

# Legal Protection for Victims of Illicit Banks Under the Guise of Cooperatives Requires Indonesian Government Intervention

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## **Legal Protection for Victims of Illicit Banks Under the Guise of Cooperatives Requires Indonesian Government Intervention**

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### **Abstract**

Illicit Bank under the guise of a Cooperative is a form of illegal investment in Indonesia. Cooperatives that do not carry out their principles and functions according to the Cooperative Regulation Law no. 25 of 1992, collecting public funds illegally, and ultimately failing to return the funds deposited by its members is an indication of Illicit Bank. The research aim is to analyze the importance of the Government of Indonesia's intervention in the legal settlement of the Indosurya Cooperative default case for the justice of tens of thousands of victims. The research method using normative legal research according to Professor Soerjono Soekanto and Sri Mamudji with the main source being secondary data which includes legal materials (primary, secondary, and tertiary). The result shows that legal protection for victims of illegal banks under the guise of cooperatives contained in laws and regulations is preventive and repressive in nature but has not provided legal protection in guaranteeing the return of funds for victims of KSP Indosurya Cipta. Interventions carried out by relevant agencies are in the form of administrative sanctions and law enforcement efforts ranging from investigations and investigations to court proceedings.

**Key Words:** Legal Protection, Government Intervention, Victims of illicit bank, Cooperative Fail to Pay

### **I. INTRODUCTION**

In 2020 Indonesia experienced an economic crisis that had fatal consequences, with many cooperatives failing to pay. According to Antara news submitted by Alatas (2022), Minister of Cooperatives and SMEs Teten Masduki said that eight non-payment cooperatives were undergoing a peace agreement after the case of Bankruptcy and Postponement of Debt Payment Obligations (PKPU), including the Savings and Loans Cooperative KSP Indosurya Cipta. Furthermore, the Minister of Cooperatives and SMEs also emphasized that the government's duty, apart from protecting the community, including members of cooperatives with problems, would also not allow cooperatives to deviate. Fibriani (2022) stated that default in the economic field is an act that cannot pay debts or fulfill obligations to other parties that have been written in an agreement or agreement at maturity. One of the characteristics of a problematic cooperative is if the cooperative fails to pay or returns the deposit funds according to the written agreement in the certificate term deposit.

As stated in the 1945 Constitution Article 33 Paragraph 1, cooperatives are business entities based on the principle of kinship to develop the economy in Indonesia. Then reaffirmed in Law Number 25 of 1992 concerning Cooperatives, Cooperatives function as a business entity built to meet economic, social, and cultural needs and aspirations together with the principle of kinship established by and for its members. Darmonodiharjo (1945) As a pillar of economics, the management and members of cooperatives must understand the principles, functions, and principles of cooperatives. Hendrajogi (2002) Article 16 of Law no. 25 of 1992 explains that the type of cooperative is based on the similarities and economic interests of the members. According to Lumbantobing (2022), there are five types of cooperatives in Indonesia: Consumers, Producers, Savings and Loans, Marketing, and Service.<sup>8</sup>

The Central Jakarta District Court Decision (2020) No. 66/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst. Stated in the background that the Indosurya Savings and Loan Cooperative (KSP) was established on September 27, 2012, with the permission of the Ministry of Cooperatives No.

430/BH/XII.I/I.829.31/XI/2012, which has 184 branches in 30 provinces in Indonesia from 2012 to 2019 with a total of approximately 1000 employees. KSP Indosurya failed to pay in February 2020 when its customers could not withdraw their deposit funds. Although many media often report it before the third year of the tragedy, the victims are still waiting for justice in settlement of this case. Pangastuti (2022) that KSP Indosurya destroyed the image of cooperatives in the country in carrying out their business by collecting funds from the public so that it became a cover for bogus (illegal) or fraudulent investments. The public expects serious attention from the government to help solve it.

According to the young Attorney General, Fadil Zumhana (2022) stated that the fraud committed by KSP Indosurya Cipta was the most significant national fraud in Indonesia's history, with losses reaching 106 trillion rupiah and 23,000 victims (Alfons, M.). The research aim is to analyze the importance of the Government of Indonesia's intervention in the legal settlement of the Indosurya Cooperative default case for the justice of tens of thousands of victims.

## II. METHOD

This article was compiled using normative legal research according to Professor Soerjono Soekanto and Sri Mamudji with the main source being secondary data which includes legal materials (primary, secondary, and tertiary). The author also uses the theory of Mukti Fajar and Yulianto Achmad regarding data collection carried out through library research. Furthermore, data processing is carried out through a selection process, classification of various findings from the provisions of laws and regulations, media news, scientific works, and dictionaries, and then analyzed qualitatively using deductive logic in the form of prescriptive arguments.

## III. RESULT AND DISCUSSION

Troubled cooperatives began to arise in Indonesia because they did not implement the abovementioned laws and regulations. Problems also arise because of the intent or purpose of carrying out all means by the perpetrators, both individually and collectively for personal interests. Indosurya Cooperative failed to pay its customer occurred, because in reality this cooperative acted like an illicit bank by collecting funds from people who were not members of the cooperative, massively.

Losses amounting to trillions rupiah in the case of Indosurya cooperative defaults could be prevented if there was a proper supervision accompanied by strict actions in accordance with cooperative, and banking laws and regulations. The dissolution of the Indosurya Cipta Cooperative should have been carried out by the Minister of Cooperatives early on, before the victims' funds accumulated beyond the capacity of a cooperative that was not performing its function. According to Partomo (2008), the dissolution of a cooperative can be carried out based on a government decision if there is an evidence that the cooperative in question does not meet the provisions of the law. Similarly, <sup>12</sup> Mulhadi (2017) said that the inspection of cooperatives by the minister could be carried out because the cooperative did not hold the Annual Member Meeting for 2 (two) consecutive years and there was a strong suspicion that the cooperative in question did not manage financial administration properly.

Most of the victims of the Indosurya Cooperative deposited and saved their funds to use the profits for sick care costs, school fees for children, sources of income, and savings during retirement and in old age. They need *political will* from the government to be fair and protect the people where 23,000 victims expect their savings to be returned to restore trust in law and investment in Indonesia.

### 3.1 Legal Protection Guarantee for Victims.

The Indosurya Cipta Cooperative has been built for more than 30 years and has tens of thousands of customers. The victims of Indosurya Cooperative was called customers (nasabah), because the fact was that they have never been involved in being members or been included in members' meetings. Indosurya Cooperative has never implemented Cooperative Law Number 25 of 1992 Article 17 Paragraph 1, and Article 20 Paragraphs 1 and 2 regarding the rights and obligations of members. The victims of the Indosurya cooperative has never even heard of any principal savings, mandatory savings, or other deposits, except for *Certificate Term Deposit (Simpanan Berjangka bilyet)*.

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However, the interest promised by the Indosurya Cooperative was 8 (eight) percent to 20 (twenty) percent per year.

To obtain the status of a legal entity, the procedure for establishing a cooperative must be approved by the government which in this case was the Minister of Cooperatives and SMEs. According to Supramono (2020), ratification must be announced in the State Gazette. As a legal entity that seeks profit, a cooperative is subject to the obligations of Law no. 3 of 1982 Article 12 concerning Cooperative Legal Entities but in practice, there are still many cooperatives that have not / have not carried out these obligations. If after the cooperative becomes a legal entity then it turns out that its membership is less than that determined by the Cooperative Law, then the government can dissolve it based on Article 47 Paragraph (1) letter a. The misuse of Indosurya Cooperative as an illegal investment business such as illegal banks did not meet the principles and procedures of cooperative business according to Law No. 25 of 1992, has raised questions about the influence and commitment of the relevant ministers in carrying out legal supervision and protection of victims. The authority to supervise is a role that is plural or inherent in public positions.

Although this role is facultative (may not be implemented), within the framework of a welfare state with general principles of good governance, this role is an unavoidable necessity that must still be carried out as a basis for establishing a policy and taking steps in making decisions, and actions to deal with various problems that arise within the scope of duties and authorities of public officials. The various things mentioned above are logical consequences of the task of providing legal protection to victims of illegal banks who are actually part of the component of the Indonesian nation that has the right to run businesses to achieve increased welfare in a cooperative environment.

Conceptually, the essence of legal protection is to provide protection, guarantee the certainty of rights, both preventive and repressive, and always related to providing services to parties who are in a weak position/victim. However, P. Hadjon's research in a book written by HS & Nurbani (2017) resulted in the finding that the handling of legal protection for the people is not effective. Referring to various provisions of laws and regulations, the terminology of protection is intended to provide a sense of security and freedom from interference, danger, and uncertainty in the resolution of a case. Prolonged legal processes without producing the results desired by the victim, can result in the victim's waning confidence in the legal process and the institutions that handle the case, it can also raise doubts about the performance and credibility of the institution or other relevant agencies.

The reality shows that the statement from the Minister of Cooperatives and SMEs was given in early 2022, and the guarantee of protection for the victim's practice under the guise of a cooperative carried out by the Indosurya Cooperative has not yet shown a bright spot. Of the total loss of around 106 trillion rupiah, as reported by Arini (2022), the investigators only confiscated a total of 2.5 trillion rupiah. The whereabouts of the public fund's victims these illegal investments are unclear after the homologation decision dated July 17, 2020, No. 66/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst. Again failed to refund. Many got paid approximately 1 percent of the verdict. According to the Indonesian Dictionary Electronic Edition (2008), homologation is the ratification by the judge of the agreement between the debtor and creditor to end bankruptcy. The homologation referred to in this article was a peace agreement between creditors (victims of KSP Indosurya Cipta) and debtors (KSP Indosurya Cipta).

In connection with the above, the latest conditions experienced by the victims of the Indosurya Cooperative default have not yet led to the provision of a sense of security, protection, and assurance of the right to a refund of their savings, causing stress, depression, and suicide cases among the victims. Therefore, a clear and firm commitment is needed from the government to make various efforts through the use of its public authority so that the funds saved by the victims can be returned in a relatively short time, considering that this has a significant impact on the economic and psychological conditions of tens of thousands of people. Victims of the cooperative. If this case is not resolved and prolonged, it may severely impact the national economy due to waning public trust in the government and the investment climate in the country.

### **3.2 The Intervention of Relevant Agencies in Refunding Victims' Funds.**

Indosurya Cooperative in running its business has collected funds illegally from the public, not members. According to detikNews reporter Alfons, M. (2022), stated that the Indosurya Cooperative

along with the former Founder and 2 (two) other perpetrators became ~~3~~ suspects and were charged with Article 2 *jo*, Article 10, Article 3 *jo*, Article 10 ML and Article 46 Paragraph 1 of Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking *jo*. Article 55 (1) of the Criminal Code, *conjunction with Article 64 (1) of the Criminal Code or Article 1372 of the Criminal Code in conjunction with Article 55 (1) in conjunction with Article 64 (1) of the Criminal Code with a maximum imprisonment of 15 years and a fine of 10-20 billion rupiah*. Various threats of imprisonment and fines were imposed for criminal acts of fraud and money laundering that occurred in Indosurya Cooperative, so the deviations found by the Minister of Cooperatives and related institutions that have legal authority, is necessary to take law enforcement actions according to their respective authorities.

The fact is that the Indosurya Cooperative received trillions of deposits funds from the public through transfers to the Cooperative's account at Bank Central Asia. Such fantastic savings funds from a cooperative account should arouse the suspicion of the Bank Supervisor to examine the source of the flow of funds in an effort to anticipate violations committed by the founder and management of the cooperative. Money laundering could be indicated by supervisors of financial institutions other than the Minister of Cooperatives before trillions of rupiah went into the account of KSP Indosurya Cipta, the Founder, and 2 other actors. One of the evidence of the existence of a large flow of funds to the cooperative's account not from its members was a time deposit slip belonging to one of the victims of the Indosurya Savings and Loans Cooperative with the initials EJ (2021) with a nominal value of Rp. 310 (three hundred and ten) billion rupiah and a fee of 20% (twenty percent) per year.

Violations of the law can be minimized by the existence of cooperation that produces synergy and collaboration between the Minister of Cooperatives as the "Supervisor" of Law Number 25 of 1992 with other relevant agencies as responsible for the legislation by reporting and taking action when there are violations of the principles and functions of cooperatives., before the losses become massive after decades of accumulation. According to reporters Sari (2018) the crime was indicated in 2018 when special staff from the Ministry of Cooperatives and SMEs gave administrative sanctions for findings of irregularities and non-compliance. This deserved attention to immediately develop cases through coordination with the police, by blocking the accounts of criminals from the flow of public funds. Soerjono Soekanto stated in Penegakan Hukum (1983) that it is necessary to have a harmonious relationship between four factors that are related to each other, namely the law and regulations themselves, the mentality of officers who enforce the law, facilities that are expected to support the implementation of the law and the importance of awareness and legal compliance from the community.

The community funds for the victims of the Indosurya Cooperative became a form of confiscation of a criminal act after the Cooperative, its founder, and the two perpetrators were charged with money laundering offenses. The confiscation of Indosurya Cooperative assets by investigators in the amount of around 2 trillion rupiah needs to be distinguished from the confiscation of assets for the occurrence of other criminal acts such as corruption, narcotics, gambling, and so on. The confiscation should be reserved for the victims' refunds because they need to get restorative justice.

According to Afifudin (2018), the steps taken by the Kemenkop UKM needed to be qualified so that it did not only provide administrative sanctions and blocking efforts considering the misuse of cooperative institutions by KSP Indosurya Cipta as camouflage for disgraceful acts with tempting promises, on a certain scale it is deemed necessary to intervene to maintain the dignity of cooperative institutions, and as an economic structure mandated by the founders of the country in achieving populist welfare in an atmosphere of mutual cooperation and the principle of kinship. The intervention is very urgent considering that the assets of KSP Indosurya Cipta have been confiscated by investigators on the basis of the provisions of Article 39 (2) of the Criminal Procedure Code, which will be auctioned off and the proceeds will be put into the state treasury (Chairanie & Afriana, 2021). According to Fibriani (2022) the role and responsibility of the government are attached so that cooperatives maintain accountability so that they do not go bankrupt. Furthermore, Banjarnahor et al., (2022) stated that the management of KSP Indosurya Cipta can be held personally responsible for all of their assets for ignoring the vocational and openness aspects.

#### IV. CONCLUSION

Legal protection for victims of illegal banks under the guise of cooperatives contained in laws and regulations is preventive and repressive in nature but has not provided legal protection in guaranteeing the return of funds for victims of KSP Indosurya Cipta. Interventions carried out by relevant agencies are in the form of administrative sanctions and law enforcement efforts ranging from investigations and proceedings to court. The allocation of confiscated goods for the return of deposit funds is in conflict with the provisions of Article 39 (2) of the Criminal Procedure Code which hinders the realization of restorative justice for victims of KSP Indosurya Cipta.

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