

CHAPTER I

INTRODUCTION

A. Background

Modern cooperatives that develop today are the result of the effects of the industrial revolution during the development of capitalism¹. In Indonesia the existence of cooperatives has an important meaning for the welfare of the people. As a nation with a history of colonialism and having been colonized for a long time, the birth of cooperatives is one of the implementation of a democratic economy which is a systematic effort to improve the structure of a colonial-style economy². The economy in the colonial period had the characteristics of capitalism. This capitalist label has eliminated aspects of humanity and justice so as to cause poverty for the people. To fight the colonial and capitalist economy, cooperatives were established. The first time in Indonesia a cooperative was established in 1895 in Leuwiliang. At the beginning of its establishment the cooperative activity was to serve savings and loans, which aimed to help the economy of indigenous civil servants³.

The principle of an economy based on mutual cooperation and kinship has an implementation to guide the course of joint efforts and realize the results of a common goal, which ultimately will lead to mutual prosperity and social justice

¹ Arifin Sitio and Halomoan Tamba, 2001, *Koperasi:Teori Dan Pratik*, in *Ekonomi*, ed. by Wisnu Chandra Kristiaji, Jakarta, Erlangga, pp. 7–8

² Revrisond Baswir, "Ekonomi Kerakyatan Vs Neoliberalisme", *Gema Keadilan*, Vol. 2, No. 1, 2015, p. 5

³ Sattar, 2017, *Buku Ajar Ekonomi Koperasi*, Yogyakarta, Deepublish, p. 18

for all Indonesian people⁴. Judicially, the thinking of Mohammad Hatta was outlined in article 33 of the 1945 Constitution and at the same time became a recognition of cooperatives in Indonesia. The thought about the principles of cooperatives as outlined in the article has the hope that in the future cooperatives can play a role as the backbone of the national economy. If the economy in Indonesia is considered a system, cooperatives can be placed as subsystems of the Indonesian economy⁵.

The Law of Cooperative has already explained and also stipulates that cooperatives must play a role in improving the quality of life and welfare of the people. In addition, cooperatives also have the function of strengthening the people's economy as the basis for the resilience and strength of the National economy⁶. To realize the roles and functions of cooperatives that have been clearly regulated in the Act, the cooperatives must be run in accordance with the principles of the cooperative⁷. But unfortunately, in practice the principles of cooperatives that have been regulated and stipulated in the Act have received less attention from the community. Whereas according to Hans-H Munkler (2015) the principle of cooperatives is a key criterion for the existence of cooperatives and the identity of cooperatives, which can distinguish cooperatives from other organizations outside cooperatives⁸.

⁴ Decision of the Constitutional Court number 28 / PUU-XI / 2013 concerning Testing of Law Number 17 of 2012 concerning Cooperatives, p. 236.

⁵ Thoby Mutis, 1992, *Pengembangan Koperasi*, in Pendidikan Ekonomi, Jakarta: Grasindo, p. 9

⁶ Article 4 of Law Number 25 of 1992 concerning Cooperatives (Republic of Indonesia State Gazette Number 116 of 1992, Additional Republic of Indonesia State Gazette Number 3502)

⁷ Prijambodo, 2018, *OUT OF THE BOX KOPERASI: Tantangan Perubahan Kini Dan Masa Depan*, Yogyakarta: Phoenix Publisher, pp. 4–5

⁸ Hans-H. Münkner, 2015, *Co-Operative Principles and Co-Operative Law*, 2nd edn, Münster: LIT Verlag, p. 1

Cooperatives as a business entity with a legal body can carry out various cooperative activities. One of the activities and types of cooperatives that are loved by the people of Indonesia are financial services cooperative, such as Saving and Loan Cooperative (KSP) or Savings and Loans Units (USP). Savings and Loans Cooperatives in their business activities can raise funds and distribute it through savings and loan activities that originate from and for its members or other cooperatives and / or their members⁹. However, cooperatives cannot run their business like banks in general, such as collecting funds from the community in the form of deposits and then channeling them to the community in the form of credit or other forms.

Today many KSP / USP are growing up without regard to cooperative principles. In recent years cases in the world of cooperatives have increased. One of them is the rise of illegal financial cases in cooperative activities, such as the case of bulging investments in the name of cooperatives which in practice seeks to raise funds from the public, which leads to embezzlement of funds¹⁰. This is rife because many people are interested in offering investment products by KSP / USP in the form of time deposits with the promise of higher returns. There are many more cases of financial services cooperatives that increasingly tarnish the image of

⁹ Article 44 paragraph (1) of Law Number 25 of 1992 concerning Cooperatives (Republic of Indonesia State Gazette Number 116 of 1992, Additional Republic of Indonesia State Gazette Number 3502)

¹⁰ Bambang Priyo Jatmiko, Pemerintah Kaji Moratorium Koperasi Simpan Pinjam Untuk Tekan Investasi Bodong, (2017). <https://money.kompas.com/read/2017/03/24/060650026/pemerintah.kaji.moratorium.koperasi.simpan.pinjam.untuk.tekan.investasi.bodong>, accessed on Sunday, 10th November 2019 at 8:35 pm

cooperatives in the eyes of the community. Eventually the community will assume that the cooperative is a container of money storage that has a high risk.

The above phenomenon can be interpreted as one of the drivers of the rapid development of Sharia cooperatives. Sharia Cooperative as a non-bank Sharia financial institution is often an alternative choice for many people because it offers more shariah and sharable principles. In addition Sharia Cooperative also does not implement a conventional interest-based economic system that is considered unfair and exploitative¹¹.

Even though Sharia Cooperative is considered to be safer because of the shariah principles and has a good image among the people, it turns out that Sharia Cooperative also has several problems before the law. As one of the non-bank Sharia financial institutions, the existence of Sharia Cooperative is not yet supported by a clear legal shade. Sharia cooperatives which include KJKS do not yet have clear regulations. Sharia cooperative arrangements are limited to referring to regulations at the Ministerial level and the regulations are still very varied¹². In contrast to Sharia banking which has been clearly regulated and stipulated in Act Number 21 of 2008 concerning Sharia Banking.

Conventional cooperatives with Sharia cooperatives actually have almost the same legal problems. In conventional cooperatives the problem is caused by the use of the Law on cooperatives that are quite old and are considered to be no longer relevant today. While the problem of Sharia cooperatives is caused by the unclear

¹¹ Syafi'i Antonio, 1999, *Bank Syariah Bagi Bankir Dan Praktisi Keuangan*, Jakarta: Tazkia Institute, pp. 124-25.

¹² Triana Sofiana, "Konstruksi Norma Hukum Koperasi Syariah Dalam Kerangka Sistem Hukum Koperasi Nasional", *Jurnal Hukum Islam*, Vol. 12(2), 2014, pp. 136-137

legal shade and the inadequacy of existing regulations. The two basic problems that cause cooperatives will tend to come out of their identity and no longer pay attention to the cooperative principles that exist, so that their identity and existence are questioned.

The next problem is the absence of deposit guarantee devices such as the Deposit Insurance Agency (LPS) which is applied in the banking world. When reflecting on several cases of bankruptcy or failed clearing in the crisis on 1997-1998, the weakness of banking in Indonesia was triggered by the absence of collateral protection for customer funds, so the security of customer funds is very weak¹³. The post-crisis solution is the need to establish a guarantor institution for customer funds in the form of LPS. Many cooperatives in Indonesia are engaged in savings and loans, therefore if the cooperatives bankrupt because of problems; such as corruption, bad debts, the high exchange rate of rupiah against the dollar, and so on, customer or member funds become insecure because there is no clear in the legal shade.

Problems that often occur between conventional cooperatives and Sharia cooperatives can result in legal loopholes that have a direct impact on society. *First*, the legal loopholes can be used by persons who are not responsible for taking actions that deviate from legal norms. *Secondly*, the legal loopholes certainly results in the absence of legal certainty for cooperative members. *Third*, legal loopholes in cooperatives can result in no legal protection for members of the cooperative .

¹³ Sahala Panggabean and Anwar Abba, 2019, *Ma'ruf Amin Way*, Jakarta: Gramedia, p. 243.

This research is not focused on providing solutions to overcome the legal loopholes that need to be issued new legislation, but rather emphasizes the identification of similarities and / or differences between the two cooperatives namely conventional cooperatives with Sharia cooperatives. Both of these studies want to identify what legal protection is used by two different cooperatives namely conventional cooperatives and sharia cooperatives. If legal issues regarding the security of cooperative members / customer funds in two different cooperatives can be identified, this research can be used as a reference for the importance of legal protection for cooperative members who put their funds in cooperatives. Given the increasing number of people who are members of cooperatives both in conventional cooperatives and Sharia cooperatives, the research that wants to identify the type of legal protection for cooperative members is still very relevant.

The object of research as a source of data in this study is the KSP Jasa Yogyakarta or better known as Kospin Jasa and KSPPS Tamzis Bina Utama Yogyakarta. KSP Jasa Yogyakarta is a branch of the main cooperative located in Pekalongan. KSP Jasa was founded in the 1970s, with legal entity number 8516 / BH / VI dated on March 11, 1974. Based on a business permit from the Cooperative Office, this cooperative is a type of savings and loan cooperative. This cooperative is located on K.H. A. Dahlan street, number 61 Yogyakarta, Special Region of Yogyakarta. Meanwhile the second location that was the object of research is KSPPS Tamzis Bina Utama Yogyakarta. KSPPS Tamzis is a sharia financial institution was established in 1992 and obtained legal entity status on November

14, 1994 under number 12277 / B.H / VI / XI / 1994 from the Department of Cooperatives.

B. Problem Formulation

Based on the background above, the research problem formulation is as follows:

1. What are the similarities and differences between conventional cooperatives and shariah cooperatives?
2. How is the legal protection for members in KSP Jasa Yogyakarta and KSPPS Tamzis Bina Utama Yogyakarta in terms of the saving and financing contracts?

C. Objectives of Research

1. General Purpose

The general objective of this research is to find out the picture on the aspect of legal protection between conventional cooperatives and shariah cooperatives.

2. Special Purpose

- a. Identifying the picture of similarities and differences between conventional cooperatives and Sharia cooperatives
- b. Identifying the types of legal protection given to members of conventional cooperatives and sharia cooperatives in terms of the saving and financing contracts.

D. Benefits of Research

1. Theoretical benefits

Identifying the similarities and differences in cooperative activities between conventional cooperatives and sharia cooperatives including the types

of legal protection for cooperative members / customers who put their funds in cooperatives, the results of this study could theoretically be used as a basic for drafting legislation regarding cooperative deposit guarantee institutions. The next theoretical benefit, if the legal protection of sharia cooperatives that adheres to the principle of profit sharing is better for customers / members of the cooperative, then the theory of revenue sharing can be included in the rules of the legislation regarding cooperatives deposit guarantee institutions.

2. Practical benefits

In the field of cooperatives the difference in cooperative labels can be used as an alternative to increasing the number of customers / members of cooperatives, so the practical benefits of research lie in the marketing aspect. The guarantee of legal protection contained in savings and financing contracts in cooperatives besides having a clear legal basis value, will also provide added value in the field of cooperative assets.