
ANALYSIS OF THE LEGAL BASIS OF NON-BANK FINANCIAL INSTITUTIONS IN CONVENTIONAL AND SHARIA COOPERATIVES

Shafa Haura Asma Hamidah¹, Yoppi Harya Fahassanta², Nariza Isandra³, Anisah Maharani Putri Werdani⁴, Wildan Fattahur Rozaq⁵, Nur Rudin Dian Saputra⁶

¹ Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100210105@student.ums.ac.id)

² Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100210119@student.ums.ac.id)

³ Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100210136@student.ums.ac.id)

⁴ Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100210141@student.ums.ac.id)

⁵ Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100210143@student.ums.ac.id)

⁶ Fakultas Hukum, Universitas Muhammadiyah Surakarta (C100210179@student.ums.ac.id)

ABSTRACT

Financial institutions play an important role in the finances of a State. Financial institutions in Indonesia are divided into two, Bank Financial Institutions and Non-Bank Financial Institutions. Cooperatives as financial institutions function in helping the Indonesian economy, so based on this, the applicable bookkeeping must be analyzed so as not to have a negative impact on the Indonesian economy itself in the future. This research was carried out using the literature study research method which was sourced from existing literature. The analysis technique used uses data triangulation techniques, where the data obtained later aims to analyze the law that forms the basis of conventional and Islamic cooperative activities. In the research, it was found that there are laws that regulate the activities of cooperatives in Indonesia, both conventional cooperatives and sharia cooperatives.

Keywords: Financial Institutions, Conventional Cooperatives. Sharia Cooperative

INTRODUCTION

Financial institutions have an important role in state life. Financial institutions play a role in controlling the circulation of money in society so that it does not cause negative things to society itself. According to Law No. 14 of 1967, a financial institution is a body that carries out activities to withdraw funds from customers which are then distributed to other customers.¹ In line with the Decree of the Minister of Finance of the Republic of Indonesia No. 792 of 1990, Financial Institutions are bodies/institutions whose activities in the financial sector are collecting and distributing funds to certain communities, with the aim of financing investment in a company or activity. So it can be concluded that a financial institution is a body formed with the aim of assisting financing activities such as investment, consumption activities and distribution of goods and services.

In Indonesia, financial institutions are grouped into 2 forms, namely: (1). Bank Financial Institutions; (2). Non-bank financial institutions. Financial Institutions Banks are institutions that act as places to store money, as intermediaries in payments, as distributors of credit activities, and as printers of money. Meanwhile, Non-Bank Financial Institutions are institutions that act as fund collectors, intermediaries for business/company activities and as credit providers. Bank and non-bank financial institutions have differences in terms of collecting funds. Bank Financial Institutions collect funds directly and indirectly, while Non-Bank Financial Institutions can only collect funds indirectly from the public.

Based on their role, these two financial institutions have a very important role in the economic

¹ Undang Undang Republik Indonesia Nomor 14 Tahun 1967 tentang Pokok Pokok Perbankan

activities of Indonesia, because they can effectively help in improving the standard of living.² However, in life, various problems are often found related to financial institutions themselves. For example, in Non-Bank Financial Institutions such as Conventional Cooperatives and Sharia Cooperatives, it was found that there were many cases of misuse of cooperatives by management.³ There are other problems that are often encountered in the life of this cooperative, namely: (1). Implementation of credit contracts; (2). The objectives of cooperatives do not reflect their basis in law; (3). Non-compliance with the implementation of the principles used; (4). The existence of a relatively low market share and low Sharia financial literacy; (5). Incompatibility in the distribution of business results; (6). Basic values of activities that are not reflected⁴; (7) There are financing problems⁵.

The problems that exist in Non-Bank Financial Institutions certainly affect the productive activities carried out such as consumer welfare and economic growth itself⁶. Based on this, it is necessary to have a law that functions as a regulation or regulator in the implementation of the activities of Cooperatives as Financial Institutions. The law itself is a set of regulations in which there are norms that must be obeyed which are binding and coercive. Indonesian Cooperative Law is regulated in the 1945 Constitution article 33 paragraph 1, which states that the economy is structured as a joint venture based on the principle of kinship. With this law, it is hoped that it can provide implementation of the existence of laws that apply in the activities of Conventional and Sharia cooperatives as legal Financial Institutions in Indonesia.

Given this problem, the author is interested in conducting research on the existing laws in cooperative activities in Indonesia. So, based on this, the author conducted analytical research with the title: "Basic Analysis of the Laws Applicable in the Implementation of Conventional and Sharia Financial Institution Activities". With this writing, it is hoped that it will be able to answer a number of related questions and can be used as an additional reference source in further relevant analysis or research activities.

RESEARCH METHODS

The idea of this research is based on several theoretical studies, namely:

1. History and Function of Financial Institutions

Financial institutions are defined as bodies that operate in the financial sector to provide services to the public/customers to meet their living needs. Based on this definition, according to Subahyo in Jamal (2014) financial institutions have functions including:

- a) Facilitate all product exchange activities using money/credit (transmission role). This means that financial institutions function as a medium of exchange using existing money, and by using credit instruments such as credit cards, checks, current accounts, etc.
- b) Collecting funds from the community (intermediation role). This means that financial institutions withdraw funds from the public in the form of savings which are then distributed to companies that need funds as a form of loan.
- c) Carrying out economic analysis and information activities. This means that financial institutions are tasked with analyzing economic and credit activities for the benefit of the financial institutions themselves and those in need

² Jamal Wiwoho. 2014. Peran Lembaga Keuangan dan Lembaga Keuangan Bukan Bank Dalam Memberikan Distribusi Keadilan Bagi Masyarakat. Universitas Sebelas Maret : Surakarta.

³ Widiastuti. 2008. Masalah Hukum Koperasi Berbadan Hukum yang Berstatus Pasif dan Beku. Wacana Hukum. 7(2):14-51.

⁴ Dewi A. N & Ani H.M. 2018. Analisis Perbandingan Sistem Pemberian Kredit pada Koperasi Syariah dan Koperasi Konvensional. Jurnal PETA. 3(1):85-94.

⁵ Faried Ma'aruf. 2021. Strategi Penyelesaian Pembiayaan Bermasalah : Studi Kasus Koperasi Syariah di Kota Tangerang Selatan. Jurnal Bisnis, Keuangan dan Ekonomi Syariah. 1(2):88-95

⁶ John Goddard & John O.S. Wilson. 2009. Competition in Banking : A Disequilibrium Approach. Journal of Banking and Finance.

- d) Know fund safety information. This means that financial institutions are tasked with analyzing and finding out information regarding the safety of funds distributed to customers (borrowers), with the aim of reducing credit congestion
- e) Provide collateral and provide liquidity. This means that financial institutions provide legal guarantees regarding the security of public (customer) funds given to financial institutions. As well as convincing the public that the funds saved can be returned when they are due or when needed.

Based on this, it can be said that financial institutions are institutions that function in providing services as intermediaries between capital owners and money markets who are responsible for distributing funds from investors to companies that need funds.

2. Bank & Non-Bank Financial Institutions

In general, financial institutions in Indonesia are divided into 2, namely: (1). Bank Financial Institutions; (2). Non-Bank Financial Institutions.

- a) Based on Law No. 10 of 1998⁷, it is stated that Bank Financial Institutions act as intermediaries for the household and industrial sectors, especially in absorbing funds from the public to companies that need investment credit. Where the aim of bank financial institutions is to improve the standard of living of many people. The function of its existence is: providing services, related to storing funds and credit expansion activities
- b) Non-Bank Financial Institutions are institutions whose activities aim to encourage capital market activities and assist companies with low economic capital. The function of this institution is: collecting funds directly or indirectly, issuing valuable paper and distributing it to the public as an investment for companies to gain prosperity and justice.

3. Conventional & Sharia Cooperative Non-Bank Financial Institution Law

In carrying out their activities, bank and non-bank financial institutions are regulated by binding law. This is in accordance with the 1945 Constitution of the Republic of Indonesia, article 1 paragraph 3, where the Indonesian state is a legal state and all activities carried out therein are based on the law.⁸ The law on bank financial institutions is written in the NRI Constitution No. 10 of 1998⁹. Meanwhile, the law on non-bank financial institutions (LKBB) is written in the Decree of the Minister of Finance No. 38/MK/VI/1972. The purpose of LKBB's existence is to help improve the welfare of the community.

Cooperatives, as an example of non-bank financial institutions, also have laws that regulate all operational activities that occur within them. This law is as written in Law No. 25 of 1992 and in the Decree of the Minister of State for Cooperatives and Small and Medium Enterprises of the Republic of Indonesia No. 91/Kep/IV/KUKM/IX/2004.

In connection with the efforts used to obtain the required data, the author uses library research methods. According to Sugiyono (2014), library studies are activities related to theoretical studies related to values, culture and norms that develop in the circumstances studied.¹⁰ In carrying out this research, the author obtained data through library sources such as laws, journals, discourse books, vproceedings and the results of theses that are relevant to the research.

Data collection techniques are carried out using how to study documentation and triangulation. Documentation study is complemented by literature study which aims to obtain theories and concepts that can be used as comparison material (acceptance or rejection) of research findings to draw conclusions. In this case, data triangulation techniques are used to increase the researcher's understanding as a writer of what has been stated. According to Gunawan in Nurhadi (2021), increasing understanding using data triangulation uses multiplication of the truth of information from

⁷ Undang Undang Republik Indonesia Nomor 10 Tahun 1998 tentang Lembaga Keuangan Bank

⁸ Undang Undang Dasar NRI 1945 tentang Indonesia sebagai Negara Hukum

⁹ Undang Undang Republik Indonesia Nomor 10 Tahun 1998 tentang Lembaga Keuangan Bank

¹⁰ Sugiyono. 2014. Metode Penelitian Pendekatan Kuantitatif, Kualitatif dan R&D. Bandung : Alfabeta CV.

several existing sources.¹¹

RESULTS AND DISCUSSION

1. Non-Bank Financial Institutions (Cooperatives)

Non-bank financial institutions have a very important role in the country's economic system. These roles are:

a. As savings

Savings are savings in the form of money, where withdrawals are based on certain conditions. Savings activities aim to encourage customers to invest in the production of goods and services in order to increase economic figures.

b. As liquidity

Liquidity is a measure of the cooperative's performance regarding its ability to fulfill its short-term obligations (business debts, taxes, etc.). With liquidity, cooperatives can know their ability to fulfill their short-term obligations.

c. As payment & credit

Cooperatives can also function in payment activities for the purchase of goods or services. Where payments made by this cooperative can also be in cash and credit.

Specifically, there are two divisions of cooperatives in Indonesia, namely:

1) Conventional Cooperatives

A conventional cooperative is a business entity founded by members or a cooperative legal entity that also adheres to the principle of kinship in its establishment.

2) Sharia Cooperative

Sharia cooperatives are business entities founded by members or cooperative legal entities that adhere to the principle of kinship and are based on Islamic law.

The difference between the two is that in conventional cooperatives there is only performance monitoring, whereas in Sharia cooperatives there is performance monitoring and Sharia supervision, the aim of which is to ensure that all activities are carried out in accordance with Islamic law.

2. Applicable Legal Basis

In the 1925 Constitution No. 25 of 1992, cooperatives have the aim of advancing the welfare of their members and participating in state economic development activities, in order to create a just, prosperous and prosperous society. Based on this, the legal basis that applies in cooperatives in Indonesia itself will be analyzed, namely:

a. Conventional Cooperatives

Conventional cooperatives are cooperatives that are formed with the principle of togetherness. The legal basis is:

1) 1956 Constitution article 33 paragraph 1, concerning an economic order based on the principle of kinship¹². Facts are often found in the field regarding family values that are declining, this is because cooperative members do not have full awareness of their contributions. To overcome this, various methods are needed to increase awareness, including providing information about the time period for paying contributions (also in accordance with Article 20 paragraph 2 letter a of the Cooperative Law).

2) Law No.25 of 1992 article 3, concerning cooperative regulations in improving the welfare of members & the community¹³. Community welfare will increase if the cooperative's professional staff are capable. This means that human resources in cooperatives must be

¹¹ Nurhadi. Analisis Hukum Perbankan Konversi Bank Konvensional Menjadi Bank Syariah. Jurnal Studi Islam. 3(2):1-10

¹² Undang Undang Dasar 1956 tentang Tatahan Perekonomian

¹³ UU No.25 Tahun 1992 mengenai Aturan Koperasi

reliable. To obtain qualified human resources, selective selection must be carried out, the aim is to match positions with the capabilities of available human resources, so that cooperative activities run effectively so that they can improve the welfare of members and the community.

- 3) Article 30 paragraph (1) and 31 of the Cooperative Law, regarding responsibility in all cooperative management activities & their businesses¹⁴. In every cooperative activity, there are definitely credits and debits both for the cooperative's own activities and for its members. Each of these activities must be accountable for its existence, the aim of which is to defend the decision that has been made so that it is definitive/certain so that there is no doubt about its existence.

b. Sharia Cooperative

Sharia Cooperatives are cooperatives that are formed based on the principle of kinship, and where cooperative business activities ranging from financing, investment to savings use a profit sharing/Sharia model which is based on Islamic Sharia, namely the Al-Quran and As-Sunnah (Menuru Afrelian, et al. in Abdul. 2022)¹⁵. The legal basis that applies to Sharia Cooperatives is:

- 1) Law No. 10 of 1998, concerning agreement rules based on Islamic law¹⁶. Islamic law is a law where all activities in it are related to Islamic law. In a Sharia cooperative, each customer is required to follow all existing Islamic rules/sharia, the aim is to maximize performance and improve the health of the cooperative. According to Faried in Basuki (2018), the health of the cooperative influences the value of the cooperative and the profits obtained by members¹⁷. So if there are weaknesses in this matter, they must be corrected in all aspects, especially in HR, starting from supervisors, administrators and managers.
- 2) Law No.21 of 2008, concerning Sharia banking. Sharia cooperative law is similar to Sharia banking, where in its implementation financial management is free from all forms of interest/usury. This is because the basic aim of Islamic Sharia is to maintain property, honor and religious benefits
- 3) MUI Statement Letter No.Kep 754/11/1999 regarding financial activities implementation. This legal basis is related to the MUI, meaning that every implementation of Sharia cooperative activities is based on Islamic Sharia, namely the Al-Quran and A-Sunnah using the concept of Ta'awun (kinship and helping each other).
- 4) Surah 57 (Al-Hadith) verse 25, regarding fairness in transaction activities. Sharia cooperatives are said to be fair in accordance with Letter 57 (Al-Hadith) verse 25, therefore applying the following principles, namely: (1) There is no absolute ownership of anything; (2). All existing resources are entrusted by Allah SWT; (3). Moving the economy together; (4). Ensure that community ownership and planning are for the benefit of many people.

3. Comparative Law on Non-Bank Financial Institutions (Conventional & Sharia Cooperatives)

Based on the explanation of the applicable legal basis, there are legal differences between conventional and Sharia cooperatives. This is because conventional cooperatives are general in nature, while Sharia cooperatives are specific in that all implementation of their activities is based on Islamic law. The legal comparisons are:

- a. Conventional Cooperatives use the law: UUD 1956 article 33 paragraph 1; Law No.25 of 1992 article 3; Article 30 paragraph (1) and 31 of the Cooperative Law,
- b. Sharia Cooperatives use the law: Law No. 10 of 1998; Law No. 21 of 2008; MUI Statement Letter No.Kep 754/11/1999; Surah 57 (Al-Hadith) verse 25,

¹⁴ UU No.25 Tahun 1992 mengenai Pertanggungjawaban Kegiatan Koperasi

¹⁵ Abdul, dkk. 2022. Dasar Hukum Kontrak (Akad) dan Implementasinya Pada Perbankan Syariah di Indonesia. Jurnal Ilmiah Ekonomi Islam. 8(1):47-58

¹⁶ UU No.10 Tahun 1998 mengenai Perjanjian Hukum Islam

¹⁷ Faried Ma'aruf. 2021

CONCLUSION AND SUGGESTION

Cooperatives are Indonesian non-bank financial institutions, whose function is to collect funds from the public. This collection aims to advance society and boost the Indonesian economy.

Conventional and Sharia cooperatives have different legal regulations, namely that conventional cooperatives are based more on the Constitution and the NRI Law. Meanwhile, Sharia cooperatives are based on the Constitution, NRI Law, MUI Decree, and the Al-Quran along with its Hadith.

This difference is because conventional cooperatives are general in nature and Sharia cooperatives are religious (based on Islamic law). However, this does not prevent someone from choosing and determining which cooperative to use. The advice that the author can give in determining which cooperative to choose is to know and analyze existing cooperatives. If the cooperative is deemed to suit the needs and requirements then the cooperative is suitable and good to run and adheres to the principles and laws of cooperatives in full.

REFERENCES

1. Abdul, dkk. 2022. Dasar Hukum Kontrak (Akad) dan Implementasinya Pada Perbankan Syariah di Indonesia. *Jurnal Ilmiah Ekonomi Islam*. 8(1):47-58
2. Dewi A. N & Ani H.M. 2018. Analisis Perbandingan Sistem Pemberian Kredit pada Koperasi Syariah dan Koperasi Konvensional. *Jurnal PETA*. 3(1):85-94
3. Faried Ma'aruf. 2021. Strategi Penyelesaian Pembiayaan Bermasalah : Studi Kasus Koperasi Syariah di Kota Tangerang Selatan. *Jurnal Bisnis, Keuangan dan Ekonomi Syariah*. 1(2):88-95
4. Jamal Wiwoho. 2014. Peran Lembaga Keuangan dan Lembaga Keuangan Bukan Bank Dalam Memberikan Distribusi Keadilan Bagi Masyarakat. Universitas Sebelas Maret : Surakarta.
5. John Goddard & John O.S. Wilson. 2009. Competition in Banking : A Disequilibrium Approach. *Journal of Banking and Finance*.
6. Nurhadi. Analisis Hukum Perbankan Konversi Bank Konvensional Menjadi Bank Syariah. *Jurnal Studi Islam*. 3(2):1-10
7. Sugiyono. 2014. Metode Penelitian Pendekatan Kuantitatif, Kualitatif dan R&D. Bandung : Alfabeta CV.
8. Widiastuti. 2008. Masalah Hukum Koperasi Berbadan Hukum yang Berstatus Pasif dan Beku. *Wacana Hukum*. 7(2):14-51
9. Undang Undang Dasar NRI 1945 tentang Indonesia sebagai Negara Hukum
10. Undang Undang Dasar 1956 tentang Tatanan Perekonomian
11. Undang Undang No.10 Tahun 1998 mengenai Perjanjian Hukum Islam
12. Undang Undang Republik Indonesia Nomor 10 Tahun 1998 tentang Lembaga Keuangan Bank
13. Undang Undang Republik Indonesia Nomor 14 Tahun 1967 tentang Pokok Pokok Perbankan
14. Undang Undang No.25 Tahun 1992 mengenai Aturan Koperasi
15. Undang Undang No.25 Tahun 1992 mengenai Pertanggungjawaban Kegiatan Koperasi