

Authorities and Responsibilities of Notaries as Officials Cooperative Establishment Deed Maker

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Abstract

Cooperative is a business entity established by and consisting of individuals. The purpose of establishing a Cooperative is as a joint effort based on the principles of kinship and democracy, which in turn requires a strong legal basis relating to the deed of establishment of a Cooperative using an authentic deed. Considering the need for a Notary in the growth and development of Cooperatives as a legal entity, especially in the process of its establishment and amendments to its articles of association, then based on the State Decree of Cooperatives and Small and Medium Enterprises Number: 98/KEP/M.UKM/IX/2004, Notaries are given the authority to make Cooperative deed. Notary authority is very important, namely as a public official authorized to make authentic deeds and other authorities as referred to in Law Number 30 of 2004 concerning Notary Positions. The involvement of a notary is not only to assist the process of making cooperative deeds, but also to care about the prospects for the development of cooperatives that are clients and are willing to provide legal guidance and consultation related to the making of cooperative deeds. The goal is that the cooperative movement and the cooperative community understand more and are not unfamiliar with matters related to the rule of law.

Keywords: Authority, Notary, Deed of Establishment, Cooperative.

INTRODUCTION

Notaries in carrying out their positions as public officials appointed by the state have a tough task, namely providing legal services to the community in order to achieve legal certainty. Furthermore, in accordance with the demands and developments of the times, many of the provisions contained in the Notary Position Regulations are no longer in accordance with the development needs of the Indonesian people, so that on October 6, the Act No. 30 of 2004 was promulgated concerning the Position of Notary in the State Gazette of the Republic of Indonesia.

Based on the provisions of Article 1 of the Law on Notary Positions, it is stated that "*Notaries are public officials authorized to make authentic deeds*". This means that as long as the making of certain authentic deeds is not reserved for other public officials, then the official who is authorized to make them is. The role of a notary in a legal state is as a legal servant who is authorized by the state to institute a private legal relationship system that is fair and has legal certainty. Authentic deeds are one of the important evidence instruments that are functionally related to the judicial process. An authentic deed is a deed made by an official who is authorized to do so by the authorities, according to the provisions that have been determined, either with or without the assistance of the interested parties, which records what is requested to be included in it by the interested parties (Mertokusumo, 1982).

Cooperatives are joint ventures which in carrying out their business activities involve all existing members in mutual cooperation, usually as in the activities of a family. This spirit of togetherness is not only in the form of mutual assistance in being responsible for cooperative business activities but also in the form of having joint capital (Hadikusuma, 2001)

The need for a Notary function, especially in the business sector, especially in the growth and development of Cooperatives as a legal entity, especially in the process of its establishment by the community at this time is a primary need, because with the intervention of a Notary in making the deed of establishment, legal protection will be achieved and in addition to it is to comply with the provisions of the legislation, in this particular case the Cooperative Law.

One of the government's efforts to realize changes in the establishment and amendments to the articles of association of cooperatives. is the signing of a document of agreement and cooperation between the State Ministry of Cooperatives and SMEs with the Indonesian Notary Association which resulted in a decision that the Cooperative Deed of Establishment must be drawn up by/in front of the Cooperative Deed Maker Notary (NPAK).

Following an agreement (Memorandum of Understanding) between the Ministry of Small and Medium Enterprises Cooperatives and the Indonesian Notary Association (INI), the Minister of State for Small and Medium Enterprises Cooperatives Regulation No. 98/KEP/M.KUKM/IX/2004 was issued concerning Notaries as cooperative deed maker. This is done in order to improve the quality of legal services in the field of cooperatives, especially those relating to the process, procedures and procedures for establishment, amendments to the Articles of Association and efforts to ensure legal certainty of the Cooperative Deed through the use of authentic deeds. In addition, through an authentic deed it clearly determines rights and obligations, guarantees legal certainty, and at the same time it is hoped that disputes can be avoided.

The issuance of the Regulation of the State Minister for Small and Medium Enterprises Cooperatives Number: 98/KEP/M.KUKM/IX/2004, was issued to improve the Decree of the State Minister of Cooperatives and Small and Medium Enterprises Number: 104.1/KEP/M.KUKM/X Year 2002 related to the involvement of the Notary in making the Cooperative deed.

Furthermore, as an implementation guide for the establishment, ratification and amendment to the articles of association of Cooperatives, the Regulation of the State Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia was issued No: 01/Per/M.KUKM/I/2006 concerning Implementation Guidelines for the Establishment,

Ratification of the Deed of Establishment and Changes to the Cooperative's Articles of Association.

According to the provisions of Article 3 paragraph 2 of the Decree of the State Minister for Cooperatives and Small and Medium Enterprises Number: 98/KEP/M.KUKM/IX/2004, it is emphasized that a Notary has the main duties including making a deed of establishment of a Cooperative, a deed of amendment to the Cooperative's articles of association and deeds others related to Cooperative activities. Thus, it can provide legal protection and certainty for the people who form cooperatives.

Reforms in the field of law, especially the law of cooperatives, are carried out by making changes to cooperative regulations. The main objective is to improve the welfare of the community, as well as to improve the quality of legal services and the quality of cooperative deeds to the community. This is especially related to the process, procedures and procedures for establishment, amendments to the articles of association and other deeds related to cooperatives, as well as in an effort to provide a legal basis for cooperative deeds. Notaries also provide legal advice and explanations regarding the law to the parties concerned. Notaries because the law is given the authority to create perfect evidence, in the sense that what is stated in the authentic deed is basically considered true as long as there is no evidence to the contrary.

The existence of legal force in the establishment of cooperatives will form the basis of cooperative activities. It aims to provide protection for the institution and its management. The policy of involving Notaries in the establishment of Cooperatives is not intended to be a burden for Cooperatives, but rather to strengthen the position of Cooperatives with the existence of an authentically made deed of establishment of Cooperatives.

With the stipulation of a Notary as the official making the deed of establishment of the Cooperative, the deed of amendment to the articles of association and other deeds related to the activities of the Cooperative, the Notaries are required to be able to carry out their duties professionally, so as to provide maximum service to the public who come to the Notary to make deeds in the field of cooperatives.

RESEARCH METHOD

The nature of this research is descriptive analytical. The type of research used is normative juridical. This legal research is research that is used with the type of normative juridical research, namely research that is focused on examining the rules or norms in positive law. Normative juridical research is research that is used to examine the application of legal rules or norms (Koto & Lubis, 2020). Normative juridical research is research aimed at and carried out by using a study of legislation and other written legal materials related to this writing. (Sunggono, 2017). In order to obtain objective and verifiable research results and the results can be accounted for, the research will use data collection tools. In this study, to obtain the necessary data, data collection tools were used through documentation studies, namely by studying the laws and regulations related to this research..

DISCUSS AND ANALYSIS

Authority of Notary as Official of Cooperative Establishment Deed

The essence of land is very meaningful for human life, especially the people of Indonesia (Wajdi, Ramadhani, 2022). The State of Indonesia is a State of Law, this is regulated in article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, affirmation The contents of this constitution mean that all aspects of life in society, state and government must be based on law (Asmadi, et.al, 2021). The government's efforts to provide strength and guarantee legal certainty for cooperative business actors as pillars of the Indonesian economy have become the government's work agenda, among others being applied in the form of signing an agreement and cooperation document (MoU) between the State Ministry of Cooperatives and Small and Medium Enterprises and the Indonesian Notary Association. (I.N.I). The above memorandum of agreement and cooperation was followed up in the form of the issuance of a Decree of the State Minister for Cooperatives and Small and Medium Enterprises Number: 98/KEP/M.KUKM/IX/2004, dated September 24, 2004, concerning a Notary as a Cooperative Deed Maker. (Untung, 2007)

Broadly speaking, there are several stages of the buying and selling process before a Notary/PPAT, namely: payment of seller's tax and buyer's tax, physical check of the original land certificate, signing of AJB, validation, and so on (Ramadhani, 2022). Although there is no single article in the Cooperative Law which stipulates that the Cooperative Articles of Association are made with an authentic deed, the establishment of a Cooperative is only required to be in the form of a deed as regulated in Article 7 paragraph 1 of The Act No. 25 of 1992, thus giving freedom for people who will establish a Cooperative can make their own deed or ask for assistance from a Notary as a public official to make an authentic deed (Untung, 2007).

According to the provisions of Article 1 paragraph 4 of the Decree of the State Minister of Cooperatives and Small and Medium Enterprises Number: 98/KEP/M.KUKM/IX/2004, the definition of a Notary for a Cooperative Deed Maker is: "Public Officials who are appointed based on the Regulation of Notary Positions who are authorized between others to make deed of establishment, deed of amendment to the articles of association and other deeds related to Cooperative activities".

After the issuance of the Decree of the State Minister for Cooperatives and Small and Medium Enterprises Number 98/KEP/M.KUKM/IX/2004 concerning Notaries as Cooperative Deed Makers, a Notary is appointed as Cooperative Deed Making Officer, this is as referred to in Article 2 paragraph 1 which states that "*The notary of the Cooperative deed is located as a party who works based on the code of ethics of his position and provides services to the community in the process of establishment, amendments to the articles of association and other deeds related to the activities of the Cooperative*".

In order for a Notary to be appointed as a Notary for the Making of Cooperative Deeds by the State Minister for Cooperatives and Small and Medium Enterprises of the Republic of Indonesia, the Notary concerned must first attend briefings in the field of cooperatives, which will later be proven by a certificate signed by the Minister of Cooperatives and SMEs. The briefing for the Notary is nothing but related to the values and principles of Cooperatives as well as related to the process of forming, merging and dissolving Cooperatives (Prabawal, I Gusti Ngurah Wira, 2020).

The functions and benefits of making the articles of association of the Cooperative with an authentic deed are as evidence, it is intended that the deed of establishment of the Cooperative has an authentic status and therefore must meet the following requirements:

1. The deed must be made "by" (door) or "in front of" (ten overstaan) a public official;
2. The deed must be made in the form determined by law;
3. Public officials by or before whom the deed was made, must have the authority to make the deed (Tobing, G.H.S, 1992).

The deed of establishment of a Cooperative to be said to be an authentic deed must have the requirements as contained in Article 1868 of the Civil Code, Article 1 paragraph (7) of Law Number 2 of 2014 concerning the Position of a Notary and according to expert opinion as follows, namely the deed made before Notaries, standard forms/formats and procedures follow the provisions of the law and have the authority to do so (Zakiah, 2007).

The position of a Notary deed as an authentic deed or notarial deed is due to:

1. The deed is made by (door) or in the presence (ten overstaan) of a public official.
2. The deed is made in the form and procedure (procedure) and conditions determined by law.
3. Public officials by – or before whom the deed was made, must have the authority to make the deed (Habib Adjie, 2009).

In order to be designated as a Cooperative Deed Notary, according to Article 4 of the Decree of the State Minister for Cooperatives and Small and Medium Enterprises Number: 98/KEP/M.KUKM/IX/2004, it must meet the following requirements:

1. A Notary who has the authority to carry out his position in accordance with the Notary Office Regulations.
2. Have a certificate of proof that they have attended briefing in the field of cooperatives which is signed by the Minister.

Before being appointed as a Notary for Cooperative Deed Maker, according to the provisions in Article 4 of the Decree of the State Minister for Cooperatives and Small and Medium Enterprises Number: 98/KEP/M.KUKM/IX/2004, a Notary must meet the following requirements:

1. Notary who has been authorized to carry out the position in accordance with the Notary Position Regulations.
2. Have a certificate of proof that they have attended the briefing in the field of cooperatives signed by the Minister.

A Notary who has fulfilled the requirements submits a written application to the Minister, through the Head of the Office/agencies in charge of Cooperatives at the Regency/City level at the place of domicile of the Notary concerned to be determined as a Notary for the Cooperative deed, by attaching:

1. Decree on the appointment of a notary,
2. Certificate of proof of having attended debriefing in the field of cooperatives,
3. Office address along with sample signature, initials and notary stamp.

After passing the above stages, the Minister shall determine the Notary as the Cooperative Deed Maker Officer through a Ministerial Decree. The decision is submitted directly to the Notary concerned with a copy to the Minister of Justice and Human Rights, the Governor and the Head of the Office/Agency in charge of Cooperatives at the Provincial level

as well as to the Regent/Mayor and Head of the Service/Agency in charge of Cooperatives at the Regency/City level at the Notary's domicile. , this is in accordance with the provisions in Article 5 paragraph 4 of the Decree of the State Minister of Cooperatives and Small and Medium Enterprises Number: 98/KEP/M.KUKM/IX/2004, the Notary for the Cooperative Deed is obliged to submit a photocopy and show the original

The authority of a Notary in making a Cooperative deed is regulated in Article 9 of the Decree of the State Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 98/KEP/M.KUKM/IX/2004 as follows:

1. Making a deed of establishment of amendments to the articles of association of Cooperatives for primary and secondary Cooperatives at the Regency/City, Provincial and National levels is the authority of a Notary in accordance with the position of the office of the Cooperative.
2. Especially for Cooperatives domiciled in the Special Capital City Region of Jakarta, making the deed of establishment and amendments to the Cooperative's articles of association is the authority of a Notary domiciled in the Special Capital City Region of Jakarta.

A notary who makes a cooperative deed has the main task of making an authentic deed as evidence that a certain legal act has been carried out in the establishment process, amendments to the articles of association and other deeds related to cooperative activities to apply for approval to the authorized official (Suharsa, 2017).

The purpose of the ratification of the deed of establishment of the Cooperative is to obtain the status as a legal entity. The legal entity status as intended by the legislators is essentially in the form of registration or recording in government institutions and announcements in the State Gazette of the Republic of Indonesia. As with the establishment of a legal entity, the establishment of a Cooperative cannot be classified as an obligatory agreement, but is a multiple legal action based on its own legal rules and formal nature (Untung, 2007).

Responsibilities of Notary as Official of Cooperative Establishment Deed

The position of a Notary is held or its presence is required by the rule of law with the aim of assisting and serving the community who need authentic written evidence regarding legal circumstances, events or actions (Permana, I Gede Angga, Muhaimin, 2021). The notary who makes the Cooperative deed has the main task of making an authentic deed as evidence that a certain legal act has been carried out in the establishment process, amendments to the articles of association and other deeds related to the activities of the Cooperative to request for approval from the authorized official.

An authentic deed made before a notary is born and created because of 2 (two) things, namely:

1. On the basis of a request or will by the interested parties so that their legal actions are stated or set forth in the form of an authentic deed, and/or
2. Apart from being requested or desired by the interested parties, also because the law stipulates that certain legal actions must (with the threat of cancellation if not) be made in the form of an authentic deed (Waluyo, 2001).

An authentic deed is born and originates from an official who is authorized to do so, this is based on the provisions of Article 1868 of the Civil Code "*An authentic deed is a deed in the form determined by law, made by or before a public official in power for that purpose. the deed was made*".

Notaries as public officials are entrusted with a mandate from 2 (two) sources, namely:

1. The members of the public who become the notary's client want the notary to make an authentic deed for those who are interested by implicitly making a mandated sentence "fulfill all the formal requirements for legitimacy as an authentic deed.
2. The mandate is in the form of a legal order (indirectly) to a notary so that certain legal actions are poured and stated with an authentic deed, it means that the notary is bound and obliged to obey the regulations that require it to be valid as an authentic deed. (Waluyo, 2001)

As the source of the birth of an authentic deed is if the deed is made by and or before a public official, therefore if it is questioned or disputed about the authenticity of a deed, it must be proven by the party who denies or denies the authenticity of the deed only by proving that the one who puts the signature on the (derived)) the deed was not from a public official.

Notary in his position as a Cooperative deed maker and because his position is responsible for the authenticity of the deeds he makes, this is based on the provisions of Article 2 paragraph (2) Decree of the State Minister of Cooperatives and Small and Medium Enterprises Number: 98/KEP/M.KUKM/ IX/2004, which reads: "In his position as referred to in paragraph (1), the Notary for the Cooperative Deed Maker due to his position is the party responsible for the authenticity of the deeds made".

Errors in making the Cooperative deed made by a Notary will make the deed of establishment and the deed of amendment to the articles of association legally invalid. As a consequence, in the establishment of a Cooperative, the competent authority will reject the application for ratification of the deed of establishment as a legal entity. While the impact on the deed of amendment to the articles of association of the Cooperative, the reporting of the deed of amendment to the articles of association made by a Notary will be rejected.

With regard to the mistakes made by the notary, then based on the provisions of article 12 of the regulation of the state minister of cooperatives and small and medium enterprises number: 01/per/m.kukm/2006, the authorized official for that will convey the following matters:

1. The official authorized to do so will submit a written refusal along with the reasons to the founding attorney by registered letter within a maximum period of 3 (three) months from the receipt of the request for complete approval.
2. With regard to the refusal of the ratification, the founders or their proxies may submit a request for re-approval of the deed of establishment of the Cooperative, within a maximum period of 1 (one) month from the receipt of the notification of refusal by attaching the documents that have been determined for it. *Pejabat yang berwenang memberikan tanda terima kepada kuasa pendiri yang mengajukan permintaan ulang.*
3. The authorized official shall make a decision on the request for re-approval within a period of no later than 1 (one) month from the receipt of the complete request for re-approval.
4. If the request for re-approval is approved, the decision letter for ratification of the deed of establishment is submitted directly to the proxies of the founders.

5. If the request for re-approval is rejected, the decision on refusal along with the reasons is conveyed to the founder or his proxies by registered letter within a maximum period of 7 (seven) days from the date the decision on rejection is issued.
6. The decision on the re-request is the final decision.

As a result of the refusal to ratify the Cooperative Establishment Deed, the rejected Cooperative does not obtain Cooperative Legal Entity status, based on the Decree of the State Minister for Cooperatives and Small and Medium Enterprises No. valid as a business license, and if it does not get approval from the deed of establishment of the cooperative, the business run by the cooperative is invalid.

As a result of legal defects in the deed of establishment and amendments to the Cooperative's articles of association, the Notary must be responsible to the parties who have an interest in the deed he made to (the clients), including the parties who made the deed related to the Cooperative in the following matters:

1. It is expressly determined by the notary position regulations (now the notary position law).
2. Because a deed made does not meet the requirements regarding the form (gebrek in de vorm), is canceled before the court or is considered to only be valid as a deed made under the hand,
3. In all cases, where according to the provisions of article 1365, article 1366 and article 1367 of the civil code, there is an obligation to pay compensation (Tobing, 1992).

As an official making an authentic deed, a Notary in carrying out his duties must comply with the provisions of the applicable laws and regulations. The provisions governing the procedure for making authentic deeds are regulated in Article 38, Article 39 and Article 40 of the Law on Notary Positions. If these provisions are not fulfilled by the Notary in making the Cooperative deed, it will result in the Cooperative deed he made only having the power of proof as an underhand deed or a deed being null and void can be a reason for the party suffering losses to claim reimbursement of costs, compensation and interest to the Notary.

Meanwhile, if it is related to the provisions of Article 1365 of the Civil Code, against the Notary's mistake against the deed he made only has the power of proof as an underhand deed, then based on the provisions of the article the Notary can be asked for compensation. In Article 1365 of the Civil Code it is stated that: "every act that violates the law that brings harm to another person, requires the person who because of his fault published the loss, compensates for the loss".

The elements contained in Article 1365 of the Civil Code regarding unlawful acts, contain 4 (four) elements, namely:

1. There must be action
2. This act is against the law
3. There must be a loss for others
4. There is an error from the maker

If there is an error or omission made by the Notary who made the Cooperative deed, then the error or omission has fulfilled the requirements to be prosecuted in accordance with the provisions of Article 1365 of the Civil Code, namely between the violation or omission

and the loss there is a causal relationship and there is an error on the part of the Notary concerned. or negligence can be accounted for to the Notary.

The element of unlawful acts committed by a Notary must also contain the existence of losses (Schade) resulting from unlawful acts committed by a Notary. A person who suffers a loss due to an unlawful act committed by another person has the right to apply for compensation for the loss he has suffered to the district court. The compensation requested can be in the form of material and immaterial compensation (Nurmayanti, 2017).

Further arrangements regarding claims that can be held accountable to a Notary due to errors or omissions that result in a deed only being an underhanded deed or becoming null and void, can be seen in the provisions of Article 84 of the Law on Notary Positions, namely:

"Violations committed by a Notary against the provisions as referred to in Article 16 paragraph (1) letter i, Article 16 paragraph (1) letter k, Article 41, Article 44, Article 48, Article 49, Article 50, Article 51, or Article 52 which results in a deed under the hand or a deed being null and void by law can be a reason for the party suffering the loss to demand reimbursement of costs, compensation, and interest to a Notary".

However, before the Notary concerned can be held responsible for paying compensation, interest or other costs, the Notary must first make mistakes or omissions in making the Cooperative's deed of establishment and amendments to the articles of association, as evidenced by the following elements:

1. There are losses suffered as a result of making the deed.
2. There is a causal relationship between the losses suffered and the violation or negligence of the notary.
3. The violation (action) or omission is caused by an error that can be accounted for by the notary concerned.

A person's responsibility for what he does is of course the obligation of each individual. A mandate given to him for someone's protection. Here the Notary is given the authority to make an authentic deed in the sense of compiling, reading and signing, and is authorized to make a deed in the form determined according to the Civil Code and the Notary Position Act.

CLOSURE

Conclusion

The role of the Notary is not only related to the making of the deed of establishment and amendments to the articles of association, but also to other cooperative activities. The authority granted by the Notary as the official making the Cooperative deed is intended to be used as evidence that certain legal actions have been carried out in the establishment process, amendments to the articles of association and other deeds related to the activities of the Cooperative. If the Notary makes an error or omission which results in the Cooperative deed he made only has the power of proof as an underhand deed or becomes null and void by law, then as a result of the mistakes of the Cooperative founders who suffer losses, they can claim compensation for costs, compensation and interest to the Notary.

Suggestion

In order for the role of the notary in making the deed of establishment of the notary to function optimally, it is necessary to conduct socialization to the community in collaboration with the local cooperatives and small and medium enterprises office, so that the public can know about the role and function of the notary in making deeds in the field of cooperatives. In

addition, the notary should always be careful and thorough in making the deed of establishment and changes to the cooperative, this is necessary so that the deeds made before the notary do not become a deed under the hand or are null and void.

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