



**THE VALIDITY OF THE ESTABLISHMENT OF THE LEGAL ENTITY STATUS
OF THE VILLAGE-OWNED ENTERPRISE “SUMBER REJEKI” LATUKAN
VILLAGE: JURIDICAL REVIEW**

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ABSTRACT

Background. The establishment of village-owned enterprises (hereinafter abbreviated as Bumdes) is based on the needs and potential of the village as an effort to improve community welfare. This business entity is intended to encourage or accommodate all activities related to increasing the income of the village community. This study aimed to determine the procedures in the formation of Bumdes that are legal entities and to determine and analyze the legal consequences of Bumdes that obtain ratification from the Ministry of Law and Human Rights (hereinafter abbreviated as Kemenkumham), the validity of business entities to become legal entities, the authority of ratification and the legal consequences of Bumdes that do not meet the requirements of ratification in Kemenkumham.

Research Method. This research was a normative research that uses a normative juridical approach, this approach is carried out by examining all laws and regulation number 11 of 2021 concerning Bumdes that are related to the problem (legal issue) being studied.

Findings. The consistency and suitability of one law with another in Bumdes that are not registered with the PDDT Ministry of Villages and are not also authorized by Kemenkumham are in fact still running as ordinary business entities but are not free to develop business.

Conclusion. The establishment and registration of Bumdes as legal entities is to facilitate village partnerships, facilitate the promotion of regional potential, accelerate regional economic improvement.

Keywords: Bumdes, Establishment, Legal entity.

BACKGROUND

National development is an effort carried out by all components of the nation in order to achieve state goals. National development includes central and regional development. Regional development is an ongoing and sustainable activity that aims to improve people's welfare both materially and spiritually.[1]

Development is carried out as widely as possible to the structures closest to the community, namely villages, which have an important role in supporting the success of the national government at large.[2] Normatively, as contained in Law No. 6/2014 on Villages, a new concept of national village governance policy has been developed.

According to Law No. 6/2014 on Villages, village development aims to improve the quality of human life and reduce poverty through the provision of basic needs, the development of facilities and infrastructure, developing local economic potential, utilizing natural resources, and reducing poverty and environment in sustainable manner prioritizing

togetherness, kinship, and mutual cooperation in order to realize peace and social justice. In the elucidation section of the Village Law, it is also stated that the purpose of Law No. 6/2014 is to provide recognition and respect for existing villages with their diversity before and after the formation of the Republic of Indonesia, provide clarity of status and legal certainty of villages with the constitutional system in order to realize justice for all Indonesian people, encourage initiatives, movements and participation of village communities for the development of village potential and assets for the welfare of the village together.[3]

Improving public services for village communities to accelerate the realization of public welfare, increasing the national socio-cultural resilience of village communities to be able to realize village communities that can maintain social unity as part of national resilience, advancing the economy of village communities and overcoming national development gaps, strengthening village communities as subjects of development that empower communities to achieve prosperity in national development.[4]

In order to achieve this welfare, it is necessary to enact a policy that provides access and opportunities for village communities to develop. This policy can be realized through the formation of economic institutions that are fully managed by the village community. This policy can be realized by the establishment of economic institutions that are fully managed by the village community. Therefore, the village is advised to have a business entity that is useful to accommodate the economy, needs and potential of the village.[5]

The form of business entity is called a Village-Owned Enterprise (hereinafter abbreviated as Bumdes). The establishment of Bumdes is based on the needs and potential of the village as an effort to improve community welfare. Related to the planning and establishment of bumdes that have been built on the initiative of the village community and based on the principles of cooperative, participatory, transparency, emancipative, and accountable, which then of all these principles, the most important thing of bumdes management is that it must be carried out professionally and independently.[6]

Bumdes is a pillar of village community economic activity that functions as a social and commercial institution. As a social institution, Bumdes focuses on the interests of the community through its contribution to the provision of social services. As a commercial institution, Bumdes aims to make a profit through offering local resources to the market. The principles of efficiency and effectiveness should be emphasized when running a business. Bumdes is a legal entity formed based on applicable laws and regulations in accordance with agreements built in the village community as well as a business entity established by villages and together with villages to manage businesses, develop productivity and investment, utilize assets, provide services and other types of businesses with the aim of maximizing the welfare of the village community.

This business entity is intended to encourage or accommodate all activities related to increasing the income of the village community. Through bumdes, the community is given a greater role in village development in order to achieve their welfare. This is in accordance with the mandate of Law Number 6 of 2014 concerning Villages in Article 71, which states that one of the sources of village income is the village's original income, which consists of the results of the village, business, asset results, self-help and participation other village revenues.[6]

One of these results is the establishment of bumdes. According to Article 1 paragraph (6) of the Village Law, what is meant by bumdes is a business entity that is wholly or partially owned by the village through direct participation derived from separated village assets to manage assets, services and other businesses for the greatest welfare of the village

community. With regard to the formation and establishment of bumdes, there are many varieties of business activities in every village in Indonesia. This variety of forms is in accordance with the local characteristics, potential, and resources of each village.

The potential of bumdes as an independent business institution of the village community can continue to be improved in the future, therefore the initial guidelines for the formation of bumdes must be available. However, the position and existence of bumdes becomes a convoluted problem when the Village Law mentions bumdes as business entities but has not been explicitly written from the position of bumdes itself.

Another problem arises when bumdes find it difficult to establish business cooperation with other parties, bumdes also find it difficult to access banking capital, and the opportunity to expand bumdes' business is hampered because there is no legal standing, making it difficult for bumdes to partner equally with others.

Therefore, Bumdes must have a solution from the authorities regarding its legal standing, so that Law Number 11 of 2020 concerning Job Creation (Job Creation Law) was born, in the provisions of Article 117 emphasizing "That Village-Owned Enterprises, hereinafter referred to as Bumdes, are Legal Entities established by villages together with villages to manage businesses, utilize assets, develop investment and productivity, provide services, funds or other types of businesses for the greatest welfare of the village community."

In another part of the Job Creation Law, namely in the 10th section, article 117 amends the provisions of Article 1 number 6 of the Village Law to read: "Village-Owned Enterprises, which bumdes is a business entity that is wholly or partially owned by the village through direct participation from separated village assets to manage assets, services and other businesses for the greatest welfare of the village community." This means that the village only plays a role in managing the business assets that already exist in the bumdes.[7]

However, the village government can encourage the development of village-owned enterprises by providing grants or access to capital when referring to article 117 of the Job Creation Law. Furthermore, the Job Creation Law amends article 87 of the Village Law. In the amendment, paragraph (4) and paragraph (5) are added, stating that bumdes can form legal entity business units in accordance with their needs and objectives. Then article 5 states that all provisions in paragraph (1) and paragraph (4) of article 87 are regulated by Government Regulation. Therefore, Government Regulation of the Republic of Indonesia Number 11 of 2021 concerning Village-Owned Enterprises was born. It indicates that village-owned enterprises have special rules (*lex specialis*) talking about village-owned enterprises that are considered to be a solution and improvements related to the shortcomings of the previous bumdes.

The mechanism for bumdes to obtain a legal entity with the enactment of the Job Creation Law, the status of bumdes explicitly becomes a legal business unit. In Law No.6 of 2014 concerning Villages, specificity is given, including in the independence of villages that already have a certain cultural setting. Then in Government Regulation No. 11 of 2021 concerning bumdes, a regulation from the implementer of the Job Creation Law, that bumdes in obtaining legal entity status must first obtain registration from the Ministry of Villages, Development of Disadvantaged Regions and Transmigration (in bahasa, next called as Kemendes PDTT) which aims to avoid a number of things such as similar names. After the registration process at Kemendes PDTT, it is then continued to the Ministry of Law and Human Rights (hereinafter abbreviated as Kemenkumham) to be documented.

In Lamongan, there are several villages that have bumdes that are legal entities. According to sources from the Community and Village Empowerment Agency in Lamongan

Regency, Latukan Village, Karanggeneng Subdistrict, is one of the villages in Lamongan where the village enterprise is already running and has a legal entity because it has been authorized by the Ministry of Law and Human Rights. For this reason, the purpose of the author making Latukan Village, Karanggeneng Subdistrict, Lamongan Regency as a sample in this study is expected to clearly know the procedure for forming a bumdes that has the status of a legal entity that has been authorized by the Ministry of Law and Human Rights and the legal consequences that arise if it does not get authorized in the Ministry of Law and Human Rights and the provisions of the Notary Deed.

RESEARCH METHOD

This research was a normative research that uses a normative juridical approach, this approach is carried out by examining all laws and regulation such as regulation number 11 of 2021 concerning Bumdes that are related to the problem (legal issue) being studied. This literature review used five processes, namely (1) identifying research questions, (2) identifying relevant studies, (3) conducting article, books, and regulations/ law that related research question using juridical review of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia[8], (4) mapping data (5) compiling, summarizing and presenting the research results.[9]

FINDINGS

1. Legitimacy of a Business Entity as Legal Entity

In the world of law, a legal subject is a body that has the rights and obligations to perform a legal act, either a unilateral act or two-party act. Basically, the subject of law consist of : (a) Human (natuurlijkpersoon) and (b) Legal entity (rechtspersoon). After the Job Creation Law Number 11 of 2020 arise, it further emphasizes the position of village-owned enterprises (bumdes) that answer the problem of difficulty in accessing capital. Previously, bumdes had difficulties because they were not legal entities. The Job Creation Law confirms that currently the position of bumdes is a new entity legal entity whose position is equivalent to a Limited Liability Company (hereinafter abbreviated as PT), equivalent to the national level (called as BUMN) and at the regional level (called as BUMD).

The regulation of bumdes is different from other legal entities because the legal umbrella used is different, the authoritative is also different. The position of bumdes as a legal entity is the key to development in the future, because the spearhead of economic strengthening in the village in there presentation of village government is bumdes. Villages are special entities that have certain characteristics, in the village law is also given specificity including on the independence of villages that already have different cultural settings.

Bumdes can be declared as a legal entity starting when the village has stipulated village regulations which are products of village deliberations authorized and signed by the village head. As in Latukan Village, Karanggeneng Subdistrict, Lamongan Regency, which held a deliberation for planning the establishment of the "Sumber Rejeki" bumdes which was held on Monday, September 20, 2021 at the Latukan Village Hall, and was attended by group representatives, hamlet representatives, and village heads. Community leaders and other

elements related to the village as listed in the attached attendance list and signed by the BPD chairman, Village Head and representatives of the community.

After the village deliberation, several things were agreed upon, namely:

1. Change of Name of Bumdes to "BUM Desa Sumber Rejeki Latukan"
2. Discussion of the bylaws until the finalization of the bylaws.
3. Determination of BUM Desa Capital Participation

The bumdes must also obtain registration from the Ministry of Villages, Development of Disadvantaged Regions and Transmigration (Kemendes PDTT) to avoid issues such as name similarities. Therefore, the name of the village is a must to be included along with the name of the bumdes itself. The establishment of the bumdes "Sumber Rejeki" in Latukan Village, Karang geneng Sub district, Lamongan Regency was formed based on the results of village deliberations which were then stipulated through village regulations.

In Latukan Village Regulation Number 02 of 2021 concerning the Establishment of Latukan Village-Owned Business Entity explains the regulations governing the establishment of the bumdes "Sumber Rejeki Desa Latukan", articles of association, all legalized deeds of establishment of business units and management composition for the establishment of the bumdes "Sumber Rejeki Desa Latukan" which was then stipulated on September 20, 2021 by the Head of Latukan village and promulgated on September 25, 2021. Attachment Number: 05 of 2021. With the provisions of the business unit including the following:

- 1) In the event you're looking for a new home, you'll want to take a look at a few of the most popular homes for sale on the market. For example, a stallor shop of basic necessities.
- 2) LPG Trading
- 3) In the event that you're looking for a new home, you'll want to take a look at a few of the most popular homes for sale on the market.
- 4) Bumdes loan services and Bumdes Wifi.

The status of a legal entity or not having a legal entity, will determine whether the business entity is accepted in business activities. The status of a legal entity will determine whether a business entity has the authority to perform legal acts. The requirements that must be met so that a business entity can be called a legal entity, we can find these requirements in: 1)Legislation; 2)Customary law; 3)Jurisprudence; 4)Doctrine.

Based on Article 1653 of the Civil Code, there are 3 types of legal entities:

1. Legal Entities held by the Government
2. Legal Entity recognized by the Government
3. Legal entity with civil construction

Business entities are determined by their legal entity status based on the provisions contained in the rules regarding these business entities. a business entity or organization can perform legal acts like humans (which are generally accepted as legal subjects) is an organization that has met the requirements, namely:

1. Has a specific purpose
2. Having organized organs or organizations

3. It has its own wealth price that is separate from humans, and;
4. Clearly stated in the laws and regulations

That the organization or business entity is incorporated (if the conditions are met).

The status of Bumdes as a legal entity is confirmed through law, but as a legal entity it must have a regular organization. This regular organization can be seen in Article 132 of the Village Regulation, which states that the Bumdes Manager must at least consist of:

- a) Advisor: held concurrently by the Village Head who can authorize other parties to carry out advisory functions (Article 17 paragraphs 1 and 2). Other parties as referred to above, determine the number of members, organization, rights and obligations, and authority by considering professionalism or expertise, effectiveness and efficiency, in accordance with the development, capabilities, and needs discussed and decided in the Village Consultative Meeting / Inter-Village Consultative Meeting and stated in the Articles of Association of Bumdes together.

Regarding the duties and authorities of advisors in Article 23 paragraphs 1 and 2 of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises, their duties are to provide advice to operational executors/directors in carrying out bumdes business management activities, have the right and authority to request an explanation of operational implementation to the director regarding bumdes management.

- b) Operational Executive: carried out by the Director of Bumdes. His/her duties are to be responsible for the management and business of Bumdes, to organize financial book keeping, inventory, and other records deemed necessary in an orderly and regular manner, to implement and develop Bumdes in order to become an institution that serves the economic needs and/or public services of the village community, to explore and utilize the potential of village economic businesses to increase the village's original income.

The authority of the Operational Executive is to make financial reports on all Bumdes business units every month, make reports on the development of Bumdes business unit activities every month, make an annual work plan, Provide reports on the development of Bumdes business units to the village community through village meetings at least twice a year.

- c) Supervisor: The supervisor is the Board of Commissioners. Its task is to oversee all activities and performance of operational executives in running the business unit, besides that the board of commissioners also acts as an observer who is always looking for new opportunities. Its authority is to request an accountability report from the operational manager at the end of each year, request a business unit report, a detailed profit and loss balance sheet report and an explanation of business activity documents. Appointment and dismissal of operational executives.[10]

Unlike legal entities such as Limited Liability Companies, Foundations or Cooperatives, all of which obtain their status as legal entities when they are authorized by the relevant minister. The Village Law and Village Government Regulation do not explicitly state when a Bumdes becomes a legal entity. However, Article 88 of the Village Law jo. Article 132 of the Village Regulation which states that "The establishment of Bumdes is conducted through village deliberations and stipulated by Village regulations", it can be concluded that when an agreement has been ratified in the Village deliberations and the agreement is stipulated in a Village Regulation, then that is when Bumdes has been born as a legal entity.

From the aforementioned regulations, it can be seen that Bumdes is indeed formed with the concept of a legal entity. To be called a legal entity, it must have characteristics, among others:

1. The existence of separate assets;
2. Has a specific purpose;
3. Has its own interests
4. There is a regular organization.

These four characteristics are reflected in the provisions governing the Bumdes. The assets of Bumdes are separated village assets. Bumdes also has objectives and interests set by the law, namely to develop the economy and increase village income.[11]

Bumdes also have a regular organization, but the legal umbrella of Bumdes is very weak in the sense that it does not provide certainty on the form of Bumdes legal entity. Based on its legal status, BUM Desa is very different from BUMN or BUMD, which are clearly regulated in the Laws and Regulations in the form of a Limited Liability Company (PT). In the elucidation of Article 87 paragraph 1 of the Village Law, it is specifically stated that BUM Desa cannot be equated with legal entities such as PT, CV or cooperatives.

In preparing the deed of establishment of Bumdes, considering that the existing legal basis does not allow BUM Desa to be established as a form of legal entity such as PT, CV, Firm to cooperative. In addition, BUM Desa also does not fully meet the qualifications of a Public Legal Entity.

The uniqueness of Bumdes legal entities can also be seen from its establishment mechanism that involves the Village Head, Village Consultative Body (BPD) and elements of the community. The establishment of Bumdes is legalized through a Village Regulation drafted in a Village Deliberation with Articles of Association authorized by a Village Head Regulation. The foundation of the establishment using this Village Regulation is difficult to use in conducting cooperation transactions with third parties, which usually require other legal bases.

Online joint BUM Desa/BUM Desa registration is conducted by the Village Government to the Mendes through the Village Information System (BUMDes portal) which is integrated with the legal entity administration system of the ministry that organizes government affairs in the field of law and human rights.

Bumdes that are not legal entities are bumdes that do not obtain authorization from the Ministry of Law and Human Rights (Kemenkumham), as a result these bumdes are not legal entities but only ordinary business entities that are managed by village officials formed in the village regulations made, there is no legal boundary between supervisors, and the executor of the bumdes itself. In the absence of clear authority, the rights and obligations of the implementers are also unclear. The director cannot be controlled by the supervisor, and the limits of rights and obligations are unclear and limited.

Village-Owned Enterprises that have the characteristics of public legal entities can be seen from their similarities with Public legal entities such as BUMN and BUMD. Bumdes is a Public Legal Entity where a legal entity is an organization or association created by an authentic deed and in law is treated as a person who has rights and obligations or is also called a legal subject which can be in the form of a person or legal entity.

Another definition of a legal entity is a legal subject (actor) that does not have a form, or its form does not look like an ordinary person but has the rights and obligations to perform

legal acts like a person (naturalijkperson). It is said that public legal entities (publiekrechtare) legal entities created according to public law or legal entities that regulate the relationship between the state and or its apparatus with citizens related to public or public interests. Examples of public legal entities are the State, Local Government. Bumdes is said to have the status of a public legal entity because it fulfills all the characteristics mentioned in legal entities included in public legal entities.

The normative requirements of a public legal entity are that it is established by legislation, carries rights and obligations, has assets, and can be sued in court. With the legal logic of the Constitutional Court's adjudication, the Village Government, which is determined attributively, is categorized as a public legal entity. Bumdes is formed by the Village Government through a deliberation process, separated Village assets, and specifically cannot be equated with legal entities such as PT, CV or cooperatives. Anti thesis, Bumdes is interpreted as a Legal Subject other than private legal entities (PT, CV, Cooperative).

Bumdes is a functional public legal entity formed by the Village Government based on the Village Law, followed by regulations on village (hereinafter abbreviated as Perdes), decision of village head on the bylaws and management of Bumdes. Its position is equivalent to the validity of a notarial deed. There is no need to confuse the authority of the Village Head and the Notary.

Bumdes runs businesses in the economic sector and/or public services. Inevitably, Bumdes must adapt to enter the liberal legal discourse that divides the functions of public law and private law. On the one hand, BUM Desa performs public law functions to utilize all of the Village's economic potential. On the other hand, Bumdes performs private functions such as services, trade, and other economic development.[11]

This is where a fundamental change in understanding occurs. Bumdes as a functional public legal entity performs both public and private legal functions. For Bumdes, the administrative power is just a matter of recognition, after seeing the Perdes and the village head's decision related to Bumdes.

2. Authority to Legalize BUMDES Through Kemenkumham

Authority is a right to do something, this is reaffirmed in Article 18 of Law No. 6/2014. Of course, village authority cannot be exercised without limits, because the exercise of this authority must be in line with the principles of village regulation, including mutual cooperation, kinship, deliberation, democracy, independence, participation, empowerment and sustainability.

After the existence of a village regulation regulating the establishment of a village-owned enterprise (bumdes) "Sumber Rejeki" Latukan Village, then the Village Head issued a Decree on the Management of Village-Owned Enterprises "Sumber Rejeki" Latukan Village Karanggeneng District Lamongan Regency Period 2022-2025. Village Head Decree No:188/03/Kep/413.318.03/2022 determined on January 20, 2022.

After the registration process at the Ministry of Villages as the result of verification of the Village Information System Number 3524182003-1-022777 Ministry of Villages, Development of Disadvantaged Regions and Transmigration. Then proceed to the Ministry of Law and Human Rights (Kemenkumham) to be documented as a legal entity that has been authorized by Kemenkumham.

The establishment of the village-owned enterprise (bumdes) of Latukan Village, Karanggeneng Subdistrict, Lamongan Regency was made on September 25, 2021, which was then approved by the Ministry of Law and Rights.

Human Rights (Kemenkumham) as a certificate of registration of legal entity establishment with NUMBER: AHU-01077.AH.01.33.TAHUN 2021 and ratified on December 15, 2021.

However, if the BUM Desa is not legalized by the Ministry of Law and Human Rights, the village-owned enterprise will remain an ordinary business entity with very limited interaction. The Village Deliberation/ Inter-Village Deliberation is the highest power holder in a joint Bumdes (article 16 paragraph 1) whose deliberations are attended by the Village Consultative Body (hereinafter abbreviated as BPD), the Village Government, and elements of the community whose implementation is regulated in the Articles of Association (article 16 paragraph 2). The Village Consultative Meeting/Inter-Village Consultative Meeting is authorized to stipulate the establishment of a joint Bumdes, stipulate the Articles of Association (AD), appoint and permanently dismiss operational executives, appoint supervisors, appoint secretaries and treasurers and so forth (see Article 17 letter a).

So far, Bumdes cannot legally cooperate with ministries/ institutions and any partners, including no taxes. With the passing of the Job Creation Law, Permendesa PD TT Number 3 of 2021 was subsequently issued, regulating the registration and legalization of Bumdes and Joint Bumdes legal entities.[12]

After going through the series above, there are still many regions in Lamongan where the village-owned enterprises (bumdes) are not registered with the Ministry of Villages and Transmigration (Kemenkumham), nor are they legalized by the Ministry of Law and Human Rights (Kemenkumham). In each region, the provisions are different from other regions, but the bumdes that are not registered and legalized are in fact still running as ordinary business entities but are not free to develop business.

The business unit that is usually run in this business entity is a kind of shop, which sells various basic needs of the village community, and its management depends on the respective village officials. In addition, this Bumdes does not need to collect data on the type of business, turn over, asset value and objective conditions of the Bumdes. The data collection should also be done to ensure that the Bumdes is economically healthy.

Bumdes that are not incorporated against village assets that are managed as the object of collateral is the responsibility of Bumdes as long as the operational executor carries out in accordance with his authority (intravires), if it is insufficient, the operational executor, advisor, and supervisory board are jointly responsible up to personal assets or called joint responsibility.

DISCUSSIONS

1. Legal Consequences of Bumdes Not Meet The Approval Requirements

Legal entity certificates are required for Bumdes and Bumdes as mandated by the provisions of Article 9 paragraph (5) of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises and Permenkumham 40 of 2021 concerning the Issuance of Legal Entity Registration Certificates for Village-Owned Enterprises/ Joint Village-Owned Enterprises.

Registration of Bumdes Legal Entity is done with the Village Information System (hereinafter abbreviated as SID) application, then verified by the ministry that organizes government affairs in the field of villages, development of disadvantaged regions and transmigration.

Bumdes data that passes verification is submitted to the Ministry of Law and Human Rights through the SABH (Legal Entity Administration System) application, and then the certificate is issued electronically. Bumdes is declared as a Legal Entity starting when the Village has enacted a village regulation which is a product of the Village Deliberation.

Authorized and signed by the Village Head. However, because Bumdes needs national rules, in the drafted RPP, Bumdes must obtain registration from the Ministry of Villages, Development of Disadvantaged Regions and Transmigration (Kemendes PDTT) which aims to avoid a number of things such as similar names. Therefore, the inclusion of the village name is a must.

After the registration process at Kemendes, it is then continued to the Ministry of Law and Human Rights to be documented. This is done because as a legal entity, Bumdes can create a new legal entity such as a Limited Liability Company (PT). A legal entity can perform legal acts or enter into legal relations, if it has the following conditions:

1. Legal Capacity (Rechtsbekwaamheid).

The legal capacity of a legal entity is the ability of an organization or group to conduct legal studies or opinions. In the sense that its members are people who are involved in the world of legal traffic.

2. Legal Authority (Rechtsbevoegdheid).

Legal Authority here means that a legal entity has formal powers derived from the law to make decisions and relationships related to the law. Village Law No. 6/2014 states that the establishment of a Bumdes is led by a Village Regulation.[12] Bumdes uses this Law as a reference, so Bumdes is sufficiently established based on a Village Regulation.

When Bumdes operates within the scope or area of the village, the Perdes can suffice. However, if Bumdes carries out its activities and develops its business outside the village, then Bumdes is like any other business entity. In this case, Bumdes must comply with applicable laws and regulations.

A legal entity in the form of a PT is required, so that is when Bumdes needs to think about having a PT legal entity, for example for one of its business units. When there is a program from the government that requires the beneficiary to have a notarial deed, then at that time also, Bumdes requires a legal entity other than Perdes. When a Bumdes is in its pioneering phase, only Perdes is needed. However, as a Bumdes progresses, it is possible that in the future it will need a legal entity. Then, the requirements needed to fulfill the legal entity will be arranged.

The legal consequences in the process of forming a business entity not authorized by the Ministry of Law and Human Rights is a business entity that can be said to be procedurally defective in its formation because it does not meet the requirements in the formation of a legal entity, the requirements submitted cannot be fulfilled and result in procedural defects that make the business entity unable to cooperate with other parties /other partners and only become an ordinary business entity.

Business entities that are incorporated require notarial deeds like legal entities such as :

1. **State-Owned Enterprises (SOEs)**

State-Owned Enterprises, hereinafter abbreviated as BUMN, are business entities in which all or most of the capital is owned by the state through direct participation from separated state assets. Perusahaan, hereinafter referred to as Persero, is an SOE in the form of a limited liability company whose capital is divided into shares, all or at least 51% (fifty-one

percent) of whose shares are owned by the State of the Republic of Indonesia whose main objective is the pursuit of profit. The establishment of SOEs includes:

- a. Establishment of a new Perum or Persero;
 - b. Change the form of government agency units into SOEs;
 - c. Changes in the legal form of SOEs; or
 - d. The establishment of SOEs as a result of the consolidation of Persero and Perum.
- The establishment of SOEs is stipulated by government regulation notarized by law.

The law is given the authority to pour all the actions, agreements and stipulations desired by the parties in order to confirm them into an authentic deed and so that the deed made by it has complete evidential power and has validity where in this case the deed in question is the Deed of Establishment of PT.

Notaries are also required to fulfill all the provisions of the office of Notary and other regulations related to the Deed of Establishment of PT. Notary in this case is a reviewer of whether the will of the parties does not conflict with the applicable laws and regulations, Notary in carrying out their duties must also rely on the Notary Position Law (hereinafter referred to as UUJN).

This is done by the Notary as a form of obligation to convey the requirements of authenticity, validity and causes of invalidation of a deed, as well as a preventive attitude to the legal defects of the Notary Deed which can result in the loss of authenticity and invalidation of the Notary Deed, which can cause harm to the community, especially interested parties.[13]

The notary also plays a role to order the name of the PT and as a proxy for the founder in terms of obtaining the status of a legal entity from the Deed of Establishment of the PT until the announcement of the Company in the State Gazette of the Republic of Indonesia. This is reinforced by the existence of a legal basis, namely based on Article 2 paragraph (1) of PERMEN No. M.01-HT 01-10/2007 concerning Procedures for Filing Applications for Legal Entity and Approval of Amendments to the Articles of Association, Submission of Notification of Articles of Association and Amendments to the Articles of Association and Changes in Company Data (hereinafter referred to as PERMEN No.M.01-10/2007).

PERMEN M.01-HT 01-10/2007, that the one who has the right to submit the application, the founder authorizes the Notary so that the formally valid person to submit the application is the Notary "in the quality and capacity as the proxy" of the founder. Article 2 paragraph (1) of the Regulation reads "the submission of an application for ratification of the Company's legal entity shall be made by a Notary as the proxy of the founder".

Because basically the Notary Deed itself is a means of evidence that has perfect evidentiary power provided that the material (substantive) and formal (procedural) requirements for making the deed are met and there are no procedural errors. If the Deed of establishment of PT made by the Notary does not fulfill the formal requirements stipulated in Article 7 paragraph (1) UUPT.

Therefore, the deed can be submitted to the court and if it is proven that the deed does not meet the formal requirements for the establishment of a PT, the court can declare the authentic deed as a deed that has the evidentiary power of an under hand deed.

The Notary is responsible for formulating the Deed of Establishment of a PT by referring to the formal truth submitted by the founders of the company to the Notary, and in

formulating the Deed, the Notary must refer to the provisions of the obligation stipulated in Article 16 paragraph (1) letter a of the Notary Office Law to be in part also that the product of a Deed is not degraded.

2. Regionally-Owned Enterprises(BUMD)

As one of the forms of business in the jurisdiction of the Republic of Indonesia, of course the existence of BUMD has a legal umbrella. This legal umbrella is so important considering the characteristics of BUMD are different from other forms of business entities, especially from the participation of the Regional Government as the owner of capital or one of the shareholders. The establishment of BUMD is first stipulated by Regional Regulation. The objectives of establishing BUMD according to the Local Government Law are:

1. Provide benefits to the Regional economy in general;
2. Organizing public benefits in the form of providing quality goods/ services for the fulfillment of people's livelihoods in accordance with the conditions, characteristics, and potential of the Region concerned based on good corporate governance; and
3. Obtaining profit and/ or gain.

Regional Company, hereinafter referred to as Perseroda, is a BUMD in the form of a limited liability company whose capital is divided into shares, all or at least 51% (fifty-one percent) of which are owned by 1 (one) Region. In the management of BUMD, the role of the regional head is very instrumental, this is due to his role as the holder of the general power of management of the regional head. In his position, the regional head has the authority to organize overall regional financial management and has the obligation to submit accountability for the implementation of this authority to the Regional People's Representative Council (DPRD). In addition, management by the regional head is also related to the division of authority affairs as stipulated in the Local Government Law. In general, the provisions of Article 331 of the LG Law state that the establishment of Bumdes is carried out by the Regional Government through Regional Regulations, in the form of Regional Public Companies and Regional Companies. The objectives of establishing BUMD are:

1. Provides benefits for regional economic development in general;
2. Organizing public benefits in the form of providing quality goods and/or services for the fulfillment of people's livelihoods in accordance with the conditions, characteristics, and potential of the region concerned based on good corporate governance, and;
3. Obtaining profit and/ or gain.

A deed made by a notary can be a legal basis for the status of property, rights and obligations of a person. The specified authority of a Notary is an authority based on other legal rules that will come later (*iusconstituendum*). As one example of the authority of a Notary that is determined later is that the Notary is authorized to make an authentic deed regarding the Establishment of BUMD.

3. Village-owned enterprises (Bumdes)

The establishment of Bumdes is agreed upon through Village Deliberation and stipulated by Village Regulation. A Village Consultative Meeting is a meeting between the Village Consultative Body, the Village Government, and elements of the community organized by

the Village Consultative Body to agree on strategic matters. Meanwhile, Village Regulations are regulations stipulated by the Village Head after being discussed and agreed upon with the Village Consultative Body. So from Article 88 of the Village Law, it is very clearly understood that the establishment of Bumdes is not by using a Notarial deed but a Village Regulation. After established by Village Regulation, Bumdes was born as a business entity to achieve its goals and objectives.

CONCLUSION

The establishment of Bumdes is based on an agreement through a village deliberation and its establishment is stipulated by village regulation. The registration of Bumdes/ joint Bumdes is carried out by the Village Government to the Village Minister through the Village Information System (Bumdes portal) which is integrated with the legal entity administration system of the ministry that organizes government affairs in the field of law and human rights.

The village-owned enterprise (Bumdes), which is not registered with the Ministry of Villages and Transmigration (Kemenkumham) nor authorized by the Ministry of Law and Human Rights (Kemenkumham), is in fact still running as an ordinary business entity but is not free to develop its business.

Conflict of Interest

The authors declare no conflicts of interest in this work and publication of this paper.

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