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Corruption Criminal Accountability in the Management of Village Owned Business Entities (BUM Desa) (Conceptual Study of the Abuse of Village Financial Management Authority)

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Abstract

The development of the spirit of regional autonomy is characterized by the enactment of Law Number 22 of 1999 concerning Regional Government, which encourages Villages to establish a business entity that aligns with the needs of the local community. This business entity is commonly referred to as Village-Owned Enterprises (BUM Desa). Village-Owned Enterprises are used to manage a business, utilize assets, develop investment and productivity, provide services and/or provide other types of businesses. With its status as a legal entity, the role of Village Owned Enterprises is increasingly important as a consolidator of community products/services, producers of various community needs, incubator of community businesses, providers of public services and various other functions. The development of Village-Owned Enterprises which have their own wealth originating from APBN and/or APBD funds is inseparable from the poor management carried out by Village-Owned Enterprises who abuse the authority they have. Furthermore, this abuse of authority can have implications for criminal acts of corruption in the management of village-owned enterprises, which can be held accountable for criminal corruption for perpetrators. This study uses normative research methods. The result of this research is that it is necessary to assert in the legislation that regulates the mechanism of settlement and accountability of Village-Owned Enterprises (BUM Desa) for errors and/or negligence in the management of BUM Desa. There is a concern that there may be conflicts in law enforcement because Government Regulation Number 11 of 2021, as a lex specialis in the management of BUM Desa, also regulates the mechanism of accountability in case of errors, negligence, and abuse of authority in BUM Desa management. Additionally, the Village-Owned Enterprises Law (UU PTPK) cannot be disregarded because BUM Desa may receive funding from the state budget (APBN) and/or regional budget (APBD).

Key words: Abuse of Authority, Corruption Crimes, Village Owned Enterprise.

Introduction

A village is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, local community interests based on community initiatives, origin rights, and/or traditional rights that are recognized and respected within the government system of the Unitary State of the Republic of Indonesia. The village has a source of village income consisting of Village Original Income, regional tax sharing and district/city regional retribution, budget allocations from the State Revenue and Expenditure Budget, financial assistance from the Provincial Revenue and Expenditure Budget and Regency/City Regional Revenue and Expenditure Budget, as well as non-binding grants and donations from third parties.

Assistance from the State Revenue and Expenditure Budget, financial assistance from the Provincial Revenue and Expenditure Budget and the Regency/City Regional Revenue and Expenditure Budget are given in accordance with the financial capacity of the Regional Government concerned. Such assistance aimed at accelerating rural development. Other sources of income can be sought by the village from managing village markets, managing village-scale tourist areas, managing non-metal mineral and rock mining without using heavy equipment and Village-Owned Enterprises and other sources and not trading them.

Villages can form a business entity known as BUM Desa to run businesses in the economic sector and/or public services in accordance with statutory provisions. The definition of Village-Owned Enterprises (hereinafter referred to as BUM Desa) is regulated in Article 1 number 6 in conjunction with Article 87 Law Number 6 of 2014 concerning Villages in conjunction with Regulation of the Minister of Villages, Development of Disadvantaged Regions and Transmigration Number 4 of 2015 concerning Establishment, Administration and Management , and Dissolution of a Village-Owned Enterprise is a business entity whose capital is wholly or substantially owned by the Village through direct participation originating from Village assets which are separated to manage assets, services, and other businesses for the maximum welfare of the Village community. The latest according to Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises defines a Village-Owned Enterprise as a legal entity established by the village and/or with villages to manage business, utilizing assets, developing investment and productivity, providing services, and/or providing other types of business for the greatest welfare of the village community.

Like other Business Entities, BUM Des in carrying out its business activities emphasizes profit oriented (profit/profit oriented). The achievement of BUM Des businesses based on Article 5 of Government Regulation Number 11 of 2021 concerning Village Owned Enterprises is carried out through developing the functions of BUM Desa including:

a. Consolidation of village community goods and/or service products;
b. Production of goods and/or services;
c. Containers, buyers, marketing of village community products;
d. Village community business incubation;
e. Stimulation and dynamics of the Village community's economic business;
f. Services for basic and general needs for the Village community;
g. Increasing the benefits and economic value of cultural wealth, religiosity and natural resources; and
h. Increased value added to Village Assets and Village original income.BUM Des whose capital comes from Village assets which are regulated based on applicable laws and regulations need to be monitored on an ongoing basis. Considering that village finances are village rights and obligations that can be valued in money and everything in the form of money and goods related to the implementation of village rights and obligations. The source of Village revenue in the form of central and regional financial balancing funds received by the Regency/City which in distribution for each Village is distributed proportionally, namely at least 10% (ten percent) is referred to as village fund allocation. The disbursement of village funds in the amount of Rp. 1 Billion – Rp. 1.4 billion every year sourced from the APBN and APBD are included in the category of state finances which, if not monitored, will be prone to fraud or abuse of authority by the Village Head and existing Village apparatus (corruption) (Kadir & Moonti, 2018: 432).

Based on Article 75 paragraph (1) of Law Number 6 of 2014 concerning Villages in conjunction with Article 93 paragraph (2) of Government Regulation Number 43 of 2014 concerning Villages as amended by Government Regulation Number 47 of 2015 in conjunction with Minister of Home Affairs Regulation Number 113 of 2014 concerning Village Financial Management stated that the Village Head is the holder of authority to manage Village funds and represents the Village Government in the ownership of separated Village assets. The Village Head who represents the Village Government is attached to the authority, rights, obligations and prohibitions regulated in Law Number 6 of 2014 concerning Villages. The powers, rights and obligations of the Village Head are regulated in Article 26 of Law Number 6 of 2016 concerning Villages and actions that are prohibited from being carried out by the Village Head as regulated in Article 29 of Law

Number 6 of 2014 concerning Villages as follows:

a. Acting against the public interest;
b. Making decisions that benefit oneself, family members, other parties, or specific groups;
c. Exploiting their authority, duties, rights, or obligations;
d. Engaging in discriminatory actions against residents or specific groups of people;
e. Engaging in actions that disturb a group of villagers;
f. Engaging in collusion, corruption, and nepotism, accepting money, goods, or services from other parties that may influence their decisions or actions;
g. Holding a position as an administrator of a political party;
h. Becoming a member or administrator of a prohibited organization;
i. Holding concurrent positions as the chairman or member of the Village Consultative Council, member of the People's Legislative Council of the Republic of Indonesia, Regional People's Representative Council of the Republic of Indonesia, Provincial People's Representative Council, or Regency/City Regional People's Representative Council, or other positions specified in laws and regulations;
j. Participating in or being involved in general election campaigns or regional head elections;
k. Violating the oath or promise of office;
l. Absenting from work for 30 consecutive working days without valid reasons and without proper accountability.

Along with the rapid economic growth in Indonesia, many "new dimensions of crime" have arisen which link an illegal abuse of economic power and public power where the influence of economic power from conglomerates is very large. closely related to the position of power of public officials, so that many perpetrators of acts that are seen as corrupt take refuge behind legality, for example "crime as business" actors, namely organized crimes aimed at obtaining material benefits through activities in business or industry which are generally carried out by the middle class and upper socio economic class as well as parties who have public power in society, so that the crime is generally detrimental to the finances and economy of the community and the state on a large scale (Adji, 1999).

To certain limits, and does not apply in general (conditions, situations with specific case specifications), for acts that are considered corrupt by taking cover behind the principle of legality and are not covered by Law no. 3 of 1971 so that it becomes the philosophical basis for changing the Corruption Law into Law Number 31 of 1999 as amended and added to Law Number 20 of 2001 Concerning the Prevention and Eradication of Corruption (hereinafter referred to as the PTPK Law) because in Law No. .3 of 1971 which was the past PTPK Law which was very detrimental to the economy of the community and the State on a large scale, it is necessary to rethink the application of the positive function of material unlawful acts one way or another to place the value of justice for society.

It has been explained regarding the background of the crime of sexual harassment above, so in this legal research 2 (two) formulations of the problem are put forward which will be discussed as follows: (1) Can separate state assets as BUM Desa capital be categorized as state finance in the PTPK Law?, and (2) What is the criminal responsibility for abuse of authority in the management of BUM Desa?.

Material and Method

This type of legal research is a type of normative legal research, which aims to examine positive legal provisions in this case criminal law as a source of law. Moris L Cohen put forward the opinion of Peter Mahmud Marzuki who stated "*Legal Research is the process of finding the law that governs activities in human society*" (Marzuki, 2017). Legal research essentially starts from human curiosity expressed in the form of problems or questions, where each of these legal problems and questions requires answers and will gain new knowledge that is considered true. Besides that, this legal research is a doctrinal research that provides or produces a systematic explanation of the legal norms or rules governing a particular category (Rijadi, 2017).

The problem approach in this legal research uses a statute approach which is carried out by examining the laws and regulations that are related to the legal issues being discussed. This legal research also uses a conceptual approach (conceptual approach) which according to Peter

Mahmud Marzuki is to move on the views of experts so that researchers need to look for legal ratios and the ontological basis for the birth of laws and researchers can understand the philosophical content behind the law. -laws as well as conclude whether or not there is a clash of philosophies between the laws and the issues at hand, and accompanied by a case approach. (Rijadi, 2017).

Results and Discussion

A. The Paradigm of the Concept of Separate State Assets as Village-owned Capital with the Concept of State Finance in the PTPK Law

The laws and regulations governing state finances and those related to them are Law Number 17 of 2003 concerning State finances, Law Number 1 of 2004 concerning the State Treasury, and Law Number 15 of 2004 concerning Management Audit and Accountability State Finance is defined as all rights and obligations of the state that can be valued in money, as well as everything in the form of money or goods that can be owned by the state in connection with the implementation of these rights and obligations. The approach used in formulating State Finances is in terms of objects, subjects, processes, and objectives.

State Finance refers to the collective rights and obligations of the state that hold monetary value. This includes policies and activities involving fiscal, monetary, and asset management, as well as any money or goods that can be considered as state property in relation to the fulfillment of these rights and obligations. Regarding subjects, State Finance encompasses all the aforementioned objects that are either owned by the state or under the control of entities such as the Central Government, regional governments, State/Regional Companies, and other organizations involved in state finances. From a procedural perspective, State Finance encompasses a comprehensive range of activities associated with the management of the mentioned objects. This includes policy formulation, decision-making processes, and ensuring accountability throughout the entire lifecycle.

Characteristically BUM Desa can be categorized as a legal entity because it has fulfilled the following characteristics (Hadi, 2021: 42-43):

1) **The existence of separate assets;** Article 135 paragraph (3) PP Number 47 of 2015 concerning Amendments to PP Number 43 of 2014 states that BUM Desa assets originating from village capital participation are village assets that are separated.
2) **Have a specific purpose;** elucidation of Article 87 paragraph (1) of the Village Law states that BUM Desa is formed to utilize all economic potential, economic institutions, as well as the potential of natural resources and human resources in order to improve the welfare of the Village community.
3) **Have their own interests;** The interests of BUM Desa are also contained in the elucidation of Article 87 paragraph (1) of the Village Law which states that BUM Desa are oriented towards financial gain and support the improvement of community welfare.
4) **The existence of a regular organization;** The BUM Desa organization is separate from the Village Government organization and the BUM Desa organization consists of at least advisors and operational implementers as stipulated in Article 123 paragraphs (3) and (4) PP Number 43 of 2014.

The PTPK Law and the State Finance Law both provide provisions regarding the definition and scope of State Finance. These provisions extend beyond the State Revenue and Expenditure Budget (APBN) and the Regional Revenue and Expenditure Budget (APBD) and encompass assets that are distinct from state-owned or regional -owned companies. However, this presents a challenge because, according to the principles of limited liability company law, state-owned or regional-owned companies (such as BUMN, BUMD, and BUM Desa) have assets that are separate from their owners, namely the state or government. The issue of causing losses to state finances or harming the country's economy is closely connected to criminal acts of corruption and maladministration as outlined in the PTPK Law. These acts are committed by Public Officials or State Administrators.

The definition related to state losses is a real and definite lack of money, securities, and goods as a result of unlawful acts, whether intentional or negligent (alpa) State financial losses can also be incurred due to natural disasters (*overmacht*), monetary crises, or government policies (discretion) that are not carried out based on the General Principles of Good Governance (AUPB). Articles 2 and 3 of the PTPK Law, which contain the phrase "harmful to the state's finances or the country's economy" are interpreted as formal offenses in the criminal act of corruption, namely that a crime is deemed to have been completed. if it fulfills the elements contained in the provisions of the article. The relationship between the functions of the state and state finances and also the founders of the economic foundation of liberalism, namely the British scholar Adam Smith in his book "*Wealth of Nations*" (Ali, 1999) elaborated on the relationship between state functions and state spending which made it the main thing in state finances at that time. According to Adam Smith, state spending is based on an analysis of state functions.

State losses can be known if there is already a mechanism related to this matter. The mechanism related to knowing that there is a loss to the state finances or the country's economy must be proven and calculated either in estimation / has not occurred or has occurred by institutions or people who are experts in their fields. Based on Law Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia, state losses can be interpreted as losses to assets, liabilities, revenues and expenses. Examinations carried out by the Audit Board of the Republic of Indonesia are very important to be carried out to be able to detect possible fraud that may occur. Fraud that can occur can cause state financial losses. Therefore, as a state institution, the BPK also has the authority and duty to determine state losses. This is in accordance with Article 10 of Law no. 15 of 2006 which states that:

a. The Supreme Audit Agency (BPK) evaluates and establishes the extent of financial losses incurred by the state due to unlawful actions, whether intentional or negligent, committed by treasurers, managers of state-owned enterprises (BUMN/BUMD), and other institutions or entities involved in the management of state finances. This also includes the case of BUM Desa, which falls under the category of entities managing state finances.
b. Assessment of state losses and/or determination of parties who are obliged to pay compensation as referred to in paragraph (1) is determined by BPK decision.

In essence, the Supreme Audit Agency (BPK) and the Financial and Development Supervisory Agency (BPKP) are government institutions that have the authority to assess or.

B. Corruption Criminal Accountability for Abuse of Authority in the Management of BUM Desa

Conceptually authority and authority are the spirit of government, the essence of government consists of organs and functions. In carrying out government functions, power that is legitimized by law (*rechtskracht*) is needed. The aquo legal power is obtained from authority and authority in which there are rights and obligations.Thus authority and authority apart from being the spirit in the government are also at the same time the driving force of the government, so that it is referred to as a state in motion (*staat in beweging*). The government is in control of the realization of a welfare state. According to the Authority Acquisition Theory, obtained based on 3 (three) ways, as follows (Ridwan, 2002):

1. Attribution, Atrributie: *toekenning van een bestuursbevoegheid door een wetgever aan een bestuursorgaan* (attribution is the granting of governmental authority by legislators to the government). The definition of attribution in Article 1 paragraph (22) of Law Number 30 of 2014 Concerning Government Administration (hereinafter referred to as the AP Law) is the granting of authority to government agencies and/ or officials by the 1945 Constitution of the Republic of Indonesia or Law with responsibility for authority rests with the agency and/or government officials concerned;
2. Delegation, Delegatie: *overdracht van een bevoegheid van het ene bestuursorgan aan een ander* (delegation is the delegation of government authority from one government organ to another government organ). The definition of attribution in Article 1 paragraph (23) of the AP Law is the delegation of authority from a higher government agency and/or official to a lower government agency and/or official with responsibility and accountability fully shifted to the recipient of the delegation;
3. Mandate, Mandaat: *een bestuursorgaan laat zijn bevoegheid namens hem uitoefenen door een ander* (a mandate oc-

curs when a government organ allows its authority to be exercised by another organ on its behalf). The definition of attribution in Article 1 paragraph (24) of the AP Law is the delegation of authority from a higher government agency and/or official to a lower government agency and/or official with responsibility and accountability remaining with the mandate giver.

The view expressed by D. Andi Nirwanto in the seminar of the Indonesian Association of Judges (IKAHI) in his material entitled "Directions for Eradicating Corruption in the Future After the Government Administration Law", in his writing it is said that authority as the right of government officials has implications and is the domain of administrative law and state Administration. If the authority is not exercised properly, then the juridical implications of using that authority can be canceled or considered invalid (Articles 30, 31 and Article 32 of the AP Law) (Nirwanto, 2015).

The occurrence of corruption itself is influenced by several factors, but the most important factor in corruption is authority. So important was the position of government authority that F.A.M. Stroink and J.G Steenbeek call it a core concept in constitutional law and administrative law *(het begrip bevoegdheid is dan ook een kernbegrip in het staats en administratief recht)* (Sadjidjono, 2008). Bagir Manan emphasized what terms and terminology is meant by governmental authority. According to him, authority in legal language is not the same as power (*macht*). Power only describes the right to do or not to do. Meanwhile, authority in law can simultaneously mean rights and obligations (*rechten en plichten*). In relation to the process of administering government, rights contain the notion of power to self-regulate (*zelfregelen*) and self-manage (*zelfbestuuren*), while obligations mean the power to administer government as it should, thus the substance of governmental authority is the ability to carry out legal actions or actions of government (*het cvermogen tot het verrichten van bepaalde rechtshandelingen*) (Sadjidjono, 2008).

Abusing authority is basically an act against criminal law (*wederrechtelijk*), as referred to in Article 3 of the PTPK Law (Sadjidjono, 2008). Furthermore, A. Andhi Nirwanto Deputy Attorney General of the Republic of Indonesia in his writing emphasized that to be able to qualify decisions and/or actions of government officials as criminal acts of corruption if there is an act against criminal law, which is preceded and followed by an evil mental attitude (mens rea) from a public official who concerned. Evil inner attitude (mens rea) of the public official concerned. The evil mental attitude of government officials that colors the discretionary policies they issue and results in losses to state finances is an indicator that the element of corruption has been fulfilled as formulated in Articles 2 and 3 of the PTPK Law (Sadjidjono, 2008).

According to him, the concept of abuse of authority in the perspective of state administrative and administrative law has different characteristics from the concept of abuse of authority in the realm of corruption criminal law (Sadjidjono, 2008).

According to Supreme Court Decision Number 977 K/PID/2004, the term "abuse of authority" is not explicitly defined in Criminal Law. Therefore, Criminal Law can adopt the same definitions and terminology found in other areas of law. This approach acknowledges that Criminal Law has the autonomy to provide its own interpretation separate from other branches of law. However, in the absence of specific provisions in Criminal Law, the definitions found in other branches of law are applicable. This reliance on administrative law helps in defining "abuse of authority" within the context of Criminal Law.

Referring to the interpretation provided by A. Andhi Nirwanto, the theory and legal norms outlined in Article 2 and Article 3 of the PTPK Law establish distinct core elements (bestideel delict). Article 2 pertains to any individual who commits an act that goes against the law and has the potential to cause damage to state finances or the country's economy. On the other hand, Article 3 applies to any person who abuses their authority, opportunities, or available resources due to their position or role, resulting in potential harm to state finances or the country's economy.

Abuse of authority (*detournement de pouvoir*) is the core offense of Article 3 of the PTPK Law. As an offense or referred to as a crime or *'strafbaar feit'*, it must be distinguished or separated between "criminal acts" and "criminal liability". In the realm of criminal law (corruption), what is of concern are acts that are against the law only (Purwoleksono, 2016). Based on the Decision of the Constitutional Court Number. 003/PUU -IV/2016 dated 25 July 2006 which canceled the material 'unlawful' nature in the Explanation of Article 2 paragraph (1) of the PTPK

Law making that in the Corruption Crime Eradication Law (PTPK Law) what is meant by against the law is against law in the formal sense only. According to the view of the *Hoge Raad* (HR) Against the Law in the formal sense, an act is said to be an unlawful act if the act complies with the prohibition of the law, if there are exceptions, even this is regulated by law, according to this view, the law is the same as the law. law (written) (Purwoleksono, 2016).

In cases of corruption within BUM Desa, the evidentiary system largely follows the regulations set forth in the Criminal Procedure Code (KUHAP). However, certain provisions related to specific evidentiary matters deviate from the evidentiary law in the Criminal Procedure Code. The proof of corruption primarily relies on the provisions stated in Article 183 of the Criminal Procedure Code, except in situations where the burden of proof is reversed. In such cases, a minimum of 2 pieces of evidence is required to establish the belief that a crime did not occur and to prove the defendant's guilt. Considering the current evidentiary law framework that we adhere to, the evidentiary system can be described as a comprehensive set of provisions governing various activities related to evidence. These provisions are interconnected and mutually dependent, forming a unified whole that cannot be separated (Chazawi, 2013).

Regarding the substance of the evidentiary system, particularly concerning the admissible evidence, methods of using such evidence to prove, the permissible use of evidence, the weight of the evidence, and the standards/criteria used to draw conclusions about the proven object, it is understood that the evidentiary system provides guidelines on how to establish proof and forms the foundation for reaching conclusions regarding the established facts.

Mistakes are a determining factor for perpetrators in the accountability of criminal corruption in BUM Desa. Whether there is an error or not, this is what will determine whether someone who commits a crime can be held accountable and therefore deserves to be punished. In connection with criminal liability based on the principle of "Geen Straff Zonder Schuld" there are 2 (two) things meant in this understanding, among others (Hamzah, 2004):

1. If an act is prohibited or neglects something that is required and is punishable by a crime, then the said act or omission must be stated in the Criminal Law;
2. These provisions may not apply retroactively, with one exception stated in Article 1 paragraph (2) of the Indonesian Criminal Code (KUHP).

Regarding the application of the principle of material unlawful acts through this positive function, it raises criticism regarding the need to carry out limited elimination of the application of the teachings of unlawful acts in a formal sense only, so as to avoid friction of interests between maintaining the principle of legality and legal certainty or introducing the principle of justice or applying the principle of reverse proof (reversal of the burden of proof), namely placing the burden of proof on the suspect (investigation process) or the accused (judicial process). The following are acts of corruption that occurred in the management of BUM Desa which have been tried at the Corruption Court, namely:

1. Decision of the Corruption Crime Court at the Tanjung Karang District Court Number 4/Pid.Sus-TPK/2020/PN.Tjk, which found the defendant Edi Istamam guilty who served as Head of Muara Mas Village, Mesuji District, Mesuji Regency. The defendant used the modus operandi of not depositing into the BUM Desa treasury in the form of a capital assistance fund from the Ministry of Villages, PDT and Transmigration and APB Desa Muara Mas TA. 2018 which totaled Rp.123,855,500,- (one hundred twenty three million eight hundred and fifty five thousand five hundred rupiah). The defendant was proven legally and convincingly guilty of violating Article 3 in conjunction with Article 18 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended and added to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication Corruption Crime. The defendant was sentenced to imprisonment for 1 (one) year and 3 (three) months and paid a fine of Rp. 50,000,000.- (fifty million rupiah) subsidiary 3 (three) months in prison and an additional penalty of Rp. 123,855,500,- (one hundred twenty three million

eight hundred fifty five thousand five hundred rupiah);

2. Decision of the Corruption Crime Court at the Bandung District Court Number: 9/Pid.Sus-TPK/2021/PN.Bdg, which decided the guilt of Defendant Agus Zaenuddin bin Abdul Manan who served as Head of BUM for Nitis Karya Village, Mundu Pesisir Village, Mundu District through the Decree of the Head of Mundu Pesisir Village Number: 141.1/Kep-05/Mdp/2019 dated January 4 2019. The defendant used the modus operandi to manipulate as if there was additional work outside the RAB 2 (two) times in the Mundu Pesisir Village Market Revitalization Project with Work Contract Number: 003/SPK.RPSMDP/II/VIII/2019 dated 16 August 2019 with a contract engineering value of Rp. 862,000,000,- (eight hundred sixty two million rupiah). The defendant was proven legally and convincingly guilty of violating Article 2 paragraph (1) in conjunction with Article 18 paragraph (1) letter b of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning amendments to the Law Number 31 1999 concerning the Eradication of Criminal Acts of Corruption. The defendant was sentenced to imprisonment for 7 (seven) years and a fine of Rp. 200,000,000.- (two hundred million rupiah) subsidiary 1 (one) year in prison, and pay a replacement fee of Rp. 666,319,896,- (six hundred sixty six million three hundred nineteen thousand eight hundred ninety six rupiah).

As can be analyzed in the criminal acts of corruption and abuse of authority that exist within the BUM Desa, the law on corruption imposes different punishments considering the position of the defendant in the corruption crime itself. If the defendant has the authority (State Civil Apparatus/ASN) then Article 3 of the PTPK Law is used as the basis for convicting the defendant, but if the defendant is not a member of the State Civil Apparatus (ASN) then Article 2 of the PTPK Law is used as the basis for convicting the defendant whose criminal sanction is more heavy. The difference in the number of prison sentences in Article 2 of the PTPK Law and Article 3 of the PTPK Law is only based on the inherent authority within the Defendant.

Another matter regarding accountability is regulated based on Article 16 PP No. 11 of 2012 concerning BUM Desa as a *lex specialis* from the arrangements regarding BUM Desa it is stated that the Village Deliberation is the highest authority holder in BUM Desa. Village Deliberation in this case is attended by the Village Consultative Body, Village Government, and community elements whose implementation is regulated in the Articles of Association.

It is further stipulated in Article 17 PP No 11 of 2012 that the Village Deliberation has the authority to discuss and decide on the loss of BUM Desa with BUM Desa assets, discuss and decide on the form of accountability that must be carried out by advisers, operational implementers, and/or supervisors in the event of BUM loss The village, which is caused by an element of intent or negligence, decides to settle the loss through legal proceedings in the event that the BUM Desa management does not show good faith in carrying out accountability, and orders the supervisor to appoint an independent auditor to conduct investigative audits in the event that there are indications of errors and/or negligence in the management of BUM Desa. This means that in terms of accountability regarding the management of BUM Desa it is possible to have alternative efforts regarding accountability through the Village Deliberation before being legally delegated through law enforcement officials related to this matter.

Conclusion

1. It is stated in the Village Law that BUM Desa capital is village wealth that is given directly through a direct investment mechanism. In this case the Village only plays a role in managing businesses and assets that already exist in the BUM Desa. Village BUM capital can also be provided by the Village community where all or most of the Village BUM capital ownership is owned by the Village or Joint Villages, the Village community can come from legal entity institutions, individuals, a combination of individuals decided at the Village Deliberation. The concept of separate state assets as one of the village-owned enterprise capitals has the same meaning as the concept of state finances regulated by the PTPK Law. Especially if the BUM Desa capital comes from assistance funds provided by the Cen-

tral Government and Regional Governments whose funds come from the APBN and APBD.
2. The highest authority in BUM Desa is held by the Village Deliberation which in the event of abuse of authority in the management of the BUM Desa can take initial steps in the spirit of consensus deliberation in terms of asking for accountability for mistakes and/or negligence and abuse of authority that occurs within the BUM Desa . After the failure of the deliberation, the Village Deliberation can delegate responsibility according to criminal law which is resolved through a criminal corruption scheme if there is mismanagement in the BUM Desa especially if the BUM Desa capital comes from the APBN and/or APBD provided by the Central Government and/or Regional Government in the form of Village Fund Budget.

Suggestion

1. It is necessary to explain explicitly regarding the assets owned by BUM Desa where there are separate state assets sourced from the APBN and/or APBD in the framework of providing capital participation.
2. It is necessary to emphasize in the laws and regulations governing BUM Desa for settlement mechanisms and accountability for errors and/or negligence in the management of BUM Desa. It is feared that there will be a conflict in law enforcement, because in PP Number 11 of 2021 as a *lex specialis* in the management of BUM Desa it also regulates accountability mechanisms if there are errors and/or negligence and abuse of management authority in BUM Desa, besides that the PTPK Law also cannot sidelined because there is BUM Desa capital originating from the APBN and/or APBD.

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