

ELUCIDATION
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ON
COOPERATIVE

I. GENERAL

The 1945 Constitution, especially Article 33 section (1) states that the Indonesian economy is organized as joint endeavor based upon the principle of brotherhood. Further, the elucidation of the Article 33 among others states that the prosperity of the society that is given priority, not the prosperity of the individuals, and the form of enterprise in conformity with that is the Cooperative Societies. The elucidation of Article 33 places the cooperative in a position as the pillar of the national economy as well as the integral part of the national economic system.

By paying attention to the cooperative position as mentioned above, the cooperative role is very important in growing and developing the people's economic potential and in realizing an economically democratic life which has characteristics i.e. democratic, togetherness, brotherhood, and openness. In such an economic life, the Cooperative Societies should have vast play space and business opportunity concerning the interests of the people's economic life. But in such fast economic development, the cooperative growth up till now has not shown its existence and role as referred to in the 1945 Constitution yet. The same goes for the existing legislation has not yet fully covered all that is needed to support the realization of Cooperative Societies as enterprise as well as a people's economic movement. Therefore, to adapt to the development of dynamic environment, it is necessary to have a new legal basis which is able to push the Cooperative Societies so that they can grow and develop to become stronger and self-reliant.

Cooperative development needs to be directed so that the Cooperative

Societies will play bigger role in the national economy. The development is directed in order that the, Cooperative Societies implement the cooperative principles and economic business norms truly. Thus the Cooperative Societies will become stable, democratic, autonomous; and participatory organization with social character. The cooperative building is basically meant to push the Cooperative Societies to carry out business activities and play the leading role in the people's economic life.

This law confirms that the giving of legal entity status to a Cooperative Societies and the endorsement of the change of the Articles of Association forms the authority and responsibility of the Government. Besides the Government is responsible to develop Cooperative Societies. In its implementation, the above mentioned authority and responsibility is carried out by the Minister administering cooperative affairs. Nevertheless, it does not mean that the Government meddles in the internal affairs of the cooperative organizations and still pays attention to the principle of cooperative self-reliance.

The Central Government as well as the Local Government, creates and develops a climate and condition which promoted the growth and socialization of Cooperative Societies. Besides, the Government provides guidance, facilities, and protection to the Cooperative Societies. Further, the Government can decide the field of economic activities which can merely be carried on by Cooperative Societies. The Government can also decide the field of economic activities in a certain region which have been carried on successfully by Cooperative Societies not to be carried on by other enterprises. This is done by paying attention to the national economic interest and the realization of fair distribution of opportunities in running economic business

This Law also gives opportunities to the Cooperative Societies to strengthen their capital through the mobilization of share capital from the members as well as the non-members. With this possibility, the Cooperative Societies can accumulate more funds for developing their business. Parallel to that, in this law it is planted the concept toward the development of cooperative professional management.

Based on the above mentioned points, this Law is drafted with the intention to clarify and confirm the identity, objectives, position, roles, management, business, and capital of the Cooperative Societies and the role of the Government and its implementation in cooperative development that will better assure the realization of the cooperative life in accordance with the message of Article 33 of the 1945 Constitution.

II. ARTICLE BY ARTICLE

Article 1

Point 1

Sufficiently clear

Point 2

The term “cooperative life” means the aspects closely related to cooperative development, such as philosophy, ideology, organization, management, business, education, the role of Government and its implementation in cooperative development, etc.

Point 3

Sufficiently clear

Point 4

Sufficiently clear

Point 5

Sufficiently clear

Article 2

Sufficiently clear

Article 3

Sufficiently Clear

Article 4

Sufficiently Clear

Article 5

Cooperative Principles from a unity and cannot be separated from cooperative life. By implementing the whole principles the Cooperative Societies realizes itself as a business enterprise and simultaneously as a people's economic movement with social character.

Section (1)

These Cooperative Principles from the essence of cooperative work basis as a business enterprise and the specific characteristics and identity of the Cooperative Societies which differentiate it from other business enterprises.

Point a

The voluntary characteristic in the cooperative membership has the meaning that to become a cooperative member cannot be forced upon by anybody. The voluntary characteristic has also the meaning that a member can withdraw from his/her Cooperative Societies in accordance with the requirements determined in the Articles of Association of Cooperative Societies. Whereas the characteristic of openness has the meaning that there is no limitation or discrimination in whatever from in the cooperative membership.

Point b

The democratic principle shows that the cooperative management is carried out by the desire and decision of its members. Those members hold and implement the highest authority in the Cooperative Societies.

Point c

The distribution of net surplus to the members is not only based on the capital owned by a person in the Cooperative Societies but also based on the proportion of business contribution of the member to the Cooperative Societies. Such kind of stipulation forms the realization of the values of brotherhood and justice.

Point d

The capital in the Cooperative Societies is basically used for the benefit of the members and not only for seeking profit. Therefore, the return of the capital provided to the members is also limited, and not only based on the amount of the capital provided. The term "limited" means reasonable in the sense that it will not exceed the interest rate valid in the market.

Point e

Self-reliance has the meaning to be capable to stand on its own without being dependent on other parties based on confidence to its own judgment, decision ability, and effort. In self-confidence, there is also a meaning of responsible freedom, autonomy, self-help, courage to

account for its own deeds, and the desire to manage itself.

Section (2)

Besides the five principles as referred to in section (1) to develop itself the Cooperative Societies shall implement two other cooperative principles as well, namely cooperative education and cooperation among Cooperative Societies.

The implementation of cooperative education and cooperation among Cooperative Societies are important cooperative principles to enhance the ability, broaden the insight of the members, and strengthen the solidarity in realizing the cooperative objectives.

Cooperation can be implemented among Cooperative Societies at the local, national, and international levels.

Article 6

Section (1)

This requirement is meant to secure the business feasibility and the life of the Cooperative Societies. Individuals establishing a Cooperative Societies are those who fulfill the membership requirements and who have similar economic interest.

Section (2)

Sufficiently clear

Article 7

Section (1)

Sufficiently clear

Section (2)

The term “domicile” means the permanent address of the Cooperative Society office.

Article 8

Point a

Sufficiently clear

Point b

Sufficiently clear

Point c

Sufficiently clear

Point d

Sufficiently clear

Point e

Sufficiently clear

Point f

Sufficiently clear

Point g

Sufficiently clear

Point h

The duration of existence of a Cooperative Societies can be decided to be limited within a certain period of time or unlimited in accordance with its objectives.

Point i

Sufficiently clear

Point j

The sanctions in this provision are sanctions arranged internally by each Cooperative Societies, being imposed on the Board of Management, Committee of Supervision, and members who violate the provisions of the Articles of Association.

Article 9

Sufficiently clear

Article 10

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Section (3)

Sufficiently clear

Article 11

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Section (3)

Sufficiently clear

Article 12

Section (1)

Sufficiently clear

Section (2)

By this provision is meant only the basic changes which need to be asked for endorsement by the Government, namely concerning amalgamation, division, and change of business fields. The endorsement meant in the case of amalgamation and change of business fields is the endorsement of the amendment to the Articles of Association, and in the case of division is the endorsement of the amendment to the Articles of Association and or endorsement of new legal entity. The endorsement of the change of cooperative business fields meant in this provision will not decrease the opportunities of the Cooperative Societies to make businesses in all economic fields.

Article 13

Sufficiently clear

Article 14

Section (1)

The joining or known by the term amalgamation and merger can only be done if it is based on considerations of cooperative development and/or business management efficiency in accordance with members' interest. In the case of amalgamation and merger which needs endorsement of the Articles of Association or a new legal entity it is done in accordance with the provisions arranged in this law

Section (2)

Sufficiently clear

Article 15

The meaning of secondary Cooperative Societies covers all Cooperative Societies established by and having as members The Primary

Cooperative Societies and/or secondary Cooperative Societies. Based on similarity of interest and objective of efficiency, a secondary Cooperative Societies can be established by Cooperative Societies of various types or levels. In case that the Cooperative Societies establish secondary Cooperative Societies in various levels, witch up to the present has been known as Centre of Cooperative Societies, Union of Cooperative Societies, and Mother of Cooperative Societies, the number of levels and their names are arranged by the concerned Cooperative Societies.

Article 16

The basis for deciding the cooperative type is similarity of activities, interest and economic needs of the members such as among others saving-loan Cooperative Societies, consumer Cooperative Societies, and service Cooperative Societies. Specifically the Cooperative Societies established by the functional groups such as government officials, members of the Armed Forces of the Republic of Indonesia, workers, etc. are not considered as a special type of Cooperative Societies.

Article 17

Section (1)

As the owners and users of the cooperative service, the members participate actively in cooperative activities. Nevertheless, as long as it does not harm the interest of the members, the Cooperative Societies can also provide services to non-members in accordance with the characteristics of its business activities, with the intention to attract non-members to become cooperative members.

Section (2)

Sufficiently clear

Article 18

Section (1)

Who can become a member of a primary Cooperative Societies is an individual who is capable to perform legal action and fulfill the requirements determined by the concerned Cooperative Societies. This is meant as a consequence for the Cooperative Societies as a legal entity. However, specifically for students, pupils and/or

individuals similarly considered who are not yet capable to perform legal action can establish a Cooperative Societies, but it will not be endorsed as a legal entity and its status in only as a registered Cooperative Societies.

Section (2)

In the event that there is somebody who wants to get services and become a cooperative member, however, does not fulfill the requirements as determined in the Articles of Association, he/she can be accepted as an associate member. This provision gives an opportunity to the Indonesian Inhabitants who do not have Indonesian Citizenship to become associate members of a Cooperative Societies as long as they fulfill the valid provisions.

Article 19

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Section (3)

Basically, cooperative membership cannot be transferred since the requirements to become a cooperative member is the economic interest of the concerned member.

In the event that the cooperative member passed away, his/her membership can be continued by his/her heirs who fulfill the requirements determined in the Articles of Association. This is meant to maintain the interest of the heirs and facilitate the process for them to become members.

Section (4)

Sufficiently clear

Article 20

Section (1)

As a consequence of becoming a cooperative member, the member has obligations to be fulfilled, namely to obey the provisions in the Articles of Association and the decisions approved in the Members Meeting. Considering that the members are the owners and service users who have a deep interest in the business done by the

Cooperative Societies, so the members' participation is also meaningful for the development of the cooperative business. This is parallel to the members' right to use and get services from their Cooperative Societies. The members form a decisive factor in the life of the Cooperative Societies, therefore it is important for the members to develop and maintain togetherness.

Section (2)

Sufficiently clear

Article 21

Sufficiently clear

Article 22

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Article 23

Sufficiently clear

Article 24

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Section (3)

Voting meant in this Section is done only by the members present at the meeting.

Section (4)

The term "considering the number of members and business contribution of the member Cooperative Societies proportionally" means that the allocation of voting rights is proportional to the number of members of each member Cooperative Societies and the amount of business contribution of member Cooperative Societies towards its secondary Cooperative Societies.

Article 25

Sufficiently clear

Article 26

Section (1)

Sufficiently clear

Section (2)

The time limit for holding the Members' Meeting in this Section is at the latest 6 (six) months after the fiscal year is over. However, in its implementation the Members' Meeting should be held at the earliest possible moment.

Article 27

Section (1)

The Extraordinary Members' Meeting is held if considered to be very urgent and which cannot wait until the holding of the Members' Meeting.

Section (2)

The request of holding an Extraordinary Members' Meeting by the members can be made due to various reasons, especially if the members consider that the Board of Management has made activities contradictory to the interest of the Cooperative Societies and causing loss to it. If the request has been made in accordance with the provisions in the Articles of Association, then the Board of Management has to fulfill the request. The Extraordinary Members' Meeting which is decided by the Board of Management is held for the interest of cooperative development.

Section (3)

Sufficiently clear

Article 28

Sufficiently clear

Article 29

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Section (3)

Sufficiently clear

Section (4)

The members of the Board of Management who have terminated their term of office can be reelected.

Section (5)

Sufficiently clear

Article 30

Section (1)

In managing the Cooperative Societies, as the authority holder of the Members' Meeting, the Board of Management carries out activities solely for the interests and benefits of the Cooperative Societies along with its members in accordance with the decision of the Members' Meeting.

Section (2)

Sufficiently clear

Article 31

Sufficiently clear

Article 32

Section (1)

This provision is meant to realize professionalism in cooperative business management. Therefore, the Board of Management can appoint an expert manager to manage the concerned cooperative business. The use of the term manager is meant to cover a broader meaning and provides alternatives to the Cooperative Societies. Thus in accordance with its interest, the Cooperative Societies can appoint a manager or a director. The meaning of the words "is given the authority and power" is the delegation of authority and power owned by the Board of Management. Thus the Board of Management does not have to carry out the authority and power which has been delegated to the manager by itself anymore and henceforth the task of the Board of Management is to supervise

the implementation of the authority and power done by the manager. The size of authority and power delegated to the manager is decided in accordance with the interests of the Cooperative Societies.

Section (2)

The approval to be requested concerning the plan to appoint a business manager. The selection and appointment of a business manager is done by the Board of Management.

Section (3)

Sufficiently clear

Section (4)

Sufficiently clear

Article 33

Work relationship between the manager and the Cooperative Board of Management follows the provisions of law of contract in general. Thus the manager is fully responsible to the Board of Management. Further the work relationship is in accordance with the agreement and is stated in the contract.

Article 34

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Article 35

Sufficiently clear

Article 36

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Article 37

The approval of the liability report of the Board of Management by

Members' Meeting releases the Board from its responsibility of what has been done in the concerned fiscal year.

Article 38

In case that the Cooperative Societies appoints a manager, the Committee of Supervision can be established permanently or when it is necessary in accordance with the decision of the Members' Meeting. This does not reduce the significance of the Committee of Supervision as an organizational organ and gives opportunity to the Cooperative Societies choose a permanent or a temporary Committee of Supervision in accordance with its necessity. The Committee of supervision established when it is necessary carries out supervision in accordance with the assignment given by the Members' Meeting.

Article 39

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Section (3)

Sufficiently clear

Article 40

In the framework of enhancing efficiency, open management, and giving protection to the interested parties, a Cooperative Societies can ask for an audit service to the public accountant. By this provision the Board of Management or the Committee of Supervision can ask for an audit service to the public accountant. To realize an appropriate audit, the Members' Meeting can decide that the audit is carried out by public accountant. The term “audit service” means audit of the financial report and other audits in accordance with the cooperative needs. Besides the Cooperative Societies can ask other services from the public accountant, such as consultancy and training.

Article 41

Section (1)

Sufficiently clear

Section (2)

The term “own capital” means capital which bears a risk or is called equity capital.

Point a

Basic savings is the similar amount. of money which a member is obliged to pay to the Cooperative Societies at the time of entering the Cooperative Societies as a member. Basic savings cannot be withdrawn as long as the concerned person is still a member of the Cooperative Societies.

Point b

Compulsory savings is a certain amount of savings which need not be of the same amount and has to be paid by a member to the Cooperative Societies at a certain time and occasion. Compulsory savings cannot be withdrawn as long as the concerned person is still a member of the Cooperative Societies.

Point c

Reserve fund is the amount of money obtained from the net surplus set aside with the purpose to strengthen the own capital and to cover the loss of the Cooperative Societies if needed.

Point d

Sufficiently clear

Section (3)

To develop its business, the Cooperative Societies can utilize borrowed capital by paying attention to the feasibility and viability of its business.

Point a

The loan obtained from the members, including the member candidates fulfilling the membership requirements.

Point b

The loan from other Cooperative Societies and/or their members based on agreement of cooperation among the Cooperative Societies.

Point c

The loan from banks and other financial institutions based on provisions of the valid legislation.

Point d

The issuance of bonds and other securities based on the provisions of the valid legislation.

Point e

Other legal sources are the loan from non-members which is made not through general offers.

Article 42

Section (1)

Capital mobilization from share capital, originating from the Government as well from the society, is carried out in the framework to strengthen cooperative business activities, especially in the form of investment. Share capital bears a risk. The owner of the share capital does not have a vote in the Members' Meeting nor in the deciding the cooperative policy as a whole. Nevertheless, the owner of the share capital can be involved in the management and supervision of investment business supported by his her share capital in accordance with the agreement.

Section (2)

Sufficiently clear

Article 43

Section (1)

Cooperative business is mainly directed to the field of business which is directly connected with the members' interest to support their business as well as to enhance their welfare. Therefore, the management of cooperative business must be done productively, effectively, and efficiently in the sense that the cooperative has to have ability to realize business services which can increase the added value and benefit for the members to the utmost by considering persistently to obtain reasonable net surplus. To achieve the above-mentioned business capability, the Cooperative Societies can carry out business flexibly by developing backward as well as forward linkages and in other various related types of

businesses. The implementation of cooperative business can be done anywhere at home and abroad by considering its feasibility.

Section (2)

The term “the excess of business capability of the Cooperative Societies” is the excess of funds capacity and power owned by the Cooperative Societies to serve the members. The excess of capacity can be utilized by to do business with non-members with the objective to optimize the economic scale in the sense of increasing the business volume and decreasing cost per unit as to render the greatest advantage to its members and to socialize the cooperative in the society.

Section (3)

In order that the Cooperative Societies can realize its functions and roles as referred to in Article 4, the Cooperative Societies makes business in all fields of the economy and play the leading role in the people's economic life. The term “people's economic life” means all economic activities implemented and related to the interests of many people.

Article 44

Section (1)

In accordance with the provisions in the law that arranges banking, the above mentioned savings-loan business is specifically arranged in this Law. The meaning of cooperative member as referred to in point a of this Section includes the member candidate who fulfils the membership requirements. While the provision in point b is valid as long as it is based on the agreement of cooperation among the concerned Cooperative Societies.

Section (2)

Sufficiently clear

Section (3)

Sufficiently clear

Article 45

Section (1)

Sufficiently clear

Section (2)

The fixing of the amount to be distributed to the members and the types and amount of the other needs is decided by the Member's Meeting. The term business contribution is business transaction and capital participation.

Section (3)

Sufficiently clear

Article 46

Sufficiently clear

Article 47

Section (1)

The decision of dissolution with the reason that the cooperative activities is contrary to the public order and/or against morality as mentioned in this provision is made if it is proven by the decision of the court of justice. The decision of dissolution due to the reason that the survival of the Cooperative Societies cannot anymore be expected, among others because of being declared as bankrupt.

Section (2)

Sufficiently clear

Section (3)

Sufficiently clear

Section (4)

Sufficiently clear

Article 48

Sufficiently clear

Article 49

Section (1)

The term “the attorney of the Members' Meeting in this paragraph” means those appointed and given the authority and responsibility by the members' Meeting to carry out the task related to the dissolution of the Cooperative Societies.

Section (2)

Sufficiently clear

Section (3)

This provision is meant to provide protection to the creditors who have not yet known about the dissolution of the above-mentioned Cooperative Societies.

Article 50

Sufficiently clear

Article 51

Sufficiently clear

Article 52

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Section (3)

Sufficiently clear

Section (4)

This provision confirms that "the Cooperative Societies in liquidation" still exists and still has the rights and obligations to settle all its affairs.

Article 53

Section (1)

The term the decision of cooperative dissolution is the decision of dissolution based on the decision of the Members Meeting as well as the decision of the Government.

Section (2)

Sufficiently clear

Article 54

Point a

Sufficiently clear

Point b

Sufficiently clear

Point c

The term “certain ex-members” means for instance those who have withdrawn from Cooperative Societies and still have the obligation to assume liability In accordance with the provision of its Articles of Association.

Point d

Sufficiently clear

Point e

Sufficiently clear

Point e

Sufficiently clear

Point g

Sufficiently clear

Point h

Sufficiently clear

Article 55

This provision confirms that the members bear only the burden of loss to the limit of the amount of basic savings, compulsory savings, and share capital which they own. While the cooperative borrowed capital coming from the members is not included in this provision.

Article 56

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Article 57

Section (1)

The organization mentioned above is not a business enterprise and therefore does not carry out business activities directly. At the time that this law is endorsed, this organization, called the Indonesian Cooperative Council (DEKOPIN, Dewan Koperasi Indonesia), has further to adapt with the stipulations of this law. The objectives

and activities of the organization mentioned above. have to be in accordance and in harmony with the soul and spirit of this law.

Section (2)

Sufficiently clear

Section (3)

The Articles of Association of the concerned organization contains at least

- a. the name of the organization;
- b. the objectives of the organization;
- c. the structure of the organization;
- d. provisions concerning Board of Management and its term of office;
- e. provisions concerning systems and procedures of the organization;
- f. provisions concerning Members Meeting and other meetings;
- g. provisions concerning members rights and obligation;
- h. provisions concerning financial sources and management;
- i. provisions concerning amendment of Articles of Association and dissolution;
- j. provisions concerning organizational sanctions.

Article 58

Section (1)

Point a

Sufficiently clear

Point b

The efforts to enhance the consciousness of the society to cooperate are carried out among others through extension activities, disseminations of information, publishing, and cultivation of business groups in the society to be directed to become Cooperative Societies.

Point c

Sufficiently clear

Point d

To develop the cooperation among Cooperative Societies and between the Cooperative Societies and other business enterprises, this organization promotes the growth and

development of the cooperative institutional and business network at regional, national, as well as international levels.

Section (2)

Sufficiently clear

Article 59

Sufficiently clear

Article 60

With this provision, the Government has a clear and strong foundation to implement its role in determining development policies needed to promote the growth. Development and socialization of Cooperative Societies. In accordance with the principle of self-reliance, the above-mentioned development efforts are implemented without interfering the internal affairs of the cooperative organization. The effort of growing, developing, and socializing the Cooperative Societies is done by the Government so that the general public understands the cooperative concept and with full awareness establish and utilize the Cooperative Societies to fulfill their economic and social interests. The provision of guidance, facilities, and protection by the Government forms an effort to develop Cooperative Societies through the stipulation of policies, provision of facilities, and consultancy needed by the Cooperative Societies so that the Cooperative Societies have the capability to perform their functions and roles to achieve their objective. Thus it is the obligation of all the Government apparatus, at the center as well as at the local areas, to make efforts in enhancing the growth, development, and socialization of the Cooperative Societies.

Article 61

Point a

Sufficiently clear

Point b

Sufficiently clear

Point c

A harmonious and mutually beneficial business relationship between Cooperative Societies and other business enterprises forms an important factor in the framework to realize the national

economic system based on economic democracy. In this connection, the above-mentioned cooperation must be mutually supporting and advantageous.

Point d

To institutionalize cooperative is to socialize the cooperative soul and spirit.

Article 62

Point a

Sufficiently clear

Point b

Sufficiently clear

Point c

This provision confirms the government commitment in the effort to strengthen cooperative capital and develop cooperative financial institutions since capital is one of the sources of strength for the development of cooperative business. In the implementation, among others, it is done by developing share capital, originating from the Government as well as from the society, and facilitating the requirements and procedures to obtain credits. The Government also provides guidance and facilities to develop financial institutions which have Cooperative Societies as their legal entity status.

Point d

The development of strong cooperative business network and close and mutually beneficial cooperation among cooperative societies is an important factor in enhancing the potential of each Cooperative Societies and the whole Cooperative Societies.

Point e

Sufficiently clear

Article 63

Section (1)

Point a

This provision firmly reflects the government commitment to strengthen the growth and development of the Cooperative Societies as enterprises stated in the 1945 Constitution. In

the framework of this commitment, the Government can decide certain economic fields, especially which is strongly related to the peoples' economic activities, which can be handled only by the Cooperative Societies. The implementation of these provisions is dynamic in character by paying attention to aspects of equilibrium towards the national economic condition and interest and aspect of equity in doing business.

Point b

This provision is meant to protect the survival of cooperative business.

Section (2)

Sufficiently clear

Article 64

Sufficiently clear

Article 65

Sufficiently clear

Article 66

Section (1)

Sufficiently clear

Section (2)

Sufficiently clear

Article 67

Sufficiently clear