

## Optimizing Village-Owned Enterprises as Legal Entities in Efforts to Enhance Cooperation and Asset Management

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### ABSTRACT

Village-Owned Enterprises (BUM Desa) is a business entity that carries out business in the economic sector and/or public services. The status of BUM Desa is confirmed as a legal business entity in the Law on Job Creation. This article discusses efforts that can be made to optimize the legal entity status of BUM Desa after the enactment of the Law on Job Creation to increase cooperation and management of BUM Desa assets after the enactment of the Job Creation Law. The research method used is normative juridical, namely research based on legal sources and their findings. The research results show that first, determining the legal entity status of BUM Desa has implications for optimizing the intensity of cooperation with third parties. Clarity on the legal entity status of BUM Desa can optimize opportunities for BUM Desa cooperation with third parties, because third parties will feel more secure in collaborating with legal entities as legal subjects who have separate assets. Second, after the establishment of BUM Desa as a legal entity, it is necessary to manage BUM Desa assets separately from Village assets, based on the statutory regulations governing BUM Desa, Good Corporate Governance Principles, and internal regulations of BUM Desa, as well as cooperation agreements with third parties if the object of cooperation is BUM Desa assets.

**Keywords:** BUM Desa; cooperation; asset management.

### INTRODUCTION

The Village-Owned Enterprise (hereinafter referred to as "**BUM Desa**") is a form of business entity found in Indonesia. As one form of business entity, BUM Desa can engage in economic activities in accordance with the provisions of the laws and regulations. This business entity has characteristics that distinguish it from other types of business entities, especially in terms of its founding purpose, which prioritizes the welfare of the village community, and in terms of its management, which emphasizes the spirit of kinship and mutual cooperation.

Prior to the enactment of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as "**Law 11/2020**"), the regulation of Village-Owned Enterprises (BUM Desa) was found in Law Number 32 of 2014 concerning Regional Government, Law Number 6 of 2014 concerning Villages (hereinafter referred to as the "**Village Law**"), Government Regulation Number 71 of 2005 concerning Villages (hereinafter referred to as "**GR 71/2005**"), and Minister of Village, Disadvantaged Regions Development, and Transmigration Regulation Number 4 of 2015 concerning the Establishment, Management, and Dissolution of Village-Owned Enterprises (hereinafter referred to as "**MoVDRT 4/2015**"). In the aforementioned laws and regulations, there is no explicit provision stating that BUM Desa is a legal entity.

In Law 11/2020, the status of BUM Desa is finally confirmed as a legal entity. The confirmation of BUM Desa as a legal entity is stated in Article 117 of Law 11/2020, which amends the provision of

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Article 1 number 6 regarding the definition of BUM Desa in the Village Law. The definition of BUM Desa according to Article 117 of Law 11/2020 is:

“A Legal Entity established by a village and/or together with villages to manage businesses, utilize assets, develop investments and productivity, provide service, and/or provide other types of businesses for the maximum welfare of the village community.”

With the confirmation as a legal entity, the government hopes that BUM Desa can have more flexibility in conducting its business activities. As a follow-up to the enactment of Law 11/2020, the government issued Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises (hereinafter referred to as “**GR 11/2021**”). In the current development, the Job Creation Law has been revoked by Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as “**GR of Job Creation Law**”). GR of Job Creation Law is based on the principles of equal rights, legal certainty, ease of doing business, togetherness, and independence, which in its development, the Perppu has been enacted into law through Law Number 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as “**Law 6/2023**”). UU 6/2023 still regulates BUM Desa as a legal entity as has been affirmed in Law 11/2020 and its implementing regulations, namely the GR 11/2021. The regulation of BUM Desa as a legal entity is expected to address the issues faced by BUM Desa, especially those caused by the ambiguity of its legal status before the enactment of the Law 11/2020. BUM Desa's legal status has sometimes been questioned when it intends to collaborate with third parties, due to the lack of clarity in the laws and regulations stating that BUM Desa is a legal entity.

Due to the ambiguity of BUM Desa's legal status, it can act as a hindering factor when BUM Desa intends to collaborate with third parties who feel more secure in engaging with legal entities. Third parties may hesitate to collaborate with BUM Desa due to concerns about potential risks arising from such partnerships in the future.<sup>1</sup> Therefore, the uncertainty surrounding BUM Desa's legal status can impact the intensity of BUM Desa's collaborations with third parties. This issue is undoubtedly a concern for BUM Desa, as collaboration plays a crucial role in developing BUM Desa's businesses. One study mentioned that the low intensity of collaboration among BUM Desa with other BUM Desas or third parties in the Cilacap Regency poses a constraint on their limited marketing reach.<sup>2</sup> Another study indicates that there are factors influencing the development of BUM Desa or hindering their growth, such as the absence of collaborative relationships with any parties, as BUM Desa typically operates as a single business unit.<sup>3</sup>

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<sup>1</sup> Ika Rahayu, “Legalitas Status Badan Hukum Sebuah Badan Usaha Milik Desa yang Didirikan tanpa Akta Notaris”, *Jurnal Multidisiplin Indonesia*, Vol. 1, No. 4 December 2022, p.1226.

<sup>2</sup> Putri Yuni Astuti, Yuri Fitriyani Tamala, Ade Yunita Mafruhah, “Tantangan dan Peluang Percepatan Pengembangan BUM DESA Menuju Status Berkembang dan Maju di Kabupaten Cilacap”, *Jurnal Nuansa Akademik: Jurnal Pembangunan Masyarakat* Vol. 7, No. 1, June 2022, pp.130-132.

<sup>3</sup> Welli Indra Mayu, “Faktor-faktor yang Menghambat Tumbuh dan Berkembangnya Badan Usaha Milik Desa di Desa Pematang Tebih Kecamatan Ujung Batu Kabupaten Rokan Hulu Tahun 2014-2015”, *JOM FISIP*, Vol. 3, No. 2, October 2016, p. 10.

In connection with the aforementioned, enhancing collaboration between BUM Desa and third parties as cooperation partners plays a crucial role in the development of BUM Desa's businesses. The designation of BUM Desa as a legal entity is expected to increase opportunities for collaboration with third parties as cooperation partners. This collaboration may even involve BUM Desa partnering with large-scale corporations to develop business activities of BUM Desa.<sup>4</sup>

Another factor hindering the development of BUM Desa's businesses relates to the optimization of BUM Desa's asset utilization. As outlined in Article 3 of the GR 11/2021, one of the objectives of establishing BUM Desa is to utilize village assets to create added value. The utilization of village assets can be achieved through empowering BUM Desa with the aim of increasing village income.<sup>5</sup> According to Article 2 (1) of the Minister of Home Affairs Regulation Number 1 of 2016 concerning Village Asset Management, the types of village assets include:

1. Original village wealth;
2. Village assets purchased or obtained using Village Revenue and Expenditure Budget funds;
3. Village assets acquired through grants, donations, or similar sources;
4. Village assets acquired through agreements/contracts and/or obtained based on legal provisions;
5. Results of village cooperation; and
6. Other village-acquired wealth.

In MoVDRT 4/2015, it has been regulated that village assets can become assets of BUM Desa through a capital injection mechanism via the Village Revenue and Expenditure Budget (hereinafter abbreviated as APB Desa). The village assets transferred to BUM Desa are the result of the village's capital injection into BUM Desa.<sup>6</sup> Through this capital injection, the assets change status to become the property of BUM Desa. This is in line with the mandate of the Village Law, which states that BUM Desa is a business entity whose entire or majority of capital is owned by the village through direct participation derived from the separated village wealth to manage assets, service provisions, and other businesses for the maximum welfare of the village community.

Article 1 number 14 of GR 11/2021 stipulates that assets of BUM Desa refer to the wealth or property owned by BUM Desa, whether in the form of money or other valuables, tangible or intangible, serving as economic resources expected to provide benefits or returns. According to Article 45 paragraph (1) of GR 11/2021, the sources of BUM Desa's assets originate from:

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<sup>4</sup> Hana Dewi Kinarina Kaban (Pewarta) dan Erafzon Saptiyulda (Editor), "Legalitas Hukum BUM Desaa Perbesar Peluang Kolaborasi dengan Korporasi", <<https://www.antaranews.com/berita/3772824/legalitas-hukum-BUM-Desa-perbesar-peluang-kolaborasi-dengan-korporasi>>, [accessed on 08 March 2024].

<sup>5</sup> Evi Dwi Kartikasari, Irma Indira, Darianto, Muammar Aminul Hakim, Dicky Eka Prasetya, "Urgensi BUM Desa dan Optimalisasi Pemanfaatan Aset Desa dalam Rangka Peningkatan Pendapatan Desa: Kajian Empiris di Desa Pule Kecamatan Modo", *BALANCE: Economic, Business, Management, and Accounting Journal*, Vol. XX, No. 1, January 2023, p. 38.

<sup>6</sup> Hana Novia Wijaya, Isis Ikhwanasyah, dan Pupung Faisal, "Pertanggungjawaban Hukum Badan Usaha Milik Desa atas Aset Desa yang Dikelola sebagai Objek Jaminan", *ACTA DIURNAL: Jurnal Ilmu Hukum Kenotariatan*, Vol. 3, No. 2, June 2020, p. 259.

1. Capital injection;
2. Non-binding assistance including grants (*hibah*);
3. Business proceeds;
4. Loans; and/or
5. Other legitimate sources.

The sources of BUM Desa's assets can also come from non-binding assistance from the central government, local government, and/or other parties, which subsequently become assets of BUM Desa.<sup>7</sup> As for the village's capital injection, it can be provided for the initial capitalization and/or additional capitalization of BUM Desa, in the form of money and/or goods other than land and buildings, which are discussed and decided upon in the village deliberation (*musyawarah desa*).<sup>8</sup>

BUM Desa plays a crucial role in participating in the management of village assets to assist the village government in realizing the welfare of the rural community. Research conducted by Resty Ditha and Arie Apriadi Nugraha on the influence of village asset management, optimization of BUM Desa utilization, and village apparatus professionalism on increasing Village Revenue indicates that:<sup>9</sup>

1. Village asset management has a positive and significant effect on increasing Village Revenue.
2. Optimization of BUM Desa utilization has a positive and significant effect on increasing Village Revenue.

Based on this, optimal management of village assets will impact Village Revenue, one of which is through optimizing the role of BUM Desa in managing village assets.

However, implementing this does not mean there are no challenges faced in optimizing the management of village assets. For example, before the enactment of Law 11/2020, based on Article 87 paragraph (1) of the Village Law, BUM Desa was not specifically designated as a legal entity like a Limited Liability Company (PT) or Cooperative. Consequently, before the implementation of Law 11/2020, the ambiguity regarding the legal status of BUM Desa as a legal entity caused confusion, especially for village governments and BUM Desa managers in managing village assets. At least, this condition would lead to issues such as accountability of BUM Desa managers for the village assets they manage,<sup>10</sup> or when BUM Desa requires capital to manage assets for business development, they might face difficulties in obtaining loans, financing facilities, or credit from lenders due to concerns about potential future problems related to lending to BUM Desa as a legal entity.

Following the enactment of Law 11/2020, as stipulated in Article 117, it is stated that BUM Desa is a legal entity, established by villages and/or together with villages to manage businesses, utilize assets, develop investments and productivity, provide service, and/or provide other types of businesses for the maximum welfare of the village community. The clarity of BUM Desa's legal entity status post the enactment of Law 11/2020 is expected to resolve issues faced by BUM Desa in

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<sup>7</sup> Article 47 paragraph (1) and (2) of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises.

<sup>8</sup> Article 41 paragraphs (1), (2), and (4) of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises.

<sup>9</sup> Resty Ditha dan Arie Apriadi Nugraha, "Pengaruh Pengelolaan Aset Desa, Optimalisasi Pemanfaatan BUM Desa, dan Profesionalisme Aparatur Desa terhadap Peningkatan Pendapatan Desa", *Indonesian Accounting Research Journal*, Vol. 3, No. 3, June 2023, p. 279.

<sup>10</sup> Hana Novia Wijaya, Isis Ikhwansyah, dan Pupung Faisal, *Op.Cit.*, p. 260.

managing village assets. The management of village assets is expected to become more optimal, and BUM Desa is expected to become more creative and innovative in strengthening its operations through easier access to capital, which can support BUM Desa's role in managing village assets to realize the welfare of the rural community.

Based on the above description, there are at least two issues faced by BUM Desa related to the clarity of its legal entity status. Firstly, there are obstacles in collaborating with third parties, and secondly, there are concerns regarding the management of BUM Desa's assets separately from village-owned assets. These two issues will be analyzed by the author in this article, linked to the establishment of BUM Desa's legal entity status as stated in both Law 11/2020 and GR 11/2021. Therefore, the legal issues to be examined by the author are: what are the implications of establishing BUM Desa's legal entity status on the intensity of collaboration with third parties, and how is the management of BUM Desa's assets post-establishment as a legal entity?

## METHODS

The methodological approach used is the normative juridical approach, which encompasses research involving the inventory of positive law, research on legal principles, research on concrete legal cases, systematic legal research, legal history research, and comparative law.<sup>11</sup> The specification of this research is descriptive-analytical, aiming to describe or depict the research object associated with primary legal materials or legal materials related to legislation. Several legislative documents used in this research include the Village Law, Law 11/2020, Law 6/2024, GR 71/2005, GR 11/2021, Minister of Home Affairs Regulation on Village Asset Management, and Minister of Village Regulation on Village Asset Management. Secondary legal materials, or sources that clarify primary legal materials, such as research findings, articles, reference books, and other information media like the internet, are also utilized. Tertiary legal materials include systematically and factually compiled legal dictionaries.

Furthermore, the data analysis method in this research utilizes a qualitative normative method by presenting facts based on research findings. Reasoning is conducted using a deductive method, followed by qualitative juridical analysis, wherein data is systematically organized and then qualitatively analyzed, with the results expressed in descriptive form.<sup>12</sup>

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<sup>11</sup> Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta: 1990, pp. 9-10.

<sup>12</sup> Maria S.W. Sumardjono, *Pedoman Pembuatan Usulan Penelitian*, Fakultas Hukum Universitas Gadjah Mada, Yogyakarta: 1989, pp. 24-25.

## DISCUSSION

### Implications of Establishing the Legal Entity Status of BUM Desa on Optimizing the Intensity of Collaboration with Third Parties

The optimization of the legal entity status of BUM Desa represents a manifestation of the government's implementation efforts in empowering rural communities. According to Chamber, community empowerment is an economic development concept that encapsulates community values to build a new paradigm in development characterized by being people-centered, participatory, empowerment-focused, and sustainable.<sup>13</sup> Furthermore, Chamber explains that the development concept with a community empowerment model is not solely about fulfilling the basic needs of the community but rather an endeavor to seek alternative local economic growth. Community empowerment as an alternative strategy in development has been discussed extensively in various literature and thoughts, although its implementation has not reached its maximum potential.<sup>14</sup>

Development and community empowerment are widely discussed topics within society because they are associated with the progress and future changes of the nation, particularly when linked to the insufficient skills of the community, which significantly hampers economic growth itself.<sup>15</sup>

The development approach utilized thus far has resulted in rural communities experiencing limited progress. This is indicated by the suboptimal state of economic organizations within villages. Ideally, these village economic organizations should grow strong from the grassroots, capable of surviving and thriving. Yet, nearly all economic organizations in rural areas are relatively fragile. This fragility is believed to be one of the significant reasons why the livelihoods and economies of rural communities are increasingly lagging behind and weakening.<sup>16</sup> One of the efforts that can be undertaken, as proposed by Blakely (1994), is the policy of Local Economic Development (LED), which can be considered an alternative in addressing the issues arising from top-down and bottom-up development policies.<sup>17</sup>

Local Economic Development (“LED”) has emerged globally as a crucial planning approach for local economies.<sup>18</sup> According to the World Bank website, Local Economic Development (LED) offers opportunities for local governments, the private sector, non-profit institutions, and local communities to collaborate in efforts to enhance the local economy.<sup>19</sup> Essentially, the establishment and management of BUM Desa (Village-Owned Enterprises) represent cooperative management of

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<sup>13</sup> Chamber, Robert, “Poverty and Livelihood: Whose Reality Counts”, *Environment and Urbanization*, Vol. 7, No. 1, April 1995.

<sup>14</sup> *Ibid.*

<sup>15</sup> See: I Made Wimas Candranegara, I Wayan Mirta, I Nyoman Mangku Suryana dan I Putu Eka Mahardhika, “Pemberdayaan Masyarakat dan Pengelolaan Ekowisata D’Bendungan View Telaga Tunjung Sebagai Wahana Rekreasi Wisata Alam Pedesaan”, *Public Inspiration: Jurnal Administrasi Publik*, Vol. 4, No. 2, 2019, pp. 97-104.

<sup>16</sup> Tri Pranadji dan Endang Lestari Hastuti, “Transformasi Sosio-Budaya dalam Pembangunan Pedesaan”, *AKP 1*. Vol. 2, No.1, March 2004, pp. 77–92.

<sup>17</sup> Bambang dan Suprpto, “Sinergitas Kebijakan *Local Economic Development* Dan Pembangunan Pedesaa Sebagai Upaya Peningkatan Daya Saing Desa”, *JP Journal & Proceeding FEB Unsoed*, Vol. 4, No. 1, 2014.

<sup>18</sup> Christian M. Rogerson, *International Encyclopedia of the Social % Behavioral Sciences (Second Edition)*, Elsevier, 2015.

<sup>19</sup> Bambang dan Suprpto, *Loc.Cit.*

productive village economies, necessitating serious BUM Desa management to maximize village potential.<sup>20</sup> As previously stated, one inhibiting factor for BUM Desa in collaborating with third parties is the ambiguity of BUM Desa's legal entity status. Before the issuance of Law 11/2020 and GR 11/2021, as well as other implementing regulations, there were two classifications of BUM Desa in practice: those with legal entity status and those without. BUM Desa established solely through Village Regulations were classified as BUM Desa without legal entity status. For BUM Desa seeking legal entity status, it was necessary in practice to draft new founding deeds before a Notary Public, typically in the form of an association, and subsequently apply for legal entity status as an association to the Minister of Law and Human Rights.

Qualifying BUM Desa as an association, whether by a Notary Public or the Ministry of Law and Human Rights, is inappropriate because business entities and associations have significantly different characteristics. Following the enactment of Law 11/2020 and GR 11/2021, to obtain legal entity status for BUM Desa established through Village Regulations, pursuant to Article 9(1) of GR 11/2021, registration with the Ministry of Law and Human Rights through the village information system is required. According to Article 8(1) of GR 11/2021, legal entity status for BUM Desa is obtained upon the issuance of an electronic registration certificate by the Ministry of Law and Human Rights.

The reinforcement of legal status for BUM Desa is a boon for strengthening the rural economy.<sup>21</sup> In conducting business activities and/or public services, BUM Desa can collaborate with other parties. Other parties that can engage in cooperation with BUM Desa include government entities, businesses, non-governmental organizations, educational institutions, socio-cultural institutions, and other BUM Desa(s). As stipulated in Article 117 of Law 11/2020, BUM Desa is defined as a legal entity established by a village or collectively by villages to manage businesses, utilize assets, develop investments and productivity, provide services, or engage in other types of businesses for the utmost welfare of the village community.

Through the clarity of legal entity status for BUM Desa, it is hoped that the issues faced by BUM Desa, such as difficulties in establishing business partnerships with third parties, accessing banking capital, and expanding BUM Desa's business opportunities, can be addressed.<sup>22</sup> BUM Desa is established by the village government to harness all economic potentials, institutionalize the economy, and utilize natural resources and human resources to enhance the welfare of rural communities and Village Original Income (*Pendapatan Asli Desa*).<sup>23</sup> The clarity of legal entity status for BUM Desa will provide opportunities for BUM Desa to be more optimal in conducting its business activities, including engaging in partnerships with third parties to achieve its goals.

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<sup>20</sup>Cucu Nurhayati (ed), *BUM Desa dan Kesejahteraan Masyarakat Desa*, Pusat Penelitian Badan Keahlian DPR RI, Jakarta: 2018, p. 10.

<sup>21</sup>Ni Kadek Sinarwati, *Badan Usaha Milik Desa (BUM Desa) Gelora Desa Membangun Indonesia*, Expert, Yogyakarta: 2021, pp. 117-119.

<sup>22</sup>Abu Ubaidillah, "UU Cipta Kerja Disahkan, BUM Desa Jadi Badan Hukum", 2020, <<https://news.detik.com/berita/d-5204854/uu-cipta-kerja-disahkan-bum-desaja-badan-hukum>>, [accessed on 01/12/2020].

<sup>23</sup>Rukin, *Pembangunan Pedesaan Melalui Badan Usaha Milik Desa*, Bumi Aksara, Jakarta: 2021, p. 23.

BUM Desa is a village enterprise institution managed by the community and village government to strengthen the rural economy and is formed based on the needs and potentials of the village. As one of the economic institutions operating in rural areas, BUM Desa must have differences compared to general economic institutions. This is intended so that the presence and performance of BUM Desa can significantly contribute to improving the welfare of village residents. Additionally, it aims to prevent the development of a capitalist business system in rural areas that could disrupt community values. The approach expected to stimulate and drive the rural economy is through the establishment of economic institutions fully managed by the village community. These economic institutions are no longer established based on government instructions but should be based on the desires of the village community, stemming from existing potentials that, if managed properly, will generate demand in the market. To ensure that these economic institutions are not controlled by certain groups with large capital in rural areas, their ownership should belong to the village and be collectively controlled, primarily aiming to improve the economic living standards of the community. In its operationalization, BUM Desa is supported by the village monetary institution (financing unit) as a unit that conducts financial transactions such as loans and deposits. If the economic institutions are strong and supported by adequate policies, economic growth accompanied by equitable distribution of assets to the people will be able to address various economic problems in rural areas. Ultimately, BUM Desa, as an instrument, serves as social capital expected to bridge efforts to strengthen the rural economy. To achieve this condition, strategic and tactical steps are needed to integrate potentials, market needs, and the design of these institutions into planning, while also considering local potentials and policy support (good will) from the government above to address the low surplus of economic activities in rural areas due to the possible lack of development in the economic sector in rural areas. This will lead to the integration of agricultural systems and structures in a broad sense, where integrated agricultural, trade, and service efforts can be used as guidelines for institutional governance.<sup>24</sup> Therefore, BUM Desa is essentially the cornerstone of economic activities in villages, serving two functions: as a social institution and a commercial institution. As a social institution, BUM Desa must prioritize the interests of the community through its contributions to social services.<sup>25</sup>

In accordance with the provisions of Law 11/2020, further regulations regarding BUM Desa are stipulated by Government Regulation (abbreviated as GR). In this GR, it is necessary to comprehensively regulate the establishment of BUM Desa as a legal entity, similar to other legal entity businesses. With the clarification of BUM Desa as a legal entity in Law 11/2020, it is hoped that BUM Desa will have more freedom in carrying out its business activities, including collaborating with third parties to achieve its goals. The collaborations undertaken by BUM Desa can involve both business and non-business collaborations.

In connection with this, with the provision of Article 117 of Law 11/2020 which designates BUM Desa as a legal entity, various views suggest that the legal status of BUM Desa will facilitate access to funding and business collaborations. BUM Desa, established by or together with villages, is aimed at

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<sup>24</sup> Agus Sudardi dan Joko Mardiyanto, "Eksistensi Badan Usaha Milik Desa terhadap Peningkatan Pendapatan Asli Desa Jetis Kecamatan Kaliwungu Kabupaten Semarang", *Jurnal Bedah Hukum*, Vol. 2, No. 2, October 2018, pp. 81-92.

<sup>25</sup> Harmen Batubara: *BUM Desa & BUMNas Sinergis Rakyat Sejahtera*, wilayahperbatasan.com, Bandung: 2018, p. 39.

managing businesses, utilizing assets, developing investments and productivity, providing services, and other business types for the maximum welfare of rural communities.<sup>26</sup> The clarity of the institutional status of BUM Desa will provide opportunities for BUM Desa to be more optimal in carrying out its business activities, including collaborating with third parties to achieve its goals.

Article 117 paragraph (1) of Law 11/2020, which amends the provisions of Article 87 of the Village Law, explains that BUM Desa is established by the Village Government to harness all economic potentials, economic institutional capacities, as well as natural and human resources potentials in order to improve the welfare of the village community. BUM Desa specifically cannot be equated with legal entities such as limited liability companies or cooperatives. Therefore, BUM Desa is a business entity characterized by the village, which in its implementation, besides assisting in the administration of the Village Government, also aims to fulfill the needs of the village community. BUM Desa can also carry out functions in service provision, trade, and other economic development activities.<sup>27</sup> The provisions of Article 87 of the Village Law state that:

1. The village may establish BUM Desa.
2. BUM Desa is managed with a spirit of mutual cooperation and communal solidarity.
3. BUM Desa may engage in business in the economic field and/or public services in accordance with the provisions of the legislation.
4. BUM Desa may establish legal entity business units according to needs and objectives.

A legal entity is an entity that has rights and obligations to carry out acts on its own behalf. A legal entity is a legal subject like a person. The requirements for an entity to be categorized as a legal entity include: the existence of wealth for a specific purpose separated from the personal wealth of the partners or founders, the interests served are common interests, and there are several individuals as the administrators of the entity. Legal entities can be classified into two main categories: public legal entities and private legal entities. Article 1653 of the Civil Code states that legal entities can be established by public authority; legal entities recognized by public authority; and legal entities permitted and established for specific purposes, which do not contradict the law or morality.<sup>28</sup>

The position of BUM Desa after Law 11/2020 as a legal entity is a new entity whose position is equivalent to a Limited Liability Company (PT), equivalent to a State-Owned Enterprise (*Badan Usaha Milik Negara* or “BUMN”) at the national level, and a Regional-Owned Enterprise (*Badan Usaha Milik Daerah* or “BUMD”) at the regional level as explained in the Explanation of Article 117 of Law 11/2020 which amends Article 87 of the Village Law. The position of BUM Desa as a legal entity cannot be equated with Corporations and Cooperatives. BUM Desa takes the form of a legal entity as regulated

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<sup>26</sup>Srihandriatmo Malau, “Wamendes: UU Cipta Kerja Jadi Solusi Badan Hukum BUM Desa”, 2020, <<https://www.tribunnews.com/bisnis/2020/10/13/wamendes-uu-cipta-kerja-jadi-solusi-badan-hukum-BUM-Desa>>, [accessed on 10 March 2021].

<sup>27</sup>Alfiansyah, “Status Badan Usaha Milik Desa Sebagai Badan Hukum atas Diundangkannya Undang-Undang Cipta Kerja, *Jurnal Ilmu Sosial dan Pendidikan*”, Vol. 5, No. 2, March 2021.

<sup>28</sup>*Ibid.*

in Law 11/2020 is expected to be a solution for the status of BUM Desa so far, thus it is expected to have a positive impact on the village economy. As a legal entity, BUM Desa will also have characteristics like other legal entities in general, namely, it can have separate wealth and act as a legal entity. The expected positive impacts of BUM Desa's status as a legal entity include:<sup>29</sup>

1. Facilitating village partnerships;
2. Facilitating the promotion of regional potentials;
3. Accelerating regional economic improvement; and
4. Accelerating the achievement of National SDGs.

As a business entity, BUM Desa engages in business activities. In accordance with Article 1 number 2 in conjunction with Article 6 of GR 11/2021, BUM Desa's activities may involve economic and/or public service sectors managed independently by BUM Desa, in accordance with prevailing laws and regulations. One form of collaboration undertaken by BUM Desa is cooperation with the village government in asset utilization. In practice, many BUM Desas conduct their business activities by utilizing village assets. The utilization of village assets by BUM Desa must be carried out in the context of cooperation with the village government, and the pattern of cooperation is regulated through a cooperation agreement signed by BUM Desa with the Village Government. In this cooperation agreement, the scope of cooperation, rights and obligations of the parties, profit and risk sharing, as well as other matters related to the implementation of cooperation must be clearly defined. In addition to complying with the agreements outlined in the agreement, the implementation of such cooperation must also adhere to the laws and regulations governing village assets.

In addition to collaboration in utilizing village assets, another form of collaboration that BUM Desa can undertake with other parties in the context of business cooperation is collaboration in jointly managing resources. For BUM Desa that possess resources, such as natural resources or other types of resources, they can collaborate with other parties to optimize the management of these resources. In the implementation of collaboration in jointly managing resources, as stipulated in Article 56 paragraph (4) of GR 11/2021, consideration must first be given to the legal status, ownership, and/or possession of the object based on prevailing laws and regulations.

Before engaging in business cooperation with other parties, according to Article 56 paragraph (5) of GR 11/2021, the operational executor must first draft a business cooperation plan and submit it for approval to the advisors, supervisors, or village assembly as authorized under the village corporation's articles of association. As stipulated in GR 11/2021, the village assembly or inter-village assembly, in accordance with Article 16 paragraph (1) of GR 11/2021, holds the highest authority in the BUM Desa or Joint BUM Desa. One of the authorities of the village assembly/inter-village assembly is to approve business cooperation of the BUM Desa or Joint BUM Desa with other parties, including the value, amount of investment, and/or specific forms of cooperation, as determined in the articles of association of the BUM Des/Joint BUM Desa.

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<sup>29</sup> *Ibid.*

In connection with this, the presence of BUM Desa represents an effort to establish, strengthen, and expand economic ventures, focusing on flagship products in rural areas and can be managed through inter-village cooperation, which, in its implementation, has the potential to enhance welfare and create high employment opportunities for the community, leading to regional economic growth and even contributing to the national economy.<sup>30</sup> For non-business cooperation that can be conducted by Village-Owned Enterprises with other parties, it may include forms such as technology transfer, knowledge exchange, arts and culture, and human resource development. Before executing any cooperation, pursuant to Article 57 paragraph (2) of the Regulation concerning Village-Owned Enterprises, the operational executor must first draft a non-business cooperation plan and seek approval from advisors and supervisors. To follow up on the provisions of GR 11/2021 the Ministry of Village, Development of Disadvantaged Regions, and Transmigration issued Ministerial Regulation No. 3 of 2021 concerning Registration, Data Collection and Ranking, Guidance and Development, and Procurement of Goods and/or Services of Village-Owned Enterprises/Joint Village-Owned Enterprises (hereinafter referred to as “**MoVDRT 3/2021**”). In this ministerial regulation, one of the provisions pertains to the development of Village-Owned Enterprises, aimed at achieving effective and efficient organizational planning, management, implementation, and monitoring systems. One of the strategies for developing Village-Owned Enterprises is through strengthening cooperation or partnerships.

In accordance with the provisions of Article 117 of Law 11/2020, which designates BUM Desa as legal entities, it is expected to facilitate access to capital and business partnerships for BUM Desa. Established by villages or collectively by villages to manage businesses, utilize assets, develop investments and productivity, provide public services, and other types of enterprises for the maximum welfare of the village community.<sup>31</sup> BUM Desa can operate in the economic and/or public service sectors and can establish legal entity business units. Based on registration results as of July 2020, there were 10,629 registered BUM Desa, with a turnover of Rp 938 billion. Then, in August 2020, there were 20,046 registered BUM Desa, with a turnover of Rp 1.173 trillion, and 10,159 are in the verification process. The transformation of 5,301 PNPM-CLC units into BUM Desa with assets in the form of revolving funds amounting to Rp 12.1 trillion, other assets totaling Rp 594 billion, spread across 5,328 sub-districts in 404 districts/cities, across 33 provinces.<sup>32</sup> In connection with this, villages can establish BUM Desa, which must be managed with a spirit of kinship and mutual cooperation, and rural communities must have an entrepreneurial spirit in managing BUM Desa. The key to BUM

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<sup>30</sup>Yusuf Wijanarko, “BUM Desa Harus Beri Kebermanfaatan Ekonomi bagi Warga Desa”, 2018, <<https://www.pikiran-rakyat.com/ekonomi/pr-01304431/BUM-Desa-harus-beri-kebermanfaatan-ekonomi-bagi-warga-desa>>, [diakses pada 10 Maret 2021].

<sup>31</sup>Srihandriatmo Malau, “Wamendes: UU Cipta Kerja Jadi Solusi Badan Hukum BUM Desa”, 2020, <<https://www.tribunnews.com/bisnis/2020/10/13/wamendes-uu-cipta-kerja-jadi-solusi-badan-hukum-BUM-Desa>>, [diakses pada 10 Maret 2021].

<sup>32</sup>*Ibid.*

Desa remains entrepreneurship in the village, making BUM Desa a potential driver of rural economic development in the future.<sup>33</sup>

The partnership concept embraced by BUM Desa Sulaksana is quite intriguing and not widely practiced by other BUM Desas. In their eco-tourism village enterprise, BUM Desa Sulaksana collaborates with all village residents to utilize their private lands for management and empowerment by BUM Desa Sulaksana, both in terms of management and empowerment. For instance, the utilization of vegetable agro-tourism, previously focused solely on cultivation and sales, now generates additional income through visits from guests arranged by BUM Desa Bina Laksana. Agricultural lands owned by residents, which were initially not very profitable when managed individually, are now utilized more effectively and profitably through this partnership. The concept of profit sharing is in accordance with agreements made between the land-owning residents and BUM Desa.

Through the partnership concept it has developed, BUM Desa Bina Laksana is able to seize business opportunities by optimizing the role and participation of the surrounding community members in BUM Desa, allowing them to participate and simultaneously gain added value from the assets collaborated with BUM Desa. BUM Desa Bina Laksana ranks among the top 50 tourism awards,<sup>34</sup> with a minimum monthly revenue of Rp. 70,000,000 (seventy million Indonesian Rupiah) before the pandemic, particularly from its eco-tourism village enterprise. It is a pioneer in establishing educational tourism villages, particularly contributing to the introduction of various cultures related to agriculture, arts, and others. This achievement has enabled it to attain the top rank in the implementation of BRILian Village Year 2021 batch 1.

In connection with this, the enactment of Law 11/2020, through its business-friendly measures aimed at creating job opportunities, underscores the importance of BUM Desa's status as a legal entity, among other things, to facilitate collaboration with other parties. For the professional development of businesses, partnerships are also forged with third parties, for example, to optimize the managerial capabilities of BUM Desa's human resources, collaborations are established to enhance capacity and proficiency in electronic data administration, which was previously manual.

The opportunities to optimize BUM Desa's businesses are increasingly expanding with various conveniences and facilities mandated by Law 11/2020. This legislation provides greater opportunities to elevate the status of business units to legal entities, whether as Limited Liability Companies (PT) or Cooperatives, with BUM Desa serving as the parent company (holding company). Furthermore, as a separate legal entity, BUM Desa has the potential to further enhance partnerships or collaborations with other economic actors, including large, medium, small, and micro-sized enterprises (MSMEs), based on mutually beneficial partnerships, while adhering to the principle that the benefits obtained by BUM Desa are for the welfare of the rural communities where BUM Desa operates.

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<sup>33</sup> *Ibid.*

<sup>34</sup> Reporter Merdeka, "Mengenal Desa Sukalaksana di Garut yang Jadi Juara Desa Brilian 2021 Tahap 1", 2021, <<https://www.merdeka.com/uang/mengenal-desa-sukalaksana-di-garut-yang-jadi-juara-desa-brilian-2021-tahap-1.html>>, [accessed on 03 December 2021].

The business units developed are based on the potentials inherent in each village where BUM Desa operates.<sup>35</sup> The establishment and development of BUM Desa businesses require careful planning and courage<sup>36</sup>, coupled with thorough business calculations, to effectively manage any arising business risks.<sup>37</sup> BUM Desa forms business units capable of supporting the development of businesses already pursued by the community, such as assisting in addressing issues related to raw material procurement, production, or marketing. The network of collaborations possessed by BUM Desa/villages can be beneficial for the development of BUM Desa businesses.<sup>38</sup>

Similarly, another implication of the clarity regarding BUM Desa as a legal entity is that it provides greater opportunities for BUM Desa to strengthen its capital through third-party sources, such as loans or credit schemes from banking institutions. Previously, when the institutional status of BUM Desa was unclear, this was difficult to achieve. Additionally, in terms of professional management, the optimization of human resources within BUM Desa is facilitated through strengthened partnerships with allies who can provide training, technical assistance, and technology for production, distribution, and marketing. Intellectual property rights (trademarks and simple patents) and BUM Desa organization are also addressed, aiming to realize an efficient and effective organization in collaboration with government agencies, other institutions (companies, academic institutions), or NGOs (Non-Governmental Organizations).

In line with this, the government has established a strategy for strengthening cooperation or partnerships as part of the development of BUM Desa, based on the provisions of Article 26 paragraph (4) of Minister of Village Regulation No. 3 of 2021, as elaborated in programs or activities:

1. Facilitation and strengthening of cooperation among BUM Desa/BUM Desa bersama;
2. Facilitation and strengthening of cooperation between BUM Desa/BUM Desa bersama and the business world;
3. Facilitation and strengthening of cooperation between BUM Desa/BUM Desa bersama and financial institutions;
4. Facilitation and strengthening through cooperation between BUM Desa/BUM Desa bersama and government agencies;
5. Facilitation and strengthening of cooperation between BUM Desa and e-commerce;
6. Other programs or activities for strengthening cooperation or partnerships.

The various facilitations provided by the government, as outlined above, aim to ensure that the cooperation established between BUM Desa and relevant parties ultimately leads to the overall welfare of the community, which is also the primary goal of BUM Desa. The cooperation undertaken

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<sup>35</sup> David Wijaya, *Mengelola Produksi BUM Desa Secara Profesional*, Gava Media, Yogyakarta: 2020, p. 31.

<sup>36</sup> Harmen Batubara, *Mendirikan & Membangun BUM Desa Sesuai UU Desa*, wilayahperbatasan.com, Bandung: 2019, p. 192.

<sup>37</sup> David Wijaya, *BUM Desa Badan Usaha Milik Desa*, Gava Media, Yogyakarta: 2018, p. 157.

<sup>38</sup> Hastowiyono dan Suharyanto, *Pelebagaan BUM Desa*, Forum Pengembangan Pembaharuan Desa, Yogyakarta: 2014, pp. 15-16.

by BUM Desa must, according to Article 54 paragraph (3) of GR 11/2021, be mutually beneficial and protect the interests of the village and its community, as well as the parties involved in the cooperation. As stipulated in Article 3 of GR 11/2021, the objectives of establishing BUM Desa/joint BUM Desa are:

1. Engaging in economic activities through business management, investment development, and enhancing the economic potential of the village;
2. Providing public services by supplying goods and/or services, meeting the basic needs of the rural community, and managing the village's food reserves;
3. Generating profits or net income to increase the Village Original Income (PAD) and maximize the benefits from the economic resources of the rural community;
4. Utilizing village assets to create added value for the village assets; and
5. Developing a digital ecosystem in the village

### **Management of Village Assets by Village-Owned Enterprises (BUM Desa) Post Establishment of BUM Desa as a Legal Entity**

The model of empowering and developing the economic potential of villages through Village-Owned Enterprises (BUM Desa) is a strategy to alleviate poverty and provide employment opportunities to rural communities.<sup>39</sup> However, the presence of BUM Desa has not significantly improved the local economy of rural communities.<sup>40</sup> According to Article 1, paragraph 6 of the Village Law, BUM Desa is a business entity whose entire or majority of capital is owned by the village through direct participation derived from village assets separated for managing assets, service provision, and other businesses for the maximum welfare of the rural community.

As an economic institution in rural areas, BUM Desa has obtained clear legal status following the issuance of Law 11/2020. This has been affirmed by Article 117 of Law 11/2020, stating that BUM Desa is a legal entity established by the village and/or together with other villages to manage businesses, utilize assets, develop investments and productivity, provide service offerings, and/or engage in other types of businesses for the utmost welfare of the rural community.

One of the requirements for an entity to be categorized as a legal entity includes the presence of wealth or assets with a specific purpose that are separated from the personal wealth of the partners or founders.<sup>41</sup> One implication of designating BUM Desa as a legal entity is the clarity regarding the distinction between village assets and BUM Desa assets. As a legal entity, apart from being a legal subject, BUM Desa also possesses its own separate wealth/assets from its owners.

The consequence of BUM Desa being recognized as legal entities is the separation of assets. Therefore, it is imperative for BUM Desa to distinctly separate village assets from BUM Desa assets. Hence, in Articles 45 to 47 of GR 11/2021, which serves as the implementing regulation of Law

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<sup>39</sup>Sugianto Amran, "Optimization of Empowerment and Development of Village Economic Potential Through Village Owned Business Entities (BUM DESA)", *International Journal of Economics, Business and Accounting Research (IJEBAR)*, Vol. 6, Issue 1, 2022.

<sup>40</sup>Tarlani dan T Sirajuddin, "Rural Development Strategies in Indonesia: Managing Villages to Achieve Sustainable Development", *IOP Conference Series: Earth and Environmental Science*, 2020.

<sup>41</sup>Alfiansyah, *Loc.Cit.*

11/2020, it is stipulated that the village provides capital to BUM Desa, which is separated or transferred to BUM Desa. Once the village invests capital in BUM Desa, the capital or assets are transferred to become the property of BUM Desa.<sup>42</sup> According to Article 1, point 14 of GR 11/2021, the definition of BUM Desa assets is as follows:

“Assets or wealth owned by BUM Desa, whether in the form of money or other valuables, tangible or intangible, as an economic resource expected to provide benefits or returns.”

The clear separation between village assets and BUM Desa assets will facilitate BUM Desa in managing its assets. As per the provisions of Article 3 of GR 11/2021, one of the objectives of establishing BUM Desa is the utilization of village assets to create added value to these assets.

Based on Article 45 paragraph (1) of GR 11/2021, the assets of BUM Desa originate from:

1. Capital participation;
2. Non-binding assistance, including grants;
3. Business proceeds;
4. Loans; and/or
5. Other legitimate sources.

BUM Desa must manage its assets based on healthy business principles. Every development and status of BUM Desa's assets must be periodically reported in the financial statements of BUM Desa.

Assets of BUM Desa derived from non-binding assistance from the central government or local government are directly allocated to BUM Desa and implemented in accordance with the provisions of prevailing laws and regulations. Meanwhile, non-binding assistance from other parties is directly allocated to BUM Desa and implemented as agreed upon by the parties involved.

Management of assets and capital is one of the strategies in the development of BUM Desa, as stipulated in Article 25 letter d of MoVDRT 3/2021. According to Article 26 paragraph (5) of MoVDRT 3/2021, the strategy for strengthening the management of assets and capital of BUM Desa is outlined in programs or activities as follows:

1. Expansion of funding sources;
2. Expansion of access to financing institutions;
3. Expansion of financing for working capital and investment capital;
4. Other programs/activities for strengthening the management of assets and capital.

To ensure that the management of BUM Desa's assets complies with healthy business principles, it is necessary to not only adhere to applicable laws and regulations but also comprehensively regulate it in the Articles of Association and Household Regulations of BUM Desa. The Articles of Association and Household Regulations of BUM Desa should establish rules regarding the management of BUM Desa that reflect the application of the principles of Good Corporate

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<sup>42</sup>Jusman Khairul Hadi, “Kedudukan Badan Usaha Milik Desa (BUM DESA) Berdasarkan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja”, *Jurnal Juridica*, Vol. 3, No. 1, November 2021.

Governance. The Articles of Association and Household Regulations are internal regulations applicable within the BUM Desa environment.

For the management of BUM Desa's assets that are collaborated with third parties, it is necessary to be included in a cooperation agreement. In this cooperation agreement, it should cover the ownership status of assets, the scope of asset management, the rights and obligations of the parties involved, profit and risk sharing, as well as other important matters related to the implementation of the cooperation.

Thus, following the enactment of Law 11/2020, which explicitly states that BUM Desa as a legal entity requires separate management of its assets from those of its owners, the management of these assets must comply with regulations, Good Corporate Governance principles, and internal rules applicable to BUM Desa.

## CLOSING

The designation of BUM Desa as a legal entity has implications for optimizing the intensity of cooperation with third parties. The clarity of BUM Desa's legal status can enhance opportunities for collaboration with third parties, as they will feel more secure and certain about the wealth held by BUM Desa to engage in partnerships with a legal entity that has separate assets.

Following the establishment of BUM Desa as a legal entity, it is necessary to manage its assets separately from those of the village. This separation between village assets and BUM Desa assets must not only comply with asset management regulations governing BUM Desa and adhere to Good Corporate Governance principles but also be addressed in internal regulations, namely the Articles of Association and Bylaws of BUM Desa. If BUM Desa's assets are to be used as the subject of cooperation with third parties, clear rules are needed in the cooperation agreement, including ownership status of assets, the scope of asset management, rights and obligations of the parties involved, profit and risk sharing, and other important matters related to the implementation of the intended cooperation.

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