Responsibility of The Notary for The Establishment of a Village Owned Business Entity as A Legal Association in The Perspective of Legislation Regulations

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Abstract
This study aims to analyze and criticize the substance of the deed of establishment of Village-Owned Enterprises with associations by notaries and the responsibility of notaries for the establishment of Village-Owned Enterprises incorporated as associations in the perspective of laws and regulations. This research is classified as a juridical research of normative with two main approaches, namely the conceptual approach and the normative approach. This research uses the theory of legal certainty, the theory of legal entities, the theory of authority and the theory of responsibility. The nature of the research is descriptive analytical. This type of research uses secondary data obtained from primary legal materials, secondary legal materials and tertiary legal materials. The results showed that regarding the substance of the deed of establishment of BUMDes with associations by notaries, there was a lot of synchrony between the substance of the deed of BUMDes incorporated as an association with the Village Law and PP BUMDes. This can be seen from its establishment which is not guided by village regulations, in the form of associations and technically BUMDes associations have goals that focus on social society only. To obtain legal entity status, the BUMDes association registers directly through SABH and the nominal amount of its capital participation is not clearly stated in the articles of association and in the case of the deed of establishment of BUMDes incorporated associations that have been made notaries are responsible for giving directions to the parties facing to notarize their BUMDes with the status of the previous legal entity of the association registered with the Ministry of Law and Human Rights through SABH adjusted via SID.

Keywords: village-owned enterprises, laws and regulations.

INTRODUCTION
The existence of Village-Owned Enterprises or abbreviated as BUMDes is one of the economic supports in rural areas. It can be said that this business entity is a milestone in business progress for rural communities in managing or marketing the results of rural areas. Village-owned enterprises are village businesses managed by the Village Government. The Village Government can establish BUMDes according to the needs and potential of the Village. The establishment of BUMDes is stipulated by Village Regulations.

The Indonesian government has established BUMDes as one of the central and local government programs to improve an independent economy in villages in order to provide benefits and welfare for all villagers. The final result of the management of BUMDes planned by the government is the existence of original income derived from the resources in the village. The impact it will produce is an increase in the amount of income, a decrease in the number of unemployed and a decrease in the poverty rate. (Wardhana, 2018: 19). The management of BUMDes is in accordance with the purpose of its establishment, which is to improve the standard of living of the community economically. The management of BUMDes must also be able to improve the financial management ability of village
governments in the implementation of government. In addition, it must also improve the activities and economy of residents in rural areas. (Nata Irawan, 2017: 9).

The establishment of BUMDes was carried out by joint deliberation between the villagers and the village government. In its management it applies the principles of kinship and gotong royong and must fulfill two functions, namely as a commercial institution and a social institution for rural communities. The function of management as a social institution is to provide social services, while the function as a commercial institution is to develop local resources to obtain benefits for rural communities. (Soetjipto, HM. Noer, 2015: 11-1).

The existence of BUMDes has indeed attracted a lot of attention, especially the issue of legal aspects. The explanation of Article 117 paragraph (1) of the Cipta Kerja Law which amends the provisions in Article 87 of the Village Law explains that:

BUMDes was formed by the Village Government to utilize all economic potentials, economic institutions, as well as the potential of natural resources and human resources in order to improve the welfare of the village community. BUMDes specifically cannot be confused with legal entities such as companies, or cooperatives.

Referring to the explanation of Article 88 of the Village Law, the establishment of BUMDes agreed through the Village Deliberation and stipulated by village regulations. The provisions for the establishment of BUMDes are emphasized in Article 4 paragraph (1) of the Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration of the Republic of Indonesia Number 4 of 015 concerning the Establishment, Management and Management, and Dissolution of BUMDes which states, "Villages can establish Village BUM based on Village Regulations on the Establishment of Village BUM."

Then it is reaffirmed in Article 7 paragraphs (1) and (6) of the Government Regulation of the Republic of Indonesia Number 11 of 2021 concerning Village-Owned Enterprises as implementing regulations of Article 117 and Article 185 letter b of Law Number 11 of 2020 concerning Job Creation which states:

(1) Village BUM is established by 1 (one) Village based on village deliberations and its establishment is determined by Village Regulations.

(6) The Village Regulation as referred to in paragraph (1) shall contain at least:
   a. asceticen establishment of Village BUM;
   b. Articles of Association of Village BUM; and
   c. determination of the amount of capital participation of the Village and/or Villager in the context of the establishment of BUM Desa.

Guided by the aforementioned provisions, the establishment of BUMDes must be based on a Village Regulation which contains the determination of the establishment, articles of association and determination of the amount of capital participation of the Village and / or community in BUMDes. The provisions mentioned in Article 7 paragraphs (1) and (6) above are provisions that must be observed when the village government wants to establish a BUMDes and make its deed, so as to avoid invalidity or cancellation of the deed.

The provisions that must be implemented, for example, the establishment of BUMDes must be based on Village Regulations. However, in its implementation, there were BUMDes formed in the deed of the association's legal entity as found in the deed of BUMDes Berkah Makaryo Karangnangka Number: 46 whose deed was made on 6-08-015 before Mr. AR, a Notary of Banyumas Regency. In the establishment of this ice BUMD, no Village Regulation was found which should be the main basis for its establishment and the nominal amount of village or community capital participation was also not clearly determined. Whereas in Article 7 paragraphs (1) and (6) above it has very clearly affirmed the provision.

The application for ratification of the legal entity itself is also different, in the association it is carried out through the Legal Entity Administration System (SABH) in accordance with Article Permenkumham Number 6 of 2014 concerning Ratification of
The Legal Entity of the Association. Meanwhile, the application for ratification of BUMDes legal entities through the Village Information System (SID) refers to Article 9 paragraph (1) of Government Regulation Number 11 of 2021 concerning BUMDes.

This is of course a new issue that should receive more attention. Article 15 of the UUJN clearly outlines the authority of a notary, namely: The notary is authorized to make authentic Deeds regarding all deeds, agreements, and determinations required by the Laws and Regulations and/or that are desired by the interested person to be stated in the authentic Deed, guarantee the certainty of the date of making the deed, keep the deed, give grosses, copies and quotations of the deed, all of which are so long as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by the Act.

From these provisions, none of them state that making a deed of establishment of BUMDes is the authority of a Notary. So that the BUMDes deed made before a Notary clearly violates the Village Law which in the Laws and Regulations does not explain the establishment of BUMDes made in the form of a Notarized deed. Especially by categorizing it as an association legal entity.

Based on the arguments and problems above, the author will further examine the legal analysis of the substance of the deed of establishment of a Owned Enterprise with an association by a notary, then the responsibility of the notary for the establishment of a Village-Owned Enterprise incorporated as an association in the perspective of laws and regulations.

Based on the search results of several existing studies, there is no research that discusses this title. The difference that underlies it with previous research is that the research is more concerned with examining the existence of the establishment of BUMDes in running a person to be stated in the perspective of laws and regulations, then how the legality and juridical implications of the establishment of BUMDes are incorporated as associations in the perspective of laws and regulations that have not been found in previous studies. Some of the previous studies that have one theme of discussion include:

a. Analysis of the Relevance of the Role of Notaries Related to the Legality of the Establishment of Village-Owned Enterprises After the Issuance of Law Number 11 of 202 0 concerning Job Creation and Government Regulation Number 11 of 2021 Concerning Village BUM (Study of Independent Mencirim Village BUM in Sei Mencirim Village and Annur Village BUM in Purwodadi Village, Sunggal District, Deli Serdang Regency), This thesis was written by Rita Deliana Malik in the Postgraduate Program of Master of Notarial Affairs, University of North Sumatra in 01, with a focus on studying the legality of the establishment of Village BUM based on Laws and Regulations in Indonesia, Relevance of the Role of Notaries related to the legality of the establishment of Village BUM after the issuance of Law Number 11 Year 2020 concerning Job Creation and Government Regulation Number 11 of 2 021 About Village-Owned Enterprises, and the Relevance of the Role of Notaries related to the legality of the establishment of Independent Mencirim Village BUM in Sei Mencirim Village and Annur Village BUM in Purwodadi Village, Sunggal District, Deli Serdang Regency After the issuance of Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 11 year 202 1 About Village-Owned Enterprises.

b. Legal Review of the Form of Legal Entities against Village-Owned Enterprises (BUMDes), this thesis was written by Muhammad Khalid Hamka in the postgraduate program of the Master of Notarial Affairs at Hasanuddin University in 2017, this study focuses on examining the form of legal entities of business units of Village-Owned Enterprises (BUMDes) and the form of accountability of the organs of business units of Village-Owned Enterprises (BUMDes).

METHOD
When viewed from its type, this research is classified as normative juridical research, namely the legal research that puts the law as a building of a system of norms. The system of norms in question is about the principles, norms of laws and regulations, court decisions, legal products, agreements and doctrines. (Mukti Fajar & Yulianto Achmad, 2010: 34).

The source of this research data is secondary data obtained by conducting literature research on the research materials used which include secondary legal materials and tertiary legal materials by collecting data and studying legal books, literature, scientific writings, laws and regulations and other readings related to this research.

RESULTS AND DISCUSSION

Result

Village-Owned Enterprises

Village-Owned Enterprises (BUMDes) are legal entities established by villages and/or together with villages to manage businesses, utilize assets, develop investment and productivity, provide services, and/or provide other types of businesses for the maximum welfare of the village community.

The establishment of BUMDes was held by the village government and initiated by the central government. Meanwhile, capital ownership and business management are jointly organized by the village government and the community. The management of BUMDes is in accordance with the purpose of its establishment, which is to improve the standard of living of the community economically. The management of BUMDes must also be able to improve the financial management capabilities of village governments in the implementation of government. In addition, it must also improve the activities and economy of residents in rural areas. (Soetjipto, HM. Noer, 2015: 11-12). In Government Regulation Number 11 of 2021 which is a reinforcement of BUMDes explained that, "as a legal entity BUMDes can directly run its business (operating company) or become the parent for legal entity (investment company)."

Laws and Regulations

Laws and Regulations are written regulations that contain generally binding legal norms and are formed or determined by state institutions or authorized officials through the procedures stipulated in the Laws and Regulations. The use of the term legislation is more relevant in talking about the type or form of regulation (law), but in other contexts it is more appropriate to use the term legislation, for example in referring to the theory of legislation, the basics of legislation, and so on.

Legal Certainty

Normative legal certainty is when a rule is made and promulgated definitively because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and logical. Logical in the sense that it becomes a system of norms with other norms so that it does not clash or cause conflicts of norms. Legal certainty refers to the enactment of clear, fixed, consistent and consequential laws whose implementation cannot be influenced by circumstances of a subjective nature. Certainty and justice are not merely moral demands, but factually characterize the law. An uncertain and unwillingly fair law is not just a bad law. (Cst Kansil, et al, 2009: 385).

Legal Entity

The legal entity is a translation of the rechtspersoon (Dutch). A legal entity in Indonesian is defined as an organization or association established by an authentic deed and in law is treated as a person who has rights and obligations or is also called a legal subject. (Suharsono, 2010: 7). Theoretically, both in common law countries and european
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... are known some of the teachings or doctrines that are the basis for the existence of legal entities. The leading concepts of the personality of legal entities include fictional theory, purposeful wealth theory, common wealth theory, organ theory and juridical reality theory.

Authority

According to Ateng Syafrudin, there is a difference between the definition of authority and authority. Authority (autority gezag) is the so-called formal power, a power derived from the power conferred by the Act, whereas the authority (competence bevoegdheid) is only about a certain "onderdeel" (part) of the authority. Within the authority there are authorities (rechtsbe voegdheiten). Authority is the scope of public legal action, the scope of government authority, not only includes the authority to make government decisions (bestuur), but includes authority in the context of carrying out duties, and gives authority and distribution of authority mainly stipulated in the Law. (Ateng Syafrudin, 2000:22).

Responsibility

One concept that is related to the concept of legal obligation is the concept of legal responsibility (libility). A person who is legally responsible for certain actions that a person can be subject to a sanction in case his actions are contrary to the law. Sanctions are imposed, because it is his own deeds that hold the person accountable. The subject of responsibility and the subject of legal obligations are the same. Responsibility is a reflection of human behavior.

Discussion

Legal Analysis of the Substance of the Deed of Establishment of Village-Owned Enterprises with Associations by Notaries

The deed of establishment of Village-Owned Enterprises refers to Government Regulation Number 11 of 2021, BUMDes established must be based on village deliberations and their establishment is determined by a Village Regulation which contains the determination of the establishment, articles of association, determination of the amount of participation in village capital and / or village communities in the context of establishing BUMDes.

The articles of association of BUMDes contain at least the name, place of domicile, purpose and purpose of establishment, capital, type of business in the field of economics and / or public services, name and number of advisors, operational executors and supervisors, rights, obligations, duties, responsibilities and authorities as well as procedures for the appointment, replacement and dismissal of advisors, operational executors, and / or supervisors, and the main provisions of use and distribution and / or implementation and utilization of business results.

The bylaws of BUMDes contain at least the rights and obligations, procedures for recruitment and dismissal, the system and amount of salaries of BUMDes employees, work procedures or standard operating procedures, and a detailed description of the bumdes articles of association.

In Article 8 of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises, it answers the procedures for BUMDes to obtain their legal entity status, as follows:
1. Village BUM / Village BUM together obtained the status of a legal entity at the time of issuance of an electronic registration certificate from materials that organize government affairs in the field of law and human rights.
2. In the event that a joint Village BUM / Village BUM has a Joint Village BUM / Village BUM Business Unit, the legal entity position of the business unit is separate from the village BUM / village BUM together in accordance with the provisions of the laws and regulations.
To obtain the status of a BUMDes legal entity in detail is described in Article 9 of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises, as follows:

1. To obtain legal entity status as referred to in Article 8 paragraph (1), the Village Government Registers Village BUM / Village BUM together with the Minister through the Village information system.

2. The results of the registration of joint Village BUM / Village BUM as referred to in paragraph (1) are integrated with the legal entity administration system at the ministry that organizes government affairs in the field of law and human rights.

3. The results of the registration of joint Village BUM / Village BUM as referred to in paragraph (2) become the basis for the minister who organizes government affairs in the field of law and human rights to issue a certificate of registration of legal entities of village BUM / village BUM together.

4. Provisions regarding the registration of village BUM / joint village BUM as referred to in paragraph (1) are regulated by a Ministerial Regulation.

   Provisions regarding the issuance of certificates of registration of legal entities of village BUM / village BUM together as referred to in paragraph (3) are regulated by a ministerial regulation that organizes government affairs in the field of law and human rights.

   Based on Article 8 and Article 9 mentioned above, it has provided legal certainty regarding the status of the BUMDes legal entity itself. In practice, BUMDes that have a deed of establishment in the form of a notarial deed and are approved as a legal entity from the Ministry of Law and Human Rights are categorized as legal entities of associations. This is obviously very wrong, because BUMDes and associations are different forms of legal entities. The association does not aim to seek profit (profit) and does not run the company, as well as having non-economic goals. Meanwhile, BUMDes is a business entity that was established for the greatest prosperity of the village community. Thus, BUMDes cannot be equated with the legal entity form of the association.

   The status of a legal entity has an important role for BUMDes in carrying out its business activities. This is, among others, related to the issue of responsibility of the BUMDes management or known as the operational implementer. If a BUMDes has the status of a legal entity, then if there are claims from third parties against BUMDes that can be sued only limited to the assets of BUMDes and do not touch the personal assets of operational implementers except in the event that the operational executor acts ultravires (actions beyond the limits of authority stated in the company's articles of association regarding the purposes and objectives of the company). (Isis Brotherhood, 2020: 54).

   In the substance of the deed of establishment of BUMDes association there is a lot of misalignment between the substance of the deed of BUMDes incorporated as the association with the Village Law and PP BUMDes. This can be seen from the establishment of BUMDes which should refer to village regulations which are the result of village deliberations. As stipulated in Article 7 paragraph (1) which states that, "Village BUM is established by 1 (one) Village based on Village Deliberations and its establishment is stipulated by Village Regulation". Thus, it is known that the notary does not have the authority to make a deed of establishment of a BUMDes, let alone by registering it with the legal entity of the association. The notary authority of BUMDes is to notarize the establishment of legal entities that it manages and the deed of affirmation of the establishment of BUMDes which in its deed explains and states and confirms the Establishment of Village-Owned Enterprises (BUMDes) as a condition for entering into an agreement with a third party.

   The form of BUMDes is a legal entity established by the village, this is as referred to in Article 1 number 1 which states, "Village-Owned Enterprises, hereinafter referred to as Village BUM, are legal entities established by the village..." and not an association. Because technically BUMDes have the aim of accommodating all activities in the field of...
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Notary Responsibility for the Establishment of Village-Owned Enterprises Incorporated as Associations in the Perspective of Laws and Regulations

In a statutory regulation, sometimes one regulation and another regulation have a relationship. In the provisions of UUJN there is an arrangement that authorizes notaries to make authentic deeds regarding all agreement making and determinations required by general regulations or because of the will of parties who have an interest in making an authentic deed. However, the Village Law does not give or regulate the authority of a notary to make a deed of establishment of BUMDes.

Based on the Village Law and its implementing regulations, the establishment of BUMDes is only enough with the results of village deliberations which are then determined based on Village Regulations. There is no necessity in the establishment of BUMDes made with a notarial deed, but there is a connection between the two rules, namely there is the authority of a notary to make deeds related to the establishment of BUMDes business units that are legal entities such as limited liability companies and microfinance institutions as well as other authorities such as making deeds of cooperation agreements between villages or with third parties if desired by both parties.

The fact is that in the field, it was found that several BUMDes that were established other than based on village regulations were also made by notarial deeds. The establishment of BUMDes in the notarial deed is an initiative of the BUMDes management itself because of the need to take care of opening an account required by the bank. For example, the establishment of BUMDes Berkah Makaryo Karangnangka, Banyumas Number 46 which was made on August 6, 2015. If reviewed again based on the Village Law and its Implementing Regulations which confirm that BUMDes must be made on the basis of village deliberations and determined through Village Regulations so that the establishment of BUMDes does not require a notarial deed.

In practice, BUMDes that have a deed of establishment in the form of a notarial deed and are legally approved as a legal entity from the Ministry of Law and Human Rights are categorized as legal entities in the form of associations, this is wrong, because BUMDes and associations are different forms of legal entities. The association does not aim to make a profit and does not run the company, as well as having a non-economic purpose. Meanwhile, BUMDes is a business entity that was established for the greatest prosperity
and welfare of the village community. Thus BUMDes cannot be equated with the legal entity form of the association.

BUMDes based on the laws and regulations that regulate it does not mention that BUMDes as a legal entity is expressly, so the position of BUMDes as a legal entity or not a legal entity is unclear. The establishment of BUMDes, which is stipulated by village regulations, does not automatically make BUMDes have the status of a legal entity. To be able to have the status of a legal entity, BUMDes must meet both material requirements and the formal requirements of a legal entity.

If you look at the material requirements of legal entities, then BUMDes have met these requirements thoroughly. BUMDes have separate assets, namely village property that is separated to become the wealth or capital of BUMDes. BUMDes has a certain goal, which is to maximize the prosperity of the village community. BUMDes have their own interests that are separate from the interests of the village where these interests can be seen from the deed of establishment and/or articles of association. And BUMDes has an orderly organization, consisting of advisors, operational implementers and supervisors, where each organ has different authority in the management of BUMDes. In addition to meeting material requirements, BUMDes must also meet the formal requirements to be categorized as a legal entity. And BUMDes have also met these requirements.

In reality, there is a form of establishment of BUMDes. There are BUMDes which are formed by village regulations only and there are also BUMDes which are formed by village regulations and then a deed of establishment is also made in the form of a notarial deed and then an application for legal entity status is submitted to the Ministry of Law and Human Rights. In determining the legal entity of BUMDes, it is legally necessary to have an attestation institution in the event that it is carried out by the Ministry of Law and Human Rights after being submitted by a notary through the Business Entity Administration System (SABH). SABH itself has not provided a forum to apply for the ratification of BUMDes as a legal entity such as a Limited Liability Company, Foundation or other legal entity, so that when it will apply for a deed of establishment of BUMDes that has been made by a notary to get approval from the Ministry of Law and Human Rights as a legal entity, it is forced into the SABH which is intended for associations.

Fortunately, this has been answered with the birth of the Ciptaker Law in Article 117 of the tenth section concerning village-owned enterprises which changes the definition of Article 1 Number 6 of the Village Law which places BUMDes as "business entities" into "legal entities". In the amendment, it has made it clear that BUMDes as a legal entity whose establishment is sufficient with village deliberations with ratification of village regulations. Since the government issued the Ciptaker Law, the problem of the status of BUMDes as a legal entity has been clearly answered.

The position of BUMDes after the Job Creation Law as a New Entity Legal Entity whose position is equivalent to a Limited Liability Company (PT) is equivalent to a BUMN at the national level and a BUMD at the regional level. Since the promulgation of the Village Law, Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages, Government Regulation Number 47 of 2015 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages, Regulation of the Minister of Villages, Development of Disadvantaged Regions, and Transmigration Number 4 of 2 015 concerning the Establishment, Management and Management, and Dissolution of BUMDes, Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises, all of which are laws and regulations governing the legality of the establishment of BUMDes that BUMDes is a legal entity established based on village regulations ratified through village deliberations. So the village government together with BPD and the village community can establish BUMDes with the passage of village regulations that are decided and determined through village deliberations. Thus the notary has no role in the legality process of establishing BUMDes. (Jusman Khairul Hadi, 2021:22).
In the Village Law and the Copyright Law, there is no regulation regarding the role of Notaries in the establishment of BUMDes. In this case, if it is related to the theory of legal certainty that in formal regulations in the Village Law that notaries do not have juridical authority or legality in terms of making the Deed of Establishment of BUMDes. This is emphasized by the ratification of Government Regulation Number 11 of 01 concerning BUMDes, that to fulfill the principle of legality, the establishment of a BUMDes is based on village regulations which henceforth ratify the legal entity status of the BUMDes can be registered with the Ministry of Law and Human Rights through the Village information system. This confirms that for the ratification of a BUMDes as a legal entity no longer needs other parties, in this case a notary as a general official who has the authority to take care of the legality of the BUMDes.

Village-Owned Enterprises incorporated as associations are BUMDes established with a deed of establishment before a Notary which is equated with an association deed. If the village government in establishing BUMDes only arrives in the deed of establishment based on village regulations, BUMDes will have difficulty carrying out business activities that require a large enough capital, besides that community participation will be difficult to realize, because the impression is that BUMDes is an extension of the village government. Even in banking practice, BUMDes, which are regulated by village regulations, are difficult to accept in economic traffic. Banks will find it difficult if there are BUMDes with problems and want to confiscate or hold the BUMDes management accountable, in this condition the price of BUMDes’ wealth is often an integral part of the assets of the village government. It was on that basis that BUMDes were formed with the legal entity of the association. Even though based on their legal status, BUMDes are not the same as associations, BUMN or BUMD which have been regulated separately in the laws and regulations can be in the form of a limited liability company (PT) or a public company (Perum). In the explanation of Article 87 atay (1) Undang-Undang Desa, it is emphasized that, BUMDes cannot be confused with legal entities of PT, CV or cooperatives.

This in the end results in a fairly substantial problem when BUMDes will carry out their business activities that are not closed, it is likely that they will always be in contact with third parties or cooperate with other village parties, and there is even a relationship with the bank to apply for a bank credit acquisition which requires other legalities.

It's just that there are often mistakes in making the deed of establishment of BUMDes, this happens because of the factor of notarial ignorance in understanding the Village Law which has affirmed that the establishment of BUMDes was agreed upon through village deliberations and determined based on Village regulations, from the Law it can be known that there is no need for a notarial deed in its establishment, especially since the BUMDes deed is a legal entity of an association. So that the actions taken by the notary tend to be wrong.

Zul Fadli, a notary in Muaro Jambi Regency argued that:

It is a mistake to assume that the establishment of BUMDes is carried out by making a notarial deed. But there is something even more wrong, when the establishment of BUMDes was established with a notarial deed, then the legal form was in the form of an association legal entity. This fallacy actually happened and it can be known on the ordering of the name of the association. Many association names use a series of words Village-Owned Enterprises.

On the other hand, the Ministry of Law and Human Rights as an administrative institution that has issued or ratified its deed of establishment is based on access to incoming data inputted by a notary through AHU Online is considered to have been negligent in verifying data before the deed of ratification of the establishment of a legal entity so that with the issuance of the deed of establishment of the BUMDes it can result in legal implications for the imposition of responsibility both to the notary and the Ministry of Law and Rights Human Rights to his administrative decisions. (Steven Frederik & Tjempaka, 2021: 91).
Notary responsibility for the establishment of Village-Owned Enterprises incorporated as associations in the perspective of laws and regulations when referring to 4 aspects of their responsibilities, including:

1. Civil Notary Responsibility for the Establishment of Village-Owned Enterprises Incorporated as Associations

   In a legal act by law it is not required to be stated in an authentic deed, so that if the deed loses its authenticity due to non-fulfillment of the formal conditions referred to in Article 1869 of the Civil Code jo Article 38 of the Notary Office Act, then the deed still functions as a deed made under the hand if the deed is signed by the parties. As long as the degradation from an authentic deed to an underhand deed does not cause harm, the notary concerned cannot be held legally liable through Article 1365 of the Civil Code regarding Unlawful Acts. This form of liability adopted by Article 1365 of the Civil Code is a liability based fault, in this case an error attached to a notary to the deed he made. The enactment of the degradation of the evidentiary power of a notarial deed into an underhand deed in general since a court decision that has had permanent legal force (inkracht). (Muthia Anggela Mawadhaty Putry, et al, 2018: 226)

   In the case of making a deed of establishment of BUMDes with an association legal entity by a notary is a mistake, because BUMDes is different from associations. The association does not aim to make a profit and does not run the company, as well as having a non-economic purpose. BUMDes is a business entity that was established for the greatest prosperity and welfare of the village community. Thus BUMDes cannot be equated with the legal entity form of the association. The status of a legal entity has an important role for BUMDes in carrying out its business activities. This is, among others, related to the issue of responsibility of the BUMDes management or known as the operational implementer.

   Another problem that arises is that BUMDes have difficulty establishing business cooperation with other parties, BUMDes are also difficult to reach banking capital, and the opportunity to expand the BUMDes business is hampered because there is no legal standing (legal position before the law) so that BUMDes find it difficult to partner equally with others. Therefore, BUMDes must have a solution from authorized stakeholders regarding their legal position. And the notary himself is responsible for providing civil legal counseling related to the deed of establishment of BUMDes which the parties will entrust to make a deed so that there is no degradation of the deed because there is no arrangement that requires the notary to make a deed of establishment of BUMDes.

2. The Responsibility of a Notary In General to the Establishment of Village-Owned Enterprises Incorporated as Associations

   In practice, if there is a notarial deed that is disputed by the parties or the authorities over the notary, it is drawn as a party who participates in committing or helping to commit a criminal act, namely making or providing false information into the notarial deed. The punishment of the notary can be carried out with restrictions, namely:

   a) There is a legal action from the notary against the outward, formal and material aspects of the deed that is deliberate, full of awareness and conversion, and it is planned that the deed to be made before the notary or by the notary together (agreed) the interceptors are used as the basis for committing a criminal act. (M. Edwin Azhar, 2018: 46). In relation to the making of the deed of establishment of BUMDes, this does not happen, because the purpose of notarizing BUMDes by a notary is to facilitate the occurrence of agreements with third parties related to the management of BUMDes.
b) There is a legal action from a notary in making a deed before or by a notary that is not in accordance with the Notary Office Act. (M. Edwin Azhar, 018: 46). In relation to BUMDes if referring to the Notary Position Law, there is a mistake when the establishment of BUMDes is made a notarial deed because there are indeed no laws and regulations that give this authority to the notary. Article 15 of Law Number 2014 concerning the Position of Notary clearly outlines the authority of a notary, namely:

The notary is authorized to make authentic Deeds regarding all deeds, agreements, and determinations required by the Laws and Regulations and/or that are desired by the interested person to be stated in the authentic Deed, guarantee the certainty of the date of making the deed, keep the deed, give grosse, copies and quotations of the deed, all of which are so long as the making of the Deed is not also assigned or excluded to other officials or other persons stipulated by the Act.

The explanation of Article 117 paragraph (1) of the Copyright Law Kerja which amends the provisions in Article 87 of the Village Law explains that:

BUMDes was formed by the Village Government to utilize all economic potentials, economic institutions, as well as the potential of natural resources and human resources in order to improve the welfare of the village community. BUMDes specifically cannot be equated with legal entities such as limited hospitals, or suitcases.

From these provisions, none of them state that making a deed of establishment of BUMDes is the authority of a Notary. So that the BUMDes deed made before a Notary clearly violates the Village Law which in the Laws and Regulations does not explain the establishment of BUMDes made in the form of a Notarized deed. Especially by categorizing it as an association legal entity. Thus, it can be said that the making of the deed of establishment of BUMDes by a notary violates the Notary Position Law, the Village Law and related regulations regarding BUMDes.

3. Notary Responsibility Based on the Notary Code of Ethics for the Establishment of Village-Owned Enterprises Incorporated as Associations

In addition to being guided by the Notary Position Law, notaries must also adhere to the Notary Code of Ethics. Because as an honorable profession (officium nobile), the notary in carrying out the duties of his office must act independently, honestly and responsibly. The values in the Notary Code of Ethics are the dignity and dignity of a notary as a professional, if the code of ethics is violated, it will lose the dignity of the notary. In carrying out his office, a notary must behave professionally, have a good personality and uphold the dignity of the honor of the notary and be obliged to respect colleagues and take care of each other and defend the honor of the good name of the corps or organization. As a profession, the notary is responsible for the profession he performs, in this case the notary code of ethics. (M. Edwin Azhar, 2018: 48)

In the case of a deed of establishment of a BUMDes with the legal entity of the association that he has made, the notary is responsible for giving directions to the parties facing to notarize their BUMDes with the status of the legal entity of the previous association registered with the Ministry of Law and Human Rights through the Legal Entity Administration System (SABH) adjusted through the Village Information System (SID).

CONCLUSION

Based on the results of the research and discussion above, can conclude as legal analysis of the legal substance of the deed of establishment of Village-Owned Enterprises
with associations by notaries there is a lot of synchrony between the substance of the deeds of BUMDes incorporated as associations with the Village Law and PP BUMDes. This can be seen from its establishment which is not guided by village regulations, in the form of associations and technically BUMDes associations have goals that focus on social society only, not to achieve profit (profit). Then to obtain legal entity status, the association BUMDes registers directly through SABH and the capital ownership comes from the BUMDes itself, and the nominal amount of capital participation is not clearly stated in the articles of association.

The notary's responsibility for the establishment of a Village-Owned Enterprise incorporated as an association in terms of the deed of establishment of BUMDes that he has made is to give directions to the parties facing to notarize their BUMDes with the status of the previous association’s legal entity registered with the Ministry of Law and Human Rights through the Legal Entity Administration System (SABH) adjusted through the Village Information System (SID).

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