

Challenges in The Implementation of Regulations in The Drafting of Cooperative Deeds in Manado

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Abstract. This research examines the legal and practical challenges faced by notaries in the process of drafting and approving cooperative establishment deeds in Manado. The study highlights the importance of notaries in providing legal certainty for cooperatives, yet identifies significant gaps in the legal framework governing their authority. Using an empirical approach, data were collected through interviews and observations, revealing issues such as lack of standardized deed formats and insufficient coordination with relevant authorities. The findings suggest that these obstacles not only delay the establishment process but also undermine the credibility of cooperatives as legal entities. The study concludes with recommendations for improving notarial services and ensuring that cooperatives can be established with greater efficiency and legal security.

Keywords: *Cooperative establishment; Empirical study; Legal framework*

Introduction

A cooperative is a type of business that is deeply rooted in the philosophy of the Indonesian people, prioritizing the principles of kinship and togetherness as its foundation. Since the enactment of Law Number 12 of 1967 concerning the Basic Principles of Cooperatives, cooperatives have become an important vehicle for the Indonesian people to develop a people-centered economy.¹ Further regulatory changes through Law Number 25 of 1992 concerning Cooperatives have reinforced the position of cooperatives as a people's economic movement based on economic principles that prioritize not only profit but also collective welfare. This increasingly significant role of cooperatives demands legal certainty in every aspect of their operations, including in the establishment process, which must be carried out through the drafting of deeds by a notary as an authorized public official.²

Previous studies have highlighted the important role of notaries in the establishment of cooperatives, particularly in the drafting of authentic deeds that provide legal certainty for cooperatives as legal entities. Yusrizal and Perdana, in their study, emphasized that notaries hold significant authority as public officials responsible for drafting cooperative establishment deeds, which not only cover legal aspects but also provide legal guidance to cooperatives during the establishment and development process.³ This research underlines that the involvement of notaries is crucial in ensuring the legality and validity of cooperative establishment documents. However, the study focuses more on the technical aspects of the notary's role without deeply examining the practical challenges faced by notaries in the field, particularly obstacles that arise in a local context such as in the city of Manado. Other research explains that one of the primary duties of a notary in the cooperative establishment process is to draft authentic deeds that evidence specific legal actions taken during the establishment of the cooperative. Indrawati also emphasized that notarization

¹ Ninik Widiyanti and YW Sunindhia, *Koperasi Dan Perekonomian Indonesia* (Jakarta: Rineka Cipta, 1989), 43.

² Pier Angelo Mori, "Community and Cooperation: The Evolution of Cooperatives Towards New Modells of Citizens' Democratoc Participation in Public Service Provision: Community and Cooperation," *Annals of Public and Cooperative Economics* 85, no. 3 (September 2014): 327, <https://doi.org/10.1111/apce.12045>.

³ Muhammad Yusrizal, Surya Perdana, and Triono Eddy, "Authorities and Responsibilities of Notaries as Officials Cooperative Establishment Deed Maker," *DE LEGALATA: Jurnal Ilmu Hukum* 7, no. 2 (December 5, 2022): 314, <https://doi.org/10.30596/dll.v7i2.10293>.

is expected to protect the management and members of the cooperative from various irregularities that may occur in the cooperative's operations.⁴

The urgency of this research lies in the pressing need to improve the quality of notarial services in the drafting of cooperative establishment deeds. Considering the increasingly crucial role of cooperatives in the national economy, legal certainty at every stage of cooperative establishment is essential and cannot be overlooked.⁵ The obstacles encountered in this process not only hinder the development of the cooperative itself but also have the potential to harm the parties involved, whether it be the founders of the cooperative or the responsible notary. Therefore, this research is expected to make a tangible contribution to improving the existing systems and procedures.

The main focus of this research is to identify and analyze the legal and practical obstacles faced by notaries in the process of drafting cooperative establishment deeds in the city of Manado. This includes an analysis of notaries' lack of understanding regarding the specific aspects of cooperatives, challenges in coordinating with the relevant authorities, and the impact of regulations that may not fully support the smooth process of cooperative establishment.

This research aims to provide a deeper understanding of the various obstacles encountered in the process of drafting cooperative establishment deeds in the city of Manado. These obstacles can arise from various factors, including notaries' lack of understanding of specific cooperative law aspects, insufficient coordination between notaries and relevant agencies, and regulatory limitations that do not fully support the smooth establishment process. By delving deeper into these obstacles, this research will not only identify the existing problems but also offer concrete solutions that can be implemented by notaries, policymakers, and other stakeholders.

Research Methods

The research method used in this study is an empirical research method, which

⁴ Ana Indrawati, "Roles and Responsibilities of the Notary in Establishment of Cooperatives," *LEGAL BRIEF* 12, no. 3 (August 30, 2023): 310, <https://doi.org/10.35335/legal.v12i3.834>.

⁵ Ratih Putri, "Pertanggungjawaban Pidana Notaris Dalam Pembuatan Akta Perubahan Anggaran Dasar Koperasi Yang Sudah Tidak Aktif" (Makassar, Universitas Hasanuddin, 2020), 43.

combines legal analysis with field observations and interviews.⁶ This study will collect primary data through interviews with notaries, cooperative management, and other relevant parties in the city of Manado to identify practical obstacles in the drafting of cooperative establishment deeds. Secondary data will be gathered from relevant literature, legislation, and official documents. This approach is expected to provide a more accurate and in-depth understanding of the challenges faced in practice, as well as solutions that can be offered to improve the quality of notarial services. By integrating these two approaches, the study aims to provide a comprehensive analysis that captures both theoretical perspectives and real-world practices. This mixed-method approach allows for a deeper understanding of the practical challenges and legal issues in the drafting process, as well as insights that may inform policy improvements and more effective notarial practices.

Discussion

Since the enactment of Law Number 12 of 1967 concerning the Basic Principles of Cooperatives, the development of cooperatives in Indonesia has shown significant progress. Cooperatives have become an important platform for the community to develop a people-centered economy, which prioritizes the principles of togetherness and mutual cooperation. This characteristic distinguishes cooperatives from other forms of business, such as limited liability companies, which are more oriented towards share ownership and individualism in asset management.

In 1992, the regulations regarding cooperatives were updated through Law Number 25 of 1992 concerning Cooperatives, which replaced Law No. 12 of 1967. This law clarifies the definition and basic principles of cooperatives as business entities based on the principles of kinship and functioning as a people's economic movement. Article 1 of Law Number 25 of 1992, for instance, states that a cooperative is a business entity consisting of individuals or cooperative legal entities, whose activities are based on cooperative principles and the principle of kinship. Article 6, paragraphs (1) and (2) of the same law also stipulate the requirements for the establishment of cooperatives, where a primary cooperative must be established by at least 20 individuals, while a

⁶ Fachrizal Afandi, "Penelitian Hukum Interdisipliner Reza Banakar: Urgensi Dan Desain Penelitian Sosio-Legal," *Undang: Jurnal Hukum* 5, no. 1 (July 11, 2022): 231, <https://doi.org/10.22437/ujh.5.1.231-255>.

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secondary cooperative must be established by at least 3 cooperatives.⁷

Nevertheless, in practice, cooperatives often face various challenges, particularly related to the process of establishing and validating the cooperative's deed of establishment by a notary. According to Article 3, paragraphs (1) and (2) of the Decree of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 98/KEP/M.KUKM/IX/2004, the notary responsible for drafting cooperative deeds has the primary duty of creating authentic deeds as evidence of specific legal actions carried out during the establishment, amendment of articles of association, and other deeds related to cooperative activities. The philosophy behind appointing a notary as a public official in this role is to provide legal protection and certainty for cooperatives.

However, the reality in the field reveals significant obstacles in carrying out this duty. One of the main issues encountered is the lack of understanding by notaries regarding specific aspects of cooperative law, which often leads to errors in the drafting of deeds. These errors can have serious consequences because, according to Article 1868 of the Indonesian Civil Code (KUHPPerdata), authentic deeds created by a notary possess perfect evidentiary power, and any deviation may result in the deed being considered legally defective.⁸

Additionally, poor coordination between notaries and cooperative officials responsible for the deed's approval, as regulated by 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, often hinders the smooth process of establishing cooperatives. This regulation emphasizes the importance of the approval of the deed of establishment and amendments to the articles of association of cooperatives by officials appointed by the Minister of Cooperatives and Small and Medium Enterprises. Delays or errors in this process can lead to postponements that negatively impact the legality and sustainability of the cooperative.⁹

⁷ Brilian Al Azhar Wibowo, "Peran Notaris Terhadap Akta Pendirian Koperasi Dan Akibat Hukum Apabila Pendirian Koperasi Tidak Melibatkan Notaris" (Universitas Islam Indonesia, 2021), 2, <https://dspace.uui.ac.id/handle/123456789/33283>.

⁸ HS Salim, *Teknik Pembuatan Akta Pejabat Pembuat AKta Tanah (PPAT)/Salim HS* (Jakarta: Raja Grafindo Persada, 2016), 35.

⁹ Ahmad Hamidi, Asasriwarni Asasriwarni, and Ikhwan Matondang, "The Relationship Between Religion and The State in Indonesia, and Its Relation to Islamic Law," *NEGREI:*

Another issue that arises is that the existing regulations do not always provide clear guidance for notaries in carrying out their duties as Cooperative Deed Officials (NPAK).¹⁰ This results in uncertainty in practice, which in turn can affect the legality and sustainability of newly established cooperatives.

Obstacles in the Creation of Cooperative Establishment Deeds and Their Approval Process

Social and Cultural Obstacles

In practice, the creation of establishment deeds and the approval process for cooperatives do not always proceed smoothly. There are various obstacles faced by both the community and notaries that can slow down or even prevent the formation of cooperatives as legal entities. These obstacles can be categorized into several main categories as follows:

- Issues with Domicile and Tax Identification Number (NPWP)

One of the main obstacles that frequently arises is the issue of domicile and the ownership of a Tax Identification Number (NPWP) by the cooperative's management and members. For example, a primary cooperative established in Manado must meet membership requirements involving at least 20 individuals with the appropriate domicile, meaning they must possess an ID card (KTP) with a Manado address. However, it is often the case that some members have KTPs with addresses outside Manado, which can be a barrier in the deed creation process. Additionally, many managers and members do not yet have an NPWP, which is a mandatory requirement for establishing a cooperative in accordance with tax regulations. According to Notary Maudy Manoppo, S.H., M.Kn., this situation often hampers the cooperative establishment process because the NPWP is one of the essential requirements that must be fulfilled before the establishment deed can be approved.¹¹

This domicile issue is not merely an administrative matter but also reflects the socio-economic dynamics of the community, particularly in urban areas

Academic Journal of Law and Governance 2, no. 1 (June 18, 2022): 1, <https://doi.org/10.29240/negrei.v2i1.3783>.

¹⁰ H Budi Untung, *Hukum Koperasi, and Peran Notaris Indonesia*, Yogyakarta (Yogyakarta: Andi Yogyakarta, 2005), 29.

¹¹ Maudy Manoppo, S.H., M.Kn, *Hambatan Dalam Pelaksanaan Pembuatan Akta Pendirian Koperasi di Kantor Notaris Kota Manado*, n.d., accessed July 26, 2024.

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and their surroundings. High population mobility, whether due to employment, education, or other factors, causes many individuals to have a domicile different from the location where they intend to establish a cooperative. This can present a unique challenge, as cooperatives based in local communities are expected to reflect the involvement and ownership of the local populace. If cooperative members come from outside the region, questions may arise regarding the representation and commitment of these members to the cooperative being established. In this context, more flexible policies or special regulatory mechanisms may need to be considered to accommodate these social dynamics without neglecting the fundamental principles of cooperative establishment.

The ownership of a Taxpayer Identification Number (NPWP) by the management and members of a cooperative also often becomes a hurdle in the cooperative establishment process.¹² In Indonesia, an NPWP is a mandatory requirement for every citizen involved in formal economic activities, including the establishment of a cooperative. The NPWP is necessary for various tax purposes, including ensuring that every individual involved in the cooperative complies with their tax obligations. However, the reality on the ground shows that many prospective management members and cooperative members do not yet have an NPWP. This could be due to various factors, such as a lack of awareness about the importance of the NPWP, the application process being perceived as complicated, or even distrust in the tax system itself.¹³

According to Notary Maudy Manoppo, S.H., M.Kn., the lack of NPWP (Taxpayer Identification Number) ownership often hinders the process of establishing a cooperative. The NPWP is one of the essential requirements that must be fulfilled before the cooperative's founding deed can be legalized. Without an NPWP, the founding deed cannot be processed

¹² Rachel Noorajavi, "The Implementation of Asian Value on the Democratic System of Southeast Asia," *NEGREI: Academic Journal of Law and Governance* 1, no. 1 (July 3, 2021): 1, <https://doi.org/10.29240/negrei.v1i1.2562>.

¹³ Heppy Trio Ananda, Iwan Permadi, and Supriyadi Supriyadi, "Overlapping Authority to Make Land Deeds in Indonesia (A Critical Review of the Realisation of Legal Order)," *NEGREI: Academic Journal of Law and Governance* 4, no. 1 (July 7, 2024): 51, <https://doi.org/10.29240/negrei.v4i1.10268>.

further, meaning the cooperative cannot be legally established.¹⁴ This situation not only impedes the development of the cooperative itself but also disadvantages prospective members who have invested time and resources in the establishment process.

This challenge can also be viewed in a broader context, where tax compliance often poses difficulties in many developing countries. A study by Ane Karoline Bak and Ole Therkildsen shows that tax compliance in many developing nations remains low, especially in the informal sector and small businesses. This is due to a combination of factors, including a lack of understanding of tax obligations, the complexity of the tax system, and a general distrust of the government.¹⁵ In the context of cooperatives in Indonesia, this challenge is further exacerbated by the fact that many cooperative members come from communities with limited access to tax information and services.

- **Time and Cost Issues with Notaries**

Another common obstacle in the process of drafting cooperative establishment deeds involves the time and costs required for notary services. The establishment of a cooperative that involves a notary as the Cooperative Deed Officer (NPAK) requires good coordination between the cooperative's management and the notary. According to Notary Maudy Manoppo, S.H., M.Kn., one of the main difficulties often encountered is the challenge of arranging a suitable meeting time between the cooperative's management and the notary. Scheduling conflicts between the two parties frequently lead to significant delays in the drafting process. In many cases, the cooperative's management has busy and varied schedules, making it difficult to coordinate a time that suits the notary. As a result, the deed drafting process is delayed, which in turn can slow down the overall process of establishing the cooperative.

In addition to time-related issues, the costs charged by notaries for drafting cooperative deeds also present a major obstacle. For instance, the fee for drafting a cooperative deed in Manado is relatively low, around IDR

¹⁴ Maudy Manoppo, S.H., M.Kn., Hambatan Dalam Pelaksanaan Pembuatan Akta Pendirian Koperasi di Kantor Notaris Kota Manado.

¹⁵ Ane Karoline Bak and Ole Therkildsen, "Democratisation in Tanzania: No Elections without Tax Exemptions," *Journal of Eastern African Studies* 16, no. 1 (January 2, 2022): 47, <https://doi.org/10.1080/17531055.2022.2067959>.

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1,500,000. However, this cost is often considered disproportionate to the workload and responsibility borne by the notary. The notary's work in the process of drafting a cooperative establishment deed involves not only the preparation of legal documents but also verification of various legal aspects, including compliance with applicable regulations and ensuring that the deed meets all legal requirements.¹⁶ This responsibility is substantial, considering that the establishment deed is a legal document that forms the foundation for all operations of the cooperative as a legal entity.

This situation has led many notaries in Manado to become less interested in taking on the role of Pejabat Pembuat Akta Koperasi (NPAK). The interest of notaries in participating in this process has declined because they feel that the fees set do not reflect the complexity and responsibility associated with the work. According to Article 12 of the Minister of Cooperatives and Small and Medium Enterprises Decree No. 98/KEP/M.KUKM/IX/2004, notaries are required to provide services without charging fees to those who are unable to pay, based on a Certificate of Indigence from the local village head or subdistrict head. However, in practice, almost no one comes with such a certificate, causing notaries to be reluctant to provide cooperative establishment services at low fees, considering that they still have to bear significant operational costs.

This issue of cost is not limited to Indonesia. International research also shows that low legal service fees can affect the quality of services provided by legal professionals. For example, in a study conducted by Richard Susskind, it was found that lawyers who provide legal services at low fees tend to experience burnout and feel that their work is not financially appreciated.¹⁷ This can decrease their motivation and commitment to the work, which ultimately can negatively impact the quality of the services they provide. A similar situation could occur in Indonesia, where notaries who feel they are not adequately compensated might deliver suboptimal services, which could, in turn, hinder the process of establishing cooperatives.

¹⁶ Salma Salsabila Imtina, Nurini Aprilianda, and Yeni Eka Widyanti, "Legal Protection Strategies for Child Adoption Without a Court Order: A Comparative Study of Indonesia, USA and Malaysia," *NEGREL: Academic Journal of Law and Governance* 4, no. 1 (July 7, 2024): 69, <https://doi.org/10.29240/negrei.v4i1.10092>.

¹⁷ Richard Susskind and Richard E Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2023), 14.

- **Lack of Public Knowledge about the Cooperative Formation Process**

The lack of public knowledge about the process of establishing a cooperative is one of the significant obstacles in the creation of a cooperative establishment deed. Many prospective cooperative founders come to the notary's office with limited understanding of the procedures that need to be followed, the type of cooperative that suits their needs, and the legal requirements that must be met. This situation not only slows down the process of drafting the deed but can also lead to errors in the preparation of the necessary legal documents, ultimately hindering the approval of the cooperative as a legal entity.

Often, prospective cooperative founders do not understand the differences between various types of cooperatives, such as Savings and Loan Cooperatives, Consumer Cooperatives, Producer Cooperatives, and Service Cooperatives¹⁸. Each type of cooperative has different characteristics and legal requirements that must be met to ensure that the cooperative can operate in accordance with applicable legal provisions. This lack of understanding leads many prospective cooperative founders to assume that all cooperatives have the same establishment procedures, which is not the case.¹⁹ For example, Savings and Loan Cooperatives require stricter capital arrangements compared to Consumer Cooperatives, as they are directly involved in managing members' savings and loans.

Many prospective cooperative founders are unaware of the importance of initial consultation with the Cooperative Office before starting the cooperative formation process. The Cooperative Office plays a crucial role in providing the necessary guidance and information regarding the steps that need to be taken, the documents that need to be prepared, and other requirements necessary for the establishment of the cooperative. Consulting with the Cooperative Office can help prospective cooperative founders better understand the entire formation process, allowing them to

¹⁸ Ilhamiya M. Minnehametova, Liliya F. Gafiullina, and Marsel M. Khismatullin, "Conditions and Factors of Development of Agricultural Consumer Cooperatives," in *Cooperation and Sustainable Development*, ed. Aleksei V. Bogoviz et al., vol. 245, Lecture Notes in Networks and Systems (Cham: Springer International Publishing, 2022), 1241, https://doi.org/10.1007/978-3-030-77000-6_144.

¹⁹ Antti Talonen et al., "Consumer Cooperatives: Uncovering the Value Potential of Customer Ownership," *AMS Review* 6, no. 3–4 (December 2016): 142, <https://doi.org/10.1007/s13162-016-0083-2>.

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be better prepared before contacting a notary for the creation of the deed.²⁰

The lack of socialization regarding the role of notaries as Cooperative Deed Officials (NPAK), as stipulated in the Decree of the Minister of Cooperatives and Small and Medium Enterprises Number 98/KEP/M.KUKM/IX/2004, is also one of the factors that causes prospective cooperative founders to choose to contact the Cooperative Office directly rather than a notary.²¹ However, notaries play a crucial role in ensuring that the cooperative establishment deed is made in accordance with applicable legal provisions, as well as providing the necessary legal protection for the established cooperative.²² Notaries also have the responsibility of providing legal advice to prospective cooperative founders regarding the legal implications of the deed they will sign and ensuring that all prepared documents are complete and comply with the applicable laws and regulations.

Research by Angga Permana reveals that the lack of public understanding regarding the role of notaries in the establishment of cooperatives is often due to insufficient socialization efforts by the relevant parties, including the government and notary associations.²³ Many people still hold the belief that the role of notaries is limited to drafting agreements or sale and purchase deeds, without realizing that notaries also play a crucial role in the establishment of legal entities such as cooperatives. This lack of information causes many prospective cooperative founders to directly contact the Cooperative Office for information, without realizing that the deed creation process must be carried out by an authorized notary.

Technical and Legal Obstacles

Based on research findings, the challenges faced by notaries in the drafting of

²⁰ Jerker Nilsson, "Consumer Cooperatives as Consumer Welfare Organizations," *Journal of Consumer Policy* 8, no. 3 (September 1985): 287, <https://doi.org/10.1007/BF00380386>.

²¹ Aleksandra Bilewicz and Ruta Śpiewak, "Beyond the 'Northern' and 'Southern' Divide: Food and Space in Polish Consumer Cooperatives," *East European Politics and Societies: And Cultures* 33, no. 3 (August 2019): 579, <https://doi.org/10.1177/0888325418806046>.

²² Bert M. Sadowski, "Consumer Cooperatives as an Alternative Form of Governance: The Case of the Broadband Industry," *Economic Systems* 41, no. 1 (March 2017): 87, <https://doi.org/10.1016/j.ecosys.2016.04.004>.

²³ I. Gede Angga Permana, Muhaimin, and Lalu Wira Pria Suhartana, "Peranan Notaris Dalam Pendirian Koperasi Sebagai Badan Hukum," *Jurnal Education and Development* 9, no. 3 (August 3, 2021): 586.

cooperative establishment deeds in Manado City are as follows:

- **Lack of Consensus on the Format/Draft of Cooperative Establishment Deeds in Manado City**

One of the main obstacles in establishing cooperatives in Manado City is the lack of consensus between notaries and the Cooperative Office regarding the format and draft of cooperative establishment deeds. According to Karel L. Butarbutar, S.H., the Chairman of the Indonesian Notary Association for North Sulawesi, there is a misalignment between the format used by notaries and the expectations that the Cooperative Office in Manado City may have.²⁴ Notaries in this region tend to follow the format set by the Ministry of Cooperatives and Small and Medium Enterprises, which is considered the standard to be followed in drafting cooperative establishment deeds. However, on the other hand, the Head of the Cooperative Office in Manado City, Mr. Roy Sendow, S.H., M.M., revealed that the Cooperative Office has never conducted socialization or meetings with notaries regarding cooperative regulations or standards, including the format of cooperative establishment deeds. The absence of such socialization programs has created a gap in understanding between the parties involved in the cooperative establishment process.²⁵

The lack of consensus can lead to various issues in practice, including delays in the approval of cooperative establishment deeds or even the rejection of the approval due to non-compliance with local regulatory expectations. In a legal context, consensus on the format and draft of the deed is crucial because the cooperative establishment deed is a legal document that forms the basis for the cooperative's existence as a legal entity. Article 1 paragraph (1) of the Decree of the Minister of Cooperatives and Small and Medium Enterprises Number 98/KEP/M.KUKM/IX/2004 states that "The Cooperative Establishment Deed is an Agreement Deed made by the Founders in the context of Forming a Cooperative and contains the Cooperative's Articles of Association." Additionally, Article 1 paragraph (3) of the same decree states that "The Cooperative's Articles of Association are the basic written rules containing the information as stipulated in Article

²⁴ Interview with Karel L. Butarbutar, S.H, Hambatan Dalam Pelaksanaan Pembuatan Akta Pendirian Koperasi di Kantor Notaris Kota Manado, July 18, 2024.

²⁵ Interview with Roy Sendow, S.H., M.M Hambatan Dalam Pelaksanaan Pembuatan Akta Pendirian Koperasi di Kantor Notaris Kota Manado, July 10, 2024.

8 of Law Number 25 of 1992 concerning Cooperatives."

Law Number 2 of 2014 concerning the Position of Notary, in the General Provisions of Article 1 Paragraph (7), also emphasizes that "A Notarial Deed is an Authentic Deed made by or before a Notary according to the form and procedure established by this Law." Thus, the cooperative establishment deed made by a notary must follow the structure established by this law. In Chapter VII regarding Notarial Deeds, the first section on the Form and Nature of Deeds in Article 38 of Law Number 2 of 2014 states that every notarial deed consists of three main parts, namely the beginning of the deed (or head of the deed), the body of the deed, and the end (or closing of the deed).

Article 38 paragraph (2) stipulates that the beginning of the deed or the head of the deed must contain several important pieces of information, including the title of the deed, the deed number, the time (hour, day, date, month, and year), as well as the full name and domicile of the notary. The body of the deed, according to Article 38 paragraph (3), must contain information about the parties appearing before the notary, including their full names, places and dates of birth, nationality, occupation, position, and residence, as well as descriptions regarding the legal standing of the parties involved. The body of the deed must also include the contents of the deed, representing the intent and wishes of the interested parties. Meanwhile, the final part or closing of the deed, as regulated in Article 38 paragraph (4), must include a statement regarding the reading of the deed, the signing and place of signing, as well as the full names, places and dates of birth, occupation, position, and residence of the witnesses present during the signing of the deed.

Although the law has detailed the structure and content of deeds, in practice, implementation in the field often encounters various obstacles, especially when there is no consensus between notaries and the relevant government agencies. These disagreements can lead to delays in the approval process of the cooperative establishment deed, which ultimately hinders the formation of the cooperative itself.

To overcome these obstacles, proactive measures are needed from the Cooperative Office of Manado, including holding socialization and discussions with notaries regarding the applicable regulations and agreed-

upon deed formats. Additionally, aligning the standards set by the Ministry of Cooperatives and Small and Medium Enterprises with field practices is also crucial to ensure that the cooperative establishment process can proceed smoothly and in accordance with the applicable legal provisions.

In 2023, a community group in Manado City took the initiative to establish a Savings and Loan Cooperative named "Koperasi Makmur Bersama." After agreeing on the basic principles of the cooperative, the group contacted a notary in Manado City to assist in drafting the cooperative's deed of establishment. The notary, who had extensive experience in drafting deeds for various types of business entities, used the standard format provided by the Ministry of Cooperatives and Small and Medium Enterprises, which had become the reference for drafting cooperative establishment deeds nationwide.

However, when the draft deed was submitted to the Cooperative Office of Manado City for approval, problems arose. The Cooperative Office stated that the submitted deed format did not fully meet their expectations, particularly regarding certain details they deemed important to be included in the deed. For instance, the Cooperative Office expected additional information on the mechanism for managing reserve funds and further details on the members' responsibilities in paying mandatory savings, which they considered crucial for the transparency of the cooperative's operations. However, these details were not included in the standard draft used by the notary, as the standard format was more general and did not cover the specific details regulated by the local Cooperative Office.

As a result of this misunderstanding, the approval of the cooperative's deed of establishment was delayed. The Cooperative Office requested the notary to revise the draft deed according to their expectations; however, the notary felt that the changes were unnecessary since the draft already followed the nationally recognized format issued by the Ministry. This situation created confusion and uncertainty for the community group attempting to establish the cooperative, as they had to wait longer until both parties (the notary and the Cooperative Office) reached an agreement on the format of the deed to be approved.

The example above illustrates the lack of understanding between the notary and the Cooperative Office in determining the format and content of the

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cooperative's deed of establishment. This lack of understanding not only slows down the process of establishing the cooperative but also reflects broader challenges related to legal interpretation and the application of regulations in a local context.

The deed of establishment of a cooperative is a highly important legal document because it serves as the foundation for the cooperative's legal status as a legal entity. According to legal expert Soerjono Soekanto, a deed must be created with care and precision, following applicable regulations, and tailored to the specific needs and conditions of the parties involved. When the notary and the Cooperative Office have different perceptions regarding the format and content of the deed, it can lead to a failure to meet the legal requirements necessary for the deed's approval.

Furthermore, Sudikno Mertokusumo, an expert in civil law, emphasized that "an authentic deed is a deed made in the form prescribed by law and made by or before a public official authorized to do so in the place where the deed is made." This means that even though the notary follows a nationally recognized standard format, that format must still align with the regulations and local needs established by the relevant authority, in this case, the Cooperative Office of Manado.

If there is a discrepancy between national standards and local interpretations, the notary must be able to communicate with local authorities to ensure that the deed created is not only legally valid but also aligns with local expectations. According to Maria Farida Indrati, an expert in legislative drafting, "harmonization between national regulations and local needs is crucial to create legal certainty that can be relied upon by all parties involved."²⁶ Therefore, socialization and discussions between the notary and the Cooperative Office before the deed-making process begins are essential to ensure that the deed meets all applicable requirements and expectations.

- The above case example demonstrates the need for more intensive dialogue between the notary and local authorities to reach an agreement regarding the format and content of the deed. This is not only to ensure compliance with regulations but also to avoid unnecessary delays in the approval

²⁶ Maria Farida Indrati, "Ilmu Perundang-Undangan: Jenis, Fungsi Dan Materi Muatan," 2007, 68.

process of the cooperative's deed of establishment. Alignment between national standards and local interpretations is critical to maintaining the legal integrity of legal documents such as a cooperative's deed of establishment.

- **Notaries Not Paying Attention to Their Jurisdiction**

One common mistake in notary practice is the creation of a cooperative establishment deed outside the designated jurisdiction. This may result from a lack of awareness or negligence on the part of the notary regarding the boundaries of their working area. For instance, there was a case where a notary in Manado accidentally drafted a cooperative establishment deed that was intended for the Gorontalo region. When this happens, the consequences can be quite serious. The notary cannot submit the deed for approval, and if the deed is submitted, its approval will be rejected by the relevant authorities. As a result, the authenticity of the deed is lost, and the deed that was created will only be considered as a private deed.²⁷

According to the Decree of the Minister of Cooperatives and Small and Medium Enterprises Number 98/KEP/M.KUKM/IX/2004 regarding Notaries as Cooperative Deed Officials, Article 9 explicitly regulates the authority of notaries in drafting cooperative establishment deeds. Article 9(1) states that the drafting of establishment deeds and amendments to the articles of association for both primary and secondary cooperatives at the district/city, provincial, or national levels is the authority of the notary in accordance with the location of the cooperative's office. This means that the notary must have an office in the same region as the cooperative's headquarters.

Furthermore, Article 9(2) specifies that, for cooperatives based in the Special Capital Region of Jakarta, the drafting of establishment deeds and amendments to the articles of association must be carried out by notaries who are based in Jakarta. Thus, notaries in Jakarta hold exclusive authority to draft establishment deeds for cooperatives based within that region.

This provision underscores the importance for notaries to be mindful of their jurisdiction before drafting cooperative establishment deeds. For

²⁷ Interview with Roy Sendow, S.H., M.M Hambatan Dalam Pelaksanaan Pembuatan Akta Pendirian Koperasi di Kantor Notaris Kota Manado.

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example, a notary with jurisdiction in North Sulawesi is only authorized to draft establishment deeds for cooperatives located within the North Sulawesi region. In this context, there are no restrictions on drafting cooperative deeds within the province. For instance, a notary based in Manado can draft an establishment deed for a cooperative based or operating in Tomohon City.

Conversely, a notary with jurisdiction in a specific area, such as Gorontalo City, is only authorized to draft establishment deeds for cooperatives based within their jurisdiction, i.e., within Gorontalo City. If the notary drafts an establishment deed for a cooperative outside Gorontalo, the deed will be considered invalid, and the application for its legalization will be rejected.

The importance of respecting jurisdiction is not only to comply with legal regulations but also to ensure that the deed holds valid legal force and does not lead to legal issues in the future. Errors in determining jurisdiction can have serious consequences, including the loss of the deed's authenticity and a decrease in public trust in the notary as an authorized public official.

A notary in Manado named Mrs. Maria took the initiative to assist a community group that wanted to establish a multipurpose cooperative named "Sejahtera Bersama" in Gorontalo City. This community group had agreed on all the basic requirements for the cooperative, and they contacted Mrs. Maria due to her good reputation as a notary with extensive experience in drafting deeds.²⁸

After drafting the cooperative establishment deed based on the standard format issued by the Ministry of Cooperatives and Small and Medium Enterprises, Mrs. Maria proceeded to create the deed for the cooperative. However, Mrs. Maria was unaware that, as a notary based in Manado, she only had the authority to draft establishment deeds for cooperatives located within North Sulawesi and not for those in Gorontalo City, which is located in Gorontalo Province.

The deed was then submitted to the Cooperative Office of Gorontalo City for legalization. However, the Cooperative Office of Gorontalo City rejected the deed's legalization, citing that the notary who drafted the deed

²⁸ Interview with Karel L. Butarbutar, S.H, Hambatan Dalam Pelaksanaan Pembuatan Akta Pendirian Koperasi di Kantor Notaris Kota Manado.

did not have the authority to create deeds in that jurisdiction. According to the applicable regulations, namely the Minister of Cooperatives and Small and Medium Enterprises Decree No. 98/KEP/M.KUKM/IX/2004, the drafting of establishment deeds and amendments to cooperative bylaws must be conducted by a notary based in the jurisdiction where the cooperative is domiciled.

Because the deed was drafted by a notary outside the appropriate jurisdiction, the authenticity of the deed was compromised. The deed created by Mrs. Maria was only considered as an unofficial document, which does not carry the same legal weight as an authentic deed that should have been drafted by an authorized notary. This forced the community group to repeat the process of creating the cooperative establishment deed, this time with a notary based in Gorontalo City. As a result, the establishment of the cooperative was delayed, and the community group incurred additional time and costs.

This situation underscores the importance for notaries to carefully consider their jurisdiction before drafting a cooperative establishment deed. Such errors not only create legal uncertainty for the parties involved but also can damage the notary's reputation and reduce public trust in the legal services they provide.

The specific example of Mrs. Maria, a notary in Manado who unknowingly drafted a cooperative establishment deed for the Gorontalo City area, illustrates the critical importance of a deep understanding of jurisdictional boundaries as regulated by notarial law. This mistake is not just an administrative issue but has serious implications for the validity and legal strength of the deed.

In the legal field, particularly in the context of notarial law, the authenticity of a deed heavily depends on the authority of the notary who drafts it. According to Sudikno Mertokusumo, a civil law expert, "an authentic deed is a legal document drafted by or before a public official authorized to do so in accordance with the form and procedures set out in the law."²⁹ In this case, the deed drafted by Mrs. Maria lost its status as an authentic deed because it was not created by a notary with authority in the Gorontalo City

²⁹ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty Yogyakarta, 2009), 34.

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jurisdiction. As a result, the deed was only considered as an unofficial document, which carries weaker legal evidentiary value.

Furthermore, Soerjono Soekanto, in his analysis of the authority of legal officials, emphasized that "ignorance or negligence in understanding the boundaries of jurisdiction can result in the loss of legal force of the actions taken by the official."³⁰ In this context, Mrs. Maria should have understood that her authority as a notary was limited to the North Sulawesi region and therefore did not extend to drafting a cooperative establishment deed in Gorontalo Province. The failure to adhere to jurisdictional boundaries directly impacted the authenticity of the deed and led to the rejection of its approval by the Gorontalo City Cooperative Office.

Maria Farida Indrati, an expert in legislative drafting, added that "the harmonization between the understanding of legislation and its application in the field is key to maintaining the integrity of legal documents created by authorized officials."³¹ In this example, Mrs. Maria's lack of understanding regarding the limitations of her jurisdiction highlights a disconnect between legal knowledge and practical application. This not only has the potential to harm the parties involved in the establishment of the cooperative but also to damage the reputation and trust in the notary profession.

This example emphasizes that notaries must always ensure that they have the legal authority to draft deeds in a specific jurisdiction, in accordance with applicable regulations. According to Soekanto, a deep and careful understanding of these legal provisions is crucial to prevent mistakes that could result in the loss of legal force of the deeds created.³² Thus, notaries can protect the legal interests of the parties involved and ensure that the deeds they draft have valid and reliable legal standing.

This case provides an important lesson that notaries must always pay close attention to the jurisdictional boundaries set by law. Failure to comply with these provisions can result in the deeds they draft becoming legally invalid, which in turn can harm the parties involved in the legal process. Notaries need to understand that their responsibility is not merely to draft legal

³⁰ Mertokusumo, 35.

³¹ Indrati, "Ilmu Perundang-Undangan: Jenis, Fungsi Dan Materi Muatan," 33.

³² Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)* (Jakarta: PT. Rajawali Pers, 2010), 23.

documents but also to ensure that these documents are created in accordance with the applicable legal provisions, including jurisdictional boundaries.

By having a correct understanding and adhering to these rules, notaries can ensure that the deeds they draft have full legal force and provide valid protection for their clients. This will also help maintain the integrity and trust in the notary profession, which is crucial in fulfilling their role as public officials authorized to create legal documents.

- **Lacking a strong legal framework, the legitimacy of notaries as officials authorized to draft cooperative deeds is weakened.**

One of the main issues in drafting cooperative establishment deeds is the weak legal framework that underpins the legitimacy of notaries as officials authorized to draft cooperative deeds. Currently, the authority of notaries in drafting cooperative establishment deeds is regulated only by the Decree of the Minister of Cooperatives and Small and Medium Enterprises Number 98/KEP/M.KUKM/IX/2004 concerning Notaries as Officials Authorized to Draft Cooperative Deeds. However, this regulation lacks strong legitimacy because it is not supported by a higher law, such as Law No. 25 of 1992 on Cooperatives, which does not explicitly state that cooperative establishment deeds must be drafted by a notary.

According to Law Number 2 of 2014 on the Notary Position, notaries have the authority to draft various authentic deeds, including cooperative establishment deeds, amendments to articles of association, and other deeds related to cooperative activities. However, because the Ministerial Decree is not a law, the legitimacy of notaries in drafting cooperative establishment deeds is often considered weak, especially in the context of legal disputes. As a result, this can create legal uncertainty and reduce public trust in the deeds drafted by notaries.

Ministerial Decree of the Ministry of Cooperatives and Small and Medium Enterprises Number 98/KEP/M.KUKM/IX/2004 states that the authority to draft deeds of establishment and amendments to the articles of association for primary and secondary cooperatives at the district/city, provincial, and national levels lies with notaries, in accordance with the location of the cooperative's office. However, this provision should have stronger legal force, for example by adopting or incorporating this

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provision into Law No. 25 of 1992 on Cooperatives, or even by enacting a specific law that regulates the role of notaries in drafting cooperative deeds. This would provide stronger legitimacy for notaries in this regard and offer a clear legal framework, thereby avoiding various potential legal issues that might arise.

In addition to the issue of legal legitimacy, another common obstacle is related to the setting of fees for drafting cooperative deeds. According to existing regulations, for cooperatives with small capital, the Ministry of Cooperatives and Small and Medium Enterprises has coordinated with the Indonesian Notary Association (INI) to set the fee for drafting deeds between IDR 500,000 and IDR 1,000,000. Meanwhile, for cooperatives with larger capital, the fees are left entirely to the discretion of the respective notary.³³ This fee setting is intended to assist the community, especially those in rural areas, in establishing cooperatives without being burdened by high costs.

The decision to set low fees has received criticism from the Manado City Cooperative Office. According to them, low fees can spur an excessive growth of new cooperatives, which in the end, will only create "pigeon cooperatives"—cooperatives established merely to obtain facilities and temporary benefits from the government, such as grants or loans, without any real intention to develop the business.³⁴ The Cooperative Office argues that there is no direct correlation between low notary fees and the quality of the cooperatives established. On the contrary, they argue that higher fees can educate the public on the importance of seriousness and commitment in establishing a cooperative.

This criticism is based on the reality that establishing a cooperative is not just about forming a business entity but also a long-term commitment to manage and develop the enterprise for the welfare of its members. By setting higher fees, it is hoped that the public will be more selective and

³³ Silvia Sacchetti and Ermanno Tortia, "The Extended Governance of Cooperative Firms: Inter-Firm Coordination and Consistency of Values: The Extended Governance of Cooperative Firms," *Annals of Public and Cooperative Economics* 87, no. 1 (March 2016): 93, <https://doi.org/10.1111/apce.12058>.

³⁴ Donal McKillop et al., "Cooperative Financial Institutions: A Review of the Literature," *International Review of Financial Analysis* 71 (October 2020): 101520, <https://doi.org/10.1016/j.irfa.2020.101520>.

serious about establishing cooperatives, ensuring that only those who genuinely intend to invest in and develop the cooperative will proceed with the establishment process.

Conclusion

To address these challenges, stakeholders, including the government, notaries, and cooperative founders, must collaborate to create a standardized framework that guides the drafting and approval process for cooperative establishment deeds. The government should provide clear guidelines and conduct regular training for notaries on cooperative regulations to ensure a uniform understanding of the legal standards involved. Notaries, in turn, should proactively seek updates on regulatory changes and enhance their competencies in drafting cooperative deeds that comply with existing laws. Lastly, cooperative founders should be well-informed of the necessary documentation and legal requirements to expedite the process. By aligning efforts across these groups, it is possible to mitigate delays and promote a more efficient and legally sound process for cooperative establishment in Indonesia.

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