy. Third, the use of the BUMDes strategy can help increase village income. The local government has given authority to the village head to supervise and account for BUMDes in the village, therefore the village head is responsible for evaluating or controlling it.

Except for the legal form of the Microfinance Institution, there is no scheme for direct community capital participation in BUMDes and limited liability company business units that it owns, although rural communities can fall into the category of private parties.

The ownership of village communities in BUMDes is not based on capital participation, but through the full involvement of village communities in village deliberations and the representation of village communities in the organs of the Village Consultative Body.

In the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 4 of 2015 Article 3 emphasizes that BUMDes was established with the aim of, among others, improving the village economy, optimizing asset benefits, increasing community efforts in managing the economic potential of the village, creating opportunities and market networks, creating jobs, increasing the income of the village community and the income of the original village, all of which increase welfare and community independence through improving public services, growth, and equitable distribution of the village economy.

In Law Number 6 of 2014 Article 89, the results of the BUMDes business, in addition to being used for the development of the BUMDes business itself, are also used for village building, empowering village communities, and providing revolving fund assistance that has been stipulated in the Village Budget. The allocation and distribution of BUMDes business results in accordance with Article 26 of the Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 4 of 2015 is determined based on the provisions regulated in the AD / ART / BUMDes,

There is no direct participation of village community capital in BUMDes, so there is no distribution of profits, business results, and direct economic benefits for rural communities. Village communities get economic benefits indirectly from the operationalization of BUMDes. Table 5.2 below outlines the flow of economic benefits received by rural communities with the establishment of BUMDes.

From the description of the chain of economic benefits that can be obtained from the establishment of BUMDes, it is clear how strategic the role of BUMDes through village funds, BUMDes is a form of complementary intervention that provides the possibility for village





governments to actively develop the local economy collectively based on the potential and strengths possessed by each village.

b. Building the BUMDes Movement

BUMDes will become a movement if the business units organized are integrated with the pulse of village life. For example, in villages where the majority of residents make a living as fishermen. Fish catches that are not sold out immediately really need fish preservatives, namely ice cubes (ice blocks).

The need for this preservative within a large party is very unprofitable if it has to be purchased from other cities/regions. Given the high costs including transportation, the process of defrosting on the way will be a disadvantage in itself. In this case, BUMDes is very suitable to have an ice block manufacturing business.

The production produced is urgently needed by residents, the absorption of large ice block production is predicted to perpetuate this business unit, and it will be more developed because the production is absorbed by neighboring villages, the location of the ice factory not far from the consumer is more profitable than the lower selling price due to low transportation costs and the risk of melting ice blocks is smaller.

BUMDes (business units) that are sensitive to the needs of residents can be ensured to survive and develop more rapidly. The idea is that BUMDes was established to support the efforts of villagers who could not be held individually, so that efforts to make the BUMDes movement related to the process of forming BUMDes.

1. Supporting factors and obstacles to BUMDes

In general, every business run by the private sector depends on economic factors (capital, managerial, entrepreneurship, technology, markets) as well as political factors even though the influence is small. Many successful "one village one product" private businesses rely on economic factors without being disturbed by political factors and social capital.

Therefore, the business of SOEs and BUMDs does not depend on political and governance factors. We like to hear information about the habit of political officials to make SOEs and BUMDs "cash cows" that make state-owned or local enterprises suffer losses and bankruptcies. The habit of the "cash cow" is called the political factor.

BUMDes are more complicated than private businesses, SOEs and BUMDs, although BUMDes are small and simple businesses. Many parties are less interested in talking BUMDes because of their small scale, limited capabilities, and inefficiency. A person who pursues





business law sees BUMDes as not very relevant because of the lame of the law, thus recommending that rural people form cooperatives that are clearer than BUMDes.

Although BUMDes has the potential to be the backbone of rural economic growth and equity, there are still shortcomings in its implementation, such as the lack of educated, trained, and qualified professionals to support the commercial diversification of BUMDes beyond savings and loans. industry. A good role will also boost the income and profits of BUMDes, which in turn will boost the salaries of administrators and commissioners

However, because not enough workers are willing to open their own businesses due to lack of desire, talent, or courage, management and society are still unaware of the community empowerment that will actually result from this.

The sectoral ministry sees that BUMDes not only face limited economic capacity but are also vulnerable to corruption. Therefore, the economic empowerment program run by the sectoral ministry ignores villages and BUMDes but empowers sectoral groups even though this approach is uneven.

2. BUMDes Performance

Establishing BUMDes cannot use a mass approach, but with a special touch because of the differences in potential and needs between one village and another. Each business unit requires financial capital and the managers of business units are different and provide capital budgets with a bagito model (for roto-divided equally all villages). The kabupaaten government facilitated the establishment of BUMDes through:

- a. The district government formed a team to form BUMDes whose members cross-sectoral cooperation with universities. The team is coordinated by SKPD such as the Community Empowerment and Village Government Agency (BPMPD) in the district. The district administration made a *multi-year* budget reaching all villages.
- b. The team carried out the socialization of new institutions (BUMDes), the stages of the formation of BUMDes, BUMDes institutions, and examples of successful BUMDes to all villages.
- c. Villages are given the opportunity to hold village deliberations and discuss the possibility of forming BUMDes. If there is a speed, potential, and manager, the village can conduct a feasibility study and if feasible can be submitted to the team.
- d. The team conducted a selection and tested the feasibility of the business, readiness and seriousness of the village to form BUMDes. The team must be competent with the business units it forms.





- e. Villages that pass the selection (their business units are categorized as very feasible) can be assisted by capital with a size that varies according to needs. the number of BUMDes assisted is not based on the target number but its feasibility.
- f. The team monitors, escorts, and accompanies it until BUMDes develops. Assistance reaches a wide range of aspects according to the difficulties and constraints of BUMDes. BUMDes that can run their business well are only monitored. The team was in touch to detect obstacles early. Monitoring is carried out thoroughly starting from the procurement of book materials, production processes, marketing, administration, accountability. Monitoring is reduced as BUMDes grows.

The growing BUMDes inspired other villages to do the same. The selection, formation, and facilitation of BUMDes are carried out continuously by the team until the establishment of BUMDes in each village.

4. CONCLUSION

- a. The Government's efforts to realize the welfare and independence of the community through the formation and empowerment of BUMDes with all the regulations and facilities provided have not been able to improve the welfare of the community. Even if measured financially in the period from 2005 to 2020, the country has suffered a considerable loss because the amount of money disbursed as working capital of BUMDes is not less than Rp. 4.2 trillion, while the original village income (PADes) obtained is only around Rp. 1.1 trillion. Some of the causes include and the most dominant is the low capacity of the village community and especially the village head and his war in understanding the purpose and objectives of the formation of BUMDes. In addition, there is also no supervision from the government from the time of the formation process until the operation of BUMDes.
- b. The concept of thinking that can be given so that government politics in the formation and empowerment of BUMDes can really realize the welfare of the community is to hold a rearrangement about the formation of BUMDes starting from socialization related to BUMDes regulations, hold village deliberations on the plan to form BUMDes by involving all components in the village, select candidates for BUMdes administrators who have an entrepreneurial spirit and commitment to advancing their villages, determine the type of business that is visible and profitable by appointing it in the plant business, making regulations for the formation of village-level BUMDes (Perdes) by including AD / ART including SOPs and Percentage of profit allocation obtained, a transparent bookkeeping and accountability system. It is necessary to form an Expert





Team consisting of academics and business practitioners who play a role in not only guiding the birth of BUMDes from the beginning of village deliberations, selecting BUMDes administrators who have managerial abilities and entrepreneurial spirit, determining the type of business that is profitable with the creation of a business plan, making a transparent accounting system and standard operating procedures for BUMDes managents to access market share and sources of capital.

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