

# LEGAL CERTAINTY AND GOVERNANCE CHALLENGES IN VILLAGE-OWNED ENTERPRISES (BUMDES): A SOCIO-LEGAL STUDY IN NORTH SUMATRA, INDONESIA

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**Abstract:** *This study examines how regulatory disharmony and weak accountability mechanisms shape the governance of Village-Owned Enterprises (Badan Usaha Milik Desa/BUMDes) in North Sumatra, Indonesia. Using a socio-legal (normative-empirical) approach, the paper combines doctrinal analysis of the Village Law and its implementing regulations with qualitative evidence reported in the dissertation's field-based chapters. The findings show three recurring governance bottlenecks. First, transitional and overlapping rules create uncertainty about BUMDes' legal personality and transaction authority, which affects contracting, licensing, and access to finance. Second, the operational separation of village assets and BUMDes assets remains fragile, increasing legal and fiscal risk when assets are pledged, recorded, or used without valid deliberative decisions. Third, accountability is weakened by overlapping roles between village governments and BUMDes management, administrative supervision that is not audit-oriented, and limited disclosure of performance indicators that balance social and commercial mandates. These constraints reduce organizational legitimacy and impede sustainable contributions to village original revenue (PADesa). The paper argues that governance reform should prioritize harmonized regulatory interpretation, auditable minimum standards for asset separation and reporting, and a clearer division of authority coupled with risk-based supervision.*

**Keywords:** *BUMDes; Governance; Accountability; Harmonization; PADesa*

## Introduction

Village-Owned Enterprises (Badan Usaha Milik Desa, BUMDes) were designed as hybrid institutions: they are expected to operate commercially while simultaneously delivering social value and strengthening village welfare. In practice, many BUMDes in North Sumatra were established formally but struggle to operate sustainably or to generate measurable and continuous contributions to village original revenue (Pendapatan Asli Desa/PADesa). A central explanation is not only managerial capacity, but also a governance problem rooted in law: rules are interpreted unevenly, institutional roles overlap, and accountability instruments are often administrative rather than risk-based and auditable (Fitriani et al., 2024).

This paper focuses on the second research problem developed in the dissertation, namely the regulatory and governance challenges that inhibit effective BUMDes management. The analysis is framed within the INSIS track on Governance and Digital Rights by highlighting how legal certainty, institutional accountability, and transparency standards condition the ability of local public-economic entities to transact, to disclose information, and to protect collective village assets. Although BUMDes are not digital platforms per se, their registration, reporting,

and rating systems increasingly rely on digital administrative infrastructures; therefore, unclear governance rules can translate into weak data quality, low traceability of decisions, and limited protection of stakeholders' rights (Putra et al., 2025).

The contribution of this paper is twofold. First, it synthesizes the dissertation's socio-legal evidence into a compact argument on why "law in the books" has not consistently become "law in action" for BUMDes governance in North Sumatra. Second, it proposes a practical set of governance priorities (harmonized legal interpretation, auditable minimum standards, and a clearer authority-supervision architecture) that can be used by village governments, inspectorates, and BUMDes boards to reduce legal and fiscal risks while improving performance accountability (Revida et al., 2023).

### Literature Review

Legal certainty is a core precondition for economic organization because it reduces transaction costs and enables predictable contracting. From a law and development perspective, the effectiveness of economic institutions depends on whether rules can be implemented consistently across administrative levels. In the context of BUMDes, legal certainty concerns at least three issues: (i) clarity of legal personality and authority to enter contracts, (ii) clarity of asset boundaries between village property and enterprise property, and (iii) clarity of accountability and supervision mechanisms (Mardiana et al., 2024).

Institutional economics helps explain why weak boundary-setting and unclear authority structures create high transaction costs. Coase's theory of the firm emphasizes that organizations emerge to reduce the costs of using markets, but ambiguous legal boundaries can increase negotiation, monitoring, and enforcement costs. Williamson further argues that governance structures matter when transactions are exposed to opportunism and uncertainty; where role conflicts exist and auditability is weak, opportunistic behavior becomes harder to detect and sanction. In village-level enterprises, uncertainty is intensified by hybrid objectives: BUMDes are expected to pursue both social outcomes and commercial outcomes, making performance measurement and disclosure more complex than in purely private firms (Sari et al., 2024).

Accountability theory distinguishes between vertical accountability (reporting to government and formal oversight bodies) and horizontal accountability (answerability to citizens, users, and community stakeholders). In many BUMDes settings, vertical accountability may exist in the form of administrative reporting, while horizontal accountability remains thin because community deliberation records, asset registers, and performance indicators are not routinely disclosed in a comparable and verifiable format. Recent studies on BUMDes accountability emphasize the mismatch between expectations and reporting practices and suggest that regulatory enhancement should clarify objectives and align financial and social indicators (Widiastuti et al., 2025).

The literature therefore suggests that improving BUMDes performance requires more than training or capital injection. It requires a governance design that clarifies legal status, strengthens asset separation, and creates auditable reporting and supervision routines. This paper uses these concepts to interpret the dissertation's evidence from North Sumatra (Ariyanti, 2025).

### Method

This paper employs a socio-legal (normative-empirical) research design. The doctrinal component reviews the Village Law framework and implementing regulations governing BUMDes establishment, legal personality, asset separation, and supervision. The empirical component relies on qualitative evidence and problem mapping reported in the dissertation

chapter on inhibiting factors and juridical challenges, which draws from observations of village governance practices, institutional documents (such as village regulations and deliberation records), and stakeholder perspectives.

Data were analyzed through a problem-structure approach: (1) identifying the relevant legal norms, (2) tracing how norms are interpreted and operationalized at the village level, and (3) assessing governance consequences in terms of legal certainty, transaction capacity, and accountability. The analysis is presented thematically around three governance bottlenecks: legal status ambiguity, weak asset boundary-setting, and accountability gaps arising from overlapping authority and limited audit-oriented supervision.

### **Result and Discussion**

The dissertation evidence indicates that BUMDes governance challenges in North Sumatra are not isolated incidents but reflect a recurring pattern of regulatory ambiguity and weak accountability instruments. The pattern can be read as a “governance chain” problem: norms are created at the national level, translated into village regulations (*perdes*), implemented by managers, and supervised by village authorities and external oversight bodies. When one link is unclear or weak, the entire chain produces low legal certainty and low organizational legitimacy (Soejono et al., 2021).

### **Legal personality ambiguity and transactional constraints**

The Village Law positions BUMDes as a village economic institution, while implementing rules after the Job Creation reform emphasize BUMDes legal-entity registration. In theory, this legal-entity status should strengthen BUMDes’ capacity to contract, to own and manage separated assets, and to be accountable through clearer governance organs. In practice, the dissertation shows that the transition from “institution” to “registered legal entity” is uneven across villages. Some BUMDes still operate under informal arrangements, while others hold a registration number but lack supporting internal instruments (articles of association, governance manuals, standardized reporting) (Kholmi, 2024).

This ambiguity creates uncertainty over transaction authority and representation. For example, counterparties may ask whether contracts should be signed by the BUMDes director, the village head, or both, and whether disputes will be treated as public law disputes (administrative) or private law disputes (civil). Even when the law recognizes BUMDes legal personality, uncertainty about its “public-private” character can lead banks to request additional collateral or to treat BUMDes as high-risk borrowers. Similarly, licensing for business units (trading, tourism, utilities, financial services) may require compliance with sectoral regulations that assume conventional corporate forms. BUMDes that cannot demonstrate clear legal identity and internal governance are disadvantaged in competition with private firms (Safarudin, 2024).

### **Fragile separation of village assets and BUMDes assets**

The second bottleneck concerns the separation of assets. The legal framework requires that village assets committed as BUMDes capital be separated and managed autonomously. Operationally, this requires at least three administrative elements: a clear decision basis (village deliberation record), a capitalization document that specifies the asset and its valuation, and an asset register that distinguishes village property from enterprise property. The dissertation’s evidence suggests that weaknesses occur in all three elements (Handayani et al., 2023).

First, deliberative decisions (*musyawarah desa*) may be conducted, but minutes and attachments are incomplete or not archived in a way that supports later verification. Second,

capitalization decisions may not be translated into clear bookkeeping entries; as a result, asset boundaries remain blurred. Third, the asset register is often not updated when assets are repaired, transferred between business units, or used jointly for village services and enterprise operations. Blurred boundaries create legal uncertainty when BUMDes uses assets to generate revenue or to secure financing (Mardiana et al., 2024). The dissertation notes cases where village assets are used as collateral, or where operational resources are taken from village inventory without a procedurally valid decision. Such practices create fiscal risk for villages (because the village head and village apparatus remain responsible for public assets) and governance risk for BUMDes (because partners may question its control rights) (Rahayu et al., 2023).

From a transaction-cost perspective, unclear asset boundaries increase the costs of negotiating with stakeholders, monitoring asset use, and enforcing rights when disputes arise. They also increase opportunities for opportunism: actors can claim “public interest” to justify asset use without clear documentation, while others may claim “enterprise autonomy” to avoid scrutiny. This is precisely why asset separation must be auditable, not merely declared (Sinarwati & Suarmanayasa, 2023).

### **Accountability gaps and overlapping authority**

The third bottleneck is accountability. BUMDes governance is expected to follow principles of transparency, accountability, participation, and fairness. Yet the dissertation finds that accountability is frequently reduced to administrative compliance (submission of forms) rather than substantive answerability (verifiable reporting on decisions, finances, assets, and performance). Three mechanisms contribute to this gap (Yuliana & Alinsari, 2022).

First, governance organs and authority lines overlap. The village head plays a political-administrative role and often initiates BUMDes formation, while the BUMDes director manages operations and the supervisory body is expected to monitor. In practice, some villages treat BUMDes as an “extension” of village administration, so operational decisions are influenced by political considerations (Sari et al., 2024). This undermines managerial independence, complicates procurement and partnership decisions, and makes it harder to enforce conflict-of-interest controls. Conversely, where managers operate without meaningful supervision, accountability weakens because there is no effective check on decisions and financial flows (Pribadi, 2023).

Second, supervision is often not audit-oriented. Oversight tends to focus on whether documents exist, not whether they are accurate. Financial statements may not be prepared regularly, or they may be prepared but not reconciled with bank records and asset movements. Without routine internal control procedures (segregation of duties, authorization limits, documented procurement), transparency remains aspirational (Sriyono et al., 2022).

Third, performance indicators are not balanced. Because BUMDes are hybrid institutions, accountability should include both financial sustainability (profitability or at least cost recovery) and social outcomes (service delivery, price stabilization, local employment, inclusion). The dissertation indicates that reporting commonly emphasizes either financial receipts or administrative outputs, while social outcomes are not measured consistently. This makes it difficult for villagers to evaluate whether BUMDes is meeting its mandate and for regulators to compare performance across villages (Suwito, 2022).

### **Cross-cutting issue: digital administration and information rights implications**

This issue cuts across the three governance bottlenecks above: when underlying documentation and authority lines are unclear, digitization can amplify weak traceability and

disclosure rather than resolve it. An important contemporary dimension is that BUMDes governance increasingly relies on digital administrative systems for registration, data collection, and rating. When governance documentation is unclear or incomplete at the village level, digitization can amplify rather than solve the problem: inaccurate data become “official” once uploaded, and decision traceability becomes weak if digital records are not linked to verifiable underlying documents (Revida et al., 2023). In the INSIS governance and digital rights perspective, this raises questions of information integrity and stakeholder rights. Villagers and partners have a legitimate interest in reliable information about asset status, governance decisions, and performance; weak disclosure undermines that right and can enable misuse of collective resources (Wibowo & Hapsari, 2022).

**Discussion: towards auditable minimum governance standards**

The evidence suggests that regulatory disharmony and accountability gaps reinforce each other. Legal status ambiguity makes it difficult to standardize contracting and reporting; weak asset separation makes it harder to audit; and blurred authority reduces incentives to disclose verifiable information. A practical implication is that governance reform should be designed as minimum auditable standards rather than merely aspirational principles (Kusmulyono et al., 2023).

First, minimum standards for legal identity should include a standardized package of internal instruments (articles of association, governance organ mandates, signature authority rules, and dispute-handling clauses) aligned with the legal-entity registration. Second, minimum standards for asset separation should require a unified asset register, capitalization documentation with valuation, and periodic reconciliation between operational use and legal ownership. Third, minimum standards for accountability should require periodic financial reporting using simple but consistent accounting templates; documented procurement and partnership procedures; and conflict-of-interest declarations for key actors (“Measuring Social Capital across Village-Owned Enterprise ({BUMDes}) Development Stages,” 2025).

Risk-based supervision is a complementary requirement. Inspectorates and village supervisors should prioritize high-risk areas such as asset movements, related-party transactions, and cash-handling business units. External audits do not have to be complex; even limited-scope audits focusing on asset and cash controls can improve trust. In parallel, balanced performance indicators are needed. BUMDes can be asked to report a small set of comparable indicators: revenue and costs per business unit, cash flow adequacy, number of users served, local employment, and the portion of surplus returned to village development (Fitriani et al., 2024).

Recent accountability studies recommend clarifying objectives and linking capacity-building to compliance-based rating systems. This aligns with the dissertation’s recommendation that reconstruction of the BUMDes governance model should be integrative (connecting legal norms, institutions, and community participation), participatory (anchored in deliberation), and adaptive (responsive to changing economic contexts and administrative digitization). The core message is that BUMDes governance must be made verifiable: what cannot be documented and audited cannot be sustainably governed (Putra et al., 2025).

**Table 1: Regulatory and Governance Bottlenecks and a Cross-cutting Digital Traceability Issue in BUMDes Management**

Bottleneck	Legal issue	Typical manifestation	Governance risk	Operational implication
Legal status	Unclear public-	Uncertain signature	High transaction	Short-term

ambiguity	private character and representation authority	authority; additional guarantees demanded by partners; licensing friction	costs; weak enforceability; reduced access to finance	contracting; delayed business expansion; conservative risk-taking
Asset separation weakness	Blurred boundaries between village assets and BUMDes assets	Incomplete capitalization files; mixed asset registers; collateral use without valid deliberation	Fiscal and legal exposure; disputes over control rights; reputational risk	Partners avoid collaboration; audit findings; stalled investment
Accountability gaps	Overlapping roles; limited audit-oriented supervision; weak disclosure	Administrative reporting without verification; limited performance indicators; low transparency	Conflict of interest; opportunism; low stakeholder trust	Low sustainability; limited PADesa contribution; unstable service delivery
Cross-cutting: digital traceability and information integrity	Weak linkage between uploaded data and verifiable documents	Inconsistent records in registration/rating systems; missing decision trails	Data integrity risks; weakened information rights for stakeholders	Poor policy targeting; difficulty comparing BUMDes performance

Source: Author’s synthesis from dissertation evidence and regulatory review.

### Conclusion

Regulatory disharmony and accountability gaps are central constraints on effective BUMDes governance in North Sumatra. The dissertation evidence shows that ambiguity over legal personality limits transactional capacity; fragile asset separation increases legal and fiscal risk; and overlapping authority combined with non-audit-oriented supervision weakens transparency and stakeholder trust. These constraints ultimately reduce BUMDes performance and the sustainability of contributions to PADesa.

Policy and practice should prioritize three reforms: harmonized interpretation of the BUMDes legal-entity framework across administrative levels; auditable minimum standards for asset separation, capitalization documentation, and routine reporting; and a clearer division of authority between village government, supervisory bodies, and professional management coupled with risk-based supervision. Implemented together, these reforms can reduce transaction costs, strengthen legitimacy, and improve both financial and social accountability of BUMDes.

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