

## JURIDICAL REVIEW ON CHANGES TO AD/ARTS OF SUBUR MAKMUR AGRO INDUSTRY COOPERATIVE REGENCY EAST KUTAI POST-CANCELLATION

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### Abstract

Amendments to the Cooperative Law brought Number 25 of 1992 to Number 17 of 2012 bringing a very basic change, this is due to the change in cooperative business from being member welfare to corporations, and then canceled by the Constitutional Court. This is what makes the author interested in conducting research so that the author takes the title of Juridical Review of Changes in Ad/Art of Subur Makmur Agro-Industry Cooperatives, East Kutai Regency after the Cancellation of Law Number 17 of 2012 concerning Cooperatives by the Constitutional Court. From the research conducted, finally the author can conclude that with the cancellation of the entire contents of the operation law number 17 of 2012 by the Constitutional Court with the decision number: 28/PUU-XI/2013 which states cancel the entire contents of the law number 17 of 2012 and at the same time re-enacting Law No. 25 of 1992 until the next cooperative law, then legally all cooperative legalities (AD/ART) that rely on law number 17 of 2012 are null and void and return to the law. The Legality of Cooperatives (AD/ART) which relies on the cooperative law number 25 of 1992, is the case with the Subur Makmur Agro-Industry Cooperative, Sangatta, East Kutai Regency.

**Keywords:** Cooperative Law, Articles of Association, Bylaws

## INTRODUCTION

Cooperatives as a form of business entity have a strategic role in empowering and strengthening the people's economy. Cooperatives as a people's economic institution have long been known in Indonesia where according to Dr. Muhammad Hatta (Proclaimer of the Republic of Indonesia), who is known as the Father of Indonesian Cooperatives, cooperatives are Joint Business Entities engaged in the economy, consisting of those who are generally economically weak, who join voluntarily, based on equal rights and obligations to carry out a business aimed at meeting the needs of its members.<sup>1</sup> Because it is through this cooperative forum that members can make efforts to improve mutual welfare. It is with this spirit of togetherness that cooperatives exist and are needed to encourage the growth of small businesses in the community.

Presence of Law No. 17 of 2012 raises pros and cons in the community, so that this Law is not only different from Law Number 25 of 1992 which it replaced, but also raises philosophical, sociological, and economic expectations from the Cooperative Movement.

As a result of the emergence of Law no. 17 of 2012 replacing Law no. 25 of 1992 there were complaints from the public and made a request for a review of Law no. 17 in 2012.

The petitioners assessed that a number of articles governing the norms of cooperative legal entities, capital participation from outside members, the authority of supervisors and cooperative boards in the law had revoked the spirit of people's sovereignty, economic democracy, as well as the principles of kinship and togetherness guaranteed by the constitution, against the lawsuit against the Judicial Review. The material for the Cooperative Law which was submitted by the NGO Coalition for Economic and Individual Democratization (Suroto DKK) and the Executive Board of the Youth Business Cooperative - Indonesian Youth National Committee (KNPI) Cimahi City, was rejected by the Constitutional Court, but for the lawsuit filed by the Cooperative Association. The Association of Indonesian Employees Cooperatives in East Java Province; East Java Village Unit Cooperative Center; East Java Women's Cooperative Center; East Java An-nisa Cooperative Center; East Java BUEKA Assakinah Cooperative Center; Indonesian Dairy Cooperative Association; Agung Haryono; and Mulyono, rejected some of the petitioners' requests and granted some of the petitioners' requests.

According to the Court, cooperatives are the same and no different from limited liability companies. Cooperatives have lost their constitutional spirit as an economic actor entity that is typical of the nation with the philosophy of gotong royong. The Court is of the opinion that although the applicant's application only concerns certain articles, because the article contains material content of substantial norms which are the heart of the Cooperative Law, it must be canceled entirely. "So if only those articles are declared to be contrary to the 1945 Constitution and have no binding law, then the other articles will no longer be able to function.

With regard to the cancellation of Law No. 17 of 2012 this has affected the Cooperatives which have enforced the Law and made changes to the AD/ART, so that with the re-enactment of Law no. 25 of 1992 had an impact on the implementation of the AD / ART of the Subur Makmur Agro-Industry Cooperative, North Sangatta District which was amended, as well as the business activities of the Cooperative which had adjusted to Law no. 17 of 2012, previously AD / ART refers to Law no. 25 of 1992.

Research purposes to understand and analyze the AD/ART of Cooperatives after the cancellation of Law No. 17 of 2012 concerning cooperatives by the Constitutional Court and to analyze the legality of cooperatives that have made changes to the AD/ART after the Constitutional Court annulled Law Number 17 of 2012 concerning cooperatives. With this research, it is hoped that it will be useful for adding to the treasury of normative juridical and empirical juridical study data so that they become study material and input for the government and related agencies in the formulation of the new cooperative law. Practically, this research is expected to be useful for the Cooperative Management and its members in running a cooperative business in accordance with the applicable laws and regulations.

## RESEARCH METHOD

Judging from the focus of the problems studied in this study, this type of research is categorized as normative juridical research, namely research conducted by examining library materials which are secondary data called library research, then to support and complement existing data, it is also carried out empirical research, the data that has been obtained from the results of the research are then analyzed qualitatively. To describe the results of this study, a descriptive step was taken with the hope that the results of this study were able to provide a systematic, detailed and comprehensive picture.

Secondary data can be obtained by conducting literature studies sourced from primary legal materials, secondary legal materials and tertiary legal materials.

- a. Primary legal materials are legal materials in the form of statutory regulations.
- b. Secondary legal materials are legal materials in the form of literature, writings or research and the results of seminars.
- c. Tertiary legal materials are legal materials that provide instructions or explanations for secondary legal materials.

The data obtained from the literature study and the results of field research were analyzed qualitatively, namely by paying attention to the facts contained in practice, then compared with the descriptions obtained from the results of the literature study relating to research problems, by using this method, it can be obtained an overview and conclusions are drawn from the discussions carried out and are expected to answer the problems set out in this thesis.

Techniques for analyzing legal materials, the chapter contains analysis and discussion of Legal Analysis on the cancellation of Law No. 17 of 2012 concerning cooperatives and re-enacting Law No. 25 of 1992 and contains the obstacles faced by cooperatives that have imposed law number 17 th. 2012 by making changes to the AD/ART.

## RESULTS AND DISCUSSION

### The Process of Amending the Articles of Association and Bylaws of the Subur Makmur Agro-Industry Cooperative at the time of the enactment of the Cooperative Law Number 17 of 2012

With the enactment of the Cooperatives Law No. 17 of 2012 it is certain that all cooperatives in Indonesia comply with the law. Thus, like it or not, cooperative legal entities are obliged to revise their respective Articles of Association and Bylaws, not to mention the Producer Cooperative "Agro Industries Subur Makmur" which is located in Sangatta, East Kutai.

#### a. Articles of Association

In this change, the cooperative member meeting decided to adjust it to the applicable laws and regulations, namely the Cooperative Law Number 17 of 2012, REPLACING the previous Law Number 25 of 1992, these changes generally include:

- a) Cooperative name change
- b) Changes in the composition of the Cooperative management;
- c) Changes in business fields;
- d) Adjustment of Cooperative Capital by converting Member's Capital

Still looking at the contents of the amendment to the cooperative's Articles of Association, it states that "Since the agenda has been known to all members of the meeting, the chairman of the meeting proposes and all meeting participants unanimously agree on the following meeting decisions;

- a) From the Multi-Purpose Cooperative KOMPOS SUBUR MAKMUR to the AGRO INDUSTRY Producer Cooperative SUBUR MAKMUR;
- b) From five members of the management of the Cooperative to three and added 3 (three) members of the supervisory of the Cooperative;
- c) Engaged in Producer Cooperatives;
- d) Converting Member's Capital from Monthly Mandatory Savings of Rp. 10,000 (Ten Thousand Rupiah) to become Cooperative Capital Certificate / Vocational High School per sheet of Rp. 300.000,- (Three Hundred Thousand Rupiah)

In the articles of association of the Subur Makmur Agro-Industry Cooperative, it states "Adjusting all articles in the articles of association of k operations with the provisions of Law Number 17 of 2001 2 (two thousand and twelve) concerning Cooperatives..." Where previously the old AD/ART reference referred to the provisions of Law no. 25 of 1992.

#### b. Bylaws

In the Bylaws of the Subur Makmur Agro-Industry Cooperative, Sangatta east kutai, chapter 1 contains the name, place and position where article 1 states:

- (1) This cooperative is called the Producer Cooperative "Agro Industries Subur Makmur" which is hereinafter referred to in the Bylaws as a Cooperative.
- (2) Head Office Domiciled at:
 

Village/ Village	: Jl. AW. Syahrani Gg. Krishna RT. 32 North Sangatta Village
District	: North Sangatta
Regency/ City	: East Kutai
Province	: East Kalimantan
- (3) nameplates are rectangular in size and color of nameplates are regulated in special regulations for cooperatives.

- (4) The cooperative uses a box -shaped stamp and contains the words Subur Makmur Agro-Industry Producers Cooperative, with the internal Cooperative symbol.

In Article 37 of the Bylaws of the Subur Makmur Agro-Industry Cooperative, it regulates the Surplus of Operating Results (SHU), among others, to:

1. Reserve Fund of 20%
2. 43% of Members (Compared to 30% of Cooperative Capital Certificates and 70% of member transactions).
3. Supervisor of 5%
4. Management of 15%
5. Managers or Employees by 12%
6. Education and social by 5%

The difference in operating results is known as the Surplus of Operating Results, the Surplus of Operating Results is set aside first for the Reserve Fund (minimum 20%) and the remainder is used wholly or partly for: Members in proportion to the business transactions carried out by each Member with the Cooperative.

### **The Legality of the Subur Makmur Agro-Industry Cooperative After the Court's Decision on the Cancellation of the Cooperative Law Number 17 of 2012**

From the decision of the Constitutional Court Number: 28/PUU-XI/2013, which canceled the entire contents of Law Number 17 of 2012 and at the same time declared the re-enactment of Law Number 25 of 1992, and reaffirmed through the Circular of the Ministry of Cooperatives and SMEs, then legally all the legality of cooperatives that rely on law number 17 of 2012 does not apply and by itself the applicable legality is legality that relies on cooperative laws number 25 of 1992, as well as the Articles of Association and Bylaws of Fertile Agro Industry Cooperatives Makmur- Sangatta Regency of East Kutai which has been amended based on the Cooperative Law Number 17 of 2012 is null and void and must re-enact the previous AD/ART on the basis of the Cooperative Law Number 25 of 1992.

### **CONCLUSION**

The Cooperative Law number 17 of 2012 concerning cooperatives, states explicitly that cooperatives as a form of economic democracy have turned in the wrong direction. This can be seen from the various changes in the contents of Law number 17 of 2012 with Law number 25 of 1992. The definition of cooperatives has changed, the investment capital is not appropriate, the organizational structure is changed and made like a private company or company that tends to be capitalistic, and changes on the organization of the movement.

With the cancellation of the entire contents of the cooperative law number 17 of 2012 by the Constitutional Court with a decision number: 28/PUU-XI/2013 which states canceling all the contents of the law number 17 of 2012 and at the same time re-enacting Law Number 25 of 1992 until the existence of the next cooperative law, legally all cooperative legality (AD/ART) which relies on law number 17 of 2012 is null and void and returns to Cooperative Legality (AD/ART) which relies on law cooperative number 25 of 1992, as well as the Subur Makmur Agro-Industry Cooperative, Sangatta, East Kutai Regency.

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