



Several Legal Issues in Cooperatives and the Role of Government and Supervisors in Indonesia

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Abstract. Cooperatives are legal entities based on the principle of kinship with the aim of the welfare of its members and the prosperity of society. In fact, recently in Indonesia there have been many problematic cooperatives such as the Indosurya Cooperative, Pracico Inti Utama Cooperative, Pracico Inti Sejahtera Cooperative, Intidana Cooperative, and etc. It is suspected that this cooperative is not only detrimental to its members, but also to society in general. This research aims to analyze several issue of the legal aspects of cooperatives in Indonesia, and the role of supervisors and the government in dealing with cooperatives in Indonesia. This research is normative legal research, with statutory, conceptual and case approaches. Source of data used is secondary data. The data analysis method is qualitative normative. The research results show that the main issues is that many cooperatives carry out their business activities in violation of Law No. 25 of 1992, which is the legal basis for cooperatives. Acts violating moral hazard and violating the law of cooperative management, management of cooperatives that are not based on the principles of economic democracy. The role of supervisors and the government is not optimal and is less firm in providing sanctions

Keywords: Cooperative Problems in Indonesia, Role of Government, and Supervisors

1. Introduction

Cooperative is a legal entity based on the principle of kinship with the aim of advancing the welfare of their members and society in general, as well as participating in building the national economic order, in order to create the advance, the just, and the prosperous society. This is stated in Law No.25 of 1992 concerning Cooperatives (Cooperative Law), but the fact is that recently in Indonesia there have been many problematic cooperatives such as Indosurya Cooperatives, Pracico Inti Utama Cooperatives, Pracico Inti Sejahtera Cooperatives, Intidana Cooperatives, and others. It is suspected that this cooperative is not only detrimental to its members, but also to society in general.

Indosurya Savings and Loans Cooperative was established on November 5, 2012 in Gambir, Central Jakarta, by company number 430/BH/XII. 1/-1,829.31/XI/2012. On June 2021 it was revealed that Indosurya Cooperatives had failed to pay and entered the Postponement of Debt Payment Obligations process, or

in Indonesia mention as *Penundaan Kewajiban Pembayaran Utang (PKPU)*. PKPU means a process which the court prohibits creditors to force debtors to pay their debts within a certain period of time. During this time period, the debtor can submit a peace plan with his creditors. On the first criminal trial, the Indosurya Cooperatives case on September 2022 was said to be the largest case of collecting illegal funds from the public in Indonesia. The total funds collected are estimated at IDR 106 trillion from 23,000 victims.[1]

Pracico Cooperative is a cooperative that is part of the PT Multi Inti Sarana (MIS) Group. Pracico has two cooperatives, namely Pracico Inti Utama and Pracico Inti Sejahtera, which established on April 2018.(Nugraha, 2023) Both of them is failed to pay allegedly up to IDR 1 trillion and harming more than 1,000 people. Finally, the cooperative members submitted a postponement of debt payment obligations (PKPU) for Pracico Inti Utama Cooperative and Pracico Inti Sejahtera Cooperative at the end of 2020. The temporary PKPU result is an amicable agreement between the two parties based on court decision No.210/Pdt.sus/PKPU/PN.Niaga Jkt Pst dated November 11, 2020 for the Pracico Inti Utama Cooperative and No.382/PDT-SUS/PKPU/2020/PN.Niaga Jkt.Pst dated 28 January 2021 for the Pracico Inti Sejahtera Cooperative, but the PKPU obligations were not carried out, Teddy Agustiansyah as the owner of the Pracico Cooperative has been named a suspect by being charged with multiple articles.[3]

Intidana Cooperative was originally formed through a Intidana Cooperative formation meeting on March 5, 2001. Based on the Decree of the Minister of State for Cooperatives and Small and Medium Enterprises of the Republic of Indonesia number 14020.BH/KWK.11/V/2001 dated 2001, The Intidana Savings and Loans Cooperative is a legal entity which has a business license. Intidana Cooperative is a primary cooperative that operates in the savings and loan business sector, or in Indonesia are mention as Koperasi Simpan Pinjam (KSP).[4] This case began when the Intidana Savings and Loan Cooperative (KSP) failed to pay on June-August 2015. Several members of the depository filed a petition for Suspension of Debt Payment Obligations (PKPU) at the Semarang District Court until a National Committee of Creditors was formed. In 2022, a number of KSP Intidana members filed for bankruptcy. The KSP Intidana case became widespread with the alleged acceptance of bribes in the bankruptcy decision at the Supreme Court conducted by Supreme Court Judge, Sudrajad Dimiyati,[5]

In fact, there are 8 (eight) cooperatives that have been declared problematic, which are handled by the Task Force Team formed by the Ministry of Cooperatives and Small and Medium Enterprises. However, the author only informed that 4 (four) cooperatives (KSP) had problems.[5] It is very apprehensive, since it is not in accordance with the principles and objectives of the cooperative as stated in the Cooperative Law. It means, the implementation of a cooperative that has been given a permit, is apparently not in accordance with the Cooperative Law. From several legal issues in cooperative cases that mentioned, what is the main issues? On the other hand, in the Cooperative Law, it is stated that there is guidance and supervision of cooperatives. The question came up, who has the authority for guidance and

supervision and how is it implemented. So, problems came up and cause a lot of losses to cooperative members and society in general.

2. Problem

From this background, the formulation of the problem can be obtained as follows:

- a. What are the main causes of several cooperative legal issues in Indonesia?
- b. What are the role of supervisors and the government in handling cooperatives in Indonesia?

3. Methods

This legal research is normative (doctrinal) legal research, which focuses its study by viewing law as a complete system that includes a set of legal principles, legal norms, and legal rules (written and unwritten).[6] This research used a statutory approach, a case approach and a conceptual approach. This research is to understand the main causes of several cooperatives experiencing payment failure, and to understand the role of supervisors and the government in handling cooperatives in Indonesia. So, the right solution can be found to overcome the problem. This research used secondary data consisting of primary legal materials in the form of: laws and regulations, court decisions related to problems; secondary legal materials in the form of: textbooks, scientific papers, legal journals; and tertiary legal materials in the form of dictionaries and the internet. Data analysis is normative qualitative, namely interpreting/dialoging secondary data with legal norms and theories.

4. Discussion

4.1 The main problems of several cooperative problems in Indonesia

Historically, cooperatives were initiated in Indonesia by a man named Patih R. Aria Wiriaatmadja, he saw many employees who were trapped in debt loans with high interest, thus establishing cooperatives, and cooperatives as one of the main pillars in supporting the Indonesian economy, Cooperatives are based on the principle of kinship. Therefore, cooperatives in Indonesia have helped the economy, especially for the lower middle class. In England the inspiration for cooperatives and the movement arose in or as a result of the Industrial Revolution, whereas in France the inspiration for cooperatives and their movements emerged as a result of the Social Revolution, known as the French Revolution. [7]

The Cooperative Law currently in force in Indonesia is Law No. 25 of 1992 concerning Cooperatives. Historically, Law No. 25 of 1992 was revoked and replaced with Law No. 17 of 2012 concerning Cooperatives, however Law No.17 of 2012 has been revoked and annulled by the Constitutional Court because Law No.17 of 2012 is considered to have a corporate spirit, has eliminated the principles of kinship and

mutual cooperation which are characteristic of cooperatives, and this was contrary to the 1945 Constitution, so it finally returned to Law No. 25 of 1992 to fill the legal vacuum, but now Law No. 25 of 1992 is undergoing a severe test, because there are many cooperative problems whose implementation is contrary to Law No. 25 of 1992 itself.

The operational basis of the economy in Indonesia is Article 33 of the 1945 Constitution, namely "the Indonesian economy is structured as a joint venture based on the principle of kinship. In the explanation, it states that the prosperity of society is prioritized, not individual prosperity, and the form of company that is in accordance with this is a cooperative. The principle of kinship in cooperatives means the awareness of each member of the cooperative to do everything in the cooperative that is useful for all members of the cooperative. Meanwhile, the principle of mutual cooperation in cooperatives has meaning that cooperatives must pay attention to the needs of their members, must be tolerant and willing to cooperate with fellow cooperative members. Based on research results from several cases of problematic cooperatives (KSP), such as in the KSP Indosurya case, it is stated as the largest case of illegal fundraising from the public in Indonesia. The total funds collected are estimated at IDR 106 trillion from 23,000 victims. It means that KSP Indosurya collects funds from people who are not members of KSP Indosurya. In the implementing regulations of Law No. 25 of 1992 (PP No. 9 of 1995 concerning the Implementation of Savings and Loans Activities) it is permissible for cooperatives to accept savings from prospective members, but the position of the prospective member is only given 3 (three) months, after the 3 months have ended the prospective member should have become a member of the cooperative. If the 3 months period ends, the prospective member is not a member of the cooperative, then the cooperative has carried out activities to collect funds from the community. If a cooperative legal entity which business activity is to raise funds from the community, then the establishment permit is not only for cooperatives, but must also have a business activity permit for a bank or microfinance institution, which according to the regulations must have permission from the OJK. Otoritas Jasa Keuangan (OJK) is an independent institution and free from interference of other parties which has the function of carrying out an integrated regulatory and supervisory system for all activities in the financial services sector. OJK has the same meaning as Financial Services Authority. In the author's opinion, the implementing provisions of Law No. 25 of 1992 (PP No. 9 of 1995) have provided opportunities for violations to occur, especially for Savings and Loans Cooperatives (KSP), so according to the author, the provisions for prospective members should be removed. This is supported by the opinion of the Task Force for Handling Problematic Cooperatives, that the causes of many problematic cooperatives are the regulations and legal umbrella that regulate cooperatives are still weak, namely Law Number 25 of 1992 concerning Cooperatives, so it needs to be reformed and improvements to regulations governing cooperatives.[8]

According to Law No. 25 of 1992, cooperatives have 3 (three) organs/institutions, namely Management, Supervisors and Member Meetings, each of which has a role in the cooperative. One of The Board of Director's responsible are managing the Cooperative and its business. In general, the problematic Savings and Loans Cooperatives (KSP) cases mentioned above start from failure to pay, the cause

of this must be looked for, and there are probably 2 (two) causes, namely: 1) because of the moral hazard (bad intentions) of the cooperative management to keep the money saved by cooperative members and the community for themselves, the management usually is suspected of committing a criminal act of embezzlement of cooperative members' and society's savings funds (Article 372 of the Criminal Code) or banking crimes (Article 16 jo 46 of Law No. 10 of 1998 concerning Banking), or 2) because they do not have the ability to manage public savings so that they can grow. The cooperative management had promised that funds deposited in the cooperative would be given a certain interest, but when the savings were taken, they failed to pay. So, according to the author, it is important to require prospective cooperative administrators to be people who have expertise in the field of raising funds and have good morals, such as the requirements for establishing a bank.[8]

The cooperative supervisory apparatus as an internal supervisor has the task of supervising the implementation of the policies and management of the cooperative and making written reports on the results of its supervision. If it happens that the management of the cooperative deviates from the Cooperative Law and has problems, then it can be said that the cooperative's internal control is weak. because it should be the duty of the cooperative's internal supervisor to report at the Member Meeting so that a policy can be taken to immediately resolve it. In its development, the cooperative experienced significant changes. Cooperatives now have tens of thousands of members, and have branches in various cities. Apart from that, cooperatives also carry out the same business activities as banks, namely collecting funds from the community and distributing them in the form of credit. Therefore, Savings and Loans Cooperatives (KSP) have the same risks as banking institutions, namely mismatch liquidity and solvency. so it requires special supervision like a banking company to maintain cooperative liquidity.[8]

The Member Meeting is the highest authority in the Cooperative, because members are the owners as well as users of a cooperative, and this Annual Member Meeting is held at least once a year. In cooperatives the Annual Member Meeting has the authority to determine: a) Articles of Association; b) general policy in the field of management organization and cooperative business; c) election, appointment, dismissal of Management and Supervisors; d) work plans, Cooperative income and expenditure budget plans, as well as ratification of financial reports; e) validation of the management's accountability in carrying out their duties; f) distribution of remaining business results; g) merger, consolidation, division, and dissolution of Cooperatives. So the settlement of various problems that occur in cooperatives is carried out through the Annual Member Meeting as a means of openness between the Management, Supervisors and members of the cooperative. If the Annual Member Meeting does not run as it should, it is possible that irregularities will occur within the cooperative.

From the description above, it can be concluded that the root causes of several cooperative problems in Indonesia (in general KSP) include: the implementing regulations of Law No. 25 of 1992 (PP No. 9 of 1995) provide opportunities for violations of the principles and objectives of cooperatives. There is a moral hazard and the inability of cooperative management to run cooperatives (KSP) that business

activities are same as banking, Annual Member Meetings that do not run according to the Cooperative Law, weak internal supervision of cooperatives, and large number of members without adequate management.

4.2 The role of supervisors and the government in handling cooperatives in Indonesia

In the Big Indonesian Dictionary, a **role** is a set of behavior that people in society are expected to have [9], it's meant a dynamic aspect of position (status), if someone carries out their rights and obligations in accordance with their position, then they are carrying out a role. According to Riyadi[10], Role is the orientation and concept of the part played by a party in social opposition. With this role, the perpetrator will behave in accordance with the expectations of people or the environment. Apart from that, according to Sutarto [10], role has three components, namely 1) role conception as a person's belief in what is done in certain situations, 2) Role Expectations, related to how one should act when occupying a certain position, 3) Role implementation, namely a person's behavior when occupying a certain position. Sutarto argues that if these three components take place in harmony, then social interaction will have continuity and smoothness. Thus, what is meant by the role of Supervisors and the Government in managing cooperatives in this discussion is related to the rights and obligations of Supervisors and the Government in managing cooperatives.

According to Article 61-64 of Law No. 25 of 1992 regulates the Government's role in cooperatives, namely carrying out coaching which includes: 1) creating and developing a climate and conditions that encourage the growth and socialization of cooperatives. 2) provide guidance, convenience, and protection to cooperatives. Thus, the Government has the right and obligation to provide guidance whose scope is as intended.

There are two opinions related to the concept of supervision, namely supervision as controlling which is limited to matching according to predetermined benchmarks, so that there is no corrective action or control, and secondly supervision as a form of control, so it includes corrective action[11]. To be able to carry out supervision must fulfill the following elements:[12]

- a. The supervisory apparatus has the authority;
- b. There are plans, policies, instructions and provisions that apply as a test tool for the implementation of supervised tasks;
- c. There are ongoing activities or the results achieved from these activities;
- d. Supervision actions end with the preparation of a final evaluation of the activities carried out and the matching of the results achieved in accordance with plans, policies, instructions, provisions that are determined and serve as benchmarks; and
- e. Monitoring actions will be continued and followed up administratively and legally.

The purpose of supervision, are to observe the implementation of tasks, goals and objectives that actually occur from an organization, and then compare with what

should be implemented, with the intention of immediately reporting deviations/mistakes to the person in charge of the activity concerned, so it necessary corrective/improvement actions can be taken.

Based on Regulation of the Minister of Cooperatives and SMEs (*Permenkop UKM*) Number 9 of 2020 concerning Supervision of Cooperatives, those who have the authority to carry out supervision of cooperatives are the Central and Regional Governments according to the cooperative area concerned. Cooperative supervisors are functional officials from civil servants who are given tasks and authority, responsibility, and given the right to carry out the work of the Cooperative Supervision Functional Position. The Ministry of Cooperatives and SMEs as the advisory agency of Cooperative Supervision Functional Position. What is meant by Supervision of Cooperatives according to Regulation of the Minister of Cooperatives and SMEs Number 9 of 2020 are activities carried out by Cooperative supervisors to carry out health checks and/or apply sanctions to Cooperatives in accordance with the provisions of statutory regulations. Thus, it is clear that the role in guidance and supervision is the authority of the Central and Regional Governments as well as the Ministry of Cooperatives and SMEs.

According to Regulation of the Minister of Cooperatives and SMEs Number 9 of 2020, cooperative supervision (external supervision) includes: routine supervision; and monitoring at any time. Routine supervision can be carried out directly (on-site) or indirectly (off-site) to the Cooperative. Direct supervision (on-site) is carried out by searching, collecting, processing and evaluating data and/or information regarding the Cooperative which is carried out at the Cooperative office and in other places that are directly or indirectly related to the Cooperative's activities. Indirect supervision (off-site) is carried out by analyzing and examining documents and written reports that must be submitted periodically by the Cooperative to the Deputy/Head of Regional Apparatus. Supervision is carried out at any time based on: a. orders from authorized officials in accordance with statutory provisions; b. reports from the public that are submitted officially and can be accounted for; and/or c. Cooperative problems that require special handling and can involve related agencies. After carrying out the external supervision of the cooperative by the Cooperative Supervision Functional Position Officer, the results of the Cooperative Supervision consist of: a. Cooperative Health Inspection Result Report; and/or b. administrative sanctions if violations are found. The Cooperative Health Inspection Result Report contains a written report document on the results of the Cooperative Health Examination and the scoring of the Cooperative's health level. consists of: a. Healthy; b. quite healthy; c. under supervision; or d. under special supervision.

With several cases related to the number of cooperatives experiencing payment failures and problems, it is certain that the supervision carried out by the Government is not optimal. Several reasons were not optimal, because the supervisor did not give strict sanctions; lack of guidance from the Government when cooperatives have problems; lack of intensity of coaching and supervision by Department of Trade, Manpower, Cooperatives and Small and Medium Enterprises, lack of supervisory and budgetary resources from Department of Trade, Manpower, Cooperatives and Small and Medium Enterprises. [13]

5. Conclusion

The root of the problem in several cooperative problems is that many cooperatives carry out their business activities in violation of Law No. 25 of 1992 which is the legal basis for cooperatives; Government Regulations No.9 of 1995 concerning Implementation of Savings and Loans Activities; provide opportunities for violations of cooperative principles and objectives; acts violating moral hazard and violating the law of cooperative management, management of cooperatives that are not based on the principles of economic democracy.

The role of supervisors and the government is not optimal and not firm in imposing sanctions on the lack of guidance from the government when cooperatives have problems; lack of intensity of guidance and supervision by Department of Trade, Manpower, Cooperatives and Small and Medium Enterprises, lack of supervisory and budgetary resources from Department of Trade, Manpower, Cooperatives and Small and Medium Enterprises.

Law No. 25 of 1992 and implementing regulations need to be reviewed in accordance with the principles and objectives of cooperatives but in accordance with business development.

The role of the Government and Supervisors needs to be reviewed in terms of performance and human resources.

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