

Cooperative Member Savings Guarantee as a Form of Legal Protection in The *Maṣlahah* Perspective

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Abstract

This research discusses the guarantee of cooperative member deposits. This research has a background that in recent times, there have been many cases of problematic cooperatives in Indonesia, with material losses of members reaching trillions. This research study examines how the guarantee of cooperative members' deposits is a form of legal protection from *Maṣlahah*'s perspective. The research method used is qualitative, normative research with analytical descriptive specifications; the legal materials used are primary legal materials (related legal rules) and secondary (various literature and research results). The results of this study indicate that currently, in Indonesia, no regulation provides explicitly a legal basis for the certainty of guaranteeing deposits of cooperative members. So, for the benefit of the government, laws related to deposit guarantees for cooperatives must be issued as a form of legal protection through the fulfilment of citizens' rights. One of the guarantee models that can be used is an explicit guarantee model with restrictions on the guarantee amount.

Keywords: Savings Guarantee; Cooperative; *Maṣlahah*.

Abstrak

*Penelitian ini membahas mengenai penjaminan simpanan anggota koperasi. Penelitian ini dilatarbelakangi bahwa dalam beberapa waktu terakhir, banyak terjadi kasus koperasi bermasalah di Indonesia, dengan kerugian materiil anggotanya mencapai triliunan. Kajian penelitian ini mengkaji bagaimana penjaminan simpanan anggota koperasi merupakan bentuk perlindungan hukum dalam sudut pandang *Maṣlahah*. Metode penelitian yang digunakan adalah penelitian kualitatif normatif dengan spesifikasi deskriptif analitis; bahan hukum yang digunakan adalah bahan hukum primer (aturan hukum terkait) dan bahan hukum sekunder (berbagai literatur dan hasil penelitian). Hasil penelitian ini menunjukkan bahwa saat ini di Indonesia belum ada peraturan yang memberikan landasan hukum secara tegas mengenai kepastian penjaminan simpanan anggota koperasi. Maka demi kepentingan pemerintah, maka harus dikeluarkan undang-undang terkait penjaminan simpanan bagi koperasi sebagai bentuk perlindungan hukum melalui pemenuhan hak-hak warga negara. Salah satu model penjaminan yang dapat digunakan adalah model penjaminan eksplisit dengan pembatasan pada jumlah jaminan.*

Kata Kunci: Jaminan Simpanan; Kooperatif; *Maṣlahah*.

INTRODUCTION

Legal protection is a state effort (exclusively state regulation), to ensure the certainty of fulfilling the rights of a person or group of people (Tarantang et al., 2023). Therefore, the government is obliged to provide legal protection in every sector that has the potential to harm the rights of others. One sector that should not escape legal protection by the government is the financial services sector.

The financial sector in Indonesia is one of the sectors that has a vital role in encouraging the improvement of the national economy and the people's economy. (Mursid, 2021). Ironically, many cases of cooperative default have recently occurred involving hundreds of thousands of citizens as cooperative members with an estimated potential loss of trillions of rupiah. Even from the eight significant cases handled by the Troubled Cooperative Task Force of the Ministry of Cooperatives and SMEs alone, the estimated default value reached IDR 26 trillion. This is the most significant default case in the history of Indonesian cooperatives and has tarnished the name of the cooperatives (Suroto, 2023).

One of the most recent cases involved cooperatives with initial customer losses of more than 106 Trillion from 23,000 customers (Arini, 2023). The final judgment in this case was an 18-year prison sentence (Prasetyo, 2023). However, the problem is about the legal protection of customers and whether customer funds can be returned with the 18-year sentence. There are still many cases like the Indosurya case, where the perpetrator or cooperative management is only sentenced to criminal offenses without settlement of civil liability, such as the case of the Salatiga District Court's decision on the criminal offense of embezzlement in the Guna Artha sejahtera savings and loan cooperative (Soponyono et al., 2016). Case of AM Savings and Loans Cooperative Sukoharjo branch (Rukmana, 2021).

Based on the explanation above, several sample cases show that the legal protection of cooperative customers has only focused on law enforcement from the aspect of the perpetrators of the crime. However, legal protection for victims of crime, in this case, cooperative customers, tends to neglect their civil rights. At the same time, legal protection must include criminal and civil protection. Based on this background, studying the guarantee of cooperative members in Indonesia in the context of legal protection is interesting.

The author's research differs from previous research, focusing on the urgency of guaranteeing cooperative customer deposits as a form of legal protection certainty in the *maṣlahah* perspective. This research is essential to contribute ideas to policymakers to immediately respond to the problems experienced by the community by issuing policies to solve existing problems, primarily related to civil rights (security of customer funds) if cooperatives experience legal and or financial problems.

LITERATURE REVIEW

The issue of cooperatives is familiar; previously, several studies have also discussed cooperative issues and related matters in books, theses, or journals. Here are some literatures related to this research. First, research in the form of a thesis by Helwida in 2017, which discusses the legal protection of cooperative members if the management commits PMH; this research is a case study of the Pandawa Mandiri Group Savings and Loan Cooperative (Herwida, 2017), the results of this study state that the settlement taken can be through litigation and non-litigation channels and only focuses on aspects of criminal liability.

Second, Nandita Windi Afreeporamara's 2019 thesis was titled Legal Protection of Cooperative Members for the Bankruptcy of Savings and Loan Cooperatives. The focus of discussion in this study is the legal consequences of savings

and loan cooperatives declared bankrupt, the settlement of receivables of cooperatives that are sentenced to bankruptcy, and the legal protection of cooperative members. The results of this study are that the juridical consequences of the decision to dissolve the cooperative are that compensation of receivables is allowed, Actio Paulina applies, and the settlement of receivables of cooperatives that are decided to be bankrupt is immediately ended by accelerating the liquidation process of cooperative assets to distribute them to all creditors then (Afreetamara, 2019).

Third, Bonaraja Purba's research in Business Economics Management and Accounting (EBMA) was published in 2023. This research discusses the legal protection of savings and loan cooperatives related to bad credit (Purba et al., 2023) This study discusses the legal consequences for customers in the event of bad credit in savings and loan cooperatives and how legal protection of savings and loan cooperatives in the event of bad credit.

Of course, from some of the literature searches the author reviewed, there are differences with the research the author did. Previous research only discussed the application of existing law (*ius constitutum*). At the same time, this research focuses on legal improvement regarding the legal protection of cooperative customers (i.e., constituents) with the valuable *fiqh* theory (*sadd Dzari'ah*) approach.

RESEARCH METHODS

search conducted is normative legal research. At the same time, the specification of this research is descriptive-analytic (Ali, 2021). The legal materials used are primary and secondary legal materials. Primary legal materials are related laws and regulations, such as Law Number 25 of 1992 concerning cooperatives and several related regulations and their derivative rules. Meanwhile, secondary legal materials are obtained from

various research results such as journals and other scientific works.

The collection of legal materials in this writing is pursued by conducting library research and document studies. The dogmatic juridical approach relies on primary and secondary data and is supported by a dogmatic juridical approach (Purwati, 2020).

THEORETICAL FRAMEWORK

Legal Protection Theory

Legal protection was born since the law is considered a value system that has the power to provide solutions to every community problem (Aswari, 2020). This means that legal protection is an effort to fulfill rights (security, safety, comfort, freedom from loss, welfare) by the state to the community (Rato, 2021) (Tarantang et al., 2023). So, legal protection is also closely related to law enforcement because, with law enforcement, legal protection is running.

According to Philipus M. Hadjon, legal protection is the protection of dignity and recognition of human rights and Property of legal entities in a country established by law. To prevent it, you must follow the rules in the country's arbitrariness to say that the law works to protect the people's interests (Ma'wa, 2015). This legal protection effort is divided into two efforts, namely preventive and repressive legal protection efforts (Tampubolon, 2016).

Preventive legal protection means efforts made by the government in the form of prevention and minimizing efforts to commit violations and crimes. At the same time, repression is an effort to protect by providing legal sanctions, such as imprisonment, fines, etc., if a violation or crime occurs (Apriani et al., 2020).

In essence, the rule of law that exists in society is to provide legal protection for the rights of every citizen from dangers and actions that can harm and torment his life from other people, society, and authorities. In addition, it also functions to provide justice

and become a means to realize welfare for all people. Protection, justice, and welfare are addressed to the subject of law, namely supporters of rights and obligations (humans) (Sinaulan, 2018).

Everyone is entitled to protection from the law; almost all legal relationships must receive protection. Legal protection manifests the operation of legal functions to realize legal objectives, namely justice, benefit, and legal certainty (Arifiyanto et al., 2016).

Maṣlaḥah Theory

Maṣlaḥah comes from Arabic, which has been standardized into the word *maslahat* in Indonesian, which means to bring goodness or that which brings benefit (*Sana'a*) and rejects damage (*mafsadah*) (Adinugraha & Mashudi, 2018). Maṣlaḥah itself is the essence of the general purpose of Islamic legislation (Zuhaili, 1999).

According to Najmuddin Aṭ-Ṭūfi, maṣlaḥah means all means and causes that can lead to goodness and the realization of benefits. There are two types of goodness and benefits: 'urfī (not mentioned by the Shari'at) and shari'ī (mentioned and determined by the Shari'at), both of which are legitimized by the Shari'ah, Allah (Khasanah, 2021)

Maṣlaḥah itself among ushul scholars is divided into three, namely 1. *maṣlaḥah mu'tabarah* is a benefit that has been regulated and determined in the text (the Qur'an and hadith) and clearly explains and acknowledges its truth. 2. *Maṣlaḥah mulgah* is a benefit that contradicts the texts of both the Qur'an and Hadith or one of them, and 3. *Maṣlaḥah mursalah* is a benefit for which no single piece of evidence explicitly recognizes or rejects it (Ardi, 2017).

Scholars in ushul and fiqh are unanimous in their opinion that maṣlaḥah mu'tabarah can be used as an argument (*hujjah*) in determining Islamic law. This kind of benefit is included in the *qiyas* method. They also agree that maṣlaḥah mulgah cannot be used as a basis for ruling in Islam because it cannot be found in Shara's

practice. As for the validity of maṣlaḥah mursalah, in principle, the majority of scholars in the field of functional and fiqh accept it as one of the methods in determining Shari'ah's rulings. However, in its implementation, they have various requirements. (Pasaribu, 2016).

The concept of maṣlaḥah as the goal of Shari'ah is the best alternative for developing *ijtihad* methods in ruling. The Qur'an and Hadith must be interpreted through *ijtihad* by emphasizing the maṣlaḥah dimension. Through the concept of maṣlaḥah, useful fiqh and fiqh scholars have a framework to answer legal issues (Asmawi, 2014).

According to the majority of scholars in the field of helpful fiqh, maṣlaḥah mursalah can be a source of Islamic law legislation if it fulfills at least three conditions: Firstly, it must be a real maṣlaḥah, not just a personal opinion. Second, it is a universal maṣlaḥah, meaning that it is not a maṣlaḥah according to individuals or specific groups and classes. Third, it does not contradict the texts (al-Qur'an and hadith) (Adinugraha & Mashudi, 2018).

RESULT AND DISCUSSION

Legal Protection of Cooperative Member Savings

Discussing the protection of savings of cooperative members, what must be seen is whether there are regulations governing member deposits. The existence of regulations as a legal umbrella has a preventive role to prevent members from losing their savings. Because without regulations that guarantee members' funds, there is no legal certainty.

It is well known that cooperatives are money management businesses full of risks, so for their development and to guarantee the rights of cooperative members, it is necessary to have rules/policies from the government that can protect members' savings (Hariyanto, 2012).

Constitutionally, cooperatives refer to Article 33 of the 1945 Constitution as a form of populist economy with family principles

(Setiyarini, 2014). Currently, cooperatives are regulated in several laws and regulations, starting from Law No. 25 of 1992 concerning Cooperatives, Government Regulation No. 9 of 1995 concerning Savings and Loan Business Activities by Cooperatives, Permenkop and UKM No. 11 of 2017 concerning Savings and Loan Businesses and Sharia Financing by Cooperatives, Permenkop and UKM No. 09 of 2018 concerning the Implementation and Supervision of Cooperatives, Permenkop and UKM No. 11 of 2018 concerning Licensing of Savings and Loan Businesses.

From the various regulations mentioned above, there are no specific legal provisions regarding the protection or guarantee of settlement in the event of irregularities in the funds of cooperative members that result in losses for these members. Regulations on the protection of members' funds are only mentioned in Article 33 No. 9 of 1995. The legal protection is related to the rules of the order of payment of obligations during the period of completion of the dissolution of the cooperative, where member deposits are one of the obligations that must be paid. However, the payment of these obligations is highly dependent on the remaining assets of the Savings and Loan Cooperative or Savings and Loan Unit that is dissolved because if there is no remainder, member deposits cannot be returned. This form of legal protection has yet to fully provide certainty and security for the savings and loan cooperative or savings and loan unit members' deposits (Sudewa, 2018).

Legal protection of members' funds concerning cooperatives has been regulated in Article 94 of Law Number 17 of 2012, which requires the government to establish a deposit guarantee institution. (Atika, 2014, p. 18). However, since the Constitutional Court Number 028/PUU-XI/2013 decision, the Cooperative Law 17/2012 is no longer valid, so the provisions of Article 94 are also automatically no longer valid (Prakoso et al., 2016).

When examining the norms contained in various existing cooperative regulations, with the judicial review of the 2012 cooperative law, the current cooperative regulations are classified as outdated and no longer relevant to contemporary economic developments. Although there is a new rule number 11 of 2018 concerning the licensing of savings and loan businesses, the parent rule that oversees several derivative regulations still uses an ancient rule, namely Law number 25 of 1992 concerning cooperatives.

Cooperative Member Savings Guarantee in the *Maslahah* Perspective

The Deposit Insurance Corporation is an independent institution that is transparent and accountable in carrying out its function to guarantee depositors field deposits (Utama et al., 2021). Deposit insurance is realized by paying guarantee claims on customer deposits (Putri, 2019).

Deposit insurance has historically been a vital issue in Indonesia since the bankruptcy of Bank Summa in November 1992. After this bad precedent, the realization began to emerge that the role of savers must be to receive adequate protection when mismatches and insolvency caused by bank mismanagement occur (Sutedi, 2010).

From the various studies conducted to overcome and prevent similar events, the idea to build a Financial Safety Net (FSN) or Financial Sector Safety Network finally emerged, one of which was by establishing the Deposit Insurance Corporation Field (D. R. Napitupulu, 2020). 2004, the government finally issued law number 24 2004 to respond to the wrong precedent. However, this regulation only guarantees customer deposits in banking institutions.

Referring to the early history of the existence of the Deposit Insurance Corporation in Indonesia, which was caused by the many losses that had to be borne by depositors, it should have been enough to be a lesson for policymakers to make regulations that provide legal protection for customer

funds, not only in the banking financial institution sector but also in every non-bank financial institution, such as cooperatives, fintech, and so on, that are engaged in finance because they have a high financial risk.

From a *maṣlahah* perspective, the following factors can show the urgency of guaranteeing cooperative members' funds. **First**, the guarantee of customer deposits provides certainty of legal protection for cooperative members if, in the future, the cooperative experiences financial problems. Legal certainty here has two meanings: certainty about the existence of governing laws (the existence of rules) and certainty about the application of established rules (certainty of rule enforcement) (Latif, 2010). Because it is useless to have rules, but there is no certainty in enforcing them. For example, there are rules about the prohibition of fraud (an example of the existence of rules), but when fraud occurs, the perpetrators do not get sanctions for violating these rules; in one case, sanctions are imposed, but in other cases, they are not. In other words, legal protection must have certainty of fulfillment. In other words, legal protection must have certainty of fulfillment. Philosophically, in addition to justice and expediency, certainty (legal validity), according to Radbruch, is the goal of the law, meaning that the existence of law (rules) is to provide certainty for the protection of citizens' rights (Manullang, 2022) as well as according to Martokusumo (Palsari, 2021). By fulfilling these three elements in legal protection, *maṣlahah* will be realized (Khasanah, 2021).

Secondly, to prevent the erosion of public trust and increase public confidence in cooperatives. As is known, lately, many cases have harmed cooperative members because they lost their savings. The Ministry of Cooperatives and MSMEs said at least eight significant cases of problematic cooperatives caused a loss value of IDR 26 trillion (Suroto, 2023). Due to the many incidents, especially after the Indosurya cooperative case, Coordinating Minister for Political, Legal,

and Security Affairs Mahfud MD urged the public to be careful in saving money in the cooperatives (Chaterine, 2023). In this case, the certainty of the regulation of guaranteeing deposits of cooperative members will increase public confidence in cooperatives again, as well as increase public confidence in banking institutions after the existence of the Deposit Insurance Corporation in the banking sector. (Soelistianingsih, 2021).

Third, to improve and enlarge cooperative finance to finance the Micro, Small, and Medium Enterprises sector. The certainty of legal protection for cooperative members through deposit insurance regulation will increase public confidence in cooperatives. So that people are not worried about placing their funds in cooperatives because there is a sense of security in the community.

The results showed that a sense of security is one of the factors why people save or save their funds in financial institutions. They are comfortable saving because there is a guarantee of security for their funds (Fitriani, 2019). If the public already believes in a financial institution because of the safety of their funds, this will increase funding funds so that they can channel more excellent financing. With capital from cooperatives, the Micro, Small, and Medium Enterprises sector greatly helped develop their businesses from downturns and bankruptcy.

From some of the above factors, the regulation of deposit guarantees will have an extraordinarily beneficial impact on the development of cooperatives. In addition, it will also reject or provide preventive efforts (preventive) against the loss or harm that will be caused. Moreover, this regulation is for Islamic law: benefit by bringing benefits and rejecting harm.

Cooperative Member Savings Guarantee Model

Generally, each country has only one Savings Guarantee Centre, which is subordinate to the government. The types of guarantees practiced in almost all countries fall into two categories: implicit and explicit.

Implicit guarantees are carried out without going through a particular institution but by existing institutions such as the central bank or finance department. While explicitly implemented by a particular institution established by the government to implement the Deposit Guarantee program. The government generally implements Deposit Insurance, and only a few countries, such as Argentina, Germany, and Sweden, implement it in the private sector (D. R. W. Napitupulu, 2010).

Indonesia has used implicit and explicit guarantees for deposit guarantees in the banking sector. Implicit guarantees were applied during the crisis in 1998 through the Blanket Guarantee program based on Presidential Decree Number 26 of 1998 until early 2004 before the birth of law number 24 of 2004 concerning the Deposit Insurance Corporation (Budiyono, 2019). The guarantee was carried out explicitly after the birth of the Deposit Insurance Corporation Act.

The guarantees model for cooperative institutions is more appropriate if it uses an explicit guarantee system because implicit guarantees, such as blanket guarantees, require substantial capital, burdening the Indonesian state budget. This can be seen from the experience of implementing blanket guarantees during the crisis, which cost the government budget 74 trillion (D. R. W. Napitupulu, 2010).

The guarantee model can explicitly be used with the provision for each cooperative to insure the deposits of its members to insurance institutions, banking institutions, or even fellow cooperative institutions. However, those with significant capital, such as primary cooperatives, ensure member funds go to secondary cooperatives. So, if the cooperative later experiences a financial crisis or even bankruptcy, the insurance will cover the members' funds.

However, the cooperative management's moral hazard must also be considered in the future deposit guarantee. According to Keraken and Wallace, the

existence of deposit guarantees will cause moral hazard because deposit guarantees will cause financial institutions to take higher risks in managing funds (Wardhana & Sufitri, 2019).

Therefore, in addition to regulations governing deposit guarantees, it must also discuss improving and strengthening the governance and management of cooperative management. This is important to prevent cooperative administrators from arbitrarily using members' funds because they feel guaranteed by the guarantee institution. Restrictions on cooperative deposit guarantees need to be set in regulations. The aim is that certain groups refrain from using the cooperative deposit insurance agency to take personal advantage.

CONCLUSION

Based on the discussion that has been carried out, it can be concluded that the guarantee of savings of cooperative members in Indonesia that exists so far only focuses on aspects of criminal liability for cooperative management, while civil rights. However, it can be resolved in a civil lawsuit (litigation), but there is no certainty about the guarantee that member funds will return. Therefore, for our constituents, the government should make policies in the form of regulations that guarantee legal protection in the form of certainty of the rights of cooperative members both criminally and civilly if the cooperative is in trouble. This deposit guarantee is a form of *maṣlahah* that will benefit the community and cooperatives. Alternative guarantee models that can be used can use an explicit guarantee model with restrictions on the amount of guaranteed deposits of cooperative members.

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