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RESEARCH ARTICLE

RECONSTRUCTION OF SAVING AND LOAN COOPERATIVE MANAGEMENT BASED ON JUSTICE VALUE

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Abstract

This research departs from the problem of managing a Savings and Loan Cooperative (KSP) as a financial institution in Indonesia that is unable to develop properly in the current era of economic globalization. The Main Problem Discussed are the weaknesses in the implementation of saving and loan cooperative management in Indonesia currently and how the reconstruction of the management of savings and loan cooperatives should be based on justice values. The study uses sociological juridical methods that explore legal research data not only from the normative aspect but also from the sociology of law. The results showed that the implementation of the legal politics of savings and loan cooperatives so far has not been effective, this can be seen by the decreasing number of cooperatives in the Demak, Yogyakarta and Semarang districts; As for weaknesses that result in the non-running of KSP management legal politics resulting in many KSPs that cannot develop, namely 1) weaknesses in legal regulations that do not clearly regulate the appointment of management who also take into account management's knowledge and experience of the operation and mastery related to information and communication technology; 2) sources of capital that are not assisted by the government, making it difficult for the position of cooperatives in economic competition in the current era of globalization; 3) inadequate access to adequate facilities and infrastructure; and 5) insufficient KSP access in having a marketing network and cooperation network; so that there is a need for a political Reconstruction of KSP management law based on the justice value contained in Pancasila and the Indonesian Constitution are by adding additional articles to Article 29 and 4 of Law Number 25 of 1992 concerning provisions relating to experience and knowledge and expertise in technological mastery in the criteria for appointing the management system and adding provisions related to the role both the central and regional government in KSP capital at the moment.

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Introduction:-

The tendency of Savings and Credit Cooperatives (KSP) to carry out business activities that violates the principles of Cooperatives and violates the Law on Cooperatives is one of the obstacles why Savings and Loans Cooperatives

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find it difficult to grow and develop qualitatively. Obstacles in the development of Savings and Credit Cooperatives, including; Inadequate legislative policies regarding Savings and Loans Cooperatives, There is no firmness to give strict sanctions to Savings and Loans Cooperatives that violate laws and regulations, and Lack of ability to master the regulations regarding the management of savings and loans from the guiding apparatus who are also supervisors of the Savings and Loan Cooperatives, as well as the poor management of Credit Unions. There are several results of research that support the hypothesis, among others, research in sub-Saharan Africa, that poor management of cooperatives is caused by internal factors and external factors. Internal factors include; low member participation, structural problems, control and mismanagement, while external factors are extreme government intervention, economic and political environment, too many expectations that cannot be realized on the role of cooperatives, how the role of government promoting "top down" cooperatives is proven to have been failed to prevent members from actively participating.

This can be seen in legal cases concerning the management of Savings and Loan Cooperatives which lately often occur, and these cases include: the first case experienced by the Karang Asem Cooperative. In 2009, the Karang Asem Cooperative Developed in Karang Asem Regency, Bali Province. has raised members and prospective members' funds in the amount of Rp. 700 billion, but funds in the amount of Rp. 400 billion cannot be accounted for. Finally, by the Karang Asem Regency Cooperative Service, the Cooperative was closed and the Cooperative manager was charged with embezzlement by violating Law Number. 10 of 1998 concerning banking.

Then the second happened to the Sembilan Sejati Cooperative in Semarang City. This legal case occurred in 2010, in which the Nine Sejati Cooperative raised Rp 200 billion in members and prospective members. However, with the Rp 200 billion fund, the manager cannot be held accountable and the Central Java Province Cooperative Office of UMKM finally closed this cooperative. The managers of the Nine-True Cooperative are charged with embezzlement and Law Number. 10 of 1998 concerning banking.

Furthermore, the third legal case that is befalling the Inti Dana Savings and Loan Cooperative, it is suspected that this Cooperative has received member and prospective member funds of Rp 900 billion. When members take or withdraw deposits, the Inti Dana Cooperative cannot provide the liquidity of the members and prospective members' savings funds. Some members have filed a lawsuit, but do not rule out the possibility that if the civil case is not yet finished, the legal case will turn into a criminal matter. In the latter case, according to several sources, the Inti Dana Cooperative is a healthy Cooperative, professionally managed and has received several awards from the Ministry of Cooperatives and MSMEs of the Republic of Indonesia. The Chairperson of the Indonesian Cooperative Council (Dekopin) in Central Java, Warsono, said that the Core Savings and Loan Cooperatives were known to be quite good Savings and Loans, in management already using information technology and there were no problems or complaints from members, however the Core funds of Savings and Loan Cooperatives is still tripping over legal issues. Then to respond to the development patterns of the management of Savings and Loan Cooperatives, both those that occur due to legal developments due to a paradigm shift, and the development of a rapidly moving world economy, in addition to management practices deemed to deviate from the principles of Cooperatives and Cooperative Law, the Government together The House of Representatives held a cooperative law renewal, namely by passing Law Number. 17 of 2012 concerning Cooperatives.

The purpose and purpose of the replacement of Law Number 25 of 1992 with Law Number. 17 of 2012 is to strengthen and strengthen cooperatives in order to align with other business actors, and more than that to deal with economic development and globalization. The development and empowerment of cooperatives in cooperative policies must reflect the values and principles of cooperatives as a vehicle for joint efforts to meet the aspirations and economic needs of members, so that cooperatives can grow strong, healthy, independent and resilient in the face of increasingly dynamic and challenging national and global economic developments.

The presence of the new Cooperative Law, namely Law Number. 17 of 2012, actually caused debate in the community. Some activists and the Cooperative movement even filed a lawsuit (Judicial Review) in the Constitutional Court on Law Number. 17 of 2012. Plaintiffs argue that Law Number. 17 of 2012 contrary to the content of Article 33 of the 1945 Constitution. Constitutional Court with the decision Number. 28 / PUU-XI / 2013, cancel Law Number. 17 of 2012. The contents of the decision of the Constitutional Court Number. 28 / PUU-XI / 2013 is that Law Number 17 of 2012 is declared contrary to the 1945 Constitution, particularly Article 33 paragraph (1) and paragraph (4). The discrepancy between Law Number 17 of 2012 and the populist economic system adopted in Indonesia is that there is a great deal of authority for shareholders with large capital, while each member does not

have the discretion because the investment system is closed in nature, besides that there is a surveillance system that has the opportunity interfering with members is also not in accordance with the breath of the cooperative.

Then the birth of Law No. 21 of 2011 concerning the Financial Services Authority, the reason for the replacement of Law Number 17 of 2012 is getting stronger, this is due to a concern that the position and sustainability of the Savings and Loan Cooperative will be increasingly weak, even though the Cooperative is expected to be a pillar national economy teacher. This makes the reason for the Constitutional Court to cancel Law Number 17 of 2012 and to fill the legal vacuum while enacting Law Number 25 of 1992.

After Law Number 17 of 2012 mandating the establishment of a Savings and Loan Cooperative Supervisory Agency was canceled by the Constitutional Court, it did not rule out the Savings and Loan Cooperative would be overseen by the Financial Services Authority, even though it was explicitly stated that Cooperatives were supervised by the Ministry of Cooperatives and Small and Medium Enterprises, because according to Article 6 letter c of Law Number 21 Year 2011 (OJK Law), that one of the tasks of the Financial Services Authority is to oversee other financial services. Admittedly, there are several Savings and Loans Cooperatives that are quite ready to be supervised by the Financial Services Authority, but most Savings and Loans Cooperatives are not quite ready to be overseen by the Financial Services Authority, because banking supervision standards differ from Cooperatives engaged in the savings and loan business and the Financial Services Authority has the standard of supervision of financial institutions is quite high.

Based on the various explanations available, it is necessary to make an effort so that the Savings and Credit Cooperative as an intermediary institution can be equitable in line with other financial institutions and together with other financial institutions to build the national economy. With regard to *ius constituendum*, Savings and Loans Cooperatives need to be regulated in a Cooperative Act, and therefore the authors conducted this research with the following issues:

1. What are the weaknesses in the current implementation of the management of savings and loan cooperatives in Indonesia?
2. How is the reconstruction of the management of savings and loan cooperatives in Indonesia based on justice values?

Method of Research:-

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge. Paradigm also looked at the science of social as an analysis of systematic against Socially Meaningful Action through observation directly and in detail to the problem analyzed.

The research in writing this dissertation is a qualitative research . Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach (approach) the research is to use the approach of Socio-Legal , which is based on the norms of law and the theory of the existing legal enforceability of a sociological viewpoint as interpretation or interpretation .

As for the source of research used in this study are :

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study , researchers used data collection techniques, namely literature study, interviews and documentation. In this study, the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion:-

Weaknesses In The Current Implementation Of The Management Of Savings And Loan Cooperatives In Indonesia

Based on theories related to the operation of the system of law the author divides the weaknesses of political laws related to the implementation of the system of saving and loan cooperative as follows :

Weaknesses in the aspects of legal regulations

It has been mentioned in the above that the development of the implementation of the cooperative of savings and loan arranged in general in the Law No. 25 Year 1992 About the Cooperative and is specialized in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises No. 15 Year 2015 on Business of saving and loan Cooperative. The weaknesses of aspects of the regulatory legislation by the author divided back into :

Weaknesses of Law Number 25 of 1992 Concerning Cooperatives

system of appointment of the board of cooperatives are not based on the knowledge and experience of the management and grounding cooperativeness , things have led to managers of cooperatives that only make cooperatives as institutions savings and loan without capable of running the principle of basic cooperation that resulted in the cooperative no longer be a co-operative which in fact , What is the capital of cooperative savings and loan acquired through business self that dotted the base of the member and also the customers who use the services of saving and loan in the institution . While budget aid from the government and the institutions of financial others are loans not granting funds help non- loan . It is increasingly growing worse by the fact that the interest of business savings and loan cooperatives are also relatively low so that the agency cooperative budget are small, while the capital of the establishment of cooperative savings and loans can be said also not small in number . It is the one that makes the cooperative of saving and loans often do embezzlement of funds of its members in order to pay debts establishment and operation of cooperative savings and loans that are not can be covered by capital revenues small.

Weaknesses of the Regulation of the Minister of Cooperatives and Small and Medium Enterprises Number 15 of 2015 concerning Savings and Loans by Cooperatives

Settings related to the appointment of the board of cooperatives in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises No. 15 Year 2015 on the Save Lending by Cooperative is not governed by clear properly Law Number 25 Year 1992 About the Cooperative. It is increasingly also lead to system management of the cooperative savings and loans in particular do not have the clarity and certainty. It 's going to lead to many HR administrators cooperative savings and loans are not competent care of the cooperative savings and loan that ultimately will lead to cooperative savings and loan out of the groove principle basis of cooperative savings and loan as that stipulated in Law No. 25 Year 1992 About the Cooperative . Then in terms of setting regarding the capital cooperatives in the Regulation of the Minister of Cooperatives and Small and Medium Enterprises No. 15 Year 2015 on the Save Lending by Cooperative regulated in Article 17. Article 17 Regulation of the Minister of Cooperatives and Small and Medium Enterprises No. 15 Year 2015 on the Save Lending by Cooperative states that :

Initial venture capital at each establishment of Primary KSP and Secondary KSP which is collected from the principal savings and mandatory savings of its members and can be supplemented with grants.

Capital venture early KSP Primer as referred to in paragraph (1) in the form of deposits at the Bank of the Government with the details as follows :

1. Primary KSP capital with the area of membership in the local district / city is set at 15,000. 000, - (fifteen million rupiah).
2. KSP capital Primer to the area Membership cross- county District / City within 1 (one) area of the Province set for Rp75.000.000,00 (seven twenty five million rupiah).
3. Primary KSP capital with the area of membership across the region Province set for Rp375.000.000,00 (three hundred and seven twenty five million rupiah).

Capital venture early KSP Secondary as referred to in paragraph (1) in the form of deposits at the Bank of the Government with the details as follows :

1. KSP capital Secondary with the area of membership in the local Regency / City set for Rp50,000,000.00 (five fifty million rupiah).
2. KSP capital Secondary to the area Membership cross- county District / City within 1 (one) area of the Province set for Rp150.000.000,00 (one hundred and five fifty million rupiah).

3. KSP capital Secondary with area membership across the region Province set at 500,000,000.00 (five hundred million rupiah).

Under the provision as it has been described in the above seen also that the capital venture cooperative savings and loans obtained through the activities of the business independently without the help of the government center in the area . It is also clear that the condition of the cooperative savings and loan also will experience difficulty in terms of capitalization and revenues income were great. so that in the end it can lead to distrust by its members .

State so clearly would violate the Fifth principle of Pancasila, contained in the fourth alinea Opening of the Constitution NRI 1945, Article 33 paragraph (1) NRI 1945 Constitution which states that " the economy is built upon a business together and based on principle such as kinship ". It is clear also violate the principle of the cooperative that is kinship or of mutual cooperation principle. This is because legal politics in Indonesia has been affected by economic globalization, which increasingly prioritizes capitalist interests over the economic needs of society.

Hans Nawiasky developed the theory of Kelsen with the concept of the new that is named with die Theorie vom stufenordnung der rechtsnormen . On the theory that, Nawiasky stated that the hierarchy of the norm of law is divided into :

1. State fundamental norms or fundamental norms ;
2. Basic rules of the state or staatsgrundgesetz ;
3. Formal Act or formell gesetz ;
4. Regulation implementing and regulatory autonomous or verordnung en autonome satzung .

In connection with the position of Pancasila as Filosofische Grondslag and at the same time as the source of all sources of law, A. Hamid S. Attamimi by using a die Theorie vom stufenordnung der rechtsnormen owned Nawiasky stated that the structure of the hierarchy of law in Indonesia consists of :

1. Pancasila and the Opening Act of the State of the Unitary Republic of Indonesia Year 1945 as staatsfundamentalnorm ;
2. Rod body of Law of the State Unitary Republic of Indonesia Year 1945, the Decree of the Assembly as well as the Convention on the state administration is staatsgrundgesetz ;
3. Regulation Legislation is formell gesetz ;
4. In a hierarchy ranging from Rule Government to Regulation Regional Province and Regulation of the Regional District / City is verordnung en autonome satzung .

The position of Pancasila as Filosofische Grondslag or by Nawiasky called the S taatsfundamentalnorm as well as rechtsidee or ideals of law , give rise to consequences that the manufacture of all the rules of law to its implementation should be in accordance with all the values that are contained in each of the precepts of Pancasila as has been described in the above . The issue of political law of the management of the cooperative savings and loan that there has been far from the principle of cooperatives were also born from the spirit of Pancasila request maps the economic populist and economic Pancasila which upholds high democracy economist populist.

So that the norm basis , the legal basis of the political law of the management of the cooperative savings and loan experience disharmonization. In connection with the disharmony that , Lon L. Fuller claimed that to know the law as a system it must be examined whether Fuller meet the eight principles or principles of legality following this :

1. The system of law should contain rules means he is not allowed to contain just the decisions that are ad hoc;
2. regulations that have made it to be announced ;
3. Regulations may not apply retroactively ;
4. rules are drafted in a formulation that can be understood ;
5. A system is not allowed to contain regulations that contradict one each other;
6. rules are not allowed to contain demand exceeds anything that can be done ;
7. Rules can not be changed frequently ;
8. Should there is a match between the rule that was enacted by the implementation of day-to-day .

Based on the opinion of Fuller as mentioned in the above , regarding the disorientation of political law of cooperatives has been violated as the principle of law in points (5) and (8). In the end, the politics law management

of cooperatives are not yet able to realize the cooperative which are effectively able to build the economy of the breath of democracy economic populist .

The weakness of the cooperative savings and loan management system

Based on the issue as that mentioned in the table at the top , then the issue of the management of the institution of saving and loan Cooperative are divided into :

Capital Issues:

It has been described in the above that the capital of the cooperative savings and loan diporeleh through business self that are the base of the members and also the customers who use the services of saving and loan at slow pace. While budget aid from the government and the institutions of financial others are loans not granting funds help or non-loan. It is increasingly growing worse by the fact that the interest of business savings and loan cooperatives are also relatively low so that the agency cooperative budgeting are small, while the capital of the establishment of cooperative savings and loans can be said also not small in number. It is the one that makes the saving and loans cooperative member often do embezzlement of funds of its members in order to pay debts establishment and operation of cooperative savings and loans that are not can be covered by capital revenues small.

The issue of capable manpower:

capable manpower were meant to obtaining capable HR members and administrators. Increasingly both quality and quantity of members of the cooperative will be more advanced, but if the quality of the member is getting low , especially in terms of the ability of the economy, the cooperative just be a place to rely in order to meet the needs of members life which in the end will make a financial cooperative is not healthy, not healthy financial cooperative will impact on the decline in public trust which will ultimately result in a decrease in the number of new cooperative members. While HR administrators must rely on the professionalism and competence of human resources there is a good basis of knowledge and experience in the sector cooperativeness savings and loans as well as the characteristics of moral. John Sullivan with the theory of Well MES said that the requirements for obtaining good implementing regulations HR must rest on three things, namely:

Well Motivation:

Well Motivation should be the motivation of someone to devote themselves as enforcers and law makers. Since the beginning of a potential enforcement and law makers must know and motivated to found a problem of law enforcement is a challenge and an arduous task. On aspect is the caretaker and the owner KSP just dotted fulcrum on a quest profit big instead on the creation of a cooperative that is based on kinship are able to build economic democracy in the family and justice Pancasila.

Well Education:

Well Education, means that an enforcer and law maker should meet certain education standards. So that in addition to formal education other education is also needed related to knowledge of law, for example legal seminars and short courses. On aspect of this every Board KSP must have the provision of knowledge that is quite relevant knowledge cooperativeness and system development of the cooperatives so the capability of cooperatives during this are taken care of by the HR administrator who does not understand the cooperative is clearly and simply make cooperatives as institutions seekers gain as a capitalist, may to be replaced by caretaker who is more competent.

Well Salary:

Well Salary, means that the salaries of law enforcement and lawmakers must be considered so that in carrying out their duties properly, law enforcement and lawmakers are not charged with the costs of carrying out their duties. So far as possible to avoid enforcement and establish stronger laws with the dilemma that exists is his salary and lack of operating funds that make law enforcement losers. In this aspect the management's welfare must be considered, this is in order to support the quality of human resources and the quality of the performance of cooperative management that is able to realize the progress of cooperatives that are more focused.

Problems of Facilities and Pre-Facilities:

It has been described in the above that one of the problems of KSP is a network marketing and working together as well as information products , by reason that in addition to the issue of human resource administrators, cause things are also included lack of facilities and infrastructure has are adequate. It is in fact an impact on the issue of capital and financial KSP difficult to thrive.

Product Information Issues To the Community:

The lack of facilities and infrastructure there resulted in access to inform the public about the impact of products that possessed was not able to materialize. It 's resulted in its less understanding of the public community will be the product of KSP.

Marketing Network Issues:

The lack of budget as well as the means and infrastructure has been included in the introduction of the product as well as the lack of the ability of human resources in the system of management of KSP, obviously complicate cooperative in having confidence for the public, things have resulted in the difficulties of cooperatives in accessing the network marketing and cooperation with the other more competent in the sector development of state financial institutions and capital of business.

The Reconstruction Of The Management Of Savings And Loan Cooperatives In Indonesia Based On Justice Values

Based on the various explanations above, it is clear that reconstruction needs to be carried out in Law Number 25 of 1992 concerning Cooperatives and Minister of Cooperatives and Small and Medium Enterprises Regulation Number 15 of 2015 concerning Savings and Loans by Cooperatives, the following will be explained with the existing reconstruction table:

No	Before On Reconstruction	Weakness	After Reconstruction
1	<p>Article 29 of Law Number 25 of 1992:</p> <p>(1) Management is elected from and by members of the Cooperative in the Member Meeting .</p> <p>(2) The Management is the authorization of the Member Meeting .</p> <p>(3) For the first time, the composition and name of the members of the board are stated in the deed of establishment .</p> <p>(4) The term of office of the Management is 5 (five) years at the most .</p> <p>(5) Requirements to be chosen and appointed become Members Board determined in the budget base .</p>	<p>The appointment system for the management has not yet considered the knowledge , knowledge , and experience of the candidates for the management related to cooperative arrangements and basic principles of cooperation .</p>	<p>Article 29 of Law Number 25 of 1992 :</p> <p>(1) Management is elected from and by members of the Cooperative in the Member Meeting.</p> <p>(2) The Management is the authorization of the Member Meeting.</p> <p>(3) For the first time, the composition and name of the members of the board are stated in the deed of establishment.</p> <p>(4) The term of office of the Management is 5 (five) years at the most.</p> <p>(5) Requirements to be 's chosen and appointed become Members Board determined in the budget base;</p> <p>(6) Each member of the board must have enough knowledge in the field of cooperatives;</p> <p>(7) Each board also must have the ability to manage the cooperative with good.</p>
2	<p>Article 41 of Law Number 25 of 1992 states that:</p> <p>(1) Capital Cooperative consists of the capital itself and the capital loan .</p> <p>(2) Own capital can come from :</p> <p>a. Basic Savings ;</p> <p>b. Mandatory Deposits ;</p> <p>c. Reserve Funds ;</p> <p>d. Grant .</p> <p>(3) Loan capital may originate from :</p> <p>a. Member ;</p> <p>b. Other cooperatives and / or their members ;</p> <p>c. Banks and institutions finance other ;</p> <p>d. Issuance of bonds and other</p>	<p>Yet there is help the government for the development of the KSP that capital is obtained in an independent and not great .</p>	<p>Article 41 of Law Number 25 of 1992 states that:</p> <p>(1) Capital Cooperative consists of capital itself , capital loans , and deposits inclusion .</p> <p>(2) Own capital can come from :</p> <p>a. Basic Savings ;</p> <p>b. Mandatory Deposits ;</p> <p>c. Reserve Funds ;</p> <p>d. Grant .</p> <p>(3) Loan capital may originate from :</p> <p>a. Member ;</p> <p>b. Other cooperatives and / or their members ;</p> <p>c. Banks and institutions finance other ;</p> <p>d. Issuance of bonds and other debt securities ;</p>

	debt securities ; e. Other sources permitted by law.		e. Other sources permitted by law. (4) Savings Investments is saving members the amount is based on the needs of the development of the cooperative , which is obtained from any member of cooperatives were registered .
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Conclusion:-

The implementation of the legal politics of savings and loan cooperatives so far has not been effective, this can be seen by the decreasing number of cooperatives in the Demak, Yogyakarta and Semarang districts; As for weaknesses that result in the non-running of KSP management in the legal substance resulting in many KSPs that cannot develop, namely 1) weaknesses in legal regulations that do not clearly regulate the appointment of management who also take into account management's knowledge and experience of the operation and mastery related to information and communication technology; 2) sources of capital that are not assisted by the government, making it difficult for the position of cooperatives in economic competition in the current era of globalization; 3) inadequate access to adequate facilities and infrastructure; and 5) insufficient KSP access in having a marketing network and cooperation network;

The political reconstruction of KSP legal management based on the Pancasila and the Indonesian Constitution is to add additions to Article 29 and 4 of Law Number 25 of 1992 concerning provisions relating to experience and knowledge and technology mastery expertise in the criteria for appointing the management system and adding provisions related to the role of the government both at central and regional levels in KSP capital in the moment.

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