

Legal Aspects of Cooperatives' Issuance of Products to Non-Member Communities in Indonesia

Dhia Novita Adristi*

Padjadjaran University, Indonesia

Elisatriis Gultom

Padjadjaran University, Indonesia

Pupung Faisal

Padjadjaran University, Indonesia

ABSTRACT: Regulations of savings and loan cooperatives allow cooperatives to collect funds, resulting in the chance of issuing products to non-member communities. This study aimed to analyze the practice of issuing products to non-member communities by cooperatives. By highlighting the principle of membership as the specialty of cooperatives in Indonesia, it argued that issuing products to non-member communities is a deviation of cooperative's business activity. It accounted for the cooperative regulations, objectives, and principles of membership in cooperatives to the practice of issuing products to non-member communities that deviate from statutory regulations does not arise. The study used legal research derived from secondary data, among others primary legal materials, secondary legal materials, and tertiary legal materials. This study showed that the practice of issuing products to non-member communities is a deviation from statutory regulations, objectives, and membership principles in cooperatives. In the meantime, cooperatives while maintaining their identity requires all cooperative actors, the government, and the general public in preventing and following up on savings and loan cooperative practices that eliminate membership rights for service users.

KEYWORDS: Cooperative Law, Cooperatives in Indonesia, Economic Democracy.



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HOW TO CITE:

Adristi, Dhia Novita, et al., "Legal Aspects of Cooperatives' Issuance of Products to Non-Member Communities in Indonesia" (2021) 8:2 Lentera Hukum 325-346. DOI: <<https://doi.org/10.19184/ejlh.v8i2.21783>>.

Submitted: 04/01/2021 Reviewed: 06/01/2021 Revised: 19/03/2021 Accepted: 07/04/2021

* Corresponding author's e-mail: adristi08@gmail.com

I. INTRODUCTION

In many socialist states, the economic institution with economic democracy plays an essential role, contributing to improve the structure of the national economy. In particular, people's economic movement is often referred as the key in fostering community participation based on the principle of kinship,¹ materialized through a cooperative. A cooperative is regarded as a community association that runs a productive business, like selling products to members with capital.² In Indonesia, Article 33(1) of the 1945 Constitution highlights the kinship principle as the primary consideration in the economic sector to establishing cooperatives. In this context, cooperative in Indonesia is part of the overall national developments,³ epitomizing as the of the national economy.⁴ A cooperative is also regarded as the tool to realize economic democracy.⁵ Given the significant rationale of Indonesia's legal framework in the economic sector, the discussion of the role of cooperative in Indonesia represents the unique development to maintain the socialist ideals under the global capitalist economy.

In Indonesia, there was some previous researches related to this topic that link to legal issues. For instance, Kurniawan discussed business activities of savings and loan cooperatives that can result in banking criminal acts.⁶ It concluded that irregularities in business activities that issued products to non-member communities by savings and loan cooperatives prevent the

¹ Mukhtar Abdul Kader, "Peran UKM dan Koperasi dalam Mewujudkan Ekonomi Kerakyatan di Indonesia" (2018) 8:1 JURISMA : Jurnal Riset Bisnis & Manajemen.

² Mateus Fei, "Perlindungan Hukum Terhadap Anggota Penyimpan dalam Kedudukannya Sebagai Penjamin Hutang Debitur dalam Perjanjian Pinjaman di Kopdit Cu Lantang Tipo" (2017) 2:2 Jurnal Nestor Magister Hukum.

³ I Gede Hartadi Kurniawan, "Tindakan Koperasi Simpan Pinjam yang Mengakibatkan Perbuatan Tindak Pidana" (2013) 10:1 Lex Jurnalica.

⁴ It is because cooperatives educate attitudes and have societal characteristics in which the community's interests must take precedence over themselves or their group. R. Susanto Hendiarto & Vincentia Wahyu Widajatun, "Factors Remaining Business Results on the Quality of Savings and Loan Cooperative Financing in Subang Regency" (2020) 10:1 Jurnal Ilmiah Ilmu Administrasi Publik.

⁵ Tri Budiyo & Christina Maya Indah S., "Pergeseran Politik Hukum Koperasi dalam UU RI No. 25 Tahun 1992 dan UU RI No. 17 Tahun 2012 Serta Putusan Mahkamah Konstitusi No. 28/PUU RI -XI/2013" (2015) 44:3 Masalah-Masalah Hukum.

⁶ Kurniawan, *supra* note 3.

regulations in the cooperative sector.⁷ Another study by Sastrawidjaja and Adam discussed the cooperative conglomerates in Indonesia.⁸ Such a conglomerate model could protect the interests of local communities amidst the current capitalized and the globalized world because their members own cooperatives' capital.⁹ It fosters cooperatives to survive in difficult conditions because of relying on the loyalty of members and the willingness of members.¹⁰

Apart of these broad discussion, this study focused on highlighting the principle of membership as the specialty of cooperatives in Indonesia. Saving and loan cooperatives (cooperatives) organize saving and loan business activities as the only business activity. It refers to the Regulation of the Minister of Cooperatives and Small and Medium Enterprises (SMEs Minister Regulation) 15/2015.¹¹ Article 19 states that saving and loan business activities include collecting deposits from members, providing loans to members, candidates, the cooperative members concerned, other cooperatives and/or members, and managing the balance of sources of funds and loan distribution.¹² In this context, cooperatives also provide public services categorized as potential members under the limitations set in Article 19(2).

In carrying out business activities, the cooperatives are limited to members, other cooperatives, members of other cooperatives, and/or prospective members no later than three months are obliged to become cooperative's members—the absence of information provided by cooperatives on membership results in uncertainty. For instance, a case related to the issuance of products to non-member communities in the cooperative of

⁷ *Ibid.*

⁸ Man S. Sastrawidjaja & Richard Candra Adam, “Langkah Menuju Konglomerasi Koperasi di Indonesia” (2015) 2:2 *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 209–231 at 209.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ It was subsequently amended as to Regulation 02/2017.

¹² Regulation of the Minister of Cooperatives and SMEs 15/2015 on Savings and Loans by Cooperatives and its amendments to the Regulation of the Minister of Cooperatives and SMEs 2/2017.

Koperasi Simpan Pinjam (KSP) Indosurya Cipta.¹³ The Ministry has licensed this cooperative since September 2012,¹⁴ and this cooperative has a membership area across provinces with a total of 12.875 members,¹⁵ with activities that include raising funds in the form of savings and distributing funds through loans. This cooperative's members supposed it a banking institution.¹⁶ Simultaneously, it failed to pay its members worth IDR 14 trillion.¹⁷ Later it was indicated that this cooperative did not provide information about its legal status.¹⁸

In organizing a cooperative, supervision by members is essential as it is under the principles of cooperative democracy.¹⁹ The principle of cooperative democracy reflects a democratic organization controlled by its members that actively support formulating policies and making decisions.²⁰ Given the frequent discovery of releasing cooperative products to non-member communities, cooperatives in Indonesia cannot be separated from supervision to implement the function of the Ministry of Cooperatives and SMEs. It mainly deals with cooperative supervision through the SME Minister Regulation 9/2020 on cooperative supervision—the supervisory authority for cooperatives is under the Ministry.²¹

¹³ Detik.com, “Kejanggalan Koperasi Indosurya,” online: <<https://finance.detik.com/moneter/d-5007322/kejanggalan-koperasi-indosurya>>.

¹⁴ Legal Entity Number 430/BH/XII.1/1.829.31/XI/2012, Cooperative Registration Number 3173080020001. KSP Indosurya, “Profil Perusahaan KSP Indosurya,” online: <<https://kospinindosurya.com/about/profil>>.

¹⁵ KSP Indosurya, *Laporan Pertanggungjawaban Pengurus Koperasi Simpan Pinjam Indosurya Cipta Tahun Buku 2019* (Jakarta, 2021).

¹⁶ Ratu Rina Windarty & Daniel Wiguna, “Dituding Gagal Bayar Rp14 T, Ini Pembelaan KSP Indosurya,” CNBC Indonesia, online: <<https://www.cnbcindonesia.com/market/20200619150116-17-166635/dituding-gagal-bayar-rp14-t-ini-pembelaan-ksp-indosurya>>.

¹⁷ *Ibid.*

¹⁸ Sugiarto, *supra* note 14.

¹⁹ Rustam Efendi & Boy Syansul Bakhri, “Konsep Koperasi Bung Hatta dalam Perspektif Ekonomi Syariah” (2018) 15:1 Al-Hikmah: Jurnal Agama dan Ilmu Pengetahuan.

²⁰ Moh Andi Arrahman, “Tanggung Jawab Pengurus Koperasi Simpan Pinjam Terhadap Pinjaman Anggota Yang Macet Menurut Hukum Positif di Indonesia” (2018) Jurnal Ilmiah Universitas Mataram.

²¹ Regulation of the Minister of Cooperatives and SMEs 9/2020 on Cooperative Supervision.

This study aimed to analyze the practice of issuing products to non-member communities by cooperatives by systematically comprehending the laws and regulations in the cooperative sector to actualize the consistency in the application of rules. It analyzes the relationship between the implementation of maximum supervision of business activities of cooperatives as a preventive and enforcement effort under statutory regulations in the field of cooperative in Indonesia carried out by the Ministry on these practices. The first part reviews the regulations and their practices of issuing products to non-member communities by cooperatives. The second part specifically highlights the supervision by the Ministry, which includes to what extent the supervision role is outlined and practiced, followed by the discussion on the importance of guidelines to this issue. Then, it is ended by the conclusion.

II. METHODS

This study used legal research derived from secondary data, among others primary legal materials, secondary legal materials, and tertiary legal materials,²² related to a cooperative legal entity, particularly regarding the issuance of cooperative products to non-member communities by cooperatives in carrying out its business activities. This study was descriptive-analytical by explaining, describing, and correlating legal rules and theories with the problems.²³ It intended to obtain a comprehensive and systematic description of issuing cooperative products to non-member communities carried out by cooperatives and prevention and settlement efforts that the competent authorities should carry out with statutory regulations on cooperatives in Indonesia.

²² Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta, Rajawali Pers, 2011).

²³ Sugiyono, *Metode Penelitian Pendidikan pendekatan Kuantitatif, Kualitatif dan R&D* (Bandung: Alfabeta, 2014).

III. ISSUING PRODUCTS TO NON-MEMBER COMMUNITIES BY SAVING LOAN COOPERATIVES

Cooperatives have an essential role in the Indonesian economy. It becomes a business entity that contributes in enhancing the standard of living and foster sustainability and development of economic democracy.²⁴ It is relevant to the cooperative's definition as an organization of people voluntarily carrying out activities to achieve economic goals.²⁵ Some elements included in this definition are personal cooperation, equal rights, and prioritizing members' promotion.²⁶

Article 43(1) of the Cooperative Law regulates carrying out a cooperative business activity as a business directly related to members' interests to improve the business and welfare of members.²⁷ Cooperatives provide savings and loan services to their members as the only business activity.²⁸ The definition of savings and loan business activities is outlined in Article 1:1 of Government Regulation 9/1995 as activities to raise funds and distribute them from and to members of cooperatives, other cooperatives and/or other cooperative members.²⁹ The saving and loan activities can be defined as money management activities in the form of collecting funds from the cooperative as saving and channeling back to the cooperative member in the form of a loan.³⁰

SMEs Minister Regulation 15/2015, with due regard to the limitations in Article 19(2), outlines that cooperatives carrying out business activities are only limited to their members, other cooperatives, other cooperative members, and/or the most prospective members. No later than three

²⁴ Ikhsan Rochmadi, *"Analisis Dampak Perdagangan Bebas dan Global pada Bergesernya Nilai Budaya, Prinsip dan Tujuan Koperasi"* (2011) 4:2 Jurnal Ekonomika.

²⁵ Hendar Kusnadi, *Ekonomi Koperasi* (Jakarta: Lembaga Penerbit Fakultas Ekonomi UI, 2005).

²⁶ Sastrawidjadja & Adam, *supra* note 8.

²⁷ Law 25/1992 on Cooperatives.

²⁸ Suwandi, *"Respon Anggota Terhadap Pelayanan Koperasi Simpan Pinjam"* (2018) 1:1 *Journal of Entrepreneurship, Management, and Industry* (JEMI) 29–33.

²⁹ Government Regulation 9/1995 on Savings and Loans Business Activities.

³⁰ Theresia Anita Christiani & Chryssantus Kastowo, *"Credit union business prospects in Indonesia"* (2020) 16:7 *Journal of Critical Reviews*.

months, they must become a member of the cooperative.³¹ In practice, several cooperatives carry out business activities and offer their services to non-member communities. A regulation stipulates cooperatives can collect funds from prospective members, even if it does not comply with further restrictions in regulating the prospective member at the latest within three months a member of the cooperative.

As experienced by KSP Indosurya Cipta, it only runs a business, including raising funds in savings and channeling funds through loans. In February 2020, KSP Indosurya Cipta experienced a default on its members up to trillions of Rupiah. Many members considered it a banking institution because it did not provide information about its legal status or legal entity as saving and loans cooperative. It allowed the offer and issuance of savings and loan cooperative products to non-member communities. By exceeding the time stipulated by the SME Ministry Regulation, the deviation of saving and loan business activities by cooperatives through the issuance of products to non-member communities can result in the loss of member rights owned by each cooperative user under the Cooperative Law. According to this law, members have the right to participate in decision-making in cooperatives. They include attending and expressing opinions, voting in member meetings, obtaining information about the cooperative, and electing management supervisors. There is a privilege of cooperatives based on membership in cooperatives. Cooperative members play a dual identity that members in a cooperative have the owner's role by contributing to the formation, growth, decision making, and supervision of cooperatives and service users and from the cooperative.³² The cooperative membership status becomes the primary basis for the development and sustainability of a cooperative business.³³ The dual identity is in line with

³¹ Regulation of the Minister of Cooperatives and SMEs 15/2015 on Savings and Loans by Cooperatives and its amendments to the Regulation of the Minister of Cooperatives and SMEs 2/2017.

³² Chalimah Chalimah & Akhmad Sakhowi, "Implementasi Dual Identity Anggota Koperasi Sebagai Wujud Komitmen Organisasional" (2014) 5:1 Jurnal Dinamika Manajemen 84–93.

³³ Ni Made Taman Ayuk & I Made Suyana Utama, "Pengaruh Jumlah Anggota, Jumlah Simpanan, Jumlah Pinjaman dan Jumlah Modal Kerja Terhadap Sisa Hasil Usaha

the purpose of cooperatives for their members' welfare, as stated in Cooperative Law.³⁴ Consequently, the absence of members contributes to growth, decision making, supervision, and decision making in implementing cooperative business activities. It eliminates the concept of membership in a cooperative where members are given the privilege of participating in the operation of business activities by the cooperative simultaneously by becoming cooperative users.

In addition, cooperative regarded as a pillar of the Indonesian national economy, has the main task to empower the national economy. In particular, it includes members' welfare. Cooperative is a form of business entity expected to play a role in the national economy through its members.³⁵ In carrying out business activities, savings and loans cooperatives play an intermediary institution function. This function cannot eliminate the cooperative's identity, which is the special nature of cooperative business activities that follow cooperatives' values and principles, namely the principles of members, by members, and for members as the cooperative's identity.³⁶ Moreover, the cooperative principles are what differentiate cooperatives from other business entities.³⁷

In particular, the forms or types of cooperatives recognized in Indonesia are grouped into two categories based on the scope of work area and the similarity of activities of its members. Savings and loans cooperatives are one type of cooperative classified based on the similarity of its members' activities. Therefore, savings and loans cooperative business activities that raise funds or provide savings services to non-member communities can be said to deviate from cooperatives' regulations and objectives in Indonesia.

(SHU) *Koperasi Simpan Pinjam (KSP) di Kabupaten Badung Provinsi Bali* (2011) 2:9 Jurnal Ekonomi dan Bisnis Universitas Udayana.

³⁴ Law 25/1992 on Cooperatives.

³⁵ Taufik Ridwan Agus Arifin, Fauziah, Yolanda Rakawati, "Analysis of Development of Savings and Loans Unit in the Cooperative of the Republic of Indonesia Prosperous of Cirebon District" (2020) 1:1 Journal of Social Science.

³⁶ Sri Purwantini, Endang Rusdianti & Paulus Wardoyo, "Kajian Pengelolaan Dana Koperasi Simpan Pinjam Konvensional di Kota Semarang" (2016) 18:1 Jurnal Dinamika Sosial Budaya 133–145.

³⁷ Dian Cahyaningrum, "Bentuk Badan Hukum Koperasi Untuk Menjalankan Kegiatan Usaha Perbankan" (2017) 8:1 Negara Hukum 1–30.

Therefore, savings and loan cooperatives that offer and issue products to non-member communities that exceed the time limit set by the Minister Regulation violate statutory regulations in the cooperative sector. However, these activities also eliminate the purpose and concept of membership. In running the business, cooperatives must develop member economic business, not non-members, because the purpose of the cooperative is basically to improve members' welfare.³⁸

The deviation impacts the loss of member rights. It contributes to the formation, growth, decision-making, and supervision of cooperatives' business activity owned by every cooperative service user under the Cooperative Law.³⁹ The essential requirements that need to be owned by the saving and loan cooperation as a financial institution are to maintain credibility or trust of the members in particular and the broader community generally.⁴⁰ The defaults on service users from cooperatives commit irregularities in savings and loan business activities. For example, the case of KSP Indosurya results in a legal risk associated with not fulfilling the rights and obligations of service users who should be members of the cooperative and participate in the operation of the cooperative's business activities concerned.

IV. THE IMPORTANCE OF MINISTRY'S SUPERVISION

The legal basis for the Ministry of Cooperatives and SMEs' duties and functions is currently set in Presidential Regulation 96/2020. Besides having a role as a regulator, the Ministry of Cooperatives and SMEs has several cooperative supervisory functions based on Article 12 of this Presidential Regulation.⁴¹ The supervisory functions cover the formulation of policies to increase the potential for cooperative businesses and the

³⁸ Azhari Mohd, et al., *"The Role of Cooperative in the Indonesian Economy"* (2017) 6:10 International Journal of Humanities and Social Science Invention.

³⁹ Chalimah & Sakhowi, *supra* note 32.

⁴⁰ Ni Made Dwi Ratnadi, et al, *"Penyusunan Prosedur Operasi Standar Penghimpunan dan Penyaluran Dana Unit Simpan Pinjam Koperasi Jasa Kelistrikan Bali"* (2017) 1:1 Jurnal Pemberdayaan Masyarakat Madani (JPMM).

⁴¹ Presidential Regulation 96/2020 on Ministry of Cooperatives and SMEs.

coordination and synchronization of policy implementation to increase the potential for cooperative businesses. They also include the supervision in monitoring, analysis, evaluation, and reporting in the field of increasing the potential for cooperative business as well as the supervision in the area of cooperative savings and loan business licenses, and supervision in providing technical guidance and supervision in cooperative savings and loan business licenses.⁴²

The implementation of the supervisory function of the Ministry of Cooperatives and SMEs is carried out with due observance of the provisions in Article 2 of the Cooperative Supervision Regulation, which contains the supervisory authority of cooperatives that have cross-provincial membership areas under the Ministry of Cooperatives and SMEs.⁴³ This Ministry's supervisory function is implemented with due observance of the Cooperative Supervision Minister Regulation provisions. This Ministry owns this supervisory authority of cooperatives that have cross-provincial membership areas. The supervisory function possessed by this Ministry has been regulated both preventively and repressively. Preventive supervision is carried out with routine supervision as mandated in the Cooperative Supervision Minister Regulation, both directly and indirectly.⁴⁴ Meanwhile, the repressive implementation of the supervisory function is carried out with occasional supervision carried out on problematic cooperatives based on orders from authorized officials, public reports, and/or cooperative problems that need special handling.⁴⁵

In addition, law enforcement to follow up cooperatives whose business activities deviated from statutory regulations are carried out by providing administrative sanctions based on Article 24 of the Cooperative Supervision Minister Regulation. It states that cooperatives with a health level under special supervision will be subject to administrative sanctions. These sanctions consist of the light sanction in the form of a warning

⁴² *Ibid.*

⁴³ Regulation of the Minister of Cooperatives and SMEs 9/2020 on Cooperative Supervision.

⁴⁴ *Ibid.*

⁴⁵ Regulation of the Minister of Cooperatives and SMEs 9/2020 on Cooperative Supervision.

letter, moderate sanctions like a decrease in the level of health of cooperatives, restrictions on cooperative business activities, or suspension of cooperative business permits, and heavy sanctions in the form of revocation of cooperative business licenses or dissolving cooperatives.⁴⁶ With regard to light sanctions, the limit related to the issuance of the warning letter can only be given a maximum of two times. Simultaneously, the cooperative that obtains a warning letter must follow it up no later than three months from the given date.

With the strict regulation regarding the supervisory function owned by this Ministry, a harmonious implementation is also needed so that issuing products to non-member communities by the cooperative can be prevented and followed up firmly. The problem of supervision in the cooperative sector, especially in the business activities of cooperatives, is broadly divided into two issues, namely the implementation of supervision as an effort to prevent and enforce the issuance of products to non-member communities and the importance of product issuance for prospective members' guidelines as an indicator of savings and loan cooperatives supervision.

A. Supervision in Preventing the Issuance of Products to Non-Member Communities

Several cases pointed out the crime of fund investment committed by a cooperative ever happened in public life.⁴⁷ One of which is the case of product issuance to non-member communities by cooperatives in Indonesia are often subjected to Article 46(1) of the Banking Law.⁴⁸ A cooperative is a form of legal entity that can be categorized as an illegal bank according to Article 46(1) of the Banking Law with threats to anyone who carries out activities as mentioned will be subject to a minimum penalty of

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⁴⁷ Chandra Adryanto, "Law Enforcement Against Fraud and/or Embezzlement (Study of KSP Intidana Central Java, Indonesia)" (2018) 3:1 Journal of Indonesian Legal Studies.

⁴⁸ Law 7/1992 on Banking and its amendment to the Law 10/1998.

imprisonment five years and a maximum of 15 years.⁴⁹ This act is categorized as a banking crime related to licensing because it fulfills the elements in the article, namely, any party that collects funds from the public in the form of deposits but is committed without permission from Bank Indonesia. It is what happens to cooperatives that carry out banking activities without a license. The cooperative performs its duties as a bank but does not obtain a business license from the competent authority.⁵⁰

It happened in the case of KSP Indosurya. The Indosurya management was charged under the Banking Law because the issuance of products to non-member communities allegedly fulfilled a banking crime by collecting funds from the public in the form of deposits without permission from the competent authority. The number of cooperatives that experience defaults are caused by the issuance of products to non-member communities. It can have more losses for the wider community and risk the cooperative's reputation due to a lack of trust from the broader community against cooperatives.

In practice, good supervision is essential for the members to comply with the cooperative principles that guide a democratic organization controlled by its members. However, given the frequent practice of issuing cooperative products to non-member communities, its implementation cannot be apart from tight supervision by the authorities. Indeed, its implementation can prevent the risk of reputation. It is because supervision aims to determine compliance in the implementation of laws and regulations.⁵¹ Article 7 of the Cooperative Supervision Minister Regulation outlines that the Ministry of Cooperatives and SMEs can conduct preventive supervision through

⁴⁹ Kamaluddin Pane, *"Pengawasan dan Penindakan Sebagai Upaya Perlindungan Hukum Terhadap Dana Masyarakat yang Disimpan di Lembaga Koperasi Simpan Pinjam (KSP)"* (2019) Thesis, USU Faculty of Law.

⁵⁰ Dessy Lina Oktaviani Suendra, *"Pertanggungjawaban Pidana Koperasi dalam Tindakan Pidana Melakukan Kegiatan Perbankan Tanpa Ijin"* (2015) 4:2 Jurnal Magister Hukum Udayana (Udayana Master Law Journal).

⁵¹ Rima Elya Dasuki & Suarny Amran, *"Konsep Kebijakan dalam Pengawasan dan Penerapan Sanksi Koperasi"* (2018) Festival Riset Ilmiah Manajemen & Akuntansi, Institut Manajemen Koperasi Indonesia.

routine supervision.⁵² Preventive supervision is specifically supervision carried out before an activity is carried out to prevent irregularities.⁵³ While linked to the issuance of products to non-member communities by savings and loan cooperatives in this discussion, it is appropriate for a savings and loan cooperative that deviate from carrying out a savings and loan business against statutory regulations can be prevented by implementing strict routine supervision.

Cooperatives whose business activities are not under applicable laws and regulations will be found by carrying out frequent supervision. They are primarily for products that should only be issued to cooperative members concerned as a form of implementation of cooperative principles in savings and loan businesses by cooperatives. The Ministry of Cooperatives and SMEs can prevent the sustainability and spread of such irregularities. At the same time, cooperative business does not follow statutory regulations based on an order from an authorized official, public reports, and/or cooperative problems that need special handling. Therefore, it is essential to monitor savings and loan cooperatives' business deviated from statutory provisions. It is miserable when a cooperative has a bad reputation cause many cooperatives, especially savings and loan cooperatives, to be subject to banking crimes due to issuing products to non-member communities. In the meantime, the Cooperative Law does not outline criminal sanctions to cooperatives whose business activities deviate from statutory provisions. The government prioritizes cooperatives to develop a business that encourages the growth and socialization of cooperatives.⁵⁴ With no criminal provisions in the cooperative law, cooperatives that collect funds from the wider community are subject to Article 46 of the Banking Law.

Nevertheless, in the Cooperative Supervision Minister Regulation, the results of cooperative supervision consist of a written report on the results

⁵² Regulation of the Minister of Cooperatives and SMEs 9/2020 on Cooperative Supervision.

⁵³ Endang Hartini, "Pelaksanaan Pengawasan Fungsional Dalam Rangka Optimalisasi Kerja di Inspektorat Daerah Kabupaten Kutai Barat" (2013) 1:1 Jurnal Administrative Reform 40–60.

⁵⁴ M Muhtarom, "Harmonisasi Hukum Perbankan dan Perkoperasian dalam Pengaturan tentang Penghimpunan Dana Masyarakat" (2013) 25:1 SUHUF 26.

of a cooperative health examination and/or administrative sanctions if deviations are found.⁵⁵ In connection with the enforcement of this deviation, the implementation could not consistently realize the Cooperative Supervision Minister Regulation. It resulted in the savings and loan cooperative experiencing default.

Since February 2019, KSP Indosurya subject to a light administrative sanction, as the Deputy discovered it for Supervision of the Ministry of Cooperatives and SMEs. However, until it underwent default in April 2020, there has been no further confirmation from the cooperative management.⁵⁶ With administrative sanctions that the Ministry of Cooperatives and SMEs can carry out, it should prevent the sustainability of the issuance of products to non-member communities, which indirectly also contains the existence of savings and loan cooperatives categorized as banking crimes. In addition, applying administrative sanctions under regulations can prevent defaults of savings and loan cooperatives against their members.

The strict and consistent administrative sanctions become a key for the Ministry of Cooperatives and SMEs in protecting cooperative members in preventing cooperatives' default. It is based on the systematic understanding of the provisions regarding administrative sanctions in the Cooperative Supervision Minister Regulation and the dissolution of cooperatives in the Cooperative Law, as well as the procedures for and settlement of cooperative dissolution by the government further outlined in Government Regulation 19/1994 concerning Dissolution of Cooperatives and Regulation of the Minister of Cooperatives and SMEs 10/2015 concerning Cooperative Institutions.

While the health level has been categorized as under surveillance or special supervision, the cooperative will be followed up with administrative sanctions. As previously mentioned, the administrative sanctions can be

⁵⁵ Regulation of the Minister of Cooperatives and SMEs 9/2020 on Cooperative Supervision.

⁵⁶ Indonesia, Ministry of Cooperatives and SMEs, "Kemenkop dan Ukm Dukung Polri Tuntaskan Kasus Koperasi Indosurya," online: <<https://www.kemenkopukm.go.id/read/kemenkop-dan-ukm-dukung-polri-tuntaskan-kasus-koperasi-indosurya>>.

carried out sequentially from the mildest to the most severe, given according to the level of deviation and impact on society, and cumulatively.⁵⁷ Furthermore, Article 30 of the Cooperative Supervision Minister Regulation has been given the Cooperative Management's obligation to resolve the administrative sanctions imposed on the cooperative.⁵⁸

Cooperatives whose business activities have deviated from statutory provisions and have the potential to experience default on their members can be resolved through the dissolution of the cooperative. It is made with due observance to the Cooperative Law and further regulations regarding the procedure and settlement of cooperative dissolution by the Government Regulation on the dissolution of cooperatives and the Regulation of the Minister of Cooperatives on the institutional cooperatives. By referring to Government Regulation on the dissolution of cooperatives, the Minister has the authority to carry out the settlement of the cooperative assets, dissolved through forming a Settlement Team consisting of the government and members of the cooperative.⁵⁹

Article 39 of the Regulation of the Minister of Cooperatives on the Institutional Cooperatives outlines that the settlement team has duties and authorities related to the settlement of cooperative assets in fulfilling its members' rights.⁶⁰ Its tasks resolve the rights and obligations of cooperatives based on statutory regulations, establishing and carrying out cooperative obligations that take precedence over statutory regulations, and using the remaining assets of the cooperative to be returned to its members.⁶¹ The regulations on the dissolution of the cooperative serve as guidelines in implementing the settlement of dissolution. They ensure the fulfillment of the rights of all members of the cooperative concerned. It is a direct link that implementing administrative sanctions explicitly provides

⁵⁷ Regulation of the Minister of Cooperatives and SMEs 9/2020 on Cooperative Supervision.

⁵⁸ *Ibid.*

⁵⁹ Government Regulation 9/1994 on Dissolution of Cooperatives by the Government.

⁶⁰ Regulation of the Minister of Cooperatives and SMEs 10/2015 on Cooperative Institutions.

⁶¹ *Ibid.*

legal consequences to prevent defaults by savings and loan cooperatives that cause losses for the wider community and minimize the risk of decreasing public trust in cooperatives, especially in savings and loan cooperatives. Based on the analysis of the implementation of supervision to prevent the issuance of products to the non-member community, the role of the government is vital in supervision to the cooperative sector. It is expected that no more cooperatives whose business activities deviate from statutory provisions and cause losses for the broader community through preventive supervision.

B. The Importance of Guidelines to Savings and Loan Cooperatives Supervision

By referring to the issue of product issuance to non-member communities, an urgency arises to find definite steps to prevent future problems. Then, it is necessary to comprehend the limits of a cooperative service user classified as members and prospective members of cooperatives. Insofar, cooperatives' rules have not provided a mechanism for issuing products to non-member communities or prospective members. There is only an obligation that prospective members must be members of the cooperative within at least three months.⁶² Consequently, it results in uncertainty regarding the mechanism, steps, and conditions for prospective members, even more so regarding the mechanism, steps, and the next requirements for a prospective member classified as a member.

There are no absolute requirements for the community to become cooperative members. Requirements for cooperative members are only limited to citizens taking legal action or cooperatives whose further conditions can be specified in the articles of association.⁶³ In other words, each cooperative has the freedom to regulate further the requirements that need to be fulfilled to become a member but still pay attention to the limits per the applicable laws and regulations.

⁶² Regulation of the Minister of Cooperatives and SMEs 15/2015 on Savings and Loans by Cooperatives and its amendments to the Regulation of the Minister of Cooperatives and SMEs 2/2017.

⁶³ Law 25/1992 on Cooperatives.

Article 18(1) of Government Regulation 9/1995 on savings and loans business outlines that individuals or cooperatives who have paid off their primary savings but have not formally fulfilled the administrative requirements fully are considered prospective members. In the elucidation of Article 20(2) of the same regulation, a service to prospective members is provided as they have fulfilled the material requirements, even though they have not fully registered yet as formal members.⁶⁴ Therefore, those categorized as prospective members are people who have fulfilled the material requirements as members but have not fully required the formal requirements, such as having not signed the member list book.

The standard for collecting funds from prospective members is essential to become guidelines. These guidelines are in the form of operational standards for cooperative business management. They provide legal certainty regarding the membership status of each service user by stipulating the requirements of members and prospective members who are firmly specified in the articles of association of every savings and loan cooperative and the creation of specific guidelines on raising funds from prospective members. There will be legal certainty of membership under the objectives and principles of the cooperative. The addition of guidelines for collecting funds sourced from prospective members prevents the issuance of products to non-member communities and all the legal consequences. Thus, all legal issues arising from issuing products to non-member communities should be prevented. The prevention can be carried out by adding the guidelines of product issuance for the prospective member as an indicator of savings and loan cooperatives supervision by the Ministry of Cooperatives and SMEs. It ensures that all saving and loan cooperatives carry out their business by maintaining the cooperative's identity and concepts of membership to achieve cooperatives' goals in Indonesia.

⁶⁴ Government Regulation 9/1995 on Savings and Loans Business Activities.

V. CONCLUSION

The practice of issuing products to non-member communities deviates from statutory regulations, objectives, and membership principles in cooperatives. The implementation of cooperatives at maintaining cooperatives' identity requires all cooperative actors, the government, and the general public in preventing and following up on savings and loan cooperative practices that eliminate membership rights for service users. Supervision through monitoring and follow-up of savings and loan cooperatives that have deviated from statutory provisions needs to be carried out firmly and consistently to prevent the sustainability and spread of such deviations. It is unfortunate that the cooperative, which is the Indonesian economy's pillar, has a bad reputation because many cooperatives, especially savings and loan cooperatives, are subject to banking crimes due to issuing products to non-member communities.

ACKNOWLEDGMENTS

None.

COMPETING INTEREST

The authors declared that they have no competing interests.

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