



Definition of the “Minister” in Government Regulation 11/2021 Concerning Village-Owned Enterprises

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Abstract

Abstract

*Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises (GR VOE) is one of the implementing regulations (verordnung or delegated laws and regulations) of Law Number 11 of 2020 concerning Job Creation (Job Creation Law). However, there is a different definition of the "Minister" between Article 1 number 17 GR VOE with the provisions in Article 117 number 1 of the Job Creation Law. Definition of the "Minister" as referred to in Article 1 number 17 GR VOE is a legal issue when viewed from a prescriptively because it indicates a vertical inconsistency. To discuss these legal issues, the author uses a statutory approach and a conceptual approach. The results of the study show that definition of the "Minister" in Article 1 number 17 GR VOE is invalid, because it is not in accordance with its parent act (Job Creation Law) and the principle of *lex superior derogat legi inferiori*. Based on the results of the study, the authors suggest that definition of the "Minister" as referred to in Article 1 number 17 GR VOE need to be revised and follow to Article 117 number 1 of the Job Creation Law.*



A. Introduction

Philosophically, national development is a series of sustainable development efforts that cover all aspects of the life of the community, nation and state, to carry out the task of realizing national goals as formulated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (Indonesia Constitution).¹ As a part of the implementation of national development, basically in the village development implementation, village communities are the main actors of village development and the Government in a broad sense has the obligation to direct, guide, protect and foster an atmosphere in supporting the implementation of village development. For this reason, village community activities and Government activities in the implementation of village development may be support each other, fill each other, and complement each other in a single step towards achieving national development goals.²

Before the issuance of Law Number 11 of 2020 concerning Job Creation (Job Creation Law) in 2020 ago, in the village development implementation, the Government experienced many obstacles, especially to encourage the development of rural community economic activities in the implementation of village development.³ Based on experiences, Government has been used a new approach expected to stimulate and to drive the rural economy through the establishment of economic institutions managed entirely by the village community. The emerging of this economic institution should be based on the desires of village communities by considering the potential of the village. In Indonesia, this economic institution is namely Village-Owned Enterprise (VOE), the pillars of village and rural economic activity, serves as a social and commercial institution. The logic of village owned enterprise's establishment are based on the needs and potential of the village and as an effort to improve the welfare of the village community.⁴ The plan and the establishment of VOE is built based on the community initiative, as well as on the principles of participatory cooperative, (user-owned, user-benefited, and user-controlled), transparency, emancipatory, accountability, and sustainability with the member-based and self-help mechanism. The most important of all is that the management of it should be done professionally and independently.⁵

After the issuance of the Job Creation Law, in principle it has been emphasized that currently VOE is legal entity. So since then there has been a phenomenon of how to understand the law in the village through the VOE performance.⁶ In principle, the definition of VOE as a legal entity as regulated in the Job Creation Law, has normatively changed the definition of VOE which was previously regulated in Article 1 number 6 of Law Number 6 of 2014 concerning Village (Village Law). The definition of VOE as a legal entity is basically to answer the substantial need for the status of VOE as the business entity. This is because the legal construction related to the status of the VOE as the business entity, which was previously regulated in the Village Law, has implications for the emergence of legal uncertainty regarding the form of the VOE as the business entity.

¹ Saptono Jenar, "Politik Hukum Pembentukan Urusan Pemerintahan Pembangunan Daerah Tertinggal Dalam Penyelenggaraan Pembangunan Nasional," *Justitia et Pax* 38, no. 1 (2022): p. 192, <https://doi.org/10.24002/JEP.V38I1.5066>.

² Zulkarnain Ridlwan, "Payung Hukum Pembentukan BUMDes," *Fiat Justitia* 7, no. 3 (2015): p. 355, <https://doi.org/10.25041/fiatjustisia.v7no3.396>.

³ Kiky Srirejeki, "Empowering the Role of Village Owned Enterprises (BUMDes) for Rural Development: Case of Indonesia," *Journal of Accounting, Management, and Economics* 20, no. 1 (2018): p. 2, <http://jos.unsoed.ac.id/index.php/jame>.

⁴ Muhammad Rais Rahmat Razak dan Sofyan B, "Role of Village-Owned Enterprises in Farming Community Empowerment," *International Journal of Advanced Science and Technology* 29, no. 6 Special Issue (2020): 684–691.

⁵ Kiky Srirejeki, "Empowering the Role of Village Owned Enterprises (BUMDes) for Rural Development: Case of Indonesia."

⁶ Anom Surya Putra, "Diskursus Pengakuan, Badan Hukum, Dan Fenomena Badan Usaha Milik Desa 'Tirta Mandiri' Di Desa Ponggok," *Jurnal Rechts Vinding* 7, no. 3 (2018): p. 465, <https://doi.org/10.33331/rechtsvinding.v7i3.260>.

With regard to the definition of VOE as a legal entity, the provisions of Article 117 Number 1 of the Job Creation Law which amend Article 1 number 6 of the Village Law states that:

“Village-Owned Enterprise, hereinafter referred to as VOE, shall be a Legal Entity established by the village and/or joint villages to manage business, utilize assets, develop investment and productivity, provide services, and/or provide other types of business for the greatest welfare of the Village community.”

Referring to the definition of VOE in the Job Creation Law above, it may be said that there are at least 2 (two) legal reasons contained in the provisions of the Law of Job Creation regarding the definition of a VOE as legal entity. **First**, namely in terms of managing a business, utilizing assets, developing investment and productivity, providing services, and/or providing other types of business, the affirmation of VOE as a legal entity will certainly have implications for the easy of doing business cooperation with any party, especially with other legal entities. Because empirically, VOE so far has experienced many difficulties in conducting business cooperation with other legal entities, due to the legality of the status of VOE as business entity which is not yet clear as a legal entity. In fact, businesses or entrepreneurs practically gave suggest that VOE may be registered to the notary first, so that VOE has the legality of legal establishment as outlined in a notary deed. **Second**, namely to provide confirmation that through a VOE as legal entity which is formed to manage business, utilize assets, develop investment and productivity, provide services, and/or provide other types of business, it is oriented to realizing the maximum welfare of the village community.⁷

In order to further regulate the VOE as legal entity after the enactment of the Job Creation Law as explicitly instructed in the provisions of Article 117 number 2 of the Job Creation Law which amends Article 87 paragraph (5) of the Village Law, the Government then issues Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises (GR VOE) as implementing regulation. Conceptually, in the elucidation of GR VOE stated that the establishment of GR VOE aims to strengthen the role of VOE/Join VOE as a consolidator of community products/services, producers of various community needs, community business incubators, providers of public services, and various other functions so that VOE/Joint VOE may become a contributor to village native income (PADes) and may be an instrument of leveraging Village Self-Relience. In addition, GR VOE is the legal basis for the formation and management of VOE/Joint VOE as a legal entity whose settings are adjusted to corporate principles in general, but still places the spirit of kinship and mutual cooperation as the main pillars in the management of VOE/Joint VOE.

Then the material contents of the GR VOE contains arrangements regarding the establishment of VOE/Joint VOE, articles of association and by laws, organization and employees, program workplans, ownership, capital, assets and loans, business units, procurement of goods/services, ease of taxation and retribution, cooperation, accountability, distribution of business results, losses, termination of business failures, as well as assistance and development of VOE/Joint VOE which in its implementation by Minister. Referring to the definition of "Minister" as regulated in Article 1 number 17 of the GR VOE, it is stated that the definition of "Minister" is as follows:

“Minister is the minister who administers of government affairs in the field of village, development of disadvantaged regions, and transmigration.”

⁷ Joni Emirzon. et.al., *Badan Usaha Milik Desa (BUM Desa) Paradigma Baru Dalam Hukum Bisnis Indonesia* (Depok: Rajawali Press, 2021). p. 44-54.

Meanwhile, referring to Article 117 number 1 of the Job Creation Law which regulates the provisions of Article 1 number 16 of the Village Law, it is stated that the meaning of "Minister" is as follows:

"Minister is the minister in charge of village."

The existence of a different definition of "Minister" between Article 1 number 17 GR VOE with the provisions in Article 117 number 1 of the Job Creation Law juncto Article 1 number 16 of the Village Law, becomes a legal problem when viewed prescriptively because it indicates a vertical inconsistency.

Based on the description above, it is important to conduct further research on the existence of the legal issue in terms of the concept of government regulation-making as regulated in the Law Number 12 of 2011 concerning the Regulations-Making as amended several times, most recently by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Regulations-Making (Regulations Law). The existence of differences in providing the definition of "Minister" in a hierarchical manner between regulations certainly has implications for the validity norm of the definition "Minister" of the GR VOE. For this reason, the formulation of the problem in the research to be studied are: (1) how is the concept of government regulation-making? and (2) what is the legal implication of the Article 1 Number 17 of the GR VOE based on the concept of government regulation-making and the principle of *lex superiori derogat legi inferiori*?

This research is a normative juridical research that aims to examine the positive legal norms or rules contained in the provisions of Article 1 number 17 GR VOE prescriptively using a statute approach and a conceptual approach. The library materials used are primary legal materials consisting of legal materials that have a binding nature in the form of statutory regulations, including the Village Law, Job Creation Law, Regulations Law and GR VOE. Meanwhile, secondary legal materials that function to support primary legal materials are in the form of legal literature, legal journal articles, and legal research results that have relevance in this study. The analysis of the legal materials that have been collected is then carried out with a qualitative descriptive analysis in order to answer the formulation of the problem in this study by using adequate legal argumentation techniques based on legal theory and the doctrine of legal experts.

In this research, the author examines the differences in the definition of the word Minister in Law Number 11 of 2020 concerning Job Creation and in Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises (BUMDes). This government regulation is basically the implementing regulation of Article 117 number 2 of the Job Creation law which amends the provisions of Article 87 paragraph (5) of Law Number 6 of 2014 concerning Villages. The novelty of this research will make a major contribution to the formation of implementing regulations for the Job Creation law, especially regarding Village Owned Enterprises (BUMDes). Implementing regulations must refer to the provisions of the law that mandates it (the above regulations). So that there is no difference in the definition of the minister in the implementing regulations. If it contradicts, automatically the regulations under it as implementing regulations do not apply.

B. Discussion

1. Concept of Government Regulation-Making

The government system as regulated in the Indonesia Constitution basically leads to the realization of a strong and stable government administration with the principles of a single executive system, in which the President as head of state is also the head of government. In addition, the President is not responsible to the House of Representatives or the People's Consultative Assembly.⁸ Constitutionally, the position of the President as Head of State and Head of Government is shown in the articles contained in the Indonesia Constitution, including Article 4 paragraph (1) which states that:

“The President of the Republic of Indonesia shall holds executive power pursuant to the Constitution.”

The meaning of "government power" is executive power. Executive power and government administration are distinguished between general government administration power and specific government administration power. The general administrative power is the power to carry out state administration, while the special government administration power is the implementation of government duties and authorities which are constitutionally vested in a personal President who has a prerogative in charge of Government. One form of power in charge of administration is the authority to make state administrative decisions or decisions on the administration of government in the executive realm.⁹ Bagir Manan explained that the types of state administrative decisions or decisions on the administration of government in the executive realm include, namely:¹⁰

- a. The form of decisions that are poured into the form of legislations, such as Government Regulations and Presidential Regulations.
- b. The form of state administrative decisions (*beschikking*), namely provisions which are administrative decisions in charge of public that are concrete, individual, and final.
- c. Forms of policy rules (*beleidsregels*), namely policy regulations made by state administrations based on the expediency (*doelmatigheid*) aspect within the *freies ermessen* framework.
- d. The form of planning decisions (*Het Plan*), namely planning regulations that describe the vision, mission, goals, objectives, development programs for a certain period of time.
- e. The form of general span decision (*besluiten van algemene strekking*).

In countries that adhere to the Anglo Saxon legal tradition such as in England, Australia, or the United States, in terms of the formation of regulations by the state administration, it is commonly known as administrative legislation, there is also what is called delegated legislations, or in other terms, namely ordinance making. or quasi legislation or in Dutch terms *verordenende bevoegdheden*.¹¹ In the context of Indonesia, the President's authority in forming Government Regulations is based on the provisions of Article 5 paragraph (2) of the Indonesia Constitution, which states that:

“The President may issue Government regulations as required to implement laws.”

⁸ Peter Mahmud Marzuki, *An Introduction To Indonesian Law* (Malang: Setara Press, 2012) p. 293.

⁹ Rahayu Prasetyaningsih, “Menakar Kekuasaan Presiden Dalam Pembentukan Peraturan Perundang-Undangan Menurut Undang-Undang Dasar 1945,” *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (2017): 263–280.

¹⁰ Gede Marhaendra Wija Atmaja, “Prinsip Dan Teknik Penyusunan Keputusan Administrasi Pemerintahan,” *Fakultas Hukum Universitas Udayana* (2015).

¹¹ Badan Pengkajian MPR, *Evaluasi Pelaksanaan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (Jakarta: Badan Pengkajian MPR, 2018). p. 105-106.

Referring to the provisions of Article 5 Paragraph (2) of the Indonesia Constitution above, Bagir Manan said that in the case of the President forming a Government Regulation to implement the Law properly, the Government Regulation serves to implement the provisions of the Law. So, in principle, the President is only allowed to form a Government Regulation if there is a Law that forms the basis for its formation. Thus, the Law will always precede the Government Regulation, because the existence of a Government Regulation only exists when there is an express order from the Law or several relevant laws to form it.¹² In line with this, Jimly Asshiddiqie explained that in terms of the President's authority to form Government Regulations, it is a form of delegation of rule-making power, namely the authority delegated by the legislature to the President as the Head of Government who will carry out executive functions in the context of carry out further provisions of the Law. Government Regulations as implementing regulations of these laws are called delegated legislations which are located as subordinate legislations under the law.¹³ Jimly Asshiddiqie also said that in the case of the Government Regulation-Making, the Government's authority must be based on direct orders or strict orders from the law, not because of the will of the Government or the President himself. Because without an order from the legislators or the delegation of authority from the law (legislative delegation of rule-making power), the Government Regulation is invalid and null and void or can be canceled (*vernietigbaar*) in force according to the Constitution.¹⁴

As for the provisions regarding Government Regulations, normatively Article 12 of the Regulations Law stated that:

"Government Regulation contents contain contents to implement the Law properly."

Then in the elucidation of Article 12 of the Regulations Law, it is explained that:

"What is meant by "implement the Law properly" is determination of Government Regulation to implement the instruction of Law or to implement the Law as necessary by not deviating from the contents set out in the relevant Law."

Observing the provisions of the Regulations Law, in principle it is the same as that described by Bagir Manan and Jimly Asshiddiqie regarding the existence of Government Regulations as delegated legislations. Conceptually, delegated legislation may be interpreted as delegating laws to one of the lower rules to regulate norms further. Laws frequently regulate briefly. Then, the provision is delegated to Government Regulation or Presidential Regulation, Regional Regulation, even Ministerial Regulation. Therefore, many regulations at various levels regulate the same matters.¹⁵ Then in the context of the delegated legislations, Moh. Fadli explained that the delegation of legislations was a regulation that was formed because there was a delegation of regulatory authority from the law as the parent act or primary legislation. Legal products formed based on the delegation of authority are referred to as legal products *secondary legislation*, because its formation is very dependent on the law which is domiciled as *primary legislation*.¹⁶ In the case of the Government Regulation-Making that functions to carry out the Act as it should, then in the Law that delegates authority, in principle, it has clearly regulated or determined the form (statutory regulations) and scope (material content) to be delegated. In

¹² Bagir Manan, *Dasar-Dasar Perundang-Undangan Indonesia* (Jakarta: IND-HILL.CO, 1992). p. 52-53.

¹³ Jimly Asshiddiqie, *Perihal Undang-Undang* (Depok: Rajawali Press, 2010). p. 194.

¹⁴ Ali Marwan HSB, "Membedakan Materi Muatan Peraturan Pemerintah Dan Peraturan Presiden," in *Monograf Dekonstruksi Perundang-Undangan Indonesia: Menggapai Cita-Cita Ideal Pembentukan Peraturan Perundang-Undangan*, ed. Moh. Fadli, et.al (Jakarta: BP FH UI kerja sama dengan FH UI, FH UB, FH UNILA, dan ICLD, 2022), p. 367.

¹⁵ Zainal Arifin Mochtar, "A Notion of Regulatory Reform," *Fiat Justisia* 16, no. 1 (2022): p. 70, doi:10.25041/fiatjustisia.v16no1.2431.

¹⁶ Moh. Fadli, *Peraturan Delegasi Di Indonesia: Ide Untuk Membangun Kontrol Preventif Terhadap Peraturan Pemerintah*. Malang: Pidato Pengukuhan Profesor Di Bidang Ilmu Hukum Pada FH Universitas Brawijaya, 2021. p. 72.

addition, the content of the Government Regulation is only limited to those that are delegated by the parent law and may not conflict with other laws and regulations of a higher level. It is also stipulated that Government Regulations may not establish new bodies or institutions and Government Regulations must not be restrictive, and reminded that the content of Government Regulations cannot exceed the content of the delegated material, if it violates these things so the Government Regulation is null and void (*nietig van rechtwege or void*) because determined by an unauthorized official or agency.¹⁷

The existence of a Government Regulation as a delegated legislations of the Law in principle becomes an important requirement so that the Law may be implemented properly. To ensure that the delegation's regulations can support the implementation of the law better, it starts from the formulation of the delegation's orders to the regulations under it as regulated in the delegation guidelines.¹⁸ The delegation guidelines then referring to the Appendix of the Regulations Law in Chapter II Special Matters, letter A which regulates the provisions for Delegation of Authority in the Delegated Regulations-Making, which are as follows:

- a. Higher Regulation may further delegate authority of governing to the lower Regulation.
- b. Delegation of authority set should mention explicitly:
 - 1) the scope of a regulated substance; and
 - 2) type of Regulations.
- c. The delegation of authority may not regulate the blank delegation.
- d. Delegation of authority from the Law to regulate minister, head of non ministerial government agencies, or officials same with the Minister level is limited to administrative technical nature regulation.
- e. Authority delegated to a state section can not be delegated further to the other state section, unless the authority delegated by the Law which opened the possibility for it.
- f. Delegation of authority of the Regulation should not be delegated to the director general, secretary general, or same level official.
- g. Delegation directly to the director general or same level official can only be provided by the Regulation that a lower than the Law.
- h. Implementing Regulation provisions should not repeat the norms that have been set in the Regulations is delegated, unless it is unavoidable.
- i. In the implementing regulations not to write again the formulation of the norm or provision contained in the higher Regulation that delegates. Rewritten can be carried back along the formulation of norms or provisions are needed as an introduction to formulate norms or terms in the further article or some articles or a paragraph or some paragraphs.

Hierarchically, the existence of Government Regulations is under the Law. Referring to Article 7 paragraph (1) of the Regulations Law, it is stated that the types and hierarchy of rules consist of:

- a. Constitution of the Republic of Indonesia of 1945;
- b. People's Consultative Council Decree;
- c. Law/Government Regulation In Lieu of Law;
- d. Government Regulation;
- e. Presidential Regulation;

¹⁷ Moh. Fadli, "Nondelegationdoctrine Dan Peraturan Delegasi Di Indonesia," in *Negara Hukum Yang Berkeadilan Kumpulan Pemikiran Dalam Rangka PurnaBakti Prof. Dr.. H. Bagir Manan, SH, MCL.*, ed. Susi Dwi Harijanti et al (Bandung: PSKN FH UNPAD, 2011), p. 165.

¹⁸ Fitriani Ahlan Sjarif, "Gaya Perumusan Kalimat Perintah Pembentukan Peraturan Yang Menjalankan Delegasi Dari Undang-Undang Di Indonesia," *Palar / Pakuan Law Review* 3, no. 2 (2017): 31–50.

- f. Province Regulation; and
- g. Regency/Municipality Regulation.

It is stipulated in Article 7 paragraph (2) of the Regulations Law that the power of regulation is in accordance with the hierarchy as intended in paragraph (1). In the elucidation of paragraph (2) it is explained further, In this provision what is meant by "hierarchy" is the level of each type of Rules based on the principle that the lower Regulations must not conflict with a higher Regulations or also known as *the principle of lex superiori derogat legi inferiori*.

The above provisions certainly cannot be separated from the theory of the hierarchy of laws and regulations (*stufentheorie*). Hierarchy theory is a concept of the legal system introduced by Hans Kelsen. In the hierarchical theory of statutory regulations, Hans Kelsen stated that the legal system is a rung system with tiered rules. The relationship between the norms that govern the actions of other norms and these other norms can be referred to as super-relationships and subordination in the spatial context¹⁹. Where the norms that determine the making of other norms are superior, while the norms that are made are inferior. The making determined by a higher norm is the reason for the validity of the whole legal order that forms the unity. As stated by Hans Kelsen:²⁰

"Norms whose validity is not obtained from other higher norms, we refer to as "basic norms". All norms whose validity can be traced to the same basic norm form a system of norms or an order of norms. This basic norm which is the main source is the binder between all the different norms that make up a norm order."

Observing above, then in essence the basis for the validity of a norm is always a norm. The search for the basis for the validity of a norm leads to a higher-ranking norm which is the basis for the basis of the norm. Thus, the basis for the validity of a norm is a postulate, namely a norm that is postulated as a norm that is essentially valid, namely a basic norm (*grundnorm*). All norms whose validity can be traced to the same basic norm form a system of norms or an order of norms. This basic norm which is the main source is the binder between all the different norms that make up a norm order. A norm belongs to a particular normative system or normative order, it can be tested only by confirming that the norm derives its validity from the basic norms that make up that norm order.²¹ So that if it turns out that there are lower-level laws and regulations that conflict with higher-level laws and regulations, lower-level laws and regulations can be demanded to be canceled and even null and void (*van rechtswege nietig*).²².

2. Legal implication of Article 1 Number 17 of the GR VOE Based on based on the Concept of Government Regulation-Making and the Principle of Lex Superiori Derogat Legi Inferiori

Based on the Village Law, all strategic nature in the context of village development are determined through village deliberations. Referring to Article 1 number 5 in juncto Article 54 paragraph (1) of the Village Law, it is stated that:

¹⁹ Jimly Asshiddiqie dan M. Ali Safa'at, *Theory Hans Kelsen Tentang Hukum* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006). p. 110.

²⁰ Hans Kelsen, *Teori Umum Tentang Hukum Dan Negara*, ed. Raisul Muttaqien, Terjemahan (Bandung: Nusa Media dan Nuansa, 2006). p. 161.

²¹ Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 17, no. 3 (2020): p. 305, <https://doi.org/10.54629/jli.v17i3.711>.

²² Saptono Jenar, "Analisis Penetapan Daerah Tertinggal Tahun 2020-2024 Dan Rencana Aksi Nasional Percepatan Pembangunan Daerah Tertinggal Tahun 2020," *Indonesia Law Reform Journal* 2, no. 1 (March 30, 2022): p. 3, <https://doi.org/https://doi.org/10.22219/ilrej.v2i1.19528>.

“The Village Consultative Meeting shall be a consultative forum followed by Village Consultative Body, Village government, and elements of the Village community to deliberate on the strategic nature in the administration of the Village Government.”

The strategic nature mentioned in Article 54 paragraph (2) of the Law of Village include:

“a. Village structuring; b. Village planning; c. Village cooperation; d. plan of investment into the Village; e. Establishment of Village Owned-Enterprise; f. Village Asset additions and disposals; and g. extraordinary events.”

In the case of the establishment of VOE, the provisions of Article 54 paragraph (2) letter e of the Village Law are in line with the provisions in Article 88 paragraph (1) of the Village Law which states that:

“The establishment of Village Owned-Enterprise shall be agreed by a Village Consultative Meeting.”

Observing the provisions of the Village Law above, in principle the establishment or formation of VOE/Joint VOE cannot be separated from the role of the Village Consultative Body, Village Government, and elements of the Village community. In the context of implementing village government, it is normatively carried out by the Joint of Village Government with the Village Consultative Body. As for carrying out the guidance and supervision of the administration of the village government, it is stipulated in Article 112 paragraph (1) of the Law of Village, namely:

“The Government, Provincial Government, and Regency/Municipal Government shall direct and supervise the Village Administration.”

Then in the elucidation of Article 112 paragraph (1) of the Village Law it is explained that:

*“The Government in this case shall be the Minister of Home Affairs who performs general guidance for Village Administration.
Provincial Government in this regard shall be the Governor as the representatives of the central government.”*

Based on the provisions of Article 112 paragraph (1) of the Village Law above, basically the establishment or formation of VOE is a part of the administration of village administration, where the role of the Government in this case is the Minister of Home Affairs is to provide general guidance on the implementation of village administration.

The role of the Minister of Home Affairs as a representative of the Government in carrying out general guidance on the administration of village governance, historically cannot be separated from the empirical fact that the handling of villages before the issuance of the Village Law was a part of government affairs that handled home affairs. This is also confirmed by the absence of government affairs specifically regarding villages in Article 5 of Law Number 39 of 2008 concerning State Ministries.²³ Although it is not normatively stipulated in Article 1 number 14 of the Village Law related to the definition of “Minister” being the Minister of Home Affairs, this may be seen in the elucidation of the Village Law. In the elucidation of the Village Law it is stated that:

“The Minister in charge of Village today shall be the Minister of Home Affairs. In this position, the Minister of Home Affairs shall define the general requirements,

²³ Saptono Jenar, “The Acceleration Development of Disadvantaged Region : On Government Affairs Perspective,” *Nurani Hukum* 4, no. 2 (2021): 1–15.

technical guidance, and facilitation of village governance, implementation of village development, village community development and empowerment of village community."

As for in principle, the elucidation must be contained in Laws, Provincial Regulations and Regency/Municipal Regional Regulations as confirmed in item 174 Attachment II of the Regulations Law. The existence of an elucidation in a law serves as the official interpretation of the legislators on certain norms in the body. In this case, the elucidation only contains a description of the word, phrase, sentence or equivalent of a foreign word/term in the norm which can be accompanied by examples. It was also emphasized that the elucidation as a means to clarify the norms in the body should not result in the ambiguity of the norms in question.²⁴ In line with this, B.R. Atre in Jimly Asshiddiqie also emphasizes the purpose of the elucidation in the law, namely to explain the meaning and purpose of a provision; clarify the provisions that are still obscure or vague so that the provisions are consistent with the objectives to be achieved by the regulation concerned; provide additional supporting descriptions of the main objectives of the legislation to make its existence more meaningful; assist the court in interpreting and suppressing errors and putting forward the object of the legislation; and as the same interpretation for everyone who is subject to the provisions stipulated in the laws and regulations.²⁵

In implementing the Village Law, Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 concerning Village was issued, as later amended by Government Regulation Number 47 of 2015 Concerning Amendment to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 2014 concerning Village. Since the issuance of Government Regulation Number 47 of 2015 Concerning Amendments to Government Regulation Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Village (GR Implementing Village), there has been a dispersal of Government authority in handling village development. Where the definition of "Minister" as referred to in Article 1 number 14 is described in the GR Implementing Village, it includes the minister of home affairs and the minister of village development, rural area development, and village community empowerment. This is identified, there are 23 articles relating to the minister home affairs to foster village governance, while there are 3 articles relating to the affairs of the minister of village development, rural area development, and community empowerment to foster village development, rural area development, and village community empowerment.²⁶

In the context of the Government's authority to carry out the development of VOE, the provisions of Article 142 of the GR Implementing Village state that:

"Further provisions regarding the procedures for establishing, administering and managing, as well as dissolving Village Owned-Enterprise and Common Village Owned-Enterprise are regulated by a regulation of the minister of village development, development of rural areas, and village community empowerment in coordination with the minister of home affairs."

Observing the provisions in Article 142 of the GR Implementing Village above, it certainly shows that although the development of VOE and Joint VOE is the area of authority of the minister of village development, rural area development, and village community

²⁴ Bustanuddin, "Analisis Fungsi Penjelasan Dalam Pembentukan Peraturan Perundang-Undangan Di Indonesia," *Inovatif: Jurnal Ilmu Hukum* 6, no. 7 (2013): 79–90.

²⁵ Bagus Hermanto. et. al., "Penegasan Kedudukan Penjelasan Suatu Undang-Undang: Tafsir Putusan Mahkamah Konstitusi," *Jurnal Legislasi* 17, no. 3 (2020): 1–9.

²⁶ Nata Irawan, *Tata Kelola Pemerintahan Desa Era UU Desa* (Jakarta: Yayasan Pustaka Obor Indonesia, 2017).

empowerment, in the implementation of the guidance it remains coordinate with the minister of home affairs. The ratio legis provision is based on the fact that in terms of fostering VOE, it cannot be separated from the role of the Government in developing village governance as mandated by Article 54 paragraph (2) letter e, Article 88 paragraph (1), and Article 112 paragraph (1) of the Village Law.

The linkage of VOE development to the implementation of village government is also shown in the elucidation of Article 117 of the Job Creation Law, which says that the purpose of establishing VOE by the Village Government is to utilize all economic potential, economic institutions, as well as the potential of natural resources and human resources in order to improve welfare of the village community. VOE specifically cannot be equated with legal entities such as limited liability companies, or cooperatives. Therefore, VOE is a business entity characterized by a village which in carrying out its activities in addition to assisting the implementation of Village Government, also to meet the needs of the village community. VOE can also carry out the functions of services, trade, and other economic development. In increasing the source of village income, VOE can collect savings at the local scale of the Village community, among others through the management of revolving funds and savings and loans. VOE in its activities is not only oriented towards financial gain, but is also oriented towards supporting the improvement of the welfare of the village community. VOE is expected to be able to develop business units in utilizing economic potential. In the event that business activities can run and develop well, it is very possible that in time VOE follow the legal entity that has been stipulated in the provisions of the legislation.²⁷

However, paying attention to the definition of “Minister” of Article 1 Number 17 GR VOE indicates that it normatively refers to the nomenclature of the Minister who leads the Ministry of Village, Development of Disadvantaged Regions, and Transmigration as regulated in Presidential Regulation Number 85 of 2020 concerning the Ministry of Village, Development of Disadvantaged Regions, and Transmigration. This would be a mistake, if the basis for the validity of Article 1 number 17 GR VOE actually refers to regulations that have a hierarchical position below it. So that the definition of “Minister” in Article 1 Number 17 of the GR VOE should be based on the definition of “Minister” as stipulated in Article 117 Number 1 of the Job Creation Law as its parent law. Because the definition of “Minister” in Article 1 Number 17 GR VOE shows a restrictive nature, namely limiting the area of guidance to VOE to only the authority of the Minister of Village, Development of Disadvantaged Regions, and Transmigration and ignoring the role of coordination with the minister of home affairs.

The definition of “Minister” as referred to Article 117 Number 1 of the Job Creation Law is basically very clear and was not change the definition of “Minister” as regulated in Article 1 Number 16 of the Village Law. With the norm in Article 1 Number 17 GR VOE which gives a different definition of “Minister” it is certainly contrary to Article 117 Number 1 of the Job Creation Law juncto Article 1 Number 16 of the Village Law. Referring to the concept of government regulation-making and the principle of *lex superiori derogat legi inferiori*, the Article 1 Number 17 GR VOE is not valid for its formation because it is contrary to Article 117 Number 1 of the Law of Job Creation Law juncto Article 1 Number 16 of the Village Law.

²⁷ Husen Altung, “Legal Analysis of the Empowering Legal Entities of Badan Usaha Milik Desa (BUMDes) After the Enactment of the Job Creation Law,” *Proceedings of the International Joined Conference on Social Science (ICSS 2021), Advances in Social Science, Education and Humanities Research*, Vol. 603 603 (2021): 532–538.

C. Conclusion

The establishment of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises is as *verordnungs* or delegated legislations of Article 117 Number 2 of the Law Number 11 of 2020 concerning Job Creation which amends Article 87 paragraph (5) of the Law Number 6 of 2014 concerning Village. Conceptually, the Government Regulation Number 11 of 2021 concerning Village-Owned Enterprise states that the establishment of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprise aims to strengthen the role of Village-Owned Enterprises/Joint Village-Owned Enterprises as a consolidator of community products/services, producers of various community needs, community business incubators, public service providers, and various other functions so that Village-Owned Enterprise may become a contributor to native village income (PADes) and may be an instrument of leveraging village self-reliance. In addition, Village-Owned Enterprise is the legal basis for the formation and management of Village-Owned Enterprises/Joint Village-Owned Enterprises as a legal entity whose settings are adjusted to corporate principles in general, but still places the spirit of kinship and mutual cooperation as the main pillars in the management of Village-Owned Enterprise/Joint Village-Owned Enterprises.

Referring to definition of the "Minister" as regulated in Article 1 number 17 Government Regulation Number 11 of 2021 concerning Village-Owned Enterprise, the author concludes is not valid based on the concept of government regulation-making and the principle of *lex superiori derogat legi inferiori*. Because the norm of definition of the "Minister" in Article 1 number 17 of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprises, contradicts with the Article 117 number 1 of the Law Number 11 of 2020 concerning Job Creation as the parent act. So the norm of definition of the "Minister" in Article 1 Number 17 of Government Regulation Number 11 of 2021 concerning Village-Owned Enterprise is recommended to be revised and follow to Article 117 Number 1 of the of the Law Number 11 of 2020 concerning Job Creation.

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