

Roles and Responsibilities of the Notary in Establishment of Cooperatives

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ABSTRACT

One aspect that is considered important that must be complied with by all legal entities, especially cooperative legal entities is the aspect of legality. To legalize it, it is necessary to draw up a deed that is ratified by an authorized official, in this case, namely a notary. The main objective of establishing a cooperative is to meet the needs of all members at the best possible level in different economic, social and political conditions. The result of research describe the role of the notary in legalizing the deed of establishment of a cooperative is that of a general official, whose main task is to draw up an authentic deed proving the special legal actions taken in the process of founding and the articles of association, and other deeds. Approval from the competent authority must be obtained in connection with cooperative activities. In conclusion, with the deed of establishment that has been legalized by a notary, it is hoped that the cooperative will become a clear legal entity and can protect its managers and members from various violations or irregularities that can occur in the operation of cooperatives.

ABSTRAK

Salah satu aspek yang dianggap penting yang harus dipatuhi oleh semua badan hukum, khususnya badan hukum koperasi adalah aspek legalitas. Untuk mengesahkannya maka diperlukan pembuatan akta yang disahkan oleh pejabat berwenang dalam hal ini yaitu notaris. Tujuan utama pembentukan koperasi adalah untuk memenuhi kebutuhan seluruh anggota pada tingkat yang sebaik-baiknya dalam kondisi ekonomi, sosial dan politik yang berbeda-beda. Peran notaris dalam mengesahkan akta pendirian koperasi yaitu sebagai pejabat umum, yang tugas utamanya adalah membuat akta otentik yang membuktikan tindakan hukum khusus yang diambil dalam proses pendirian dan anggaran dasar, dan akta lainnya. Persetujuan dari otoritas yang berwenang harus diperoleh sehubungan dengan kegiatan koperasi. Oleh karena itu dengan adanya akta pendirian yang sudah disahkan oleh notaris diharapkan koperasi menjadi badan hukum yang jelas dan dapat melindungi pengelola dan anggotanya dari berbagai pelanggaran atau penyimpangan yang dapat terjadi dalam penyelenggaraan koperasi.

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I. INTRODUCTION

Cooperatives consist of cooperative values and a set of principles, cooperative identity is the basis or instrument for the development of cooperatives as a particular form of community organization (Kalimansyah dkk., 2022) As already mentioned in the context of understanding cooperatives, it is now expected that in order to establish a cooperative there must be mandatory terms and conditions that must be met (MUHAMMAD, 2023). Cooperative principles are thus established as the basis for developing cooperative businesses. The main objective of forming a cooperative is to meet the needs of all members at the best possible level in different economic, social and political conditions (Qaes dkk., 2023). In practice, there can be ambivalence between cooperatives when describing environmental conditions and requirements and what is meant in response to contracts drawn up together based on provisions and laws (Misra dkk., 2021). Cooperatives must also adapt to the current conditions and business environment which includes political, social, cultural and security aspects (Heryana dkk., 2023). However, the description of cooperatives is by no means intended to limit the direction and progress of cooperative life. Identity is only a guide or basis that can provide guidance so that cooperatives can survive in different circumstances without releasing their organizational characteristics (Suryokumoro & Ula, 2020). Because, if you pay close attention, there are many types of cooperatives in the world, with different forms generally adapted to their business activities, and service requirements resulting from the needs of their members, because they are different (PEBI RUSTAM, 2020). The point is that cooperatives are generally formed and grow in groups of people who have different ways of life and culture. Although different, cooperatives generally have the same goal. This means that the establishment of cooperatives is essentially aimed at meeting the needs of all members as well as possible in different economic, social and political conditions (Bado & Mustakim, 2023). For this reason, cooperative organizations are formed according to their needs (thus producing various forms with conditions such as basic references that must exist.

This research has similarities with other studies conducted by Heryana (2023) and Bado & Mustakim (2023) which discuss the basic concept of establishing cooperatives, namely that cooperative establishment is based on the needs of its members. All of these cooperative organizations refer to the cooperative identity framework. Just like cooperatives that already exist today, when cooperatives were first established they should have taken into account changes in the global economic environment. These changes create obstacles and obstacles for business development, so that it also creates various changes in needs that need attention (Suryokumoro & Ula, 2020). However, this does not mean that the establishment of cooperatives can immediately eliminate various economic problems, both at the local and international levels. This also means that established cooperatives remain helpless, even if they are only able to solve a small part of the big problems, because cooperatives are not for that. The difference with this current research is that the researcher discusses in detail the roles and responsibilities of a notary in establishing a cooperative, especially in terms of issuing legal certificates of incorporation.

Therefore, the process of establishing a cooperative must still be rational and meet the needs of members according to their abilities. Through the learning process in cooperatives, it is hoped that the various advantages of members and associations can be utilized to facilitate service improvement for members. Herein lies the importance of the role of cooperatives as educational institutions for members. UU no. UU no. 25/1992 that "granting status and validating changes to laws and regulations and certain matters is the authority and responsibility of the Minister" (Kusumastuti & MM, 2021).

The government is tasked with formulating policies and adopting attitudes that motivate cooperatives to become legal entities that develop rapidly in terms of management and capital

(Alhusain dkk., 2019). In order to facilitate this step, the government is obliged to respect the identity, autonomy, autonomy and independence of cooperatives regardless of their internal circumstances. The ideals of cooperatives according to the Cooperative Law and the previous Cooperative Law are essentially open and voluntary for membership, democratic management, and distribution of the remaining business results and business volume (Maulana dkk., 2020). The services provided by each member are limited, and the provision of capital is limited and independent.

On May 4 2004, an MOU or memorandum of understanding was signed between the Ministry of Cooperatives and Small and Medium Enterprises and the Indonesian Notary Association (Ikatan Notaris Indonesia/INI) to expand the authority of a notary as a public official who understands the law. In Law no. 25/1992 there is no single provision that requires the authenticity of the Cooperative Articles of Association. This means that the formation of cooperatives is only required in writing (deed) and the formation can be individual or individual. In the case of certificates, this can be concluded from Article 7(1) of the Cooperative Law: "The establishment of a cooperative in the sense of Article 6 is carried out through a charter containing provisions." to establish the freedom to vote on secret charters without involving officials with real charters. Until this Cooperative Law is amended, the options given to co-founders by law cannot be limited. Privileges and benefits of compiling the Articles of Association of a cooperative as evidenced by original deeds. Article 1868 BW states, "An original letter is a letter in the form determined by law issued by or before a public official authorized to issue it at the place of issue of the letter." (Rosdiana, 2021)

Article 1868 BW requires that the deed has evidentiary value, so the official (notary) must have the authority to be legalized. Stbl.1860: 3 (fictitious at the statutory level) notary position regulation (PJN) is a further explanation of article 1868 of the Civil Code, where the main provision is the authority of a notary to elaborate on supporting documents. Included in PJN 1. So based on Cooperative Law No. 25/1992 the role of the notary is increasingly specific and clear, the notary must know the Cooperative Law so that the notary's duties as a consultant can run well. Article 1 Number 1 Number 1 RI Law No. 2/2014 concerning the Position of Notary (hereinafter referred to as UUJN-P) provides a definition of Notary, namely: "Notary is an official authorized to make official documents who have other authorities based on this law or other laws".

The position of a notary is carried out or his presence is desired according to statutory regulations, which aim in principle to help parties who need validation on letters or certificates so that they have legal force. However, nowadays the original deed drawn up by a notary often indicates a violation, whether it is a crime or the characteristics of a crime. This causes the notary to often be involved in the crime of his client because of the lack of vigilance and carefulness and the reluctance to examine further the subject and object of the documents submitted. The ambiguity of the UUJN-P is contained in Article 16(1)(a), which regulates the duties of a notary. In carrying out their duties, a notary must act impartially, honestly, responsibly and trustworthy while respecting the interests of the parties involved in the legal process. Problems arise in making authentic deeds because the UUJN-P does not clearly regulate the principles and procedures for a notary to be more flexible in making a deed. That's why there are no guidelines for notaries, and guidelines help prevent deeds from happening. The crime of blocking a deed drawn up by a notary.

A notary is a public official with a unique specialty because he or she carries out the task of serving the public in the field of civil law. The main task of the notary is to make a definitive proof deed based on Article 1870 of the Civil Code. In the sense that what is written in the original document is generally accepted as the truth.

The requirements for appointing a notary by Menkumham are regulated in Article 3 of Law no. 30/2004 as follows: (a) Indonesian citizens; (b) Faith and Fear; (c) Min age 27 years; (d) Physically

and Spiritually Healthy; (e) SH and graduates from the Notary Masters level; (f) After completing a notary study, either on his own initiative or on the recommendation of a notary organization, completing training or actually working as a notary employee in a notary office for 12 consecutive months; (g) And does not hold concurrent positions as a public official, civil servant, lawyer, or other positions prohibited by law from being combined with the position of notary;

The power of a notary includes ratification of all acts, agreements and agreements, provided that the formation of a deed is not granted or excluded by any general rules to officials or other people. In other words, the power of a notary is general (principle), and the powers of other public officials are extraordinary. Therefore, unless the law expressly states that a public official other than a notary has the power to make certain documents, the law requires the production of original documents for claims. The authority of a notary is regulated in Article 15 of Law no. 30/ 2004 as follows: (a) Notaries are authorized to sign authentication documents of all acts, agreements and decisions according to law and/or are required to be included in the authentication document to ensure the implementation date. Deeds, safekeeping of deeds, granting of gross deeds, copying and collection of deeds, all unless entrusted or exempted to other positions or other persons for whom the making of the deeds is required by law. (b) The notary also has the authority to: (1) Examine the signature and write it in a special book to determine the certainty of the date of said handwritten letter; (2) register and attach personal documents in a special ledger; (3) Make an original copy of the personal letter in the form of a copy stating the contents of the letter concerned; (4) Ensuring that the copy matches the original letter; (5) to provide legal advice in connection with the implementation of any action; (6) Preparing land deed; and (7) making auction records.

The notary's obligations are regulated in Pasal 16 of Law no. 30/2004 as follows: In carrying out his position, a Notary is obliged to: (a) Act honestly, thoroughly, independently and impartially, and protect the interests of the parties involved in the legal process; (b) Make a deed in the form of a record of the deed and keep it as part of the notarial records; (c) Issuance of the number of certificates, copies of certificates, or quotations of certificates based on certificate records; (d) Serving parties in need unless there is a notary reason to refuse to help; (e) Unless otherwise required by law, in accordance with the oath/pledge of duty, we will keep everything related to the certificate that we have made confidential and all information that is accepted to produce the certificate; (f) Bind 50 certificate booklets made in the last month. If the number of certificates does not fit in one book, you can bind the certificates into several books and record the number of certificates recorded, the month of manufacture, and the year on the cover of each book; (g) Preparing a list of protest letters for non-payment or non-receipt of collateral; (h) Make a monthly list of the deeds related to the will in accordance with the order in which the deeds were drawn up; (i) Submit all supporting documents completely within 5 days of the following month; (j) The deed must be read aloud in the presence of at least two witnesses and signed simultaneously by the witness and notary witness.

The notary is also required to keep the original Minutes of the Deed. The original deed as referred to in paragraph (2) is a deed: (a) Deed of attorney; (b) Certificate of ownership; or (c) Other deed required. The notary may make several copies of the original document as referred to in paragraph (2) and sign the form and contents at the same time. provided, however, that the word "considered as one" in each written document must be considered as one for all, namely the original deed with the name of the attorney in 1 copy, affixing a stamp or seal as explained in the Ministerial Regulation. The letter referred to may not be read, if the person facing does not want to be read to him because he has read it and knows and understands its contents. indicated in the documentation. Certificate cover page and each notes page. The deed was signed by the presenters, witnesses and notary.

The notary also has several restrictions attached to the position he holds. Prohibition for Notaries is regulated in Law No. 30/2004 article 17 as follows: "(a) Running a position outside the territory of his office; (b) Leaving the territory of office for more than 7 (seven) consecutive working days without a valid reason; (c) Concurrently serving as a civil servant; (d) Concurrent positions as state officials; (e) Concurrent positions as an advocate; (f) Concurrent positions as a leader or employee of a state-owned enterprise, regionally owned enterprise or private enterprise; (g) Concurrent positions as a Land Deed Making Officer outside the Notary's territory of office; (h) Become a Substitute Notary or; (i) Doing other work that is contrary to religious norms, decency or propriety that may affect the honor and dignity of the Notary's position.

Notaries have various roles that can be explained according to role theory or role theory in Dutch called Theory van de Loor. Is a theory related to responsibility by individuals or organizations in the workplace or environment by using a formula or rationale. Role theory consists of two syllables: theory and role. Role theory is a theory that studies how a person behaves according to his role and duties. Behavior is not only behavior (posture) in society, but also reactions and reactions that appear in gestures and language. This behavior corresponds to status and role. Status, that is related to the position held where the role is the expected behavior of that position. Law is understood as a form of agreement between a person's position and role in society. Role theory is a theory that examines the role of institutions and the public in solving, finding solutions, or solving problems that exist in society, the nation and the nation.

Role has to do with responsibility or accountability. According to R. Virgiono Progiodicolo, accountability is accountability for one's actions. As a general rule, it is established only when an act substantially impermissible by law is committed, and many of those actions are illegal under Civil Code. Acts against the law or against the law are regulated by Sections 1365 to 1380 of the Civil Code concerning contracts made by law. Article 1365 of the Civil Code stipulates, "If someone has caused harm to another person through an unlawful act, the person who has compensated for the loss due to his negligence is obliged to compensate for the loss."

The concept of responsibility according to Hans Kelsen is closely related to the task, but the two are not exactly the same. Compulsory legal entities must carry out these obligations as mandated by the constitution. Non-compliance with obligations will result in sanctions. These sanctions are mandatory measures under the rule of law to ensure the proper performance of legal entity obligations. According to Hans, companies that are subject to sanctions must be "responsible".

The liability theory asserts that a person is or is legally responsible for certain actions. That is, he has the right to be sanctioned if his actions are against the law. Hans Kelsen classifies responsibility into four types, namely; (1) Personal responsibility, namely responsibility for personal/self-violations; (2) Joint responsibility and several people for an act of violation; (3) Responsibility based on negligence, that is, a violation that occurs without planning; (4) Absolute Responsibility means absolutely responsible whether a violation was unintentional or intentionally committed. In general, the principles of responsibility are categorized into the principle of responsibility based on negligence, namely the principle that a person cannot be legally held accountable unless he is guilty; (5) The principle of presumption of responsibility, namely that the defendant is always held accountable until proven innocent and the burden of proof is on the defendant; (6) The principle of the presumption of irresponsibility, contrary to the presumption of responsibility, means that the accused is always considered irresponsible until proven guilty; (7) The principle of absolute responsibility (non-fault liability) in this principle states that negligence is not the determining factor, but there are exceptions that allow for exceptions from liability, such as force majeure circumstances; (8) Principle of Limitation of Liability This principle of responsibility prohibits economic actors from unilaterally imposing clauses that harm consumers, including limitations on liability. Any restrictions must be based on applicable law.

The implication of this research is that there is clearer knowledge and awareness regarding the role and responsibility of a notary in helping clients to make authentic deeds. Apart from that, the implications of this research are also for readers to understand more clearly the boundaries of the role and responsibilities of a notary regarding the establishment of cooperatives and that there is no abuse of the position of a notary regarding the establishment of cooperatives that violate the law.

II. RESEARCH METHOD

This type of research is normative legal research, namely legal research conducted through a review of literature or secondary data. In this research, three methods are used to investigate the problems described in the research. Including analyzing using laws and regulations in this case Law no. 2/2014 and Law no. 30/2004. The conceptual approach is a method for studying and analyzing various theories from experts related to the topic under study. Data analysis used in prescriptive legal research is qualitative analysis, namely the method of analyzing data obtained from legal sources based on concepts, legal and regulatory theories, principles, legal principles, expert opinions, or the researchers' own opinions. The data analysis techniques carried out were researcher collecting various laws and regulations related to cooperatives and the establishment of cooperatives, looking for previous research journals on Google Scholar, the internet etc. with the keywords notary, cooperative, roles and responsibilities.

III. RESULT AND DISCUSSION

The role of a notary is as a public official, whose main task is to make authentic deeds proving the special legal actions taken in the process of establishment and articles of association, and other deeds (Arifin, 2021) Approval from the competent authority must be obtained in connection with cooperative activities (Hapsari dkk., 2022). As a pillar of the Indonesian economy, the government's efforts to empower cooperative economic bodies and guarantee legal certainty have become the government's task which is manifested in the form of contracts. 4 May 2004, Small Business and Indonesian Notary Chamber (I.N.I). The agreement and cooperation note mentioned above have been followed up in the form of a Decree of the Minister of Cooperatives and Small and Medium Enterprises. Number: 98/KEP/M.KUKM/IX/2004 concerning notaries as cooperative organizers. This decision was taken in order to improve the quality of legal services in the field of cooperatives, especially those relating to the establishment process, procedures, procedures, amendments to the Articles of Association and other documents related to cooperative activities. Efforts are needed to ensure legal certainty for deed cooperatives through the use of original deed. Based on Article 1 paragraph (4) Decree of the Minister of UMKM No. for a notary as the drafter of the Cooperative Deed: 98/KEP/M.KUKM/IX/2004, Notary for making Cooperative Deeds A person is described as "a general official appointed under the notary law, with the power, among other things, to make deed of establishment, amendment to the articles of association and other deeds related to cooperative activities."

Cooperatives are legally required to be established with a notarial deed. Notary status and notary authority over cooperatives are still regulated by statutory provisions. Based on the Republic of Indonesia Kop.UMKM Decree No. 98/Kep/M.KUKM/IX/2004. The notary who authorizes the establishment of a cooperative is a public official who has the authority to issue certificates/deeds of establishment. Its authority includes making the ratification of AD/ART and other relevant documents from the cooperative. This means that as long as laws in Indonesia are still enforced by a notary to establish cooperatives, this will not change and is still a mandatory requirement for establishing cooperatives. The notary who issues the deed of incorporation performs his duties based on the law and code of ethics. The main task of a notary to make a cooperative deed is to

issue a deed stating that certain legal actions have been taken as part of the formation process, to make and this requires approval from the cooperative.

According to the Decree of the Minister of UMKM RI No. 98/KEP/M.KUKM/IX/2004, a notary is defined as a cooperative deed maker. At the time he was appointed as the official for making the Cooperative Deed based on article 2 paragraph 1, with the provisions that: "A notary who makes a cooperation deed is a party acting based on the code of ethics of his position in serving the community. Establishment, changes to the Articles of Association and other documents related to cooperative activities" (PUTRI, 2020) .

Laws related to supervision of notaries have been around for a long time and were passed during the Reformation era. Dutch East Indies Statute concerning Supervision of Notaries, namely Staatsblad 1860 No.3 Regulations on Op Het Notary-Ambt in Indonesia (Jurnalistika, 2022). This is stated in Law no. 30/2004 regarding the status of Notary Jo. UU no. 2/2004 concerning Notary Position. Provisions regarding notary supervision in the two laws consist of Articles 69 to 80-4 of Law no. 30/2004 regarding the duties of a notary. The four articles relate to the position, structure, authority and duties of officials who are authorized to supervise notaries, the Notary Supervision Agency.

The supervisory authority of a notary is regulated in Article 67(1) of Law no. 2/2014 concerning the Position of Notary. This provision stipulates that the Minister supervises notaries. The minister in this article is the Minister of Law and Human Rights of the Republic of Indonesia. The main task of a notary to make a cooperative deed is to issue a deed stating that certain legal actions have been taken as part of the process of forming a cooperative, to make and this requires approval from the cooperative (Dianti, 2021). Some of the principles that apply in cooperatives are open and voluntary, democracy, benefits are distributed fairly and equally, giving awards to members who excel, are independent, educated, and have strong cooperation. To form a cooperative, there must be several people who understand the values, understanding, and principles of cooperatives (Nurkholis dkk., 2023). At least at least 20 people, Indonesian citizens, attend the cooperative formation meeting, sufficient capital, and human resources capable of managing cooperative management properly.

In carrying out supervision, the Menkumham RI forms a Notary Supervisory Council or is called the Supervisory Council. The Supervisory Board consists of 9 (nine) people, consisting of elements: Government, Notary Organizations and Academics or experts each of 3 people. The Supervisory Board is a body that oversees and fosters notaries (Toruan, 2020). Therefore there are two main functions of a notary supervisor, namely as a coach and supervisor. The formation, structure, authority and obligations of the Regional Supervisory Council have been determined in Article 69 of Law no. 2 / 2014 concerning Amendments to Law no. 30/2004 concerning the Position of Notary and Article 70 of Law no. 30/2004 concerning the Position of Notary.

IV. CONCLUSIONS

In this case, the form of the document forming the cooperative is the original document. registrar in the document location. (See Article 1868 of the Civil Code, Article 165 of the Indonesian Herzine Regulations ("HIR") and Article 285 of the Buitengewesten Rules of Law ("RBg")). When establishing a cooperative, validation is done in the form of a notarial deed. The function of the Cooperative Deed is (formalitat^{is} causa) or a condition for the existence of objects. The point is that the means must be created so that the deed is complete or perfect (Zulfa, 2021). Deed is an official requirement to show that something is legal. This means that if there is none then it will be

considered invalid or there is no legal relationship (Permana & Suhartana, 2021). Notary deed is a prerequisite for the survival of cooperatives. In order for a cooperative to become a legal entity, it must be accompanied by a deed of establishment of the cooperative drawn up by a notary (Tambunan & Tambunan, 2019). The role of a notary in legalizing the deed of establishment of a cooperative is that of a general official, whose main task is to make an authentic deed that proves the special legal actions taken in the establishment process and the articles of association, and other deeds (Arifin, 2021) Approval from the competent authority must be obtained in connection with cooperative activities (Hapsari dkk., 2022). Therefore, with the deed of establishment that has been legalized by a notary, it is hoped that the cooperative will become a clear legal entity and can protect its managers and members from various violations or deviations that can occur in the operation of cooperatives.

The contribution of this research is that the public knows the roles and responsibilities of a notary in establishing a cooperative and that there are no violations or deviations from the position of a notary. In addition, the results of this study can also strengthen the role and responsibility of a notary in providing legal certificates of establishment of cooperatives.

It is hoped that through serious training, notaries will be able to understand what cooperatives are like. The form of legal responsibility of a notary is explained in Article 65 of Law no. 30/2004 concerning Notary Duties: "We are responsible for all our actions." submitted or transferred to a third party; "Notary record storage place" Here, the notary has the right to be held accountable if there is a problem with the deed he made. This responsibility can take the form of criminal, civil, ethical and administrative responsibility.

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