

Legal Aspects In The Establishment of A Village Owned Business Entity Deed And its Business Branches

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ABSTRACT

The village is the forerunner to the formation of a government in a unitary state, it can be said that the village is a miniature of a country. There are rights and obligations of village communities, especially in the field of human resource management and natural resources. In carrying out efforts to improve in the economic field, villages can form BUMDESA which has the aim of increasing the income of the villagers. The establishment of BUMDESA can be done through village meetings, if village officials need official documents, it can be made in the form of an authentic deed before a notary in accordance with Article 15 of the Law on Notary Services and its amendments. The type of research in this legal research is normative legal research, which is a process to find the rule of law, legal principles, and legal doctrines in order to answer legal issues faced. Techniques and data collection in this research is carried out by means of library research (library research). Data collection tools used are document studies to obtain secondary data, by reading, studying, researching, analyzing secondary data, with secondary and tertiary related to this research. The purpose of this legal research is to analyze the legal aspects of the establishment of BUMDES which is made with an authentic deed document. The legal issue in this study is the legal aspect of the establishment of bumdes and other business branches, the second legal issue is the role of a notary in the establishment of a village-owned enterprise business unit. The conclusion of this research is that the village government exists and exists until now since the NKRI was formed, the village has the potential of natural resources that must be managed in an accountable, professional and trustworthy manner. Regarding village management, BUMDESA can be used as a means of driving the economy for the village community. That notaries can assist in making deeds relating to the establishment of BUMDESA and BUMDESA business units.

Keywords: BUMDESA, Authentic Deed, Notary

1. INTRODUCTION

Relationship between the center and the regions within the framework of a unitary state is quite interesting to study. The problem that arises in practice, namely the attraction of interests is clearly unavoidable. For a unitary state, the efforts of the central government to always be in control of various government affairs are very clear. Usually, the state in the form of a unitary government authority is the center. The authority granted by the center to the regions is very limited. (Ni'matul Huda: 2010). The absolute characteristics inherent in a unitary state are: first, the supremacy of the central people's representative council, and second, the absence of other sovereign bodies (Miriam Budiharjo: 2000). Government power in a country in the form of such a unit can be carried out in a centralized manner (Abu Daud Busro: 2001).

The village is the smallest scope of government under the auspices of the Regency, the Village Government is led by the Village Head and Village apparatus as an element of village administration. The village is regulated in Law Number 6 of 2014 concerning Villages explicitly assigning tasks to the village government in terms of administering government, implementing

development, community development, and community empowerment based on Pancasila. Villages have enormous potential is very large and requires special attention so that the stigma of "success only exists in the city" slowly shifts to success it can be built from the village through natural resource utilization programs (Rudianto & Roesli, 2019). For example, the number of villages in East Java province is more than 8000 villages spread across various regions. district ten. Given that the Village has the potential for human resources that must be given the opportunity to manage the village, the Village Law provides a program for the formation of village-owned enterprises established by the villagers. Examples of successfulas in villages include:

1. Management of umbul ponggok tourist attractions
2. Management of bottled drinking water originating from springs
3. BUMDESA of Karangkandri Sejahtera
4. BUMDESA Srisadani, Kedung primen, Bojonegoro The

BUMDESA have assets of billions of rupiah and managed to become an economic source for the local villagers. It is hoped that the village can be managed well and reduce the number of TKI/TKW every year. With the facts above, this legal research was conducted as a form of contribution to the science of civil law and state administration which can be used as a reference for stakeholders.

2. RESEARCH METHODS

Legal research is a process to find the rule of law, legal principles, and legal doctrine in order to answer the legal issues faced. This is in accordance with the character of legal science. There are two types of legal research proposed by Soerjono Soekanto, namely normative legal research and empirical legal research. The type of research used in this research is normative legal research, which is a research that primarily examines positive legal provisions and legal principles. To support legal research, research methods are used which consist of the approaches used in this legal research, namely the statute approach, the case approach, the comparative approach and the conceptual approach. This study uses empirical juridical methods, namely juridical research conducted by examining library materials called library research with a statute approach. Sources of Legal Materials used in this legal research use primary legal materials which are authoritative legal materials, meaning they have authority. Primary legal materials consist of legislation and judges' decisions. The primary legal materials in this research are:

- a. 1945 Constitution of the Republic of Indonesia
- b. Law No. 6 of 2014 concerning Village Government
- c. Law No. 2 of 2014 concerning amendments to Law No. 30 of 2004 concerning the Position of Notary

- d. Government Regulation of the Republic of Indonesia Number 11 of 2020 concerning Village-Owned Enterprises

While secondary legal materials are all publications on law that are not official documents. Publications on law that are used as secondary legal materials in research are textbooks, legal dictionaries, literatures, scientific journals, and other dictionaries as support.

3. RESULTS AND DISCUSSION

Legal Aspects Of Establishing Bumdes And Other Business Branches

The words government and government have different meanings. Government implies carrying out the duties and functions of government, while government implies the meaning of government. The term government in a sense is divided into two, namely the government in a narrow sense, specifically only concerning executive power. According to the 1945 Constitution, the government is the President, the Vice President and is assisted by ministers. Government in a broad sense is all state organs including the DPR (executive and legislative) (CST Kansil: 2009). The village is a government unit under the regency/city. Villages are not the same as sub-districts whose status is under the sub-district head. Kelurahan is only the work area of the lurah to carry out sub-district administration and does not have the right to regulate and manage the interests of the local community.

Villages have rights of origin and traditional rights that are inherent in every resident. that in the course of the state administration of the Republic of Indonesia, Villages have developed in various forms so that they need to be protected and empowered to become strong, advanced, independent, and democratic so that they can create a strong foundation in implementing governance and development towards a just, prosperous, and prosperous society. Regulations regarding villages are regulated in the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages. Village is a village and traditional village or what is called by another name, hereinafter referred to as Village, is a legal community unit 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. recognized and respected in the government system of the Unitary State of the Republic of Indonesia. Regarding the territorial or geographic area of the village, Article 5 of the Village Law states that the Village is domiciled in the Regency/City area. Part Two Types of Villages Article 6 (1) Villages consist of Villages and Traditional Villages. Considering that the village is the smallest part of regional government, the village has the authority as stated in Article 18 of the Village Law that, Village Authority includes authority in the field of Village Administration, implementation of Village Development, Village

community development, and Village community empowerment based on community initiatives, origin rights, and village customs.

A village is led by a village head based on Article 25 of the Village Law which states that the village government is led by a village head who is assisted by village officials. The village apparatus consists of the heads of affairs, namely the executor of affairs and the head of the hamlet. The heads of affairs assist the village secretary in providing data, information and providing services. Implementation of affairs is an official who carries out village household affairs in the field. The hamlet head is the deputy village head in his area. The role and authority of the village head for the progress of the village is very important, so that the village head should be a capable figure in leading the village so that the village is independent and can develop in the future. The village is obliged to:

- a. Protect and maintain the unity, integrity and harmony of the village community in the context of national harmony and the integrity of the Unitary State of the Republic of Indonesia;
- b. Improving the quality of life of rural communities;
- c. Developing democratic life;
- d. Develop village community empowerment; and
- e. Provide and improve services to rural communities.

Village communities have the right to:

- a. Requesting and obtaining information from the village government as well as supervising the implementation of village governance, implementation of village development, village community development, and village community empowerment;
- b. Get equal and fair service;
- c. Delivering aspirations, suggestions, and oral or written opinions in a responsible manner regarding village administration activities, implementation of village development, village community development, and village community empowerment;
- d. Choose, be elected, and/or appointed to be: Village head, village apparatus, member of the village deliberative body; and Members of village community institutions, get shelter and protection from disturbances to peace and order in the village.

Village communities also have obligations including the obligation to:

- a. Build yourself and maintain the village environment;
- b. Encouraging the creation of village government administration activities, implementation of village development, village community development, and good village community empowerment;
- c. Encouraging the creation of a safe, comfortable, and peaceful situation in the village;

- d. Maintain and develop the values of deliberation, consensus, kinship, and mutual cooperation in the village; and
- e. Participate in various activities in the village

Given that the village is given a large amount of funds, the government provides funds to be managed. Village financial management can be developed into capital in the formation of village-owned enterprises. Article 87 (1) Villages may establish Village-Owned Enterprises called BUM Desa. (2) BUM Desa is managed in a spirit of kinship and mutual cooperation. (3) BUM Desa may run a business in the economic sector and/or public services in accordance with the provisions of laws and regulations. Article 88 (1) The establishment of BUM Village is agreed upon through a Village Deliberation. The establishment of BUM Village is determined by Village Regulation. Village-Owned Enterprises are business entities whose capital is wholly or most of the capital owned by the Village through direct participation originating from separated Village assets in order to manage assets, services, and other businesses for the greatest welfare of the Village community. The procedure for establishing BUMDESA in Article 88 (1) is agreed upon through a Village Deliberation and stipulated by a Village Regulation. From the results of the BUM Village business, it can be used for:

- a. business development; and
- b. Village development, village community empowerment, and providing assistance to the poor through grants, social assistance, and revolving fund activities stipulated in the Village Revenue and Expenditure Budget.

It is hoped that BUMDESA can develop and can be a means of driving the village economy. Regarding capital, the government or private sector can provide grants and/or access to capital, provide technical assistance and access to markets, and prioritize BUM Village in managing natural resources in the Village. In the explanation of the Village Law that specifically BUM Village cannot be equated with legal entities such as limited liability companies, CVs, or cooperatives. Therefore, BUM Village is a business entity characterized by a Village which in carrying out its activities in addition to assisting the administration of Village Government, also to meet the needs of the Village community. BUM Village can also carry out the functions of services, trade, and other economic development. In increasing the source of village income, BUM Village can collect savings at the local scale of the Village community, among others through the management of revolving funds and savings and loans. BUM Village in its activities is not only oriented towards financial gain, but is also oriented towards supporting the improvement of the welfare of the Village community. BUM Village is expected to be able to develop business units in utilizing economic potential. In the event that business activities can run and develop well, it is

very possible that in time BUM Village follows a legal entity that has been stipulated in the provisions of the legislation.

The government established Government Regulation of the Republic of Indonesia Number 11 of 2020 concerning Village-Owned Enterprises as an implementing regulation regarding BUMDESA. Article 5 of the BUMDESA PP states that the achievement of BUMDESA objectives is carried out through the development of the joint BUM Village /BUM Village functions including:

- a. consolidation of products and/or services of the Village community;
- b. production of goods and/or services;
- c. holder, buyer, marketing of Village community products;
- d. village community business incubation;
- e. stimulation and dynamics of the village community's national economy;
- f. basic and general needs services for the Village community;
- g. increase the benefits and economic value

In PP BUMDES mentioned in Article 7 (1) BUM village founded by one (1) Village by Village Council and founding defined by Regulation village. BUM Desa is jointly defined by 2 (two) or more Villages based on the Inter-Village Deliberation and its establishment is determined by a Joint Regulation of the Village Head. The scope of business of the BUM Village is established based on the similarity of potential, business activities, or proximity to the geographical area of the BUMDes. Regarding the ratification of BUMDESA, it is submitted to the Minister of Law and Human Rights as well as the ratification of other legal entities.

Notary Participation In The Establishment Of Village Owned Business Units

In the previous chapter that BUMDESA can be formed by agreement between several people, the definition of an agreement according to Article 1313 BW is an act by which one or more people bind themselves to one or more other people. The definition of an agreement according to R. Subekti is a legal event where a person promises to another person or where two people promise each other to carry out something. (Subekti, *Principles of Civil Law*, 2005) making an agreement must prioritize the principle of freedom of contract which contains the right of everyone to make a contract (agreement) which contains and is of any kind as long as it does not conflict with the law, decency and public order.

The principle of freedom of contract gives freedom to the parties to determine the form of a treaty, there are two forms of the purchase agreement, namely:

1. The agreement in oral form, which is an agreement made by the parties in an oral form and only by consensus and trust among parties

2. The agreement in written form, the agreement which is poured into the writing or deed, the deed is divided into two kinds:
 - a. Authentic deed The definition of an authentic deed is contained in Article 1868 of the Civil Code, which is a deed made in a form determined by law by or before a public official authorized for that at the place where the deed was made.
 - b. Underhanded deed An underhanded deed or onderhands deed is a deed made by the parties without the intercession of an official. In Article 1874 BW states that the deed below is a writing that is signed and made without the intermediary or assistance of a public official.

Regarding public officials who work to serve the making of authentic deeds, it is regulated in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions. That a Notary is a public official who is authorized to make an authentic deed and has other authorities as referred to in this Law or based on other laws. Notaries as public officials have the authority in Article 15 UUJN that notaries are authorized to make authentic deeds regarding all actions, agreements, and stipulations required by laws and regulations and/or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed. , keep the deed, provide grosse, copies and quotations of the deed, all of which are as long as the making of the deed is not assigned or excluded to other officials or other people stipulated by law.

Whereas Article 88 (1) of the Village Law explains that the establishment of BUM Village was agreed upon through a Village Deliberation, but not all village officials understand the making of agreement documents, for that regarding the establishment of BUMDES, village apparatus can appoint a notary in establishing BUMDESA in accordance with the phrase That a notary is authorized to make Authentic deed regarding all desired actions as stated in Article 15 UUJN. After the establishment of BUMDES, a notary can also assist in ratifying the business entity in the BUMDESA to the Minister of Law and Human Rights of the Republic of Indonesia. In addition to the establishment of BUMDESA, village officials may require the making of a deed regarding BUMDES including:

- a. Establishment of a BUMDESA business unit deed in the form of a legal entity
- b. Deed of minutes of meeting in BUMDESA
- c. Deed in the form of transfer of BUMDESA assets to other parties
- d. Deed of agreement between BUMDESA and other villages
- e. Or things that the parties

BUMDESA want to have in common with other legal entities, namely the existence of the articles of association in the BUMDES which is regulated in Article 1 1 (1) PP BUMDESA that

the Articles of Association of the BUM Village /BUM Village are together and the amendments are discussed and determined in the Village Deliberation. / Inter-village meetings. The Articles of Association of BUMDESA/BUMDESA shall at least contain:

- a. name;
- b. domicile;
- c. the aims and objectives of the establishment;
- d. capital;
- e. type of business in the field of economy and/or public services;
- f. name and number of advisors, operational executives, and supervisors;
- g. rights, obligations, duties, responsibilities and authorities as well as procedures for the appointment, replacement, and dismissal of advisors, operational-executors, and/or supervisors; and
- h. basic provisions for the use and distribution and/or implementation and utilization of business results.

4. CONCLUSION

That the village government exists and exists until now since the NKRI was formed, the village has the potential of natural resources that must be managed in an accountable, professional and trustworthy manner. Regarding village management, BUMDESA can be used as a means of driving the economy for the village community.

That a notary can assist in making deeds relating to the establishment of BUMDESA and BUMDESA business units, as well as things that are desired by the parties in the operation of BUMDESA activities. The role of a notary is very necessary, because not all village officials understand the law and the process of establishing a BUMDESA legal entity. It is hoped that notaries will upgrade their knowledge about BUMDESA.

SUGGESTIONS

The village government is expected to manage the potential of the village and develop it through BUMDES and continue to innovate for the sake of progress for the village. The notary should not refuse if the village asks for help to make deeds related to BUMDESA and other deeds as a form of service to the community .

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