

JURIDICAL STUDY ON THE LEGALITY OF MANAGING COMMUNITY REVOLVING FUND ACTIVITIES FOR THE EX NATIONAL PROGRAM EMPOWERMENT OF INDEPENDENT RURAL COMMUNITIES FROM THE PERSPECTIVE OF JOINT VILLAGE OWNED ENTERPRISES

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Abstract: In this research, the author raises the issue of the legality of managing community revolving fund activities for the former National Program for the Empowerment of Independent Rural Communities from the perspective of Joint Village-Owned Enterprises. The aim of the research is to find out the appropriate form of legal entity in the BUMDesma-LKD business unit and to find out the legal consequences of establishing a microfinance institution by a cooperative legal entity. Writing this thesis uses a normative juridical method with a statutory approach and a conceptual approach. The methods used in the research are the statue approach and conceptual approach by examining regulations related to BUMDes, cooperatives, limited liability companies and microfinance institutions and then linking them to relevant legal entity theories. Based on the results of the research and discussion, it can be concluded that the legal standing of BUMDesma-LKD as a legal entity is determined based on the Joint Village Head Regulation. The difference in the status of BUMDesma-LKD as a legal entity when viewed from a public law aspect is that its establishment is sufficient with a Joint Village Head Regulation, whereas if viewed from a private law aspect, registration must be carried out with the Ministry of Law and Human Rights to fulfill the principle of publicity. The legal entity form of the BUMDesma-LKD business unit can be established in the form of a cooperative or limited liability company. The establishment of an LKM by a cooperative legal entity turns out to have legal consequences on several aspects of the LKM cooperative, namely the business activity aspect, capital aspect, institutional aspect, and supervision aspect. These legal consequences arise due to differences in regulations between Cooperatives and MFIs, where Cooperative regulations are based on Law Number 25 of 1992 concerning Cooperatives, while MFIs are based on Law Number 1 of 2013 concerning Microfinance Institutions.

Keywords: BUMDesma-LKD, Legal Status, Cooperative-LKM

I. INTRODUCTION

The National Program for Independent Rural Community Empowerment (PNPM-MPd) is a Government and Regional Government program to overcome poverty through a community empowerment approach. PNPM-MPd was ended in 2014 with one of the considerations being the implementation of Law Number 6 of 2014 concerning Villages (hereinafter referred to as the Village Law) which provides an allocation or ceiling for Village Funds, so that all sources of funds for government programs are for community empowerment, both for infrastructure development, rural areas and strengthening the village economy nationally are drawn and integrated into the implementation of the Village Law (Ministry of Home Affairs, 2007).

So far, coaching has been carried out based on the Village Law and implementing regulations, as well as efforts to integrate into the institutional system. Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law) then strengthens the Village Law by establishing BUMDes as a Legal Entity. Government Regulation Number 11 of 2021 concerning BUMDes (hereinafter referred to as PP BUMDes) is the implementing regulation of the Job Creation Law, one form of government guidance in the field of regulation in organizing the institutions of national programs in rural areas in general, including institutions managing ex-PNPM-MPd community revolving fund activities. Nationally, the transformation of the management of the former PNPM-MPd revolving funds aims to save assets in the form of IDR 12.7 trillion which so far have no legal certainty, so it is hoped that it can minimize losses in society. Based on consideration of the ownership status of the former PNPM-MPd assets, BUMDesma is the most appropriate legal entity to manage the ex-PNPM-MPd revolving funds and replace the position of the former PNPM-MPd Activity Management Unit (UPK) in the future.

The existing condition of the management of ex-PNPM-MPd community revolving fund activities currently has a legal entity, either in the form of a Cooperative, Limited Liability Company or Association of Legal Entities. The establishment of this legal entity was based on the Circular Letter of the Coordinating Minister for People's Welfare of the Republic of Indonesia No. B 27/MENKOKESRA/ I/2014 dated 31 January 2014 Regarding the Selection of the Form of Legal Entity to Manage Community Empowerment Trust Funds, former PNPM-MPd. With the existence of the BUMDes PP, all forms of legal entities are required to transform into BUMDesma-LKD business units. Transforming the institutional management of community revolving fund (DBM) activities from the former PNPM-MPd into BUMDesma-LKD is the most rational solution compared to previous recommendations such as Cooperatives, PT, or PBH. Rational here means that this transformation is able to accommodate not only the juridical but also the philosophical and sociological aspects of the former PNPM-MPd DBM Activity Manager (UPK).

BUMDesma is a business entity or village business institution that is legally valid and has business activities through the business units it owns. With the existence of business units, it is possible to have separate management of each BUMDesma business unit both operationally and management in developing the business unit (Alfiansyah, 2021).

The potential for developing independent business units results in the need for legality that is separate from BUMDesma. This is because each business unit is an independent legal subject, meaning it has its own wealth so that all profits and losses are the responsibility of the business unit itself without harming the assets or wealth of the BUMDesma.

In carrying out its business activities, BUMDesma-LKD business units can be purely profit-oriented in accordance with the legal entity form of business units mandated by law, namely in the form of Limited Liability Companies, Cooperatives, Microfinance Institutions. Law Number 25 of 1992 concerning Cooperatives (hereinafter referred to as the Cooperative

Law) does not limit cooperative business activities, so that cooperatives can carry out business in all areas of people's economic life that are directly related to the interests of members. Article 44 Paragraph (1) of the Cooperative Law states that cooperatives can carry out fund management activities through savings and loan business activities from and for members of the cooperative concerned, other cooperatives and/or their members.

Based on these provisions, cooperatives, especially Savings and Loans Cooperatives, the former PNPM-MPd business unit, which incidentally is a Women's Savings and Loans (SPP) business activity, only have the right to manage members' funds and are prohibited from managing non-members' funds. Meanwhile, based on the provisions of Article 73 PP BUMDes, it is mandated that the former PNPM-MPd business unit must transform into a Microfinance Institution. Therefore, in order not to violate the provisions of the Cooperative Law and to strengthen its position, the former PNPM-MPd Cooperative legal entity which manages non-member public funds can establish a Microfinance Institution by applying for a business license as an LKM Cooperative to the Financial Services Authority (hereinafter referred to as OJK) (Muhtarom, n.d.).

The relationship between cooperatives and Law Number 1 of 2013 concerning Microfinance Institutions (hereinafter referred to as the LKM Law) is stated in Article 4 of the LKM Law which stipulates that one of the requirements for establishing an LKM is to fulfill the form of a legal entity. This provision is clarified by Article 5 of the LKM Law which stipulates that the form of legal entity in question is a Cooperative or Limited Liability Company (PT). LKMs established by cooperative legal entities are hereinafter referred to as LKM Cooperatives. The existence of dual institutions in one body, namely Cooperatives and LKMs, causes LKM Cooperatives to ultimately fall under 2 (two) regulations, namely the Cooperative Law and the LKM Law. This regulatory dualism gives rise to its own changes in the relevant MFI Cooperative, where theoretically there are different arrangements between cooperatives and MFIs, both in terms of business activities, business area coverage, business permits, capital, as well as guidance, supervision and regulation.

Based on the problems related to the legal position of managing ex-PNPM-MPd community revolving fund activities as a BUMDesma-LKD business unit, and with the existence of dual institutions in one body, namely Cooperatives and LKM, a problem formulation can be drawn, namely:

1. What is the legal review of the legal position of the management of ex-PNPM-MPd community revolving fund activities, and the legal status of the BUMDesma-LKD business unit as a microfinance institution?
2. What is the legal review of the legal consequences of establishing a microfinance institution by a cooperative legal entity as a BUMDesma-LKD business unit?

Based on the background and problem formulation above, this research aims to analyze the legal position of establishing a manager of community revolving fund activities from the former PNPM-MPd to become BUMDesma-LKD, as well as to analyze the legal consequences of establishing a microfinance institution by a cooperative legal entity as a BUMDesma-LKD business unit.

II. RESEARCH METHOD

The research method used is normative juridical (doctrinal), where law is conceptualized as what is written in statutory regulations (law in books) with a type of quantitative research that describes legal events and legal consequences by collecting material and then analyzing it using a descriptive-analytical model. To answer legal issues, the author uses library research instruments on primary legal materials and secondary legal

materials which are then analyzed using a statutory approach and a conceptual approach to find answers to the problems faced.

III. RESULT AND DISCUSSION

A. Study of the Legal Position of BUMDesma-LKD

The previous definition of BUMDes/BUMDesma according to the provisions of Article 1 number 6 of the Village Law states that BUMDes/BUMDesma is a business entity whose capital is wholly or partly owned by the village/villages which can be directly invested in from the assets of the separate village/villages. However, after the Job Creation Law came into existence, the definition of BUMDes/BUMDesma itself was changed, stating that BUMDes/BUMDesma is a legal entity that has been established by villages/villages to manage businesses, utilize assets, develop investment and productivity, provide services or provide business services. others in providing welfare for village communities. So, if you look at these two meanings, there is a difference in that in the Village Law, BUMDes/BUMDesma is a business entity that is not a legal entity, whereas according to the Job Creation Law, BUMDes/BUMDesma is a business entity that has a legal entity. So there is a difference between the two, when you are not yet a legal entity, BUMDes/BUMDesma does not need to register with the ministry, but after becoming a legal entity there is an obligation to register with the ministry to obtain a registration certificate (Kusumawati et al., 2023).

The status of establishing a legal entity is obtained when BUMDesma has been established through a Joint Village Head Regulation. BUMDesma-LKD is a legal entity established together with villages to manage businesses, utilize assets, develop investment and productivity, provide services, and/or provide other types of business for the greatest welfare of village communities. Meanwhile, BUMDesma-LKD's capital comes from all of the former PNPM-MPd DBM assets whose status is jointly owned by the community in 1 (one) former PNPM-MPd sub-district. The former PNPM-MPd DBM assets are in the form of property or assets in the form of money or other objects which can be valued in money, both fixed and movable assets, which have been managed and utilized in ex-PNPM-MPd DBM activities.

From the explanation above, it can be seen that BUMDesma-LKD when linked to the elements of a legal entity are: (a) having an association, (b) having certain goals and common interests, (c) having an organized organization, (d) having assets that are separate from the assets of its members, (e) have rights and obligations, and (f) can sue and/or be sued in court. Based on these criteria, BUMDesma-LKD is treated as a legal entity in accordance with the provisions of Article 1653 of the Civil Code, which is included in the category of legal entity established by a government entity, in this case the village government.

Apart from fulfilling the elements of a legal entity mentioned above, the recognition of BUMDesma-LKD as a legal entity has also been explicitly recognized in statutory regulations, namely Article 117 of the Job Creation Law in conjunction with Article 1 number 1 PP BUMDes which clearly states regarding BUMDesma-LKD legal entity status. The confirmation in the Job Creation Law and PP BUMDes has strengthened the status of BUMDes/BUMDesma as valid legal entities because they comply with statutory regulations. The confirmation in the statutory regulations is related to the theory of juridical reality, where the presence of a legal entity is a form of juridical reality which is determined by the existence of legal provisions. According to E.M. Meijers, in the theory of juridical reality, legal entities are something real and concrete.

In the process of its development, the legal status of BUMDesma-LKD is not only determined by a joint regulation with the village head, but must also fulfill the registration

requirements in the Legal Entity Administration System (SABH) of the Ministry of Law and Human Rights (Kemenkumham) electronically through the Village Information System (SID). This is realized in the issuance of an electronic Registration Certificate by the Ministry of Law and Human Rights. This registration certificate has a role as a legal basis that recognizes the status of BUMDesma-LKD as a legal entity which is regulated in Article 8 paragraph (1) PP BUMDes. In other words, the legal status of BUMDesma-LKD as a legal entity is determined through an endorsement process carried out by the Ministry of Law and Human Rights. The same thing also applies to each establishment of a BUMDesma-LKD bus

Registration of BUMDesma-LKD through the Village Information System (SID) from a private law aspect is to fulfill the principle of publicity. The principle of publicity is an announcement to third parties about the position of a legal entity. Registration of BUMDesma-LKD as a legal entity is intended to provide legal certainty and protection to third parties who will carry out legal actions with BUMDesma-LKD as a legal subject. The principle of publicity can provide public access to find out about the existence of BUMDesma-LKD. Apart from that, the registration of BUMDesma-LKD is intended to make it easier for the government to supervise and develop BUMDesma-LKD as a business entity that has the obligation to register as a company.

B. Review of the Legal Status of the BUMDesma-LKD Business Unit

In the development process of BUMDesma-LKD there has been a change in the institutional structure and its business units, where there is the potential for separation between the legal governance of BUMDesma-LKD and its business units, so that both become separate and independent legal entities as regulated in Article 8 paragraph (2) PP BUMDes. This separation has legal implications, where each institution has independent legal responsibilities as a civil legal entity. This situation can occur when BUMDesma-LKD has several business units, and each business unit has separate management. By separating the legal entity between BUMDesma-LKD and its business units, it will create GCG (Good Corporate Governance) which will facilitate the fulfillment of accountability, independence and responsibility between BUMDesma-LKD and business units, BUMDesma-LKD with third parties, and business units with other parties. third, compared to if the BUMDesma-LKD business unit was not separated from BUMDesma-LKD.

Regarding the legal entity form of the BUMDesma-LKD business unit, based on the BUMDes PP, it is in the form of PT, Cooperative or LKM, whereas in the LKM Law it is explained that the legal entity status of microfinance institutions is between PT and Cooperative. From this explanation, it can be concluded that the legal entity related to the BUMDesma-LKD business unit is only in the form of a PT or Cooperative. The law already provides restrictions regarding legal entities that are permitted in the BUMDesma-LKD business unit. With these restrictions, it automatically closes the opportunity for the existence of other forms of legal entities such as foundations, private companies, associations of legal entities, etc.

C. Legal consequences of establishing a microfinance institution by a cooperative legal entity

The establishment of an LKM by a cooperative legal entity, hereinafter called a Cooperative-LKM, has legal consequences for the LKM Cooperative. Legal consequences arise due to the dualism of regulation in Cooperatives-LKMs which theoretically provides different regulations between Cooperatives and LKMs. This regulatory dualism has resulted in changes in several aspects of Cooperative-LKM, such as: aspects of business activities, capital, institutions/organizations, and supervision.

1. Legal Consequences in Aspects of Business Activities

Cooperative business activities in the financial sector are basically the collection and distribution of funds from cooperative members, other cooperatives and their members. This is emphasized in Article 44 paragraph (1) which regulates that:

- (1) Cooperatives can collect funds and channel them through savings and loan business activities from and to:
 - a. Members of the cooperative concerned
 - b. other cooperatives and/or their members

Legal events in the form of the establishment of an LKM by a cooperative legal entity further expand the business activities of the cooperative-LKM in question. Cooperative-LKM can not only collect and distribute funds to their members, but also to the community in general. Apart from that, cooperatives can carry out business activities in the form of business development consulting services. As Article 11 paragraph (1) of the LKM Law explains that LKM business activities are business development services and community empowerment through micro-scale loans or financing, savings management, as well as providing business development consulting services to members and the community.

2. Legal Consequences in Capital Aspects

LKM capital is regulated based on the scope of its business area. The scope of the LKM's business area is determined in 1 Village/District, District, Regency/City area in accordance with the business scale of each LKM. Article 9 paragraph (2) POJK Number 61 of 2015 concerning Amendments to POJK Number 12 of 2014 concerning Licensing LKM Business and Institutions regulate the provisions for paid-up capital/principal savings, mandatory savings and LKM grants as follows:

- a. Rp. 50,000,000.00 (fifty million rupiah) for Village/Subdistrict business area coverage.
- b. Rp. 100,000,000.00 (one hundred million rupiah) for sub-district business area coverage.
- c. Rp. 500,000,000.00 (five hundred million rupiah) for Regency/City business area coverage.

In contrast to MFIs, Article 41 of the Cooperative Law does not regulate how much initial capital/amount of rupiah must be owned to establish a cooperative. So, cooperatives that wish to establish an LKM must adapt and apply all provisions regarding LKM capital according to the scope of the Cooperative-LKM's business area in the future. If the cooperative's capital is insufficient or does not meet the minimum requirements for the amount of paid-up capital/principal savings, mandatory savings, and grants according to the MFI's area coverage, then the cooperative must increase its capital first before applying for a business permit as a Cooperative-LKM to the OJK.

3. Legal Consequences in Institutional Aspects

a. Member Meeting

Article 22 of the Cooperative Law states that the member meeting is the highest authority in the cooperative. Member meetings are a characteristic of cooperatives that other organizations/legal entities do not have. Therefore, LKMs established by cooperative legal entities must continue to hold member meetings, this is because these LKMs will then become LKMs that have cooperative legal entities or are called Cooperative-LKM.

b. Management

The management is a cooperative organizational device at the level below the members' meeting which has the authority to represent the cooperative as a legal

entity. In the event that a cooperative establishes an LKM, hereinafter called an LKM Cooperative, the previous cooperative management will act as the Cooperative-LKM Management as stated in Article 1 number 7 letter b POJK Number 12 of 2014 concerning Business Licensing and LKM Institutions that the Board of Directors for the LKM is in the form of a legal entity cooperative is the Management as intended in the laws and regulations regarding cooperatives.

c. Supervisor

Cooperative internal supervision actions are carried out by the Cooperative Supervisor. In the event that a cooperative establishes an LKM which is hereinafter called a Cooperative-LKM, the supervisor of the cooperative will previously act as the Supervisor of the Cooperative-LKM as stated in Article 1 number 8 letter b POJK Number 12 of 2014 concerning Business Licensing and LKM Institutions that the Board of Commissioners for the LKM is in the form of The Cooperative legal entity is the Supervisor as intended in the laws and regulations regarding cooperatives.

d. Articles of Association

The Articles of Association are regulations that directly regulate the life of a cooperative. The Articles of Association are made by and for cooperative members based on mutual agreement at a member meeting. The establishment of an MFI by a cooperative legal entity results in changes in the business field carried out by the cooperative concerned. Changes in the business sector require the cooperative to make changes to the Articles of Association and submit a request for ratification of the deed of amendment to the Articles of Association to the Ministry of Cooperatives and UKM. Article 12 paragraph (1) Government Regulation Number 4 of 1994 concerning Requirements and Procedures for Ratifying the Deed of Establishment and Amendments to the Articles of Association of Cooperatives, states that:

- (1) In the event that there is a change to the articles of association of a Cooperative which involves a change in business field, merger or division of the Cooperative, the management is obliged to submit a request for ratification of the changes to the articles of association in writing to the Minister.

Apart from that, cooperatives that wish to establish an MFI must also adjust their Articles of Association to the MFI's Articles of Association which at least contain: 10 names and place of domicile, business activities as a conventional/shariah MFI, capital, ownership, authority, responsibility and term of office. Management, Supervisor and DPS for Cooperative-LKM which carries out business activities based on sharia principles.

4. Legal Consequences in the Supervision Aspect

The provisions of Article 28 paragraph (1) of the LKM Law regulate that the guidance, regulation and supervision of LKMs, whether Cooperative-LKM or PT LKM, is carried out by the OJK in coordination with the Ministry of Cooperatives and SMEs as well as the Ministry of Home Affairs (hereinafter referred to as the Ministry of Home Affairs). The implementation of guidance and supervision is delegated to the Regency/City Regional Government. Coordination between these institutions is outlined in a Memorandum of Understanding (MoU) regarding coordination of LKM implementation. Coordination between OJK and the Ministry of Home Affairs regarding collaboration with Regency/City Regional Governments to provide guidance and supervision of MFIs so that communication can be carried out in 2 (two) directions between OJK and the Ministry of Home Affairs, and OJK and Regency/City Regional

Governments. However, all aspects related to operations in financial services fall under the purview of the OJK. Meanwhile, coordination between the OJK and the Ministry of Cooperatives and SMEs is related to the legal entity status of cooperatives.

The difference in authority between the OJK and the Ministry of Cooperatives and SMEs regarding Cooperative-LKM can be seen in the establishment permits and ratification of the deed of establishment of cooperatives which remain with the Ministry of Cooperatives and SMEs, while the business permits and supervision of Cooperative-LKM are with the OJK. Therefore, supervision of Cooperative-LKM will continue to be treated like an LKM.

IV. CONCLUSION

BUMDesma-LKD is a legal entity formed by the village government and determined by a Joint Decree of the Village Head. Registration of BUMDesma-LKD as a legal entity in the village information system (SID) is a fulfillment of the principle of publicity to guarantee legal certainty and protection to third parties who will carry out legal actions with BUMDesma-LKD. The legal entity form of the BUMDesma-LKD business unit can be a Limited Liability Company (PT) or cooperative according to the characteristics of the BUMDesma-LKD business unit. The BUMDesma-LKD business unit is an independent legal subject, meaning that it has its own assets that are separate from the BUMDesma-LKD assets and can optimally run its business as a commercial business entity to gain profits for the BUMDesma-LKD business unit itself and BUMDesma-LKD as the capital owner. Likewise, if a loss occurs, the BUMDesma-LKD business unit is fully responsible, while BUMDesma-LKD is responsible to the extent of the capital invested. With the BUMDesma-LKD business unit having its own legal entity, it will realize the principles of good corporate governance.

Legal events in the form of the establishment of an LKM by a cooperative legal entity give rise to legal consequences for the cooperative-LKM concerned. Legal consequences arise due to the dualism of regulation in Cooperatives-LKMs which theoretically provides different regulations between Cooperatives and LKMs. This regulatory dualism has resulted in changes in several aspects of Cooperative-LKM, including: (1) business activity aspects, (2) capital aspects, (3) institutional aspects; and (4) supervision aspects.

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