

## Legal Requirements and Appointment Procedures for Cooperative Deed Notaries: Evidence from Malang

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### ABSTRACT

This study examines the implementation of regulations regarding the requirements and appointment procedures for Notaries as Makers of Cooperative Deeds (NPAK) in the drafting of Cooperative Establishment Deeds in Malang City. NPAKs hold a vital position as public officials authorized to draft cooperative deeds ; however, in practice, various regulatory and operational obstacles are still encountered in the field. This research focuses on three main aspects: the implementation mechanism of the regulations and appointment procedures for NPAKs in Malang City, the inhibiting factors faced during the implementation process, and the formulation of efforts that can be taken to overcome these existing obstacles. To address these issues, this study employs an empirical legal research method with a socio-legal approach in the Malang City region. Data were gathered directly through interview techniques and documentary studies with respondents comprising NPAKs, non-NPAK notaries, the Department of Cooperatives, and relevant professional organizations, which were subsequently analyzed using a descriptive-qualitative method. The results indicate that the implementation of the regulations has generally proceeded in accordance with the applicable administrative criteria , but its execution remains suboptimal due to differing interpretations of the procedures and the uneven participation of notaries. This suboptimality is driven by both juridical and non-juridical obstacles , which require refined harmonization among ministries and continuous legal education for the public .

**Keywords:** *Notary Public for Cooperative Deeds (NPAK), Tax Disputes, Substantive Justice, Articles of Incorporation for Cooperatives, Legal Certainty.*

### 1. INTRODUCTION

Cooperatives occupy a strategic position within Indonesia's national economic system. Article 33 paragraph (1) of the 1945 Constitution emphasizes that the national economy shall be organized as a common endeavor based upon the principle of familyhood. This constitutional provision serves as the philosophical foundation for cooperative development as an economic institution that promotes collective welfare and equitable distribution of economic benefits. (Hadhikusuma, 2000; Hendrojogi, 2002; Swasono, 1987).

In implementing these constitutional principles, the Indonesian government enacted Law Number 25 of 1992 concerning Cooperatives. The law recognizes cooperatives as legal entities that must be established through a deed of establishment and subsequently obtain legal entity status from the competent authority. The legal certainty of cooperative establishment is therefore closely linked to the authenticity and validity of the founding deed. (Abdulkadir, 1982; Pachta et al., 2018).

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The preparation of cooperative deeds constitutes one of the responsibilities entrusted to notaries. However, unlike ordinary authentic deeds, cooperative establishment deeds may only be drafted by notaries who have been specifically appointed as Cooperative Deed Officials (NPAK). This requirement is regulated under the Decree of the Minister of Cooperatives and Small and Medium Enterprises Number 98/KEP/M.KUKM/IX/2004 concerning Notaries as Cooperative Deed Officials. (Untung, 2005; Adjie, 2009a).

The appointment of NPAK aims to ensure that notaries involved in cooperative establishment possess adequate understanding of cooperative law and cooperative governance principles. Consequently, Article 4 of the Ministerial Decree stipulates several requirements that must be fulfilled by notaries before being appointed as NPAK, including participation in cooperative training programs and possession of certification issued by the Ministry. (Anshori, 2009; Lumban Tobing, 1983).

Despite the existence of such regulations, practical implementation remains problematic. Field findings indicate that not all notaries involved in drafting cooperative deeds have fulfilled the requirements stipulated in Article 4. This condition raises legal concerns regarding the effectiveness of regulatory implementation, legal certainty, and the legal consequences arising from non-compliance with appointment requirements.

The issue becomes increasingly significant considering the growing number of cooperatives established in Indonesia and the important role of notaries in ensuring the legality of cooperative entities. In Malang City, which serves as one of the major economic and educational centers in East Java, cooperative establishment activities continue to increase. As a result, the role of NPAK becomes increasingly important in guaranteeing legal certainty for cooperative founders.

From the perspective of legal effectiveness theory, the existence of a regulation does not automatically guarantee its implementation. A legal norm may fail to function effectively when there is ambiguity in its formulation, lack of enforcement mechanisms, or inadequate institutional support. Therefore, evaluating the implementation of NPAK regulations is necessary to assess whether the objectives underlying the Ministerial Decree have been achieved. (Budiono, 2005; Juniarso, 2009).

This study seeks to answer three research questions. First, how are the requirements and procedures for appointing NPAK implemented in the drafting of cooperative deeds of establishment in Malang City? Second, what obstacles are encountered in implementing these regulations? Third, what efforts may be undertaken to overcome these obstacles and improve regulatory effectiveness?



## **2. RESEARCH METHOD**

This research employs empirical legal research utilizing a socio-legal approach. The empirical approach was selected because the study focuses on the implementation of legal norms in practice rather than solely examining statutory provisions.

Primary data were obtained through interviews with notaries practicing in Malang City who have experience in drafting cooperative establishment deeds. Secondary data consisted of legislation, legal doctrines, academic journals, books, and previous research relevant to notarial law and cooperative law. The empirical legal research approach follows Ibrahim (2008).

Data collection techniques included interviews, document studies, and literature reviews. The collected data were analyzed using descriptive qualitative analysis to identify patterns, legal issues, and practical obstacles associated with the implementation of NPAK regulations

## **3. RESULTS AND DISCUSSION**

### **Implementation of the Regulations Governing the Requirements and Procedures for Appointing Cooperative Deed Officials (NPAK) in the Drafting of Cooperative Deeds of Establishment in Malang City**

The establishment of a cooperative as a legal entity requires compliance with both substantive and administrative legal requirements. One of the important administrative requirements is the preparation of a deed of establishment by a Notary appointed as a Cooperative Deed Official (Notaris Pembuat Akta Koperasi/NPAK). This requirement is regulated under the Decree of the Minister of Cooperatives and Small and Medium Enterprises Number 98/KEP/M.KUKM/IX/2004 concerning Notaries as Cooperative Deed Officials.

The rationale behind the appointment of NPAK is to ensure that notaries who prepare cooperative deeds possess adequate knowledge regarding cooperative law and cooperative governance. Therefore, the Ministerial Decree establishes several requirements that must be fulfilled before a notary may be appointed as an NPAK.

Article 4 of the Ministerial Decree stipulates that a notary who wishes to become an NPAK must satisfy several requirements, including possessing a valid notarial appointment, attending cooperative training programs, and submitting an application to the competent authority. These requirements were formulated to guarantee that cooperative establishment deeds are prepared by individuals who understand the specific characteristics of cooperative legal entities.

Based on interviews conducted with notaries in Malang City, the implementation of these provisions has not been entirely uniform. Several respondents indicated that cooperative training certificates are still regarded as an important requirement. However, others argued that the practical



application of Article 4 has generated different interpretations, particularly regarding whether all requirements must be fulfilled cumulatively or whether certain requirements may be considered administrative formalities.

This difference of interpretation has resulted in varying practices among notaries. Some notaries consider cooperative training certificates as an absolute prerequisite before drafting cooperative deeds, while others view the certificate requirement as a procedural administrative matter that does not directly affect the validity of the deed.

From the perspective of legal certainty theory, such divergent interpretations indicate the existence of normative ambiguity. Gustav Radbruch explains that legal certainty requires legal norms to be formulated clearly and consistently so that individuals subject to the law may understand their rights and obligations. When legal provisions are ambiguous, uncertainty inevitably arises regarding their implementation. Legal certainty requires clear and enforceable norms (Arlinandes Chandra et al., 2022).

The findings of this research indicate that ambiguity within Article 4 has contributed significantly to inconsistencies in practice. Although the Ministerial Decree requires cooperative training certification, the regulation does not explicitly state the legal consequences if a cooperative deed is drafted by a notary who has not fulfilled this requirement.

The absence of clear sanctions further contributes to uncertainty. In legal theory, a norm lacking enforceability often experiences difficulties in implementation. Consequently, the effectiveness of the Ministerial Decree becomes dependent upon voluntary compliance rather than institutional enforcement.

In addition, the appointment procedure itself has undergone several practical changes following the digitalization of legal entity registration through the Legal Entity Administration System (SABH). Digitalization has improved administrative efficiency but has also introduced technical challenges that affect the implementation of NPAK regulations.

Field findings demonstrate that the role of NPAK remains highly important in ensuring the legality of cooperative establishment. Notaries function not only as public officials authorized to draft authentic deeds but also as legal advisors who assist cooperative founders in understanding regulatory requirements. (Tan Thong Kie, 2007; Notodisoerjo, 1993).

Therefore, the implementation of NPAK regulations in Malang City may be categorized as partially effective. While the majority of cooperative deeds are prepared in accordance with applicable procedures, regulatory ambiguities continue to create inconsistencies in practice.



## **Obstacles in the Implementation of the Regulations Governing the Requirements and Procedures for Appointing Cooperative Deed Officials (NPAK) in the Drafting of Cooperative Deeds of Establishment in Malang City**

### **1. Juridical Obstacles**

- a. Ambiguity in the Interpretation of Article 4 of Ministerial Decree Number 98/KEP/M.KUKM/IX/2004.

The most significant juridical obstacle identified in this research concerns the ambiguity surrounding the interpretation of Article 4. The provision regulates the requirements for appointment as NPAK but does not clearly indicate whether those requirements are cumulative or alternative. As a result, notaries frequently adopt different interpretations regarding the necessity of cooperative training certification. Such differences undermine legal certainty and create inconsistencies in administrative practice.

- b. Absence of Detailed Implementing Regulations

Another obstacle is the lack of detailed implementing regulations explaining how appointment requirements should be verified and enforced. The Ministerial Decree provides general requirements but does not establish detailed procedures for supervision, evaluation, or compliance monitoring. Consequently, implementation depends largely upon individual interpretation rather than standardized administrative procedures.

- c. Lack of Legal Consequences

The research further reveals that existing regulations do not provide explicit legal consequences for non-compliance with NPAK appointment requirements. This regulatory gap weakens the effectiveness of the norm because compliance becomes largely voluntary.

- d. Weak Supervisory Mechanisms

The study also found that supervisory mechanisms concerning NPAK implementation remain limited. No specific monitoring system currently exists to evaluate whether all cooperative deeds are prepared exclusively by notaries who fully satisfy NPAK requirements.

### **2. Non-Juridical Obstacles**

- a. **Technical Problems in the SABH Online System The importance of SABH in legal entity administration has been highlighted by Hariyani et al. (2011).**

One of the most frequently reported obstacles concerns technical disruptions within the SABH Online system.

Interview respondents explained that server errors, slow response times, and temporary system failures occasionally delay the registration process for cooperative legal



entities. Such technical obstacles increase administrative burdens and reduce efficiency in cooperative establishment procedures.

b. Incomplete Administrative Documents

Many cooperative founders fail to provide complete documentation during the registration process.

Missing identity documents, incomplete membership records, and insufficient supporting documents frequently delay deed preparation and legal entity registration.

c. Membership Requirements

Another obstacle concerns compliance with minimum membership requirements. Several respondents noted that prospective cooperatives often encounter difficulties in satisfying the statutory minimum number of members required for establishment.

d. Domicile Issues

The research also found difficulties related to domicile requirements. Prospective cooperative members sometimes possess identification documents that do not correspond to the cooperative's intended domicile, thereby creating administrative complications during registration.

e. Limited Understanding of Cooperative Regulations

Many cooperative founders demonstrate limited understanding regarding legal requirements governing cooperative establishment.

This lack of legal awareness often results in procedural mistakes and delays during the establishment process.

A. Efforts to Overcome Obstacles in the Implementation of NPAK Regulations

Based on the findings, several measures may be adopted to improve implementation. From a juridical perspective, the government should revise or supplement Ministerial Decree Number 98/KEP/M.KUKM/IX/2004 by providing a clearer formulation regarding appointment requirements and legal consequences for non-compliance.

Furthermore, implementing regulations should establish standardized procedures for verification, monitoring, and evaluation.

From a non-juridical perspective, improvements to the SABH Online system are necessary to minimize technical disruptions. Increased legal education and socialization programs for cooperative founders may also improve compliance with administrative requirements.

**Training programs for notaries should be conducted regularly to strengthen understanding of cooperative law and ensure consistent interpretation of regulatory**



provisions. This is consistent with findings by Joko Arifin (2021) and Azhar Wibowo (2021).

Finally, stronger coordination among the Ministry of Cooperatives, the Ministry of Law, and notarial organizations is essential to create a more effective and integrated system for cooperative establishment.

#### 4. CONCLUSION

Based on the findings, the implementation of regulations concerning the requirements and procedures for appointing Notaries as Cooperative Deed Officials (Notaris Pembuat Akta Koperasi/NPAK) in the drafting of cooperative deeds of establishment in Malang City has not been fully effective. Although the appointment of NPAK is regulated under the Decree of the Minister of Cooperatives and Small and Medium Enterprises Number 98/KEP/M.KUKM/IX/2004, its practical implementation demonstrates inconsistencies due to differing interpretations regarding the fulfillment of appointment requirements, particularly the requirement to participate in cooperative training and obtain a cooperative training certificate. The findings indicate that the provisions contained in Article 4 of the Ministerial Decree have not provided sufficient legal certainty because they do not clearly regulate whether the stipulated requirements are cumulative and mandatory, nor do they specify the legal consequences for non-compliance.

The research further reveals that the implementation of NPAK regulations is hindered by both juridical and non-juridical obstacles. Juridical obstacles include normative ambiguity within Article 4 of the Ministerial Decree, the absence of detailed implementing regulations, the lack of explicit legal consequences for non-compliance, and weak supervisory mechanisms. Meanwhile, non-juridical obstacles include technical disruptions in the Legal Entity Administration System (SABH), incomplete administrative documents submitted by cooperative founders, difficulties in fulfilling membership requirements, domicile-related issues, and the limited legal awareness of cooperative founders regarding establishment procedures. These obstacles collectively reduce the effectiveness of the regulatory framework governing NPAK and create inconsistencies in the practice of cooperative establishment.

To improve the effectiveness of the NPAK appointment system, legal reform is necessary through the clarification and harmonization of existing regulations, particularly by providing explicit provisions regarding appointment requirements, supervision, and legal consequences for violations. In addition, administrative improvements, enhancement of digital registration systems, and continuous legal education for both notaries and cooperative founders are essential. Such



measures are expected to strengthen legal certainty, ensure uniformity in the implementation of NPAK regulations, and enhance the role of notaries in supporting the lawful establishment and development of cooperatives in Indonesia.

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