
Legal Juridical Analysis of the Responsibility of Village-Owned Enterprises (BUMDes) in Business Activities: A Comparative Review of Indonesian and Malaysian Law

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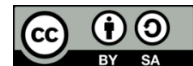
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ABSTRACT

In practice, the implementation of Village-Owned Enterprises (BUMDes) in Indonesia still faces fundamental problems, including weak managerial professionalism, limited administrative capacity, and an underdeveloped legal and financial accountability system. In addition, BUMDes remains highly dependent on village government structures, indicating that it has not yet fully functioned as an independent and professional business entity. Normatively, BUMDes is expected to operate as an autonomous village enterprise with legal certainty, professionalism, and strong accountability in all business activities, including clear liability arrangements in cases of losses or business disputes. However, a significant gap exists in practice, particularly regarding the unclear legal status of BUMDes as an independent legal subject, which creates uncertainty in the allocation of liability between the village government, management, and BUMDes itself. This research aims to analyze the legal regulation of the position and responsibility of BUMDes in Indonesia and Malaysia, as well as the legal mechanisms for liability in cases of loss or disputes, in order to develop a model for strengthening legal certainty in village-based enterprises. The study employs a normative juridical method with a qualitative comparative approach between Indonesian and Malaysian legal concepts. The findings indicate that although BUMDes under Government Regulation No. 11/2021 is formally recognized as a legal entity with economic, social, administrative, and legal responsibilities, its implementation is still constrained by governance weaknesses and unclear liability boundaries. This results in liability ambiguity, requiring stronger structural, substantive, and cultural legal reforms to ensure legal certainty and good governance.

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1. INTRODUCTION

Village-Owned Enterprises (BUMDes) constitute one of the primary instruments in Indonesia's village-based development policy, aimed at enhancing the economic independence of rural communities. BUMDes are established as business entities responsible for managing local potential, including trade, services, and village asset management. From a law and development perspective, BUMDes function not only as economic instruments but also as part of the state's broader strategy to strengthen decentralization and promote community-based equitable development [1], [2], [3]. Over the past decade, the growth of BUMDes has been significant in terms of both quantity and diversity of business activities; however, this expansion has not been accompanied by adequate strengthening of legal frameworks and governance structures [4], [5].

From a *das sein* perspective, the implementation of BUMDes in Indonesia continues to face various challenges, including weak managerial professionalism, limited administrative capacity, and suboptimal legal and financial accountability systems [6], [7], [8]. Many BUMDes still operate administratively under the dependence of village governments, indicating a lack of full corporate autonomy [9], [10]. Conversely, from a *das sollen* perspective, BUMDes are expected to function as independent and professional business entities with clear legal certainty in all business activities, including in matters of legal liability for losses and disputes [11], [12], [13]. This gap between the ideal framework and practical implementation reflects a structural problem in the legal design of BUMDes.

A fundamental issue in the regulation of BUMDes lies in the ambiguity of its legal status as an independent legal subject within the Indonesian legal system. This ambiguity has direct implications for the uncertainty of legal liability mechanisms in cases of business losses or disputes involving third parties [14], [15], [16]. In practice, there is often no clear

demarcation between the responsibilities of the village government, BUMDes management, and BUMDes as a business entity. This condition creates potential conflicts of interest and weakens the enforcement of liability principles in village-based business law [17], [18].

Several cases of BUMDes in Indonesia demonstrate business failures resulting from weak governance and unclear legal responsibility. For instance, some BUMDes have suffered financial losses in trade and service investments, yet such losses were transferred to the village government or covered by village funds without a clear accountability mechanism imposed on the management [7], [15], [19]. These cases indicate that BUMDes have not fully implemented the principles of good governance and legal accountability in their business practices [8], [20].

In a comparative context, Malaysia adopts a more structured approach to community-based economic management through cooperative societies, which are supported by clearer legal regulations regarding legal entity status and managerial responsibility. The Malaysian legal system provides a more explicit separation between the cooperative entity and individual managers, including well-defined mechanisms for dispute resolution and liability for losses [21], [22], [23]. This suggests that Malaysia possesses a more established governance model for community-based enterprises compared to Indonesia, particularly in terms of legal liability.

Previous studies have examined BUMDes from various perspectives, including governance and rural economic development [1], [6], financial accountability [7], [10], the effectiveness of good corporate governance [11], and institutional legal aspects of BUMDes [14], [16]. However, most of these studies remain sectoral in nature and have not comprehensively addressed comparative legal analysis between Indonesia and Malaysia, particularly regarding liability mechanisms in BUMDes-related business disputes [17], [21], [23]. Accordingly, a research gap exists in the absence of a

comparative study focusing on liability and legal certainty of BUMDes across different legal systems.

The urgency of this research lies in the increasing need to ensure legal certainty in the management of BUMDes, which are becoming more actively involved in village-level business activities. The lack of clarity in legal liability mechanisms poses risks of financial losses not only to the state but also to rural communities. The novelty of this study is its comparative approach between Indonesia and Malaysia in analyzing the legal status and accountability mechanisms of BUMDes in village business activities. This research aims to examine the legal framework governing the status and responsibilities of BUMDes under Indonesian and Malaysian law, as well as to analyze the legal liability mechanisms applicable in cases of losses or disputes arising from village-level business activities [24], [25].

2. LITERATURE REVIEW

2.1 *Legal Entity Theory*

Legal Entity Theory constitutes a fundamental framework for analyzing the legal status of an entity within both private and public law systems. This theory asserts that a business entity can be treated as an independent legal subject possessing its own rights, obligations, and liabilities, distinct from those of its founders or managers. In the context of Village-Owned Enterprises (BUMDes), this theory is particularly significant because the legal status of BUMDes occupies a relatively “grey area,” situated between a public entity embedded within village governance and an economic entity that is expected to operate independently. From this perspective, the study examines whether BUMDes fulfills the essential characteristics of a separate legal entity, including the existence of separated assets, an autonomous organizational structure, and the capacity to bear legal responsibility for its own actions in business activities. In practice, the application of this theory is crucial in addressing a fundamental issue:

determining who ultimately bears legal responsibility when BUMDes incurs losses or becomes involved in business disputes. If BUMDes is not fully recognized as an independent legal entity, there is a significant risk that liability may shift to the village government or even to individual managers. Such a condition generates serious legal uncertainty in the governance of village enterprises. Therefore, Legal Entity Theory functions not only as a normative concept but also as an analytical tool to assess the extent to which Indonesian regulations on BUMDes have ensured legal certainty comparable to other business entities, as well as to examine how Malaysia constructs community-based business entities within a more established cooperative legal framework.

2.2 *Legal Liability Theory*

Legal Liability Theory serves as an analytical instrument for explaining how legal responsibility is attributed to legal subjects for actions or omissions that cause harm or loss. In the context of business law, this theory distinguishes among personal liability, management liability, and corporate liability. Within the study of BUMDes, this theory is highly central, as BUMDes business activities inherently involve risks of financial losses, contractual conflicts, and disputes with third parties, all of which require clear identification of the legally responsible party.

The ambiguity in the allocation of responsibility within the BUMDes structure often gives rise to what may be described as a “liability vacuum,” a condition in which no legal subject clearly bears ultimate responsibility for the losses incurred. In many cases in Indonesia, losses experienced by BUMDes are shifted to the village government or even collectively borne by the community through village funds, without a clear accountability mechanism imposed on the management. Through this theoretical lens, the study evaluates whether the Indonesian legal system has effectively

implemented the principle of limited liability or whether it continues to conflate administrative responsibility with corporate liability. Furthermore, this theory enables a comparative assessment with Malaysia, where cooperative governance practices tend to demonstrate a clearer separation between organizational liability and individual managerial responsibility, reflecting a more consistent application of corporate liability principles.

2.3 *Legal System Theory (Lawrence M. Friedman)*

Lawrence M. Friedman's Legal System Theory provides a comprehensive framework for analyzing the effectiveness of law by conceptualizing it as a system composed of three interrelated elements: legal structure, legal substance, and legal culture. Legal structure refers to institutions and law enforcement bodies; legal substance concerns the norms and regulations in force; and legal culture encompasses the values, attitudes, and behaviors of society toward the law.

In the context of BUMDes, this theory is highly relevant in explaining why, despite the existence of regulatory frameworks, their implementation remains suboptimal. From the perspective of legal structure, the governance of BUMDes is often characterized by institutional fragmentation among the village government, BUMDes management, and supervisory bodies, leading to overlapping authorities. From the standpoint of legal substance, there remain normative gaps, particularly regarding legal accountability mechanisms in business disputes and the clarity of BUMDes' legal status. Meanwhile, from the perspective of legal culture, there persists a perception that BUMDes is merely an "extension of the village government," resulting in a lack of professional accountability comparable to modern business entities.

By employing this theoretical framework, the study systematically

explains the gap between the normative conception of BUMDes as a professional business entity and its empirical implementation in practice. At the same time, it facilitates a comparison with Malaysia, where cooperative systems exhibit a more structured integration of regulatory frameworks, institutional arrangements, and legal culture in governing community-based economic entities.

3. METHODS

This study employs a normative juridical approach with a primary focus on the comparative analysis of legal concepts between the legal systems of Indonesia and Malaysia, particularly in understanding the construction of legal liability of Village-Owned Enterprises (BUMDes) in village-level business activities. This approach is not oriented toward a doctrinal examination of statutory provisions; rather, it emphasizes a conceptual analysis of how each legal system constructs and interprets the status of legal entities, the notion of liability, and models of accountability within community-based business entities. Accordingly, this research examines law as a system of values, principles, and structures a living legal system rather than merely a collection of written norms. The legal data utilized in this study are derived from primary, secondary, and tertiary legal materials, which are analyzed qualitatively through a comparative approach to identify similarities, differences, and conceptual patterns between the Indonesian and Malaysian legal systems in constructing the legal liability of BUMDes in village-level business activities.

4. RESULTS AND DISCUSSION

4.1 *The legal framework governing the status and liability of Village-Owned Enterprises (BUMDes) in business activities at the village level under the regulatory regimes of Indonesia and Malaysia*

Pursuant to Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises (BUMDes), BUMDes is legally recognized as a village-owned legal entity established by a village and/or jointly by multiple villages to manage business activities, assets, and local economic potential with the aim of improving community welfare. This legal status confirms that BUMDes is not merely an ordinary business unit, but an autonomous legal entity possessing independent legal standing, enabling it to enter into legal agreements, engage in business cooperation, and conduct professional business management. Within the village governance system, BUMDes also functions as an economic instrument designed to optimize local potential and increase village-generated revenue (Pendapatan Asli Desa/PADes), while remaining within the broader framework of village governance. Importantly, BUMDes does not constitute a formal component of the village administrative structure, as its management is autonomous and professional, yet accountable to the Village Assembly (Musyawarah Desa) as the highest decision-making authority at the village level.

In the conduct of its business activities, BUMDes bears multidimensional responsibilities encompassing economic, social, and legal aspects. Economically, BUMDes is responsible for professionally managing village enterprises, enhancing local productivity, developing investment based on village potential, and contributing to the increase of PADes. From a social and public service perspective, BUMDes is obligated to provide goods and/or services required

by the village community, support the fulfillment of basic needs, and strengthen local economic and food resilience. Furthermore, BUMDes is entrusted with the management of village assets to ensure they are utilized optimally, productively, and lawfully, thereby generating added value for village development.

From a governance perspective, BUMDes is required to implement the principles of good governance, including professionalism, transparency, accountability, participation, and sustainability. These principles ensure that all business activities are accountable both administratively and legally. This responsibility extends to institutional and legal obligations, whereby BUMDes must be accountable for all business activities undertaken, including risks of financial losses, and is required to submit accountability reports to the Village Assembly as a form of social and institutional oversight.

In contrast, Malaysia does not have a specific regulatory framework explicitly governing entities equivalent to BUMDes. However, substantively similar functions are carried out through various sectoral legal instruments and policies. The primary legal framework governing community-based economic enterprises is the Co-operative Societies Act 1993, which regulates the establishment, management, and supervision of cooperatives as member-based legal entities. These cooperatives engage in diverse economic activities, including trade, agriculture, services, and small-scale industries, and function as the primary economic instruments at the village level under the supervision of the Suruhanjaya Koperasi Malaysia (SKM). Additionally, rural economic development is supported by the Federal Land Development Authority Act 1956 (FELDA Act 1956), which focuses on agricultural-based rural development through land management and community empowerment, as well as the

Federal Land Consolidation and Rehabilitation Authority Act 1966 (FELCRA Act 1966), which governs land rehabilitation and optimization to enhance the productivity of smallholders. The Societies Act 1966 allows for the establishment of community-based organizations that support socio-economic activities, while the Companies Act 2016 provides a legal framework for the establishment of business entities that may also be utilized by rural entrepreneurs. These legal instruments are further reinforced by non-legislative policies such as the Rural Development Policy administered by the Ministry of Rural and Regional Development (KKDW), which emphasizes community empowerment through business assistance, entrepreneurship training, and development programs.

A comparative analysis of the legal regulation governing the status and responsibilities of BUMDes in Indonesia and Malaysia reveals a fundamental difference in paradigms concerning community-based economic entities. In Indonesia, BUMDes is explicitly recognized as a village-owned legal entity with autonomous authority to manage business activities, assets, and local economic potential. This positions BUMDes as a relatively independent legal subject capable of entering into legal relations and conducting business activities. However, in practice, BUMDes operates within a hybrid framework, positioned between an independent economic entity and a village policy instrument embedded within the local governance structure. This hybrid nature creates multidimensional legal responsibilities and often leads to ambiguity in determining liability, particularly in cases involving business losses or disputes.

From a liability perspective, BUMDes in Indonesia carries not only economic responsibility in generating PADes, but also broader social and legal responsibilities. Economically, it is

expected to manage local resources productively and sustainably; socially, it functions as a provider of essential services and a stabilizer of local economic resilience; and legally, it must adhere to governance principles and accountability mechanisms, including reporting obligations to the Village Assembly. However, from the standpoint of legal liability theory, there remains a significant issue regarding the unclear delineation of responsibility between BUMDes management, the village government, and the BUMDes entity itself, resulting in what may be termed “liability ambiguity.”

By contrast, Malaysia adopts a more structured and institutionally stable approach. Although it lacks a single regulatory framework equivalent to BUMDes, it relies on well-established legal entities such as cooperatives, which operate under clearly defined corporate liability principles. In this system, the cooperative as a legal entity bears responsibility for its activities, management is held professionally accountable, and members’ liability is limited based on their contributions. This reflects a clearer separation of legal responsibility and a more consistent application of corporate governance principles.

From the perspective of Legal Entity Theory, Legal Liability Theory, and Friedman’s Legal System Theory, it can be observed that Indonesia and Malaysia differ in the maturity of their rural economic legal systems. Indonesia has formally recognized BUMDes as a legal entity; however, challenges persist in ensuring consistency across legal structure, substance, and legal culture. Conversely, Malaysia demonstrates a more integrated system in which legal entities, regulatory frameworks, and legal culture are aligned to support the professionalization of community-based economic organizations.

Table 1. Comparative Analysis of Legal Regulation of Village-Owned Enterprises (BUMDes) in Indonesia and Malaysia

Analytical Aspect	Indonesia	Malaysia
Legal Status	Recognized as a village-owned legal entity with autonomous characteristics, but institutionally linked to the Village Assembly	No specific BUMDes concept; replaced by cooperatives and community-based enterprises regulated under sectoral laws
Entity Form	Separate legal entity to a certain extent, but still intersecting with village governance structure	Cooperatives as fully independent legal entities based on membership
Regulatory Framework	Government Regulation No. 11 of 2021 on BUMDes	Co-operative Societies Act 1993, FELDA Act 1956, FELCRA Act 1966, Companies Act 2016
Institutional Structure	BUMDes management, village government, and Village Assembly	Cooperatives, government institutions (SKM, KKDW), and community organizations
Legal Liability	Multidimensional (economic, social, administrative, legal), but often ambiguous in cases of loss or dispute	More clearly defined: cooperatives bear corporate liability with a clear separation from individual managers
Accountability Mechanism	Reporting to the Village Assembly as the primary oversight mechanism	Supervision by Suruhanjaya Koperasi Malaysia (SKM) and corporate governance mechanisms
Main Issues	Unclear boundaries of liability (liability ambiguity) and dual institutional position	Fragmentation of sectoral regulations, but more stable institutional practice
Legal Entity Theory Perspective	Legal entity status is not yet fully consistent as an independent entity	Cooperatives consistently function as separate legal entities from their members
Liability Theory Perspective	Risk of shifting liability to village government or community (via village funds)	Liability clearly attributed to the cooperative entity (stronger limited liability principle)
Friedman's Legal System Perspective	Weaknesses in legal structure, substance, and legal culture	More integrated system between structure, regulation, and legal culture

Source: Processed primary data (2026)

In conclusion, while Indonesia has conceptually moved toward a modern legal entity model in recognizing BUMDes, empirical challenges remain in the consistent application of liability separation principles. This necessitates strengthening in regulatory substance, institutional supervision, and legal culture to ensure legal certainty in resolving business losses and disputes at the village level. Meanwhile, Malaysia's cooperative-based approach reflects a more stable and clearly defined accountability system, despite its reliance on fragmented sectoral regulations.

4.2 *The legal accountability mechanisms of Village-Owned Enterprises (BUMDes) in addressing losses or disputes arising from business activities at the village level*

The legal accountability mechanism of Village-Owned Enterprises (BUMDes) in cases of losses or disputes arising from business activities at the village level must be understood within the framework of legal entity construction, governance systems, and the distribution of authority as regulated under national law. Pursuant to Government Regulation Number 11 of 2021, BUMDes is normatively positioned as a village-owned legal entity with separate assets and the authority to enter

into legal relations. Consequently, from a theoretical perspective, legal responsibility is inherently attached to the BUMDes entity itself as an independent legal subject. In this context, when business losses or disputes with third parties occur, the primary responsibility rests with BUMDes as a legal entity (corporate liability), rather than directly with the village government or individual managers, provided that such losses arise from lawful business activities conducted in accordance with established operational procedures.

However, this accountability mechanism is not absolute. In practice, BUMDes managers may still be held personally liable if there is evidence of negligence, abuse of authority, or violations of the prudential principle in business management, thereby invoking management liability and personal liability.

Procedurally, the accountability mechanism begins with the internal obligation to prepare and submit financial statements and accountability reports to the Village Assembly (Musyawarah Desa), which serves as the highest decision-making forum. In the event of losses, the Village Assembly functions as a control and evaluation mechanism to determine appropriate corrective measures, such as business restructuring, governance improvement, or replacement of management. Where disputes involve third parties, resolution may be pursued through civil mechanisms, arbitration, or litigation, depending on the nature of the contractual relationship entered into by BUMDes. In certain circumstances, particularly where losses affect village financial management, the village

government may exercise supervisory and facilitative roles; however, it does not automatically bear legal responsibility for such losses unless there is direct involvement in unlawful decision-making.

From the perspective of Legal Entity Theory and Legal Liability Theory, this mechanism demonstrates that Indonesia has normatively adopted the principle of separation of liability. Nevertheless, its implementation remains inconsistent, as reflected in the tendency to shift responsibility to the village government or even to the community through the use of village funds, thereby indicating the presence of liability ambiguity. In contrast, a comparative perspective with Malaysia shows that accountability mechanisms in cooperative institutions as village-level economic entities are more clearly defined, adhering strictly to corporate liability principles, where the cooperative as a legal entity bears responsibility, management is held professionally accountable, and members' liability is limited according to their contributions.

Based on the foregoing analysis, it can be concluded that, conceptually, the accountability mechanism of BUMDes in Indonesia has evolved toward a modern legal entity model. However, empirically, it continues to face challenges in the consistent application of the principle of separation of legal liability. Therefore, strengthening is required in terms of regulatory substance, supervisory structures, and legal culture to prevent legal uncertainty in resolving business losses and disputes at the village level.

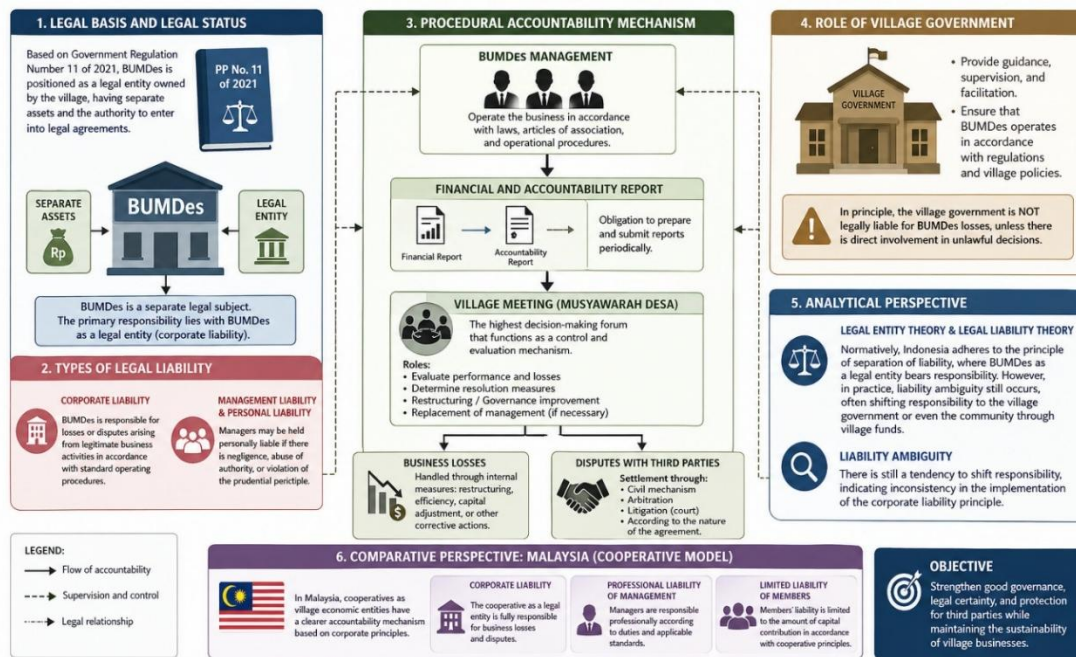


Figure 1. Legal Accountability Mechanism of Village-Owned Enterprises (BUMDes) in Handling Losses and Disputes within Village-Level Business Operations

5. CONCLUSION

Based on the findings of this study, the legal regulation concerning the status and liability of Village-Owned Enterprises (BUMDes) in Indonesia and Malaysia reveals a significant difference in paradigms in the construction of village-based economic law. In Indonesia, pursuant to Government Regulation Number 11 of 2021, BUMDes is formally recognized as a village-owned legal entity with autonomous authority to enter into legal relations and conduct business activities professionally. However, it remains under the control of the Village Assembly (Musyawarah Desa), resulting in a hybrid institutional character—operationally independent as a business entity, yet structurally linked to village governance. Consequently, BUMDes bears multidimensional responsibilities encompassing economic, social, administrative, and legal aspects. In practice, however, there remains ambiguity in delineating liability among the BUMDes entity, its management, and the village government, particularly in cases involving business losses or disputes.

In contrast, Malaysia does not explicitly recognize a BUMDes-like concept; instead, similar functions are carried out through cooperatives and sectoral regulations, such as the Co-operative Societies Act 1993, the FELDA Act 1956, the FELCRA Act 1966, and the Companies Act 2016. Within this framework, cooperatives are clearly positioned as independent legal entities operating under well-defined corporate liability principles, supported by stable institutional structures and integrated supervisory mechanisms through state agencies. As a result, legal accountability in cases of losses or disputes is more certain, as it is directly attached to the cooperative entity, with clearly limited liability for managers and members.

Although, normatively, Indonesia has moved toward adopting the principle of separation of liability through mechanisms such as reporting and oversight by the Village Assembly, as well as the possibility of personal liability for managers in cases of negligence or abuse of authority, empirical evidence indicates a persistent tendency to shift liability to the village government or village funds. This reflects an inconsistent application of legal entity principles in

practice. Therefore, from a comparative perspective, Malaysia demonstrates a higher degree of legal certainty in the governance of community-based economic entities, while Indonesia still requires substantial strengthening in institutional structure, regulatory substance, and legal culture to ensure that the accountability mechanism of BUMDes operates in a consistent, certain, and equitable manner in addressing business losses and disputes at the village level.

Based on these findings, it is recommended that the Indonesian government strengthen the regulatory framework governing BUMDes by clearly defining the boundaries of legal status and liability among the BUMDes entity, its management, and the village government, in order to eliminate liability ambiguity in practice. This includes reinforcing the application of corporate liability principles by ensuring a clear separation between village assets, BUMDes assets, and the personal liability of managers in all business activities. Furthermore, regulatory harmonization with good governance principles is necessary through capacity-building in institutional management, the establishment of more independent supervisory mechanisms, and the standardization of dispute resolution processes at the village level to enhance effectiveness and legal certainty.

Additionally, Indonesia may adopt the Malaysian cooperative model as a

comparative reference in strengthening its village-based economic institutions, particularly in terms of clarifying legal entity status, establishing a more precise allocation of liability, and integrating regulatory frameworks with supervisory institutions to achieve a more stable and accountable governance system.

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