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### RESEARCH ARTICLE

#### LAW, CONTESTED SPACE AND THE POLITICAL ECONOMY OF VILLAGE-OWNED STATE ENTERPRISES INSTITUTIONALISM IN INDONESIA

Ulil Afwa

Lecturer, Faculty of Law, JenderalSoedirman University, Indonesia.

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#### Abstract

Village-Owned State Enterprises is a vital institution to create a dialogue in the village as a reflection of sovereignty from the village community to their economic development. In the ideal management, to increase participation and create economic sovereignty of the Village-Owned State Enterprises, it should be freed from the intervention of local elite capture. The institutionalism process of village-level economic institutions through Village-Owned State Enterprises is a form of creating a local democratic economy in the village. This institutional reform is made to create a market-friendly institution within society that will create institutional structures which provide a more secure environment to community participation in society to evolve and improve capacity and capability as a reflection of the democratic economy. This paper will address 3 things to analyze: 1) Analyze the nature of the prismatic community in Indonesia in responding to the policy from the government regarding the making of Village-Owned State Enterprises; 2) Examines the way in which political factors have shaped the process of Village-Owned State Enterprises in Indonesia; 3) Presents the conclusion to the chapter. This research is kind of a qualitative method. The research sampling that is used is purposive sampling with the informants. While the data analysis method used is descriptive.

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#### Introduction:-

Rural development is a part of President Joko Widodo Nawacita which is "To build Indonesia from its margins by strengthening the rural areas and villages under the framework of the Unitary Country of Republic of Indonesia". The Village Law gives a birth to the village autonomy era where villages are required to establish Village-Owned State Enterprises to improve the village economy and develop the potential of the village. The flushing of funds through village funds which is also strengthened through the Village-Owned State Enterprises commonly called as BUMDES, makes many villages throughout Indonesia by empowering the community as a role in driving the village economy. According to statistical data received by this media that BUMDES throughout Indonesia on December 2021 have reached 57.273 BUMDES. Whereas 45.233 BUMDES are active and 12.040 BUMDES are not active. The Director of Village Economic Development, PDT and Transmigration development explained that the graph of the development of BUMDES in Indonesia per year increased. In 2021 around 72%, (Source: Village and PDTT ministry) of villages had BUMDES, the number of BUMDES in Indonesia is currently around 57.273. This figure has exceeded the target of 5,000 Bumdes for five years. Bumdes as a new economic institution at the village

**Corresponding Author:- Ulil Afwa**

Address:- Lecturer, Faculty of Law, JenderalSoedirman University, Indonesia.

level is growing and developing. The workers absorbed 20.369.834 people, BUMDES turnover omzetis4,6 trillion last year. BUMDES is expected to be the driving force of the village economy, Stimulating the emergence of Village Scale economic activities, thus Increasing the Income of Village Communities, as well as being one of the Sources of Village Revenues. The number of Village-Owned State Enterprises getting higher each year. In 2021 approximately 72%, of Indonesian villages have village-owned state enterprises. With Applicable labor and estimated omzet increased per year.

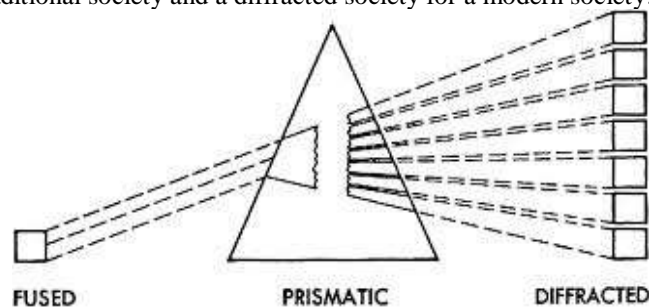
Data shows that of the 83.381 villages, and 57.273 BUMDES not all have humanresources that can manage BUMDES, It is recorded that the number of BUMDES that actually runs is only around 45.233 BUMDES that active and 12.040 BUMDES that is not active. Those who have really reaped profits are around 30,000 units, many BUMDES in the village are only established but not active and not operating properly.

**This is due to various problems:**

1. Ignorance of BUMDES management
2. The vested local elite
3. Organizational readiness by village communities.

In order to create ideal Village-Owned State Enterprises is by building a coherent institution, as one component in the process of working the law in addition to the components of substance and structure. The formation of this also needs to be built on communication and legal participation in society because this is the initial stage in building legal behavior.<sup>i</sup> Village-owned enterprise is a strategic institution to improve village welfare. It could improve the village's economy, capability, and capacity. However, the rise of Village-Owned State Enterprises can vested problems for the domination of particular elites, resulting in what we call as elite capture. The relationship of the "patrimonial" relationship in Javanese society and the "internal differentiation" of society occurred before and during colonial rule.<sup>ii</sup> The existence of villages is conditioned to have the same experience for decades under the New Order government. At that time through Law Number 5 of 1979 concerning village government, the village was controlled and controlled by the state. The community is uniformed in a social organization called Desa. The new order government positioned the village community as the lowest unit for the implementation of development, the creation of stability, and the legitimacy of power. The village became the lowest government organization under the sub-district. Therefore it is necessary to reverse the development of villages within the framework of democracy.<sup>iii</sup> Based on the results of the study, it was revealed that in several villages in Indonesia at that time it turned out that they had succeeded in developing practices, behaviors, and flexibility in the New Order-style villages. The study shows that villages and communities are not passive towards uniformity, control, and consolidation of village systems in the style of the New Order. Regulations that are considered to be uniform for social organizations, in reality, do not marginalize traditional traditions and society; village actors also flexibly select, find out which formulas are suitable and which are not, do the distribution of authority, and even adjust the village system into the clan and sultan culture, or vice versa.<sup>iv</sup> Here we are directed to see the village as a political institution that is the arena of power struggles of various interests.

Village communities in Indonesia are transitional societies.<sup>v</sup> The word 'transition' itself refers to a stage of time between a certain past and a predicted future condition. In other words, in this case, the transition society is a society that is changing to a new value. The nature of society in developing countries is a transitional society, which is between people who have traditional as well as modern characteristics. Fred W. Riggs places the transition phase in the development of society as a prismatic society which, when drawn in a linear line, lies between what is called a fused society model as a traditional society and a diffracted society for a modern society.<sup>vi</sup>



**Fig. 1:- Prismatic Community by Fred W. Riggs.**

### **Objective Of The Study:-**

This study aims at identifying opportunities to maximize Village-Owned State Enterprises impacts by analyzing the political economy of its institutionalism in Indonesia.

### **Methodology:-**

This research uses sociological juridical research with a qualitative approach. The sociological juridical method is used to produce an analysis of the nature of the prismatic community in Indonesia in responding to the policy from the government regarding the making of Village-Owned State Enterprises as well as to examine the way in which political factors have shaped the process of Village-Owned State Enterprises in Indonesia in the establishment of Village-Owned State Enterprises in Indonesia.

### **Discussion:-**

This research will focus on identifying practices that will optimize the Village-Owned State Enterprises impact based on Theory of prismatic society, Cube Politic Theory, Institutional Theory, and Hibrida Theory.

### **Nature of Prismatic Community in Indonesia in Responding to The Policy from Government Regarding The Making of Village-Owned State Enterprises**

To effectively optimize the impact of Village-Owned State Enterprises, first, we have to identify the pattern in the community. Rural communities in Indonesia are transitional communities. The word 'transition' itself refers to a stage of time between a particular past and a situation in the future that is predicted. In other words in this case the transitional society is a society that is or is moving to change to a new value. The nature of the people of developing countries is a transitional society, which is between people who have traditional as well as modern characteristics. Fred W. Riggs places the transition phase in the development of society as a prismatic society, which when drawn linearly lies between what is called the fused model of society as a traditional society and a diffracted society for modern society.

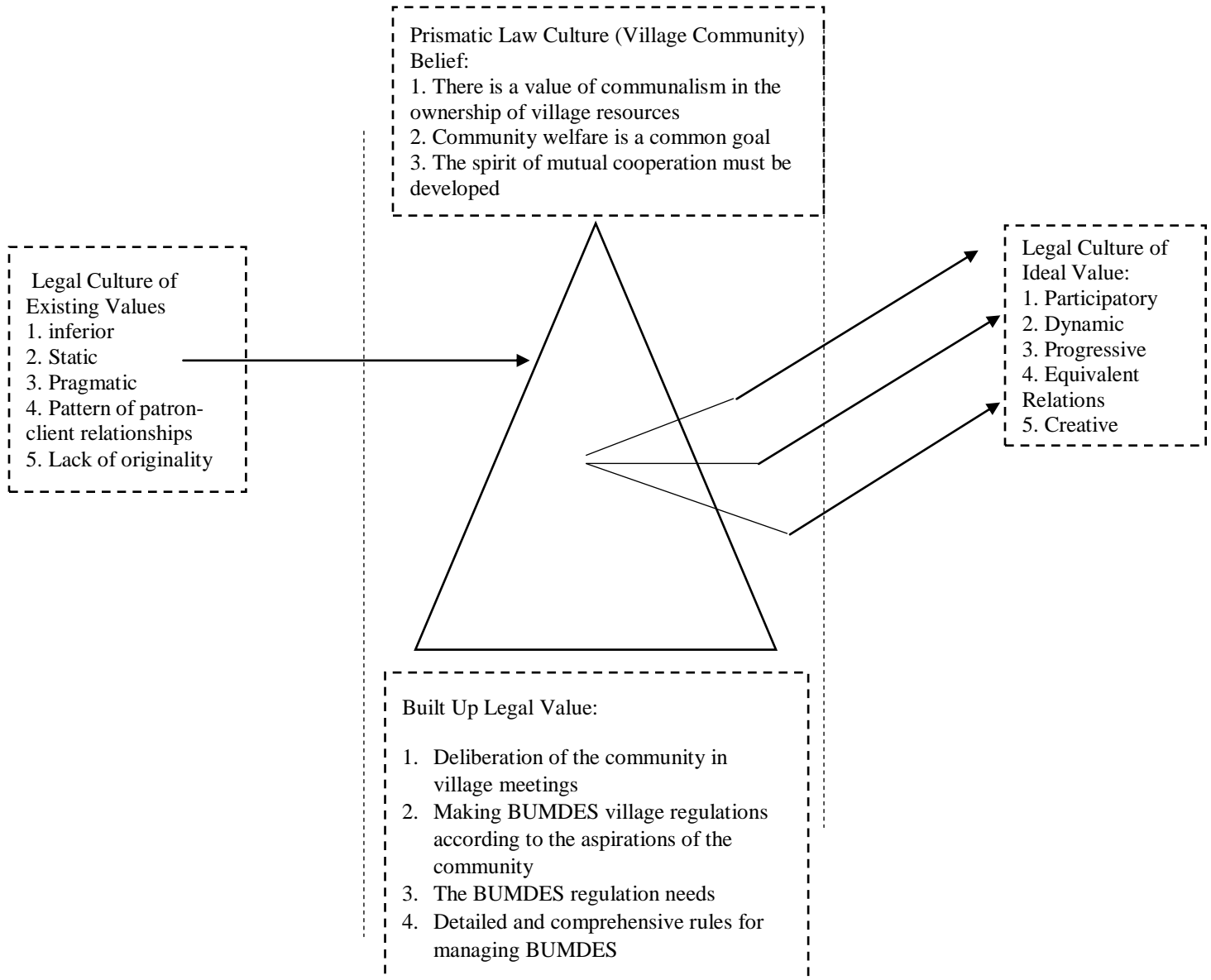
The prismatic theory of Fred W Riggs can be used to analyze the new form of construction of the reconstruction of the legal culture of rural communities related to the management of BUMDES, which is related to the reconstruction of values that are the source of norms to manage natural potential and special characteristics of the village there is to create prosperity and prosperity so that the results of the development and empowerment of the village economy can be enjoyed by all people fairly and evenly. Fred W. Riggs uses the fifth dichotomy of Talcott Parsons as a basic conception to develop his theory of prismatic society. There is a distinction between "fused types of society" as a whole society, with a "diffracted types of society" characterized by differentiation and separation of complete functions. The prototype of a "fused" community is family and kinship groups, where community unity fulfills almost all roles and functions, meaning that the whole aspect as a whole is very thick. Whereas in a diffracted society all the elements have a specific structure so that the specific aspects of the field of life become increasingly assertive. In communities like this, there are economic sub-systems, sub-political systems, sub-systems of education, sub-systems of law, and so on, each of which has its own organization and performs the functions of each these sub-systems. The sub-system sub-systems each have a certain degree of autonomy but are also dependent. Based on this concept Fred W Riggs introduces the concept of prismatic society or "prismatic type of society".

The basic values of reconstruction in the recipe which include the principles of divinity, the principle of humanity, the principle of unity, the principle of democracy, and the principle of social justice as a prismatic choice in the study of prismatical legal approaches so that the elaboration of the contents of the reconstruction of legal culture is related to the content of reconstruction of values that have been stated in the legal norms of legislation concerning UU NO Village. 6 of 2014 and management of BUMDES Minister of Home Affairs Regulation No. 39 of 2010 concerning BUMDES.

Legal cultural reconstruction related to these values goes on to understand the norms that have the content of values, especially legislation on Village management, namely Law Number 6 the Year 2014 concerning Villages, Law Number 32 of 2004 concerning Regional Government, Regulation Minister of Home Affairs Number 39 of 2010 concerning BUMDES, and Government Regulation No. 72 of 2005 concerning Villages. The entire regulation found the legal ideals, principles, and objectives, the basic principles of regulation about the Village as the fundamental foundation of the management of BUMDES namely Pancasila, and the 1945 Constitution of the Republic of Indonesia as the source of overall national legal politics regarding fisheries resources.

In BUMDES in several districts in Indonesia, there are no local regulations specifically regulating the management of BUMDES as mandated by Law No. 6 of 2014 concerning Villages and Minister of Home Affairs Regulation No.39 of 2010 concerning BUMDES, therefore it is very possible to reconstruct the legal culture of rural communities with the adaptation of the prismatic community concepts that exist in the life values of rural communities. This has the goal that the regulations that will be produced will be in harmony with the life values of the village community to reconstruct the legal culture of the community so that they are better and more responsive in following up on the programs launched by the government in order to improve the welfare of the village community.

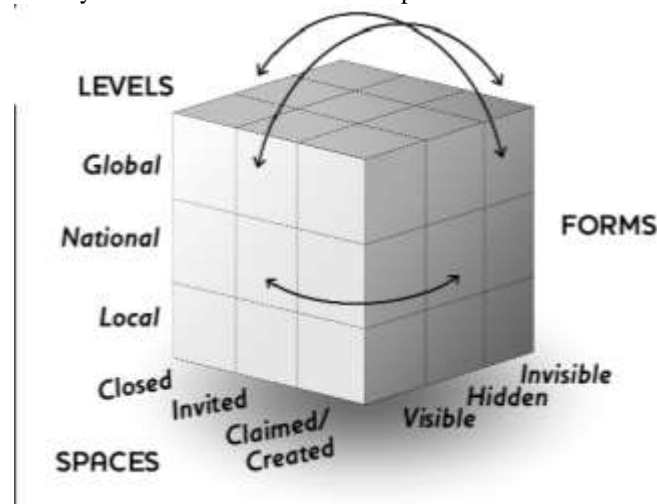
This will be explained in the Chart Form of Reconstruction of Rural Community Law Culture with the Adaptation of the Concept of the Prismatic Society below:



The direction of legal culture that is built to prosper and prosper the village community in the management and utilization of BUMDES is carried out through efforts to promote progressive values so that they continue to carry the virtue of considering local wisdom, sustainable conservation, sustainable development, integration, partnerships of parties involved in the utilization and management of BUMDES through active community participation aims to empower rural communities, value equity, consistency, justice, legal certainty, decentralization, accountability, recognition of local communities, and traditional communities so that substantial behavior can be achieved, namely mutual cooperation, honesty, cooperation, social politeness, social concern as a symbol of participatory society, good life and good behavior and character so that the welfare of the village community includes material welfare, clothing, food, and board and immaterial namely the need for a sense of justice can be fulfilled properly.

### Political Factors Shaped the Process of Village-Owned State Enterprises in Indonesia

BUMDES actually adopted the logic of the World Bank's Community Driven Development in the Urban Poverty Project.<sup>vii</sup> This approach makes the community an object and subject of management so that it can be ascertained that it is the community who later becomes the main actor through collective action. This management logic emphasizes delegation of authority from the center, to then provide refreshment of democracy at a lower level, so that collective action emerges from local communities.<sup>viii</sup> Although considered more participatory, this delegation is not without risk. According to Furniss,<sup>ix</sup> the consequences of the current decentralization will always involve many new processes and institutions which are presented as a manifestation of refreshing the old institutional structure. However, the flow of decentralization as an effort to achieve independence does not necessarily displace predatory village elites who have already become elite policymakers.<sup>x</sup> The flow of decentralization especially in the villages does not guarantee the refresher of democracy if the old elite structure continues to play and controls village politics. The old village elite's power which is inherited from the New Order era structure will not just revoke its influence. Conversely, the momentum of decentralization might have been a big step for them to further strengthen their influence. The presence of new institutions such as BUMDES in the village such as providing a large arena for new and old political actors to then contest their influence.<sup>xi</sup> One of the negative effects of decentralization is the occurrence of the elite capture phenomenon. As an institution that has just been 'born' and is engaged in the economy, of course, the BUMDES are very vulnerable and will attract the attention of a handful of elites in the village. Moreover, BUMDES has the opportunity to 'suck up' the village budget. For the BUMDES elite the arena of exposure to power as well as new resource suppliers. Elite capture itself is a phenomenon of mastery or dominance of a person or group who then makes his personal interests as an objective to run an institution. This study argues that presenting a new institution does not completely eliminate the establishment of the old elite structure in the village. Moreover, the institution presented moves in the economic sector. To deepen the analysis of elite capture, this study uses the concept of The Power Cube from John Gaventa,<sup>xii</sup> to explain the strategy of the operation of elite power in various forms. Gaventa tried to explain the concept of his version of power by visualizing a cube. As we know, a cube has several sides that are interrelated with each other. Gaventa sees power in three things, namely level, space, and form of power. These three sides can explain more comprehensively about the operation of power. Because the context of this research is in the village, it is the dimensions of the level at the local level that are appropriate to explain this. The author focuses on two dimensions of power, namely space, and form of power to explain the workings of power by elites in the context of local politics.



The discussion of elite capture certainly cannot be separated from the discussion about the elite. Internal factors of a person working as an elite, as according to Lay,<sup>xiii</sup> among other things, sacred values, namely the achievement of someone in the history of a region, individual charisma, and ascriptive factors or kinship networks owned. Both concepts are used as 'weapons' to analyze power run by elites in the context of managing BUMDES. In addition, this study also uses the management stages of BUMDES to explain the arena of the operation of power by the elite. This stage is divided into 4 stages, namely agenda setting, policy implementation, policy monitoring, and policy evaluation.

The socio-cultural conditions of village communities provide space for the elite to emerge and dominate the policy arena. Elite is very free because there is still a lack of interest from the community to participate in conducting supervision. This condition is coupled with access to the mastery of information that can only be accessed by these elites. Until finally the role and activeness of the community is not evenly distributed across the social strata of the village community. Only youth groups are quite critical and are able to pressure the village government when actions are deemed inappropriate. Meanwhile, most of the villagers are still ignorant of any actions from the village government. This factor is also one reason why the vulnerability of the community in this village is gripped by elite domination. The presence of elites is usually very developed in the community that has a low level of education and economy because the figure is directly proportional to the low level of community participation. Communities are more likely to be preoccupied with their work to be able to live decent lives so the matter of supervision of the government is more likely to be ignored. In these conditions, the elite is easier to 'play' within the scope of power and increasingly strengthen its network.

Among the opportunities for the conflicting policy outcomes, various parties agreed that efforts to obtain the greatest benefits from Law No. 6 of 2014 is aimed at its implementation in the field.<sup>xiv</sup> The relationship between the expected structure of Law 6 of 2014 concerning the village and the reality of implementation in accordance with the apparatus capable of the village government can be analyzed according to the delivery system.<sup>xv</sup>

The direction of the relationship starting from the stipulation of Law 6 of 2014 concerning villages towards its implementation in the field is classified as a top-down approach. In this law the aspects of governance are expressed as the rules of local self-government, namely the lowest government structure. In the development aspect, the rules for building villages are compiled, namely a series of village development and village management initiatives originating from the central, provincial, and district/city governments. Meanwhile, after getting the training, it is expected that the apparatus of the village government will be able to implement the latest village regulations. The ability of the village government apparatus to carry out the tasks and functions of the government shows the development initiatives of the village. The explanation section on Law No. 6 of 2014 concerning villages states that the increased authority of the village government to take the initiative is stated as a rule of a self-governing community. Through this authority, the village can take the initiative to decide on development activities and budgets, or in-laws known as village building rules. The rule explains the bottom-up approach to analyzing policy implementation.

Analysis of policy implementation evolves from a rational model (top-down approach), towards criticism of the bottom-up approach, and finally in the form of a hybrid or synthesis approach that seeks to integrate a top-down and bottom-up approach.<sup>xvi</sup> In accordance with the integration of the principles of village administration in the form of local self-government and "village-building" that are bottom up with self-governing communities and "building villages" that are top down in Law no. 6 In 2014, the analysis of delivery systems is more appropriate to use a hybrid approach that uses the two approaches together.<sup>xvii</sup> In the policy model in managing BUMDES, top-down policies are implemented so that commitment and compliance are expected to emerge from lower levels of bureaucracy to higher levels of bureaucracy. Meanwhile, Law Number 6 of 2014 concerning Villages is affirmative which requires a commitment to the community, in addition to higher bureaucracy. The contestation between parties in managing the BUMDES in bringing top-down trends on one side and bottom up on the other can reduce the effectiveness of the BUMDES institution itself. This is not like the initial ideals of the establishment of the BUMDES, namely providing space for participation in the community and village government to build rural economics in their villages.

#### **Village-Owned State Enterprises Institutionalism In Indonesia**

Political economy has devised three main sets of approaches that address these questions: instrumentalist, structuralist, and state-centered. Although there is significant variation within each set of approaches, their broad features are as follows:

1. Instrumentalist approaches explain state policy (and, therefore, the institutional structure of society) in terms of the direct control of the state by the dominant class or class fraction in society, either through a class-based party, or occupation of the bureaucratic office, or ideological hegemony.<sup>xviii</sup> In this view, the state is an instrument that is used by this class or class fraction to further its own economic and political interests. Institutional reform occurs, therefore, as a response to the demands of this class or class fraction. Whilst instrumentalist approaches have been widely used, they have been criticized on several grounds, the most important of which is that they ignore the structural pressure capital exerts on the state.
2. Structuralist approaches, by contrast, explain state policy in terms of the restrictions imposed on state action by the very structure of capitalist society. According to this approach, the state is constrained by capital, not because capitalists inhabit the state, but rather because they “are the key to investment, production, and economic growth, and are essential to the economic survival of society as a whole”.
3. State-centered approaches explain state policy in terms of the collective interests of state officials. According to these approaches, the state is an autonomous actor in its own right, which can, if required, act against the interest of the dominant class or class fraction in society. In other words, the state is seen as being separate from society and at times even in conflict with it. According to this approach, then, institutional reform is an expression of the state’s interest. Whilst state-centered approaches, therefore, avoid the reductionism of “society-centered” approaches, they have been criticized for over-estimating the autonomy of the state, especially in capitalist societies.<sup>xix</sup>

The combination of all three approaches is the most suitable to explain institutional reform in the Indonesian context. This is because Indonesia has a multi-dimensional character in that it responds, not just to instrumental, structural, or state-centered dynamics but to all three, depending on the particular historical circumstances that prevail. The institutionalism of BUMDES has an instrumental dimension because of the close personal connections that exist between many leading capitalists and senior political and bureaucratic figures. It also has a structural dimension because – despite these instrumental pressures – it is often compelled to act in the interest of capital as a whole, especially at times of economic crisis, and to mediate conflicts between individual fractions of capital. And finally, it has a state-centered dimension because the independent interest of state officials are also often incorporated into state policy.<sup>xx</sup>

Well-functioning large institutions of BUMDES are needed to ensure the effective delivery of services to those who need it, and make an impact on the world’s worst problems. However, at a certain point, institutional interests may collide with social justice goals and opportunities. When a BUMDES has a big scale of potential money, it’s not surprising that demands for potentially more risky social justice strategies, particularly at a difficult political moment.

While applauding the large-scale BUMDES development that draws public attention to the perils of poverty and rural economic development, many worry that over-institutionalization of BUMDES has created troublesome tensions and fragmentation among civil society actors working on different issues, levels (local-national-global), and strategies. These disconnects translate into a lack of effective linkages to constituencies in the political clout of organizations’ messages and lobbying. BUMDES dominance has generated debates with other important civil society actors, like social movements and grassroots groups. Concerns about the concentration of resources and visibility in a few players and the political compromises they’re forced to make are top among these debates. In this way, BUMDES-ization while tapping into various kinds of power is a challenge for building the power of numbers, unity, and collectivity.

On the other hand, the Ministry of BUMN, the Ministry of Village Development of Disadvantaged Regions and Transmigration has the ambition to accelerate the establishment of the holding of Village-Owned Enterprises (BUMDES). The BUMDES holding is planned to be managed centrally through one of the subsidiaries of state-owned enterprises (BUMN). Local governments were also given the opportunity to form BUMDES holding in the regency and provincial scope. This holding will be a form of consolidation of BUMDES. It is planned that Bulog Corporation will ‘inject’ Rp200 billion for the composition of 30% of the shares in PT Mitra BUMDES Nusantara which will be a holding for the establishment of BUMDES throughout the country. Of that amount, the share allocation for Bulog is 30%. The rest will join other BUMNs. Then formed PT Nusantara BUMDES Partners in each district, which holds government shares through BUMN 51%, and 49% of regional government shares through BUMD. After each regional government forms PT Nusantara BUMDES Partners in its territory, then PT is formed in each village with structured management through one holding. PT BUMDES Nusantara Partners has been

inaugurated by the government with the State Logistics Agency as executor. In the future, this company will be independent with the status of a state-owned company or BUMN. In the future, BUMDES is directed to buy MSME products and market through the company.

Analyze about the form of institutionalization of BUMDES into holding, until now there has been no grand unified design of BUMDES to create the right rural economic development. In Indonesia, BUMDES is strongly influenced by political factors. Equitable development and the results require healthy freedom and democracy. The absence of security to protect democracy makes victims of the economic crisis have no means to channel their voices to take part in decision-making. Meanwhile, the lack of openness has made a lot of fraud grow uncontrollably, also when overcoming the crisis that is being carried out. Therefore, said Amartya Sen (Nobel Prize for Economics in 1998), security of economic protection and guarantee of openness are sides of the conscience of economics, meaning that democratic maturity will also affect equity and prosperity, otherwise history will show the opposite.<sup>xxi</sup>

If we look at the initial objectives of the establishment of BUMDES as a driver of a populist economy and the participation of rural communities, then the consolidation form of cooperatives and Village-Owned Enterprises (BUMDES) will make people's businesses stronger. BUMDES should encourage cooperatives as one of the institutions that can optimize the units in each village, for example, agricultural potential. One function of holding is to find market opportunities and involve other partners, such as financial institutions and banks. Although there are obstacles most of the BUMDes do not yet have a legal entity. Looking at the style of prismatic society in Indonesia, empowering rural communities through cooperatives and BUMDES will be an ideal program. If a Village-Owned Enterprise (BUMDES) becomes capital-intensive or a limited liability company (PT), then there will be a group of people who control shares. The capital-intensive nature of BUMDES is worrying because groups with certain capital control shares in them. Finally, the BUMDes mission as a social agent could not work. If seen from the spirit of Article 33 constitution, the establishment of BUMDES should be directed towards cooperative legal entities, especially at the village level with the pattern of its prismatic community.

The form of institutionalization of BUMDES should be relevant to the people's economy to be built in the countryside. Group companies have a complex, dynamic structure and consist of several layers of subsidiaries. At the same time, group companies are institutions that have flexibility so that they are adaptable, both economically and juridical. Some countries specifically regulate group companies in a statutory regulation to avoid the complexity posed by group construction companies. In contrast, the group company regulatory framework in parts of the world still uses a single company approach.<sup>xxii</sup>

Indonesia does not yet have legislation that specifically regulates group companies. In addition, until now the laws and regulations in Indonesia have not provided juridical recognition to the status of the legal entity group companies vis-à-vis other legal entities. The Limited Liability Company Law and other laws and regulations still provide juridical recognition of special relations between the parent and subsidiaries in the form of limited liability companies. The implication is the juridical aspects of the integration of group company management as well as the harmonization and coordination of the operationalization of group companies articulated through the main control instrument for subsidiaries achieved through unified management. Achieving the management unit of a group company can cause a subsidiary to lose its independence. In contrast, the juridical plural forms of group company members have correspondence with objectives that are different from the principles used in the governance structure and become the reason for the existence of a group company vis-à-vis subsidiary. Through neglect in the context of business reality, the existence of group companies will certainly provide opportunities for subsidiaries to manage themselves as independent legal entities that manage business activities in accordance with the economic interests of the company concerned. In the management of BUMDES, by becoming a holding company the consequences to be borne are:

1. Who is the parent company. If the company is a Tbk, then there is a risk of conflict of interests with private stakeholders
2. The creation of a more capitalistic model of new competition
3. Village independence that will be taken away because of policies that ultimately are more top-down
4. Management of regional assets and revenues that are no longer independent and must share with other parties in the holding company.



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