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Concept Of Deposit Guarantee Institutions In Saving And Loan Cooperatives In Indonesia

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ABSTRACT

Cooperatives as the pillars of the Indonesian economy are aimed at the welfare of members in particular and the whole community in general to become a prosperous just society based on Pancasila. Implicitly, the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (1) states that the economy is structured as a joint effort based on the principle of kinship. Article 33 of the 1945 Constitution as the legal basis for the formation of Law Number 25 of 1992 concerning Cooperatives. Based on data from the Ministry of Cooperatives and Micro, Small and Medium Enterprises of the Republic of Indonesia, up to 2015 the number of cooperatives in Indonesia was 212.135 with the distribution of active cooperatives totaling 150,223 and 61,912 inactive cooperatives including savings and loan cooperatives. Inactive savings and loan cooperatives can have implications for members as loanors when there is a bottleneck in disbursing their money. This study will examine the concept of deposit insurance institutions in savings and loan cooperatives in Indonesia. The theory used is Richard Posner's economic theory of law. The methodology in this research is this study is evaluative and comparative. The results of this study stated that the establishment of a guarantor savings deposit and savings cooperative in Indonesia must be formed by the government to provide guarantees to savings and loan cooperative members by revising Law Number 25 of 1992 concerning Cooperatives.

Keywords: *Deposit Insurance Corporation; Savings and Loan Cooperatives; Indonesia.*

INTRODUCTION

Basically, the legal system is a unit consisting of elements that have interactions with one another and work together to achieve the objectives of that unit. Satjipto Rahardjo further stated that the legal system is a complex unit consisting of parts that are related to one another. Therefore, in the unity of the legal system consisting of interrelated legal parts must strengthen one another to achieve the legal goals of justice, expediency and public order. The occurrence of various problems in a Savings and Loan Cooperative (hereinafter referred to as S&L) regarding the return of funds belonging to members of the cooperative is a bad situation. Therefore, the law must be able to provide answers to such conditions as Friedman divides the legal system into three components, namely the substance or content of the law, namely regulations, legal structure or law enforcement and culture or legal culture, namely elements of social attitudes and values.

The development of cooperatives began since the days of the Dutch East Indies precisely in Purwokerto driven by E Siedeburgh as the regional head of Purwokerto and his successor De Wolf van Westerrede who listed himself as the pioneer in the establishment of the first cooperative in Indonesia, Purwokerto, while the native Indonesians who listed themselves as cooperative pioneers were Raden Aria Wiria Atmadja. (Mulhadi: 2011)

According to the Article 1 number (1) of Law Number 25 of 1992 concerning Cooperatives, cooperatives are business entities consisting of individuals or cooperative legal entities by basing their activities based on cooperative principles as well as people's economic movements based on the principle of kinship. International Labor Organitation (ILO) in resolution Number 127 of 1966 explains that cooperatives have the following main characteristics:

1. A cooperative is a collection of people
2. Each member voluntarily joins together
3. Members have a goal to achieve the same economic goals
4. Cooperatives are established through the establishment of democratically supervised business organizations
5. Each member contributes the same capital and receives a fair share of risks and benefits from the cooperative in which the member actively participates. (Rr. Dijan Widijowati: 2010)

The development of cooperatives in Indonesia is currently experiencing growth and has promising development prospects, this can be seen by the number of cooperative members as of 31 December 2015 recorded 37,783,160. The number of cooperatives and members of cooperatives in Indonesia is proportional to the number of active cooperatives as many as 150,223 and 61,192[3] inactive cooperatives. The number includes S&L which has many problems and part of the cooperative is not active.

The development of cooperatives indicates that the Indonesian people have realized and understood the importance of cooperatives in the framework of the welfare of members in particular and society in general and also helped build national economic growth in order to create a just and prosperous society based on Pancasila.

Based on data from the Ministry of Cooperatives and Micro, Small and Medium Enterprises of the Republic of Indonesia up to 2015 the members of cooperatives reached 37,873,160 spread throughout Indonesia. The high number of inactive S&Ls will be proportional to the possibility of closing cooperatives and impacting cooperative members. During the last 3 (three) years, namely 2015-2017, the government has closed cooperatives totaling 40,013. The large number of cooperatives that are closed by the government has implications for members who save their money in savings and loan cooperatives, often the members of the cooperative suffer from uncertainty because the money deposited in S&L has not been returned. In Law No. 25 of 1992 concerning Cooperatives does not mention the existence of a deposit guarantee institution in cooperatives, this is different from the banks that have the Deposit Insurance Corporation (FDIC), and the Microinsurance Deposit Insurance Institution.

Each S&L bears the burden of returning money belonging to cooperative members as a result of liquidation, liquidation or bankruptcy. This is a burden and responsibility of cooperatives, therefore cooperatives must carry out good corporate governance in anticipation of returning funds to S&L members while avoiding the occurrence of revocation of business licenses from the government in this case represented by the Department of Cooperatives due to dissolution, liquidation, bankruptcy, as well as other causes that can disrupt the health level of the S&L and give confidence to all members.

Until now there are many S&L business licenses that have been revoked by the Cooperative Office. To anticipate such matter the Cooperative Law has determined that for the benefit of creditors and members of the cooperative on the dissolution of the cooperative, a dissolution settlement will be carried out, hereinafter referred to as settlement. The follow up to that matter is specifically regulated in Article 54 of Law Number. 25 of 1992 concerning Cooperatives states that using the remaining cooperative assets to settle the remaining cooperative obligations. This is certainly very helpful for cooperative members when a business license is revoked, then the funds for cooperative members and creditors will be returned in accordance with statutory regulations.

The existence of the Indonesian Deposit Insurance Corporation (hereinafter referred to as FDIC-S & L) has not yet been established, although some parties have recommended to the government to establish FDIC-S & L. Meanwhile the protection investment fund for banks has been implemented by the Indonesia Deposit Insurance Corporation (FDIC) and the Indonesian Deposit Insurance Corporation (FDIC-LKM). Based on this the authors are interested in conducting research on the Concept of the Deposit Insurance Corporation in a Savings and Loan Cooperative in Indonesia.

UNDERLYING THEORY

Richard Posner's economic analysis theory emphasizes the principle of Wealth Maximination efficiency, a condition where resources are allocated so that its value is maximized. In economic analysis, efficiency in this case is focused on ethical criteria in the context of making social decisions (social decision making) concerning the regulation of public welfare (Richard Posner: 1998).

Efficiency according to Posner's view is interpreted as an increase in one's wealth without causing losses to other parties. Related to this, economic analysis in law like this is known as the idea of wealth maximization or in the Posner term "caldor-hics" where changes in the rule of law can improve efficiency if the winning party's profits exceed the losses of the losing party and the winning party can provide compensation for losses for the losing party, so that the losing party is still better. In this context, Posner views one aspect of justice that includes not just distributive and corrective justice. Posner emphasized "pareto improvement" in which the objectives of legal regulation can provide valuable input for justice and social welfare (Nicholas Mercuro & Steven Medumo: 1999). The Deposit Insurance Corporation in a Savings and Loan Cooperative will have a positive impact on the development of cooperative law in Indonesia through guarantees for each S&L member and creditors. Thus, the three values in law according to Gustav Radbruch namely justice, usefulness, and legal certainty can be realized (Sadjipto Raharjo: 2000)

RESEARCH METHOD

Erlyn Indarti stated that the method is part of the methodology (Erlyn Indarti: 2007). This is also consistent with the opinion of Bagele Chilisa and Barbara Kawulich that the method is a means to collect data and is an important part of the methodology (Bagele Chilisa and Barbara Kawulich: 2013). The method as part of the methodology can be considered as the fourth issue of alternative paradigm inquiry. This research is evaluative and comparative research. Comparative case studies are used to compare two or more cases. An evaluative approach is used to evaluate government policies regarding cooperatives. The comparison in this study is the comparison of laws and regulations concerning deposit insurance institutions in banks, deposit insurance institutions in microfinance institutions, and guarantee institutions in the capital market.

DISCUSSION

A. Arrangements of the Deposit Insurance Corporation in a Saving and Loan Cooperative in Indonesia

The law is a rule that continues to evolve with the times and never stops to create a new idea in order to realize justice, usefulness and certainty. The law must be able to respond to every problem by providing solutions to all the hustle and bustle of the problematic life of the nation and state society. The development of the human mindset about the conception of law has an impact on fundamental changes in law so that the law can bring changes to realize the values of justice. In fact the law does not tabulate change, without legal change the community will leave it, at a concrete level the change will occur in the legal system and regulations (Sadjipto Rahardjo:2009).

At present Indonesian law is seen as a non-standard and not rigid rule, so that it is possible for national law to change as long as it meets the requirements to follow the changing times in order to achieve the country's goals. According to Gustav Radbruch (Sadjipto Raharjo: 2000). Law must fulfill three values, namely justice, usefulness and legal certainty. Therefore, legal changes should ideally have positive implications with the values of justice, usefulness and legal concern in order to strengthen the development and renewal of national law. The legal change is a response to social problems, especially the Savings and Loan Savings Cooperative Institution (FDIC-S & L) in Indonesia. Problems in the field of cooperatives, especially regarding FDIC S & L, have yet to obtain maximum results, so that it can lead to protracted legal problems. Such a situation ultimately harms the Indonesian people, therefore there must be an immediate legal development in the field of cooperatives.

Development simply means changing a situation that is not good to be better or that does not exist into existence. Likewise, there are no FDIC S&L. The situation was caused by the fact that the agency that had guaranteed all funds owned by S&L members in Indonesia had not yet been determined when it had experienced bankruptcy or liquidation. Scohten as quoted by Sudikno Mertokusumo argues that the law is an open system because it contains legal regulations that are incomplete and may not be complete. Therefore, there is a need for legal development by forming new laws that are in accordance with the noble values of the Indonesian people to complete an open and incomplete legal system.

According to the ILO (International Labor Organization) Publication entitled "Cooperative Administration and Management" 1960 cooperatives are defined as: "*A Cooperative is association of persons usually of limited economic and through the formation of a democratically controlled busines organization, making equitable contribution to the capital required and acsepting a fair share of the risks and benefits of the undertaking*. (Sudarsono: 2005)

According to the Dutch cooperative regulations of 1949 No. 179 cooperatives are associations of Indonesian people or legal entities that liberate and stop people as members and are based on equality, mainly intending to advance the physical interests of their members by trading or carpentry together with the purchase of necessities the need is to bear the loss and life or the provision of pledges or loans and on the establishment of associations where the certificate must be made (legal letters) registered or announced in the manner described in this regulation. (I Gusti Gede Raka: 1981)

Cooperatives as a people's economic movement as well as business entities that participate in creating a just and prosperous developed society based on Pancasila and the 1945 Constitution. Every cooperative formation is based on the principles of family and economic democracy. It aims to make cooperatives a milestone in the progress of the national economy as well as the welfare of members of cooperatives in particular and society in general and help build the national economic order. Cooperative arrangements in Indonesia have been regulated through Law Number 25 of 1992 concerning Cooperatives.

The establishment of cooperatives requires at least 20 (twenty) people to form primary cooperatives and at least 3 (three) cooperatives for the formation of secondary cooperatives. The President of the Republic of Indonesia and the House of Representatives (DPR) in 2012 changed Law No. 25 of 1992 to Law Number 17 of 2012 concerning Cooperatives. The cooperative law divides 4 (four) types of cooperatives, namely consumer cooperatives, producer cooperatives, service cooperatives, and savings and loan cooperatives. The existence of Law Number 17 of 2012 concerning Cooperatives has been canceled and declared invalid by the Constitutional Court (MK) through Decision Number 28 / PUU-XI / 2013 because it is felt that the contents of the 2012 Cooperative Law are identical to corporations and have eliminated the principle of kinship and mutual cooperation. as a characteristic of cooperatives.

Based on data from the Ministry of Cooperatives and UMKM RI up to 2015 cooperative members reached 37,873,160 spread throughout Indonesia. The high level of inactive cooperatives will be proportional to the possibility of the closure of cooperatives and the impact on cooperative members. During the last 3 (three) years, namely 2015-2017, the government has closed cooperatives totaling 40,013. The large number of S&L closed by the government has implications for the fate of members who have money. Savings and loan cooperatives are cooperatives that carry out savings and loan business activities as the only business that serves members. Savings and loan cooperatives should be banks that collect community funds and channel them back to the community in the form of credit. With regard to the dissolution of S&L, the members of the cooperatives often suffer from uncertainty because the funds owned by the cooperatives have not yet been returned by the government. In Law No. 25 of 1992 concerning Cooperatives does not mention the existence of a deposit guarantee institution in cooperatives, this is different from the banks that have the Deposit Insurance Corporation (FDIC) as RI Law Number 24 of 2004 concerning the Deposit Insurance Corporation and RI Law Number 1 of 2013 concerning The Microfinance Institutions, as well as the Capital Market, which have formed the Securities Investor Protection Fund to guarantee deposits owned by investors in the Indonesian capital market.

Each S&L bears the burden of returning the cooperative members' money as a result of liquidation, liquidation or bankruptcy. This is a burden and responsibility of cooperatives, therefore S&L must carry out good corporate governance in anticipation of returning money to cooperative members while avoiding the revocation of business licenses from the government, in this case represented by the Department of Cooperatives due to dissolution. , liquidation, bankruptcy, and other causes that can disrupt the health level of S&L and give confidence to all members of the cooperative. Arrangements regarding guarantees of funds belonging to members of cooperatives that become creditors are not regulated in the Cooperative Law, but when compared with Law 17 of 2012 concerning cooperatives that have been declared invalid by the Constitutional Court, there are arrangements for deposit insurance institutions in cooperatives. Article 94 of Law Number 17 Year 2012 states that savings and loan cooperatives are required to guarantee the savings of members. The action was carried out with the government able to form FDIC-S & L to guarantee the savings of members. According to the author, the guarantor depositary institution is very good in answering legal issues so far, especially in the field of liquidation / liquidation of S&L, which has resulted in many S&L members losing their savings due to the absence of FDIC-S & L. However, Law Number 17 Year 2012 concerning Cooperatives was canceled by the Constitutional Court so that the protection of funds belonging to members of the cooperative has not received certainty until now.

The Concept of a Deposit Insurance Corporation in a Saving and Loan Cooperative in Indonesia

Law is an institution that aims to bring people to a just, prosperous life and make people happy. National law was created, developed and developed to organize life and society throughout Indonesia. National law is used to manipulate the joints of people's lives. Therefore, legal development is an ongoing effort to make a change from an unfavorable condition to become better in order to provide justice for human well-being and happiness. This is closely related to all aspects of national legal development especially FDIC-S & L. National law itself is a law or statutory regulation that is formed and implemented to achieve the basic objectives and legal goals of a country. In this context, the formation of national law should be based on Pancasila and the opening of the 1945 Constitution as a source of national law. Therefore, the formation of laws and regulations regarding FDIC-S & L must be based on Pancasila and the 1945 Constitution as the basic goal of realizing prosperity for the people of Indonesia.

Every law is positioned as a tool to achieve the goals of the country (Moh. Mahfud MD: 2010). The founders of the nation in the opening of the 1945 Constitution mandated to protect the entire nation of Indonesia, and all of Indonesia's blood and to promote public welfare as the goal of forming a nation. Therefore there is no harm if the author makes a comparison of the law against deposit insurance institutions in several laws. According to Soenarjati Hartono, as quoted by R Soeroso, it states that legal comparison is a method of inquiry and not a branch of science as is often assumed by some people (R. Soeroso: 2005) Meanwhile, according to R Soeroso himself, that comparative law is a branch of legal science that uses comparative methods in order to find the right answer to concrete legal problems (R. Soeroso: 2005).

Security guarantees in the financial system are a priority for the state to give confidence to the public of the funds entrusted to the S&L. The existence of regulations regarding FDIC-S & L will certainly have a good impact on the stability of the financial system and provide comfort for fund owners.

At present the Cooperative Law has not yet established the FDIC-S & L, so there are concerns about funds owned by creditors and cooperative members. According to Article 51 of the Cooperative Law it has been determined that for the benefit of creditors and members of cooperatives on the dissolution of the cooperative, a dissolution will be carried out, hereinafter referred to as settlement. Article 54 of the Cooperative Law states that the settlement party will use the remaining assets of the cooperative to settle the remaining cooperative obligations.

The definition of settlement above does not provide a guarantee for creditors and S&L members of all risks that will befall creditors and S&L members as a result of an uncertain situation that can cause harm. The existence of the Cooperative Law that has not yet provided compensation for an unexpected situation in the future has also been inseparable from the risks of bankruptcy, liquidation and dissolution of cooperatives. Dissolution, liquidation and bankruptcy of the cooperatives caused the fate of creditors and S&L members to float, causing the government to think hard to provide protection as well as guarantees of returning deposits deposited by S&L customers which were declared defaulted.

Furthermore, the existence of Articles 54 and 55 of the Cooperative Law has not provided protection and security for creditors and members of cooperatives if the S&L experiences liquidation or bankruptcy, bearing in mind that the article stipulates and implements all payment obligations that take precedence over other debt payments and in the event of a liquidation S&L members only bear losses to the extent of the principal savings compulsory savings and investment capital they have.

The existence of the Indonesian Deposit Insurance Corporation (FDIC) has so far been specific to banks and cannot be used to guarantee transactions for other activities. Article 1 number 8 of Act Number 24 of 2004 concerning the Deposit Insurance Agency states that a guarantee is a guarantee that is carried out by a deposit insurance institution for bank customer deposits. The arrangement was made to provide a sense of security for the creditor's customers of the funds deposited in the bank, as well as this law is the government's answer in taking preventive measures in order to cope with mass withdrawals by bank customers. The establishment of the FDIC aims to guarantee depositors' savings and to take an active role in maintaining the stability of the banking system in accordance with their authority.

The restrictions on the FDIC Act which only applies to banks have resulted in the FDIC's scope being concentrated solely on banks, whereas currently there are several rules regarding the establishment of deposit insurance institutions in non-banking business activities, namely microfinance institutions and capital markets.

Deposit insurance institutions also exist in microfinance institutions, namely financial institutions specifically established to provide business development services and community empowerment, both through loans or financing on a micro-scale business to members and the community, savings management, and providing business development consulting services that are not merely looking for profit.

Microfinance institutions can conduct business activities that include business development services and community empowerment, either through loans or financing in micro-scale businesses to members and the community, savings management, as well as providing business development consulting services. In carrying out business activities, microfinance institutions face various problems or problems in the future. This can have an impact on the trust of microfinance institution customers in entrusting their savings. Therefore, in order to guarantee public saving for the MFI, the Regional Government and / or MFI can form an LKM deposit guarantee institution, if needed, the Government together with the Regional Government and MFI can establish an LK M deposit guarantee institution.

In the capital market sector To improve security in investing in the Indonesian capital market, each investor asset is protected by establishing a Investor Protection Fund (SIPF). Indonesia SIPF is a company that runs the Investor Protection Fund program, and is overseen by the Financial Services Authority (OJK).

With various comparisons as above, at present several discourses on the formation of a cooperative guarantee program are under the authority of the Simpnan Guarantor Institute (FDIC). Even though we know that at this time FDIC only provides guarantees for customers' funds that have been sacrificed, both commercial banks (conventional and sharia) and rural banks (BPR). Therefore, if the cooperative guarantor program will be given authority to the FDIC, then there must be a revision of Law Number 24 of 2004 concerning the Deposit Insurance Corporation. The next alternative is to form a cooperative deposit insurance guarantor by revising Law Number 25 of 1992 concerning Cooperatives in order to provide guarantees to creditors while participating in the welfare of members and national economic development.

CONCLUSION

Deposit insurance institutions in savings and loan cooperatives do not currently exist, although financial institutions, both banks and other non-banks, have established deposit insurance institutions, namely FDICs at banks, Deposit Insurance Institutions at microfinance institutions (FDIC-LKM), Securities Investment Protection Funds (SIPF) in the capital market. In order to protect creditors at S&L, an FDIC-LKM must be formed immediately in order to provide security, comfort and security in the welfare of members, creditors and to participate in national economic development through savings and loan cooperatives.

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