

The Role of the Notary in Making the Deed of Establishment of Savings and Loans Cooperative

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Abstract. *Cooperative legal entities in practice cannot be denied that these legal entities have cases that can harm the Cooperative in question, where the problem lies in the result of committing a form of negligence and even intentional perpetration by the founders of the Cooperative. On a scientific basis, writing is motivated to carry out a scientific study in the form of systematic and fundamental research with the title "The Role of Notaries in Making Deeds of Establishment of Savings and Loans Cooperatives (Case Study in Pekalongan Regency)". The research method that used in this study is the empirical juridical approach, which is a study that besides looking at the positive legal aspects also looks at its application or practice in the field in the form of interviews or photographs, interest and costs as a result of mistakes or negligence in making cooperative decisions.*

Keywords: Cooperative; Deed; Loans; Savings.

1. Introduction

Cooperatives have quite a long history before finally emerging as a form of business entity in the world. "The Cooperative Ideology was born in the glorious era of Capitalism." This means that cooperative ideology has developed since the 18th century, namely in the era of the industrial revolution in England. Capitalism is an understanding that prioritizes the important role of capital in economic activity, this is the opposite of cooperatives where cooperatives prioritize the human role in fostering capital.¹

The difference between capitalism and cooperatives lies in the emphasis on the role of factors of production in economic activity, namely cooperatives place

¹Andjar Pachta W.; Myra Rosana Bachtiar; and Nadia Maulisa Benemay, Indonesian Cooperative Law Understanding, Regulation and Business Capital (Jakarta: Kencana, 2005), p.14

more emphasis on the aspect of their human role while capitalism emphasizes the aspect of capital strength. However, this does not mean that one does not require the production factors emphasized by the other. In capitalism, humans are needed as one of the factors of production, whereas in cooperatives, capital, which is one of the factors of production to run its business, is collected by the humans who are its members. Cooperatives founded in capitalist countries acquire and discover their function as a business entity. Cooperatives make efforts to improve the economic level of life of people who come from groups of workers (laborers) or people who have fallen into poverty as a result of the implementation of capitalism. They finally realized that to raise their standard of living, they had to work together in an organization that had an orderly program and was jointly managed democratically. So an important element of cooperatives is togetherness in running a business within the framework of the economic capabilities of its members.

In practice, cooperative legal entities cannot deny that these legal entities have cases that can be detrimental to the cooperative concern, where the problem lies in the consequences of committing a form of negligence, even intentional, by the founders of the cooperative. One aspect that is considered important and must be complied with by all legal entities, especially cooperative legal entities, is the legality aspect which regulates compliance to ensure that cooperative legal entities comply with statutory regulations. One of the non-compliance of the founder of the Cooperative legal entity was not involving the establishment of the Cooperative with a Notary as the maker of the Cooperative deed. According to the provisions above, the deed of establishment of the Cooperative is the authority of the Notary in making cooperative deeds and has main duties, which duties must be based on the provisions of Article 3 paragraph (2) above. The Deed of Establishment of a Cooperative is made by a Notary or Notary Making the Cooperative Deed (NPAK). To carry out its implementation as a public official. Notaries should pay attention to the precautionary principle regarding the preparation of deeds, including deeds of establishment of cooperative legal entities.

This aims to ensure that the deeds made by the Notary do not violate statutory regulations and give rise to legal consequences. The existence of legal consequences creates a responsibility that can be directed at both the parties appearing and the Notary himself. Within the scope of civil law, the public official who has the authority to make authentic deeds is a notary. The authentic deed has 3 (three) elements, the first is a deed made/determined based on statutory

regulations, the second is made by/before an authorized notary employee, and the third is at the place where the deed is made.²

There are various provisions governing the establishment of cooperative legal entities, one of which is the cooperative law, which states that notaries have a role in making deeds of establishment of cooperatives for parties who wish to establish such legal entities. Previously, the formation of the Cooperative had been held by the founders of the Cooperative, including the organ structures of the Cooperative administrators. Notaries are required to understand and comprehend the field of legal entities, especially cooperative legal entities. The use of authentic deeds related to the deed of establishment of a Cooperative is often looked down upon by parties who have a deed or even did not have a deed of establishment at all when the Cooperative was established, especially for parties who occupy the management of the Cooperative.

There are sentences that are quite popular among cooperative members, namely, from members, for members and by members. A notary as a public official has the authority to make authentic deeds regarding all acts, agreements and provisions required by statutory regulations or those desired by interested parties to be stated in authentic deeds, as long as this authority is not excluded by other officials.

Almost all legal acts can be deeded by a notary, including business activities carried out by cooperatives. There are quite a lot of business activities carried out by cooperatives, but the most common are savings and loan activities. In this savings and loan activity, cooperatives act as creditors who provide money loans to their members or the surrounding community. So that the savings and loans are binding on the parties and have strong evidentiary power in court, it should be made in the form of a notarial deed. In daily transaction activities, cooperatives very rarely use the services of a notary in their savings and loan activities. This creates a potentially big problem in the future if it turns out that the debtor of the cooperative is in default.

Considering that the majority of Indonesia's population is Muslim, the form of cooperatives and notaries who carry out their positions based on Islamic law is very necessary and recommended. This is intended so that cooperatives in carrying out their activities, both in terms of establishment, capital collection and distribution of capital, as well as a notary in carrying out his daily office, do not deviate from Islamic law which can result in an act having a haram value in the eyes of Allah SWT which will ultimately disturb the people. Muslims in Indonesia as users of their services.

²Indonesia, Law on the Position of Notary Public, Law no.30, LN No.117 of 2004, TLN. No. 4432, p.15

2. Research Methods

The research method that will be used in this research is an empirical juridical approach, namely a research that, apart from looking at positive legal aspects, also looks at its application or practice in the field in the form of interviews or photos, examining the role of notaries in making deeds of establishment of savings and loan cooperatives to look for relationships (correlation) between various symptoms or variables as a data collection tool consisting of document studies and interviews.³

3. Results and Discussion

3.1. The Role of the Notary in Making the Deed of Establishment of a Savings and Loans Cooperative

Article 2 paragraph (1) Decree of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 98/KEP/M.KUKM/IX/2004 Concerning Notaries as Cooperative Deed Makers states that:

The cooperative deed notary is a party who works based on the code of ethics of its position and provides services to the community in the process of establishment, changes to the articles of association and other deeds related to cooperative activities.

The provisions above explain that a Notary has the authority to make cooperative deeds because of his position as a public official who has the main task of making authentic deeds, as proof that certain legal actions have been carried out in the process of establishment, changes to the articles of association and other deeds related to cooperative activities to request for approval from the authorized official.

Based on the research that the authenticity of the notarial deed is based on Article 1 paragraph (1) of the Law of the Republic of Indonesia Number 30 of 2004 concerning the Office of a Notary which states that a Notary is a "General Officer" (*openbaar ambtenaar*), so that a deed made by a notary in that position acquires the nature of an authentic deed, as referred to in Article 1868 of the Civil Code. 40 The function and benefit of making the articles of association of a cooperative with an authentic aim is as evidence. In order for the cooperative's

³Soerjono Soekanto, 2001, Normative Legal Research A Brief Overview, Jakarta; Raja Grafindo Persada, p. 275

articles of association deed to have authentic status, the deed must meet the following conditions:⁴

1. the deed must be made "by" (*door*) or "in front of" (*ten overstaan*) a public official;
2. the deed must be drawn up in a form determined by law;
3. a public official by- or before whom the deed was drawn up, must have the authority to draw up the deed.

Based on the provisions above, so that a notarial deed, including the deed of the cooperative's articles of association and the deed of amendment, does not lose its status as an authentic deed, it must comply with these provisions. If one of the above requirements is not fulfilled, the deed only has the power of a deed made under the hand.

The notary's authority includes 4 things, namely:⁵

- a. The notary must be authorized as far as the deed is made;
- b. The notary must be authorized insofar as it concerns the person, for whose benefit the deed was drawn up;
- c. The notary must be authorized as long as it concerns the place where the deed was made;
- d. The notary must be authorized as long as it is related to the time of making the deed;

Based on the description above, not every public official can make all deeds, but a public official can only make certain deeds, namely those assigned or excluded to him based on statutory regulations.

Based on the results of research in the Decree of the Minister of State for Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 98/KEP/M.KUKM/IX/2004 concerning Notaries as Cooperative Deed Makers, it is stated that the notary is the maker of cooperative deeds, thus the notary is one of the officials authorized and assigned to make the deed of the cooperative's articles of association and amendments to its articles of association. The notary is obliged to make minutes of all deeds made before him

⁴Lumban Tobing, GHS, SH, Notary Position Regulations, Erlangga Jakarta Publisher, 1983, p. 48

⁵Interview with Notary Mr Sobirin, SH., Mkn in Pekalongan Regency

including the cooperative deed, where if this is not done, the deed will not have authentic force and the notary is obliged to compensate costs, losses and interest to interested parties if there are parties who are harmed because of this.

The storage of minutes of cooperative deeds by a notary is no different from the storage of minutes of other deeds made by-and/or before a notary, because every notary is obliged to keep not only the minutes of deeds made by-and/or before the notary himself, but also applies to minutes taken over from another notary. As well as minutes, lists, repertory and clappers must be treated in the same way as prescribed for minutes. The notary making the cooperative deed is obliged to make the deed in the form of minutes of the deed and keep part of the notary protocol which is a state document, this has been stated in article 16 paragraph (1) letter b of the Notary Office Law which reads as follows:

The notary is obliged to make a deed in the form of minutes of the deed and keep it as part of the notary's protocol. The law not only regulates how to store it, but also regulates where it is stored. The storage area must be easily accessible and secure and the place must be lockable. Minutes of deeds including minutes of deeds of cooperatives, repertoire and others must be secured by a notary from damage caused by fire and outside influences, such as humidity and animals that can damage them and from the danger of theft. A client who draws up a deed related to a cooperative when paying a notary's honorarium, the client concerned automatically expects from the notary even though it is not expressly stated that the deed will receive security from the notary concerned. The deed of establishment of the cooperative, amendment to the cooperative's articles of association and dissolution of the cooperative before being signed by the presenters, witnesses and notary, the deed must be read by the notary himself and is not permitted to be read by anyone else. The reading of the deed is part of what is called "verlijden" (reading and signing) of the deed. The reading of the deed by a Notary in the presence of the presenters before the deed is signed by the presenters is mandatory, this is stated in Article 16 paragraph (1) letter l of Law Number 30 of 2004 concerning the Position of Notaries which reads as follows:

Read the deed in front of the presenter in the presence of at least 2 (two) witnesses and signed at that time by the presenter, witness and notary.

Regarding the reading of the cooperative deed or other deed made by and/or in the presence of a notary, this must be notified at the closing of the deed. Conversely, if the appearer wishes that the deed not be read out because the appearer has read it himself, knows and understands its contents, this must also be stated on the cover of the deed and on every minute page of the deed initialed by the appearer, witness and notary.

The reading of the cooperative deed that was not carried out by the notary who made the cooperative deed for part or all of the deed, then the deed will only have the power of a deed made under the hand if the deed is signed by the appearers .The notary who makes cooperative deeds is obliged to send an annual report regarding the cooperative deeds he has made to the minister with a copy to the authorized official in his work area no later than February, after the end of the current year. This is based on article 14 of the Decree of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 98/KEP/M.KUKM/IX/2004 Concerning Notaries as Cooperative Deed Makers. Based on this provision, it creates polemics among notaries because on the one hand, notaries must report the deeds they make to those authorized to do so based on the notary position law and on the other hand, notaries who make cooperative deeds must report the deeds they make to the minister, in this case to the minister whose field of duties and responsibilities includes cooperative affairs.

The method of filling in the repertory in the case of making a cooperative deed is no different from the way of filling in other notarial deeds, that is, every time a deed is made relating to a cooperative, you must write down the available data in the repertory column, namely serial number, monthly number, date of the deed, nature of the deed and names. from the observers. Procurement of a repertoire for deeds made before a notary is to provide confidence regarding the existence of the deed that has been made by the notary and the date of the deed itself and to facilitate the search for the deed.⁶

Another notary's obligation is to issue a copy of the cooperative deed, this is based on Article 16 paragraph (1) letter c of Law Number 30 of 2004 concerning the Position of Notaries. A copy of the cooperative deed is a copy of the deed issued by a notary after the cooperative deed has been signed by the presenters and then a copy is issued that has the same sound as the minute which is only signed by the notary on a seal and stamped with the title of notary.

A copy of the deed issued by a notary is for the benefit of the applicant as proof that a legal act relating to the cooperative has been carried out and as one of the conditions for establishing the cooperative, changing the articles of association and dissolving the cooperative .Ratification of the deed of establishment of the Cooperative shall be stipulated by a Ministerial Decree within a maximum period of three months from the receipt of the request for complete approval.

The ratification decision and the deed of establishment of the cooperative that has received a statement of approval are submitted to the founder or his

⁶ibid

attorney by registered letter within a maximum period of seven days from the date the ratification decision is made.

According to the doctrine of recognition as a legal entity, generally applies *ex tunc*, which means that all legal actions taken on behalf of the legal entity before recognition as a legal entity is transferred to said legal entity unless the law determines otherwise. The Minister makes a decision on the request for re-authorization as in point 2 above within a maximum period of one month from the receipt of the complete request for re-validation.

In the event that ratification is granted for the deed of establishment of a cooperative, the minister shall deliver the ratification decision letter and the deed of establishment of the cooperative which has received a statement of ratification to the founder or his proxy by registered letter within a maximum period of days seven from the date the ratification decision is made.

5. Things that a Notary must prepare when making a Cooperative Amendment Deed.

Changes to the cooperative's articles of association are carried out based on the decision of a Member Meeting held specifically for this purpose, unless otherwise specified, member meetings regarding the articles of association are only taken if attended by at least $\frac{3}{4}$ (three quarters) of the number of cooperative members present.

Members' Meeting decisions regarding changes to the cooperative's articles of association are valid if the changes are approved by at least $\frac{3}{4}$ (three quarters) of the number of cooperative members present. Changes to the cooperative's articles of association that involve changes in business fields, mergers or divisions of cooperatives must be made based on the decision of the Members' Meeting, while changes outside of this can be made by the management and then reported by the management to the next members' meeting.

A cooperative merger is the joining of one or more cooperatives with other cooperatives to become one cooperative. Meanwhile, cooperative division is one cooperative divided into two or more cooperatives. For changes to the cooperative's articles of association that involve changes in business fields, a request for approval is submitted by attaching the following:

- a. two copies of the cooperative's articles of association which have been amended, one of which is properly stamped,
- b. minutes of member meetings.

For changes to the cooperative's articles of association that involve the merger or division of cooperatives, a request for approval is submitted by attaching the following:

- a. two copies of the amended articles of association of the cooperative, one of which is properly stamped,
- b. meeting minutes,
- c. the new balance sheet of the cooperative that received the merger or the cooperative that was divided.

Changes to the articles of association that do not involve changes in business fields, mergers or divisions of cooperatives, the implementation of changes to the articles of association of cooperatives can be carried out without having to change or replace the contents of the articles of association as a whole, but simply mentioning the articles that need to be changed.

If the request for approval of amendments to the cooperative's articles of association has been made in accordance with the provisions as mentioned above, the management or their proxies will receive a receipt.

The Minister approves changes to the cooperative's articles of association if after conducting research on changes to the articles of association:

- a. does not conflict with Law Number 25 of 1992 concerning Cooperatives, and
- b. not contrary to public order and decency.

Ratification of changes to the cooperative's articles of association shall be specified by a Ministerial Decree within a maximum period of one month from the receipt of the request for complete approval.

The ratification decision and the articles of association of the cooperative that have been amended and have received a statement of approval are submitted to the management or their proxies by registered letter within a maximum period of seven days from the date the ratification decision is designated.

If the request for approval of amendments to the cooperative's articles of association is rejected, the decision for rejection and the reasons shall be submitted to the management or their attorney by registered power of attorney within a maximum period of one month from the receipt of the complete request for ratification.

Amendments to the articles of association of cooperatives that do not involve changes in business fields, mergers or distribution of cooperatives must be reported to the minister no later than one month after the changes were made.

Changes to the cooperative's articles of association as mentioned above must be announced by the management in the local mass media no later than two months after the amendment was made and carried out at least twice with a maximum grace period of 45 (forty five) days.

Based on the provisions of Article 16 paragraph (2) Decree of the Minister of State for Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 104.1/Kep/M.KUKM/x/2002 Concerning Instructions for the Implementation of the Formation, Ratification of the Deed of Establishment and Amendments to the Articles of Association of Cooperatives states that if the request for ratification of the Amendment to the Budget The constitution is rejected, then the old Cooperative Articles of Association remain valid.

3.2. Notary Obstacles and Completion in Making the Deed of Establishment of Savings and Loans Cooperatives

In deed, if the problem occurs, it is reviewed from Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2014 concerning the Office of a Notary. Notary profession is a job with special expertise that demands extensive knowledge, as well as heavy responsibility to serve the public interest and the core of the notary's duties is to regulate in writing and authentic legal relations between the parties who unanimously request the services of a notary. Notaries need to pay attention to what is called professional behavior which has elements regarding the Notary Deed containing statements and statements of the parties, made at the will or request of the parties, and the Notary makes it in a form that has been determined according to the Law.

The notary is not a party to the deed, the inclusion of the notary's name in the deed is due to a legal order, then canceling the notary's deed means outwardly not recognizing the deed, thus the deed is not a notary's deed. Outwardly the evaluation of a notarial deed is not a notarial deed, so it must be proven from the beginning to the end of the deed, that there are conditions that have not been met regarding the form of a notary deed. If it can be proven that the notarial deed does not meet the requirements as a notarial deed, then the deed will have evidentiary value as a private deed, the assessment of which depends on the recognition of the parties and the judge.⁷

⁷Liliana Tedjosaputro, 2003, Professional Ethics and the Legal Profession, Aneka Ilmu, Semarang, p. 93.

Based on the explanation above, the notary's responsibility for the deed he made is that in civil terms the notary is only responsible for the head of the deed, meaning that it contains the authority of the appearers in signing the deed, then for the closing deed which contains the authority of the witnesses then confronted by the appearers to sign the deed, meanwhile For the contents of the deed, the notary is only responsible that the deed he made does not violate clauses prohibited by law and the norms of decency that exist in society as stated in Article 1320 of the Civil Code. Criminally, a notary can be prosecuted in court if in the future the authorities, such as the police and public prosecutors, can prove that the notary consciously believes that he has entered information that benefits one party and harms the other party.

Based on the explanation above, the notary's responsibility for the deed he makes is that in civil terms the notary is only responsible for the head of the deed, meaning that which contains the authority of the presenters in signing the deed, then for the cover of the deed which contains the authority of the witnesses who are then confronted by the presenters to sign the deed, whereas regarding the content of the notary's deed, he is only responsible that the deed he makes does not violate the clauses prohibited by law and the norms of property that exists in society as stated in Article 1320 of the Civil Code.

If in making a cooperative decision it turns out that the notary made a mistake in writing the editorial, there were changes and/or additions either at the request of the parties or there were errors or deficiencies, then these changes and additions must be written on the side of the deed and are not permitted to make a renvooi for changes to the blanks found at the top or bottom of the leading page. These changes must be made in the blank on the left side of the head. Any changes or additions to the blank section on the left side are only valid if signed or initialed by the person making the cooperative deed, witnesses and notary.

As far as authentic deeds are concerned, correction of errors can be done by making a "rectificatie" deed, where the contents of the deed have no legal effect on changes in the position of those who are parties to the deed as a result of the error. Based on Article 51 paragraph (1) of the Law on the Position of Notaries, they have the authority to correct writing errors and/or typographical errors contained in the minute the deed has been signed.

Article 51 paragraph (2) of the Law on the Position of Notaries states that corrections as intended in paragraph (1) are carried out by making an official report and providing a note about this in the original deed minute by stating the date and number of the corrected official report. Article 51 paragraph (3) of the Notary Position Law states that a copy of the deed of minutes as intended in paragraph (2) must be submitted to the parties.

If the deed of establishment of the cooperative that is being submitted for approval turns out to be in error, the official authorized to do so will convey the following matters:

- a. The authorized official will convey the refusal in writing along with reasons to the attorney of the founder by registered letter within a maximum period of 3 (three) months from the receipt of the complete request for approval.
- b. Regarding the rejection of the approval, the founders or their proxies can submit a request for renewal of the deed of establishment of the cooperative, within a period of 1 (one) month from the receipt of the notification of rejection by attaching the documents specified for it.
- c. The authorized official gives a receipt to the attorney of the founder who submits the request again,
- d. The authorized official, makes a decision on the re-application within a period of no later than 1 (one) month from the receipt of the complete request for re-approval,
- e. If the request for re-approval is approved, the decision to ratify the deed of establishment is submitted directly to the attorney of the founders,
- f. If the request for re-approval is rejected, the decision for refusal and the reasons shall be submitted to the founder or his proxy by registered letter within a maximum period of 7 (seven) days from the date the refusal decision is made,
- g. The decision to repeat the request is the final decision.

The provisions of Article 41, Article 44, Article 48, Article 49, Article 50, Article 51 and Article 52 of the Law on Notary Office if the Notary makes the cooperative deed is not fulfilled, which results in the cooperative deed he made only has the power of proof as a private deed or a deed becomes null and void can be a reason for the party who suffers a loss to demand reimbursement of costs, compensation and interest from the notary.

Based on the results of the study stated that if the error or negligence committed by the notary makes the cooperative deed fulfills the requirements of being prosecuted under Article 1365 of the Civil Code, namely that between the violation or negligence and loss there is a causal relationship and there is an error or omission on the part of the notary concerned can be accounted for by the notary. Before the notary is concerned can be punished to pay compensation, interest and fees, the mistakes or omissions that the notary made in making the cooperative deed must first be proven:

- a. any loss suffered as a result of making the deed,
- b. There is a causal relationship between the loss suffered and the violation or negligence of the notary.
- c. The violation (act) or negligence was caused by an error which can be accounted for by the notary concerned.

4. Conclusion

The role of a Notary in Making a Deed of Establishment of a Savings and Loans Cooperative is due to his position as a public official who has the main task of making authentic deeds, as proof that certain legal acts have been carried out in the founding process, changes to the articles of association and other deeds related to cooperative activities to request approval from the authorized official.

5. References

- Andjar Pachta W.; Myra Rosana Bachtiar; and Nadia Maulisa Benemay, (2005), Indonesian Cooperative Law Understanding, Regulation and Business Capital, Jakarta: Kencana
- Interview with Notary Mr Sobirin, SH., Mkn in Pekalongan Regency
- Liliana Tedjosaputro, (2003), Professional Ethics and the Legal Profession, Semarang: Aneka Ilmu
- Lumban Tobing, GHS, SH, (1983), Notary Position Regulations, Jakarta: Erlangga Publisher
- Soerjono Soekanto, 2001, Normative Legal Research A Brief Overview, Jakarta; Raja Grafindo Persada