



JURIDICAL STUDY ON COOPERATIVE LEGAL ENTITY BANKRUPTCY SUBMISSIONS BY ITS MEMBER

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ABSTRACT

The Covid-19 pandemic resulted in several cooperatives failing to pay and made many of their members file bankruptcy petitions against their cooperatives, this condition then caused opposition from several parties. Therefore, this paper aims to examine the issue of filing for bankruptcy of a cooperative legal entity by its member with questions: 1) how is the legal construction of Indonesian cooperative bankruptcy, 2) whether the permissibility of filing a bankruptcy petition against cooperatives by its member is in line with the characteristics of Indonesian cooperative legal entities. The method used is normative juridical research. The results show 1) Law no. 37 of 2004 and Law no. 25 of 1992 do not regulate restrictions on legal subjects who can file for bankruptcy against cooperatives. Therefore, the cooperative itself, members of the cooperative, and other creditors have the right to file for bankruptcy against the cooperative. 2) The filing of a petition for bankruptcy of a cooperative by its member (who is a creditor) is not in accordance with the characteristics of Indonesian cooperatives, considering that each of cooperative members is the owners of the cooperative itself and the main basis for the operation of cooperatives is the principles of kinship and democracy. Thus, it is concluded that the filing of a petition for bankruptcy of a cooperative by its member (who has a position as a creditor) is valid but is not in accordance with the characteristics of the legal entity of Indonesian cooperatives. Therefore, the government is advised to review the terms and restrictions on legal subjects who can petition for bankruptcy against cooperatives.

Keywords: cooperative; bankruptcy; law

INTRODUCTION

Referring to the provisions of Article 1 paragraph (1) of Law Number 25 of 1992 concerning Cooperatives ("Law No. 25 of 1992"), a cooperative is formulated as "a business entity consisting of individuals or cooperative legal entity based on its activities based on the cooperative principle as well as a people's economic movement based on the principle of kinship."¹ Based on this formulation, it can be seen that in Indonesia a cooperatives is not just business entity but is considered as a form of people's economic movement which is based primarily on the principle of kinship. Cooperatives are a form of economic democracy in which production is carried out by, for, and under the leadership or ownership of community members. In this case, the prosperity of the community is prioritized,

not the prosperity of individuals.² Because they considered the importance of the existence of these cooperatives, the founders of the country even made cooperatives "the pillars of the national economy" and made them an inseparable part of the Indonesian economic system.³

Although cooperatives are expected to become the pillars of the nation's economy to replace the position of other business entities originating from the capitalist system, unfortunately in practice this condition has not been realized.⁴ On the other hand, in practice, many

¹ Indonesia, *Law of the Republic of Indonesia No. 25 of 1992 Concerning Indonesian Cooperative*, 1992, Article 1 paragraph (2).

² Indonesia, *1945 Constitution of the Republic of Indonesia*, n.d., Elucidation Article 33 paragraph (1).

³ Ariesy Tri Mauleny et al., *Koperasi Dalam Sistem Perekonomian Di Indonesia (Cooperatives in the Economic System in Indonesia)*, 1st ed. (Jakarta: Yayasan Pustaka Obor Indonesia, 2018), 3.

⁴ Mochamad Adib Zain, "Politik Hukum Koperasi Di Indonesia (Tinjauan Yuridis Historis Pengaturan Perkoperasian Indonesia)," (Legal Politics of Cooperatives in Indonesia (Historical Juridical Review

cooperative businesses face various issues and challenges such as lack of working capital, lack of understanding and capability of the management and members of cooperatives, non-performing credit, and so on.⁵ Furthermore, the presence of the Covid-19 pandemic has also caused new problems where several cooperatives are known to face default situations, both against fellow cooperative members and other third parties such as banks.⁶ In this regard, Henra Saragih, Head of the Coordination of Laws and Regulations at the Ministry of Cooperatives and SMEs, considered that the cases of non-payment of cooperatives were generally caused by two things, that are the cooperatives experiencing problems due to the management of the cooperatives itself and/or the failure to pay which did occur due to liquidity difficulties as a result of the health crisis of the Covid-19 pandemic.⁷

The existence of default conditions experienced by cooperatives during the pandemic then resulted in many cooperative members submitting the bankruptcy petition against their cooperatives. Based on data from the Troubled Cooperatives Work Unit, between 2020 and 2021, there are at least 38 (thirty-eight) cooperatives (savings and loans cooperatives) that have filed for Bankruptcy and Suspension of Debt Payment Obligations to the Commercial Court.⁸ Deputy

of Indonesian Cooperative Arrangements), *Jurnal Penelitian Hukum* 2, no. 3 (2015): 163.

⁵ Riandy Arya Satria, I Nyoman Putu Budiarta, and Ni Gusti Ketut Sri Astiti, "Akibat Hukum Pembubaran Koperasi Terhadap Hak Dan Kewajiban Anggota (Legal Consequences of the Dissolution of Cooperatives on the Rights and Obligations of Members)," *Jurnal Preferensi Hukum* 2, no. 3 (2021): 466.

⁶ Moch. Dani Pratama Huzaini, "Gagal Bayar Karena Pandemi, Mestikah Koperasi Menjadi Objek Pailit? (Failed to Pay Due to the Pandemic, Should Cooperatives Become the Object of Bankruptcy?)," *Hukumonline*, last modified 2020, accessed March 20, 2022, <https://www.hukumonline.com/berita/a/gagal-bayar-karena-pandemi--mestikah-koperasi-menjadi-objek-pailit-lt5ed624eb423a2/?page=all>, diakses pada 20 Maret 2022.

⁷ *Ibid.*, accessed on 20 March 2022.

⁸ CR-27, "Upaya Memperjelas Koperasi Dalam Proses Kepailitan Dan PKPU (Efforts to Clarify Cooperatives in the Process of Bankruptcy and Suspension of Debt Payment Obligations (PKPU))," *Hukumonline*, last modified 2022, accessed March 15, 2022, [chairman of the Troubled Cooperatives Work Unit, Yudhi Wibhisana said that "This is the first time in Indonesia's history because it has never happened before that the submission of the bankruptcy petition exceeds 22 \(Twenty Two\) submissions to cooperatives. Most of the requests were submitted by the cooperative members themselves."⁹](https://www.hukumonline.com/berita/a/upaya-</p></div><div data-bbox=)

The existence of the phenomenon of filing for bankruptcy of a cooperative legal entity by its member was then deemed by some to be inappropriate. This is because, as mentioned earlier, a cooperative is a business entity with distinctive characteristics based on the principle of kinship, not the same as other commercial business entities. In this regard, Yudhi Wibhisana believes that cooperative members should prioritize a sense of belonging to their respective cooperatives, but on the other hand, many cooperative members act as if they are customers who have bank savings accounts. A similar opinion was expressed by the Director of Drafting Legislation of the Ministry of Law and Human Rights, Cahyani Suryandari, who said that cooperative members should not easily bankrupt their cooperative, in this case, if there is a default, the settlement should be done amicably.¹⁰ The existence of these conditions then raises questions regarding how the construction of the bankruptcy law of cooperative bodies in Indonesia and whether the permissibility of filing a petition for bankruptcy against a cooperative by its member is in line with the characteristics of Indonesian cooperative legal entity.

This study is a new study that has never been studied or reviewed before. However, there are other studies related to this study, one of which is Rachmat Suharto's writing entitled "Karakteristik Kepailitan Badan Hukum Koperasi" (Characteristics of Bankruptcy of Cooperative Legal Entity). In the article, he explained that cooperatives have 2 (two) dimensions, namely the social dimension and the economic dimension. In connection with this, in the event of bankruptcy against the cooperative legal entity. He considered that the bankruptcy filing should be submitted by the Ministry of Cooperatives.¹¹ Although Rachmat

memperjelas-koperasi-dalam-proses-kepailitan-dan-pkpu-lt61f51d9d81b69/ accessed on 13 March 2022.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Rachmat Suharto, "Karakteristik Kepailitan Badan Hukum Koperasi (Characteristics of Cooperative Legal

Suharto's research leads to a discussion of almost similar themes, this research does not examine the legal issues of filing for bankruptcy of cooperative by cooperative members as will be discussed specifically in this paper.

RESEARCH METHODS

This study uses a normative legal research method with a statute approach, a case approach, and a conceptual approach. Normative legal research itself is legal research conducted by examining materials derived from various laws and regulations and other materials from various literature.¹² In this regard, the type of data used in this research is secondary data derived from primary legal materials and secondary legal materials. Primary legal materials are materials whose law has binding legal force¹³, in this paper includes decisions, laws, and regulations in the field of cooperatives, bankruptcy, and others. Secondary legal materials are materials that provide explanations of primary legal materials¹⁴, in this paper some of them are books, journals, news, and other written works related to the issue of bankruptcy of cooperative legal entities. The data referred to are obtained by data collection techniques from library research, where their existence will be analyzed using qualitative data analysis techniques.

ANALYSIS AND DISCUSSION

A. Characteristics of Indonesian Cooperative Legal Entities

According to Mohammad Hatta, cooperative is a joint effort to improve the state of economic life based on the principle of mutual help. The cooperative comes from the English "Co-Operation" namely "Co" means together and

Entity Bankruptcy)," *Lex Journal: Kajian Hukum & Keadilan* 3, no. 1 (2019): 1.

¹² Sri Mamudji Soerjono Soekanto, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat) (Normative Legal Research (A Brief Overview))* (Jakarta: PT. Rajagrafindo Persada, 2007), 13.

¹³ Sudjana, "Progresivitas Perlindungan Terhadap Pencipta Dalam Mendorong Ekonomi Kreatif Di Indonesia (Progressive Protection of Creators in Encouraging Creative Economy in Indonesia)," *Jurnal Ilmiah Kebijakan Hukum* 14, no. Juli (2020): 86.

¹⁴ Ibid.

"Operation" means work. Cooperation (cooperation) was then standardized into Indonesian to become a cooperative which means to cooperate.¹⁵ Meanwhile, as mentioned earlier, that referring to the provisions of Article 1 paragraph (1) of Law no. 25 of 1992, Cooperative is defined as "business entities consisting of individuals or cooperative legal entities based on their activities based on cooperative principles as well as a people's economic movement based on the principle of kinship."¹⁶ In this case, based on the formulation in the article, it can be concluded that the elements of cooperative definition include:¹⁷

1. Cooperative is a business entity, not a community organization (ormas);
2. The founder/owner of a cooperative is an individual or a legal entity of a cooperative;
3. Cooperative shall cooperate based on the principles of cooperative and kinship;
4. Cooperative as a people's economic movement.

Cooperative is organized based on Pancasila, the 1945 Constitution, and the principle of kinship. Meanwhile, the purpose of cooperative as regulated in Article 3 of Law no. 25 of 1992 is none other than to promote the welfare of members in particular and society in general and to participate in building the national economic system to create an advanced, equitable and prosperous society.¹⁸ Furthermore, Herman Suryokumoro and Hikmatul Ula argue that the characteristics of cooperatives include:¹⁹

¹⁵ H.A. Tulus Sartono, "Revitalisasi Kaidah Koperasi Dalam Sistem Ekonomi Kerakyatan (Revitalization of Cooperative Rules in a People's Economic System)," *Jurnal Masalah-Masalah Hukum Universitas Diponegoro* 39, no. 3 (2010): 246.

¹⁶ Indonesia, *Law of the Republic of Indonesia No. 25 of 1992 Concerning Indonesian Cooperatives*, Article 1 paragraph (1).

¹⁷ Herman Suryokumoro and Hikmatul Ula, *Koperasi Indonesia Dalam Era MEA Dan Ekonomi Digital (Indonesian Cooperatives in the MEA Era and the Digital Economy)*, The First. (Malang: UB Press, 2020), 8.

¹⁸ Indonesia, *Law of the republic of Indonesia No. 25 of 1992 Concerning Indonesian Cooperatives*, Article 2 jo. Article 3.

¹⁹ Suryokumoro and Ula, *Koperasi Indonesia Dalam Era MEA Dan Ekonomi Digital (Indonesian Cooperatives in the MEA Era and the Digital Economy)*,

1. A Cooperative is an association of people, but it is also a social association;
2. Cooperative membership is voluntary and open (in this case the word “open” is interpreted as no secret terms among members);
3. The purpose of the cooperative is to enhance the welfare of its members by working together in a family manner.

Cooperative is a form of implementing a systematic people’s economy that seeks to correct the economic structure of a capitalist pattern as a result of past colonial experiences that have been experienced by the Indonesian people.²⁰ The concept of cooperatives, which is based on the principle of kinship and the principle of *gotong royong* itself, is closely related to the values that are owned and become the hallmark of Indonesian society.

According to Sri Edi Sawasono, the meaning of the cooperative spirit based on the principle of kinship is carried out by living the triple-co concept which includes the concept of co-ownership (shared ownership), co-determination (equality in decision-making), and co-responsibility (participation in taking responsibility).²¹ Meanwhile, Molly Bondan argues that the principle of kinship has 2 (two) kinds of characteristics at once, namely, on the one hand, it contains values of equality, equal taste, brotherhood, and democracy among its members. On the other hand, it also contains the value of the responsibility of the leader towards members and each member towards his entire family towards the outside community.²² Furthermore, the concrete implementation of the principle of kinship in the cooperative itself, as explained by Indra Afrita and Yalid who quoted the opinion of Ildaini Idrus, Chair of the Beringin Women Cooperative, is

that “cooperative as a joint effort must reflect the provisions, as is usual in family life. In a family, it appears that everything that is done together is intended for the common interest of all family members”.²³ In line with these opinions, Rachmat Suharto argues that cooperatives have 2 (two) dimensions, namely the social dimension and the economic dimension, namely to achieve prosperity through cooperation and cooperative effort that work on an ideal basis, a structural basis, and an operational basis.²⁴

Furthermore, in terms of institutional structure, based on Law no. 25 of 1992 it is explained that the organizational apparatus of cooperatives consist of 3 (three) parts, namely the meeting of members, management, and supervisors of cooperatives. The meeting of members is the highest power holder of the cooperative which must be held at least once a year. The meeting of members has the authority to request rights and responsibilities to the management and supervisors of cooperatives, to determine cooperative policies, articles of association, and other matters as regulated in Article 22 of Law no. 25 of 1992. The next apparatus is cooperative management. The management of the cooperative is elected from and by the members of the cooperative through the members’ meeting. The management is the holder of power for the cooperative members’ meeting and is responsible for the entire organization of the management of the cooperative or its business at the members’ meeting or extraordinary members’ meeting. Furthermore, cooperative supervisors. Like the board, the supervisor of the cooperative is also elected from and by the members of the cooperative. In this case, the main task of the supervisor is to supervise the implementation of policies and management of cooperatives. The existence of this cooperative supervisor is important to ensure the check and balance system in the cooperative organizational structure runs smoothly.²⁵

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²⁰ Zain, “Politik Hukum Koperasi Di Indonesia (Tinjauan Yuridis Historis Pengaturan Perkoperasian Indonesia) (Legal Politics of Cooperatives in Indonesia (Historical Juridical Review of Indonesian Cooperative Arrangements)),” 161.

²¹ Indra Afrita and Yalid, “Asas Kekeluargaan Sebagai Nilai Konstitusional Dalam Koperasi Dan Perseroan Terbatas (Family Values as Constitutional Values in Cooperatives and Limited Liability Companies),” *Jurnal Hukum Respublica* 13, no. 2 (2014): 214.

²² *Ibid.*, 212.

²³ *Ibid.*

²⁴ Suharto, “Karakteristik Kepailitan Badan Hukum Koperasi (Characteristics of Cooperative Legal Entity Bankruptcy),” 5.

²⁵ Dian Cahyaningrum, “Bentuk Badan Hukum Koperasi Untuk Menjalankan Kegiatan Usaha Perbankan (Form a Cooperative Legal Entity to Run Banking Business Activities),” *Negara Hukum* 8, no. 1 (2017): 8–9.

Like other business entities, cooperative business entities can also be dissolved. Referring to Article 46 of Law no. 25 of 1992 it is stated that the dissolution of a cooperative can be carried out based on the decision of the members' meeting or the government's decision. The decision to dissolve the government itself can be made if 1) there is evidence that the cooperative in question does not meet the provisions of the law, 2) its activities are contrary to public order and/or decency, or 3) its survival can no longer be expected.²⁶ The existence of a bankruptcy decision is one of the grounds for determining the dissolution of a cooperative on the grounds that its survival can no longer be expected. As for the record, in the event of dissolution, the members of the cooperative only bear losses limited to their principal savings,²⁷ mandatory savings,²⁸ and their participating capital. In this case, the cooperative and members loan capital is not included in the losses borne by the cooperative members.²⁹

B. Cooperative Legal Entity Bankruptcy Legal Construction

Etymologically, bankruptcy comes from the word "bankrupt" which is taken from the French "faillite" which means obstacles or delays in payments.³⁰ Referring to the provisions of Article

1 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations ("Law No. 37 of 2004") it is stated that what is meant by bankruptcy is "general confiscation of all assets of the Bankrupt Debtor whose management is and the settlement is carried out by the Receiver under the supervision of the Supervisory Judge as regulated in this Law".³¹ Bankruptcy is a general confiscation of all debtor's assets declared bankrupt, i.e. both assets that existed at the time of the declaration of bankruptcy, and those obtained at the time the bankruptcy took place for the benefit of all creditors.³² In Indonesia, the definition of bankruptcy doesn't mean a condition where a business entity continues to suffer losses so that it has the potential to go out of business. On the other hand, bankruptcy can occur in companies that do not experience losses and whose financial condition is still healthy, the main element in bankruptcy is the existence of a debt.³³

According to Levinthal, all bankruptcy laws have 3 (three) general objectives. First, namely that bankruptcy law aims to secure and distribute the proceeds of the sale of a debtor's assets fairly to creditors. Second, bankruptcy law aims to prevent insolvent debtors from harming their creditors, and Third, bankruptcy law aims to protect debtors with good intentions rather than creditors.³⁴

²⁶ Indonesia, *Law of the Republic of Indonesia No. 25 of 1992 Concerning Indonesian Cooperatives*, Article 47.

²⁷ "Principal savings are the same amount of money that must be paid by members to the Cooperative at the time of becoming a member. Principal savings cannot be taken back as long as the person concerned is still a member", Indonesia, "Law of the Republic of Indonesia No. 25 of 1992 concerning Indonesian Cooperatives", Elucidation of Article 41 paragraph (2) letter a.

²⁸ "Mandatory saving is a certain amount of savings that does not have to be the same that must be paid by members to the Cooperative within a certain time and opportunity. Mandatory saving cannot be taken back as long as the person concerned is still a member.", Indonesia, "Law of the Republic of Indonesia No. 25 of 1992 concerning Indonesian Cooperatives", Elucidation of Article 41 ayat (2) huruf b.

²⁹ Cahyaningrum, "Bentuk Badan Hukum Koperasi Untuk Menjalankan Kegiatan Usaha Perbankan (Formation of a Cooperative Legal Entity to Run Banking Business Activities)", page 9.

³⁰ Susanti Adi Nugroho, *Hukum Kepailitan Di Indonesia Dalam Teori Dan Praktik Serta Penerapan Hukumnya (Bankruptcy Law in Indonesia in Theory*

and Practice and the Application of the Law) (Jakarta: Pranadamedia Group, 2018), 19.

³¹ Indonesia, *Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations*, 2004, Article 1 paragraph ayat (1).

³² M. Beni Kurniawan, "Redefinisi Tanggung Jawab Negara Dalam Kasus Kepailitan PT Istaka Karya Ditinjau Dari Three Keywords Theory (Redefinition of State Responsibility in the Bankruptcy Case of PT Istaka Karya Seen From Three Keywords Theory)," *Jurnal Ilmiah Kebijakan Hukum* 11, no. 3 November 2017 (2017): 250.

³³ Nugroho, *Hukum Kepailitan Di Indonesia Dalam Teori Dan Praktik Serta Penerapan Hukumnya (Bankruptcy Law in Indonesia in Theory and Practice and the Application of the Law)*, 31.

³⁴ Sutan Remy Sjahdeini, *Sejarah, Asas, Dan Teori Hukum Kepailitan, Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran (History, Principles and Theory of Bankruptcy Law, Understanding Law No. 37 of 2004 concerning Bankruptcy and Suspension of Payment Obligations)*, The Second. (Jakarta: Kencana, 2016), page 4.

In Indonesia, the bankruptcy law is made as an implementer of the provisions of Article 1131 and Article 1132 of the Civil Code. The provisions of Article 1131 of the Civil Code stipulate that “All assets of the Debtor, both movable and immovable, both existing and those that will still exist in the future, are collateral for all engagements”. Meanwhile, Article 1132 of the Civil Code states that “All assets of the Debtor shall be jointly used as collateral for all of its Creditors; the sale of all the assets of the debtor is divided according to the balance, that is, according to the size of the creditor’s receivables, unless among the creditors there are reasons that according to the law are legal to do.” In relation to these rights, according to Sutan Remy Sjahdeini, to prevent creditors from fighting over each other and taking precedence in controlling and selling debtors’ assets, the Bankruptcy Law was enacted.³⁵

As for its development, M. Hadi Subhan explained that in the context of Indonesian law, bankruptcy is often used as a legal tool or instrument for people or companies that fail to pay their debt obligations. This failure itself can be due to financial difficulties or it could be due to the debtor’s unwillingness that is not related to bankruptcy, financial difficulties, or asset and financial solvency. This unwillingness can then be motivated by the existence of good faith or bad faith. In this regard, he argues that the legal politics of bankruptcy in Indonesia has more functioned as a debt collection mechanism and not a solution mechanism for debtors experiencing financial difficulties.³⁶

The provisions of Article 2 paragraph (1) of Law no. 37 of 2004 state that “a debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible, is declared bankrupt by a court decision, either at his request or at the request of one or more creditors”.³⁷ Based on this formulation, it can be

³⁵ Ibid., page 5.

³⁶ M. Hadi Subhan, “Fenomena Hukum Pengajuan Kepailitan Terhadap Pengusaha Oleh Pekerja Karena Hak Pekerja Yang Tidak Dibayar Pengusaha (The Legal Phenomenon of Filing Bankruptcy Against Employers By Workers Because of Workers’ Rights That Are Not Paid by Employers),” *Jurnal Hukum dan Pembangunan* April-Juni, no. 2 (2020): 524–526.

³⁷ Indonesia, *Law of the Republic of Indonesia No. 25 of 1992 Concerning Indonesian Cooperatives* Article 2

concluded that there are at least 3 (three) elements that must be met to be able to file for bankruptcy against a debtor, namely, 1) the debtor has 2 (two) or more creditors, 2) the debtor does not pay off at least one debt that has matured and can be collected, and 3) the application is made by the debtor himself or his creditor.

Concerning cooperative legal entities, both Law no. 37 of 2004 and Law no. 25 of 1992 itself do not stipulate more specifically regarding the mechanisms, conditions, and restrictions on legal subjects who can file for bankruptcy against cooperatives. Thus, both the cooperative itself, creditors, and cooperative members who have receivables or domiciled as cooperative creditors are entitled and have the opportunity to be able to apply for bankruptcy against cooperatives as long as the conditions stipulated in Article 2 paragraph (1) of Law no. 37 of 2004 is fulfilled.

The convenience to file a bankruptcy petition against a cooperative has positive and negative aspects. On the positive side, for example, creditors or cooperative members (who are in the position of creditors) can use the bankruptcy mechanism as an instrument to collect their receivables from cooperatives that do not want to pay their debts based on bad faith or because of default. The ease of filing for bankruptcy also can guarantee more protection for receivables from members or customers of cooperatives who are creditors. In the case of the bankruptcy of the Koperasi Simpan Pinjam Pandawa Mandiri (“KSP Pandawa Mandiri”), for example. In this case, KSP Pandawa Mandiri did not fulfill its obligations towards its members and customers, furthermore, the leader of KSP Pandawa Mandiri was also sentenced by the Panel of Judges to had committed a criminal act of collecting public funds without a business license. Problems arose when the Panel of Judges stated that the assets of the KSP Pandawa Mandiri which initially became bankruptcy assets would be confiscated for the state due to the verdict of the criminal case. This condition will certainly cause losses for creditors. The Central Jakarta Commercial Court, as strengthened by the Supreme Court, then decided that KSP Pandawa Mandiri’s assets were not confiscated but remained as bankruptcy assets.³⁸

paragraph (1).

³⁸ Andi Saputra, “Abak Baru Sengketa Aset Koperasi

In this case, the existence of the case shows that the bankruptcy legal instrument is sufficient to provide a guarantee of protection for creditors.

However, the ease of filing for bankruptcy against cooperatives on the other hand also has a negative side, one of which is the potential for decreasing credibility or public trust in cooperative business entities because of their vulnerability to being filed for bankruptcy. In addition, it is also necessary to pay attention to the risk of loss experienced by cooperative members (who are creditors) in the event that bankruptcy is granted while the assets of the cooperative are not sufficient to pay their debts. In the case of the Koperasi Simpan Pinjam Baitul Mal Wat Tamwil Fi Sabillah Sharia (“KSP Fi Sabillah”), for example. In this case, KSP Fi Sabillah was declared bankrupt, without going through a Suspension of Debt Payment Obligations (PKPU), after one of its members filed for bankruptcy on the basis of the existence of a cooperative receivable amounting to Rp.82,177,674, - (Eighty Two Million One Hundred Seventy Seven Thousand Six Hundred Seventy Four Rupiah). What needs to be considered is that there is an information that KSP Fi Sabillah is suspected of not being able to pay for savings, deposits, disbursement of deposits, bank bills, and other claims such as employee salaries up to a total value of Rp. 20,488,731,314 (Twenty Billion Four Hundred Eighty Eight Million Seven Hundred Thirty One Thousand Three Hundred Fourteen Rupiah). What then becomes a question is whether the bankruptcy can guarantee the applicant will get his debts repaid and whether the assets of KSP Fi Sabillah are sufficient to pay off all of these debts so as not to harm other creditors.³⁹

Based on the nature of the receivables, creditors in bankruptcy can be divided into 3 (three) groups, namely separatist creditors, preferred creditors, and concurrent creditors. Separatist creditors are creditors who hold material guarantees such as mortgages, liens, fiduciaries, and others. In this case, the word separatist itself indicates that

Pandawa Rp 3,3 Triliun (New Chapter of Pandawa Cooperative Asset Dispute of Rp 3.3 Trillion),” *DetikNews*, last modified 2019, <https://news.detik.com/berita/d-4534163/babak-baru-sengketa-aset-koperasi-pandawa-rp-33-triliun>.

³⁹ Semarang Commercial District Court, Decision No.12/Pdt.Sus-Pailit/2017/PN Niaga SMG (2017).

the position of the creditor is separated from other creditors in the sense that the creditor can sell and take the proceeds from the sale of bankrupt assets that have been pledged for settlement of his receivables. Furthermore, preferred creditors are creditors who have special rights that come from the law so that their level is higher than other creditors (concurrent creditors) solely based on the nature of the receivables (Article 1134 of the Civil Code). Preferred creditors have the right to receive prepayment from the proceeds of the bankruptcy sale. Concurrent creditors are creditors who are not included in the separatist or preferred group. Repayment of receivables from concurrent creditors is sufficient from the proceeds of the sale of bankrupt assets after taking part in the separate and preferred groups.⁴⁰

In this case, if a cooperative is declared bankrupt, the position of the cooperative members as creditors has not been specifically regulated in the provisions of the legislation, thus the members of the cooperative can be categorized as concurrent creditors and will receive payments on a *pari passu pro-rata* basis. The principle of *pari passu pro-rata* basically means that the debtor’s assets are joint guarantees for the creditors and the proceeds must be distributed proportionally between them, except if there are creditors who according to the law must prioritize the payment of the bill.⁴¹ Thus, the new cooperative members will receive payment from the remaining bankrupt assets which have been distributed to the separatist creditors and preferred creditors first. If it is related to the case of KSP Fi Sabillah, it can be concluded that the applicant belongs to the group of concurrent creditors who will only receive the final payment (of the remaining bankrupt assets) proportionally. In the event that the assets or assets of KSP Fi Sabillah are not sufficient to cover the debt, this will certainly be detrimental to the applicant and other concurrent creditors.

⁴⁰ Sri Redjeki Slamet, “Perlindungan Hukum Dan Kedudukan Kreditor Dalam Hal Terjadi Kepailitan Terhadap Debitor (Legal Protection and Creditor Position in the Event of Bankruptcy Against the Debtor),” *Lex Jurnalica* 13, no. 2 (2016): 104–114, hlm.109-110.

⁴¹ M. Hadi Subhan, *Hukum Kepailitan, Prinsip, Norma, Dan Praktik Di Peradilan (Bankruptcy Law, Principles, Norms, And Practices in the Judiciary)*, 4th ed. (Jakarta: Prenadamedia Group, 2014), page 29.

Moreover, in the construction of a savings and loan cooperative business entity, the absence of a Deposit Insurance Corporation (LPS) also makes the position or guarantee of refund of cooperative members become more vulnerable.

C. Filing of Bankruptcy of Cooperative Legal Entity by the Cooperative Member

As mentioned earlier that based on Article 2 paragraph (1) of Law no. 37 of 2004, cooperative members have the right to file a petition for bankruptcy against cooperatives. Even though in terms of legality, the permit is valid, from a conceptual point of view, the arrangement is deemed inappropriate with several considerations including:

First, each member of the cooperative is the owner of the cooperative itself. The provisions of Article 17 paragraph (1) of Law no. 25 of 1992 explicitly states that “Members of Cooperatives are owners and users of Cooperative services at the same time”.⁴² The ownership of cooperative members towards cooperatives is based on the logical reason that the formation of a cooperative body is based on the existence of the members themselves and that the main purpose of cooperatives is to promote the welfare of all its members.⁴³ As the owner, of course, it is only natural that members of the cooperative obtain the benefits or advantages of the cooperative as the purpose of its establishment. However, it should be remembered that as the owner, the members of cooperatives also have the obligation and responsibility to bear the potential risks to the organization of cooperative business activities.⁴⁴

The provisions of Article 20 paragraph (1) letter (b) of Law no. 25 of 1992 states that “Each member has the obligation to participate in business activities organized by the Cooperative”.⁴⁵

⁴² Indonesia, *Law of the Republic of Indonesia No. 25 of 1992 Concerning Indonesian Cooperatives* Article 17 paragraph ayat (1).

⁴³ *Ibid.*, Article 3.

⁴⁴ Firdaus Putra, “Darurat Lembaga Penjamin Simpanan Koperasi (Emergency Cooperative Deposit Insurance Corporation),” *Kompas*, last modified 2021, accessed March 16, 2022, <https://money.kompas.com/read/2021/06/14/111100426/darurat-lembaga-penjamin-simpanan-bagi-koperasi?page=all>, diakses pada 16 Maret 2022.

⁴⁵ Indonesia, *Law of the Republic of Indonesia No. 25*

This arrangement is then mentioned again in the explanation of Article 17 paragraph (1) of Law no. 25 of 1992 which states that as owners and users of cooperative services, members actively participate in cooperative activities. One form of participatory cooperative members can be done through organizational instruments in the form of “members’ meetings”. The members’ meeting itself is the highest authority in the cooperative.⁴⁶ In this case, referring to Article 23 of Law no. 25 of 1992 it is explained that a Members’ Meeting is held to determine

- a. *Articles of Association;*
- b. *the general policy in the field of management organization and cooperative business;*
- c. *election, appointment, dismissal of Management and Supervisors;*
- d. *work plan, revenue and expenditure budget plan of the Cooperative, as well as ratification of financial statements;*
- e. *ratification of the responsibilities of the Management in carrying out their duties;*
- f. *distribution of the remaining operating results;*
- g. *merger, consolidation, division, and dissolution of Cooperatives.*⁴⁷

However, it should be understood that the authority of the members’ meetings is broader than the matters mentioned above. In this case, the extent of the authority of the members’ meeting can be regulated and mutually agreed upon by the members and set forth in the Articles of Association of the cooperative concerned.⁴⁸ The members’ meeting is attended by members with a decision-making system based on deliberation to reach a consensus. If a meeting is not reached through deliberation, then decisions are made through voting in which each member has one

of 1992 Concerning Indonesian Cooperatives, Article 20 paragraph (1).

⁴⁶ *Ibid.*, Article 22 paragraph (1).

⁴⁷ *Ibid.*, Article 23.

⁴⁸ Myra Rosana, “Konsep Hukum Koperasi Modern Bagi Koperasi Sebagai Organisasi Perusahaan Berstatus Badan Hukum Sempurna (Modern Cooperative Legal Concepts for Cooperatives as Company Organizations with Perfect Legal Entity Status),” *Jurnal Hukum dan Pembangunan Edisi Khusus Dies Natalis 85 Tahun FHUI* (2009): 211.

right vote.⁴⁹

Such an arrangement shows that not only limited to participation, the opportunity for each member in determining the direction of cooperative business policies is also quite open through the existence of a “Members’ Meeting”. In practice, the management of cooperatives and their business is carried out by the Management, but it should be remembered that the Management is also elected from and by the members.⁵⁰ Thus, looking at the role and position of cooperative members as owners and users of the cooperative’s services, when a cooperative experiences financial difficulties or liquidity constraints in paying debt obligations to its members, especially due to the pandemic conditions, there should be a sense of solidarity given by each of cooperative members to does not directly file for bankruptcy against the cooperative itself but tries to resolve it together with a “family way”. This is considering that the cooperative culture is essentially mutual aid cooperation, which includes, among other things, an attitude of solidarity to help each other, depend on each other, strengthen each other, and benefit each other.⁵¹

On the other hand, if the cooperative’s financial difficulties cannot be expected anymore and the cooperative intends to bankrupt itself, then the decision to bankrupt the cooperative should also be made based on a joint decision through a members’ meeting beforehand. This is considering that one of the cooperative principles as regulated in Article 5 paragraph (1) of Law no. 25 of 1992 is that cooperative management is carried out democratically where management is carried out at the will and decision of the members. It is the members who hold and exercise the highest power

⁴⁹ Indonesia, *Law of the Republic of Indonesia No. 25 of 1992 Concerning Indonesian Cooperatives*, Article 24. Sebagai catatan, “Hak suara dalam Koperasi Sekunder dapat diatur dalam Anggaran Dasar dengan mempertimbangkan jumlah anggota dan jasa usaha Koperasi - anggota secara berimbang”.

⁵⁰ *Ibid.*, Ps.29.

⁵¹ Suarny Amran, “Filsafat Koperasi Dalam Rangka Penguatan Hukum Koperasi Di Indonesia (Cooperative Philosophy in the Framework of Strengthening Cooperative Law in Indonesia),” in *Koperasi: Filasafat, Hukum, Strategi, Dan Kinerja* (Sumedang: Institut Manajemen Koperasi Indonesia (IKOPIN), 2020), 5.

in the Cooperative.⁵²

Furthermore, in this case, it can be compared that in the construction of a business entity in the form of a Limited Liability Company, if a Limited Liability Company intends to bankrupt itself, the decision must be based on the General Meeting of Shareholders (GMS). Referring to Article 89 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (“Law No. 40 of 2007”) it is explained that the GMS for filing for bankruptcy of the company can be held if the meeting is attended or represented by 3/4 (three quarters) of the total shares with voting rights. The resolution of the GMS is valid if it is approved by at least 3/4 (three quarters) of the total votes cast unless the articles of association specify a larger quorum.⁵³ As for paragraph (2), it is determined that if the quorum for the meeting is not reached, a second GMS may be held.⁵⁴ The existence of such an arrangement shows that the filing of bankruptcy against oneself in the construction of a Limited Liability Company must also be made on a joint decision and should not be carried out solely on the initiative of one party.

Second, the cooperative is a business entity that has distinctive characteristics. As mentioned earlier, the cooperative is a business entity with special characteristics that are based on the principle of kinship and become one part of the people’s economic movement that aims to realize the welfare of members in particular and society in general. The economic and social dimensions of cooperatives have placed cooperatives as a business entity that is considered to be born from the noble values of the Indonesian nation, namely kinship, and mutual cooperation, starting from the aspect of capital to accountability for all cooperative activities.⁵⁵

However, as stated by Rachmat Suharto, the reality of the bankruptcy of cooperatives in Indonesia in recent years shows that bankruptcy leaves problems for members and seems to

⁵² Indonesia, *Undang-Undang RI No. 25 Tahun 1992 Tentang Perkoperasian Indonesia*, Penjelasan Ps.5.

⁵³ Indonesia, *Law Number 40 of 2007 Concerning Limited Liability Company*, 2007, Article 89 paragraph (1).

⁵⁴ *Ibid.*, Article 89 paragraph (2).

⁵⁵ Suharto, “Karakteristik Kepailitan Badan Hukum Koperasi (Characteristics of Cooperative Legal Entity Bankruptcy),” 11.

distance members from the main goal of forming the cooperative concerned. The current bankruptcy comes from western law, even though a provision that will be enforced in a legal area should be made in accordance with the intrinsic values found in society.⁵⁶

Based on the provisions of Article 2 paragraph (1) of Law no. 37 of 2004 can be concluded that only two conditions are needed to file for bankruptcy against a cooperative, namely 1) the cooperative has two or more creditors and 2) the cooperative does not pay off at least one debt that has matured and can be collected. Thus, it can be constructed that a member of the cooperative who feels that his debt has not been repaid by the cooperative can even file for bankruptcy against the cooperative as long as these conditions are fulfilled. This is a legitimate thing to do but it seems to be inconsistent with the principles of kinship and democratically adopted by the cooperative.

As mentioned in the previous discussion, M. Hadi Subhan explained that the political law of bankruptcy in Indonesia has now more functioned as a debt collection mechanism and not a solution mechanism for debtors who are experiencing financial difficulties.⁵⁷ Therefore, such legal politics does not seem appropriate when used by cooperative members against their cooperative which is a business entity that does not only have an economic dimension but also a social dimension. In this regard, Rachmat Suharto also argues that the existence of Law no. 37 of 2004 does not yet reflect the legal substance that places cooperatives in their distinctive characteristics because they are treated the same as other legal entities that are commercial.⁵⁸

On the other hand, if we examine further the provisions of the bankruptcy terms in Article 2 of Law no. 37 of 2004, there is a stipulation that for certain business entities, parties that can file

a bankruptcy petition are limited to only certain parties. Referring to Article 2 paragraph (3) of Law no. 37 of 2004, if the debtor is a bank, a petition for declaration of bankruptcy can only be filed by Bank Indonesia. According to Susanti Adi Nugroho, the purpose of involving Bank Indonesia as a party that can file for bankruptcy itself is to provide certainty of proper enforcement of banks as financial institutions that have a very important role and are sensitive to public and state activities. In this case, banks are also not allowed to file for bankruptcy against themselves, this arrangement is enforced to prevent shareholders or bank owners from trying to avoid liability to creditors and customers depositing funds through bankruptcy efforts.⁵⁹

Furthermore, referring to Article 2 paragraph (4) of Law no. 37 of 2004 states that in the event that the debtor is a securities company, stock exchange, clearing and guarantee institution, depository, and settlement institution, a petition for declaration of bankruptcy can only be filed by the Capital Market Supervisory Agency (Bapepam). In the explanation of the article, it is explained that the petition for bankruptcy against this institution can only be submitted by the Capital Market Supervisory Agency because this institution carries out activities related to securities and are under the supervision of the Capital Market Supervisory Agency.⁶⁰ For the record, after the issuance of Law Number 21 of 2011 concerning the Financial Services Authority in 2011, the authority of the Capital Market Supervisory Agency as regulated in Article 2 paragraph (4) of Law no. 37 of 2004 automatically switches to OJK.⁶¹

Meanwhile, referring to Article 2 paragraph (5) of Law no. 37 of 2004 stipulates that if the debtor

⁵⁶ Ibid., 11–12.

⁵⁷ Subhan, “Fenomena Hukum Pengajuan Kepailitan Terhadap Pengusaha Oleh Pekerja Karena Hak Pekerja Yang Tidak Dibayar Pengusaha (The Legal Phenomenon of Filing Bankruptcy Against Employers By Workers Because of Workers’ Rights That Are Not Paid by Employers),” 524–526.

⁵⁸ Suharto, “Karakteristik Kepailitan Badan Hukum Koperasi (Characteristics of Cooperative Legal Entity Bankruptcy),” 2.

⁵⁹ Nugroho, *Hukum Kepailitan Di Indonesia Dalam Teori Dan Praktik Serta Penerapan Hukumnya (Bankruptcy Law in Indonesia in Theory and Practice and the Application of the Law)*, page 179-180.

⁶⁰ Indonesia, *Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations*, Elucidation Article . 2 paragraph (4).

⁶¹ Ari Rio Pambudi, Ety Susilowati, and Hendro Saptono, “Kedudukan Otoritas Jasa Keuangan Pada Kepailitan Perusahaan Efek (Studi Kasus Kepailitan PT AAA Sekuritas) (The Position of the Financial Services Authority in the Bankruptcy of Securities Companies (Bankruptcy Case Study of PT AAA Sekuritas),” *Diponegoro Law Journal* 5, no. 3 (2016): 3.

is an insurance company, reinsurance company, pension fund, or State-Owned Enterprise (BUMN) engaged in the public interest, then the application for filing for bankruptcy can only be submitted by the Minister of Finance. In the explanation section of the article, it is explained that “this provision is needed to build the level of public trust in Insurance Companies and Reinsurance Companies as public fund management institutions that have a strategic position in economic development and life”.⁶² From a historical perspective, the existence of this arrangement itself emerged in response to the will of the insurers initiated by the Indonesian Insurance Council, after the filing of the bankruptcy petition case against 15 (fifteen) insurance companies to the Central Jakarta Commercial Court. At that time, the legislation that was still used was the provisions of the old Bankruptcy Law, namely Law no. 4 of 1998 in which the articles do not limit the rights of creditors and debtors to file for bankruptcy against insurance companies.⁶³

The existence of special arrangements for certain business entities then raises the question of whether cooperative legal entities should also be institutions that need special treatment in the Bankruptcy Law. In this case, Rachmat Suharto is of the view that the filing of a bankruptcy petition for cooperatives should be submitted to the Ministry of Cooperatives. This is carried out to ensure that all development efforts have been conducted by the Ministry of Cooperatives before a cooperative is declared bankrupt.⁶⁴ In line with this opinion, according to the author, the regulation regarding the bankruptcy of cooperative legal entities requires special arrangements. The submission of bankruptcy to the commercial court for a cooperative legal entity should not be carried out only by one or two members of the cooperative but must be based on deliberation and mutual agreement as a result of the members’ meeting. In

⁶² Indonesia, *Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations*, Elucidation of Article 2 paragraph ayat (5).

⁶³ Nugroho, *Hukum Kepailitan Di Indonesia Dalam Teori Dan Praktik Serta Penerapan Hukumnya (Bankruptcy Law in Indonesia in Theory and Practice and Application of the Law)*, 17-18.

⁶⁴ Suharto, “Karakteristik Kepailitan Badan Hukum Koperasi (Characteristics of Cooperative Legal Entity Bankruptcy),” 16.

the event that there are other creditors or only a few members of the cooperative (who are creditors) who feel aggrieved and wish to file for bankruptcy against the cooperative, then to protect the rights of minority cooperative members, other creditors, and the cooperative itself, the submission of a bankruptcy petition should first obtain approval from the Ministry of Cooperatives.

CONCLUSION

Both Law no. 37 of 2004 and Law no. 25 of 1992 do not regulate more specifically the mechanism or restrictions on legal subjects who can file for bankruptcy against cooperatives. Thus, both the cooperative itself, cooperative members who are creditors, and other creditors have the right to file for bankruptcy against cooperatives as long as the conditions stipulated in Article 2 paragraph (1) of Law no. 37 of 2004 are fulfilled. On the other hand, although the filing for bankruptcy of a cooperative by its member (who is a creditors) is legal, this arrangement is not in accordance with the characteristics of cooperatives in Indonesia. The basic considerations are that each of the cooperative members is the owner of the cooperative itself and that the main basis for organizing cooperative activities is based on the principles of kinship and democracy. In this case, the politics of Indonesian bankruptcy law, which often places more emphasis on the debt collection function, does not seem appropriate if it is used by cooperative members against their cooperative, which is a business entity with economic and social dimensions. Therefore, it is necessary to have special arrangements or restrictions related to legal subjects who can file for bankruptcy against cooperative legal entities, similar to those of other business entities such as banks, securities companies, insurance companies, state-owned enterprises, and others.

SUGGESTIONS

The government needs to review the mechanism and/or restrictions on legal subjects who can file for bankruptcy against cooperatives. In addition, both the government and each cooperative also need to organize socialization and internalization activities related to the philosophy and values of cooperatives for all cooperative members. This is so that each member understands that the cooperative is not a mere economic entity

but also a social entity that is jointly owned by all members.

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