

The Merging Cooperatives Based on The Regulation of Cooperatives and Job Creation

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ABSTRACT

This paper aims to describe and analyze the procedure for merging cooperatives in Indonesia based on applicable regulations and the legal consequences of merging these cooperatives. Cooperative is a form of cooperation in the economic area. Cooperation in cooperatives is generally conducted under the same goal: the necessities of life. In industrialized countries, cooperatives emerged as a reaction to the system of economic freedom in the 19th century, where a group of capital owners controlled people's lives. Cooperatives in several countries have merged to increase the existence and efficiency of improving their welfare. In Indonesia, the merger of cooperatives is necessary when the cooperative wants efficiency to improve welfare. Based on the study results, it can be seen that merging cooperatives was carried out to improve the welfare of members. The act of merging cooperatives was carried out with the legal provisions in Law Number 25 of 1992. It did not use the existing rules in the Law of the Republic of Indonesia No. 11 of 2020 on Job Creation.

Keywords: Cooperative; Indonesia; Merger

INTRODUCTION

Cooperatives are a pillar of the economy in Indonesia, whose existence is highly needed by the community (Permadi & Wisudawan, 2018). Cooperatives were established to improve

the community's welfare. Initially, cooperatives grew in industrialized countries in Western Europe, including the Netherlands, England, Germany, Denmark, and Sweden. After these industrial countries colonized several countries in Asia, Africa, and South America, cooperatives also developed in colonized countries, including Indonesia (Mohamad Hatta, 1987). The existence of cooperatives has now been recognized for its benefits by the community, both from the middle economy and from the low economy. The existence of cooperatives is more beneficial as the Indonesian state is dealing with free trade. Therefore, cooperatives are expected to be more professional in managing their business to benefit the community.

Cooperatives as the pillars of an economy can be optimized by harmonizing the spirit of cooperatives as an organization (Hainim Kadir & Yusbar Yusuf, 2012). A cooperative is a business entity consisting of several people or a legal entity by underlying the activities on the cooperative principle and a people's economic movement on the principle of kinship. As one of the people's economic movements, cooperatives are national development boards that aim to improve the welfare of members and the people in general (Febrina et al., 2019). Cooperatives are the pillars of the Indonesian economy under Article 33 of the Constitution of the Republic of Indonesia. It can be interpreted that cooperatives are the pillars or "main support" of the economy.

The main task of a cooperative business entity is to support its members' economic interests to promote the welfare of the members. In improving the welfare of its members, cooperatives are required to promote members' economic efforts and develop member resources through education and training that is carried out continuously that members are more professional and able to adapt to their business field environment (Mahanani & Yusroni, 2014). Cooperatives have the following objectives: (1) Provide welfare for members of cooperatives and the wider community; and (2) Contribute to building the country's economic structure

The existence of cooperatives in Indonesia increases, along with the large needs and desires of the community to open new businesses or maintain a consumptive lifestyle. Cooperatives are an option for the community as they are more familiar to Indonesian people than banks or financing institutions. Compared to others, the advantage of this cooperative financial institution is that it is easy to become a member by paying for the principal and mandatory deposits that the cooperative has determined. Therefore, it has implications for the ease of obtaining credit and savings in the form of time deposits (Wisudawan, 2015). The consumptive lifestyle of the Indonesian people causes the existence of loans or credits and the

desire of the people to save their money, which supports the formation of cooperative financial institutions in Indonesia.

Ropke stated that a cooperative is a business organization whose owners or members are also the company's main customers or identity criteria. The identity criterion is the principle that distinguishes the cooperative business unit from others (Kusnadi, 2005). In addition, cooperatives are autonomous organizations. It exists in a socio-economic environment that allows each individual and group of people to formulate their goals independently and realize these goals through joint economic activities. Meanwhile, in Law Number 17 2012 concerning Cooperatives, cooperatives are legal entities established by individuals or cooperative legal entities, separating their members' wealth as capital to run a business. It fulfills shared aspirations and needs in the economic field, social, and cultural in accordance with the values of cooperative principles. However, Law Number 17 2012 was canceled by the Constitutional Court or *Mahkamah Konstitusi* (MK) through its Decree Number 28/PUU-XI/2013 as it was considered that the law was contrary to the Constitution of the Republic of Indonesia. Law No. 17 2012 was canceled as it tends to value the spirit of a corporation, not mutual cooperation, eliminates the principle of kinship, abolishes the independence of cooperatives, transforms cooperatives into material-oriented legal entities, and reduces the democratic side of cooperatives.

The current Law on Cooperatives is Law Number 25 1992. According to Article 1 of Law Number 25 1992, the definition of a cooperative is a business entity and a legal entity established based on a people's economic movement and based on kinship. In the management of cooperatives, the principle of kinship is the main characteristic related to operational strategies, policies on mergers, consolidation of cooperatives, and other legal actions. As long as they are not included in criminal law, they can be resolved using the principle of kinship and the spirit of mutual cooperation. Its embodiment is deliberation in the Members' Meeting (Permadi & Wisudawan, 2018). The principle of kinship and mutual cooperation is referred to in Article 33 of the Constitution of the Republic of Indonesia as the legal basis for the existence of cooperatives in Indonesia.

A merger is a natural and common thing in the business world. As in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 10/Per/M.KUKM/IX/2015 concerning Cooperative Institutions states that merger is the joining of one or more cooperatives with other cooperatives. Companies perform mergers intending to obtain economies of scale and economics of scope. Economies of scale are large

volumes of output, the smaller the average cost of production, the greater profit. Meanwhile, the scope of the economy is when the company produces various types of output, and then the average production cost will be smaller. In addition, the joint companies will benefit from an established operating and administrative system (Probosiwi et al., 2020). In general, a merger occurs between two or more companies where one company continues its business, while the merging companies will dissolve without liquidation. Furthermore, business entities such as cooperatives in Indonesia may also merge. The number of cooperatives in Indonesia encourages mergers and consolidations of cooperatives that have similar business fields.

Basically, the merger of cooperatives and business efficiency will provide several other advantages. First, the cooperative market will expand with an increase in cooperative members. Second, the merger of cooperatives will increase capital so that cooperatives can independently provide business capital. If the cooperative's business capital increases, the business turnover will be more dynamic, and the remaining operating income (SHU) obtained by the cooperative distributed to members has increased (Umi Latifah, 2016). In the end, it will improve the welfare of its members.

An interesting legal phenomenon to be discussed in this article is related to cooperative financial institutions, namely the incorporation of cooperatives. In practice, the merger of cooperatives needs to be studied carefully, especially concerning the legal consequences of the merger. Based on this phenomenon, several aspects need to be analyzed in this article, especially those related to the procedure for merging cooperatives and the legal consequences of merging cooperatives in Law Number 25 of 1992 concerning Cooperatives and the Job Creation Law.

Based on the description above, several things need to be analyzed in this article, especially those related to the procedure for merging cooperatives and the legal consequences.

RESEARCH METHOD

This study is normative juridical research. Normative juridical research examines primary legal materials consisting of laws and regulations relating to the studied issues. This study examined secondary legal materials consisting of literature and opinions of scholars related to the research problem. This study also examined the Cooperative Law and the Job Creation Act related to the merger of cooperatives.

This research used a statutory approach to assess the laws and regulations, the central theme (Johnny Ibrahim, 2005). In addition, this study also utilized a conceptual approach. It

can be interpreted as a starting point or approach for legal research analysis as there will be many concepts emerging for a legal fact (Achmad, 2009). The law approach was used to analyze the Cooperative Law and the Job Creation Law related to the merger of cooperatives. The conceptual approach is carried out to analyze cooperatives conceptually in Indonesia.

The data collection of legal materials was conducted through document studies, namely by reading and observing existing library materials related to the research problems. The analytical technique used was a qualitative analysis technique. It was presented in a descriptive analysis. Descriptive means that the presentation of research results is carried out systematically and thoroughly related to this paper. Analysis means that the presentation of this paper is based on careful analysis.

RESULTS & DISCUSSION

Cooperative Merger Procedure

Cooperative organizations that have been formed require the implementation of cooperative management, including the relevant Organizational Structure Charts, tools and functions of cooperative organizations. Cooperative Organizational Structure Chart describes the composition, content, and scope of the cooperative organization and explains the position of the functions along with the duties and obligations of each function, clear working relationships, and responsibilities. This Cooperative Organizational Structure Chart is not standardized and can still be modified according to the organization's needs/adequacy/characteristics. The organizational apparatus must be listed as stated in Article 21 of Law Number 25 of 1992, namely the Meeting of Members, Management and Supervisors, which can then be supplemented by the presence of managers (managers and employees).

Article 21 of Law Number 25 of 1992 concerning Cooperatives states that the cooperative apparatus consists of meeting members, administrators, and supervisors. Furthermore, it contains the highest authority, namely the RAT (Annual Member Meeting), regulated normatively in Article 22 of Law Number 25 of 1992. The meeting discussed the responsibility of the management to the management of cooperatives for one year in the fields of finance, management, and appointments. A dismissal of management and supervisors determines long-term, short-term, and medium-term cooperative policy plans and other evaluations necessary to support the progress of cooperatives.

A merger is a legal event that is a strategic option in the business world. The possibility of mergers also occurs in cooperative financial institutions as cooperatives are business entities

in the form of legal entities (Zaenal Asikin & Wira Pria Suhartana, 2016). As stated in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises Number 09 of 2018 concerning the Implementation and Guidance of Cooperatives, the merger of cooperatives is a legal action carried out by two or more cooperatives to merge with other existing cooperatives then the merging cooperative is declared disbanded legally.

The procedure for merging or merging cooperatives generally refers to the provisions and legal basis. The legal basis for the merger of cooperatives is as follows:

1. Law Number 25 of 1992 concerning Cooperatives, namely Article 12, 13, 14 Paragraph (1) and Paragraph (2);
2. Government Regulation Number 4 of 1994 concerning Requirements and Procedures for Ratification of the Deed of Establishment and Amendment to the Articles of Association of Cooperatives;
3. Government Regulation Number 17 of 1994 concerning Dissolution by the Government;
4. Regulation of the Minister of Cooperatives and Small and Medium Enterprises Number 09 of 2018 concerning the Organization and Development of Cooperatives;
5. The Decision of the Minister of State for Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 104.1/Kep/M.KUKM/X/2002 concerning Implementation Guidelines for the Establishment, Ratification of Deeds, and Amendments to the Articles of Association of Cooperatives as implementing Government Regulation Number 4 of 1994; and other supporting provisions.

Article 21 of the Regulation of the Minister of Cooperatives and Small and Medium Enterprises Number 09 of 2018 concerning the Implementation and Guidance of Cooperatives explains that the merger of cooperatives can only be carried out if it is based on considerations and efficiency of cooperative management efforts under the interests of members. Cooperatives merge after obtaining member approval from the results of each cooperative's member meetings that have been mutually agreed upon. The agreement is based on operational efficiency, where the merger of companies will increase economies of scale and improve management, including more competent human resources in managing the company (Abdullah, 2020).

The Decree of the Minister of Cooperatives and Small Business Development of the Republic of Indonesia Number 361/KEP/M/II/1998 concerning Guidelines for the Implementation of Merger and Consolidation of Cooperatives explains the requirements for cooperatives to be able to merge, including (1) being legal entities; (2) having the same level form, namely primary and secondary cooperatives; (3) being not currently in a court case; (4)

Having the desire to do a merger which is stated through the decision of the member meeting of each cooperative; (5) having assets or assets equal to or greater than the cooperative's obligations and at least meet the audit criteria; (6) having the potential to be improved.

The purpose of the merger is to provide better synergies to performance, including efficiency and effectiveness in generating profits and monitoring the company's operations (Putra, 2013). Before a cooperative carries out a merger, each of these cooperatives must first settle their rights and obligations to third parties and or all problems within the cooperative institution (Proboosiwi et al., 2020). The stages of the cooperative merger procedure are as follows:

1. Each cooperative holds a members' meeting to obtain approval for the merger;
2. If the meeting has been agreed, the cooperative shall hold a joint meeting to discuss the Amendment to the Articles of Association of the Cooperative;
3. If a new amendment to the Articles of Association has been agreed upon, it must request approval from the competent authority. The possibility of such ratification is Accepted, Rejected, or Not Given a Decision within a Certain Period.

Regarding changes to the articles of association of cooperatives conducting mergers, it has been regulated in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 10/Per/M.KUKM/IX/2015 concerning Cooperative Institutions. The changes to the cooperative's articles of association are made based on the decision of the members' meeting under the provisions stipulated in the cooperative's budget. Changes to the cooperative's articles of association cannot be made if the cooperative is declared bankrupt. Changes in the articles of association of cooperatives concerning changes in business fields, mergers, and divisions must obtain approval from the authorized official. Meanwhile, changes to the articles of association of cooperatives that do not involve changes in business fields, mergers, and divisions, cooperatives only report in writing to the authorized official.

Law Number 40 of 2007 concerning Limited Liability Companies in Article 126 paragraph (1) explains that a merger cannot be carried out if it is detrimental to certain parties, including the shareholders, employees, creditors and business partners. The Law also explains that certain companies that will carry out a merger must obtain approval from the relevant agencies. Thus, in relation to cooperatives, the merger should not cause losses to the members and management of the cooperative as the members' welfare is very important. In addition to the approval of the relevant agencies, cooperatives must also obtain approval from the Minister

of Cooperatives and SMEs of the Republic of Indonesia. The role of the government related to the merger of cooperatives is passive. They will follow up on a merger of cooperatives if there is a proposal from the cooperative concerned. This government role is commonly referred to as bottom-up or an active role from the bottom to the top level (Poetra, 2006).

The Employment Creation Law that the Indonesian House of Representatives ratified on October 5 also discusses Cooperatives. Discussions related to cooperatives are described in Chapter V on Ease, Protection and Empowerment, Cooperatives, Enterprises, Micro, Small and Medium Enterprises. However, the Job Creation Law does not regulate the merger of cooperatives. Therefore, the rules regarding the merger of cooperatives still utilized the Cooperative Law.

Legal Consequences of Merging Cooperatives

A business merger means a legal action carried out by one or more companies to merge with another company, after which the merging company will be dissolved (I Kadek Yoga Arya Putra & I Made Sarjana, 2021). Thus, a cooperative that merges with other cooperatives will be dissolved. Therefore, the merger cooperative becomes a legal entity as it merges with another cooperative so that they unite to be one cooperative to operate (Utami, 2013).

Article 56 of Law Number 25 of 1992 concerning Cooperatives explains that the dissolution of cooperatives is announced in the State Gazette of the Republic of Indonesia, with the intention that the parties and the public are aware of the abolition of the cooperative to avoid parties' destruction. The legal entity status used during the merger results from the merger. Due to the announcement of the dissolution of the cooperative in the State Gazette of the Republic of Indonesia, the status of the legal entity shall be deleted from the date of the announcement of the dissolution of the cooperative.

The merger of cooperative businesses aims to achieve goals, including increasing operational efficiency, strengthening the capital structure and expanding market growth (Manurung, 2011). However, the merger can impact the company's internal conditions as the implementation has consequences for parties within the company, such as company personnel and investors. Thus, if the cooperative merges, it must be prepared for these consequences (Hetty Tri Kusuma Indah, 2014).

As a result of the implementation of a business merger, it can impact the parties in the company, namely the company's workforce. There will be a consolidation of work positions and a merger of the company's workforce so that the merging company will have a greater number of workers than the number of work positions (Reymond Hendry Terok, 2018:1).

Likewise, with the merger of the cooperatives, the cooperative will impact the number of management and members of the cooperative caused by the merger.

Article 8 and Article 19 of Law Number 25 of 1992 concerning Cooperatives stipulate that after the merger of cooperatives occurs, the members of the joining cooperatives can choose whether they remain in the new cooperative or intend to resign. Suppose the member resigns or leaves the cooperative membership. In that case, the amount of savings that he has deposited with the cooperative, namely principal, mandatory, and voluntary, will be returned, depending on the association and cooperative policies articles. Likewise, it is also explained in Article 154 A paragraph (1) letter a, Law Number 11 of 2020 concerning Job Creation that termination of employment can occur because the company merges, consolidates, takes over, or separates companies and the worker/laborer is not willing to continue the working relationship. Moreover, employers are not willing to accept workers/labor. It indicates that the merging cooperative can terminate the employment relationship of the cooperative management or cooperative members if things occur, as stated in the article.

In the merger process, the cooperative tend to take legal action, such as buying office equipment for cooperative inventory, raising funds as cooperative capital, or establishing relationships with third parties. This action has its own legal consequences. The party responsible for all these actions prior to the minister's approval of the cooperative merger is the elected management of the cooperative resulting from the merger. The management's responsibility for its actions is a personal responsibility to his personal property and is not a joint responsibility between the management(Poetra, 2006).

In a merger, the responsibilities or obligations of the cooperative to a third party must be resolved first to facilitate the performance of the cooperative that performs the merger. It is very important as it involves the pooling of cooperative assets. However, the merger can be carried out as long as there is an agreement from each merging cooperative and a statement that their respective obligations can be brought to the cooperative. Suppose a problem arises, namely that the merged cooperative does not complete its obligations but the cooperative has agreed to join. In that case, the obligation of the cooperative cannot be charged to the cooperative as there is no initial agreement stipulating that the obligations of the cooperative are brought and settled to the cooperative resulting from the merger. Thus, according to Articles 51,52, 53 of Law Number 25 of 1992, these obligations are completed by the settlement team as an effort to protect third parties and cooperative members.

CONCLUSION

Merger in cooperatives is a legal action taken by cooperatives to strengthen the cooperative institutional system to improve the welfare of members. In addition, the merger of cooperatives is carried out by agreement without harming the parties in the cooperative financial institution. The act of merging cooperatives must obtain a permit from the Minister of Cooperatives and Small and Medium Enterprises.

The stages of the merger include (a) each cooperative will hold a members' meeting to obtain approval for the merger; (b) if it has been agreed, the cooperative will hold a joint meeting to discuss the Amendment to the Cooperative's Articles of Association; (c) if a new Amendment to the Articles of Association has been agreed upon, approval will be requested from the competent authority. There are three possibilities for a cooperative merger application: Accepted, Rejected, or Not Given a Decision Within a Certain Period.

As a result of the merger of cooperatives, there is a unity of assets from the merging cooperatives. The responsibility for legal actions that arise when the merger has not been legalized will be personally borne by the cooperative's management. With the merger of cooperatives, the legal position of the old cooperative is dissolved and replaced by the merging cooperative. Therefore, the legal entity status of the old Cooperative is also removed.

Each cooperative that will carry out the act of merging cooperatives should settle on its obligations or dependents to third parties. They also have to solve all problems that exist in the cooperative before the act of merging cooperatives is carried out. After the dependents have been completed, the cooperative can carry out the merging process.

Furthermore, the government should be able to find a solution for inactive, bankrupt, or unproductive cooperatives under their supervision by advocating the implementation of cooperative mergers. Moreover, the government can also help cooperatives with funding support.

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