

## REGULATION AND INSTITUTIONAL ARRANGEMENT OF VILLAGE-OWNED ENTERPRISES AFTER THE WORK CREATION ERA APPLIED

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### Abstract

The management of BUMDesa is not yet optimal because many BUMDesa administrators still need to understand BUMDesa regulations and institutions. Seeing these problems, there needs to be capacity building preceded by legal reasons as a guideline for regulating BUMDesa management signs. Increasing the capacity of Village-Owned Enterprises (BUMDesa) as an organ driving the village economy can be carried out through the Job Creation Era, which has become a momentum for structuring BUMDesa regulations and institutions. The era of work creation referred to is the birth of Law Number 11 of 2020 concerning Job Creation which is now declared invalid with the presence of Government Regulation (Perpu) Number 2 of 2022 concerning Job Creation. This study uses normative legal research methods (normative legal research). The author uses this legal research because the focus is on studying literature and laws and regulations related to the object of research. The results of the research show that the Job Creation Perpu needs to be pushed into law so that it can become a legal umbrella for the establishment and management of BUMDesa institutions because, in fact, the spirit that is carried out in the Job Creation Era, namely improving the investment ecosystem and business activities, one of them through the institutional arrangement of BUM Desa.

**Keywords:** BUMDesa, Village, Job Creation Law, Institutional, Job Creation Perpu

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### INTRODUCTION

The village has an important role in the progress of the Indonesian state. This is in line with Jimly Asshiddiqie's opinion in his book, which says that the village represents the uniqueness of the Indonesian nation because within the village lies a diversity of customs, languages, clothing and other inseparable things characteristics. Furthermore,

Jimly Asshiddiqie emphasized that the village is the foundation or the main pillar of the life of the Indonesian nation-state.<sup>1</sup> For the most part, Indonesian people live in villages. The Unitary State of the Republic of Indonesia will never stand upright if the struggle to uphold independence is not supported by the people of villages throughout the country.<sup>2</sup>, so great is the role of the village in the history of the founding of the State of Indonesia. Jimly Asshiddiqie wrote that the center of attention in national development efforts should be directed at rural communities. Thus, developing Indonesia must be carried out from the periphery by strengthening the regions, in this case, villages which are also a priority for the state. Where the goal is to advance the economy of rural communities and overcome national development gaps.<sup>3</sup>

Constitutionally, the position of village existence will be found in Article 18A of the 1945 Constitution. This article emphasizes that the state recognizes and respects special or special regional government units regulated in law. This article further emphasizes that Indonesia has always known and acknowledged the existence of villages. Then there is also recognition of village government in a separate article, namely in Article Chapter VI of the 1945 Constitution. In the articles of the Chapter, it is clear that the position of village government is constitutionally recognized. The village has an important role in the country's progress. One aspect that can advance the village is the Village Owned Enterprise (BUMDes).

According to Law Number 6 of 2014, Village-Owned Enterprises (BUMDes) are "business entities whose capital is wholly or substantially owned by the Village through direct participation originating from village assets that are separated to manage assets, services, and other businesses. for the welfare of the village community as much as possible. The purpose of establishing BUMDes is to improve services to the community and empower the Village as an autonomous region with productive businesses and increase village independence and capacity to strengthen the economy. In more detail, the objectives of BUMDes are as follows:<sup>4</sup>

1. Avoiding village communities from the influence of releasing high interest, which can be detrimental and burdensome for village communities;
2. Increasing the role of village communities in managing capital assistance originating from the Government and Village Administration and other legitimate sources;
3. Maintaining and enhancing the habits of cooperation to like save in an orderly, regular, beneficial and sustainable manner;
4. Encouraging the growth and development of the activities of the village community;

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<sup>1</sup> Jimly Asshiddiqie, 'Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi' (Jakarta: Bhuana Ilmu Populer, 2007), p. 916.

<sup>2</sup>Ibid.

<sup>3</sup> Eka Nurcahya, 'Tugas Pemerintah Dalam Menyelesaikan Masalah – Masalah Sosial: Tinjauan Mengenai Masalah Badan Usaha Milik Desa', *Responsive*, 2.1 (2019), 1 <<https://doi.org/10.24198/responsive.v2i1.23015>>.

<sup>4</sup> Romi Saputra, 'Peranan Badan Usaha Milik Desa (BUMDES) Sebagai Implementasi Ekonomi Kreatif Dalam Rangka Pemberdayaan Masyarakat Desa Jalan Cagak Kecamatan Jalan Cagak Kabupaten Subang Provinsi Jawa Barat', *TRANSFORMASI: Jurnal Manajemen Pemerintahan*, 9.1 (2019), 15–31 <<https://doi.org/10.33701/jt.v9i1.607>>.

5. Encouraging companies engaged in the informal sector to be able to absorb labor for rural communities;
6. Increase the entrepreneurial creativity of village community members who have low incomes.

In its work, BUMDes has a myriad of problems. BUMDes management can be difficult due to problems such as limited Human Resources (HR). In general, the main activities in the Village are in agriculture and management of natural resources, which of course, require qualified human resources to be able to manage them properly.<sup>5</sup> In the BUMDes management process, there are often several challenges that BUMDes managers or administrators must resolve. Some of the challenges faced in BUMDes management are as follows:

*First* is the problem of organizational settings. Organizational arrangements are needed for the smooth running of a business. Good organizational management will encourage business progress and development. Few BUMDes ultimately cannot develop due to a lack of good organizational arrangements within BUMDes. Even though BUMDes management has been formed, in its implementation, BUMDes management has yet to be able to carry out its responsibilities properly.

*Second*, find and develop village potential. A village is a territorial unit inhabited by several families with a government system headed by a village head. Each village has potential that can be developed, whether it's potential in natural resources (nature tourism, agriculture, etc.) or potential in human resources (crafts, services, etc.). Developing the village's potential can be difficult because uniting the community to develop the village takes work. Many want to avoid developing the village's potential for various reasons. It is very necessary to socialize and train human resources to change how people think so that they are willing to be invited to manage the village's potential together.

*Third*, promotion problem. BUMDes that are well managed and have quality output often still need help in terms of promotion. This makes BUMDes management have to be able to see opportunities and be smart in finding ways to carry out promotions. Because it will be useless if the potential of the village has been transformed into a product but cannot be distributed properly just because of poor promotion issues.<sup>6</sup>

Amendments to Law Number 6 of 2014 concerning Villages with Law Number 11 of 2020 concerning Job Creation have implications for the status of BUMDes. Previously the phrase "BUM Desa" was written in two laws. The first law is the Village Law No. 6 of 2014. This law was born as a basis for village regulation as a state-recognized territorial unit. In addition, it is also used as a legal basis for village fund allocations to village government arrangements. Then the phrase "BUM Desa" was

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<sup>5</sup> Cut Sabina Anasya Zulkarnain and Maret Priyanta, 'Kewenangan Pemerintah Daerah Dalam Penataan Ruang Kawasan Perdesaan: Implikasi Perubahan Pasca Undang-Undang Cipta Kerja (The Authority of The Local Government in Rural Area Spatial Planning: Post-Implications of Indonesian Law Number 11 Year 2020)', *Bina Hukum Lingkungan*, 5.3 (2021), 416–31 <<https://doi.org/10.24970/bhl.v5i3.211>>.

<sup>6</sup> SahabatBumdes, 'Tantangan Dalam Pengelolaan BUMDes, Apa Saja?', *Bumdes.Id*, 2022 <<https://blog.bumdes.id/2019/05/tantangan-dalam-pengelolaan-bumdes-apa-saja/>> [accessed 22 February 2023].

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written in the Job Creation Law No. 11 of 2020. This law was challenged in the Constitutional Court with the result that the panel of judges decided "conditionally unconstitutional," namely allowing the government to improve, but this law still applies without any additional rules.<sup>7</sup>

Article 1 of the Village Law states: Village-Owned Enterprises, from now on referred to as BUM Desa, are business entities whose capital is wholly or substantially owned by the village through direct participation originating from village assets which are separated to manage assets, services and other businesses. for the greatest welfare of the village community.

Article 117 of the Job Creation Law states: Village-Owned Enterprises, from now on referred to as BUM Desa, are legal entities established by villages and with villages to manage businesses, utilize assets, develop investment and productivity, provide services, and other types of business for the maximum welfare of the village community.

The Village Law defines BUMDesa as a business entity from these two different meanings. Then it was replaced with the Job Creation Law, which mentions BUMDesa as a legal entity. With the presence of the Job Creation Law, BUM Desa is automatically a legal entity operating in the village. The presence of the Job Creation Law aims to improve the investment ecosystem and business activities, one of which is through BumDesa.

As one example, North Gorontalo Regency, as an area on the coast, has the potential for the tourism sector, the fisheries and maritime sectors being the mainstay. Apart from that, the condition of agriculture and plantations is the leading sector which is the field of livelihood for the people's economy. Productive economic business activities in rural areas are still very limited in variety and number. The main business activities and livelihoods of people in rural areas are the business of managing/utilizing natural resources which are directly or indirectly related to fisheries/marine affairs, agriculture and plantations. Therefore BUMDesa/BUMDesa together need to be encouraged to develop the potential that exists in the region.

Currently, the regional government of North Gorontalo Regency already has Regional Regulation Number 3 of 2017 concerning Village-Owned Enterprises. However, the presence of Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises has implications for legal uncertainty regarding the content contained in Regional Regulation Number 3 of 2017, particularly regarding BumDesa institutions, so it needs to be repealed and a new regional regulation made. To provide legal certainty regarding Village Owned Enterprises in North Gorontalo Regency.

The following are some of the problems faced by BUMDes after the enactment of PP Number 11 of 2021 concerning Village Owned Enterprises:<sup>8</sup>

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<sup>7</sup>See Law Number 11 of 2020 concerning Job Creation.

<sup>8</sup> Budi Heryanto and others, 'Implikasi Pemberlakuan Pasal 117 Undang-Undang Nomor 21 Tahun 2020 Tentang Cipta Kerja Jo. Peraturan Pemerintah Nomor 11 Tahun 2021 Tentang Badan Usaha

1. BUMDes must change its business entity into a legal entity. Even though, as previously emphasized, human resources in the village can still be said to be lacking, it will make it difficult for the village community to manage BUMDes;
2. There has been a change in the structure contained in the BUMDes management;
3. There are changes to the duties, functions and authorities of each section in BUMDes management;
4. PP Number 11 of 2021 demands that BUMDes are people who have productivity and quality. Such demands will indirectly put pressure on the village community because, as in villages, human resources are still categorized as less advanced (capable);
5. BUMDes management must make a plan or business plan to increase BUMDes productivity. On the other hand, not all BUMDes administrators understand and know how to make a business plan;
6. There is still a lack of focus on BUMDes administrators in increasing the productivity of BUMDes activities.

Currently, Law Number 11 of 2020 Concerning Job Creation (UUCK) is declared invalid with the presence of Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation. Although the Perpu does not repeal the UUCK derivative regulations, it must be immediately discussed between the executive and the legislature so that it can become a law. Some of the problems previously described prompted researchers to write an article entitled Regulatory and Institutional Arrangements for Village-Owned Enterprises in the Post Job Creation era because the momentum for regulatory and institutional arrangements for BUMDesa came through the promulgation of regulations in the Job Creation era. Therefore, this paper aims to answer how to arrange regulatory and institutional arrangements for village-owned enterprises after the birth of the Job Creation era.

## RESEARCH METHODS

The method used in the writing of this journal is normative research, namely the process of finding legal principles, legal principles, and legal doctrine to answer the legal problems faced.<sup>9</sup> Based on this definition, this type of research uses library material as primary data to analyze cases. The author does not conduct field research. This research uses literature (secondary material) or library Law Research, which generally discusses: research on legal principles, legal Systematics, and the synchronization of Village-Owned Enterprises (BUMDes) and the Job Creation era. Sources that assist the author in choosing this method are:

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Milik Desa Terhadap Struktur Dan Produktivitas Badan Usaha Milik Desa', *JUSTITIA: Jurna Ilmu Hukum Dan Humaniora*, 9.7 (2022), 3433–45 <<https://doi.org/10.31604/justitia.v9i7.3433-3445>>.

<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi, Cetakan Ke-12* (Jakarta: Kencana, 2016).

1. The main sources of law are binding materials for the issue to be studied. For example, the 1945 Constitution, laws, government regulations, Pancasila, jurisprudence, etc.
2. Secondary sources of law are data materials that explain the material of primary data law. Examples are bills, research results, scientific works, etc.
3. Sources of tertiary law are data materials that provide information on primary and secondary rules. Examples are legal language dictionaries, encyclopedias, magazines, mass media, and the internet.
4. The Data collected in this study using a statutory and case research approach and analytical techniques used to process legal material is legal hermeneutics. Legal hermeneutics is also known as the way of realizing the legal material itself as a form of attempt to obtain clarity from something being discussed.

## RESULT AND DISCUSSION

### Development and Dynamics of Village Owned Enterprises

Historically, the village was the forerunner of the formation of Indonesian political and governmental society, even long before this country was founded it had become a very important institution, known as indigenous peoples.<sup>10</sup> The village has developed in various forms, so it needs to be protected and empowered so that it becomes strong, advanced, independent and democratic so that it can create a strong foundation in carrying out governance and development towards a just, prosperous and prosperous society.<sup>11</sup> The village as an entity that has autonomy at the local level and is responsible to the regent/mayor as the administrative unit above it.<sup>12</sup> In discussing the village, there are at least three interpretations and meanings that can be studied.<sup>13</sup> First, the sociological definition of a village is described as a community unit or community of residents who live and live in an environment where the people know each other well, are supported by a homogeneous cultural pattern and depend a lot on nature in their daily life. Second, the notion of a village economically, a village is described as a community environment that fulfills its daily life from what is provided by the surrounding nature. Third, the political understanding of the village is described as a government organization or power organization that politically has certain authority because it is part of the state government (second level of government).

The existence of Village business entities is one of the functions of government, namely managing the economy for the prosperity of its people. The Village needs a business entity because the Village's economy has been in a slump. In addition, the Village exists to serve its community, maintaining legal and social order and helping the

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<sup>10</sup> Z Ridlwan, 'Urgensi BUMDes Dalam Pembangunan Perekonomian Desa', *Fiat Justicia Jurnal Ilmu Hukum*, 2014, 425 <[http://repository.lppm.unila.ac.id/13935/1/2014\\_07\\_Urgensi BUMDes dalam Pembangunan Perekonomian Desa.pdf](http://repository.lppm.unila.ac.id/13935/1/2014_07_Urgensi BUMDes dalam Pembangunan Perekonomian Desa.pdf)> [accessed 22 February 2023].

<sup>11</sup> Hukum Pemerintahan Desa Ni'matul Huda, 'Dalam Konstitusi Indonesia Sejak Kemerdekaan Hingga Era Reformasi' (Malang: Setara Press, 2015), p. 212.

<sup>12</sup> M Solekhan, 'Penyelenggaraan Pemerintahan Desa Berbasis Partisipasi Masyarakat', 2014, 22.

<sup>13</sup> Mohamad Rifan and Liavita Rahmawati, 'Konstitusi Desa Dan Eksistensinya Dalam Regulasi Di Indonesia', *Jurnal Konstitusi*, 18.1 (2021), 022–043 <<https://doi.org/10.31078/jk1812>>.

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welfare of its people. The arrangements in this regulation ensure that the Village has income sourced from the Village's original income; part of the results of district taxes and levies; part of central and regional financial balance funds received by the Regency; financial assistance from the Central Government, Provincial Government, Regency Government; as well as grants and donations from third parties that are not binding.

The certainty of this income is expected to increase the independence of the Village to answer the problems and needs of the community that is developing in the Village regarding village wealth which is expected to have the potential to increase the Village's source of income so that the management and utilization of village wealth need to be administered properly.

As the smallest governance system, the Village is not just an object receiving government assistance but a subject capable of local emancipation (or autonomy from within and autonomy from below) to develop local assets as a source of common livelihood. Villages have property rights or assets and access to local resources used collectively for shared prosperity.

Villages have BUMDesa that are strong and capable of being a driving force for local potential and providing direct protection to citizens, including marginalized groups and weak women, but more in the form of BUMDesa, which has adequate authority and budget, as well as having controlled democratic economic governance (check and balances) by local institutions such as the Village Representative Body and the local community.

Assistance is directed at accelerating or accelerating village development. Other sources of income that villages can cultivate from Village-Owned Enterprises are management of village markets, management of village-scale tourism areas, management of non-metal mineral and rock mining without using heavy equipment and other sources. BUMDesa was established, among others, to increase Village's Original Income. From this perspective, if the Village's original income can be obtained from BUMDesa, then this condition will encourage each Village Government to provide goodwill in responding to the establishment of BUMDesa. As one of the economic institutions operating in rural areas, BUMDesa must differ from economic institutions. This is intended so that the existence and performance of BUMDesa can significantly contribute to improving the villagers' welfare. In addition, so as not to develop a capitalistic business system in the countryside which can disrupt the values of community life.

Mastery of this economic sector is useful in protecting the social security of the Village community. When viewed from its function, the BUMDesa institution is a pillar of economic activity in the Village that functions as a social and commercial institution. BUMDesa, as a social institution, sides with the community's interests through its contribution to the provision of social services.

Meanwhile, as a commercial institution, it aims to profit by offering local resources (goods and services) to the market. In its business, the principles of efficiency and effectiveness must always be emphasized. BUMDesa, as a legal entity, is formed based on the applicable laws and regulations and by the agreements established in the village

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community. In running Village Owned Enterprises there are several principles that must be applied in managing BUMDesa, namely as follows:<sup>14</sup>

1. Cooperative  
All aspects in BUMDes must be able to work together for the development and sustainability of the business. In developing BUMDes, the village government, BUMDes managers, BPD and district governments through sub-districts must coordinate and work together to improve the development of BUMDes management;
2. Participatory  
All aspects involved in BUMDes must be voluntary in providing and contributing to encouraging the progress of BUMDes;
3. Emancipatory  
All parties involved in BUMDes must be given the same opportunity, regardless of differences;
4. Transparent  
All BUMDes activities relating to the interests of the general public must be known by all levels of society easily and openly;
5. Accountable  
All business activities must be accountable technically and administratively. Every activity carried out by BUMDes must be accountable and maintain accountable principles;
6. Sustainable  
Business activities must be developed and preserved by the community in the BUMDes container. BUMDes must be able to innovate and increase creativity in order to be able to compete and maintain its existence.

The existence of BUM Desa is a form of independence from a village as an implementation of village autonomy. Through BUMDesa, it is hoped that villages in development will only partially depend on subsidies from the government. BUMDes is also the right tool to increase the potential of the village.<sup>15</sup> Village-Owned Enterprises can be used as another alternative that provides additional Village finances. This Village Owned Enterprise is also useful for managing the Village assets and assets so that they can be utilized as much as possible for the welfare of the Village community. To revive the economy, villages must establish institutions that embrace all village potential and local wisdom. An institution that can be used as a forum for every villager to provide hard work and ideas. The appropriate institution for village communities is BUMDesa. BUMDesa, with the spirit of cooperation, must aim to provide social justice and community welfare.

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<sup>14</sup> Afifa Rachmanda Filya, 'Optimalisasi Pengelolaan Badan Usaha Milik Desa ( Bumdes ) Dalam Meningkatkan Pades Di Kecamatan Bojonegoro Kabupaten Bojonegoro Provinsi Jawa Timur', *Jurnal Ekonomi Dan Keuangan Publik*, 5.1 (2018), 19–39 <<http://ejournal.ipdn.ac.id/JEKP/article/view/393>>.

<sup>15</sup> Jamal Wiwoho and S H Munawar Kholil, 'Pembentukan Dan Pengelolaan Badan Usaha Milik Desa', *Jurnal Kertha Negara*, 9.5 (2011), 367 <<http://jamalwiwoho.com/wp-content/uploads/2013/11/BUMDes-2.pdf>> [accessed 22 February 2023].



The condition of BUMDesa quite concerns the formation of BUMDes in North Gorontalo; for example, currently, there is a lot of potential that need to be explored but needs to be properly utilized by BUMDes in North Gorontalo. This needs to be taken seriously by the village government to carry out mapping and research to see village potential that needs to be processed and explored into useful sources of income for the village. The emergence of this source of income is a golden opportunity for the village government to directly feel its existence in improving people's welfare.

The condition of corn commodities is relatively large considering the seriousness of the regional government's increase in maize productivity in the regions. Of course, this can be developed through BUM Desa/BUM Desa Bersama with corn-based production. The hope is that there will be added value for farmers or if all this time marketing through go-betweens outside the BUMDes village can take this role. Another potential, bearing in mind that some villages in North Gorontalo Regency are located on the coast, BUM Desa/BUM Desa Bersama can work with third parties to develop tourist objects around the village in the hope that the community's economic benefits will be felt.

So far, the number of fishery commodities is very abundant considering the geographical conditions of North Gorontalo are in the coastal area, so the economic potential that needs to be processed is from the fisheries sector. BUM Desa/BUM Desa Bersama can take a role through the door-to-door distribution of fish to make it easier for people to get fish which is their daily consumption in North Gorontalo Regency.

Referring to the GRDP value of North Gorontalo Regency, based on current prices in 2021, it reaches 3.59 trillion rupiah. Nominally, this GRDP value increased from 3.43 trillion rupiah in 2020. This increase in GRDP value was influenced by increased production in several business fields and inflation. In 2021, North Gorontalo's GRDP will contribute 8.18 percent of Gorontalo's GRDP. Based on constant 2010 prices, the GRDP figure has also increased, namely 2.38 trillion rupiah in 2021. This shows that in 2021 North Gorontalo Regency is experiencing economic growth of around 2.20 percent, an increase compared to the previous year. This increase in GRDP was purely due to the reduced impact of COVID-19 in several business fields, not affected by inflation.<sup>16</sup>

During the last five years (2017-2021), the economic structure of North Gorontalo Regency has been dominated by four categories: Agriculture, Forestry and Fisheries; Wholesale and Retail Trade, Car and Motorcycle Repair; Construction; and Government Administration, Defense and Compulsory Social Security. The contribution of these four categories to North Gorontalo's GRDP is 78.44 percent. The agriculture, forestry and fisheries categories make the biggest contribution to the formation of North Gorontalo Regency's GRDP in 2021. The role of this sector reached 52.81 percent (increased from 50.68 percent in 2017). The Wholesale and Retail Trade, Car Repair and Motorcycles categories amounted to 9.74 percent (an increase from 9.11 percent in 2017).

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<sup>16</sup> Badan Pusat Statistik Gorontalo Utara, 'Badan Pusat Statistik Kabupaten Gorontalo Utara', p. 99 <<https://gorontaloutarakab.bps.go.id/publication/2022/04/05/d6640dcccface3dd27f43f/produk-domestik-regional-bruto-kabupaten-gorontalo-utara-menurut-lapangan-usaha-2017-2021.html>> [accessed 22 February 2023].

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Furthermore, the Construction category was 9.20 percent (decreased from 10.33 percent in 2017). As well as the Government Administration, Defense and Compulsory Social Security category of 6.69 percent (decreased from 7.89 percent in 2017). Meanwhile, the role of other categories, each less than five percent.

## **BUMDES Regulatory and Institutional Arrangement Reform through the Job Creation Era**

The village has the closest relationship with the people, so they know directly the problems that arise in society. The problems that arise in the village consist of various fields: the social, economic, educational, and infrastructure fields, so the village in the composition and procedures for administering government and development needs to be regulated separately by law. Law Number 6 of 2014 concerning Villages is a new thing in governance that gives greater authority and trust to village administrations to carry out development.

BUMDesa was established by agreement through village meetings determined by village regulations. BUMDesa acts as a liaison between the village government and the community in implementing community empowerment and managing village potential for the greatest prosperity of the people. BUMDesa business results are used for business development, village development, empowering village communities, and providing assistance to the poor through grants, social assistance, and revolving fund activities stipulated in the Village Budget. BUMDesa is an economic institution whose establishment must be based on the existence of economic potential so that it is an important resource in driving policy implementation.<sup>17</sup>

Village Owned Enterprises agreed through village meetings in the spirit of cooperation to build and develop village potential in the economic sector or public services to improve the welfare of village communities by the mandate of the Village Law. However, the position and existence of BUMDes become a convoluted problem when the UUDes mention BUMDes as a business entity, but the position of BUMDes itself has yet to be explicitly written. In the Village Law, the legal entity status of BUMDes has been emphasized. Article 87 of the Village Law emphasizes that BUMDes have a business entity that cannot be equated with legal entities such as a limited liability company, CV, or cooperative. What makes BUMDes a form of business entity that is a legal entity is different from BUMD and BUMN, which in-laws and regulations have regulated that they can take the form of a limited liability company or a public company.<sup>18</sup>

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<sup>17</sup> Puguh Budiono, 'Implementasi Kebijakan Badan Usaha Milik Desa (Bumdes) Di Bojonegoro', *Jurnal Politik Muda*, 4.1 (2015), 116–25 <<http://www.journal.unair.ac.id/download-fullpapers-jpm3cd22097c1full.pdf>> [accessed 22 February 2023].

<sup>18</sup> Alfiansyah Alfiansyah, 'Status Badan Usaha Milik Desa Sebagai Badan Hukum Atas Diundangkannya Undang-Undang Cipta Kerja', *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 5.2 (2021), 216 <<https://doi.org/10.58258/jisip.v5i2.1991>>.

Another problem that arises is that BUMDes find it difficult to establish business cooperation with other parties; BUMDes also find it difficult to reach banking capital, and BUMDes business expansion opportunities are hampered because there is no legal standing (legal position before the law), so that BUMDes find it difficult to partner equally with another. Therefore BUMDes must have a solution from the stakeholders regarding its legal standing, so with the birth of Law Number 11 of 2020 concerning Job Creation (abbreviated as Job Creation Law), in the provisions of Article 117, it is stated "that Village-Owned Enterprises which hereinafter called BUM Desa are legal entities established by villages and/or with villages to manage businesses, utilize assets, develop investment and productivity, provide services, establish business cooperation with other parties, BUMDes also find it difficult to reach banking capital, and BUMDes business expansion opportunities are hampered because there is no legal standing (legal position before the law) so that BUMDes find it difficult to partner equally with another. Therefore BUMDes must have a solution from the stakeholders regarding its legal standing, so that with the birth of Law Number 11 of 2020 concerning Job Creation (abbreviated as Job Creation Law), in the provisions of Article 117 it is stated, "that Village-Owned Enterprises which from now on called BUM Desa are legal entities established by villages and with villages to manage businesses, utilize assets, develop investment and productivity, provide services."<sup>19</sup>

The purpose of enacting the Job Creation Law is contained in its preamble. It is hoped that the Job Creation Law will absorb the widest possible Indonesian workforce amid increasingly competitive competition and the demands of economic globalization. Arrangements related to the facilitation, protection and empowerment of cooperatives and micro, small and medium enterprises, enhancing the investment ecosystem, and accelerating national strategic projects, including increasing the protection and welfare of workers spread across various sectoral laws, are currently unable to meet the needs of the law for the acceleration of work copyright, so it needs to be changed.

There is a regulation regarding BUMDes in the Ciptaker Law as stipulated in Article 117 of the Job Creation Law, which changes the provisions in Law Number 6 the Year 2014 concerning Villages Article 1 number 6 Village-Owned Enterprises, from now on referred to as BUMDesa, are legal entities established by villages and with villages to manage businesses, utilize assets, develop investment and productivity, provide services, and provide other types of businesses for the greatest welfare of the Village community. The provisions of Article 87 read:

- (1) "Villages can establish BUMDesa.
- (2) The BUM Desa as referred to in paragraph (1) is managed in a spirit of kinship and mutual cooperation.
- (3) BUM Desa can run businesses in the economic sector and/or public services in accordance with statutory provisions.
- (4) BUM Desa as referred to in paragraph (1) can form a business unit with a legal entity in accordance with the needs and objectives."

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<sup>19</sup> Jusman Khairul Hadi, 'Kedudukan Badan Usaha Milik Desa (BUMDES) Berdasarkan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja', *Juridica*, 3.1 (2021), 31.

Furthermore, in the explanation of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises, it is explained that Law Number 11 of 2020 concerning Job Creation has confirmed the position of BUMDesa as a legal entity established by the Village and with Villages to manage businesses, utilize assets, developing investment and productivity, providing services, and providing other types of business for the greatest welfare of the Village community.

With the status as a legal entity, the role of BUM Desa/BUMDesa together is increasingly important as a consolidator of community products/services, producers of various community needs, an incubator of community businesses, providers of public services, and various other functions. BUMDesa/BUMDesa can be a contributor to the Village's original income. Therefore, in the future, BUMDesa/BUMDesa together is believed to be a lever for Village independence.

Issuing the latest government policy related to BUMDes in the Job Creation Law with its derivative regulations PP 11/2021 concerning Village-Owned Enterprises revises the substance of the Village Law, causing differences in the definition and status of BUMDes. BUMDes in the Village Law only takes the form of a business entity without a legal entity as regulated in Article 1 of the Village Law, which later changed its status to a legal entity after the Job Creation Law and the latest Government Regulations were passed. Based on Article 1653 of the Civil Code, there are three types of legal entities:

1. Legal entities held by the Government (general authority), for example, regional governments consist of provincial, district or city governments, banks established by the state and so on.
2. Legal entities recognized by the Government (general authority), for example, associations, churches, religious organizations, etc.
3. Legal entities with civil construction or established for a specific purpose, such as limited liability companies, shipping, insurance associations, etc.

In the context of the discussion, BUMDes refers to legal entities with civil construction, meaning that BUMDes are established based on official statements from individuals, one of which can be in the form of PT (BUMDes is included in the fifth part regarding the Limited Liability Company Law Article 7). Note that what must be legal entities are business units that can be formed by BUMDes. Previously, in the provisions of the Village Law, BUMDes business units were based on the Statutes and Bylaws (AD/ART) regarding the Establishment of BUMDes. Functionally, the establishment of a PT has a specific purpose, namely that the PT is run with a certain capital which is divided into shares, in which the shareholder participates in taking one or more shares and carrying out legal actions made on behalf of the company and is not responsible for the agreements themselves. approval of the company (with liability solely limited to the capital they have contributed).

The change in BUMDes's status as a legal entity does not rule out the main definition, namely BUMDes as a village institution or institution that is collected on a local village and rural area scale; its establishment is discussed through Village Deliberations (Musdes) and stipulated through Village Regulations (Perdes) and Joint

Village Regulations (Perdesma) as well as the preparation of the Statutes and Bylaws (AD/ART). BUMDes cannot be specifically equated with other legal entities such as limited liability companies or cooperatives.<sup>20</sup> This is because BUMDes is a business entity that has the characteristics of helping organize village government which includes village communities. BUMDes have an important role in the economy of rural communities. So the regulation regarding BUMDes must be by Pancasila values.<sup>21</sup> Sources of authority for BUMDes include:

1. BUMDes includes village-scale local authorities determined by attribution in Article 19 letter b jo. Article 72 paragraph (1), along with an explanation of the Village Law; And
2. The village head has the authority to issue village regulations regarding establishing BUMDes after being agreed upon through a village meeting (Article 26 letter d jo. Article 88 of the Village Law). The village head's authority includes the attributions stipulated in the Village Law. Attribution authority is the authority that exists in a position and is given or determined for a particular position.

During the hustle and bustle of the Job Creation Law, there is an article related to Village Owned Enterprises (BUMDes). Article 117 emphasizes that BUMDes is defined as a legal entity. The legality of BUMDes, previously legalized through a Village Head Regulation, is now being strengthened in an Act (UU). The status of the legal entity is the same as a PT or Cooperative, which has previously been established as a legal entity. Two spirits are carried by the Job Creation Law when BUMDes are incorporated. *First*, the ease of doing business cooperation with any party. So far, when BUMDes want to cooperate with companies, they are sometimes hampered by legal matters because they have yet to become legal entities. Some even ask that BUM Desa must be registered with a notary so that it can be legally valid.

*Second*, easy access to capital for financial institutions. The fear of banks giving loans to BUMDes is due to distrust of whether a party is responsible for financial risks. With the status of a legal entity, BUMDes can be sued civilly if they commit financial fraud. A breath of fresh air from the ease of doing business cluster is Article 109 of the Job Creation Law. It is easy for BUMDes to establish a Limited Liability Company (PT). BUMDes business units can turn into PT. Of course, when changing to a PT, the opportunity to get capital injections from investors will be more open. Not necessarily all BUMDes must immediately submit their legal entity status. It's useless; the status of a legal entity is attached if it's just administrative and nameplates. Moreover, the status of a legal entity is only made to look up the hands of various disbursements of assistance,

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<sup>20</sup> Iznan Habib Kashogi, Dasril Radjab, and Bustanuddin Bustanuddin, 'Analisis Pembentukan Badan Usaha Milik Desa Sebelum Dan Sesudah Di Undang Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja', *Limago: Journal of Constitutional Law*, 2.1 (2022), 136–47 <<https://doi.org/10.22437/limago.v2i1.17655>>.

<sup>21</sup> Allan Fatchan Gani Wardana, 'ANALISIS KESESUAIAN PENGATURAN BADAN USAHA MILIK DESA DENGAN NILAI-NILAI PANCASILA', *AL WASATH Jurnal Ilmu Hukum*, 2.2 (2021), 61–76 <<https://doi.org/10.47776/alwasath.v2i2.180>>.

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Based on the results of BPK's sampling of 8,220 BUMDes, it showed that 2,188 BUMDes that were established were not operating, and 1,670 BUMDes had not contributed to village income.<sup>22</sup> The BPK findings are in the Semester Examination Results Summary Report (IHPS) II/2018. With these conditions above, BUMDes must be introspective. Not all BUMDes have good governance. In terms of quantity, the growth of BUM Desa from 2014-2019 was quite high, namely 50,199.

Of the total villages in Indonesia, there are 74,957 villages, meaning that almost 67% already have BUMDes. However, there are only around 37,000 active BUMDes. It turns out that after the pandemic, only 10,600 made transactions. When the BUMDes business unit is in the form of a PT, it is no longer bound by the stipulation that most of the capital must be owned by the village. PT must comply with Law No. 40 of 2007 concerning Limited Liability Companies. Anyone can buy the offered shares. The bigger the stock, the bigger the dividend. The highest decision in PT is at the GMS (General Meeting of Shareholders), no longer a village meeting.

When the BUMDes business is increasingly widespread and massive, a lot of interest comes from investors. The BUMDes spirit in Law No. 6 of 2014 concerning Villages is the spirit of cooperation in empowering the village economy. Don't let the villagers be spectators in their own homes. So the character of BUMDes is not only profit-oriented but also socially solutive. Keep the outside from looking like BUMDes, but the inside is only controlled by individuals or a handful of parties with capital. Of course, every village has local wisdom.<sup>23</sup>

Article 49 Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises states that BUMDesa/BUMDes can own and form BUM Desa/BUMDesa together Business Units by statutory provisions. This business unit has a strategic function and relates to the livelihood of many people and general welfare. Part of the capital of the business unit must be owned by BUM Desa/BUM Desa together.

Article 50 Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises disclose how BUM Desa/BUM Desa business units jointly gain financial benefits and provide benefits to the community through various activities. This business unit can manage natural, economic, cultural, social, religious, knowledge, skills and ways of life based on local wisdom in the community.

In addition, it also carries out local resource-based processing industry activities, distribution and trading networks, financial services, and priority public services for basic needs, including food, electrification, sanitation, and housing. BUM Desa/BUMDesa and business units can also act as intermediaries for goods or services, including distribution and agency and other activities that meet eligibility. As mentioned in Article 8 Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises, BUM Desa/BUMDesa together obtain the status of a legal entity when the electronic registration certificate is issued by the minister who administers

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<sup>22</sup> Ade Nurul Aida, *Problematika BUMDes Dalam Menggerakkan Ekonomi Desa*, 02 edn (Buletin APBN, 2020), V.

<sup>23</sup> Tomi Tomi, 'Masa Depan BUMDes Pasca-UU Cipta Kerja | KRJOGJA', *Krogja.Com*, 2020 <<https://www.krjogja.com/angkringan/read/285696/masa-depan-bumdes-pasca-uu-cipta-kerja>> [accessed 22 February 2023].

government affairs in the field of law and human rights. "In the case of a joint BUMDesa/BUMDesa business unit having a joint BUMDesa/BUMDesa Business Unit, the legal status of the business unit is separate from BUMDes/BUMDesa together by statutory provisions.

In simple terms, it can be explained that the sociological basis for the establishment of the First Village-Owned Enterprise, the development of the economic base in the countryside, already needs to be processed and explored so that the potential of the village can be seen to become a new village source of income. However, these efforts have yet to yield satisfactory results as desired. This is due to limited human resources, so there needs support from the local government in the form of assistance to increase the creativity and innovation of rural communities in managing and running the economic engine in the countryside.

*Second*, Villagers need independence to manage their natural resources in their village area so that if they have limitations in financial terms, access to collaboration with third parties is necessary so that management runs optimally and sustainably to increase the percentage of the village's original income. *Third*, Village Owned Enterprises are one of the village's economic development institutions, which are an important component of the village's source of income. Professional management is required by referring to the provisions of laws and regulations to obtain significant results or contributions of Village-Owned Enterprises.

Professional management requires guidelines on statutory signs. On November 25, 2021, the Constitutional Court read out Decision Number 91/PUU-XVIII/2020 regarding the submission of a formal test from several parties regarding Law Number 11 of 2020 concerning Job Creation (Job Creation Law). The Constitutional Court's decision stated that Law Number 11 of 2020 concerning Job Creation is still valid until repairs are made by the maximum period of 2 (two) years from the pronouncement of the decision, and if during this period no amendments are made, then the law or articles or law content material that has been revoked or amended by Law Number 11 of 2020 concerning Job Creation is declared valid again. That is, all the time repairs are carried out which do not exceed two years.<sup>24</sup>

Furthermore, the Constitutional Court's decision states to suspend all actions/policies that are strategic and have broad implications, and it is also not justified to issue new implementing regulations relating to Law Number 11 of 2020 concerning Job Creation. This means that even though it remains in force, this decision recommends that strategic actions or policies with wide-reaching impacts be suspended and prohibits the issuance of new implementing regulations.<sup>25</sup>

Before the amendments by the mandate of the Constitutional Court decision, President Jokowi issued a Government Regulation (Perpu) Number 2 of 2022 concerning Job Creation on December 30, 2022. A week after issuing a Government

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<sup>24</sup> Atang Irawan, 'Undang-Undang Cipta Kerja Di Tengah Himpitan Putusan Mahkamah Konstitusi Nomor 91/Puu-Xviii/2020', *Litigasi*, 23.1 (2022), 101–33 <<https://doi.org/10.23969/litigasi.v23i1.4773>>.

<sup>25</sup> Dian Agung Wicaksono, '(Quo Vadis of the Constitutional Court's Standing in Reviewing the Law of Job Creation and Its Implications towards Regional Government's Confusion in Implementing Authority to Regulate)', 11.April (2022), 77–98.

Regulation (Perpu), the Constitutional Court challenged it again. The pros and cons of the publication of the Job Creation Perpu lie in the debate whether it is by the Constitutional Court Decision No. 91/PUU-XVIII/2020 dated November 25, 2021, or otherwise contrary to the Constitutional Court's decision.

Meanwhile, law Number 11 of 2020 concerning Job Creation is now declared null and void with the presence of Government Regulation (Perpu) Number 2 of 2022 concerning Job Creation. Even though the Perpu does not repeal derivative regulations from the UUCK, this still leaves problems because Government Regulations are formed to carry out the Law as they should.

Regarding the consequences of the stipulated Perpu, Prof. Marida Farida Indrati Soeprapto, in her book *Science of Legislation: The Fundamentals and Its Formation*, says that this Perpu has a limited (temporary) period because it must seek approval from the DPR as soon as possible, namely at the next trial. If the DPR approves the Perpu, it will become law (UU). Meanwhile, if the DPR does not approve the Perpu, it will be revoked (p. 94). The approval of the DPR is very important because it is the DPR that has legislative power and is the one who objectively assesses whether there is a compelling crisis or not, as we have explained above.<sup>26</sup>

The debate regarding the Constitutional Court's decision and the Perpu seems to be insignificant because, at this time, the Legislative Body of the People's Representative Council has agreed that the Perpu be passed into Law.<sup>27</sup> Currently, what can be done is to push the Perpu into Law to realize regulatory and institutional arrangements regarding BumDes. From the description above, with the arrival of the Job Creation era, the government intends to encourage the investment climate and strive through strategic policies that are preceded by guidelines that refer to laws and regulations. The arrival of the Job Creation Era has become a momentum for regulatory arrangements for BUMDesa to clarify its legal status to become a legal entity, not a business entity. However, due to the legal umbrella debate regarding the Constitutional Court's decision regarding the UUCK and Perpu Cipta Kerja, the regulatory and institutional arrangements for BUMDesa have become a little blurry because even though the Perpu does not revoke the UUCK implementing regulations, actually a Government Regulation must be formed to carry out the Law as it should. The Law in question is the UUCK which has been declared null and void by the Perpu, so the Perpu must be pushed into Law.

## CONCLUSION

Establishing BUMDesa aims to empower villages as autonomous regions with productive endeavors and increase village independence and capacity to strengthen the economy. In its journey, managing BUMDesa is difficult, and it encounters many obstacles, such as BUMDesa regulations and institutional arrangements. The presence

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<sup>26</sup> Tri Jata Ayu Pramesti, 'Kapan Perpu Dibuat Oleh Presiden Dan Apa Syaratnya?', *Hukumonline.Com*, 2022 <<https://www.hukumonline.com/klinik/a/kapan-perpu-dibuat-oleh-presiden-dan-apa-syaratnya-lt5188b1b2dfbd2>> [accessed 22 February 2023].

<sup>27</sup> Wildan Muhamad, 'Baleg DPR Setujui Penetapan Perpu Cipta Kerja Jadi Undang-Undang', 2023 <<https://news.ddtc.co.id/baleg-dpr-setujui-penetapan-perpu-cipta-kerja-jadi-undang-undang-45774>> [accessed 22 February 2023].



of the Job Creation Law has become a momentum for the regulation and institutional arrangement of BUMDesa from previously business entities to legal entities. However, this momentum has remained strong with the promulgation of the Job Creation Law as conditionally unconstitutional and the Government issuing the Job Creation Perpu. Meanwhile, professional BumDesa management requires a valid legal basis. Even though the Perpu does not revoke implementing regulations from the Job Creation Law, government regulations should be formed to implement the law as they should. The Perpu has been approved to become law by the Legislative Body of the House of Representatives. This Perpu needs to be pushed into law so that the spirit of regulatory and institutional arrangements in the era of job creation, for example, ease of conducting business cooperation with any party and ease of access to financial institution capital, can be realized.

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