

Legal Aspects of Supervision of Cooperatives as A Micro Financial Institution

Dwi Tunggal Adi Rahmanto
{dwitunggaladirahmanto@ymail.com}

Universitas Borobudur, Jakarta, Indonesia

Abstract. The participation of cooperatives in realizing national economic development has a very important position, for this reason it is necessary to have the role of the government in conducting guidance to increase cooperative growth and supervision of cooperative business activities. Regulatory dualism towards cooperative supervision raises new legal problems and regulatory inconsistencies. Cooperatives in their business activities as microfinance institutions have special provisions that regulate business licensing and supervision of business activities under the supervision of the Financial Services Authority which is lex specialist, has a legal source, namely Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 1 2013 concerning Microfinance Institutions, and in its implementation refers to the Financial Services Authority Regulation Number 62/Pojk.05/2015 concerning Microfinance Institution Business Conduct.

Keywords: Microfinance Institutions; Cooperatives

1 Introduction

Cooperatives have the principles of togetherness and kinship as mandated in the 1945 Constitution Article 33 paragraph (1). Cooperatives, both as individuals' financial developments and as business elements, partake in making a high level, just and prosperous society in view of Pancasila and the 1945 Constitution in the public monetary framework which is organized as a joint exertion in light of the standards of connection and monetary majority rules government. Regulation Number 25 of 1992 concerning Cooperatives as the legitimate reason for cooperatives. Cooperatives as the mainstays of the public economy and a necessary piece of the Indonesian economy, play a vital part in fostering the financial capability of individuals and can make an existence of a majority rules system, harmony, connection, and transparency.

The participation of cooperatives in realizing national economic development has a very important position, for this reason it is necessary for the participation of the government in conducting guidance to improve the development of cooperatives and the authority to supervise cooperative business activities by the Minister in charge of cooperatives and still pay attention to the principle of cooperative independence. The business movement of an agreeable is to gather reserves and appropriate it through investment funds and credit exercises from and for individuals from the helpful concerned and different cooperatives as well as their members.

The current improvement of the agreeable especially investment funds and advance exercises, many complete unlawful business exercises. The rise of online loan businesses carried out by savings and loan cooperatives, the Ministry of Cooperatives and Small and Medium Enterprises has coordinated with the National Police Criminal Investigation Agency (Bareskrim) regarding the disclosure of the Mutual Mainstay Savings and Loans Cooperative (KSP) which is suspected of conducting an illegal online loan business (borrowing). The Ministry of Cooperatives and Small and Medium Enterprises through the Deputy for Cooperatives conducted a search to the address used by the Savings and Loans Cooperative Andalan Bersama (SAB) which is located at Jalan Letjen S Parman, Slipi, West Jakarta. Based on the search results, no cooperative office was found at that address, so it is suspected that the cooperative used a fictitious address as an office address.

On October 26, 2021, a search was carried out to a different place used by the cooperative as an office address. The search was carried out in a building in the Tendean area, South Jakarta. It was found that there were at least 20 cooperatives that used virtual office facilities to practice online lending (borrowing) illegally in recent times. These cooperatives, which were only established in 2021, do not have the legality of a business license that is appropriate as a savings and loan cooperative. Savings and loan cooperatives are required to put up signage at the head office and business network offices in accordance with Article 21 of the Meteri Rules for Cooperatives and Small and Medium Enterprises Number 15 of 2015 concerning Savings and Loans by Cooperatives. This is to ensure that Cooperative activities are carried out in a transparent and accountable manner.

Cooperatives in conducting savings and loan business activities are currently growing following the dynamics and changes in the social economic order of the community. The public authority through the Financial Services Authority has forced limitations on the execution of data innovation-based loaning and getting exercises.

Cooperatives as microfinance organizations as legitimate elements as controlled in Article 5 letter an of Law Number 1 of 2013 concerning Microfinance Institutions, which complete business exercises in the monetary administrations area. The Financial Services Authority (OJK) judiciously manages, administers and gives direction to all microfinance organizations as Cooperatives or Limited Liability Companies. All microfinance organizations are dealt with similarly, no matter what the size of little and enormous organizations. Reasonable administrative techniques are not in accordance with the guidelines in agreeable regulation, which are instructive, enabling and give mercy. Judicious administrative techniques did by OJK can possibly restrict the extension for development and development of MFIs,

This has given rise to a new legal problem, namely the dualism of regulation on cooperative supervision. Which institution is given the authority to supervise cooperatives? The dualism of the laws and regulations applicable to Cooperatives also creates regulatory inconsistencies. Based on the explanation of the Cooperative Law, Cooperatives run their business with the principle of independence. The meaning of cooperative independence is that it can stand alone and not depend on other parties, believe in its own abilities, be autonomous, self-reliant, manage itself, and dare to take responsibility for its own actions.

Based on the cooperative principle, the government is tasked with strengthening and participating in maintaining the maintenance of the cooperative independence principle. as clarified in Law Number 25 of 1992 concerning Cooperatives, that in order to carry out its role in establishing policies for the development of the Government, it is necessary to encourage the growth, development, and socialization of Cooperatives. In accordance with the principle of independence, this guidance is carried out without interfering with the internal affairs of the cooperative organization. The principle of independence of cooperatives has given autonomy

to cooperatives, so that regulatory and supervisory activities within cooperatives are internal affairs of the organization which are regulated and supervised by themselves through the cooperative's own management and supervisory organizations. The coaching is carried out without interfering with the internal affairs of the cooperative organization.

The principle of independence of cooperatives has given autonomy to cooperatives, so that regulatory and supervisory activities within cooperatives are internal affairs of the organization which are regulated and supervised by themselves through the cooperative's own management and supervisory organizations. The coaching is carried out without interfering with the internal affairs of the cooperative organization. The principle of independence of cooperatives has given autonomy to cooperatives, so that regulatory and supervisory activities in cooperatives are internal affairs of the organization which are regulated and supervised by themselves through the cooperative's own management and supervisory organizations.

Implementation of the implementation of supervision of the occurrence of discrepancies between the Cooperative Law and the Regulations of the Ministry of Cooperatives and Small and Medium Enterprises which are the legal umbrella for cooperatives, where the supervision of cooperatives is carried out by the cooperative supervisory board and the regulations of the Ministry of Cooperatives and Small and Medium Enterprises in supervising the implementation of policies and management of cooperatives, while the OJK itself is an independent institution and is free from interference from other parties, one of which is cooperatives as a non-bank financial institution. This proves the ineffectiveness of the Cooperative Law and the Regulation of the Ministry of Cooperatives and Small and Medium Enterprises with the Financial Services Law through its implementation of Law Number 1 of 2013 concerning Microfinance Institutions.

Based on these problems, this study analyzes and examines the Legal Aspects of Supervision of Cooperatives as Microfinance Institutions.

Formulation Of the Problem

The formulation of the problem in this study is "How is the regulation of supervisory authority cooperative microfinance institutions"?

2 Literature Review

Legal Aspects of Cooperatives in Indonesia

Cooperatives were born in Rochdale, England in 1848 and developed in Europe as a form of resistance to capitalism which has encouraged the economic advances of western societies, where these advances are closely related to the notions of liberalism and individualism. In contrast to capitalism, cooperatives rely on cooperation among people which is carried out democratically, regardless of the amount of capital. Everyone is entitled to one vote. Therefore, the cooperative is said to be an association of people, not an association of capital. This does not mean that capital is not important for cooperatives. However, the capital is owned equally among the members of the cooperative.

Cooperative is a legal entity consisting of a group of people based on equality as human beings and as a people's economic movement based on the principle of kinship which is affirmed in Law Number 25 of 1992 concerning Cooperatives, which is regulated in Article 1 point 1.

According to RT Sutantya Rahardja Hadhikusuma, cooperatives can be defined as follows:

“A cooperative is an association or economic organization consisting of people or bodies, which provide freedom of entry and exit as members according to existing regulations, by

working together in a family manner to run a business, with the aim of enhancing the physical welfare of its members”.

Cooperatives as a joint effort must reflect the provisions as usual in the life of a family that everything that is done together is aimed at the common interest to advance the welfare of all family members and build an affirmed national economic order. National financial request depends on Pancasila and the 1945 Constitution. Cooperative business activities must run a business that gains economic benefits, even though cooperatives are not a form of capital accumulation. To achieve the goal of bringing economic benefits, the cooperative must run its business continuously (continuously), openly, relate to third parties, and calculate profit and loss and record all of its business activities into a book.

With respect to business exercises of Indonesian cooperatives, it is directed in Article 43 of Law Number 25 of 1992 concerning Cooperatives that:

1. Cooperative business is a business that is directly related to the interests of members to improve the business and welfare of members;
2. The advantages of the cooperative's service capabilities can be used to meet the needs of people who are not members of the cooperative.
3. Cooperatives carry out business activities and play a major role in all fields of people's economic life.

Cooperative businesses that are directly related to members, improve the welfare of members and can meet the needs of the community who are not members of cooperatives such as savings and loans carried out by cooperatives as regulated in Article 44 paragraph (2) that: Savings and loan business activities can be carried out as one or the only business activities of Cooperatives.

Savings and loan cooperatives carry out their business activities with capital (funds) from third parties and distribute these funds to third parties as well. This is an effort to encourage community empowerment, especially the lower middle-income community and micro, small and medium enterprises (MSMEs) requiring comprehensive support from non-bank financial institutions known as microfinance institutions in the form of cooperatives. Through Law Number 1 of 2013 concerning Microfinance Institutions, the government provides a legal basis for the activities of these cooperative microfinance institutions.

Microfinance Institutions legally incorporated as cooperatives can be run conventionally or run with sharia principles called Sharia LKM Cooperatives (LKMS). Cooperative microfinance institutions in carrying out business activities in the financial sector are very helpful for micro-enterprises of the community by upholding the principles of kinship, independence and playing an active role in improving the national economy.

Supervision of Cooperative Microfinance Institutions

a. Ministry of Cooperatives and Small and Medium Enterprises

Free management of Cooperatives is directed in Law Number 25 of 1992 concerning Cooperatives and Regulation of the Minister of Cooperatives, Small and Medium Enterprises Number 9 of 2020 concerning Supervision of Cooperatives.

Regarding supervision is regulated in Article 38 Law Number 25 of 1992 concerning Cooperatives, that:

- 1) Supervisors are elected from and by the members of the Cooperative and the Members' Meeting.
- 2) The supervisor is responsible to the Members' Meeting.
- 3) The requirements to be elected and appointed as Supervisory Members are stipulated in the Articles of Association.

Duties and powers supervisors are regulated in Article 39 of Law Number 25 of 1992 concerning Cooperatives, formulating that:

- 1) Supervisors are in charge of:
 - a. supervise the implementation of policies and management of Cooperatives;
 - b. make a written report on the results of its supervision;
- 2) Supervisor authorized:
 - a. examine the existing records of the Cooperative;
 - b. obtain all necessary information;
- 3) Supervisors must keep the results of their supervision confidential from third parties.

Cooperatives appoint managers, supervisors can be held on a permanent basis or held when needed in accordance with the decision of the Member's Meeting. According to Suhardi, Moh Taufik Makarao and Fauziah, stated:

"This does not reduce the meaning of supervisors as organizational instruments and provides an opportunity for cooperatives to elect supervisors on a permanent basis when needed according to their needs. The supervision held when it is needed carries out supervision in accordance with the assignments given by the Member Meeting.

To realize a strong, healthy, independent, tough and competitive cooperative in accordance with the identity of the cooperative, it is necessary to increase accountability, trust, compliance, sustainability, and provide the maximum benefit to members and the community.

Implementation of cooperative supervision according to Article 1 number 2 Regulation of the Minister of Cooperatives, Small and Medium Enterprises Number 9 of 2020 concerning Supervision of Cooperatives, in that: "Supervision of Cooperatives is an activity carried out by supervisors of Cooperatives to carry out health checks and/or apply sanctions to Cooperatives in accordance with the provisions of laws and regulations".

The implementation of cooperative supervision is carried out by the Cooperative Supervisory Functional Officer within the government agency, the implementation of the Cooperative Supervision task is determined by the official who has the authority in the field of cooperatives in accordance with the provisions of the legislation. The object of supervision is the primary and secondary cooperatives.

The tasks of implementing Cooperative Supervision include:

- a. supervision of all facilities and infrastructure related to the implementation of cooperative business activities;
- b. inspection, verification, and clarification of every document related to Cooperatives;
- c. requests for information from members, management, supervisors, sharia supervisory boards, managers/management, employees, creditors, investors and cooperative partners;
- d. preparation of BAPK and LHPKK;
- e. reporting the results of the examination to the principal who gave the assignment; and
- f. monitoring the implementation of administrative sanctions against Cooperatives with a health level under supervision or under special supervision.

Supervision carried out by functional officers of cooperative supervisors is carried out routinely and from time to time. In the event that the Cooperative carries out business activities that are the object of supervision by other agencies, the supervision of the Cooperative is carried out in cooperation with the relevant agencies. Such as coordinating with the Governor and Regent/Mayor in the context of the effectiveness of cooperative supervision. The Police, the Prosecutor's Office, the Financial Services Authority (OJK) and the Financial Transaction Analysis Control Center (PPATK). If a violation is suspected or there is a suspicious financial flow that occurs within the Cooperative.

c. Financial Services Authority

Monetary Services Authority as an autonomous institution and liberated from obstruction from different gatherings, who have the capacities, obligations, and power to direct, oversee, inspect, and investigate financial administration exercises in the financial area, capital market, protection, benefits reserves, funding foundations, and other monetary assistance organizations.

According to Adrian Sutedi, stated:

“The Financial Services Authority (OJK) has a secondary position with institutional independence or also known as political or goal independence. In terms of position, this means that OJK's status as an institution is fundamentally separate from the executive or government, free from legislative or parliamentary influence, free to formulate goals or suggestions for its policies without any influence from political institutions or the government.

The position of OJK as an independent institution that has the functions, duties and authority to regulate, supervise, examine, and investigate financial institutions is implicitly regulated in Article 1 number 1 of Law Number 21 of 2011 concerning the Financial Services Authority, that:

The Financial Services Authority, hereinafter condensed as OJK, is an organization that is autonomous and liberated from obstruction from different gatherings, which has the capacities, obligations, and specialists of guideline, oversight, assessment, and examination as alluded to in this Law.

Financial Services Authority (OJK) has the authority regulation, supervision, examination, and investigation or other actions against financial service institutions including having licensing authority including microfinance institutions in the form of cooperatives based on Article 9 Law Number 1 of 2013 concerning Microfinance Institutions.

The Financial Services Authority (OJK) has the task of providing guidance, regulation, and supervision of MFIs as stipulated in Article 28 paragraph (1) of Law Number 1 of 2013 concerning Microfinance Institutions. In providing guidance, the Financial Services Authority facilitates with the Ministry that sorts out agreeable undertakings and the Ministry of Home Affairs which is appointed to the Regency/Municipal Government or other assigned party.

The direction and oversight expect to guarantee that the MFI carries out sound MFI strategic policies, so that its business congruity will be kept up with. In the execution of management, it is controlled through Financial Services Authority Regulation Number 62/Pojk.05/2015 concerning Amendments to Financial Services Authority Regulation Number 13/Pojk.05/2014 concerning Microfinance Institution Business Conduct.

3 Research Methods

The method used in this research is normative juridical, namely by collecting scientific knowledge materials sourced from legal regulations, books, literature, scientific works, and the internet which are closely related to this scientific work.

4 Results and Discussion

Law Number 25 of 1992 concerning Cooperatives, Article 38 paragraph (1) namely the Supervisors are elected from and by the members of the Cooperative and the Members' Meeting, while the provisions of Article 1 point 2 Regulation of the Minister of Cooperatives, Small and

Medium Enterprises Number 9 of 2020 concerning Supervision of Cooperatives, conducting health checks and/or applying sanctions against Cooperatives in accordance with the provisions of laws and regulations. Supervision of Cooperatives is carried out by the Cooperative Supervisory Functional Officer as regulated in Article 3 paragraph (1) and carried out by the Ministry of Cooperatives and Small and Medium Enterprises. Meanwhile, cooperatives in their business activities as microfinance institutions have special provisions that regulate their supervision.

Microfinance Institutions that mean to move individuals' economy as well as business elements partake in understanding a high level, just and prosperous society in view of Pancasila and the 1945 Constitution in the public financial framework which is organized as a joint exertion in light of the standards of family relationship and monetary majority rules government. Microfinance Institutions (MFIs) in the form of cooperatives based on Law Number 1 of 2013 concerning Microfinance Institutions, in carrying out savings and loan business activities, this is in accordance with what is stipulated by affirmation in Article 16 paragraph (1) of Law Number 7 of 1992 concerning Banking as changed by Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking which specifies that:

Any party conducting activities to collect funds from the public in the form of savings must first obtain a business license as a Commercial Bank or Rural Bank from the Management of Bank Indonesia, unless the activity to collect funds from the public is regulated by a separate law.

Microfinance Institutions (MFIs) as non-bank financial institutions, carry out lending or financing activities in micro-scale businesses to members and the public, this is the responsibility and authority of the Financial Services Authority (OJK) as an independent institution in supervising its business activities based on the Act. Number 21 of 2011 concerning the Financial Services Authority, which plans to guarantee that movements of every sort in the monetary administrations area are completed in an efficient, fair, straightforward and responsible way and can safeguard the interests of buyers and general society. In completing its administrative exercises, it is managed by the Financial Services Authority Regulation Number 62/Pojk.05/2015 concerning the Business Implementation of Microfinance Institutions.

Aspects of supervision carried out by OJK will be more complex, including microprudential aspects that prioritize the soundness of financial institutions and macroprudential aspects, namely aspects of monitoring financial system stability. For this reason, the pattern of coordination between institutions needs to be arranged so that overlap between institutions and loopholes in regulation and supervision can be minimized. The integrated regulation and supervision (integrated approach) as introduced by the OJK has advantages, especially in responding to the increasingly integrated trend of the financial industry.

Alluding to HD Stoud's hypothesis of power, in regards to power is the general guidelines connecting with the securing and utilization of government authority by subjects of public regulation in open legitimate relations. There are two components contained in the idea of power presented by HD. Stoud, to be specific: the presence of lawful principles and the idea of legitimate connections.

Before the authority is designated to the foundation that executes it, it should not entirely set in stone in that frame of mind, as regulations, unofficial laws or lower level guidelines. The idea of the legitimate relationship is the nature that is connected and has something to do or ties or connects with the law. The legal relationship is public and private, namely the legal relationship between Law Number 25 of 1992 concerning Cooperatives and Law Number 1 of 2013 concerning Microfinance Institutions and Law Number 21 of 2011 concerning the Financial Services Authority, and OJK in the implementation of supervision of Cooperative LKM through Financial Services Authority Regulation Number 62/Pojk. 05/2015 concerning

the Business Implementation of Microfinance Institutions. OJK in giving direction, guideline and management in collaboration with OJK facilitates with the service that puts together agreeable undertakings and the Ministry of Home Affairs, as controlled in Article 28 passage (2) of Law Number 1 of 2013 concerning Microfinance Institutions, which can be assigned to Regency/Municipal Governments. In the setting of encouraging and administering, OJK might lead reviews on MFIs, as per the arrangements of Article 31 which plans that: with regards to cultivating and regulating as alluded to in Article 28 section (1), the Financial Services Authority will direct assessments on MFIs.

OJK conducts inspections on MFIs for onside, namely financial audits for MFIs in the form of Cooperatives, which are conducted once a year and offsites, for financial audits for MFIs in Cooperatives, which are conducted once a year, quarterly, which is sent by business actors through the SILKM (Microfinance Institution Information System) application. OJK in carrying out its authority in supervising MFIs in the form of cooperatives in a lex specialist manner, has legal sources, namely Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 1 of 2013 concerning Microfinance Institutions, and in its implementation refers to the Regulation of the Financial Services Authority Number 62/Pojk.05/2015 concerning Business Implementation of Microfinance Institutions.

Supervision carried out by the Financial Services Authority must be directed at creating sound efficiency, consumer protection, and maintaining a healthy market mechanism. Keeping that in mind, the rule of correspondence (level battleground), guideline and oversight in view of the standards of equity and straightforwardness should be applied so as to make a precise, proficient and useful monetary action and exchange, and guarantee the security of clients and people in general. Along these lines, the Financial Services Authority (OJK) as an autonomous organization and liberated from impedance from different gatherings, has the capacities, obligations, and position to manage, regulate, look at and explore the monetary administrations area.

5 Conclusion

Regulation Number 25 of 1992 concerning Cooperatives, Article 38 passage (1) namely the Supervisors are chosen from and by the individuals from the Cooperative and the Members' Meeting, while the arrangements of Article 1 point 2 Regulation of the Minister of Cooperatives, Small and Medium Enterprises Number 9 of 2020 concerning Supervision of Cooperatives, directing wellbeing checks and additionally applying sanctions against Cooperatives as per the arrangements of regulations and guidelines. Management of Cooperatives is completed by the Cooperative Supervisory Functional Officer and did by the Ministry of Cooperatives and Small and Medium Enterprises.

Cooperatives in their business exercises as microfinance foundations have exceptional arrangements that direct business permitting and management of business exercises under the oversight of the Financial Services Authority which is lex subject matter expert, has a legitimate source, to be specific Law Number 21 of 2011 concerning the Financial Services Authority, Law Number 1 2013 concerning Microfinance Institutions, and in its execution alludes to the Financial Services Authority Regulation Number 62/Pojk.05/2015 concerning Microfinance Institution Business Conduct.

References

- [1] Hermansyah, Indonesian National Banking Law (Revised Edition), (Jakarta: Kencana, 2011).
- [2] Rahardja Hadhikusuma, RT Sutantya Indonesian Cooperative Law, (Jakarta: RajaGrafindo Persada, 2005).
- [3] Ruslina Elli, Indonesia's Economic Basis in Deviating the Constitutional Mandate of the 1945 Constitution of the State of the Republic of Indonesia, (Yogyakarta: Total Media, 2013).
- [4] Soekanto, Soejono, Introduction to Legal Research, (Jakarta: University of Indonesia, 2014).
- [5] Suhardi, Moh. Taufik Makarao and Fauziah, Cooperative Law (Micro, Small and Medium Enterprises in Indonesia), (Jakarta: Akademia, 2012).
- [6] Sutedi, Adrian, Legal Aspects of the Financial Services Authority, (Jakarta: Raih Asa Sukses, 2014).
- [7] Law Number 25 of 1992 concerning Cooperatives.
- [8] Law Number 7 of 1992 concerning Banking in conjunction with Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking
- [9] Law Number 21 of 2011 concerning the Financial Services Authority.
- [10] Law Number 1 of 2013 concerning Microfinance Institutions.
- [11] Regulation of the Minister of Cooperatives, Small and Medium Enterprises Number 9 of 2020 concerning Supervision of Cooperatives.
- [12] <https://mediaindonesia.com/economy/443120/kemenkop-dan-ukm-tekan-20-koperasi-pinjol-illegal-dalam-satu-gedung?msclkid=2433f915b16311ecbd3f864543c91bc2>, accessed April 1, 2022.