

Third-Party Responsibility Against Cooperative Legal Action

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Abstract

This research is a theoretical study of the third-party responsibility concept towards cooperative legal actions based on Law Number 25 of 1992. This is normative legal research. Data analysis obtained from library research was carried out in a qualitative way. The data obtained were grouped regularly and then linked to the formulation of the existing problems based on their accuracy value in order to get a clear picture of the discussion. Results showed that the positive law regarding cooperatives gave the board of directors the right to appoint a manager who came from a third party outside the cooperative. The board of directors and managers are bound by employment agreements. The board of directors remains fully responsible for legal actions committed by managers in cooperative management.

KEYWORDS

Cooperatives, Board of directors, Managers, Third Parties



Introduction

The Constitutional Court through Decision Number 28/PUU-XI/2013 stated that the regulations regarding cooperatives previously regulated in number 17 of 2012 concerning Cooperatives were declared invalid and returned to Law Number 25 of 1992 concerning Cooperatives (Cooperative Law). The main reason for the cancellation is that the regulation has a corporate spirit and eliminates the principles of kinship and mutual cooperation which are the characteristics of cooperatives. ¹Article 1 point 1 of the Cooperative Law regulates that cooperatives are legal business entities which are one of the pillars of economic development in Indonesia.² Cooperatives as a forum for joint efforts of their members to achieve prosperity essentially have characteristics inherent in the cooperative itself. Etymologically, the term "cooperative" comes from the Latin "Cum" which means "with", and "Aperari" which means "work".³ Dutch people call "cooperatives" with *Cooperative Vereniging*, which means working together with other people to achieve a certain goal. ⁴Furthermore, Nindyo Pramono gives the definition of a cooperative, namely an association consisting of people or entities, which provides freedom of entry and exit as members by working together as a family to carry out efforts to enhance the physical welfare of its members. ⁵Based on the definition above, it can be highlighted that cooperatives are business entities and/or associations consisting of people or bodies whose activities are based on families to improve the physical welfare of their members.

Cooperatives as legal entities can basically have rights and carry out actions just like humans have their own assets and can be sued in front of a judge. Cooperatives as legal entities have an organizational structure or in the Cooperative Law are regulated as organizational instruments consisting of a meeting of members, management (trustees), and supervisors (receivers). Cooperatives as legal subjects certainly cannot act alone like legal subjects. Cooperatives carry out legal actions by the cooperative management. Cooperative management in general has the role to manage cooperatives and has the authority to represent cooperatives in any legal actions taken by cooperatives. The management as an organ that manages and represents the cooperative is not necessarily free from accountability.

¹ Agus Sahbani, "The Cooperative Law is Cancelled Because It Has a Corporate Spirit," Law Online, 2014, <http://www.Hukumonline.com/berita/baca/lt5385bfa83b01f/uu-perkoperasian-dibatalkan-because-it-has-a-corporate-spirit>.

² *Law Number 25 of 1992 Concerning Cooperatives* (Republic of Indonesia, 1992).

³ RT Sutantya Rahardja Hadhikusuma, *Indonesian Cooperative Law* (Jakarta: Raja Grafindo Persada, 2000), 1.

⁴Ibid.

⁵ Nindyo Pramono, *Several Aspects of Cooperatives in General and Indonesian Cooperatives in Development* (Yogyakarta: TPK Gunung Mulia, 1986), 9.

Cooperative management has the obligation to report all cooperative management activities and its business to the member meeting. Basically, all actions taken by the management must prioritize the interests of the members. Management as individuals can still be held responsible for losses suffered by the cooperative due to actions carried out intentionally or negligently. One form of negligence committed by cooperative management is not running the cooperative as it should. The Ministry of Cooperatives and Small and Medium Enterprises stated that cooperatives as a group of people are a path to equal distribution of welfare. Therefore, cooperatives must no longer be just nameplates but must be able to grow and become large as well as must be of high quality and have many members; a cooperative without members is meaningless.

The Ministry's statement provides an illustration that currently there are cooperatives that are just nameplates and are not growing to provide welfare to the community. The meaning of a cooperative that is only a nameplate is a cooperative that is legally still a legal entity but in fact, the cooperative does not carry out any activities at all and/or does not carry out the obligations that must be carried out by a cooperative. Regarding these cooperatives, the government through the Ministry of Cooperatives and SMEs asked regional stakeholders to propose that cooperatives that are no longer active have their legal entities suspended.⁶ There are cooperative classifications formed by the Department of Cooperatives, Micro, Small and Medium Enterprises (KUMKM service) which are determined based on their performance. The cooperatives are divided into active cooperatives, passive cooperatives, and suspended cooperatives.⁷ The KUMKM Service provides an understanding of passive cooperatives, namely cooperatives that make financial reports but never hold member meetings even though they still have members.⁸ The management has an obligation to maintain the stability of the cooperative so that the cooperative is not declared suspended or passive as explained in *aquo*. If this happens, the management is personally responsible for the losses arising from this action.

Cooperatives as legal entities also have the ability to be responsible just like the legal subjects of individuals. If we are concerned about the Cooperative Law, it does not specifically regulate how a cooperative is responsible for actions carried out by and for the cooperative. Cooperative

⁶ Imas Damayanti, "Government Proposes to Suspend Inactive Cooperatives in Regions, *Republika*," *Republika*, last modified 2019, accessed March 25 2020, <https://republika.co.id/berita/puvtf9383/gov-udara-bekukan-koperasi-tak-active-in-region>.

⁷ Widiastuti, "Legal Problems of Passive and Frozen Legal Entity Cooperatives," *Journal of Legal Discourse*, Volume VIII No. 2 (2008), 45.

⁸ *Ibid*

Law focuses more on the accountability of the trustee and receiver for legal actions that cause losses to cooperatives and specifically to cooperative members. From a criminal law perspective, ⁹If the concept of corporate criminal liability is drawn from a civil law perspective, it will be in contact with unlawful acts as regulated in Article 1365 of the Civil Code. A cooperative as a legal entity can of course be a party brought in a case involving an unlawful act in court if the plaintiff feels that the cooperative has done things that fulfill the elements of Article 1365 of the Civil Code of *aquo* . Thus, all legal actions carried out by the cooperative are not always limited to the responsibility of the cooperative, but the management can also be drawn as the party responsible for the cooperative's losses, in this case , the members of the cooperative.

Based on the description above, the researcher is interested in conducting research in the form of a theoretical study of the concept of managing cooperatives by third parties and the legal consequences based on the Cooperative Law. Furthermore, the researcher formulates research questions, namely what are the legal consequences if the management of the cooperative hands over the management of cooperative to a third party outside the cooperative.

Method

This research is juridical-normative in nature. A juridical approach is used to analyze various laws and regulations related to cooperatives. This research uses normative studies whose data sources include research on legal systematics, levels of legal synchronization, and legal comparisons. The approach used in this legal research is the statute approach and the conceptual approach. ¹⁰Thus, the researcher can obtain accurate information and data on various issues related to this legal research. The statute approach is carried out by examining all laws and regulations related to cooperatives and the accountability of third parties outside cooperatives. The conceptual approach is carried out by departing from the views and doctrines that have developed in the science of law to find ideas that arise on relevant legal understandings, concepts, and principles as a basis for building legal arguments in solving the formulated problems that researchers discuss .¹¹

This research uses library research to search for secondary data. Library research is a data collection technique that originates from legal materials related to the problem being studied. This study uses secondary

⁹ *Supreme Court Regulation Number 13 of 2016 concerning How to Handle Criminal Cases by Corporations* (Supreme Court, Indonesia, 2016).

¹⁰ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Prenadamedia Group, 2005),133.

¹¹ *Ibid.*

data obtained through research by studying and reviewing books, journals, results of previous studies and/or research, articles, and laws and regulations related to the problem. The legal materials that will be used in this research include primary legal materials and secondary legal materials.

Library research is carried out by collecting materials in the form of literature consisting of books, theses, dissertations and scientific journals that discuss cooperatives. Furthermore, the researcher looks for laws and regulations that have a relationship with cooperative law and the accountability of third parties who manage cooperatives but outside the organs of the cooperative.

Findings and Discussion

Article 3 of the Cooperative Law basically explains that the aim of cooperatives is to advance the welfare of members in particular and society in general and to contribute to building a national economic order based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The meaning of the phrase "cooperatives promote the welfare of their members in particular" is that a cooperative makes improving the welfare of its members a top priority rather than the public.¹² These objectives are still general in nature and cover broad matters. The cooperative needs to describe more operational objectives so as to make it easier for the management to manage the cooperative. Article 1 point 1 of the Cooperative Law specifies that cooperatives are business entities consisting of individuals or cooperative legal entities based on cooperative principles as well as a people's economic movement based on the principle of kinship. The definition of cooperatives in the Cooperative Law emphasizes that cooperatives are business entities, however, there is a main feature that distinguishes cooperatives from other business entities, namely the position of cooperative members as owners and users of cooperative services. This is in line with the provisions of Article 22 paragraph (1) of the Cooperative Law which stipulates that member meetings are the highest authority in cooperatives. Member meetings are part of the cooperative organizational structure along with the trustee and receiver.

The organizational apparatus tasked with managing the cooperative is the management in accordance with the provisions of Article 30 paragraph (1) letter a of the Cooperative Law. The management is a cooperative organizational device authorized to represent cooperatives inside and outside the court. The management also has the authority to take actions and efforts for the interests and benefits of the cooperative in accordance

¹² Arifin Sitio and Halomoan Tamba, *Cooperative Theory and Practice* (Jakarta: Erlangga, 2001), 19.

with its responsibilities and the decisions of the member meeting.¹³ According to the organism theory of Otto von Gierke, trustees are organs or equipment of a legal entity. Just as humans have organs, every movement or activity of a legal entity is desired or ordered by the legal entity so that the trustees are the personification of the legal entity itself.¹⁴ Article 29 paragraph (1) of the Cooperative Law explains that the management are members of the cooperative who are elected from and by the cooperative members at a member meeting. Management is the process of planning, organizing, directing, and supervising the efforts of organizational members and the use of other organizational resources in order to achieve stated organizational goals.¹⁵ Management in running a cooperative business can be assisted by managers consisting of managers and cooperative employees.¹⁶ This is regulated in Article 32 paragraph (1) of the Cooperative Law, namely that the cooperative management can appoint managers who are given the authority and power to manage the cooperative business. Furthermore, the Cooperative Law through the Elucidation of Article 32 paragraph (1) explains that in essence, the management can appoint expert management staff to manage the cooperative business in question. The use of the term "Manager" is intended to cover a broader understanding and provide an alternative for Cooperatives. The meaning of the words "given authority and power" is the delegation of authority and power possessed by the Management. In this way, the Management no longer personally exercises the authority and power that has been delegated to the Manager, and the Management's task shifts to supervising the implementation of the authority and power exercised by the Manager.

There are no derivative regulations governing the definition of cooperative managers in general. The definition of manager is only regulated in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 11/PER/M.KUKM/XII/2017 Concerning the Implementation of Savings and Loans Business Activities and Sharia Financing by Cooperatives (hereinafter referred to as Permenkop 11 of 2017). Even though these rules specifically regulate cooperatives with savings and loan business activities and Sharia financing, if a systematic interpretation is used, the definition of cooperative manager can refer to these regulations. Article 1 number 13 of the Minister of Cooperatives 11 of 2017 stipulates that cooperative managers

¹³ Abdul Kadir Muhammad, *Indonesian Company Law* (Bandung: Citra Aditya Bakti, 2010), 152.

¹⁴ Hadi Shubhan, *Bankruptcy Law, Principles, Norms and Practices in the Judiciary* (Jakarta: Kencana, 2015), 226.

¹⁵ Schochrul Rohmatul Ajija et al., *BMT Cooperative Theory, Application and Innovation* (Karanganyar: Inti Media Komunika, 2018), 44.

¹⁶ Hendrojogi, *Cooperative Principles, Theory and Practice* (Jakarta: Raja Grafindo Persada, 2012), 134.

are cooperative members and/or third parties who are appointed by the management and are given the authority to manage savings and loans and sharia financing businesses. ¹⁷Taking into account these provisions, cooperative management can appoint cooperative managers from cooperative members or from third parties by taking into account the ability of these parties to manage cooperatives in order to achieve cooperative goals, namely the welfare of cooperative members.

The Cooperative Law does not provide a definition of a third party appointed to manage a cooperative. There is no clarity regarding the intended third-party legal subject whether it only applies to people as legal subjects or legal entities who can also be appointed as cooperative managers. The elucidation of Article 32 of the Cooperative Law basically explains that trustees can appoint expert managers to manage cooperatives. To clarify this matter, it is necessary to carry out a systematic interpretation by paying attention to the provisions of Article 13 paragraph (5) of Permenkop 11 of 2017 which basically regulates that cooperative managers are required to have a competency standard certificate issued by a professional certification body that has obtained a license in accordance with the provisions of statutory regulations. Presidential Regulation Number 8 of 2012 concerning the Indonesian National Qualifications Framework in Article 1 point 7 specifies that what is meant by a work competency certificate is written evidence issued by an accredited professional certification body which certifies that a person has mastered certain work competencies in accordance with Indonesia's national work competency standards. ¹⁸Paying attention to the provisions of this article, it contains the word "someone" which means that the legal subject who can become a cooperative manager is the legal subject of a person and not a legal entity.

Article 32 paragraph (2) of the Cooperative Law regulates that the appointment of a manager by the management is submitted at a members' meeting as a form of approval. Elucidation of Article 32 paragraph (2) of the Cooperative Law explains that what needs to be sought for approval by the management at a member meeting is regarding the plan to appoint managers, while the appointment and election are determined by the management. This provision explains that the member meeting only determines whether a cooperative needs or does not need assistance from the management in its management process. Regarding who will be the manager and how to process the appointment, it is decided by the

¹⁷ *Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 11/PER/M.KUKM/XII/2017 concerning the Implementation of Sharia Savings and Loans and Financing Business Activities by Cooperatives (Republic of Indonesia, 2017)*.

¹⁸ *Presidential Regulation Number 8 of 2012 concerning the Indonesian National Qualifications Framework (Republic of Indonesia, 2012)*.

management after the members' meeting agrees. Furthermore, Article 33 of the Cooperative Law regulates that the legal relationship between cooperative management is a working relationship based on an agreement. The explanation of Article 33 of the Cooperative Law explains that the working relationship between cooperative managers and managers is subject to the provisions of general engagement law. Specifically, the form of engagement between cooperative managers and cooperative managers is regulated in Article 13 paragraph (6) of the Ministry of Cooperatives Regulation 11 of 2017 which stipulates that the agreement between managers and cooperative managers contains at least the terms of the work agreement; authority responsibility; the rights and obligations of each party; and dispute resolution. Thus, the management of the cooperative can appoint a third party outside the cooperative to manage the cooperative. Before appointing a cooperative manager, the management must meet the requirements, namely the appointment has been approved by the members. After being approved, the management appoints the cooperative manager and makes a work agreement with the cooperative manager. The management must carry out these stages if they wish to delegate the task of managing the cooperative to managers who are third parties or members of the cooperative.

The legal consequence of appointing a third party as manager to manage the cooperative is that the third party has the authority to manage the cooperative. The authority possessed by the manager comes from the authority of the management as manager of the cooperative as regulated in Article 30 of the Cooperative Law. The intended authority is that cooperative managers can represent the cooperative inside and outside the court and take actions and efforts for the interests and benefits of the cooperative. Specifically, what authority can be exercised by the cooperative manager is regulated in the work agreement between the cooperative manager and the cooperative management. Even though the management of the cooperative has been transferred to the cooperative manager, The Cooperative Law through Article 32 paragraph (4) still provides limitations regarding the responsibility of management, namely that the management remains responsible for all cooperative management activities, including those managed by the cooperative manager at member meetings or extraordinary member meetings. Thus, the appointment of a manager does not eliminate the responsibility of the cooperative management.

The responsibility of cooperative management is regulated in Article 34 of the Cooperative Law which emphasizes the position of management in terms of personal responsibility when carrying out actions that can cause harm to cooperatives. It is not clearly determined what kind of losses are the responsibility of the cooperative management. The article explains that in general as long as the board of directors causes a legal action that is

detrimental either intentionally or negatively, then the board is personally responsible. Article 32 paragraphs (3) and (4) of the Cooperative Law stipulates that the manager is responsible for the management, however managing the business by the manager does not reduce the responsibility of the management. The provisions of this article explain that the management's legal actions with all their legal consequences are the management's legal actions. Even though the management and trustee are bound by a work agreement, this does not place any restrictions on the management because the management of the cooperative as a whole is the responsibility of the cooperative management and they are accountable for this at member meetings or extraordinary members meetings in accordance with the provisions of Article 31 of the Cooperative Law.

The provisions of Article 31 of the Cooperative Law can be interpreted that all actions of cooperative managers are the responsibility of the management and the transfer of management responsibility to cooperatives is determined at a member meeting. If the member meeting approves legal action taken by the management through the cooperative manager even though the cooperative suffers a loss, then all legal consequences carried out by the manager will shift from the management to become the responsibility of the cooperative. If accountability is denied, then it can be interpreted that the management will bear personally for the legal actions taken.

The provisions of the Cooperative Law in substance apply the same principle of responsibility of the management as the principle of responsibility of the directors in Law number 40 of 2007 concerning Limited Liability Companies (UU PT). The intended principle of responsibility is the principle of indoor management rule. The principle of the indoor management rule explains that outsiders with good intentions are not burdened with responsibility for the internal legitimacy of parties representing the company, but on the contrary, the authorities in the company are responsible for the legitimacy of their actions.¹⁹ Another form of responsibility that is also applied in the Cooperative Law is the principle of fiduciary duty. The fiduciary duty of a trustee is a duty that is legally issued from a fiduciary relationship between the trustee and the cooperative he leads so cooperative trustees must have concern and ability, good faith, loyalty, and honesty towards the cooperative. The fiduciary duty of a cooperative trustee is stated in Article 30 paragraph (2) of the Cooperative Law. These provisions stipulate that the management is authorized to take actions and efforts for the interests and benefits of the Cooperative in accordance with their responsibilities and the decisions of the meeting of members.

¹⁹ Sutan Remi Sjahdeni, *History, Principles and Theory of Bankruptcy Law* (Jakarta: Kencana, 2016), 573.

Conclusion

The Cooperative Law through Article 32 paragraph (1) gives cooperative management the right to appoint managers who are given the authority and power to manage power. The management of the cooperative can responsibly determine based on their considerations who will be appointed as the manager of the cooperative which can come from members of the cooperative or third parties outside the cooperative. The legal consequence of appointing a third party as manager to manage the cooperative is that the third party has the authority to manage the cooperative. Specifically, what authority can be exercised by the cooperative manager is regulated in the work agreement between the cooperative manager and the cooperative management. Although the management of the cooperative has shifted to the management of the cooperative, The Cooperative Law through Article 32 paragraph (4) still provides limitations regarding the responsibility of management, that the management remains responsible for all cooperative management activities, including those managed by the cooperative manager at member meetings or extraordinary member meetings. In appointing a cooperative manager, the management must also fulfill the formal requirements specified in the Cooperative Law in the form of approval from a member meeting and making an agreement in the form of a work agreement between the trustee and receiver who come from members of the cooperative or third parties outside the cooperative.

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DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

Write if there is a source of funding

ACKNOWLEDGMENT

The authors thank the anonymous reviewers of this article for their valuable comments and highlights.

HISTORY OF ARTICLE

Submitted : September 26, 2023
Revised : October 13, 2023
Accepted : November 29, 2032
Published : December 1, 2023