

## **Legal Protection of Consumers that Have Funds in Illegal Cooperative Legal Entities in Indonesia Study of the Supreme Court Decision Number 3 K/Pdt.Sus-Pailit/2019**



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**ABSTRACT:**This study aims to provide a way out regarding legal protection for consumers who carry out fund-keeping activities in illegal cooperative legal entities. Seeing the development of the pattern of life in society, where the current economic sector is growing rapidly, in this case the investment or deposit of funds in a particular legal entity is in great demand by the public. This interest is then used by unscrupulous cooperative bodies in carrying out their illegal business activities. The state as a regulator and protector of the public interest needs to be present in regulating the procedures for storing funds and how to protect them for the community. This then becomes interesting for the author in conducting this research. Where the cooperative legal entity carries out business activities to raise funds in the community illegally and when carrying out its business activities the cooperative legal entity fails to pay, the big question is what form of legal protection is provided by the state to consumers who have already done fundraising on illegal cooperative legal entities the. The existence of the court as the last door for consumers that can then be given by the state as a form of legal protection that can be taken.

**KEYWORDS:** legal protection, Illegal Funds, consumer.

### **INTRODUCTION**

The existence of government in a country has a function as a regulator and guardian of the procedures for the pattern of life in society. The government, which in this case is Indonesia, has a conception of the rule of law in carrying out its functions. Because as is known, the State of Indonesia is a state of law, that is what is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia so that it contains the consequence that all aspects of life in the social, national and state fields, including government, are always based on law.<sup>1</sup>

On the basis of this, it can be interpreted that all elements of life need to be regulated in a legal mechanism, in order to be able to protect the rights and obligations of the community in it. In carrying out the pattern of life in society, the economy becomes a means of driving the wheels of life in the midst of society, meaning that in running the economy there will often be conflicts in it, so that is where the role of law needs to be present as a regulator of the running of the economy in Indonesia

One of the goals of establishing a state government is to promote the general welfare. The mandate, among others, has been described in Article 33 of the 1945 Constitution of the Republic of Indonesia and is a constitutional mandate that underlies the formation of all laws and regulations in the economic field. The constitution mandates that national economic development must be based on democratic principles that are able to create the realization of Indonesian economic sovereignty. The linkage of economic development with people's economic actors was strengthened again with the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVI/MPR/1998 concerning Economic Politics in the Context of Economic Democracy as a source of material law.<sup>2</sup>

National legal products based on the State Constitution need to guarantee the existence of the value of certainty, order, law enforcement and protection aimed at justice and truth and is expected to create a sense of security for the community which will later be in harmony with the growth and development of the national economy.

In order to realize a national economy that is able to grow in a stable and sustainable manner, to create broad and balanced employment opportunities in all economic sectors, and to provide equitable welfare to all Indonesian people, the national

<sup>1</sup>Jimly Asshiddiqie, *Perihal Undang-Undang*, (Jakarta: Rajawali Press. 2010), hlm. 256.

<sup>2</sup>Penjelasan Umum dalam Paragraf pertama Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan.

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economic development program must be implemented comprehensively and capable of driving national economic activities that are has a broad reach and touches all real sectors of the Indonesian economy. The national economic development program must also be implemented in a transparent and accountable manner based on the principles of economic democracy as mandated by Pancasila and the 1945 Constitution of the Republic of Indonesia.

To achieve this goal, the national economic development program needs to be supported by good governance that continuously reforms every component in the national economic system. One of the important components in the national economic system is the financial system and all financial service activities that carry out the intermediary function for various productive activities in the national economy.<sup>3</sup>

The intermediation function carried out by various financial service institutions has, in its development, contributed significantly in the provision of funds to finance national economic development. Therefore, the State always pays serious attention to the development of the activities of the financial services sector, by seeking to establish an integrated and comprehensive regulatory framework and supervision of the financial services sector.<sup>4</sup>

### DISCUSSION

#### I. Legal Protection For Consumer

Legal protection is one element to improve aspects of law enforcement in a country. Of course, legal protection is given by the state to its people in order to create stability in any case, including in economic and legal matters. According to the terminology of legal protection, the notion of legal protection can be separated into two words, namely protection and law.<sup>5</sup>

Legal protection is closely related to the aspect of justice. In the opinion of Soediman Kartohadiprodjo, essentially the purpose of the existence of law is to achieve justice. Therefore, the existence of legal protection is one medium to enforce justice, one of which is the enforcement of justice in the economic field, especially the capital market. Law enforcement in the form of legal protection in business economic activities, especially the capital market, cannot be separated from the legal aspects of the company, especially regarding limited liability companies, because legal protection in the capital market involves capital market players, especially issuers, investors and institutions supporting capital market activities. where the parties are dominated by legal subjects in the form of legal entities in the form of limited liability companies. There are two legal subjects in civil law, namely individual legal subjects and legal subjects in the form of legal entities. The legal subject of an individual or *natuurlijkpersoon* is a person or human who has been deemed competent according to law. People as legal subjects are supporters or bearers of rights from the time they are born alive until they die, although there are exceptions that babies who are still in their mother's womb are considered to have become legal subjects as long as their interests support it.<sup>6</sup>

In the activities of public fund associations in an agency that needs to be given great attention is the process of protecting public funds, so that in the business process of the association later no community or other parties are harmed. Because, according to Marulak Padede, protection of customer data in Indonesia can be done in 2 (two) ways, namely: A. Implicit deposit protection, namely protection produced by effective bank supervision and guidance, which can prevent bankruptcy bank. This protection can be obtained through:

- (1) Legislation in the banking sector, namely the rules or regulations governing banking.
- (2) The protection resulting from effective supervision and guidance carried out by Bank Indonesia, supervises the performance of banks in protecting depositors of funds and provides guidance to those who are not healthy.
- (3) Efforts to maintain the continuity of the bank's business as an institution in particular and the protection of the banking system in general,
- (4) Maintaining the bank's soundness level, namely by providing guidance carried out by Bank Indonesia
- (5) Conducting business in accordance with the principle of prudence, the provisions of Article 2 of Law Number 10 of 1998 stipulates that Indonesian Banking in conducting its business is based on Economic Democracy by using the principle of prudence. From this provision, it shows that the prudential principle is one of the most important principles that must be implemented or implemented by banks in carrying out their business activities.
- (6) The method of granting credit that does not harm the bank and the interests of customers,
- (7) Provide risk information to bank customers<sup>7</sup>

Explicit deposit protection, namely protection through the establishment of an institution that guarantees public savings, so that if the bank fails, the institution will replace the public funds deposited with the failed bank. This protection is obtained through the

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<sup>3</sup>Penjelasan Umum dalam Paragraf Kedua Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan

<sup>4</sup>Ibid

<sup>5</sup>Hilda Hilmiyah Dimiyati, *Perlindungan Hukum Bagi Investor Dalam Pasar Modal* (Fakultas Syariah dan Hukum UIN Jakarta). Hlm 2

<sup>6</sup>Pasal 2 Kitab Undang-Undang Hukum Perdata

<sup>7</sup>Budi Fitriadi, 2000, *Teknologi Informatika dalam Perbankan*, Bandung, hal .21

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establishment of an institution that guarantees public savings, as regulated in Presidential Decree of the Republic of Indonesia Number. 26 of 1998 concerning Guarantees Against the Obligations of Commercial Banks.<sup>3</sup> Law Number 10 of 1998 concerning Banking mandates the establishment of a Deposit Insurance Corporation (LPS) as the implementer of public fund guarantees. On September 22, 2004, the President of the Republic of Indonesia ratified the Law of the Republic of Indonesia Number 24 concerning the Deposit Insurance Corporation. Based on this Law, the LPS is formed, an independent institution, which has the function of guaranteeing depositors' deposits and actively participates in maintaining the stability of the banking system in accordance with its authority.

In principle, every law protects the interests of the public, or bank customers in particular. For example, in the Consumer Protection Law, the protection of bank customers can be mainly seen from Article 18 concerning the inclusion of standard clauses. Business actors, in this case banks, in every credit agreement or letters relating to banks usually always include standard clauses. The inclusion of this standard clause makes customers unable to move or protest. If the customer does not agree with the clause proposed by the bank, then the customer may not bind himself to the bank, but this will be detrimental to the customer himself. Therefore, the Consumer Protection Law seeks to protect bank customers by setting limits on standard clauses. unavoidable in this business world. Another example of the law's efforts to protect the public with the existence of the Civil Code, for example in article 1367 it is stated that: "Every act that violates the law, which causes harm to another person, obliges the person who because of his mistake published the loss, to compensate for the loss"

In the context of the Banking Law, customers are divided into 2 (two) namely depositors and debtor customers. Depositing Customers are customers who place their funds in a bank in the form of deposits based on the bank's agreement with the customer concerned. Whereas what is meant by debtor customers are customers who obtain credit or financing facilities based on sharia principles or the equivalent based on the bank agreement with the customer concerned.<sup>8</sup>

Administrative Requirements for Cooperative Establishment

### A. General

1. Two copies of the notary's Deed of Establishment (NPAK).
2. Minutes of the Cooperative Establishment Meeting.
3. Attendance at the cooperative establishment meeting
4. Photocopy of the Founder's ID Card (the order is adjusted according to the attendance list to make it easier during verification).
5. Authorization of the founder (elected management) to take care of the legalization of the formation of the cooperative
6. Proof of availability of capital in the amount of at least the amount of the principal and mandatory savings that must be paid off by the founders.
7. Cooperative business activity plan for at least the next three years and Cooperative Budget and Income Plan.
8. List of management and supervisors.
9. List of Cooperative Working Facilities
10. The statement letter does not have a family relationship between the management
11. Cooperative Organizational Structure.
12. Statement Letter of Cooperative Office Status and supporting evidence
13. Other documents required in accordance with the laws and regulations

### B. Additional Requirements for Cooperative Establishment if you have a Savings and Loans Unit (USP) business

1. Proof of deposit of own capital at the beginning of establishment, in the form of Deposits at Government Banks in the name of the State Minister for Cooperatives and SMEs.
2. Work Plan for at least 3 (three) years.
3. Completeness of USP's organizational administration & bookkeeping is managed specifically and separately from the cooperative's bookkeeping.
4. Name and Curriculum Vitae of Managers and Supervisors
5. Letter of work agreement between the cooperative management and the cooperative USP manager.
6. Name and curriculum vitae of the prospective manager, which is accompanied by:
7. Evidence of having attended training/internship in cooperative savings and loan business.
8. Certificate of good behavior
9. A statement that you do not have blood and marriage relations with the management and supervisors
10. A statement from the manager regarding his willingness to work full time.
11. Application for a permit to operate a savings and loan business

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<sup>8</sup> Ayu Endah Damastuti, *Peran Lembaga Simpanan Dalam Kegiatan Perbankan Di Indonesia, FH UI 2008.*

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12. Statement letter willing to be examined and assessed for the health of the USP of the cooperative by the authorized official
13. Organizational Structure of Savings and Loans Unit (USP)
- C. Requirements for the Establishment of a Savings and Loan Cooperative (KSP)
  1. Two copies of the Cooperative Establishment Deed from a notary (NPAK)
  2. Minutes of the Cooperative Establishment Meeting
  3. Attendance at the cooperative establishment meeting
  4. Photocopy of the Founder's ID Card (the order is adjusted according to the attendance list to make it easier during verification)
  5. Authorization of the founders (elected management) to take care of the application for approval of the formation of cooperatives.
  6. Proof of deposit of own capital at the beginning of the establishment of KSP in the form of Deposits at Government Banks on behalf of the State Minister for Cooperatives and SMEs, accompanied by proof of deposit from members to cooperatives;
  7. Cooperative work plan for at least 3 (three) years ahead (capital plan, Initial Balance, business activity plan, business plan, organizational & HR plan).
  8. Completeness of organizational administration and bookkeeping.
  9. List of management and supervisors.
  10. Name and Curriculum Vitae of prospective Manager which is completed with:
    - a. Evidence of having attended training/internship in cooperative savings and loan businesses.
    - b. Certificate of good behavior
    - c. Statement letter that you do not have blood and marriage relations with the management and supervisors
    - d. Statement letter from the manager regarding his willingness to work full time.
  11. The statement letter does not have a family relationship between the management.
  12. List of working facilities
  13. Application for a permit to operate a savings and loan business
  14. Statement Letter of willingness to be examined and assessed for the health of the cooperative by the authorized official
  15. Statement Letter of Cooperative Office Status and supporting evidence
  16. Organizational Structure of Savings and Loan Cooperatives

The conditions contained in the explanation above can be used as a reference for people who really want to raise funds in a cooperative, because people don't let people raise funds in the wrong cooperative and in the end the community itself must be harmed.

### II. Cooperative Procedures in Conducting Community Fund Raising

Fundraising is the main thing that an institution needs to run its institutional wheels. Funds are cash and/or other assets which can be immediately cashed and which are available or set aside for certain purposes. The greater the ability to collect funds from the public, the more likely it is to be able to provide credit and it means the greater the institution earns income, on the contrary, the smaller the funds collected, the smaller the credit provided by the institution to the community. Fundraising is the business activity of financial institutions in attracting and collecting funds from the public and accommodating them in the form of deposits, demand deposits, savings deposits, time deposits/other securities. Deposits are funds entrusted by members, prospective members or other cooperatives in the form of deposits and time deposits<sup>9</sup>

Funds in cooperatives are cash owned or current assets which can be cashed out at any time. Funds owned or controlled by cooperatives are not only sourced from the cooperative itself, but also from other parties or third party funds. Fundraising in cooperatives is obtained through cooperative capital, namely funds entrusted by members to cooperatives to be channeled to the productive sector in the form of financing. This is in accordance with Article 66 paragraph 1 and paragraph 2 of Law Number 17 of 2012 concerning Cooperatives that the capital owned by Cooperatives is divided into 2 (two) namely :

- a. Principal Deposit
- b. Cooperative Capital Certificate as initial capital
- c. In addition to the above capital, cooperative capital can also come from:
  - Grants
  - Participating Capital
  - Loan capital can come from:
    - member

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<sup>9</sup>Frianto Pandia, Manajemen Dana dan Kesehatan Bank, (Jakarta: Rineka Cipta, 2012), hal.1

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- other cooperatives and/or their members
- banks and other financial institutions
- issuance of bonds and other debentures
- Government and Local Government

d. other legitimate sources that do not conflict with the Articles of Association and/or the provisions of laws and regulations.

The cooperative legal entity system in Indonesia has rules that bind the activities of the cooperative, meaning that all business activities to be carried out by cooperative legal entities must be in line with Law Number 17 of 2012 concerning Cooperatives Article 88 paragraph 2 and Article 89 Points A-C. The article requires savings and loan cooperatives to obtain a business license by the relevant Minister and can only carry out business activities including:

- a. Collect funds from members
- b. Providing loans to members
- c. Placing funds in the secondary savings and loan cooperative<sup>10</sup>

From the above provisions, cooperative legal entities in Indonesia are not allowed to carry out business activities outside of the restrictions set by Law Number 17 of 2012 concerning Cooperatives. Because the pure purpose of the presence of a cooperative legal entity in Indonesia becomes useless for the community because of the existence of a cooperative legal entity that carries out illegal or deviant business activities.

Because in every business activity carried out by cooperatives there are community rights that must be protected by the state and the legal entity itself. Consumer Protection in the financial services sector aims to create a reliable consumer protection system, increase consumer empowerment, and raise awareness of Financial Services Businesses regarding the importance of consumer protection so as to increase public confidence in the financial services sector. The expected tangible results include, among others, Financial Services Businesses paying attention to the aspect of fairness in setting costs or prices for products and/or services, minimum fee-based pricing that does not harm consumers, as well as conformity of products and/or services offered to the needs and capabilities of consumers. The application of market conduct is implemented in a balanced way between developing the financial services sector and fulfilling the rights and obligations of consumers to increase consumer confidence. Market Conduct is the behavior of Financial Services Businesses in designing, compiling and conveying information, offering, making agreements, on products and/or services as well as dispute resolution and complaint handling. In this regard, efforts to protect consumers and/or the public are directed to achieve two main objectives. First, increasing the trust of investors and consumers in every activity and business activity in the financial services sector (Market Confidence); and Second, providing opportunities and opportunities for development for Financial Services Businesses in a fair, efficient and transparent manner and on the other hand Consumers have an understanding of rights and obligations in dealing with Financial Services Businesses regarding characteristics, services, and products (Level Playing Field). In the long term, the financial industry itself will also benefit positively to spur increased efficiency in response to the demands for more excellent services for financial services.<sup>11</sup>

Seeing the problems above, it can be concluded that the PandawaMandiri Group Cooperative, apart from running a savings and loan cooperative business, also carries out public fundraising but does not have a business license to collect public funds, so that the activities of collecting public funds by the PandawaMandiri Group Savings and Loan Cooperative can be said to be illegal. In order to prevent such cases from reoccurring, it is necessary to provide information to cooperatives or legal entities that wish to raise public funds, in fact Article 9 letter H number 1 of Law Number 20 of 2011 concerning the Financial Services Authority requires legal entities to obtain permission from the Financial Services Authority if I want to run a community fundraising business. So that later all the rights of consumers or the community can be protected by the state and do not cause harm to the community which will ultimately damage the economic system in society.

### A. What is the Legal Protection for Consumers Who Save Funds in Illegal Cooperative Legal Entities in Indonesia Study of Supreme Court Decision Number 3 K/Pdt.Sus-Pailit/2019

Legal protection is one element to improve aspects of law enforcement in a country. Of course, legal protection is given by the state to its people in order to create stability in any case, including in economic and legal matters. According to the terminology of legal protection, the notion of legal protection can be separated into two words, namely protection and law. Therefore, the existence of legal protection is one medium to enforce justice, one of which is the enforcement of justice in the economic field, especially the capital market. Law enforcement in the form of legal protection in business economic activities, especially the capital market, cannot be separated from the legal aspects of the company, especially regarding limited liability companies, because legal protection in the capital market involves capital market players, especially issuers, investors and institutions

<sup>10</sup> Pasal 66 ayat 1 dan ayat 2 Undang-Undang Nomor 17 Tahun 2012 Tentang Perkoperasian.

<sup>11</sup> Penjelasan Umum Peraturan Otoritas Jasa Keuangan Nomor 01/POJK/.07/2013 Tentang Perlindungan Kosumen Sektor Jasa Keuangan

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supporting capital market activities. Where the parties are dominated by legal subjects in the form of legal entities in the form of cooperatives. So we can conclude that legal protection can be manifested in the form of the presence of the court as the final determinant of a legal problem in Indonesia. In line with Article 1 Number 1 of Law Number 48 of 2009 concerning Judicial Powers, namely:

"Judicial power is the power of an independent state to administer the judiciary to enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the State of Law of the Republic of Indonesia". In this case, the community needs justice and certainty from the actions of cooperative legal entities that carry out business activities to raise funds illegally. And the only way is through the judiciary as in the case of the Pandawa Group cooperative itself. Where the creditor, in this case the consumer of the cooperative fund association in the Pandawa group, files an application for bankruptcy at the Central Jakarta Commercial Court. Where in the decision Number: 3.K/Pdt.Sus-Pailit/2019 decided that:

1. Pandawa Group Savings and Loans Cooperative and Nuryanto declared Bankrupt
2. So that all goods that have been subject to general confiscation in accordance with Article 31 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations cannot be transferred to the State property because they no longer belong to the defendants and must immediately be included in the bankruptcy documents. and returned to creditors.

Decisions like this then reflect certainty and justice for consumers of the savings and loan cooperative fund association. Where the Central Jakarta Commercial Court has firmly decided that all assets included in general confiscation cannot be transferred to the state property. This is what can then be stated as protection that can be had by consumers of illegal fund associations in cooperative legal entities.

**B.** What is the Decidendi Ratio of judges in deciding cases on the Supreme Court Decision Number 3 K/Pdt.Sus-Pailit/2019 on Consumers?

**C.** Considering, whereas after the decision of the Commercial Court at the Central Jakarta District Court was pronounced in a trial open to the public on September 19 2018, then against this decision the Petitioner through his proxy based on a special power of attorney dated May 2, 2018 filed a cassation request on September 27 2018 as it turns out that from the Deed of Statement of Application for Cassation Number 23 Kas/Pdt.Sus-Pailit/2018/PN.Niaga.Jkt.Pst. juncto Number 11/Pdt.Sus-Other Lawsuits/2018/PN.Niaga.Jkt.Pst. made by the Registrar of the Central Jakarta District/Commercial Court, the application is accompanied by a memorandum of cassation containing the reasons which were accepted at the Central Jakarta District/Commercial Court Registrar on the same date; Whereas the cassation memorandum has been submitted to the Respondent (Curator Team) on October 1, 2018, however the Respondent (Curator Team) did not file a counter cassation memorandum;

- b. Considering that the a quo cassation request and the reasons for it have been carefully informed to the opposing party, submitted within the time limit and in the manner stipulated in the law, therefore the cassation request can be formally accepted;
- c. Considering, that based on the memorandum of cassation received on September 27, 2018, which is an integral part of this Decision.

In the explanation above, it is clear that the ratio decidendi in the decision is related to the Pandawa Group Savings and Loans Cooperative and Nuryanto is a legal entity that is proven to have carried out business activities of raising funds illegally and is declared unable to pay to creditors so that all assets that have been included in the general bankruptcy seizure are not can be returned to the other country

### CONCLUSION

Cooperatives in Indonesia have problems when carrying out their business activities carried out by cooperatives have deviated from the provisions of the laws and regulations governing cooperative business activities in Indonesia, one example is the Pandawa Group Savings and Loans Cooperative. The Pandawa Group Savings and Loans Cooperative was established in 2015, and has a permit from the Ministry of Cooperatives and Small and Medium Enterprises in the form of a cooperative business. However, the Pandawa Group Savings and Loans Cooperative itself has violated several business rules and has committed various violations of business licenses and has raised public funds that violate the rules. KSP Pandawa Mandiri Group violated the cooperative rules in which the Pandawa Mandiri Group Savings and Loan Cooperative carried out illegal collection of public funds or carried out illegal investment activities under the guise of a Cooperative. In practice, the Pandawa Mandiri Group Savings and Loans Cooperative does not have a license to raise public funds or investments, because the Mandiri Group Savings and Loan Cooperative does not have a business license from the OJK. The Pandawa Mandiri Group Savings and Loans Cooperative itself uses or misuses the cooperative's license in carrying out illegal investment activities. So the Pandawa Mandiri

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Group Savings and Loan Cooperative uses the name Pandawa Mandiri Group Cooperative to carry out illegal investment activities.

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