



Legal Aspects of the Establishment of Village Regulations on Empowerment of Bumdes According to Law Number 6 of 2014 Concerning Village

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Abstract

Villages face a new era in accordance with Law Number 6 of 2014 concerning Villages. The village is expected to be independent socially, culturally, economically, and even politically. Law Number 6 of 2014 concerning Villages to become Regulations on Village (PERDES) stipulated by the Village Head after obtaining joint approval from the Village Representative Body, which was formed in the context of implementing village autonomy. PERDES is a further elaboration of higher laws and regulations by taking into account the characteristics of each village. In this regard, a PERDES is prohibited from contradicting public interests and/or higher laws and regulations. Village-Owned Enterprises (BUMD) are village businesses managed by the Village Government and legal entities. The Village Government can establish Village-Owned Enterprises according to the needs and potential of the Village. The formation of Village-Owned Enterprises is stipulated by a Village Regulation. The management of Village-Owned Enterprises consists of the Village Government and local village communities. It is hoped that the community can be actively involved in the formation of Village Regulations, but the obstacles in the field is that community understanding regarding the Village Regulations are still lacking so that the community is still apathetic to the process of the Village Regulation Formation, so that a constructive idea is born to provide counseling and guidance to legal awareness communities. from the interests of the community itself, namely being actively involved in the formation of Village Regulations.

Keywords: *Village-Owned Enterprises; Bumd; Village Government; Legal Entities*

Introduction

Indonesia is a country which territory is divided into provinces. Provincial areas are further divided into regencies and municipalities. Every province, regency and municipality have a regional government which is regulated by law. In carrying out its duties, the Central Government will certainly find it difficult to regulate an area that is so wide and divided into several regions. Therefore, the Government issued a policy regarding Regional Autonomy by giving authority to the Regional Government to develop and develop the potential that exists in the region, aiming for the welfare of the local community itself.

Village as part of the territory of a district, has an absolute autonomy. Even though within the limits of original autonomy, the village can build the capacity of its economic and financial resources in order to increase the economic growth of the village and increase the welfare of its people. The development of a village is done through managing local resources in the form of human resources (residents), capital resources (money), natural resources (land, water, forests) and social resources.

Currently, village is facing a new era in accordance with Law Number 6 of 2014 concerning Villages. Villages are expected to become independent socially, culturally, economically, and even politically. This is in line with the intention to build Indonesian state by strengthening small areas. The government with its powers can regulate, supervise and provide intensive direction so that economic actors can play an optimal role for their own interests without neglecting their responsibilities to the government and society. In the face of current global competition, villages are the lowest part of the region and are commonly seen as poor areas making the government have a duty to pay great attention to helping villages in reducing poverty.

The village community is currently making efforts in managing natural resources which are planned to have a good impact on increasing village income. However, currently there are still obstacles or hindrance that are felt by the village community and village officials in developing natural resources, these are financial problems and the lack of quality human resources which makes the village community unable to process them. Seeing the above phenomenon, the government has made efforts to form Village-Owned Enterprises or *Badan Usaha Milik Desa*, hereinafter referred to as BUMDes. BUMDes is a village business institution managed by the community and village government in an effort to strengthen the village economy and is formed based on the needs and potential of the village. BUMDes are the pillars of economic activity in villages that function as social and commercial institutions. In addition, BUMDes also plays a role as a social institution that sides with the interests of the community through its contribution to the provision of social services.

BUMDes has the potential of as an independent business institution for village communities in providing the welfare of the village community itself (Ridlwan, 2013). In order for rural people to develop their potential, so that they are not disadvantaged and more benefited, a reverse flow is needed in the distribution of natural resources and policies (Chambers, 1998, p. 216).

Village Administration is the implementation of government affairs and the interests of the local community in the government system of the Unitary State of the Republic of Indonesia (NKRI). The elements of village administration are the Village Head (Article 1 point 3 of Law Number 6 of 2014) and the Village Consultative Body (Article 1 point 4). In order to be able to carry out its duties, the village government must have rules that are formed in consultation with the village community (Article 69 paragraph (9), the Draft of Village Regulation must be consulted with the village community. How to consult with village communities is not explained further in Law Number 6 of 2014 and also Government Regulation Number 43 of 2014 concerning Implementation Regulations of Law Number 6 of 2014 concerning Villages.

In the decision-making system process in the village there are two types of decisions, first decisions - decisions with a social perspective, which bind the community voluntarily, without clear sanctions, secondly decisions made by formal village institutions established to carry out decision-making functions. For the first form of decision, many are found in the social life of village communities, the decision-making process is carried out through a process of mutual consent, where previously the reasons for choosing an alternative were previously elaborated by village leaders or people who were deemed to have certain authority. As for the second form, decisions are based on procedures that have been mutually agreed upon, such as the Village Development Deliberation (MUSBANGDES) process which is held

once a year in the village hall. The decision-making process is carried out by the parties legally and is given the function to do so.

Research Method

Research is a principal means of developing science and technology. This is because research aims to reveal the truth systematically, methodologically, and consistently. Through the research process, analysis and construction of the collected data were carried out. The research method used in this legal research is normative juridical research, which is carried out by examining library materials which are secondary data and also called literature research.

Analysis and Discussion

Regional autonomy is part of the political system which is expected to provide opportunities for citizens to be more able to contribute their creative power. Thus, regional autonomy is a necessity in the era of globalization and reform. Without regional autonomy, people will have difficulty placing themselves on par with other human beings in various countries when free trade comes into effect (Ramadana, 2013).

BUMDes is a business entity that is whole or most of the capital owned by the village through direct participation from separated village assets to manage assets, services and other businesses for the maximum welfare of the village community (Putra, 2015).

BUMDes must be born with the will of all villagers which is decided through the Village Deliberation or Musyawarah Desa (hence, MusDes). MusDes is the highest forum to produce various main decisions in BUMDes starting from the name of the institution, the selection of the management to the type of business to be run.

BUMDes is very closely related to the community because this business entity is a service provider for the community to involve the community in the process of planning, implementation, and evaluation of activities in order to develop the economy in the village. Village potentials that are well managed will increase income of rural areas, so that jobs area created for people in rural areas through utilization of unmanaged natural resources. In addition, it can improve supporting facilities in rural areas to increase community welfare.

In Government Regulation Number 43 of 2014 as amended by Government Regulation Number 47 of 2015, it is stated that now the Village has the authority to regulate resources and direction of development. The enactment of regulations on villages opens hopes for the Village community to reform. The village is entering an era of self-governing community where the village has autonomy and planning, public services, as well as finance. Therefore, village is no longer bounded to await instructions from the *Supra Desa* (sub-district, regency, province, and center). For this reason, the basis for the dynamics of Village life is very dependent on community participation in encouraging the establishment of Village management agreements, being able to foster and develop social, cultural, economic and political values.

Law Number 6 of 2014 concerning Villages becoming Village Regulations stipulated by the Village Head after obtaining joint approval from the Village Representative Body, which was formed in the context of implementing village autonomy. PerDes is a further elaboration of higher laws and regulations by taking into account the characteristics of each village. In this regard, a PerDes is prohibited from contradicting the public interest and/or higher laws and regulations.

In the process of its formation, PerDes requires community participation so that the final result of the Village Regulation can fulfill the aspect of legal enforcement and can be implemented according to the purpose of its formation. Community participation in this case can be in the form of input and brainstorming in the formulation of the substance of the PerDes arrangement.

BUMDes are also regulated in Articles 87 to 90 of Law Number 6 Year 2014. The provisions set out in this chapter can be summarized into two, namely:

1. Establishment of BUMDes.
2. Development and utilization of BUMDes products.

In the Law concerning Village, apart from providing guarantees that villages can establish BUMDes, there are also provisions related to types of BUMDes services. As in Article 87 paragraph (3), it is clearly stated that the business space that BUMDes usually does is to run businesses in the economic sector and public services, BUMDes can run various businesses, ranging from services, microfinance, trade, and other economic development (Yasin, 2015).

BUMDes capital comes from: village government; public savings; assistance from the government, provincial government and district / city government; loan; and / or business cooperation with other parties. Other BUMDes capital, can come from revolving funds for government and local government programs that are submitted to villages and / or communities through the village government.

A. Legal Product in Village

Types of regulations in the village based on the Minister of Home Affairs Regulation Number 111 of 2014 on Technical Guidelines for Village Regulations are as follows:

1. Joint Village Head Regulations: Regulations stipulated by two or more Village Heads and are regulatory in nature. This Joint Regulation of Village Heads contains material on village cooperation.
2. Village Head Regulation: Regulation stipulated by the Village Head and is regulating. This Village Head Regulation contains materials for implementing village regulations, joint village head regulations and follow-up to higher legislation.

Apart from legal products in the village that are regulatory in nature, the Village Head may stipulate a Village Head Decree for the implementation of regulations in the village, higher level laws and regulations, and in the context of implementing stipulating village authority. This Village Head Decree is a decision that is concrete, individual, and final in nature.

B. Types of BUMDes

The types of businesses that can be developed by BUMDes are as follows:

1. Simple Sosial Business services that provide public services with financial benefits. This business is an economic public service business which is social in nature but has a business nuance to the community although it does not provide maximum benefits. Examples of this type of business include village drinking water management, village electricity, food storage, businesses related to local resources and efficient technology.
2. Goods rental business serve the needs of the village community and is aimed at obtaining village original income. The types of businesses that can be carried out in this business group are

- transportation equipment rental, tractor rental, party equipment rental, building rental, shop or kiosk rental, village land rental that has been submitted to BUMDes as village capital participation.
3. Brokering business which provides services to the residents. BUMDes can play a role as a marketing agency for agricultural, plantation, animal husbandry, handicraft products from the community, so that they do not have difficulty in marketing their products and commodities.
 4. Producing or Trading business of certain goods to meet the needs of the community or marketed on a wider market scale. For example, ice factories, agricultural production facilities, farming businesses, processing village commodities, and other productive business activities.
 5. Financial business which is intended to meet the capital needs of micro-scale businesses run by economic entrepreneurs in the village, with lower interest rates than loan sharks or conventional banks, for example, Village Banks, micro financial institutions, and village credit.
 6. Joint ventures (holding) as the parent of business units developed by the village community both at the local village scale and in rural areas. For example, the village transportation business, especially for villages in isolated areas, village boats, tourist villages, the development of medium-scale village-specific handicrafts (Putra, 2015, p. 37).

C. Establishment of BUMDes

The establishment of a BUMDes was agreed upon through a Village Deliberation. The topics discussed in the Village Deliberation include:

1. establishment of BUM Desa in accordance with the economic and socio-cultural conditions of the community;
2. BUMDes management organization;
3. BUMDes business capital; and
4. BUMDesa Articles of Association

The results of the Musdes agreement serve as guidelines for the Village Government and the Village Consultative Body to establish a Village Regulation concerning the Establishment of BUMDes.

The establishment of BUMDes is based on Law Number 32 Year 2004 in conjunction Law Number 23 of 2014 concerning Regional Government, Law Number 6 of 2014 concerning Villages and Government Regulation Number 72 of 2005 concerning Village. In Law Number 32 of 2004 in conjunction with Law Number 23 of 2014 concerning Regional Government. Article 213 paragraph (1) states that "Villages can establish village-owned enterprises according to the needs and potential of the village" (Republic of Indonesia, 2014a).

In Article 1 number 4 Regulation of the Minister of Home Affairs Number 39 of 2010 concerning Village-Owned Enterprises, BUMDes states that "Village-Owned Enterprises, hereinafter referred to as BUMDes, are village businesses formed/established by the village government whose capital ownership and management are carried out by the government villages and communities" (Minister of Internal Affairs, 2010).

The establishment of BUMDes was also based on Article 87 of Law Number 6 of 2014 concerning Village which states:

- 1) Villages can establish Village-Owned Enterprises called BUMDes,
- 2) BUMDes is managed with a spirit of kinship and mutual cooperation,
- 3) BUMDes can run businesses in the economic sector and / or public services in accordance with the provisions of laws and regulations. (Republik Indonesia, 2014b)

The establishment of BUMDes is an effort to accommodate all activities in the economic sector and public services managed by villages and cooperation between villages (Minister of Village, 2015). The objectives of establishing BUMDes are:

- 1) Improve the village economy.
- 2) Optimizing village assets to be useful for village welfare.
- 3) Increase community efforts in managing the economic potential of the village.
- 4) Develop a business cooperation plan between villages and with third parties.
- 5) Create market opportunities and networks that support citizens' public service needs.
- 6) Opening up jobs.
- 7) Improve community welfare through improved public services, growth and even distribution of the village economy.
- 8) Increase village people's income and village income. (Minister of Village, 2015)

Villages can establish BUMDes based on village regulations regarding the establishment of BUMDes. According to Regulation of Minister of Village (2015), villages can establish BUMDes by considering:

- 1) Village government and village community initiatives.
- 2) Potential of village economic enterprises.
- 3) Human resources capable of managing BUMDes.
- 4) Statement of capital from the village government in the form of village financing and assets submitted to be managed as part of the BUMDes business.

According to Putra (2015, pp. 28-35), the following are steps to institutionalize BUMDes in a participatory manner which aims to make the agenda for establishing BUMDes really with village economic efforts and village democratization.

- 1) Socialization about BUMDes: socialization initiatives to village communities can be carried out by the Village Government, Village Consultative Body (BPD), Village Community Empowerment Cadres (KPMK) either directly or in collaboration with village assistants residing in the sub-district, technical assistants domiciled in the regency as well as third party assistants (NGOs, universities, community organizations or companies).
- 2) Implementation of MusDEs: practically, village meetings are held by the BPD and facilitated by the village government. One of the important stages in MusDEs is the planning of mapping community aspirations needs regarding BUMDes by BPD. BPD members can work with their counterparts to conduct a business feasibility study at a simple level, such as:
 - a. Finding village potential that can be developed through business management.
 - b. Recognizing the needs of the majority of villagers and communities outside the village.
 - c. Formulating together with villagers to determine alternative designs regarding business units and classification of types of businesses. The proposed business unit can be a legal entity (PT/Ltd. or LKM) or not a legal entity.
 - d. Classifying types of businesses in village locations that have just started a village economic business collectively, it is advisable to design alternatives for BUMDes business units with service types or social business and rental business. Both the types of BUMDes business units have relatively minimal profit but minimal risk of loss for BUMDes.

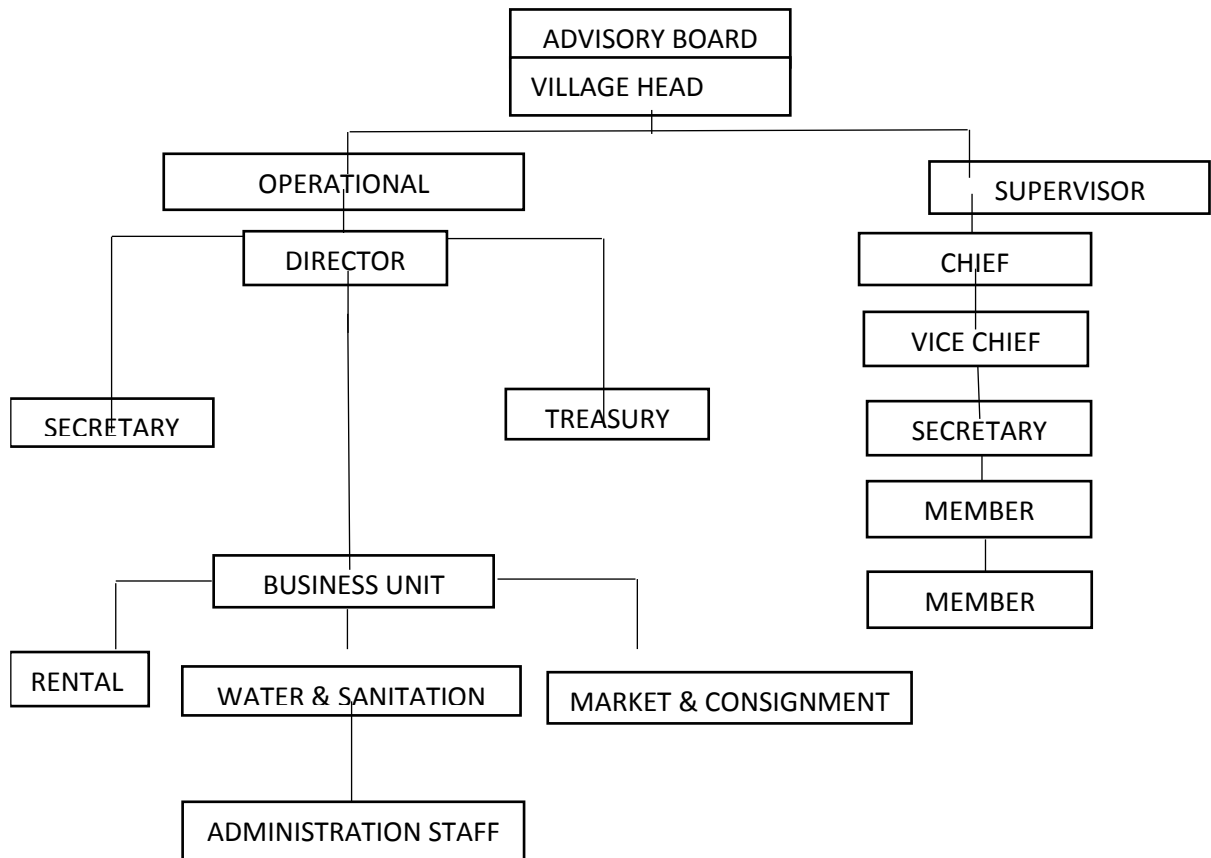
- e. The BUMDes management organization includes the management structure (organizational structure and names of administrators).
 - f. BUMDes business capital: The initial capital for the BUMDes comes from the Village APB. BUMDes capital consists of village capital participation and village community capital participation.
 - g. BUMDes articles of association.
 - h. An optional subject on village investment plans carried out by outsiders and later managed by BUMDes.
- 3) The stipulation of the PerDes on the establishment of BUMDes is an integral part of the perdes. In general, BUMDes has two benefits, commercial and public services.
- 1) Commercial
As a commercial body, BUMDes is able to open wider space for the community to increase income and also open up jobs for rural communities, rural youth who have the potential to get jobs in the village, thereby reducing urbanization.
 - 2) Public Service
BUMDes is not only engaged in business, but BUMDes must also have an interest in meeting the needs of the community through its contribution in the field of social services.

Among many benefits received, the village will be independent both in the economic and public service sector. It is hoped that all rural communities in Indonesia will immediately form BUMDes and participate in improving the village economy (Putra, 2015, pp. 37-41).

D. *Organizational Structure of BUMDes*

BUMDes have similarities with other business entities which in their arrangement and management require qualified human resources both in terms of thought and expertise that can support the development of BUMDes or village-owned enterprises.

This is something that is also regulated in the village regulations governing the establishment of village-owned enterprises, namely by forming an organizational structure. This organizational structure is chosen during village meetings and is elected in a democratic way in accordance with existing provisions. Figure 1 explains the organizational structure of BUMDes.



E. Implementation of BUMDes

In order to carry out the activities of any organization or body, there must be someone who moves and get something done. The same applies with BUMDes, in which BUMDes is done, it is divided into implementation and management. This implementation is divided into the implementation itself (activities) and the executor (people who carries out the activity).

The definition of implementation is a person who works or carries out a plan that has been prepared or an action or implementation of a plan that has been prepared carefully and in detail. Implementation is usually carried out after the planning is deemed ready, in simple terms implementation can mean application (Usman, 2002, p. 70).

In another light, implementation is an activity or efforts carried out to carry out all plans and policies that have been formulated and determined, complete with all the needs, the necessary tools, who carries out it, where the implementation starts and how it should be carried out, a process of a series of activities follow-up after the program or policy has been established which consists of decision making, strategic and operational steps or policies to become a reality in order to achieve the objectives of the program that was originally set (Syukur, 1987, p. 40).

The implementation of daily activities for implementation is carried out by BUMDes executor which are classified into advisors, operational executors, and supervisors. The advisor is the village head

as the director who will guide and also encourage the implementer in running the BUMDes business unit which is expected to be the main spearhead of the village economy. BUMDes executors are divided into two, which are, first, executors in the organizational structure selected at the time of village meetings, consisting at least of the BUMDes Director, Treasurer, and Head of BUMDes Business Unit. Second, there are daily executors involved directly who are employed in running BUMDes. Meanwhile, supervisory activities are carried out to find out immediately any irregularities, abuse, waste and other organizational problems, which will then take steps to make corrections and improvements to these problems.

Of the three implementers, operational executors are daily executors who take care of activities carried out by BUMDes daily in running the business unit. However, these three aspects are interrelated where operational executors must hear advice from advisors about what makes BUMDes better and must also be serious about their performance because they are supervised by supervisors and will also be accountable for BUMDes developments both in periodic and annual accountability reports.

According to Kamaroesid (2016, pp. 38-39), there are several important points to be considered in the implementation of BUMDes, these are:

- 1) Designing the organizational structure.
- 2) Prepare a job description.
- 3) Establish a coordination system.
- 4) Formulate a form of cooperation with third parties.
- 5) Compiling the BUMDes organizational work guidelines.
- 6) Develop information system design.
- 7) Prepare a business plan.
- 8) Develop an administrative and bookkeeping system.
- 9) Carry out the recruitment process.
- 10) Establish a system of pay and wages.

The success of BUMDes is largely determined by how to manage marketing. Although BUMDes is a business with a social character, it still requires income to achieve its goal—earning profit.

BUMDes has a significant role to increase village economic growth, if managed properly, because it can play a role from upstream to downstream. The role from upstream, for example, BUMDes can play a role in helping channel various government subsidies, ranging from subsidies for fertilizers, seeds and others. Whereas in the downstream sector, first, BUMDes can collect production products produced by rural communities. Second, BUMDes can also partner with banks to channel people's business credit (KUR) which is now managed by government banks and some private banks. Third, BUMDes can also act as financial managers inclusive, such as a savings and loan business which, if managed properly, can raise income quite well, BUMDes can be a means of paying for water, electricity, and gas. These goals can only be achieved if BUMDes has income comes from sales or product marketing. Therefore, BUMDes managers must know what is actually being sold.

Marketing activities generate income that is used to cover costs that must be incurred. If there is a surplus of income over costs, it is said that BUMDes generates profits from the BUMDes business. The activity of managing BUMDes marketing is an activity to convey the value of product superiority to the target market segments or community groups served by BUMDes. What makes BUMDes different from offers includes aspects of the product, price, distribution channels, and promotions.

BUMDes management aims for BUMDes to strive and develop, maintain and increase profits, be able to solve social humanitarian problems in the village, and maintain and increase sales (Prasetyo, 2019,

pp. 208-209). The factors that must be considered when BUMDes will choose the right target market strategy are nature of goods, ownership of resources, and product life cycle stages.

New BUMDes products are products marketed by BUMDes that are different from products that have been marketed or are completely new. Prasetyo (2019, pp. 206) proposes that new products can be classified as follows:

- 1) Products that are completely new as a result of innovation
- 2) New products as a result of modification
- 3) New products with the same benefits
- 4) New products due to brand changes

It is stated in the law that BUMDes can be established according to the needs and potential of the village, what is meant by the needs and potential of the village is as follow:

- 1) Community needs, especially in meeting basic needs.
- 2) There are village resources that have not been used optimally, especially village wealth and there is a demand in the market.
- 3) There are human resources capable of managing a business entity as a driving asset for the community's economy.
- 4) There are business units that are economic activities.
- 5) Community members who are partially managed and less accommodated. BUMDes is a vehicle for running a business in the village.

The involvement of the village government as the largest investment in BUMDes or as the co-founder of the community is expected to be able to meet the Minimum Service Standards or *Standar Pelayanan Minimal* (SPM) which is manifested in the form of protection against harmful interventions from third parties (both from inside and outside the village). The village government plays a role in the formation of BUMDes as a legal entity that is based on the prevailing laws and regulations and is in accordance with the agreements built in the village community.

The development of BUMDes is a form of strengthening of village economic institutions as well as a means of empowering the local economy with various types of potential that exist in the village, more than that BUMDes is the backbone of the village government economy in order to increase the welfare of its citizens.

With the issuance of Law Number 6 of 2014 concerning Villages, it becomes a beautiful dream to lead to an autonomous village life in managing government and society, thereby encouraging the birth of villages with more accountable and transparent governance, participatory village communities, and a village economy that is supporting families, supported by the spirit of community cooperation, will affect the acceleration of village economic development.

BUMDes can collaborate between two or more BUMDesa. The cooperation between two or more BUMDes can be carried out within one sub-district or between sub-districts within one regency/city. Moreover, cooperation between two or more Village BUM must obtain the approval of each Village Government and made in a cooperation agreement text. The text of the cooperation agreement between two or more BUM Desa contains at least: (1) the subject of cooperation; (2) the object of cooperation; (3) time period; (4) rights and obligations; (5) funding; (5) desperate measure; (6) assets acquisition; and (7) conflict resolution.

Manuscripts of cooperation agreements between two or more BUMDes are stipulated by the Operational Executor of each cooperating BUMDes. While Cooperation activities between two or more BUMDes or more shall be accounted for by their respective Villages as the owner of the BUMDes. In terms of cooperation activities between BUMDes business units that are legal entities, it is regulated in accordance with the provisions of the laws and regulations regarding Limited Liability Companies and Micro Financial Institutions.

The understanding of law among village community is still very low as well as regarding village regulations made by the village government. Meanwhile, village regulation should actively involve the community because the limited conditions of the community make community participation very passive. It is evident from the results of interviews that shows there are still many people who do not know what PerDes have been implemented in their village. Therefore, it is expected that the conduct of this research could provide education to people who are aware and actively involved in the formation of village regulations to contribute thoughts and ideas.

Conclusion

Village-Owned Enterprises (BUMDes) are institutions established or formed by the village government whose capital ownership and management are carried out collaboratively by the village government and community. The establishment of a BUMDes was agreed upon through a MusDes or Village Deliberation. The establishment of BUMDes is intended as an effort to accommodate all activities in the economic sector and/or public services managed by the Village and/or inter-Village cooperation. The benefits received by the village with the existence of BUMDes are that the village will be independent both in the economic and public service sectors. Thus, it is expected that all rural communities in Indonesia will immediately form BUMDes and participate in improving the village economy.

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