



P-ISSN : 2964-0628

E-ISSN : 2963-4261

Vol. No. Yr : 2-2-2023

pp : 1-22

Editorial Office: Jl. Tebet Raya No. 2 Fl. 3 Block C, Tebet Barat,
Tebet, Jakarta Selatan, Jakarta, Indonesia.

Website: <https://scientium.co.id/journals/index.php/jsdi>

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Aligning the Recognition-Subsidiarity Principle and Legal Liability in Village Financial Management in Indonesia

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Article Info	Abstract
<p>Keywords:</p> <p><i>Village Financial Management; Recognition-Subsidiarity Principle; Legal Liability.</i></p> <p>History of Article:</p> <p>Received: 04-15-2025 Reviewed: 04-19-2025 Accepted: 04-16-2025 Published: 04-30-2025</p> <p>DOI: 10.56282/jsdi.v2i2.566</p>	<p>The amount of revenue and expenditure realization of village government per year, which is quite significant, and the ongoing efforts of certain individuals to misuse village finances indicate the need for an effective and efficient legal concept of village financial accountability in Indonesia. This study yields two conclusions based on the normative juridical method using legal principles, legal systematics, vertical and horizontal synchronization levels, concrete legal regulations, the principle of subsidiarity recognition, and existing legal accountability models. First, the principle of subsidiarity recognition in the form of facilitation, emancipation, and consolidation should serve as the basis for village financial accountability in Indonesia. Second, the ideal concept of legal accountability in village financial management, which can foster sustainable development in</p>

Indonesian villages, is achieved through establishing and enforcing laws governing strict liability, vicarious liability, secondary liability, and collective liability, both administratively and criminally. It is recommended that there be a revision of the Village Law, which regulates the rights and obligations of each stakeholder in the village, to prevent potential incentives, pressures, motives, rationalizations, and opportunities in village finances, personal and/or joint responsibilities of each stakeholder in case of financial misconduct in the village, the principle of ultimum remedium in the event of financial misconduct in the village, and the imposition of administrative sanctions in the form of interest at the monthly interest rate in cases of financial misconduct in the village.

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A. INTRODUCTION

The revenue and expenditure realization of village governments (Village Budget - *APB Desa*) throughout Indonesia is significant. It can be seen from the revenue and expenditure realization in 2019-2021, which amounted to IDR 117.44 trillion and IDR 113.69 trillion in 2019,¹ IDR 121.83 trillion and IDR 121.92 trillion in 2020, and IDR 124.88 trillion and IDR 124.97 trillion in 2021.²

However, the management of village finances, which should be used to improve the welfare in rural areas, reduce the urban-rural gap, and alleviate poverty in rural communities in Indonesia,³ is a cause for concern due to certain individuals attempting to misuse village finances. The fact that there have been cases of financial misuse in villages is evident from the report by

¹ Badan Pusat Statistik, *Statistik Keuangan Pemerintah Desa 2021*, Jakarta: Badan Pusat Statistik, 2022, hlm. xxxi.

² *Ibid.*, hlm. 5.

³ Ombudsman Republik Indonesia, "Mengawasi Dana Desa", 2022, available at <https://www.ombudsman.go.id/perwakilan/news/r/pwkmedia--mengawasi-dana-desa>, accessed on 23 Februari 2023.

Indonesia Corruption Watch (ICW), which recorded 676 defendants in corruption cases from 2015 to 2020 involving village officials.⁴ Moreover, misuse of village finances tends to increase as enforcement of corruption cases carried out by law enforcement officers (*Aparatur Penegak Hukum* - APH) in the village budget sector reached 154 cases with potential state losses of IDR. 233 billion in 2021.⁵ One of the methods used was through fictitious liability, as in the case of an individual Village Head in 2016, who enjoyed IDR 232 million from village funds of around IDR 1 billion.⁶

The ongoing misuse of village finances will only result in the loss or reduction of village resources to improve the well-being of its residents. Village finances, in essence, can address various classic problems such as poor infrastructure, limited access to economic capital for rural residents, and hindered democratic strengthening in villages.⁷ Apart from the empirical gap, as mentioned above, the persistent misuse of village finances cannot be separated from the existing juridical gap.

The juridical gap can be seen in the issuance of the Village Law and its implementing regulations, namely Government Regulation (PP) No. 11 of 2019, PP No. 8 of 2016, PP No. 47 of 2015, PP No. 43 of 2014, and PP No. 60 of 2014. However, these regulations need to address the supervision of village finances, and no definition of village financial supervision is found. The absence of a definition for village financial supervision was initially addressed through the creation of a Memorandum of Understanding (MoU) between the Ministry of Home Affairs, the Ministry of Villages, Development of Disadvantaged Regions, and Transmigration (*Kemendes PDTT*), and the Indonesian National Police on October 20, 2017. The MoU aimed to achieve effective, efficient, and accountable village fund management through synergistic cooperation among the three government institutions. However, the MoU faced criticism and opposition from various parties, including the Association of Village Governments throughout Indonesia (*Apdesi*), as it was seen as potentially leading to intimidation of village heads.⁸

⁴ *Loc.cit.*

⁵ Vika Azkiya Dihni. 2022. "ICW: Kasus Korupsi Terbanyak Terjadi di Sektor Anggaran Dana Desa pada 2021", available at <https://databoks.katadata.co.id/datapublish/2022/04/19/icw-kasus-korupsi-terbanyak-terjadi-di-sektor-anggaran-dana-desa-pada-2021>.

⁶ Heru Cahyono *et al.*, *Pengelolaan Dana Desa*, Jakarta: LIPI Press, 2020, hlm. 188.

⁷ Dinas Pemberdayaan Masyarakat dan Kampung Tulang Bawang, *Modus korupsi dana desa*, 2019, tersedia di laman <http://dpmk.tulangbawangkab.go.id/news/read/386/modus-korupsi-dana-desa>, diakses tanggal 27 Februari 2023.

⁸ Cahyono *et al.*, *Op.cit.*, hlm. 10-11.

While Minister of Home Affairs Regulation No. 73 of 2020 explicitly regulates the supervision of village finances, it does not either define or establish village financial supervision based on the principle of subsidiarity recognition.⁹ Additionally, the juridical gap in the Village Law is also reflected in the accountability of finances or programs within a year to the Village Consultative Body (*BPD*), which has the authority to request reports from the village head and other village officials.¹⁰ The absence of accountability based on the principle of subsidiarity recognition and the lack of functioning supervision by the *BPD* represent a disregard for democracy in villages. The Village Law adopts democracy, including deliberative democracy, which implies that at the implementation level of policies, deliberative democracy requires accountability, transparency in decision-making, and public oversight of the implementation of decisions.¹¹

The existing empirical and juridical gaps in village financial management align with the philosophy of fraud, as the fraud triangle theory suggests that fraud occurrences cannot be separated from incentives or pressures or motives, rationalization, and opportunity.¹² It can be seen in the profiles of deviations or financial misconduct in villages, which involve severe breaches of accountability, inadequate internal control mechanisms, and ineffective governance structures.¹³ The deviations or financial misconduct profiles in Indonesian villages indicate the need for urgent research on village financial accountability based on the principle of subsidiarity recognition.

Indeed, there have been several previous studies on village financial management, but this study offers new perspectives, summarized as follows:

1. Simanjuntak's (2021) research concluded that the current village financial supervision hinders the goal of village self-reliance. Therefore, it is necessary to renew the concept of village financial supervision in the Village Law based on the principle of subsidiarity recognition. It includes implementing village-based financial

⁹ Dumaria Simanjuntak, 2022, *Rancang Bangun Hukum Pengawasan Desa di Indonesia*, Jakarta: PT. Scientia Integritas Utama, hlm. 3-4.

¹⁰ Cahyono *et al.*, *Op.cit.*, hlm. 164.

¹¹ *Ibid.*, hlm. 34.

¹² Yudha Pramana dan Anis W. Hermawan, "Addressing the Financial Reporting Fraud: A Rational Choice Theory Perspective", *The Scientia Journal of Social and Legal Studies* 1, no. 2 (2022): 97-103, <https://doi.org/10.56282/sjsls.v1i2.167>.

¹³ *Loc.cit.*

supervision with two treatments.¹⁴ Firstly, categorizing villages into three types: fully autonomous villages, partially autonomous villages, and low autonomous villages, based on their readiness to conduct village-based financial supervision and treat the supervisory institutions accordingly. Secondly, establishing regulations that define the roles of relevant institutions and the procedures for coordinating supervision to ensure effective village financial oversight and to move away from supravillage supervision practices that may still be prevalent during the reform of coordinating supervision tasks. Previous studies have primarily focused on the legal framework of village supervision in Indonesia based on the principle of subsidiarity recognition, without producing a concept of accountability based on subsidiarity recognition for effective and efficient village financial management that can minimize financial misconduct.

2. Sutrisno's (2014) research emphasized the importance of community participation in the formation of village regulations toward participatory democracy.¹⁵ The novelty of this research lies in using the analytical framework of subsidiarity recognition and the concept of legal accountability for all parties involved in village financial management in Indonesia.
3. Susanto's (2015) doctrinal and normative research addressed the complexity of village financial management, mainly focusing on the village funds within village governance, which requires financial management that complies with the law.¹⁶ The novelty of this study lies in aligning the principles of subsidiarity recognition and legal accountability in effective and efficient village financial management in Indonesia.
4. Agus's (2015) study only described the definition of village finance, the definition of village financial management, and the process of financial

¹⁴ Dumaria Simanjuntak, 2021, *Pembaharuan Konsep Pengawasan Keuangan Desa Berbasis Kemandirian (Implementasi Asas Rekognisi-Subsidiaritas Dalam UU No. 6 Tahun 2014 Tentang Desa)*, Semarang: Suatu Disertasi Program Doktor Hukum Universitas Diponegoro.

¹⁵ Sutrisno PHM, 2014, *Partisipasi Warga Desa Dalam Pembentukan Peraturan Desa untuk Menuju Demokrasi Partisipatoris*, Semarang: Suatu Disertasi pada Program Doktor Ilmu Hukum Universitas Diponegoro.

¹⁶ Heru Susanto, 2015, *Politik Hukum Pengaturan Pengelolaan Keuangan Desa Pasca UU No. 6 Tahun 2014 Tentang Desa*, Malang: Suatu Disertasi pada Program Doktor Ilmu Hukum Universitas Brawijaya.

administration in villages.¹⁷ According to Agus, the financial administration process in villages starts with preparing reports on the realization of the Village Budget Implementation, Village Regulations, Village Assets Reports, Reports on Government Programs, and Regional Governments' contributions to the village. It concludes with their submission to the Regent/Mayor and the community.¹⁸ The novelty of this recent study lies in the effort to develop an ideal concept of legal accountability in village financial management.

There still needs to be an empirical gap, juridical gap, and scarcity of research on the implementation of subsidiarity recognition and legal accountability in effective and efficient village financial management in Indonesia. Therefore, this study aims to address two problem formulations. **First**, why should subsidiarity recognition be the basis for village financial accountability in Indonesia? **Second**, what is the ideal concept of legal accountability for sustainable village financial management in Indonesia?

B. RESEARCH METHODS

This study is related to what should be, aiming to answer problem formulations about how things should be.¹⁹ Considering that the answer to the problem formulations examines the law in books concerning the world of "*das sollen*" (what should be),²⁰ this study appropriately uses the normative juridical method. Normative sciences can be used to determine whether an action or event can be assessed as an action or event that can be justified or can be blamed.²¹

The legal principles, legal systematics, vertical and horizontal synchronization levels, and concrete legal regulations will be examined in this study.²² In terms of its form, this normative juridical research is prescriptive, as

¹⁷ Puji Agus, 2015, *Pengelolaan Keuangan Desa: Sistem dan Prosedur Pertanggungjawaban Keuangan Desa*, tersedia di laman <https://bppk.kemenkeu.go.id/balai-diklat-keuangan-ci-mahi/berita/pengelolaan-keuangan-des-sistem-dan-prosedur-pertanggungjawaban-keuangan-des-773157>, diakses tanggal 1 Maret 2023.

¹⁸ Loc.cit.

¹⁹ Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar*, Yogyakarta: CV. Maha Karya Pustaka, 2020, p. 33.

²⁰ Achmad Ali and Wiwie Heryani, *Menjelajahi Kajian Empiris terhadap Hukum*, Jakarta: Kencana, 2012, p. 1.

²¹ Risanto & Arief H. P. Lubis, (2022). Novum and Unrevealed Data in Tax Disputes in Indonesia: A Legal Certainty Perspective. *Journal of Tax Law and Policy*, 1(2), 17–28. DOI: <https://doi.org/10.56282/jtlp.v1i2.95>.

²² Sudikno Mertokusumo, Ibid.

it aims to provide an overview or formulate issues based on the existing conditions or facts concerning existing norms.²³ The deductive nature²⁴ of the conclusions drawn in this study will provide recommendations for addressing these issues.²⁵

C. ANALYSIS AND DISCUSSION

Village Overview and Village Financial Management in Village Law

The village is a legal entity in an abstract sense, based on the sovereignty of the people and the right to determine their fate and size, as well as the right to own assets and financial resources, including rights over land, water, mountains, and ravines.²⁶

Although the enactment of Law Number 32 of 2004 concerning Local Government as lastly amended with Law Number 9 of 2019 recognizes the diversity of localities and opens up space for decentralization and village democracy, the focus of regional autonomy is still placed on the district/city level.²⁷ It has led to the need for the Village Law. Implementing the Village Law shows that villages within districts/cities are not subnational and are not under the lowest administrative structure. They are also not extensions of regional governments.²⁸ Villages also receive recognition and subsidiarity of authority based on their origin and local authority at the village level. Additionally, villages receive financial transfers from the State Budget (APBN) and Regional Budgets (APBD), known as Village Funds (DD) and Village Allocation Funds (ADD), to meet their expenditure needs within these two areas of authority.²⁹

²³ Suteki dan Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktek)*, Depok: PT RajaGrafindo Persada, 137.

²⁴ Leo B. Barus, The Street-Level Bureaucracy Implementation in Public Service in Villages, *Journal of Public Administration and Policy Issues* 1, no. 2 (2022): 31-36, 32, DOI: <https://doi.org/10.56282/jpapi.v1i2.286>.

²⁵ Suteki dan Galang Taufani, *Ibid*.

²⁶ N. Huda, 2015, *Hukum Pemerintahan Desa Dalam Konstitusi Indonesia Sejak Kemerdekaan Hingga Era Reformasi*, Malang: Setara Press.

²⁷ Badan Pusat Statistik, 2022, *Statistik Keuangan Pemerintah Desa 2021*, tersedia di laman <https://www.bps.go.id/publication/download.html?nrbyfeve=NDFmZTY3MDU0N2IxZmIzNTBkNzI5ZTMx&xzmn=aHR0cHM6Ly93d3cuYnBzLmdvLmlkL3B1YmxpY2F0aW9uLzIwMjIvMDIvMTQvNDFmZTY3MDU0N2IxZmIzNTBkNzI5ZTMxL3N0YXRpc3Rpay1rZXVhbmdhbi1wZW1lcmludGFoLWRlc2EtMjAyMS5odG1s&twoadfnear-feauf=MjAyMy0wMy0xNSAxNzo0MjoyNA%3D%3D>, diunduh tanggal 5 Maret 2023, hlm. xix-xx.

²⁸ Borni Kurniawan, 2015, *Desa Mandiri, Desa Membangun*, Jakarta: Kementerian Desa, Pembangunan Daerah Tertinggal, dan Transmigrasi Republik Indonesia, hlm. 26.

²⁹ *Loc.cit*.

The Village Law has stimulated the democratization process at the village level, with village communities becoming more critical, demanding more accountable and transparent performance from village heads in managing village policies and finances. It has led to the establishment of Village Representative Bodies (BPD) as new actors driving democracy to reduce the dominance of the village head as the sole authority.³⁰

Villages have several sources of finance the government provides through autonomous regions' rights, authorities, and obligations to regulate and manage their own governance and local interests within the Unitary State of the Republic of Indonesia. Article 72 of the Village Law stipulates that village revenue comprises six sources. First, village-owned revenue, which includes business profits, asset profits, self-help and participation, mutual cooperation, and other village-owned revenues. Second, allocation from the State Budget. Third, a portion of local taxes and regional levies from the District/City. Fourth, the Village Allocation Fund, which is part of the transfer funds received by the District/City. Fifth, financial assistance from the Provincial and District/City Budgets. Sixth, non-binding grants and donations from third parties. All village revenues are received and channeled through the village cash account, and their use is determined in the Village Budget (APB Desa). The village head and treasurer sign the fund's disbursement from the village cash account.³¹

The village government manages village finances, revenue, and expenditure and cannot be separated from the basis of self-reliance. Therefore, according to Simanjuntak, the definition of finance is integrating the understanding of village finance and the legal principle of village governance (subsidiarity recognition). Village finance should encompass all the rights and obligations of the village based on subsidiarity recognition, which can be assessed in terms of money and anything related to implementing village rights and obligations that generate revenue, expenditure, and financing.³²

Furthermore, Article 2 and Article 3 of the Ministry of Home Affairs Regulation Number 20 of 2018 concerning Village Financial Management stipulate that the village head is the holder of the Village Financial Management

³⁰ Badan Pusat Statistik, 2022, *Loc.cit.*

³¹ Dumarisa Simanjuntak, 2021, *Pembaharuan Konsep Pengawasan Keuangan Desa Berbasis Kemandirian (Implementasi Asas Rekognisi-Subsidiaritas Dalam UU No. 6 Tahun 2014 Tentang Desa)*, Semarang: Suatu Disertasi Program Doktor Hukum Universitas Diponegoro.

³² Dumarisa Simanjuntak, *Desa dan Keuangan Desa di Indonesia*, Jakarta: PT. Scientia Integritas Utama, 2023.

Authority (PKPKD) and represents the village government in managing village assets separated by using the Village Budget as the basis for village financial management for one fiscal year, from January 1 to December 31.³³ The authority of the village head as PKPKD includes setting policies regarding the implementation of the Village Budget, managing village assets, taking actions resulting in expenditures based on the Village Budget, appointing the Village Financial Management Implementers, approving the Budget Implementation Document, Budget Change Implementation Document, and Budget Realization Report, approving the Village Cash Plan, and approving the Payment Request Letter.

In addition to the village head, other implementing units involved in village financial accountability include the Village Secretary, Section Heads, Treasurer, Regent/Mayor, Subdistrict Head, and the community. These principles indicate that every stage of village financial management should be carried out for the welfare of the village community and must be accountable to the village head and other relevant parties.³⁴

Subsidiarity Recognition Principle as the Basis for Village Finance

Several principles outlined in the Village Law ensure the strict, controlled, professional, and integrity-based management of village finances. These principles include the recognition, subsidiarity, accountability, and participatory principles. Implementing these principles will ensure that village governance is carried out as planned and serves as a corrective and improvement mechanism when deviations hindering goal achievement are identified.³⁵

The recognition principle acknowledges the origin rights, indicating that the existence of villages, including their customs and customary laws held by the local community, is recognized. Recognition is not only given to the existence of the village itself but also through economic redistribution in the form of budget allocation from the State Budget and Regional Budgets, enabling villages to have their own Village Budget.³⁶ In addition to the

³³ Henry D. P. Sinaga, "Piercing the Veil of Village Financial Accountability in Indonesia: A Legal Liability Perspective," *Journal of Village and Local Community* 1, no. 2 (2022): 82. DOI: <https://doi.org/10.56282/jvpc.v1i2.300>.

³⁴ *Ibid.*

³⁵ Simanjuntak, Saraswati, Utama, Sukirno, and Sinaga, *Ibid.*

³⁶ Simanjuntak, 2021, *Ibid.*

recognition principle, the Village Law includes the subsidiarity principle, which fundamentally differs from the residual principle applied in the Local Government Law. The subsidiarity principle, as explained in the Village Law, entails determining local-scale authority and making local decisions for the benefit of the village community.³⁷

To understand the participatory principle, the theoretical framework needs to be understood. Theoretically, participation involves genuine involvement and inclusion, which, although similar, emphasize different aspects. Inclusion refers to who is involved, while involvement focuses on how the community is involved. Involvement means providing space for anyone to participate in the political process, particularly disadvantaged groups, minorities, the underprivileged, women, and other marginalized groups.³⁸ The participatory principle leads to deliberative democracy, "governing by the governed."³⁹ The relationship between the principles of good governance and deliberative democracy is realized through the accountability principle, which involves public accountability, including holding decision-makers in government accountable to the community.⁴⁰

These principles in village financial management indicate that village finances are managed to achieve village self-reliance. Simanjuntak (2021) emphasized that the understanding of village finance as the integration of village finance and the legal principle of village governance (subsidiarity recognition) encompasses "*all the rights and obligations of the village based on subsidiarity recognition, which can be assessed in terms of money and anything related to the implementation of village rights and obligations that generate revenue, expenditure, and financing.*"⁴¹ The understanding of the subsidiarity recognition principle in village finance positions the village as a subject of development, with a development model based on village-driven development, and promotes facilitation, emancipation, and consolidation as the approach and actions for village financial management.⁴²

³⁷ *Loc.cit.*

³⁸ *Loc.cit.*

³⁹ Heru Cahyono *et al.*, *Pengelolaan Dana Desa*, Jakarta: LIPI Press, 2020, hlm. 34.

⁴⁰ *Ibid.*, hlm. 40.

⁴¹ Simanjuntak, 2023, *Ibid.*

⁴² *Loc.cit.*

Regulation of Village Financial Liability in Indonesia

The presence of these principles in village financial management indicates that every stage of village financial management should be carried out for the welfare of the village community and must be accountable to the village head, their staff, and other relevant parties. Those responsible for liability should openly share information about each stage of village financial management with the community, whether through government-developed applications, manuals, or village meetings.⁴³

Elements of village financial liability include the Report on the Implementation Accountability of the Village Budget (consisting of village revenue, expenditure, and financing), which is an integral part of the reports on village administration, village regulations, village asset reports, and government and regional government program reports that pertain to the village.⁴⁴ According to Article 70 of the Minister of Home Affairs Regulation Number 20 of 2018, the village head is obliged to submit a report on the implementation accountability of the Village Budget, as determined by the village regulation, to the Regent/Mayor through the Subdistrict Head at the end of each fiscal year. The village regulation on the report of the implementation accountability of the Village Budget should be accompanied by at least the formats of the Report on the Implementation Accountability of the Village Budget, the Village Asset Report as of December 31 of the relevant fiscal year, and the Government and Regional Government Program Report that pertains to the village.⁴⁵ Furthermore, the realization report and the report on the implementation accountability of the Village Budget should be communicated to the community in written form and through accessible media channels, such as notice boards, community radio, and other information outlets. The report on the implementation accountability of the Village Budget must be submitted one month after the end of the relevant fiscal year. Additionally, Article 71 stipulates that the accountability report is part of the end-of-year report on village administration submitted to the Regent/Mayor and subsequently forwarded by the Regent/Mayor, in the form of a consolidated report on the implementation of the Village Budget, to the Minister of Home Affairs through the Director-General of Village Administration.

⁴³ Dumaria Simanjuntak, Retno Saraswati, Yos Johan Utama, Sukirno, dan Reny Y. Sinaga, *Ibid.*

⁴⁴ Puji Agus, *Ibid.*

⁴⁵ *Loc.cit.*

The village head's hierarchical accountability of village financial reports highlights the importance of the accountability principle. This principle represents the obligation to account for the management and control of resources and the implementation of policies entrusted to achieve predetermined goals. It determines that every activity and the final outcome of village administration should be accountable to the village community, following the provisions of laws and regulations.⁴⁶ Accountability involves assessing the resources or authority used and should adhere to the checks and balances in governance. Therefore, a village government is considered accountable when it fulfills the entrusted mandate and responsibilities, carries out its duties effectively, and refrains from misconduct, corruption, and selling village assets for personal gain.⁴⁷

Weak liability is often accompanied by a need for more transparency, a principle of openness that enables the community to have extensive access to information about village finances. The principle of transparency in village law requires the government (central, district/city, and village levels) to be open to the community's right to obtain accurate, honest, and non-discriminatory information about the administration of village governance while adhering to the provisions of laws and regulations.⁴⁸ Upholding the accountability principle ensures that the village head, their staff, and the responsible parties in village finance have followed the process of checks and balances.

The weakness in liability due to a lack of transparency needs to be addressed by implementing an appropriate concept of legal liability closely related to the understanding of tort law. Tort law plays a significant role in regulating the behavior of legal subjects to act following reasonable care standards and reciprocal obligations to restore damages caused by unlawful actions that harm others.⁴⁹

Legal liability encompasses the duty to act or perform and the duty to refrain from acting or not performing for every legal subject.⁵⁰ The duty to act or perform must fulfill four criteria:

“(1) it is carried out in good faith to fulfill legal obligations, unless force majeure, coercion, or other circumstances are proven to have forced the

⁴⁶ *Loc.cit.*

⁴⁷ Simanjuntak, 2021, *Ibid.*

⁴⁸ Simanjuntak, Saraswati, Utama, Sukirno, and Sinaga, *Ibid.*

⁴⁹ Sinaga and Sinaga, *Ibid.*

⁵⁰ Benny R. P. Sinaga, Elvrida N. Sinaga, Leo B. Barus, Reny Y. Sinaga, dan Henry D. P. Sinaga, Justice Reconception In Establishing Responsive Tax Law In Indonesia: A Rawlsian Perspective, *Ayer Journal*, Vol. 27, No. 3, 2020, hlm. 185.

subject to act otherwise; 2) it is done due to potential dangers, damages, or losses that may occur immediately and cannot be avoided; 3) there are no better alternatives available, or failure to take such action would result in more significant dangers, damages, or losses; and 4) the action or conduct is purely unintentional.⁵¹

On the other hand, the duty to refrain from acting or not performing must fulfill four criteria:

“1) it constitutes a prohibited act; 2) it falls outside the scope of one's capacity, preventing them from acting according to their professional judgment; 3) there are alternative actions or measures available that do not violate applicable laws and regulations; and 4) it involves actions or conducts that enrich oneself, a group, or another party, causing financial losses to the state”.⁵²

Legal liability, which goes beyond responsibility based solely on fault, and liability without fault, should have a philosophical and theoretical foundation in managing village finance in Indonesia. Liability without fault has given rise to various liability models that have begun to be applied in certain legal fields, such as strict liability, vicarious liability, secondary liability,⁵³ and collective liability. Criminal liability without fault is adopted in Article 37 of Law Number 1 of 2023 concerning the Criminal Code, which states that, as determined by the law, any person can be punished solely based on the elements of the criminal act without considering any fault, or held accountable for criminal acts committed by others. The formulation of Article 37 of the Criminal Code indicates that the principle of liability without fault can be applied in specific circumstances, not only as a principle of non-criminalization without fault, which is one of the main principles in criminal law.

The application of strict liability relates to its criteria related to community well-being, a risk assessment that heavily relies on information, and the usefulness of its regulation as a *mala prohibita*, where proving *mens rea* is necessary to ensure the purpose of the relevant legislation is clear.⁵⁴

⁵¹ Sinaga and Sinaga, *Op.cit.*, hlm. 103-104.

⁵² *Loc.cit.*

⁵³ Anton Hartanto dan Henry D. P. Sinaga, Criminal Tax Liability of Corporate Taxpayer in Indonesia, *Scientium Law Review*, Vol. 1, No. 2, 2022, p. 44, pp. 41-52. DOI: <https://doi.org/10.56282/slr.v1i2.217>.

⁵⁴ Sinaga and Sinaga, *Ibid.*, p. 290-291.

According to the explanation of Article 37 of the Criminal Code, strict liability determines that the perpetrator can be punished solely because the elements of the criminal act have been fulfilled by their actions or that the perpetrator can be punished solely because the action of the perpetrator has fulfilled the elements of the criminal act.

The application of vicarious liability lies in its criteria to pursue the unlawful actions committed by the actual beneficiaries within an organization, thereby providing fairness to parties considered responsible but can prove they did not receive any additional benefits from the criminal act.⁵⁵ According to the explanation of Article 37 of the Criminal Code, vicarious liability establishes that every person is responsible for the actions committed by another person who performs work or acts on their behalf or within the scope of their authority, extending criminal responsibility to the actions of their subordinates, such as a company leader being held responsible for the actions of their subordinates.

The application of secondary liability lies in its appropriate criteria to punish a legal subject as a secondary or intermediary party who possesses the right and ability to oversee the activities of another party to prevent violations of specific financial interests but knowingly, voluntarily or negligently disregards regulations involving criminal acts and financial losses to the state/region/⁵⁶desa. According to Dinwoodie (2017), "secondary liability," also known as "accessory liability" or "indirect liability," can be participant-based or relationship-based.⁵⁷ Participant-based liability occurs when the secondary defendant induces, contributes to, or facilitates the harmful conduct of the primary wrongdoer. The claim often revolves around the defendant's knowledge concerning the wrongful conduct, sometimes constructively imputed through proxies and the extent to which the defendant actively contributes to the harm actionable under the applicable primary law.⁵⁸ Relationship-based liability may arise where the defendant benefits from the harm and has a sufficiently close relationship to the primary wrongdoer that the law treats them as the same (often because the relationship is close

⁵⁵ *Ibid.* P. 331.

⁵⁶ Henry D. P. Sinaga, Aditya Wirawan, and Rintis N. Pramugar, Reconstruction of Corporate Criminal Liability in Indonesia, *International Journal of Advanced Science and Technology* 29, no. 8 (2020): 1237.

⁵⁷ Graeme B. Dinwoodie, A Comparative Analysis of the Secondary Liability of Online Service Providers, in Graeme B. Dinwoodie (Ed.), *Secondary Liability of Internet Service Providers*, Cham: Springer International Publishing AG, 2017, p. 9.

⁵⁸ *Loc.cit.*

enough that the intermediary could have prevented the primary unlawful acts from occurring). This type of liability reflects the principle of respondeat superior or vicarious liability, which arises when the defendant has the authority and ability to oversee the violation and directly benefits financially from the activities.⁵⁹ Understanding these participant-based or relationship-based liability concepts demonstrates that the essence of secondary liability is derivative accountability for losses caused by the actions of a third party.⁶⁰

Collective liability is one solution to the failure of individualistic responsibility approaches that have been unable to halt the ongoing abuse.⁶¹ Hildebrandt (2011) suggested that in limiting the discourse on individual obstacles to the development of an investigation, collective and global accountability should be applied to the invisible hand of systemic interactions among several agents at a local level.⁶² Furthermore, regarding the political character of criminal law, where crime is fundamentally a shared responsibility issue, Ristroph (2011) emphasized that criminal accountability should not solely rely on attributing individual responsibility but instead on collective responsibility for multiple actors or groups involved.⁶³ Even in implementing and enforcing the law, society or the state can be collectively responsible if they intentionally encourage or even permit criminogenic conditions. In this case, the accused individual does not stand alone as the responsible party. However, criminal liability also becomes a matter of public and collective institutions throughout the process of criminalization, prosecution, court decisions, and punishment.⁶⁴

⁵⁹ Loc.cit.

⁶⁰ Ibid., p. 10.

⁶¹ Vidya Prahassacitta, Tanggung Jawab Bersama (Collective Responsibility) dalam Hukum Pidana, 2019, available at <https://business-law.binus.ac.id/2019/03/31/tanggung-jawab-bersama-collective-responsibility-dalam-hukum-pidana/>, accessed on January 12, 2023.

⁶² Mireille Hildebrandt, Criminal Liability And 'Smart' Environments, in R. A. Duff and Stuart P. Green (Eds.), *Philosophical Foundations of Criminal Law*, Oxford: Oxford University Press, 2011, p. 508.

⁶³ Alice Ristroph, Responsibility for the Criminal Law, in R. A. Duff and Stuart P. Green (Eds.), *Philosophical Foundations of Criminal Law*, Oxford: Oxford University Press, 2011, p. 109.

⁶⁴ Loc.cit.

Critical Study of the Recognition-Subsidiarity Principle and Legal Liability in Combating Village Financial Fraud

Villages in Indonesia are vulnerable to poverty and education gaps,⁶⁵ so it is necessary to improve the development of self-reliant and prosperous villages, in order to eradicate all forms of financial fraud in village management. Fraud, which primarily consists of incentives, pressure or motives, rationalization, and opportunity, is an unlawful act committed by individuals both within and outside the organization with the intention of personal or group gain, directly harming others.⁶⁶

The fact that financial fraud still occurs in village management should be a particular concern for the Indonesian government, considering the alarming complexity of such fraud. It dominates activities related to illegal acts, violating the law and contravening moral standards, appropriateness, diligence, and care that individuals should have in society.⁶⁷ This results in financial losses to the state/region/village⁶⁸ or detriment to the national economy. Combating financial fraud requires mapping the behaviors and rational interests of the actors or agents within the organization, implementing organizational continuity through fixed preferences and stable institutions, and being able to explain economic determinism (economic power ultimately being a determinant of social and political change).⁶⁹ Dealing with financial fraud can be implemented through improving gaps in the

⁶⁵ Aditya Wirawan, E. Warassih, and Benny R.P. Sinaga, (2022). Capability Dep-
rivation Meets The Digital Divide: The Urgency of Accessibility and Connec-
tivity in Alleviating The Poverty of Tobacco Farmers in Indonesia. *Journal of*
Tax Law and Policy, 1(1), pp. 42–56. DOI:
<https://doi.org/10.56282/jtlp.v1i1.62>.

⁶⁶ Yudha Pramana dan Anis W. Hermawan (2), The Construction Industry and Financial Statement
Fraud: A Literature Review of Fraud Triangle Theory, *Journal of Accounting Issues* 1, no. 2 (2022):
48, DOI: <https://doi.org/10.56282/sar.v1i2.225>.

⁶⁷ Henry Dianto P. Sinaga, F.X. Adji Samekto, and Joni Emirzon, Ideal Corporate Criminal Liability
for the Performance and Accreditation of Public Accountant Audit Report in Indonesia,
International Journal of Economics and Business Administration 8, no. 4, (2019): 451-463, 453.

⁶⁸ Henry D. P. Sinaga, Yudha Pramana, dan Anis W. Hermawan, Income Tax Reconstruction on
Construction Services to Support Development in Indonesia, *World Journal of Entrepreneurship,*
Management and Sustainable Development 19, no. ½ (2023): 125-136, DOI:
10.47556/J.WJEMSD.19.1-2.2023.10.

⁶⁹ Yudha Pramana dan Anis W. Hermawan, *Op.cit.*, hlm. 102.

implementation of applicable laws and regulations,⁷⁰ especially the basic concept of legal liability, as stated in Article 145 of the Criminal Code, which defines "Every Person" as an individual, including corporations. Corporations, on the other hand, are organized collections of individuals and/or assets, whether they are limited liability companies, foundations, associations, cooperatives, **state-owned enterprises**, regional-owned enterprises, village-owned enterprises, or entities of a similar nature, as well as unincorporated associations or business entities in the form of partnerships, limited partnerships, or entities of a similar nature.

Understanding the principles of recognition-subsidiarity, strict liability, vicarious liability, secondary liability, and collective liability indicates that village-based community oversight is critical to the accountability of village financial management. The embodiment of these principles refers to the binding values that exist within the original village community order, recognized by the individual actions of village residents. These values must be authentically derived from the village and continue to exist as guardians of the order, manifested through the participation of village residents in the institutional framework of village deliberations, which is well-known as a characteristic of Indonesian villages.⁷¹ Therefore, as facilitation, emancipation, and consolidation of the recognition-subsidiarity principle, village financial management must be elevated as a procedural approach to financial accountability.⁷² The regulation of village financial liability that reflects the recognition-subsidiarity principle includes:

1. Firmly defining the rights and obligations of each stakeholder in the village to prevent incentives, pressure or motives, rationalization, and opportunities for financial misconduct. The regulation of rights and obligations is one of the foundations to protect the interests and active participation of all stakeholders in overcoming potential fraud in village financial management (Wirawan *et al.*, 2022).⁷³ These

⁷⁰ Anis W. Hermawan, (2022). Improving Tax Compliance of The Construction Sector in Indonesia: A Juridical Perspective. *Scientia Business Law Review*, 1(2), pp. 1–14. DOI: <https://doi.org/10.56282/sblr.v1i2.89>.

⁷¹ Simanjuntak, 2022, *Op.cit.*, p. 170.

⁷² *Loc.cit.*

⁷³ Aditya Wirawan *et al.* (2022). E-Participation in the Management of Tobacco Excise Production Sharing Funds: An Initiation to Strengthen The Principles of Decentralization in Indonesia. *Scientia Business Law Review*, 1 (1), pp. 21–36. DOI: <https://doi.org/10.56282/sblr.v1i1.50>.

stakeholders include the Village Head, Village Financial Management and Administration Unit (PPKD), Village Consultative Body (BPD), Regent/Mayor, Subdistrict Head, Village Community, and the Director-General of Village Governance.

2. Firmly stipulating these stakeholders' personal and/or collective responsibilities in case of financial misconduct unless they can prove and convince that they are genuinely incapable of bearing such responsibilities.
3. Applying the principle of *ultimum remedium* (last resort) in addressing village financial misconduct, prioritizing the recovery of financial losses and administrative sanctions over criminal penalties.
4. Clearly defining administrative sanctions, such as interest calculated at the monthly interest rate, to be imposed from the occurrence of financial misconduct if village funds have been misappropriated.

D. CONCLUSION

This study draws two conclusions. **First**, the recognition-subsidiarity principle should serve as the basis for village financial accountability in Indonesia because it embodies the facilitation, emancipation, and consolidation of village financial management. **Second**, the ideal concept of legal liability in effective and efficient village financial management in Indonesia encompasses strict liability, vicarious liability, secondary liability, and collective liability in both administrative and criminal aspects to prevent financial misconduct in villages. This accountability includes the revision of regulations regarding the rights and obligations of each stakeholder in the village to prevent potential incentives, pressure or motives, rationalization, and opportunities for financial misconduct, personal and/or collective responsibilities of these stakeholders in case of financial misconduct, the principle of *ultimum remedium* for addressing financial misconduct, and the imposition of administrative sanctions in the form of interest calculated at the monthly interest rate from the occurrence of financial misconduct if village funds have been misappropriated.

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