

1 A Study in Sumbawa Regency Dissolution of Cooperatives According to the Indonesian Legal System

by Turnitin Pak Muhaimin Pak Muhaimin

Submission date: 30-Sep-2020 09:00AM (UTC+0700)

Submission ID: 1400889104

File name: on_of_Cooperatives_According_to_the_Indonesian_Legal_System.pdf (576.59K)

Word count: 3726

Character count: 20514



A Study in Sumbawa Regency: Dissolution of Cooperatives According to the Indonesian Legal System

Nanda Junardi; Salim H. Sidik; Muhaimin

Graduate Program Student in Notary, Faculty of Law, Mataram University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v6i3.769>

Abstract

Based on the basic foundation of cooperatives, many cooperatives have sociologically been formed or established in Indonesia. Based on the data, the number of cooperatives that have been formed in Indonesia is 21,135 cooperatives. Moreover, the number of cooperatives in West Nusa Tenggara is 4,049 cooperatives consisting of cooperatives that are still active as many as 2,385 cooperatives and those that are inactive as many as 1,664 cooperatives. Meanwhile, the number of cooperatives in Sumbawa Regency is 394 cooperatives which include cooperatives that are still active as many as 209 cooperatives and those that are inactive as many as 185 cooperatives. This study aims to analyze and determine the dissolution factors of cooperatives in Sumbawa Regency. The results of this normative-empirical study showed that the dissolution factors of cooperatives in Sumbawa Regency were due to 3 (three) reasons: they did not hold a member meeting for 2 (two) consecutive years, members of cooperatives that made loans did not make payments so cooperatives cannot operate properly, and lack coordination between the cooperative members. The procedure for dissolving cooperatives based on Law No. 25 of 1992 is decided based on the decision of member meetings or government decisions. The decision to dissolve a cooperative by the government is carried out if there is evidence that a cooperative does not fulfill the provisions of Law No. 25 of 1992 in which its activities are contrary to public order and/ or morality and its survival is no longer expected.

Keywords: Cooperative; Law; Indonesia

Introduction

National development aims to create a just and prosperous society that is materially and spiritually equitable based on the Pancasila and the 1945 Constitution of the Republic of Indonesia in the context of the Unitary State of the Republic of Indonesia that is free, united, sovereign, just and prosperous. Therefore, development is carried out in all fields of life in stages which cover the political, legal, economic and social aspects (Burdaturun, 2016).

In an effort to maintain and enhance sustainable national development, the development actors, governments or communities and individuals or legal entities, must work hand in hand to advance the Indonesian economy. Based on laws and regulations, the 1945 Constitution of the Republic of Indonesia Article 33 states as follows: a. the economy is regulated as a joint venture based on the principle of kinship, b. production branches that are important to the State and which control the livelihood of many

people are controlled by the State, c. earth, water, and natural resources contained therein are controlled by the State and are used for the greatest prosperity of the people, and d. the national economy is organized based on economic democracy with the principle of togetherness, efficiency, justice, sustainability, environmental insight, and independence by maintaining balance, progress and national economic unity.¹

Based on Article 33 specifically paragraph one (1), it appears that the cooperative business entity is the most appropriate or in accordance with the composition of the Indonesian economy (Kurniawan, 2014). Regarding its development history in Indonesia, the form of cooperative cooperation leads to two estuaries which include social cooperation and economic cooperation. Social cooperation in Indonesia is as old as our State civilization which is part of customs in the form of mutual cooperation activities in the community.

After the stipulation of Law No. 25 of 1992 concerning cooperatives, the establishment of cooperative institutions greatly increased. It appears that the philosophical foundation of the establishment of cooperatives has been determined in the consideration of Law No. 25 of 1992 concerning Cooperatives. The consideration states that: a. cooperatives, as a people's economic movement or as a business entity, play a role in realizing an advanced, just and prosperous society based on Pancasila and the 1945 Constitution in the national economic order which is structured as a joint effort based on the principle of family and economic democracy, b. cooperatives need to develop itself more and be strong and independent based on cooperative principles so it can be the role models for the national economy, and c. cooperative development is the duty and responsibility of the government and all the people of Indonesia (Salim, 2018).

Since cooperatives are legal entities based on Article 9 of Law No. 25 of 1992 concerning Cooperatives, cooperatives obtain status as legal entities after the establishment deed was approved by the government. To get legality as a legal entity, it must be ratified by a deed official i.e. notary based on 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 the notary as a cooperative deed official. It aims to improve the quality of legal services in the field of cooperatives, especially those relating to processes, procedures for establishment, amendments to the articles of association and other deeds related to cooperative activities. Therefore, it requires an effort to ensure legal certainty for the cooperative deeds through the use of authentic deed.²

Based on the basic foundation of cooperatives, many cooperatives have sociologically been formed or established in Indonesia. Based on the data, the number of cooperatives that have been formed in Indonesia is 21,135 cooperatives. These cooperatives are divided into two types consisting of cooperatives which are still active as many as 150,223 cooperatives and those that are inactive as many as 61,912 cooperatives. Moreover, the number of cooperatives in West Nusa Tenggara is 4,049 cooperatives consisting of cooperatives that are still active as many as 2,385 cooperatives and those that are inactive as many as 1,664 cooperatives. Meanwhile, the number of cooperatives in Sumbawa Regency is 394 cooperatives which include cooperatives that are still active as many as 209 cooperatives and those that are inactive as many as 185 cooperatives. From these inactive cooperatives, the Sumbawa Regency Government dissolved 100 cooperatives based on the Decree of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia No. 153 of 2018 concerning the Dissolution of Cooperatives (Salim, 2018).

Based on the above description, the focus of this research focuses more on the factors of dissolution of cooperatives in Sumbawa Regency and the legal consequences of dissolving cooperatives against its members in Sumbawa Regency. Furthermore, the research design used in this study is normative-empirical research using a statute approach, conceptual approach and sociological approach. In

¹ See Article 33 Paragraph (1-4) of the 1945 Constitution of the Republic of Indonesia

² Decree of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 98/Kep/M.KUKM/IX/2004 concerning Notary as a Cooperative Deed Official

1 addition, the legal materials used in this study are primary legal materials, secondary legal materials and tertiary legal materials.

Factors of Dissolution of Cooperatives in Sumbawa Regency

The factors of dissolution of cooperatives in Sumbawa Regency are due to the lack of management's dedication to the survival of the cooperative. It means that the personality and mentality of the management, supervisors, and managers are not cooperative in spirit so that it must be improved again. In developing countries, cooperatives are very much needed to build institutions that can become partners of the state in driving development to achieve community welfare. However, in reality that happened in Indonesia, which is a developing country, cooperatives face obstacles to develop which are caused by several factors; internal and external factors. Internal factors usually occur in the management or membership itself and the capital, while external factors come from competitors and the community's assumptions about cooperatives. The factors that cause cooperatives face difficulties to develop are as follows:

1. Lack of Human Resources (Managers)

Human resources, in this case, are all cooperative managers. They often or even tend to be community leaders who carry out multiple positions; for instance, the Chair of the Neighborhood Unit or the like. So, they do not focus only on cooperative matters. In fact, we often find cooperative managers who are old so that their movement capacity is limited and they do not understand the development of the era. Briefing about the cooperative is indispensable to younger generations through education on cooperatives so that they can participate in it. Participation is an important factor to support the development of cooperatives.

2. Capital Limitation

Regarding capital issues, the most involved party is the government. In this case, the government is the party that has substantial capital. Through the provision of capital, cooperatives can expand their business so that they can survive and develop. In addition to the government, the community is an equally important party in which people who have more funds can save their money in cooperatives, which can later be used for cooperative capital.

3. Competitor

Competitor is a factor that we cannot avoid; however, we must know how to react to it. If we are not sensitive to the environment (competitors), we will soon be eliminated. If we know how to react, cooperatives will progress and develop. In responding to competitors, we must have special tricks. We can apply those tricks or steps to the price of goods or services, the credit system, and the maximum service.

4. Cultural Issues

Since the persistence and discipline of the Indonesian people far from expectations, cooperatives will be difficult to develop even to advance. For this reason, the determination of the cooperative management must go through a good process so that later during the cooperative journey, there will be no members who receive salaries without going to work. In addition, training or guidance should be carried out or given to all managers and members so that they are aware that this is a cooperative where they must be willing to work for the progress of the cooperative.

5. Technology

Until now, cooperatives still do not use technology in carrying out daily activities including bookkeeping, financial, administrative and other activities. Thus, it is impossible for the cooperative to advance because they do not have the facilities and infrastructure that support these activities. For this reason, cooperatives should begin to pay attention to technology to produce data and information to its members.³

The factor that caused the dissolution of the cooperative in Sumbawa Regency was the lack of understanding of the community itself, especially the community in Sumbawa Regency about cooperatives so that the cooperative could not carry out its business as it should. It was also caused by a lack of government attention to the business continuity of cooperatives and a lack of guidance for cooperatives that had just run their businesses. Meanwhile, Law No. 25 of 1992 concerning Cooperatives contained in Articles 60-64 explains that cooperatives that have just run their businesses get guidance from the government on how to run a business.

6. Causes of Cooperative Dissolution in Sumbawa Regency

Based on data from 2018, the Sumbawa Cooperative Office has dissolved 100 cooperatives. The reason of Sumbawa government to conduct dissolution to those cooperatives was to carry out the mandate of Law No. 25 of 1992 and the Decree of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia No. 153 of 2018 concerning the Dissolution of Cooperatives. After the stipulation of the Minister of Cooperatives' Decree, the Cooperative Office had to dissolve 100 cooperatives but they did not immediately dissolve the cooperative for no reason. A cooperative is dissolved if it runs a business outside the provisions of Law No. 25 of 1992, does not carry out provisions in the Cooperative's Articles of Association, runs activities that are contrary to public order, does not run annual meetings, does not pay taxes, and does not conduct business activities during two consecutive years starting from the date of ratification of the deed of establishment.⁴

Lack of Community Understanding on Cooperatives

After conducting research, the data analysis was carried out to obtain and describe the actual condition or situation in accordance with the data obtained regarding the dissolution of cooperatives in Sumbawa Regency. Based on the research results and discussion, we can draw conclusions about people's perceptions of the dissolution of cooperatives in which the categories tend to be negative. From the 21 respondents who had been interviewed, there were 17 respondents who said that the government's attention is very little for cooperatives that have been established. The government tends to let go of the existing cooperatives. Meanwhile, based on Law No. 25 of 1992, Article 60 to Article 64 states that there is guidance from the government which of course aims to maintain the survival of a cooperative. So, based on the data that has been obtained, the government gives less attention to cooperatives in Sumbawa Regency.

Liquidation of Cooperative Dissolution Problems in Sumbawa Regency

After the decision to dissolve the cooperative is issued, the liquidation of the dissolution is immediately carried out. The liquidation is regulated in Articles 51-55 of Law No. 25 of 1992. Liquidation is carried out to protect the interests of creditors and members of cooperatives. This liquidation is carried out by the liquidator. For liquidation based on the decision of the member meeting, the liquidator is appointed by the member meeting. For liquidation based on government decision, the liquidator is referred to by the government. During the liquidation process, the cooperative still exists as

³ Henra Eka Suparman, <https://blogspot.com>, Problems in Cooperatives (accessed on 29 April 2019)

⁴ Results of Interview with Mr. Muslihadian, Head of Institutional and Monitoring Section on March 19, 2019

“cooperative in liquidation”.⁵ This provision confirms that rights and obligations still exist to complete all of their affairs.⁵ The liquidation will be carried out immediately after the decision on the dissolution of the cooperative has been issued by a decision of member meeting and government. Liquidators are responsible to the attorney of member meeting and to the government; in this case the liquidation is indicated by the government. Based on the provisions of Article 54 Law No. 25 of 1992 the liquidator has the following rights, authority and obligations:⁶

1. Conduct all legal actions for and on behalf of cooperatives in a liquidation.
2. Gather all necessary information.
3. Call certain management, members and former members individually or collectively.
4. Obtain, examine and use all cooperative records and archives.
5. Establish and carry out all payment obligations that take precedence over other debt payments.
6. Use the remaining assets of the cooperative to liquidate the remaining obligations of the cooperative.
7. Share the remaining proceeds of liquidation with members.
8. Make a liquidation report.

Procedure for Implementation of Dissolution

a. Dissolution by the Government

Firstly, the Office of Cooperatives and Small and Medium Enterprises of Sumbawa Regency conducts a research. After the research was carried out, the Office of Cooperatives and Small and Medium Enterprises Service sends a notice to the management. If there is no objection, the Office of Cooperatives immediately issues a dissolution decision and then forms a liquidation team. The liquidation team then notifies the creditor regarding the dissolution and billing of a maximum of 3 (three) months. The liquidation team make the dissolution report. The announcement of cooperative dissolution is carried out by the Minister of Cooperatives in the State Gazette of the Republic of Indonesia. If there are members who object it, then a review is carried out whether the objection letter can be accepted or not for a period of 15 days to one month.

A decree to dissolve a cooperative accompanied by the appointment of a liquidation committee will be sent to people who will act as cooperative liquidators. In carrying out their duties, the liquidation committee must act on the following considerations:

- a. Evidences available at the cooperative will be dissolved.
- b. Provisions that will be stipulated in the cooperative's articles of association.
- c. Decisions that apply in relation to dissolution.

In carrying out their duties, the liquidation committee has the following rights and obligations:⁷

- a. Conduct all legal actions for and on behalf of cooperatives in a liquidation.
- b. Gather all necessary information that is closely related to the liquidation of cooperatives.

⁵ <https://chaeossofis.blogspot.com>. Cooperative Dissolution and Liquidation, (accessed on April 30, 2019)

⁶ See Article 55 of Law No. 25 of 1992 concerning Cooperatives.

⁷ See Article 11 of Government Regulation No. 17 of 1994 concerning Dissolution of Cooperatives by the Government.

- c. Call members and former members which is related to responsibilities individually or collectively.
- d. Obtain, examine and use all cooperative records and archives.
- e. Establish and carry out all payment obligations that take precedence over other debt payments.
- f. Use the remaining assets of the cooperative to liquidate the remaining obligations of the cooperative.
- g. Make a liquidation report.

b. Dissolution by Member Meeting

Member meeting, as the highest authority holder, can dissolve the cooperative. If a member meeting has decided to dissolve the cooperative, the management of the cooperative or the attorney of the member meeting notifies the decision to dissolve the cooperative in a written form. Then, the management of the cooperative or the attorney of the member meeting notifies in a written form about the decision regarding the dissolution of the cooperative to all creditors and the government within a maximum period of 14 (fourteen) days from the date of the decision to dissolution member meeting. If the reason for the dissolution is accepted by the government, the dissolution will be announced in the State Gazette of the Republic of Indonesia. Since the date of the announcement of dissolution in the State Gazette of the Republic of Indonesia, the status of the legal entity of the cooperative concerned is deleted.⁸ The member meeting must dissolve the cooperative in the following order: first, deciding to dissolve and second, appointing the liquidation team.

Conclusion

1. The factors of dissolution of cooperatives in Sumbawa Regency include the lack of dedication of the management to the survival of the cooperative as well as the influence of internal and external factors; in this case, internal problems occur in the management or membership and external problems come from competitors and the community's assumptions about the cooperative which all cause cooperatives to be difficult to develop. The lack of understanding of the people in Sumbawa Regency about cooperatives and the lack of attention of the Sumbawa Cooperative Office to the cooperatives that have been formed, resulted in the many cooperatives being dissolved.

Regarding the liquidation of the dissolution of the cooperative in Sumbawa Regency, after the decision on the dissolution of the cooperative was issued, the completion of the dissolution was immediately carried out, which was subsequently called a liquidation. The liquidation is regulated in Articles 51-55 of Law No. 25 of 1992. Liquidation is carried out to protect the interests of creditors and members of cooperatives. This liquidation is carried out by the liquidator. For liquidation based on the decision of the member meeting, the liquidator is appointed by the member meeting. For liquidation based on government decision, the liquidator is referred to by the government. Liquidation can also be pursued through litigation (problem solving through court) and non-litigation (problem solving through off-court) in the form of negotiation, mediation and counseling.

⁸ Rita Rti Yusnita, Dissolution of Cooperatives, Source: Ppt Download Slide player, on August 10, 2011

1

References**Books**

Burdatun, B. (2016). *Law Enforcement of the Transfer of Land Function into Non-Agricultural Land in Mataram City*, Thesis, Graduate Program in Notary, Mataram University.

Kurniawan. (2014). *Company Law, (Characteristics of Legal Entities and Non-Legal Entities in Indonesia)*, Genta Publishing.

Salim, H.S. (2018). Paper on the Role of Notary for Cooperative Deed Official and Cooperative Establishment, Seminar on the Role of Notary for Cooperative Deed Official.

Legislation

1945 Constitution of the Republic of Indonesia.

Law of the Republic of Indonesia No. 25 of 1992 concerning Cooperatives, State Gazette of the Republic of Indonesia of 1992 no. 116, Supplement to the State Gazette of the Republic of Indonesia No. 3502.

Government Regulation No. 17 of 1994 concerning Dissolution of Cooperatives by the Government, Release Sheet of the State Secretariat in 1994.

Decree of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 98/Kep/M.KUKM/IX/2004 concerning Notary as a Cooperative Deed Official.

Internet

Henra Eka Suparman, <https://blogspot.com>, Problems in Cooperatives (accessed on 29 April 2019).

<https://chaeossofis.blogspot.com>. Cooperative Dissolution and Liquidation, (accessed on April 30, 2019).

Rita Rti Yusnita, Dissolution of Cooperatives, Source: Ppt Download Slide player, on August 10, 2011.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).

1

1 A Study in Sumbawa Regency Dissolution of Cooperatives According to the Indonesian Legal System

ORIGINALITY REPORT

99%

SIMILARITY INDEX

99%

INTERNET SOURCES

0%

PUBLICATIONS

0%

STUDENT PAPERS

PRIMARY SOURCES

1

ijmmu.com

Internet Source

99%

Exclude quotes On

Exclude matches < 10%

Exclude bibliography On