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CONVERSION OF CONVENTIONAL COOPERATIVES INTO SHARIA COOPERATIVES (STUDY IN WEST LOMBOK REGENCY)

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Abstract: *The purpose of this research is to know and analyse the form of arrangement and procedure of conventional cooperative conversion into sharia cooperative and constraint in conversion of conventional cooperative become sharia cooperative in West Lombok regency. This type of research is a normative-empirical legal research. Data analysis used is Descriptive Analysis, Systematic Analysis.*

The result of research of conventional cooperative conversion and conversion procedure become sharia cooperative that conventional general cooperative wishing to change its business activity become cooperative based on sharia principle must fulfil provisions contained in Regulation of Minister of Cooperatives And Small And Medium Enterprises of Republic Indonesia Number 16/Per/M. Kukm/IX/2015 on the Implementation of Savings and Loans and Sharia Financing Activities by Cooperatives, with the approval of member meetings conducted through amendments to the articles of association; The conventional co-operative conversion procedure into a sharia cooperative namely; Meeting members of cooperatives and made the minutes of the meeting of members of the conventional budget change from conventional to sharia, Making certificate of amendment of the articles of association, Submitting online approval to the Ministry of cooperatives through SISMINBHKOP, Submitting change of business license from conventional to sharia. While the constraints in converting conventional cooperatives into sharia cooperatives in the district of West Lombok are juridical and non-juridical obstacles, these juridical constraints include the rule of law (law). While the constraints non juridical is a facility or facility that supports, social community, and culture it.

Keywords: *conventional cooperative, sharia cooperative, conversion*

I. INTRODUCTION

As a celestial religion, Islam combines the esoteric dimensions *(aqidah)* on the one hand, and the exoteric dimension (sharia) on the other side. The exoteric dimension of Islamic teachings contains the most fundamental teachings concerning the system of faith and belief in Allah SWT, as the creator of the universe and *arkan al-iman* other. On the practical level, Islam

has a balance point between *esoterism-aqid* and *exoterism- sharia*.[1] This aspect is the operational lines of religious teachings, whether concerning human relations with God, human relationships, and relationships with nature and the environment.

The world of economics in Islam is business or investment. This can be observed from explicit signs of investment (business invitation in Al-Qur'an and As-Sunnah) to the implicit signs that create systems in the investment climate (the system of zakat as a disincentive tool for the accumulation of wealth, the prohibition of usury to encourage investment optimization, as well as the prohibition of gambling to encourage productivity for every investment.[2]

Cooperative in terms of concept is a business entity consisting of a person or a legal entity cooperative with the basis of its activities based on the principle of Cooperatives as well as a people's economic movement based on the principle of kinship.[3] Cooperative aspect in this concept aims to advance the level of member economics in particular and society in general by using conventional system.

Establishment of cooperatives with the principles of sharia is one part of human desire to be able to live in the world by living the command of religion. The desire to think about the world and God encourages people to believe and do well to others. Recognition of the relation of value (religion) and economy is not only Islamic claims but also conventional economics.

The ideological consideration of cooperative members in the regency of West Lombok, who are predominantly Muslim, to convert cooperative efforts from the interest system to a profit-sharing system is to avoid consuming usury. Islam is forbidden usury but still debating the position of interest with profit sharing. In order not to remain in doubt then opened the cooperative Sharia's in general, both in the sale and purchase and borrow. The practice of usury has the following pattern;

First, a person sells goods to the buyer based on a price agreement and a certain grace period. If within that time period the buyer cannot pay, then the seller will raise the price of the item. Second, a creditor lends money to the debtor on the terms of time and the debtor is required to pay more than the principal amount of the debt.

This is what makes the conventional cooperative convert to sharia cooperative. Religious behavior, which concerns the economy, must be done with mathematical considerations, economic, rational. Nevertheless, the rational nature of the economy should not defeat the religiosity of being concerned only with economic targets. Although normatively there is no legal basis that explicitly regulates the existence of sharia cooperatives in Indonesia. However, in practice in the field has established a sharia-based cooperative, as a form in meeting the needs of society in socializing.

The things that want to be analyzed in this paper are: How to arrangement and procedure of conventional cooperative conversion become sharia cooperative; and Conversion Constraints of conventional cooperatives into sharia cooperatives in West Lombok regency.

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[1] Muhammad Harifin Zuhdi, *Muqaranah Mazahib Fil Mu'amalah,* Sanabil, Perum Bunga Amanah Sayang-Sayang Mataram, 2015, p. 1.
[2] Ascarya, *Akad dan Produk Bank Syariah,* Rajawali Pers, Jakarta, 2011, p. 1
[3] Article 1 of Act Number 25 of 1992 concerning Cooperatives

II. LITERATUR RIVIEW

2.1 Theory

2.1.1 The Theory of Legal Certainty

Certainty in understanding has the meaning of a provision, or provision, whereas if the word certainty is combined with the word law becomes legal certainty, which has a meaning as a provision or legal provision of a country that is able to guarantee the rights and obligations of every citizen. Normatively a legal certainty is when a rule is created and enacted as it is clearly defined and logical. Clearly, in the sense that there is no doubt (logic) and logical does not cause a clash and hazard of norms in the norm system with each other or a rule has not been made.

Besides, it is mentioned that certainty has meaning in the concrete case of the two parties to dispute to determine their position. In this sense the legal security means that it provides protection for both parties to the dispute over the arbitrary act of the judge. While the certainty because of the law is meant, that the law ensures certainty on one side with another party.[4]

Legal certainty is an indispensable feature of law, especially for written legal norms. The law without a certainty value will lose meaning because it can no longer be a code of conduct for all people, *incertrum juice, ibi jus nullum* (where there is no legal certainty, there is no law).[5]

2.1.2 Theory of Contract

The theory of contract or also called the contract theory (English), or contract theories (Dutch) has a very important meaning in the life of society, nation and state. This is because this theory analyzes the legal relationship between one legal subject and another.[6]

According to Salim HS, The Contract Theory is:[7]

> "A theory that examines and analyzes relationships or agreements made between legal subjects to one another, where one subject of law is obliged to do something, while the other is entitled to something."

From the above understanding that the object of study of contract theory is, first, the legal relations of the parties, namely the related or related circumstances or ties related to the law. Which, in turn, gives rise to the legal consequences of raising rights and obligations? Second, the subject of law, namely the supporters of rights and obligations. Right is conceptualized as the authority or power of the parties to do something, do something or do nothing because it has been determined in the legislation, while the obligation is conceptualized as something that must be implemented by the parties.

2.1.3 Theory of Legal Effectiveness

Theory of legal effectiveness comes from the English translation, the effectiveness of the legal theory; the Dutch language is called *effectiviteit van de jurisdiche theorie*, the German language, *wirksamkeit der rechtlichen theorie*.[8]

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[4] Yeni Indrayani Oktaviana, *Perlindungan Hukum Pemegang Tanah Wakaf*, (Tesis Magister Ilmu Hukum, Universitas Mataram), 2017, p. 22.
[5] *Ibid*.
[6] H. Salim HS, *Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis*, Buku ke II, PT. Raja Grafindo Persada, Jakarta, 2014, p. 239.
[7] *Ibid*, p. 240.

Hans Kalsen presents the definition of legal effectiveness:[9]

"Do people in fact act in any way to avoid sanctions promulgated by legal norms or not, and whether they are actually enforced if conditions are met or not met".

The Concept of Legal Effectiveness by definition Han Kalsen emphasizes the subject and sanctions. Subjects that implement them are people or legal entities. Such persons shall carry out the law in accordance with the sound of legal norms. So if the legal norm is not implemented will be imposed sanctions for people who do not implement it.

2.1.4 Theory of Law Enforcement

The theory of legal action is used as a tool of analysis of the third problem relating to the constraints faced in conventional cooperative conversion into sharia cooperatives.

In the theory of lawfulness the ability to do such reasoning not only leads man to concrete explanations and breaks down in detail, but contradicts them to rise to a more philosophical explanation.[10]

The theory of legal enforcement is about to pursue up to the essential issues of the law, as Radbruch says, "the task of legal theory is to make clear the values by legal postulates to its highest philosophical foundation."[11]

2.2 Concept

2.2.1 Conversion Concepts

Understanding the conversion is the process of changing from one system to another system better. Conversion can also be interpreted as a change from one initial thing to something new.[12] The new thing here is related to conventional cooperative conversion into sharia cooperative.

2.2.2 Cooperative Concept

Sutantya Rahardja defines cooperatives as follows:[13]

"A cooperative is an economic association or organization composed of persons or bodies, which provides freedom of entry and exit as members under existing regulations; by cooperating in a familial way of running a business, with the aim of enhancing the physical welfare of its members."

2.2.3 Concept of Conventional Cooperation

Cooperatives are principally an institution in which people with relatively diverse interests come together and assemble to improve their welfare. In the implementation of its

[8] H. Salim HS & Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, PT. Raja Grafindo Persada, Jakarta, 2014, p. 302.
[9] *Ibid*.
[10] Satjipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 1991, p. 254.
[11] *Ibid* .
[12] Annisa Sekar, *Makalah Konversi Bank Konvensional Menjadi Bank Syariah*, September 14, 2016, FEBI IAIN Salatiga, p. 5.
[13] *Ibid*.

activities, cooperatives are based on values and principles as economic institutions loaded with business ethics values.

The values contained in the cooperative, such as self-help, self-relief, and cooperation can provide a powerful force for cooperatives to be able to compete with other economic actors.[14] Cooperative is a union that aims to meet the needs of the properties of its members by way of selling goods needs cheaply and does not intend to make a profit.

2.2.4 The Concept of Sharia Cooperatives

Sharia cooperatives are better known as KJKS (Sharia Financial Services Cooperative) and UJKS (Sharia Financial Services Unit). Sharia Financial Services Cooperative is a cooperative whose business activities are engaged in financing, investment, and savings in accordance with the pattern of profit sharing (sharia).

III. METHOD

This type of research is empirical normative legal research. The approach used in this research is the approach of legislation, conceptual, and sociological. Source of data/legal materials used are library data and field data. Then analyzed by descriptive method by using deductive method.

IV. RESULT AND DISCUSSION

4.1 Arrangement and Procedure of Conversion of Conventional Cooperative into Sharia Cooperative

4.1.1 Conversion Setting of Conventional Cooperatives into Sharia Cooperatives

Along with the development of cooperatives in Indonesia and NTB Government's belief in implementing sharia-based economy also has an impact on the business field of cooperatives. From these instruments, many emerging conventional cooperatives have transformed their business activities into sharia. The establishment of sharia cooperatives is certainly based on sharia principles.

Based on Article 1 of Act No. 25 of 1992 concerning Cooperatives, the meaning of Cooperatives is defined as a business entity consisting of persons or legal entities of the Cooperative, based on the principles of Cooperative as well as the people's economic movement based on the principle of kinship. In the concept of cooperative sharia has the same understanding with conventional cooperatives.

Sharia cooperatives, better known as KJKS (Sharia Financial Services Cooperative) and UJKS (Sharia Financial Services Unit), seem to be a fertile ground to grow and develop in the midst of the development of Muslim society that began to realize and require the management of sharia-based economic system and amid the lethargy of conventional cooperatives. Sharia cooperatives based on the Qur'an footstep of the letter al-Maidah Verse (2), which advocates for mutual help in goodness and forbid otherwise, contain two elements in it, namely *ta'awun* (please-help) and *shirkah* (cooperation). The suitability of the two elements is in line with the

[14] H. Zaeni Ashadie & Budi Sutrisno, *Hukum Perusahaan dan Kepailitan,* PT. Gelora Aksara Pratama, Erlangga, Mataram, 2012, p. 126.

principle of cooperative (conventional), so that Sharia cooperatives are easily accepted by the community and become an option in supporting economic activities.[15]

Conventional Cooperatives Who Want to Change Their Business Activity into a Cooperative Based on Sharia Principles must comply with the provisions contained in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 16/Per/M.Kukm/IX/2015 on the Implementation of Business Activities of Savings and Loans and Sharia Financing By Cooperative.[16]

KSP/USP Cooperative may transform its business into sharia principles with the approval of member meeting by stating that business based on sharia principles is the only cooperative business activity submitted to the Minister.

KSP/USP cooperative which has changed its business to be based on sharia principles cannot be converted back into KSP / USP Cooperative. The period of transformation process from KSP / USP Cooperative to KSPPS / USPPS Cooperative must be completed no later than 1 year after the amendment of the Articles of Association is approved by the Minister.

Concerning the change of business activities as mentioned above must be done through amendments to the articles of association of cooperatives. The amendment of the articles of association of cooperatives shall be regulated in Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 10/Per/M.Kukm/IX/2015 on Institutional Cooperatives.

The amendment of the articles of association of cooperatives shall be based on the decision of the meeting of members in accordance with the provisions stipulated in the articles of association which contain two things:[17]

a. Minutes of the meeting of members of the amendment of articles of association made and signed by the Notary; and;
b. Minutes of member meetings of amendments to the articles of association of cooperatives signed by the chairman of the meeting, secretary, one of the participants of the meeting and the Notary, attaching the attendance list of the members listed in the member list book.

Noted in the case of amendments to the articles of association of cooperatives is the amendment of the articles of association cannot be made if the cooperative is declared bankrupt according to the prevailing laws and regulations, except with the approval of the court.

4.1.2 Conventional Cooperative Conversion Procedure Becoming a Sharia Cooperative

In economic or business life, there are certain efforts that require cooperation to achieve its goals. Cooperative conversions should be initiated by a shared desire to improve prosperity jointly through business development related to member economic interests.[18]

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[15] Sofiani Triana, "*Konstruksi Norma Hukum Koperasi Syariah Dalam Kerangka Sistem Hukum Koperasi Nasional,*" *Jurnal Hukum Islam (JHI)*, Volume12,(Desember 2014): Hal 1.
[16] Article 8 Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 16/Per/M.Kukm/IX/2015 on Implementation of Business Savings and Loans and Sharia Financing by Cooperatives.
[17] Article 14 paragraph (1), Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 10/Per/M.Kukm/IX/2015 on Institutional Cooperatives
[18] Burhanuddin S, Koperasi Syariah dan Pengaturannya Di Indonesia, UIN-Maliki Press, Malang, 2013, p. 37.

Normatively the subject matter of the amendment of the articles of association can be related to several matters according to the interests and needs of the members. There are 2 types of cooperative budget changes that are:

a. Changes in the articles of association relating to changes in business, merger, and division of cooperatives shall be authorized by the authorized Official.
b. Changes in the articles of association which are not related to changes in the business field, merger, and distribution of cooperatives are sufficiently reported in writing to the authorized Officer.

Mechanism of procedure of basic budget changes related to cooperative business field. The application for ratification of the amendment of the articles of association relating to changes in the business of the cooperative shall be approved by the authorized official delivered by the Notary. Changes in the field of cooperative business as mentioned, including changes in the pattern of service from conventional to the pattern of service based on the principles of sharia economy. Cooperative can only apply 1 (one) type of service pattern that is conventional or service pattern based on sharia economic principles.

The conventional co-operative conversion procedures into sharia cooperatives are:

1) Meeting of special Members of change, Cooperative can only apply 1 (one) type of service pattern that is conventional or service pattern based on sharia economic principles. Cooperative can only apply 1 (one) type of service pattern that is conventional or service pattern based on sharia economic principles.
2) Submission of application for approval of amendment to the articles of association submitted by Notary by enclosing:
   a) 2 (two) copies of the amended Articles of Association of the Cooperative, sufficiently stamped;
   b) Minutes of Meeting, or copies of declarations of stamp duty meeting signed by the chair of the meeting and known to the Notary;
   c) Minutes of the amendment of the articles of association;
   d) The deeds of amendment of the articles of incorporation made authentic by the Notary;
   e) A photocopy of the original deed of establishment and articles of association already legalized by a Notary;
   f) Attendance list of members of the amendment to the articles of association of the cooperative; and
   g) Taxpayer Identification Number (NPWP) including group of business field (KLU).
3) Acceptance and research of application

   If the application is complete and correct then the receipt is given, and the file is processed at the latest 1 Month, but if the file is incomplete and not correct, the application is returned for repair.
4) Enactment of amendment to the articles of association of cooperatives

   Officials authorized to approve the amendment of the articles of association shall undertake a review of the articles of amendment to the articles of association concerning the Material of the amendment of the articles of association of cooperatives shall not be contradictory to the Law on Cooperatives and its implementing regulations. The official who authorizes the change of basic budget in this case is the Governor if the type of cooperative

business within the scope of a single province, and the Regent / Mayor within the scope of the city districts.

Furthermore salenka explain about conventional cooperative conversion procedure become sharia cooperative is:[19]

1) Meetings of members of cooperatives and made the minutes of the meeting of members of the conventional budget change from conventional to sharia.
2) Making the deed of amendment to the articles of association.
3) Apply online approval to the Ministry of Cooperatives through SISMINBHKOP.
4) Submit a change of business license from conventional to sharia.

4.2 Conversion Constraints Conventional Cooperation Becomes a Sharia Cooperative in West Lombok Regency

4.2.1 The Juridical Factor

a. Rules of Law (Law)

The inhibition of the members of the cooperative in terms of changing the articles of association relating to the conversion of conventional cooperatives into sharia cooperatives in West Lombok is also caused by legal factors, namely the absence of a set of rules that explicitly made the foundation in terms of the process of establishment, approval, guidance and supervision or alteration cooperative basic budget.

Until now the rule of law which regulates the Sharia cooperative either in terms of changes in the articles of association, conventional cooperatives into sharia cooperatives associated with the ratification of guidance and supervision that currently refers to various laws and regulations, and only at the level of Ministerial Regulation and Ministerial Decree . Therefore it normatively raises legal problems that can lead to legal uncertainty *(rechtsonzekerheid)* for members of the cooperative. As described by Gustav Radbruch about legal certainty that is, certainty by law, and certainty in or from law. Ensure certainty because the law becomes the duty of the law. Successful law ensures a lot of certainty in community relations is a useful law. While the certainty in or from the law is reached if the law is as much as the law of the Law, in the Act there is no conflicting provision (Act) based on logical and definite system).

In this case the certainty in question is the certainty of members of cooperatives, especially West Lombok regency who want to convert cooperatives so that the demands of members of cooperatives and / or communities who want or want to convert their business from conventional to sharia system or establish directly cooperative with the system of love.

b. Law Enforcement Officials

As explained by Seoerjono Soekanto, the meaning of law enforcement will be limited to those directly involved in the field of law which includes not only law enforcement, but also peace maintenance. It should be assumed that the group includes those in charge of judicial, prosecutorial, police, lawyers and social offices. Law enforcement officers to be discussed by the

[19] Salenka dalam Training Seminar and debriefing of notary candidates of cooperative deed on 5 May 2018.

authors in this study are the Officials, the Office of cooperatives or staff employees as organizers in the conventional co-operative conversion process into Sharia cooperatives.

Further H. Husein explained Constraints faced In conventional co-operative conversion processing into sharia cooperatives in West Lombok regency, the regulation of shifts from the Head of Cooperative and Small Business Office of West Lombok Regency resulted in the inhibition of the law's own effectiveness, which had an impact on implementation of its performance results.[20]

On the other hand, the change of political regulations on the leadership of the Department of Cooperatives and SMEs West Lombok district. This has led to the ineffectiveness of the process of implementing such cooperative conversions, especially in the filing of applications, often the file that has been filed becomes liable as a result of a change of leadership. Moreover, the understanding of the law enforcement officers is less about conventional cooperative conversion into sharia cooperatives. As is the case in West Lombok District which previously the leader of the Office of Cooperatives and SMEs ie Muslims but changed to no Muslim, so in terms of understanding of conventional cooperative conversion into sharia relatively less.

4.2.2 Factor Non Juridical

a. Facilities or facilities

As already described facilities or facilities are very influential in law enforcement process. Without adequate facilities or facilities then the law enforcement process will not work properly. In this case, according to Soerjono Soekanto, the facilities or facilities include educated and skilled manpower, good organization, adequate equipment, adequate finance, and adequate management. So that if these demands cannot be done then it will affect the achievement of the effectiveness of the law itself.

b. Social society

The social factors of society also influence the conversion efforts of conventional-based cooperatives into Sharia-based cooperatives in West Lombok regency are among others: beliefs, values adopted attitudes and community stance including the habits that have long tradition in society, especially in the field of cooperatives.

Habits of people who have for so long using cooperative services by using the system of interest for example, is clearly one of the cooperative member inhibitors in changing the system of cooperative business based on sharia in western Lombok regency. This can be seen from the realization of the number of cooperatives targeted by the Department of Cooperatives and SME NTB Province. Where the number of Sharia cooperatives that must be built in the district of West Lombok is 50 sharia cooperatives, but in realization until 2018 the number of cooperatives that already exist in the district of West Lombok 8 sharia cooperative and even then most cooperatives make changes to the articles of association.

Unclear community's concerns related to sharia cooperatives. Society in West Lombok in understanding sharia cooperative still not the same perception. It means that the cooperative of sharia is the same kind of business as the conventional cooperative which assumes only the name difference.

[20] Interview with H. Hussein, Head of Kina Pembina Koperasi and Usaha Simpan Pinjam Syariah, Department of Cooperatives and MSME of NTB, on March 21, 2018.

Awareness of the community and / or members of the cooperative in its position as the legal subject in the cooperative, still not maximally understanding that he is a member and owner. From the lack of understanding and awareness is very impact on the development of cooperative management itself.

This kind of social factor that has long been embedded in the minds of people is not so much can be changed. It takes a long time to give understanding, cultivate trust and change community preference to sharia cooperative. Therefore, the juridical need for the establishment of a regulation that explicitly regulate either from the standpoint of sharia cooperative or about the amendment of articles of association relating to the sharia business system so that the community or members of the cooperative who will convert the cooperative in the form of sharia has legal certainty in order to achieve effectiveness law itself.

V. CONCLUSION

Setting and conversion procedure of conventional cooperative to become sharia cooperative that conventional general cooperative wishing to change its business activity become cooperative based on sharia principle must fulfill provisions contained in Regulation of Minister of Cooperatives And Small And Medium Enterprises of Republic Indonesia Number 16/Per/M.Kukm/IX/2015 on the Implementation of Savings and Loans and Sharia Financing Activities by Cooperatives, with the approval of member meetings conducted through amendments to the articles of association; The conventional co-operative conversion procedure into a sharia cooperative namely; Meeting members of cooperatives and made the minutes of the meeting of members of the conventional budget change from conventional to sharia, Making the deed of amendment of the articles of association, Submitting online approval to the Ministry of cooperatives through SISMINBHKOP, Submitting the change of business license from conventional to sharia.

Constraints in the conversion of conventional cooperatives into sharia cooperatives in the district of West Lombok are juridical and non-juridical obstacles, these juridical constraints include the rule of law (law). While the constraints non- juridical is a facility or facility that supports, social community, and culture itself.

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