

Settlement of Defaults Made by Members of The Multi-Busnesse Consumer Cooperative Al Husna Tangerang

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Abstract. *This study aims to identify and analyze the resolution of defaults by members of the Al Husna Multipurpose Consumer Cooperative in Tangerang. The research approach method used in this thesis is an empirical juridical legal research method. The types of data used in this study are primary data which include the 1945 Constitution; the Civil Code; Law Number 25 of 1992 concerning Cooperatives; Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; Regulation of the Minister of Cooperatives Number 9 of 2018 concerning the Implementation and Development of Cooperatives, and secondary data containing books, scientific journals, legal theories and tertiary data such as legal dictionaries. Research data collection using interview techniques and literature studies as well as direct observation or observation in the field. The data analysis method used in analyzing the data is qualitative analysis. The results of the study indicate that the settlement of default carried out by cooperative members is to make a default settlement lawsuit to the court, but the basis of the cooperative is from members to members and is founded on the principle of family, it would be more appropriate with a non-litigation method, namely settlement outside the court as regulated in Article 1 Number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Some more appropriate non-litigation settlement methods are mediation, because it prioritizes the interests of members considering the purpose of the cooperative from members to members. The obstacles faced by cooperative members are the difficulty in paying off receivables due to Termination of Employment (PHK) in the company where the cooperative members work so that the cooperative members cannot carry out their performance properly. The solution in resolving the default of cooperative members is that if the principal savings and mandatory savings of cooperative members will be used as collateral for cooperative members when they cannot repay their loans.*

Keywords: Cooperative; Default; Force Majeure; Provision of Productive Assets; Write-off.

1. Introduction

Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the Indonesian economy is structured as a joint effort based on the principle of family.¹ The explanation refers to the ability to form a cooperative to run a joint venture. A cooperative is a business entity comprised of individuals or legal entities, whose activities are based on cooperative principles and which also serves as a people's economic movement based on the principle of family.² Cooperatives began to grow and develop in England in the mid-nineteenth century, around 1844, pioneered by Charles Howard in the village of Rochdale. However, the inspiration for the cooperative movement had actually been around since the eighteenth century, following the Industrial Revolution and the implementation of the capitalist economic system. This movement benefited lower-income communities, particularly laborers with very low incomes. The movement aimed to address the economic challenges posed by pressure from company owners, which was causing the economy to weaken.

After developing in England, cooperatives spread to countries in mainland Europe, the Americas, and Asia, including Indonesia. These countries primarily use cooperatives as an alternative to solving economic problems and improving the welfare of their people.

Cooperatives actually arrived in Indonesia in the late 19th century, around 1886, pioneered by RA Wiriadmaja. However, the Indonesian cooperative movement officially began on July 12, 1947, at the first congress in Tasikmalaya, which is commemorated as Indonesian Cooperative Day. The development of cooperatives has become a system in the economic life of society as an effort to fulfill the needs of life and solve the economic problems they face. In Indonesia, cooperatives serve as a cornerstone of the Indonesian economy, leading to a just and prosperous society. Therefore, cooperative businesses must be continuously nurtured and developed to ensure their continued growth and proper development. Therefore, we must first understand the history of cooperative development, both quantitatively and qualitatively. To properly and effectively foster cooperatives, we must first understand the history of cooperative development. The foundation of Indonesian cooperatives is a guideline in determining the direction, objectives, role and position of cooperatives in relation to other economic actors in the Indonesian economic system. Law Number 25 of 1992 concerning Cooperatives, Indonesian Cooperatives have the following foundations:

¹Republic of Indonesia. (1945). Constitution of 1945. State Gazette of the Republic of Indonesia 1945, No. 6. State Secretariat. Jakarta

²Republic of Indonesia. (1992). Law Number 25 Concerning Cooperatives. State Gazette of the Republic of Indonesia 1992, Article 1. State Secretariat. Jakarta

- a. Ideological basis, in accordance with Chapter II of Law Number 25 of 1992 concerning Cooperatives, the ideological basis of Cooperatives is Pancasila; and
- b. The Structural Foundation is the 1995 Constitution.

Business entities that are legal entities need to develop the form and type of cooperative. In terms of the formation of cooperatives based on Government Regulation Article 3 (1) Primary cooperatives are formed by at least 9 (nine) people. (2) Secondary cooperatives are formed by at least 3 (three).³The types of cooperatives are divided into five parts, including Producers, Consumers, Marketing, Services, and Savings and Loans. The definition of the types of cooperatives is as follows:

The cooperative identity, which consists of cooperative values and a set of principles, and was ratified in Manchester in 1998, is the foundation or means for developing cooperatives.⁴ Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, justice, and solidarity. Following the traditions of their founders, cooperative members believe in ethical values such as honesty, openness, social responsibility, and caring for others.⁵ Cooperatives implement the following cooperative principles:

1. membership is voluntary and open;
2. management is carried out democratically;
3. the distribution of remaining business profits is carried out fairly in proportion to the size of each member's business services;
4. provision of limited compensation for capital; and
5. independence.⁶

Cooperatives also implement the following cooperative principles:

- a. cooperative education;
- b. cooperation between cooperatives.⁷

Savings and loan business activities are activities carried out to collect funds and distribute them through savings and loan business activities from and for members of the cooperative concerned, prospective members of the cooperative

³Republic of Indonesia. (2021). Government Regulation Number 7 of 2021 concerning Ease of Protection and Empowerment of Micro, Small, and Medium Enterprises Cooperatives. State Gazette of the Republic of Indonesia 2021. Number 17. Ministry of State Secretariat. Jakarta

⁴Untung Budi, (2005). *"Hukum Koperasi dan Peran Notaris"*. (Yogyakarta:PT. Penerbit), p.7

⁵*Ibid*, p. 7

⁶*Op.cit*

⁷*Loc.cit*. Article 5 Paragraph 2

concerned, other cooperatives and/or their members.⁸ Savings and Loan Cooperatives are cooperatives whose activities are only savings and loan businesses.⁹ Savings and Loan Unit is a cooperative unit that operates in the savings and loan business sector, as part of the business activities of the Cooperative in question.¹⁰ Savings are funds entrusted by members, prospective cooperatives, other cooperatives and/or their members to the cooperative in the form of savings and term cooperative savings.¹¹ Time Deposits are deposits in cooperatives where the deposit is made once and withdrawals can only be made at certain times according to the agreement between the depositor and the cooperative concerned.¹² Cooperative Savings are savings in a cooperative where deposits are made in installments and withdrawals can only be made according to certain conditions agreed between the saver and the cooperative concerned using the Cooperative Savings Book.¹³ A loan is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the Cooperative and another party which requires the borrower to repay the debt after a certain period of time accompanied by payment of a certain amount.¹⁴ Based on Article 17 paragraph (1) of Law Number 25 of 1992 concerning Cooperatives, it is stated that Cooperative Members are both owners and users of Cooperative services. And Cooperative Membership is recorded in the member register.¹⁵

Cooperative members are every Indonesian citizen capable of carrying out legal actions or cooperatives that meet the requirements as stipulated in the Articles of Association. Cooperatives may have extraordinary members whose membership requirements, rights, and obligations are stipulated in the Articles of Association. Tangerang Regency has a fairly large area, consisting of 29 sub-districts, 28 urban villages, and 246 villages, covering an area of 95,961 hectares (959.61 km²). According to data from the Ministry of Cooperatives and SMEs of the Republic of Indonesia, there are 1,780 cooperatives. Al Husna Tangerang Multipurpose Consumer Cooperative was established in 1999 with the Legal Entity Establishment number 219/BH/KDK.10.4/V/1999 on May 25, 1999, domiciled at Jalan Raya Krese KM 1/2 Saga Village, Balaraja District, Tangerang Regency. Based on the results of the Annual Members Meeting on March 6, 2025, Chairman of the Management Mr. Asnadi, Secretary Mr. Aliropi, and Treasurer Mr. Asnadi, the

⁸Republic of Indonesia. (1995). Government Regulation Number 9 of 1995 Concerning the Implementation of Savings and Loan Activities by Cooperatives. Number 19. Minister of State Secretariat. Jakarta

⁹*Ibid* Article 1 Paragraph 2

¹⁰*Ibid* Article 1 paragraph 3

¹¹*Ibid* Article 1 paragraph 3

¹²*Ibid* Article 1 paragraph 4

¹³*Ibid* Article 1 paragraph 5

¹⁴*Ibid* Article 1 paragraph 6

¹⁵Republic of Indonesia. (1992). Law Number 25 Concerning Cooperatives. State Gazette of the Republic of Indonesia 1992, Article 17. State Secretariat. Jakarta

cooperative has a total of 1,082 members, consisting of 555 men and 527 women. The cooperative's operations include savings and loans, rental properties, and a shop. However, in 2024, the cooperative encountered problems with its savings and loans operations. Many members borrowed but failed to repay them on time, and some were even unaccounted for.

Loan Data at the Al Husna Multipurpose Consumer Cooperative in Tangerang

Year	Amount Borrowed	Amount in Default
2023	600 People	1 Person
2024	750 People	1 Person
2025	780 People	3 People

Data on Cooperative Members in Default

No.	Name	Address	Big Loan	Loan Time	Remainder Loan
1	A. Ropi	Sentul Jaya	50,000,000	36 months	38,000,000
2	Rohayati	Sentul Jaya	50,000,000	25 months	48,000,000
3	Maman, S.	Sentul Jaya	60,000,000	20 months	39,400,000
4	Lia Pahlianti	Sentul Jaya	65,000,000	24 months	45,000,000
5	A. Hambali	Sentul Jaya	50,000,000	25 months	35,000,000

2. Research Methods

The research approach method used in this thesis is an empirical juridical legal research method. The specifications of this research use descriptive analysis. The types of data used in this study are primary data which include the 1945 Constitution; Civil Code; Law Number 25 of 1992 concerning Cooperatives; Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;

Regulation of the Minister of Cooperatives Number 9 of 2018 concerning the Implementation and Development of Cooperatives, and secondary data containing books, scientific journals, legal theories and tertiary data such as legal dictionaries. Research data collection using interview techniques and literature studies as well as direct observation or observation in the field. The data analysis method used in analyzing the data is qualitative analysis.

3. Results and Discussion

3.1. Settlement of Defaults Carried Out by Members of the Al Husna Tangerang Multipurpose Consumer Cooperative

Law Number 25 of 1992 concerning cooperatives does not regulate the method of resolving defaults committed by cooperative members who have loans to the cooperative.

Therefore, the approach taken to resolve defaults returns to the rules regarding agreements, in this case savings and loan agreements, furthermore in the legal system of agreements in Indonesia, it is regulated in the Civil Code, namely in Book III of the Civil Code where the conditions for the validity of an agreement are regulated in Article 1320 of the Civil Code. For the validity of an agreement, four conditions are required:

- a. an agreement that binds both parties;
- b. ability to make a contract;
- c. a particular subject matter; And
- d. a reason that is not forbidden.

In order for a contract to be considered valid by law, it must meet certain legal requirements.¹⁶The legal requirements for a contract to be considered valid are as follows:

1) Objective Validity Requirements Based on Article 1320 of the Civil Code

The objective legal requirements for a contract based on Article 1320 of the Civil Code consist of:

- a) Regarding certain matters; and
- b) Allowed clauses.

The specific terms mean that a contract must relate to a specific matter, be clear and legally permitted.

Meanwhile, the permissible clause means that a contract must be made with an intention or reason that complies with applicable law. Therefore, a contract may not be made to do anything that violates the law. The legal consequence if one of

¹⁶Munir Fuady, *Op.cit.* p.14

these objective conditions is not met is that the contract is invalid and null and void.

2) Subjective Validity Requirements Based on Article 1320 of the Civil Code

The valid conditions for a subjective contract based on Article 1320 of the Civil Code include the following:

- a) There is an agreement of will; and
- b) Authority to act.

The requirement for an agreement of will is that for a contract to be considered legally valid, both parties must agree on what is regulated by the contract. The law generally accepts the theory that an agreement of will exists if one of the following elements is absent: duress (dwang, duress); fraud (bedrog, fraud); and mistake (dwaling, mistake).

Meanwhile, the requirement of authority to act means that the party entering into the contract must be a person who is legally authorized to make the contract. The authority to act is only considered valid by law when the contract is made by the following persons:

- a) Adults;
- b) People who are not placed under guardianship;
- c) Married women (this requirement no longer applies); And
- d) People who are not prohibited by law from carrying out certain actions. For example, a husband and wife cannot enter into a sale and purchase contract. Or a person who makes a contract for and on behalf of another person, but the power of attorney is invalid.

The legal consequence of not fulfilling one of these subjective conditions is that the contract is "voidable (vernietigbaar) by one of the interested parties. If the cancellation action is not taken, the contract still exists and must be executed as a valid contract.

3) General Validity Requirements Outside of Article 1320 of the Civil Code

There are several conditions for contracts that apply generally but are regulated outside Article 1320 of the Civil Code, namely as follows:

- a) Contracts must be made in good faith;
- b) The contract must not conflict with applicable customs;
- c) Contracts must be made on the basis of fairness; and
- d) Contracts must not violate public interests.

If a contract is made in violation of one of the 4 (four) principles, the legal consequence is that such a contract is invalid and null and void.

4) Special Validity Requirements

In addition to the conditions mentioned above, a contract must meet several specific conditions intended for special contracts. These special conditions are as follows:

- a) Written terms for certain contracts;
- b) Notarial deed requirements for certain contracts;
- c) Requirements for certain official deeds (other than notaries) for certain contracts; and
- d) Permission requirements from authorized officials for certain contracts.

The legal force of the agreement is based on Article 1338 of the Civil Code, which states that all agreements made in accordance with the law apply as law to those who make them. Such agreements cannot be revoked except by mutual agreement or for reasons determined by law. Agreements must be executed in good faith.

If a dispute occurs, in this case a dispute between a cooperative member who is in the position of loan recipient (debtor) and the cooperative that provides the loan (creditor), then of course the savings and loans carried out between the member and the cooperative are based on a savings and loan agreement.

And then if there is a default, it returns to the provisions contained in Article 1238 of the Civil Code, which explains that the debtor is declared negligent by means of a written order, or by a similar deed, or based on the strength of the obligation itself, namely if this obligation results in the debtor being deemed negligent by the passage of the specified time.

Furthermore, regarding the elements of default, Subekti in Contract Law explains four elements of default, including:

- 1) Not doing what one promises or not doing what one promises;
- 2) Does what is promised but not as promised;
- 3) Did what was promised but was late; And
- 4) Doing something that according to the agreement is not allowed to be done.

In the event of a breach of contract, the negligent party must compensate for costs, losses, and interest. The consequences or sanctions for this breach are outlined in Article 1239 of the Civil Code, which states that every obligation to do or not to do something must be resolved by compensating for costs, losses, and interest if the debtor fails to fulfill their obligation.

Reimbursement of costs is compensation for costs or money incurred by one party. Compensation for losses incurred due to the negligence of the defaulting party.

Furthermore, regarding interest, J. Satrio in the Law of Contracts explains that interest can be classified into three types, namely as follows:

- a) Mortgage interest, namely interest owed because the debtor is late in fulfilling his obligations;
- b) Conventional interest, namely interest agreed upon by the parties; and
- c) Compensatory interest, namely all interest outside the interest stated in the agreement.

In law, breach of contract means the failure to fulfill a specified obligation. Performance is something that can be demanded. In a contract, one party generally demands performance from the other party.

However, to resolve a breach of contract, a default lawsuit must be filed with the court to ensure the member's performance, namely the payment of their obligations. The performance guarantee provisions even include two guarantees:

1. General guarantee is a guarantee as can be understood based on Article 1131 of the Civil Code which states: "All movable and immovable assets belonging to the debtor, both existing and future, become guarantees for the debtor's individual obligations."
2. Special collateral is a material collateral that requires collateral in the form of movable or immovable property. Special collateral is further divided into two types: special collateral due to statutory provisions and special collateral due to agreements.

And it is possible that the debtor's assets will be confiscated to be used to pay off the loan.

However, since cooperatives are based on the principle of family, the author believes that non-litigation is more appropriate. This non-litigation provision for out-of-court settlement is recognized in Indonesian law. First, the explanation of Article 3 of Law Number 14 of 1970 concerning Basic Provisions on Judicial Power states, "Dispute settlement outside the court, based on peace or through a referee (arbitration), remains permitted."

Second, in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 1 number 10 states "Alternative Dispute Resolution is an

institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, or expert assessment."

1. Consultation is a personal action between one party (client) and another party, a consultant, who provides his/her opinion or advice to the client to meet the client's needs and requirements. The consultant only provides (legal) opinions as requested by the client, and then the decision regarding the resolution of the dispute will be taken by the parties.
2. Negotiation, dispute resolution through direct deliberation/negotiation between the disputing parties with the aim of seeking and finding forms of resolution that are acceptable to the parties. The agreement regarding the resolution must then be set out in written form that is agreed upon by the parties.
3. Mediation is the resolution of disputes through negotiation with the assistance of an impartial/neutral external party in order to obtain a resolution to the dispute agreed upon by the parties.
4. Conciliation, in English, means peace, the resolution of a dispute through negotiation involving a neutral third party (conciliator) to assist the disputing parties in finding a mutually agreeable settlement. The results of this conciliation must be in writing and signed jointly by the disputing parties, and then registered with the District Court. This written agreement is final and binding on the parties.
5. Expert opinion, an effort to resolve a dispute by appointing an expert to provide his opinion on the disputed issue to obtain an objective view. Dispute resolution outside the court (non-litigation) is an effort to bargain or compromise to obtain a mutually beneficial solution. The presence of a neutral third party is not to decide the dispute, but rather the parties themselves make the final decision.

In the author's view, of the several non-litigation methods, the more appropriate solution for resolving the default committed by members of the Al Husna Tangerang Multipurpose Consumer Cooperative is mediation, because cooperatives are based on family principles and prioritize the interests of members, considering that the cooperative's goal is from members for members in advancing the welfare of members.

3.2. Obstacles Faced by Cooperative Members and Solutions in Resolving Cooperative Member Defaults

Every legal entity in the form of a cooperative inevitably faces numerous challenges in its operations, particularly financial ones. Not all savings and loan cooperatives are profitable; some experience losses, and these losses are caused by various factors, one of which is the default of cooperative members.

From the results of the interview with the chairman of the Cooperative on Monday, April 7, 2025 at the Al Husna Multipurpose Consumer Cooperative Hall, Tangerang, it was stated that cooperative members had problems paying off their receivables due to layoffs (PHK) at the company where the cooperative members worked, so that the cooperative members could not carry out their duties properly.

Apart from that, there is no guarantee given by the cooperative members to the cooperative, it is only seen from the length of time they have been members, the amount of principal savings and mandatory savings and the calculation of reserve funds in the cooperative.

At the Al Husna Multipurpose Consumer Cooperative in Tangerang, before taking out a loan, they are required to use collateral, which in this case is a general guarantee, as intended by Article 1131 of the Civil Code. Therefore, the general guarantee of the creditor, in this case the cooperative, still does not have privileges or no right to priority repayment, when the debtor also has debt obligations (their obligation to pay debts to third parties).

When a cooperative defaults, it must be able to mitigate its losses. Article 1236 of the Civil Code states, "The debtor is obligated to compensate the creditor for costs, losses, and interest if he or she renders himself or herself unable to deliver the asset or fails to properly maintain it to save it."

When it comes to mitigating losses, each cooperative has its own strategy. Similarly, the Al Husna Balaraja Cooperative in Tangerang Regency has its own strategy and methods for mitigating losses.

According to Asnadi, Chairman of the Al Husna Cooperative Management in Balaraja, Tangerang Regency, the solution to overcome losses at the Al Husna Cooperative has been regulated in the Annual Members Meeting (RAT) and is based on applicable laws and regulations. If the principal savings and mandatory savings of cooperative members will be used as collateral when cooperative members are unable to repay their loans, then based on the agreement at the Annual Members Meeting (RAT), the cooperative will immediately use these savings to repay the cooperative member's loans.

And if the guarantee of principal savings and mandatory savings is still insufficient to repay the loan, the cooperative will use the cooperative's reserve fund. In Article 1 number 11 of the Minister of Cooperatives Regulation No. 9 of 2018 concerning the Implementation and Development of Cooperatives, it is explained that the Reserve Fund is an amount of money obtained from the allocation of business results after tax which is intended to build up the cooperative's own capital and cover the cooperative's losses if necessary. This has also been

regulated in Article 108 paragraph 5 of the Minister of Cooperatives Regulation No. 9 of 2018 concerning the Implementation and Development of Cooperatives, it is explained that, "Reserves are an amount of money obtained from the allocation of remaining business results, which is intended to build up the cooperative's own capital and to cover the cooperative's losses."

As for the value, it is regulated in Article 108 paragraph 6 of the Minister of Cooperatives Regulation No. 9 of 2018 concerning the Implementation and Development of Cooperatives, namely, The value and mechanism for determining reserve funds are regulated in the Articles of Association/Bylaws, and/or decisions of the Members' Meeting.

Where the reserve funds at the Al Husna cooperative have been taken from the Provision of Business Surplus (SHU) of 20% each year based on the agreement of the Members' Meeting and have been stated in the Cooperative's Articles of Association.

When a loss occurs in the cooperative, the reserve fund will be used by the cooperative to cover the loss, by means of a Productive Asset Write-Off Provision (PPAP) according to the loss figure.

If the principal savings, mandatory savings, and reserve funds are insufficient to cover the losses, based on Article 1131 of the Civil Code, the cooperative will use the assets of the cooperative members (debtors), both movable and immovable, as collateral to repay the loan. If the cooperative is unable to cover the losses, its assets can be seized upon a decision by the District Court.

4. Conclusion

The settlement of defaults committed by members of the Al Husna Multipurpose Consumer Cooperative in Tangerang can be resolved through two methods: litigation and non-litigation. In this case, the cooperative prefers mediation, as it prioritizes the interests of its members, given the cooperative's goal of providing services from members to members, promoting their welfare. Every legal entity in the form of a cooperative inevitably faces numerous challenges in its operations, particularly financial ones. Not all savings and loan cooperatives are profitable; some experience losses, and these losses are caused by various factors, one of which is the default of cooperative members. When a cooperative defaults, it must be able to mitigate its losses. Article 1236 of the Civil Code states, "The debtor is obligated to compensate the creditor for costs, losses, and interest if he or she renders himself or herself unable to deliver the asset or fails to properly maintain it to save it." Because Law Number 25 of 1992 concerning Cooperatives does not regulate the method of dispute resolution in savings and loan law in cooperatives, and because the cooperative is in principle from members to members based on a family principle, the savings and loan agreement determines the method of

dispute resolution, namely by means of Alternative Dispute Resolution (ADR) or Alternative Dispute Resolution (APS), which is more appropriate by means of a family method through mediation. One way to mitigate losses in cooperatives is for the cooperative to create a principal agreement and additional agreements when issuing collateral before issuing loans. There must also be legal updates regarding the regulation of principal and mandatory savings, which will be used as collateral, particularly in cooperatives.

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