

An Analysis of The New Regulation on The Governance of Village-Owned Enterprises

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Abstract. The enactment of Law No.11/2020 concerning Job Creation, followed by Government Regulation No.11/2011 on Village-Owned Enterprises introduces a new regulatory framework to the management of Village-Owned Enterprises (*Badan Usaha Milik—”BUM Desa”*). The regulation is expected to improve the management and productivity of BUM Desa. This paper aims to examine how this new regulation addresses some of the legal challenges and deficiencies identified under the previous regulations. The analysis draws from a combination of a normative research method, a survey and qualitative interviews with respondents from a small purposive sample of BUM Desa. Based on the analysis of the new regulation outlined, the paper concludes that the new regulation addresses a number of previous challenges and puts in place provisions that have the potential to further professionalize BUM Desa. However, the regulation risks placing requirements that may be too onerous on BUM Desa given that one of the main challenges for BUM Desa relates to their limited human resource capacity. Although the new regulation promotes good corporate governance practices and BUM Desa development, on the other hand, it could also be a burden that may hinder the development of BUM Desa themselves.

Keywords: village-owned enterprise, BUM Desa, corporate governance, business judgment rule

1 Introduction

1.1 Background

Efforts to strengthen the rural sector by the government continue to be carried out by looking for the most appropriate development formulation and in accordance with the Indonesian context. The Village Law that applies the Village Driven Development approach can be seen as the latest ‘recipe’ to correct previous approaches that are considered to have not succeeded in overcoming the problems faced by the rural economy. The Village Law was drafted to reposition the village into a locomotive, rather than a carriage just waiting to be pulled. With a more active role, villages can become a driving force for national economic development.

The revision of the Village Law (Law No.6 of 2014) in the recently enacted Job Creation Law (Law No.11 of 2020) emphasizes the important message that villages have a crucial role in Indonesia’s development strategy. With the enactment of Government Regulation Number 11 of 2020 on Village-Owned Enterprises (“PP 11/2021”) as one of the implementing regulations, it can be inferred that Village-Owned Enterprises (*Badan Usaha Milik Desa—” BUM Desa”*) remain one of the main tools in this strategy. From a budgeting perspective, the 2021 State Budget allocates Rp795.48 trillion for Transfer to Regions and Village Funds (*Transfer ke Daerah dan Dana Desa—”TKDD”*) [1], of which Rp72 trillion is budgeted for Village Funds. The Minister of Villages, Disadvantaged Areas and Transmigration Regulation No.13 of 2021 on Priorities for The Use of Village Fund (“Permendesa 13/2021”) upholds the establishment, development, and revitalization of BUM Desa as one of the priorities for fund utilization.

Our previous studies have highlighted the regulatory challenges and deficiencies of BUM Desa governance, inquiring to what extent provisions conformed with the principles of

good corporate governance and provided legal certainty in the governance of BUM Desa [2]. The enactment of PP 11/2021 is expected to overcome some of these issues. Although this regulation has only recently been enacted, it is important to conduct upfront a study of potential new challenges. Such a study should also provide recommendations on addressing those challenges.

1.2 Research Question and Method

This paper aims to examine how the new regulation on BUM Desa addresses some of the legal challenges and deficiencies identified under the previous regulations. The analysis draws from a combination of a normative research method, a survey, and qualitative interviews with respondents from a small purposive sample of BUM Desa. The discussion of this paper will be divided into three sections. The first section will briefly address the core agency issues in BUM Desa governance underlying the urgent need of a legal framework of professional and accountable governance. The second section will address the important highlights of new governance rules in the newly enacted regulation on BUM Desa. Lastly, the third section will provide an overview and analysis of the new governance rules. The discussion then ends with conclusions and recommendations.

2 Discussion

2.1 Corporate Governance Problem in BUM Desa

In principle, running a BUM Desa is the same as running a government business. Management of government-owned businesses such as a State-Owned Enterprise (*Badan Usaha Milik Negara*— “BUMN” or *Badan Usaha Milik Daerah*— “BUMD”) is entrusted to professionals. In the agency theory perspective, this governance pattern separates ownership and control based on a principal-agent relationship. In this relationship, one or more capital owners engage another person to perform services on their behalf that involves delegating some decision-making authority to the agent [3]. However, there is a potential moral hazard in the separation of ownership and control functions, namely a conflict of interest between capital owners and the company’s management.

Although the management of the company is said to be rational, they cannot be trusted always to act faithfully to represent the best interests of capital owners because the management is assumed as selfish individuals who may put their personal interests first [4]. Therefore, this moral hazard must be avoided by controlling the performance of the management through a supervisory mechanism to prevent deviant actions of the management [5]. Company management as an agent must use their expertise, wisdom, good faith and fair, and just behavior in managing the company [6].

Government-owned companies, in general, face a different spectrum of agency problems compared to their purely private counterpart. These companies may encounter “double agency” issues, as the process of holding agents to account involves two sets of control relationships [7]. Tensions may emerge between managers and the controlling body, as well as between politicians and the public as ultimate owner of the company [8]. The public as the ultimate owner can not directly exercise neither the principal nor the agent function. It is represented by the government elected through a political process. The principal or the agent function, therefore, may be carried out by politicians with self-interest.

In BUM Desa, the advisory organ is held ex-officio by the Village Head. In the principal-agent spectrum, the Village Head carries out both role of the principal (as the head of the village government who represent the village community as the ultimate owner of BUM Desa) and role of an agent (as ex-officio advisor). The double agency risk, therefore, without doubt exists in BUM Desa governance. Various cases of corruption and misuse of BUM Desa funds have confirmed this problem. This is what underlies the significance of applying good corporate governance principle in BUM Desa. Laws and regulations are important to frame these principles into clear provisions that can provide legal certainty in the governance and

development of BUM Desa. BUM Desa must be managed professionally, not only in relation to the accountability of public funds used for its establishment and development, but as well as the ultimate goal of achieving a productive and financially independent BUM Desa as one of the main pillars of village economy.

Moreover, as prescribed by Berle and Means in their landmark study, the separation of ownership and control is a characteristic of a 'modern corporation' [9]. This underlying premise projects the added complexities to BUM Desa governance when such 'modernity' is applied to rural areas which are often identified as traditional sectors in a dualistic society like Indonesia [10].

Not all villages have a natural competitive advantage, nor human resources with adequate entrepreneurship and creativity to run a company and develop a business. Not all village communities are open and receptive to new ideas or approaches that may not align with their establishment. In other words, in addition to implementing good corporate governance based on a strong and clear legal framework, the challenge in developing BUM Desa also extends to various other variables, mainly social and cultural aspects and human resource capacity. Each village is unique and, therefore, every BUM Desa will face different obstacles. This has resulted in significant variation in the success level of BUM Desa.

2.2 Key Changes in the Regulatory Framework

(i) Legal status of BUM Desa

Based on its characteristics, BUM Desa can be categorized as a public legal entity. One of the criteria as a public legal entity is the basis for its establishment, which is established based on statutory regulations by the authorities (government) [11]. BUM Desa is established based on a Village Regulation (*Peraturan Desa*—"Perdes") enacted by the Village Head together with the Village Council (*Badan Permusyawaratan Desa*—"BPD"). However, as highlighted in previous studies, the Village Law and its implementing regulations do not explicitly prescribe the status of BUM Desa as a legal entity. This problem has created doubt about the legal personality of BUM Desa in its business activities [12].

The law provides legal subjects with the capacity to participate in legal activities. The legal subject's capacity determines the subject's status and the extent of participation in the legal system [13]. A legal entity is individualized as a legal subject by recognizing of the juridical personality to bear rights and obligations [14]. Without the status as a legal entity, BUM Desa finds it challenging to carry out business development, such as forming business partnerships or applying for loans for additional business capital. In addition, the unclear status of BUM Desa also obscures the essence of BUM Desa as an autonomous entity separate from the Village with separate financial accountability.

In response to this issue, the Job Creation Law prescribes a new operational definition for BUM Desa that clarifies its position as a legal entity. The new operational definition emphasizes that BUM Desa is a legal entity established by villages to manage businesses, utilize assets, develop investment and productivity, provide services, and/or provide other types of business for the greatest welfare of the village community [15]. This provision is also consistently stated in PP 11/2021 and various related regulations.

In line with this legal development, the government has also enacted the Minister of Villages, Disadvantaged Regions and Transmigration Regulation No.3 of 2021 ("Permendesa 3/2021") which covers the mechanism of BUM Desa establishment and registration process.

Upon verification by the Ministry of Villages, Development of Disadvantaged Regions and Transmigration, the registration is forwarded to the Ministry of Law and Human Rights through an integrated legal entity administration system. BUM Desa will be issued with a legal entity registration certificate to serve as authentic documentary evidence for their status as a legal entity.

(ii) Clearer Governance Principles

Adherence to clear good governance principles in a company is crucial to achieve an improved accountability system and minimize agency problems such as fraud and self-enrichment by company managers and officers. Accountability mechanisms combined with effective risk management and internal controls may mitigate potential risks and help avoid

corporate crises [16]. Clear governance standards may also improve decision-makings in the company. The underlying principles in governance and management, hence, are key to sustain a company's long-term undertaking.

In Indonesia, these general standards are identified covering five basic principles of Good Corporate Governance (GCG): transparency, accountability, responsibility, independence and fairness [17]. Nevertheless, the previous legal framework for BUM Desa did not make any explicit reference to any of these general GCG principles. Our previous study concluded that the previous regulation contained provisions which mirror aspects of the GCG or have, in essence, aimed to implement parts of the GCG, but lacked comprehensiveness [2].

PP 11/2021 reflects the government's recognition of the importance of governance principles. As evidenced in the elucidation of the regulation, PP 11/2021 serves as the legal basis for BUM Desa governance based on general GCG principles, but still places the spirit of kinship (*kekeluargaan*) [18] and mutual cooperation (*gotong royong*) [19] as the main pillars of management. For this reason, this regulation is enacted to ensure that the organs of BUM Desa carry out their duties and authorities in a professional, efficient, effective and accountable manner.

PP 11/2021 has moved forward by laying down 5 basic principles of BUM Desa governance. Article 3 of the regulation stipulates that the governance of BUM Desa is implemented based on the spirit of kinship and mutual cooperation based on the following principles:

- a) professional (governance in accordance with existing rules and carried out by capable and competent actors)
- b) open and accountable (data/information accessibility by the public and management accountability to the village community)
- c) Participatory (opportunities for community participation in BUM Desa)
- d) Local resources priority
- e) Sustainable (a business strategy that takes into account sustainability principle)

In concept, these principles intersect and correlate with the general corporate governance principles. BUM Desa in principle belongs to the village community and is fully managed for the common interest of the village community. With the characteristics of kinship and cooperation, BUM Desa has similarities with cooperatives, but is not the same because cooperatives are private business entities that are managed to benefit of the individuals who are members. BUM Desa is directed to be managed based on corporate principles, but the explanation of the Village Law has stated that BUM Desa is not the same as a limited liability company or limited partnership with capitalistic characteristics. It can be inferred that the government recognized the need to identify and clarify the underlying principles for BUM Desa to achieve governance that somewhat conforms with general GCG principles but is adapted to the unique and specific features of BUM Desa.

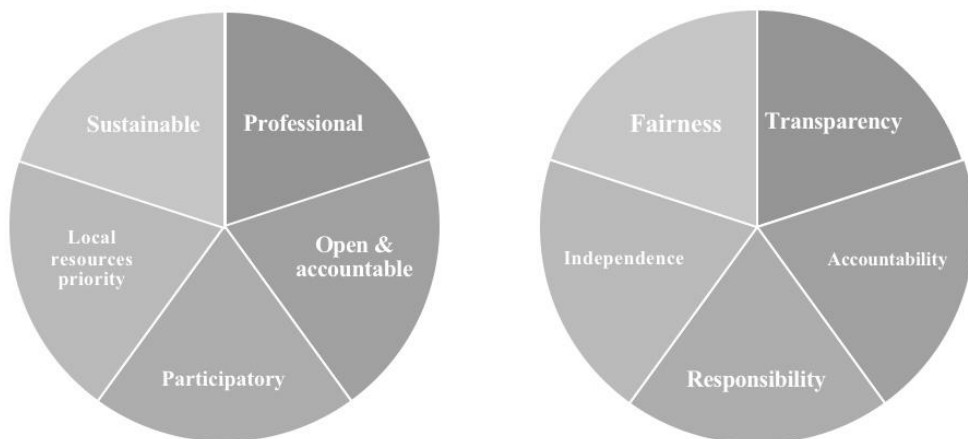


Fig. 1. General Good Corporate Governance Principles and BUM Desa Governance Principles

(iii) Standardization of BUM Desa Articles of Association and Bylaws (AD/ART)

Corporate articles of association and bylaws are important governance tools [20]. Articles of association is a document that provides general but fundamental aspects of corporate governance. The content and terms of articles of association may vary by type of company and the applicable statutory regulation, but in general articles of association at the minimum set the purpose of establishment, capital structure, composition of organs and distribution of duties and authorities and profit sharing. Whereas corporate bylaws serve as the company's internal operations manual.

BUM Desa articles of associations (*Anggaran Dasar*) and bylaws (*Anggaran Rumah Tangga*)—“AD/ART”—play an important role in BUM Desa governance. The previous regulation did not set a standard or minimum content of a BUM Desa. Based on a qualitative study on AD/ART of BUM Desa we conducted from various villages in Indonesia (using random sampling technique), the absence of legal standardization on the content of AD/ART has resulted in the variations of AD/ART content by details and comprehensiveness.

In several of AD/ART, for example, there is no provision for submitting periodic management reports to advisors or supervisors. Of the 10 AD/ARTs studied, the majority did not include provisions regarding the obligation of managers to prepare business plan documents and annual work plans (which are generally found in a company's AD/ART). The majority of AD/ART also does not clearly regulate transparency standards for the community member's access to information on BUM Desa governance. In general, the manager's performance report is submitted at the Village Meeting (*Musyawarah Desa*—“*Musdes*”) forum. However, in reality *musdes* is not attended by all members of the community. Our previous qualitative study on 10 BUM Desa in North Sumatera found that community access to governance information is accommodated in various ways, such as through community activities, publications through banners that are displayed in areas attended by the community, or through a website/blog for BUM Desa that have implemented digitization in their governance [21].

Apart from AD/ART, in general BUM Desa does not have other management guidelines. Accountability aspects such as procedures and provisions for the appointment and dismissal of management, division of tasks, and responsibilities, profit sharing, performance and financial reporting, risk management, and others, replicated the general rules in existing regulations.

In addition to regulating various general terms and statutory rules to address various potential governance problems, PP 11/2021 has also stepped up the governance aspect by laying out the basic or minimum content of the AD/ART BUM Desa. The existence of norms that regulate this minimum content is not only good for standardization and uniformity, but most importantly to provide a clear legal basis for realizing accountable and professional governance.

Table 1. Standard content for BUM Desa Articles of Association and Bylaws

Articles of Association (<i>Anggaran Dasar</i>)	Bylaw (<i>Anggaran Rumah Tangga</i>)
a. name	a. rights and obligations of employees
b. domicile	b. procedures for employees recruitment and dismissal
c. intent and purpose of establishment	c. Salary/remuneration for employees
d. capital;	d. standard operating procedures;
e. type of business	e. detailed description of the Articles of Association
f. identity and composition of organs	
g. Responsibilities and authorities as well as procedures for the appointment, replacement, and dismissal of advisors, managers and supervisors;	
h. basic provisions for the use and distribution profit/revenue	

(iv) Organ compositions

One of the major highlights of PP 11/2021 is the introduction of *Musdes* as an internal organ of BUM Desa. It holds the highest power in BUM Desa governance. Based on the

previous regulation, although *Musdes* had a role in establishing of BUM Desa and the ratification of changes to AD/ART, it was not an internal organ in BUM Desa.

A *musdes* is similar to a general shareholders meeting in a limited liability company (*perseroan terbatas*) or members meeting in a cooperative. *Musdes* is attended by BPD, the village government and other community's element as prescribed in the Articles of Association. This new feature of BUM Desa governance portrays the hybrid characteristics of BUM Desa. The governance aspect is similar to that of a private business entity (having organs, articles of association and by-laws, having a commercial orientation), but still has the characteristics of a public legal entity which is essentially owned by the public.

The repositioning of *musdes* as an organ of BUM Desa may help address a number of agency problems in governance, and opens up the possibility of a number of risks. This will be discussed further in the analysis section.

(v) More detailed and prescriptive governance rules

PP 11/2011 contains a number of new provisions that expand the scope of duties and authorities of the organs in BUM Desa. The regulation assumes more active roles of supervisors. Supervisors must audit management reports and submit annual supervision reports to the *musdes*. Together with the advisor, supervisors must review managers work plan before getting submitted to the *musdes*. This policy may incentivise supervisors and advisors to be more serious and participative in dedicating time, energy and creativity as well as increasing a sense of ownership. The burden of losses for BUM Desa is no longer the sole liability of managers, but jointly shared with advisors and supervisors.

PP 11/2011 also allows Village Head to authorize the advisory role to other parties. This is very similar to the board of commissioners in a limited liability company or the supervisory board in a cooperative.

The management burden of BUM Desa organs, in essence, is similar to that of directors and commissioners in a limited liability company as regulated in Law 40/2007. However, the BUM Desa previous regulatory framework did not protect managers acting in good faith. This situation might hinder professional business decisions and the development of BUM Desa. Managers, for example, will be hesitant to carry out corporate actions that they judge would benefit BUM Desa due to the potential business risks they might have to be personally accounted for. Such burden might not be proportional to the BUM Desa remuneration and reward system.

PP 11/2021 addresses this issue by adopting the business judgment rule principle which provides protection and a legal basis for self-defense against personal liability in the case of business loss for managers, supervisors and advisors, acting professionally in good faith for the best interest of BUM Desa and the village community [22].

(vi) More flexible funding mechanism

PP 11/2021 opens up more opportunities for BUM Desa funding sources. The mechanism for placing capital is faster and more efficient because it can be directly channelled to BUM Desa without going through the Village Budget system (*Anggaran Pendapatan dan Belanja Desa* – “APBDesa”) as prescribed in the previous regulation. Apart from village capital participation, PP 11/2021 stipulates that BUM Desa equity may also be sourced from retained earnings and the village community (legal entities, non-legal entities, individuals or association of people).

Equity participation can now be channeled directly to BUM Desa. If the capital is money, the money is directly placed into the BUM Desa account. If the capital is in the form of goods, then the goods are recorded in the BUM Desa financial report. Whereas the previous mechanism required capital placement through the APBDesa mechanism. In other words, capital must first be transferred to the village, and then channeled to BUM Desa in the form of separated village asset.

In addition to equity participation, Article 45 of the regulation stipulates that BUM Desa assets can also be sourced from grants, loans or other legitimate sources. The flexibility of

the source of funds and the mechanism for their placement can strengthen the BUM Desa capital in realizing various business activity plans.

The flexibility, however, is subject to a number of terms and conditions that uphold accountability standards. Subject to the approval of advisors, supervisors and *musdes*, taking loans as a source of asset is only allowed for BUM Desa with sound financial reports for at least 2 (two) consecutive years. Loans must take into account the principles of transparency, accountability, efficiency and effectiveness, as well as prudence in accordance with the provisions of laws and regulations. A loan should not result in changes in the proportion of equity ownership and may not use Village assets managed by BUM Desa as collateral. The repayment period of the loan should not exceed the remaining term of office of the managers.

(vii) Employee recruitment and payroll

PP 11/2021 stipulates that employment of BUM Desa staff is based on an employment contract in accordance with the applicable labour laws and regulations. In other words, all obligations and rights of employees regulated in the contract must comply with the minimum standards set by statutory regulations, including the number of minimum wages, leave, holiday allowances, and severance pay.

The previous regulation did not explicitly regulate staff recruitment. However, Permendes 4/2015 which provided the operational guidelines for BUM Desa states that managers can be assisted by employees according to their needs with clear assignment of duties, division of roles and other aspects of division of labor. This provision did not provide any stipulation on remuneration.

(viii) Partnership with private sector

PP 11/2021 provides more transparent and more robust legal basis for BUM Desa to establish cooperation or partnership (in business or other fields) with other parties in the village. Other parties in this case include, among others, the central government, regional governments, village governments, cooperatives, non-governmental institutions, educational institutions, and socio-cultural institutions, owned by Indonesian citizens or legal entities, and other BUM Desa.

Subject to the approval of *musdes* and the applicable various laws and regulations, the area of cooperation may include utilization of village assets cooperation with the village government, cooperation with the private sector in resources management, and others. Joint management of resources includes the management of public resources such as springs, rivers, lakes, beaches, mountain areas, forests, mines, etc, to be managed together commercially and/or for public service. The cooperation is subject to a few limitation, which include the prohibition for BUM Desa to assume contractual obligations of other parties and the prohibition for BUM Desa to bear the risk of loss and loan guarantees in village assets management. Thus, the new regulation supports the development of BUM Desa through opportunities for cooperation with other parties. In addition, this provision also serves as an indirect affirmation on the status of BUM Desa a legal entity that has the capacity to carry out legal actions. Such provision was not clearly regulated in the previous regulation. It raised the lack of clarity regarding the legal aspects of business cooperation with other parties BUM village.

(ix) Procurement rules/ procedures

In relation to the needs of BUM Desa to procure goods or services, PP 11/2021 stipulates that the procurement mechanism of BUM Desa is based on business practice standard, and not subject to the laws and regulations on government procurement. The procurement process must be published through media that can be accessed by the village community. This provision indirectly affirms the independence of BUM Desa as a separate legal entity from the village government, with separate finances and not subject to government accounting standards.

This provision indirectly affirms the autonomy of BUM Desa as a legal entity separate from the village government, with separate finances and not subject to government

accounting standards. With this provision, procurement can be faster and more effective, in the condition that it adheres to the principles of transparency, accountability, efficiency, and professionalism as laid out in the regulation. The procedures for procurement is further regulated in Permendesa 3/2021. The previous regulation on the other hand did not clearly regulate BUM Desa procurement, resulting in uncertainty regarding the procurement mechanism.

2.3 Analysis

Based on the key regulatory changes highlighted in the previous section, it can be inferred that PP 11/2021 addresses a number of previous challenges and puts in place provisions that could further professionalize BUM Desa. In line with the Job Creation Law, the new regulation affirms the legal entity status of BUM Desa which also clarifies its capacity to do business and its autonomy in governance separate from the villages. The regulation adopts governance principles and contains more transparent governance rules that reflect GCG principles. In the perspective of the principal-agent relationship, these provisions can potentially reduce the agency problems in BUM Desa governance. However, several potential drawbacks must be anticipated, as will be explained below.

(i) The Domination of Village Heads in BUM Desa Governance

The introduction of the *musdes* as a corporate organ may improve the monitoring of BUM Desa governance in accordance with the interests of the village and the community. The provision may also reduce the Village Head domination as an ex officio advisor in BUM Desa. Structurally, the relationship between manager and advisor is horizontal. No one is higher than the other. However, because politically the Village Head has a very high and strategic role in general village government affairs, this structural relation tends to turn vertical. Findings of our previous research have highlighted that many Village Heads dominated BUM Desa governance and acted as if they owned the companies. This mentality also resulted in the constrain of managers in exercising their authorities and duties [21]. Kurniasih and Wijaya (2017) resonate the same tone in their research, concluding that the inability of BUM Desa management to provide added value for village income is due to BUM Desa management still considering itself subordinate to the village government and, thus, lacking the authority to make innovations [23]. Involving *musdes* in decision making in theory can help overcome this issue.

On the other hand, it is also important to anticipate the possible deficiencies of the provision. The decision-making process can be time-consuming and inefficient, which can hinder business and result in loss of opportunities. Moreover, there is an unclear boundaries of manager's autonomy in making professional decisions because most strategic ones must be approved by *musdes*. However, the most fundamental issue with the role of *musdes* as an organ would be to what extent it can effectively carry out its authority.

A study conducted by Salim et.al (2017) [24] found that the quality of *musdes* is variable. *Musdes* is only attended by some aspects of the community and, hence, not all aspirations would be heard. Priorities for village development in *musdes* were rarely considered, and many important issues ended up being decided solely by the Village Head. In the study, it was also found that the material submitted by the Village Head regarding the village development plans was approved without deliberation. Concerning BUM Desa, the effectiveness of the role of the *musdes* as an organ, therefore, will also depend on the quality of the forum. In line with the recommendations of the study, the effective role of *musdes* as an organ in a BUM Desa would be dependent upon active participations and improved decision-making mechanisms. In other words, if *musdes* is carried out without active participation of the community elements present, then its existence is nothing more than a mere formality and instead may become an inefficiency because it adds layers to the decision-making process. If so, then the agency problem identified will not be resolved through *musdes*' role as an organ.

(ii) Fiduciary Duty of Advisory Role Proxies

The provision of PP 11/2021 that allows Village Heads to delegate advisory role to a proxy may have a positive impact on the separation between village government affairs and BUM Desa governance affairs. PP 11/2021 stipulates that the advisory role proxy can be either an individual or a board consisting of professional members based on specific expertise by taking into account the BUM Desa needs and resources.

Advisory role proxies—professional advisors—will carry out their duties and authorities professionally, as do managers. However, to whom do these professional advisors owe a fiduciary duty? Is it the Village Head who gave them power or to BUM Desa and the community as the ultimate owner? PP 11/2021 does not go into specific details on the extent these proxies can act professionally for the best interest of BUM Desa when it is not in line with the will or opinion of the Village Head. It is not clear whether these proxies can fully exercise the authority of the advisory function or merely carry out the will of the Village Head. This issue can be addressed by adding the necessary provisions in the BUM Desa AD/ART to establish and clarify the relationship between the Village Head and advisory role proxies.

(iii) No Provisions on Concurrent Position Prohibition

PP 11/2021 does not contain a strict prohibition on the concurrent positions practice by village government officials or members of BPD in BUM Desa (either as manager, supervisor or advisory role proxy).

PP 11/2021 and its predecessor provisions stipulate that only Village Heads can serve concurrently as the head of the village administration and an advisor to the BUM Desa. In practice, however, there are BUM Desa managers or supervisors who are also members of the BPD or government officials. This could potentially be a conflict of interest. By repositioning *musdes* as an organ in BUM Desa, such practice of concurrent positions also creates more confusion, because the BPD element is present in the *musdes*. The absence of a strict prohibition regarding concurrent positions can be addressed by setting it in the AD/ART BUM Desa.

(iv) More Financial Burdens for BUM Desa

Adherence to the new provisions may also mean more significant financial burdens for BUM Desa. For example, the adherence to labour laws and regulations for staff recruitment as stipulated in PP 11/2021 may have a positive impact because it injects professionalism in governance. In addition, a clear salary system that complies with legal standards will provide incentives for staff to work diligently and professionally. However, on the other hand, these provisions can become a burden for BUM Desa which are less productive, do not have stable financial conditions or the capacity to comply with these regulations, so they are cannot fully pay staffs in according to statutory regulations.

Therefore, BUM Desa governance planning which includes staff recruitment plan must put into account the company's ability and utilize the recruitment mechanism that suits best the company's limitation (such as opting for a temporary work contract rather than an employment contract), but still within the boundaries that do not violate laws and regulations.

(v) Onerous and Burdensome Statutory Provisions

As highlighted in the previous section, PP 11/2021 contains several provisions that expand the scope of duties and authorities of the organs in BUM Desa and elevate accountability standards. Nevertheless, while these provisions may enforce more professional governance, based on indications shown in our previous study, they may be too onerous and burdensome to implement by all the organs, especially the managers. These provisions may also give more financial burden to the company..

Although there are BUM Desa managers who are capable and have an adequate understanding of the legal aspects of BUM Desa, managers in general have limited legal knowledge in BUM Desa governance. In our study in the Karo Regency, North Sumatera [25], we found that most managers do not comprehend the concept of legal entity and the importance for a BUM Desa to gain recognition as one. They do not understand the importance of dividing roles and duties in the context of enforcing GGC principles. Not all managers comprehensively understand all aspects of governance as regulated in the existing

laws and regulations. Their understanding is limited to what they get through training activities or capacity building provided by local governments, universities or non-government organizations. Most villagers do not comprehend the basic concept of a BUM Desa. Moreover, many also still equate it with a cooperative or consider it only as a working unit of the village government. Many BUM Desa are not supported by the village community or the village government. This is also due to the lack of understanding of the Village Law (especially the adoption of the principles of recognition and subsidiarity) and the role of BUM Desa as one of the main locomotives of village development.

In addition to limited legal knowledge, most BUM Desa managers lack managerial capacity [21]. A number of other studies have also highlighted BUM Desa financial governance problems due to the limited capacity of the managers [26]. Most managers have limited bookkeeping/accounting and financial administration capacity. This may not commensurate with the financial reporting obligation imposed by the regulation. PP 11/2021 requires managers to submit work program implementation reports per semester to advisors and once per year to *musdes*. The report must contain a statement of financial position as well as income statement.

PP 11/2021 allows BUM Desa to conduct business cooperation and to access various sources of funding, including loans. However, it is important to note that this would require entrepreneurship and the skills to identify business opportunities and risks through adequate assessment. Factually, there are many BUM Desa established without a proper feasibility study, but rather for practical purposes, such as obtaining the distribution of Village Fund or because of 'coerced' directions from the regency or provincial government. There are many dormant or non-performing BUM Desa due to managements' lack of commitment and seriousness and incompetency.

Lawrence M. Friedman, whose seminal work has been cited and appraised widely among Indonesian legal scholars, laid out 3 important elements of a legal system; legal substance, legal structure and legal culture. Taking into account this framework, the effectiveness of law, therefore, is not only dependant on the substance of law and regulation, but also on the people (legal structure) and on how the law is perceived (legal culture) [27]. Improvements to the legal substance of BUM Desa in laws and regulation for professional and accountable governance need to be accompanied by efforts to address other underlying challenges. For rural communities, more rules means more accountability, but also means more complications and more difficulties in implementation. Good regulations can become useless and ineffective if they are challenging to enforce.

The study of Salim et.al (2017) [25] on the Village Law implementation emphasizes an interesting yet important finding:

“The Village Law can be both enabling and constraining in making positive changes or reforms towards more accountable governance. On one hand, the law can be regarded as an enabler, because in general, its stipulations have encouraged some village reforms, in comparison with the law that preceded it. On the other hand, creates a complex reporting burden“ .

In line with that premise, we have also come to a similar finding that although the new BUM Desa regulation promotes good corporate governance practices and BUM Desa development, on the other hand, it could also be a burden that may hinder the development of BUM Desa themselves.

3 Conclusion

Based on the discussion above, we conclude that PP 11/2021 as the new regulation on BUM Desa governance, serving as one of the implementing regulations of the Village Law and the Job Creation Law, addresses a number of previous challenges and puts in place provisions that could further professionalize BUM Desa. Remaining limitations could potentially be addressed by adding necessary governance rules in the AD/ART of BUM Desa. However, the regulation risks placing requirements that could potentially be too onerous on

BUM Desa. This is particularly the case given that one of the main challenges for BUM Desa relates to their limited human resource capacity.

The enactment of the new regulation needs to be supported by efforts to improve the capacity of village communities, especially the managers of BUM Desa. The government also needs to find the right dissemination and socialization mechanism. Regulations on BUM Desa governance should be translated into guidelines and tools that are easy to understand and implement. The government needs to periodically monitor and review the effectiveness of the regulation and revise it as necessary.

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References

- [1] TKDD is part of the State Expenditure in order to fund the implementation of fiscal decentralization.
- [2] Sukarja, D., Siregar, M., & Lubis, T.M. (2020) 'The Regulatory Framework of Village-Owned Enterprise in Indonesia: Does It Conform with Good Corporate Governance Principles?', *Proceedings of the International Conference on Law, Governance and Islamic Society (ICOLGIS 2019)*, 71-77.
- [3] Jensen, M.C., and Meckling, W.H. (1976) 'Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure'. *Journal of Financial Economics*, 3(4), 305-360
- [4] Padilla, A. (2002) 'Can agency theory justify the regulation of insider trading?', *The Quarterly Journal of Austrian Economics*, 5 (1) Vol.5, 3-38.
- [5] Filatotchev, I. (2007) 'Corporate Governance and the Firm's Dynamic: Contingencies and Complementarities', *Journal of Management*, 44 (06), 1041-1056.
- [6] Khairandy, R. (2009) *Perseroan Terbatas: Doktrin, Peraturan Perundang-Undangan, dan Yurisprudensi*. Yogyakarta: Kreasi Total Media, p. 153.
- [7] Menozzi, A., & Urtiaga, M.A. & Vannoni, D. (2010) 'Board Composition, Political Connections and Performance in State-Owned Enterprises' *Working papers 09*, Former Department of Economics and Public Finance "G. Prato", University of Torino.
- [8] Child, J., Rodrigues, S.B. (2003) 'Corporate Governance and New Organizational Forms: Issues of Double and Multiple Agency'. *Journal of Management & Governance* 7, p.339.
- [9] Berle, A. and Means, G. (1932) *The Modern Corporation and Private Property*. New York: Commerce Clearing House.
- [10] Boeke, J. H. (1953) *Economics and Economic Policy in Dual Societies*, H. D. Haarlem: Tjeenk Willink & Zoon N. V.
- [11] Ali, C. (1985) *Badan Hukum*. Bandung: Alumni, 1985. p.62.
- [12] Sukarja, D., Siregar, M., & Lubis, T.M. (2020) 'Telaah Kritis Status Badan Hukum dan Konsep Dasar Badan Usaha Milik Desa'. *Arena Hukum*. 3 (3). 568-588.
- [13] Kleyn D. and Viljoen F. (2004) *Beginner's Guide for Law Students* 3ed, (Juta Law, A Division of Juta & Co, Lansdowne, SA), pp.112-113
- [14] Adriano, E. A. Q. (2015) 'The Natural Person, Legal Entity or Juridical Person and Juridical Personality', 4 (1). *Penn State Journal of Law & International Affairs*. p.363.
- [15] Article 117 of Law No.11/2020.
- [16] International Finance Corporation (2014) *The Indonesia Corporate Governance Manual*. Jakarta.
- [17] Komite Nasional Kebijakan Governance (2006) *Pedoman Umum Good Corporate Governance Indonesia*.
- [18] The elucidation of PP 11/2021 clarifies that "*kekeluargaan* is the sense of being part of a large family unit, not to be misunderstood in the context of nepotism. Thus, BUM Desa prioritizes the welfare of the community as a whole, not the welfare of individuals..
- [19] The elucidation of PP 11/2021 clarifies that "*gotong royong*" is a habit of helping each other to build a village.
- [20] Ridgely, H.D. (2015) "The Emerging Role of Bylaws in Corporate Governance". *SMU Law Review*, 68 (2), 317-330.

- [21] Sukarja, D., Siregar, M., & Lubis, T. M. (2019). 'Implementing Good Corporate Governance Principles by Village Owned Enterprises: A Case Study from North Sumatera.' *1st International Conference on Trade, Business, Human Rights, and Globalization Conference Proceedings*. 1st International Conference on Trade, Business, Human Rights, and Globalization, Makassar.
- [22] Article 62 (1) of PP 11/2021
- [23] Based on a survey conducted on 50 BUM Desa across Karo regency.
- [24] Kurniasih D. and Wijaya, S.S. (2017) 'Kegagalan Bisnis Pemerintah Desa (Studi tentang Relasi Bisnis-Pemerintah pada Pengelolaan Badan Usaha Milik Desa di Kabupaten Banyumas)', *JPSI (Journal of Public Sector Innovations)*, 1 (2), 66 – 72.
- [25] Salim, A., Bulan, W.R., Untung, B, Laksono, I. and Brock, K. (2017) *Indonesia's Village Law: enabler or constraint for more accountable governance?* Making All Voices Count Research Report, Brighton: IDS , The Institute of Development Studies, available at: <https://core.ac.uk/download/pdf/286048288.pdf>.
- [26] Such as Kurniasih, D., Setyoko, P. I., & Imron, Moh. (2017). Problems of Public Accountability in Village Government Business Management (Study on Village Business Enterprises in Banyumas, Indonesia). *Journal of Public Administration and Governance*, 7(4), 147–164.
- [27] Friedman, L. M. (1975) *The Legal System: A Social Science Perspective*. New York: Russel Sage Foundation.