



Legal Protection of Investors for Default in Savings and Loan Cooperative Investment Business

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Abstract

This article discusses the legal protection of investors against default in the investment business of savings and loan cooperatives. Savings and loan cooperatives have an important role in improving the welfare of the community by providing savings and loan services. However, some savings and loan cooperatives have violated the rules and conducted unethical practices, such as misusing customer funds for illegal or fraudulent investments. This has caused huge losses to investors and the public who invest in savings and loan cooperatives. Effective and efficient legal protection of investors is necessary to prevent losses and ensure investment security. In this context, the role of the government and financial institutions is crucial. They should enhance supervision of savings and loan cooperatives and impose adequate sanctions against offences committed by such cooperatives. This article reviews some cases related to defaults in the investment business of savings and loan cooperatives and how the law can be used to protect investors. The government and financial institutions need to improve supervision and provide protection to investors through adequate policies and regulations. Investors are also urged to be more cautious and conduct careful research before investing in savings and loan cooperatives. They need to understand the risks associated with such investment businesses and take appropriate preventive measures. In conclusion, the legal protection of investors for defaults in the investment business of savings and loan cooperatives is a sensitive and complex issue. Protection efforts must involve co-operation between the government, financial institutions, and investors themselves. With effective legal protection, investors can feel more secure and protected in investing in savings and loan cooperatives.

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Introduction

In general, everyone has the privilege of continuing their lives indefinitely. To fulfil these needs, people have various ways, one of which is by fulfilling needs related to money. In Indonesia, the government started cooperatives because people's financial needs are still not fully met. Cooperatives are one type of financial institution that can help today's society to develop. Organisations that still exist and develop are cooperatives. They are also a kind of hierarchical body. In Article 33 paragraph (1) of the Constitution, it is affirmed that the principle of cooperatives is an economy coordinated as a joint effort by taking into account the norms of association. Co-operatives have a big role in realising a just and prosperous society ^[1]. The national economic system is structured jointly based on the principles of kinship and cooperation.

¹ Indarta, D. W. (2021). Legal Protection of Cooperatives in Granting Credit with Collateral Owned by Third Parties. JUSTITIABLE-Journal of Law, 3(2), 42-51. Page 2

Law No. 25 of 1992 explains that cooperatives are the people's economic movement and as business entities participate in realising an advanced, just and prosperous society based on Pancasila and the 1945 Constitution. It is the responsibility of the government and society as a whole to encourage economic democracy and the growth of cooperatives^[2].

KSP or savings and loan cooperative is a cooperative that lends money to its members quickly, cheaply, and appropriately for welfare and productive purposes. This credit is made possible by the standard and constant reserve funds of individuals. These loans must be returned to the cooperative with interest as per the applicable agreement. Cooperatives can thrive and grow if loan repayments are made on time. The inability of people to make timely repayment of advances or credits will impact the growth of the agreement as it will disrupt the flow of assets. Investment fund and advance co-operatives are credit granting co-operatives. The Investment and Credit Fund Co-operative is certainly an association that has the ability to provide advances to people who need financial assistance. Co-operatives play an important role in meeting the needs of people who generally have very limited financial resources. The Investment and Credit Fund Cooperative can be a solution for business people who need additional capital, especially business people who want to expand their business^[3].

The co-operative makes it easier for people who are obliged to take credit by providing easy development application requirements. In addition, members who borrow according to the agreement receive SHU or residual income from the cooperative. Account holders benefit from the ease of obtaining co-operatives because borrowers have better adaptability in obtaining credit. This acknowledgement is to be paid in accordance with the matters in the agreed Submission and Understanding. Since the benefit has simplified it for the account holder to acquire capital upfront, the debt holder should have the option to finalise the arrangement of the deal. In the execution of the agreement, it is unethical if the debtor does not fulfil its obligations, especially in terms of payment. When the debtor fails to perform the terms of the agreement, this is called default.

Indonesia is a developing country, where development activities in all fields are actively carried out, one of which is development in the field of the national economy, because the national economy is a determining factor for the welfare of society, and one of the characteristics of developing countries is the dependence on developed countries which is very high, thus opening up opportunities for developed countries to "dictate" to developing countries. So that national economic development aims to realise Indonesia's political and economic sovereignty, one form of national economic development is in the form of cooperatives. The acceleration of national economic development is an effort to realise Indonesia's political and economic sovereignty, therefore it is necessary to increase investment to process economic potential into real economic power using capital from within the country and from abroad. In addition to Indonesia's growing and developing economy, Indonesia's huge population is the most important factor for investment.

Investment is one of the essential factors in a country's economic development. Through investment, both foreign and domestic investment, it is expected to be able to move the wheels of a country's economy, so the state is required to regulate in such a way that investment can have a positive influence on the nation and its people. Investment, which is commonly called capital investment, is now a familiar term in society. Investment is a commitment to invest a number of funds in one or more assets for several periods in the future. The many benefits obtained in investing make many people strive to invest both in the form of savings in banks, investing in stocks, property, forex trading and others. The reason someone invests more is to get a more decent life in the future, reduce inflationary pressures, and the urge to save taxes.

The legal protection of investors against default in the investment business of savings and loan cooperatives has become a very sensitive and complex issue in recent years. Savings and loan cooperatives, as community-based financial institutions, play an important role in improving people's welfare by providing savings and loan services. However, some savings and loan 3 Hafidzal Imam Zeindiq, "Member Defaults in Lending and Borrowing Agreements at the Baitul Maal Wat-TamwilAlmudarris Savings and Loan Cooperative in Pontianak City", E-Journal Gloria YuridisVolume 2 No.3 Untan Legal Science, 2014, p. 6. 6. cooperatives have violated the rules and engaged in unethical practices, such as misusing customer funds for illegal or fraudulent investments.

In some cases, investors who invested in savings and loan cooperatives that do not operate transparently and do not fulfil their obligations have suffered huge losses. They have not only lost their investments, but have also experienced stress and loss of trust in the financial system. Therefore, effective and efficient legal protection of investors for defaults in savings and loan cooperative investment businesses is necessary to prevent losses and ensure investment security.

In this context, the role of the government and financial institutions in providing legal protection to investors is crucial. They should improve supervision and oversight of savings and loan cooperatives, and impose adequate sanctions on cooperatives that do not fulfil their obligations. In addition, investors should also be more cautious and conduct better research before investing in savings and loan cooperatives.

In this article, we will discuss the legal protection of investors for defaults in savings and loan cooperative investment businesses. We will review several cases related to default and how the law can be used to provide protection to investors. We will also discuss the role of the government and financial institutions in providing legal protection to investors and how investors can be more cautious in investing in savings and loan cooperatives.

Research Methods

The research used in this study is an empirical juridical method. Empirical juridical research is legal research on the enactment or implementation of normative legal provisions

² Cooperative Law No. 25 of 1992 on Indonesian Cooperatives," no. 1 (1992) pp. 1-57.

³ Hafidzal Imam Zeindiq, "Member Defaults in Lending and Borrowing Agreements at the Baitul Maal Wat-TamwilAlmudarris Savings and Loan Cooperative in Pontianak City", E-Journal Gloria YuridisVolume 2 No.3 Untan Legal Science, 2014, p. 6. 6.

in action on every specific legal event that occurs in society. This research describes events in the field and is then compared with laws and regulations and the opinions of experts.

The research approach used is juridical sociological. According to Sugono, juridical sociology is carried out based on problems that occur in society, both actions taken by humans in the community, as well as the implementation of law by social institutions. This approach is intended to find facts that are then identified and finally lead to problem solving. This approach is used to obtain facts and answers to several related problems about how "legal protection of investors over wan prostration in the investment business of a save banking cooperation".

In this study, data was collected through literature review from various sources relevant to the research topic. The literature search was conducted through academic databases such as Google Scholar, PubMed, Scopus, and other leading scientific journal platforms. After the literature search was conducted, the articles found were then filtered based on predetermined inclusion and exclusion criteria. Inclusion criteria included relevance to the research topic, accuracy of information, and availability of required data. Exclusion criteria included articles that did not fulfil the desired research quality, non-academic articles, and articles in languages that could not be understood by the researcher. The literature review method used in this study made it possible to gain in-depth insight into the research topic without having to conduct primary data collection. However, it is important to remember that the limitation of this method lies in the reliance on the quality and trustworthiness of the literature sources used. Therefore, systematic data collection and analysis steps are essential to ensure the validity and reliability of the research.

Discussion

Factors Causing Default of Investment Business Cooperative Simpani Pinjam Investment is an expenditure of a certain amount of investment funds to finance production activities to obtain future profits. Understanding about investment will be better if we understand the meaning of investment itself. Several meanings of investment were put forward by experts, namely. Martonoi reveals that investment is the investment of funds made by a company into an asset in the hope of obtaining income in the future. Fitzgeraldi defines investment as an activity related to efforts to withdraw sources of funds used to procure capital goods at the present time, and with capital goods there will be a flow of new products in the future. Investment is important for economic growth due to the contribution it makes. The contribution of investment to economic growth can be seen from the demand and supply side. From the demand side, an increase in investment will stimulate economic growth by creating effective demand. Meanwhile, from the supply side, an increase in investment will stimulate economic growth by creating more capital stock which then expands in the form of increased production capacity.

Investment activities make it possible for a society to continue to increase the level of prosperity of the

community. Where Indonesia is experiencing an increase in population which is increasing every year. The increase in population which is increasing due to the unbalanced economic activities, especially the available job opportunities, has created a major problem, namely unemployment. Wanprestastie comes from the Belandai language "wanprestastie", which means that there is no fulfilment of the performance or obligation that has been determined against certain parties in an engagement, either an engagement born of an agreement or an engagement arising from the law. According to the Law Dictionary, default means negligence, default, breach of promise, failure to fulfil obligations in an agreement^[4].

As for what is meant by default is a situation that is due to negligence or misconduct, the debtor is unable to fulfil the performance as specified in the agreement and not in a situation of 4 Yahya Harahap, 1986, Legal Aspects of Treaties, Second Mould, Alumni, Bandung, pp. 60. force, while it is stated that default is not fulfilling or neglecting to carry out obligations as specified in the agreement made between the creditor and the debtor⁵.

In practice, Simpani Pinjami Cooperative often collects funds from the public who are clearly not members of the cooperative in the form of deposits in conjunction with providing loans to its customers over bank loans. By placing a certain amount of money with the cooperative, prospective customers are given the hope that they will later get a high return, without having to work hard to get a profit. This kind of offer is very tempting, because people will tend to have a pragmatic attitude to getting a profit. The strong urge to get high profits can make people without the need to consider masaki on the rationality of the business and the possibility of risk. So that many people are then interested and invest their money.

The results of the research also found that the activity of offering investment has also occurred in KSPs such as the case conducted by Koperasi Simpani Pinjami Manunggali Utamai Karyaiin Solo. The case was under the guise of offering term deposits. Some customers admitted that they were tempted by the lure of high interest rates, so they bought term deposit certificates with a value of 10 million rupiah per certificate. Because they were tempted by the large profits, some customers were tempted to buy dozens of certificates. However, until the time limit promised by the bungai and the return of the deposit money was apparently not also paid by the cooperative⁶.

1. The human resources managing the cooperative are not competent

Human resources are an important factor in the management of a financial institution, especially a financial institution, in this case a cooperative simpani pinjami hali this is related to how the cooperative institution simpani pinjami is able to analyse the ability and amount of credit that can be given to members who make loans. The credit can go bad because of the mismanagement of the management. So it is interrelated between the capital and the human resources of the cooperative management, in some cases the accusations that often occur are generally in the middle after financing the

⁴ Yahya Harahap, 1986, Legal Aspects of Treaties, Second Mould, Alumni, Bandung, pp. 60.

⁵ Salim H.S., 2008, Introduction to Written Civil Law (BW), Sinar Grafika, Jakarta, pp. 180.

⁶ mujiyanti, v. D. (2022). Legal protection of investors for default in savings and loan cooperative investment business. Cita hukum indonesia, 1(1), 48-59. Page 9

customer starts not being able to pay, i that is due to various problems so that the capital that has been channeled to members cannot be returned.i Related to the quality of human resources was also explained by the Head of the Institutional Division of the Cooperative and Micro, Small and Medium Enterprises (Dinkop-UMKM) of Central Jawa Province, Bimai Kartika, hoping that cooperative actors can better understand the concept of economic democracy.i This is important to maintain the sustainability of cooperatives.i The reason is, not infrequently, misunderstandings between the management and members of cooperatives often lead to legal problems.

2. Unprofessional management

The unprofessional management of cooperatives has resulted in cooperative institutions not running as they should, a condition also highlighted by the Minister of Cooperatives and Small and Medium Enterprises (SMEs) Teteni Masdukii said that cooperatives that manage finances must be accompanied by good managerial skills.i Furthermore, she explained that there are several KSPs that we supervise, and it is revealed that there are some that fail to pay.i How strange is it that there are cooperatives that fail to pay? i In fact, there are, because cooperatives collect money from members, but invest it not for the benefit of members, but rather for big business," he said, adding that this is part of the business of the cooperatives that sympathise with loans to expand their business.i The problem of not fulfilling the promises made by the simpani pinjam cooperative.

3. Not honouring the agreement

In the case of kspi investment cases that occur, the cooperative simpani pinjami does not pay the profits that are promised every month, but what happens is that the payment of profits is not made in accordance with the investment agreement that has been agreed upon, which is in the amount of the nominal and is paid every month.i In the research on the decision of the Magelang District Court Number: i 20/Pdt.G/2017/PNi Mggi The KSPi party is negligent because it does not pay the profit every month to the investor in the investment agreement of profit sharing or profit sharing by Almarhumi Agusi Munarto as an investor with KSPi Danai Sejahtera with an investment value of 500.000,000, in this case the respective length of time for the return of investment funds and profit sharing in the Investment Agreement deed is 24 (Twenty-Four) months starting from the agreement of the Investment Agreement signed by both parties. From the investment fund invested by the investor to KSPi Danai Sejahtera, KSPi is obliged to provide profit sharing every month to Almarhumi Agusi Munarto.

4. Level of profitability to be gained

Investors will invest their capital in investment types that provide good and profitable prospects.i If the investment chosen is no longer profitable, investors will move to other types that are more profitable.i Investors must always observe the performance of the company in which they invest.i The rise and fall of shares can be an indicator of whether the company is performing well or not.i Agreements should be carried out as they should without interruption or hindrance.i But at certain times, which cannot be expected by the parties, things often arise so that the implementation of the agreement cannot be carried out properly or can be said to be unable to fulfil its obligations. Default has a very close relationship

with subpoenas.i Default is not fulfilling or neglecting to carry out obligations as specified in the agreement made between the creditor and the debtor.

In the event of default committed by a cooperative, the person responsible for overcoming the default is the director of the cooperative in accordance with the by-laws (articles of association/ by-laws).i If the co-operative suffers a loss due to the actions of the management, whether intentional or unintentional or due to negligence, the management must be held accountable for the loss.i If the actions that harm the co-operative are intentional, the management can be sued in court. Legal Protection of Investors Against Default in Investment Business Investment Cooperatives Simpani Pinjam

The term legal protection in English is known as legal protection, while in Dutch is known as Rechtsi bescherming.i Etymologically, legal protection consists of two words, namely protection and law.i In Kamusi Besari Bahasa Indonesia, protection is defined as (1) a place of refuge,i (2) a thing (action and so on),i (3) a process, a way, an act of protecting.i Basically, an investor will choose a profitable investment, because any capital deposited for investment must have a high rate of return.

The high rate of return on investment can be a consideration for investors to invest in securities.In the framework of the preparation and presentation of financial statements, it is stated that investment is an activity used by companies for the growth of wealth (accretion of wealth) through the distribution of investment returns (such as interest,i royalties, dividends and advances), i for the appreciation of the value of investments, i or for other benefits of the company that invests, such as benefits obtained through trade relations7i.i Suadi Husnani (2003:3) explains that investment is any use of money with the intention of generating income.i While the term investment can relate to a variety of activities, investing some funds in real assets or land, gold, machinery (buildings), or financial assets (deposits, deposits or bonds) is a common investment activity.

Basically, the purpose of people investing is to make a certain amount of money.i But in more detail, the purpose of investing is to improve the welfare of investors.i Welfare in this case is monetary welfare, which can be measured by summing up the current approach to future income.i According to Umari Huseini (2008: i 4) in his article, there are several reasons why someone invests, among others: To get a more decent life in the future.i Someone who is wise will think about how to increase his living standards over time or at least try how to maintain his current income level so that it does not decrease in the future.

Participation capital is not "equity participation".i Participation capital refers to the obligation of the "company owner" in terms of the "sharei capital" needed to drive the business.i So participation capital is the "equity capital" contribution of the company owner.i The term "participation capital" (MP) was introduced and regulated in Law 25 of 1992, article 42 (paragraph 1 and paragraph 2), as well as Government Regulation 33 of 1998.i In essence, the participation capital is not "equity" or own capital collected from cooperative members, as owners of the cooperative company to which they subscribe or from which they (members) receive services.i Participation capital is collected, both from members and non-members.i The participation of members in participation capital is not due to their capacity as members, but as fund owners who invest a

certain amount of money or goods with the expectation of getting a "return" or income in the form of profit sharing.ⁱ The capacity of a member in the case of participation capital is as a capital investor or "financier".ⁱ The definition of participation capital is according to the provisions of laws and regulations.ⁱ Similarly, the participation of "non-members" as financiers of capital instruments.

Participation, ⁱ cannot claim to be a member of the cooperative.ⁱ Especially individual financiers who are not members and business entities as well as government agencies and local governments.ⁱ So these non-member financiers do not have "voting rights", therefore they cannot be elected or choose to sit in the management and supervisory bodies of the cooperative.ⁱ Even so, in accordance with their capacities and competencies, they can provide input, and even, if agreed, the financier can participate in managing the business financed by the funds collected from the participation capital.

That the potential to develop cooperatives can be done from two sides, namely :ⁱ 1)ⁱ business that is directly related to member services,ⁱ and 2)ⁱ business that is based on the "business opportunity" to non-members.ⁱ The implementation of both patterns/models of cooperative business simultaneously, generally has the consequence of providing a large amount of capital, and that is actually the real constraint of cooperatives, i.e. insufficient capital availability.

On the other hand, to attract additional capital from members is also not easy.ⁱ Because of the existing experience, members expect maximum service, but are reluctant to increase their capital contribution.ⁱ In addition, the members' own capital is collected from sources in the form of "savings" (principal and mandatory) which in reality is relatively limited,ⁱ relatively small.ⁱ Also, the own capital that comes from the company (organised capital) of the cooperative, in the form of a share of the SHUⁱ (Sisai Hasili Usaha) that is set aside for the cooperative to deal with competing interests to be divided as much as possible as dividends or SHUⁱ that must be distributed to members.ⁱ These conflicting interests ultimately create the perfect space for cooperatives to accumulate funds for the purpose of increasing the amount of the cooperative's own capital.ⁱ Mubektii defines default linguistically as negligence⁸ⁱ while Yahmani defines it as breaking a promise.ⁱ By term, Subektii defines it as a debtor who does not fulfil his obligations or is late in fulfilling them or fulfils them but not as agreed.

The provisions regarding performance and default are regulated in the third chapter of the Civil Code.ⁱ In Article 1234 of the Civil Code, it is explained about the forms of performance in the contract, namely:

- Giving something, for example, in a sale and purchase agreement.ⁱ
- It means something,ⁱ for example, an agreement between an employer and his employees.ⁱ
- For example, larangani contractor to the homebuyer to build another building other than the one that already exists in the area.

As a lawful act of performance, default is a behaviour where the debtor does not fulfil the performance.ⁱ According to Subekti, the forms of default are ^[7].

- If the debtor does not perform what he/she undertakes to perform
- The debtor fulfils his promise but not as agreed.
- Debtor is late in fulfilling the agreement
- The debtor did something that according to the agreement should not be done.

If the debtor has been declared in default and there are losses therein, then the creditor according to Article 1267ⁱ of the Civil Code has the following legal rights or remedies:

- Request implementation of the agreement b. Seeking compensation
 - Seeking enforcement of the agreement as well as compensation.
 - In reciprocal agreements, it is possible to request cancellation as well as compensation for damages
- Damages in cases of default are regulated in Article 1243 of the Criminal Code where the compensation for damages includes:
1. Biayai (kosnten), ⁱ i.e. all expenses or ongkosi that have been realistically incurred by the party in the agreement.ⁱ For example, a singer who cancels his arrival unilaterally when the venue and other needs are already ready.ⁱ
 2. Loss (schade), i.e. a loss that actually affects the creditor's property, for example a construction company that builds a building that is not according to plan and then collapses and damages the creditor's property.ⁱ
 3. Bungai (intresten),ⁱ which is the loss of expected profits (winstderving)ⁱ when the debtor does not perform.ⁱ For example, a company that makes mannequins promises to make mannequins for airline A,ⁱ but then the mannequins are only finished after one year from the promised time.ⁱ The company must reimburse the amount of money that was estimated to be airline A's labour during the year ⁸.

Default, which is defined as breaking a promise, means not performing the contract.ⁱ Thus, default means a situation when someone does not fulfil or neglects to carry out their obligations as regulated and determined in the agreement made by the creditor and the debtor.

Restatement of the law of contract, especially in the United States, the understanding of default or breach of contract is divided into two parts, namely total breach and partial breach.ⁱ Total breach means that the performance of the contract is impossible, while partial breach means that the performance of the agreement is still possible to be performed.ⁱ The Law of the Republic of Indonesia has also regulated the legal basis of default, which is explained in Article 1234 of the Civil Code, which means that a person who delivers something, does something, and does not do something, should be considered in default.

Closing

This article discusses the legal protection of investors against default in the investment business of savings and loan cooperatives. Savings and loan cooperatives have an important role in improving the welfare of the community by providing savings and loan services. However some savings and loan cooperatives have engaged in unethical practices and violated the rules, resulting in huge losses for investors

⁷ Subekti, 1984, Law of Treaties, Jakarta: PT Intermedia, p 45.

⁸ Ibid

and the public who invested in the cooperative.

Effective and efficient legal protection of investors is necessary to prevent losses and ensure investment security. In this regard, the role of the government and financial institutions is crucial. They should improve supervision of savings and loan cooperatives and impose adequate sanctions on cooperatives that do not fulfil their obligations.

One step that can be taken is to improve supervision and oversight of savings and loan cooperatives. The government and financial institutions should conduct regular audits of cooperatives to ensure regulatory compliance and transparency in the management of investor funds. If unethical practices or violations are found, appropriate legal action should be taken to protect the rights of investors.

In addition, investors should also be more cautious and do better research before investing in savings and loan cooperatives. They need to understand the risks associated with such investments and check the credibility and track record of the co-operative before deciding to invest. By taking this step, investors can reduce the risk of loss and protect their interests.

In terms of dispute resolution, the judicial system should provide easy and quick access for investors who have been defaulted on by savings and loan cooperatives. Dispute resolution procedures should be transparent, fair, and efficient so that investors can obtain justice and recovery for their losses.

Overall, the legal protection of investors for defaults in savings and loan cooperative investment businesses is important in maintaining trust and stability in the financial system. Collaborative efforts between governments, financial institutions, and investors are needed to ensure ethical practices and optimal investment security. Only with effective legal protection and strict enforcement of violations can investors feel safe and confident to invest in savings and loan cooperative businesses, which in turn will support economic growth and community welfare.

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