



Juridical Analysis on The Potential of Conflicts Between Credit Union Financial Institution and Its Service Users

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ABSTRACT

At present there is a dualism of licensing and supervision of financial institutions, Financial Services Authority on one hand and on the other hand Governors, Regents, Mayors or Village Owned Enterprises for a financial institution in the form of Cooperative. This situation keeps the potential for major conflict in the operation of Credit Union as a financial institution. Based on the juridical and empirical facts above, a research on the problem aiming to provide a comprehensive solution was carried out. The proposed legal problem was: How is the conflict potential emerging from the relationship between Credit Union and its service users. The research used a normative research method and the secondary data was the main data in this study. Information from interested parties became additional data strengthening the analysis to be carried out. The analysis in this study used qualitative analysis. The result of the study showed that there was identification on conflict potential to the existence of the institution itself and the lack of legal protection for Credit Union service users.

Keywords: credit union, institution, model, identification, cooperative

1. Introduction

National Survey on Financial Literacy and Inclusion conducted by Financial Services Authority in 2016 showed a financial literacy index of 29.66% and a financial inclusion index of 67.82%. This percentage was an increase compared to the National Survey on Financial Literacy and Inclusion in 2013, namely the financial literacy index of 21.84% and the financial inclusion index of 59.74%. There was also an increase on financial understanding from 21.84% to 29.66%, as well as increased access to financial products and services from 59.74% to 67.82% (OJK, 2018). This data shows the increasing public understanding of financial institutions in the community. The main problem in rural economic development relates to the acquisition of funds as the business capital. Banks as an intermediary institution in distributing funds to the public must meet collateral



and administrative requirements. These administrative requirements and collateral availability have caused the minimum use of banking institutions. The presence of financial institutions as fund providers having the flexibility in administration and collateral is a "helper" for rural communities. *Bank plecit* (institution or individual lending money with high interest), private pawn shops and money lenders are phenomena providing an alternative provision of funds present as if they were helpers.

Credit Union as one of the financial institutions now widely known in the community has introduced a more promising formula for providing funds that is more flexible in the administrative procedures than banks. One of the savings and loan institutions widely trusted by the public is Credit Union.

There is a dualism of licensing and supervision of financial institutions, Financial Services Authority on one hand and on the other hand Governors, Regents, Mayors or Village Owned Enterprises for a financial institution in the form of Cooperative. This situation keeps the potential for major conflict in the operations of Credit Union as a financial institution. If not well-managed, this conflict will potentially arise major problems from the aspect of both public finance and Credit Union as a financial institution already been trusted by the community. Credit Union as a non-banking financial institution requires an intervention of the protection mechanism on the interests of the community and the financial institution itself. The urgency of this study can be seen that now Credit Union is a financial institution in the form of cooperative providing financial services, such as savings, loans, insurance, and money transfer services (WOCCU 2003). Data until 2016 showed that the number of individual members was 2,731,242 and the number of Credit Unions is 914. (cuccoindo, 2018). It is expected that in 2020 the number of the members can reach 10 million. The assets also increased from 14 trillion rupiahs to 19 trillion rupiahs. (Neraca, 2018) On the other hand, the licensing and supervision mechanism has not been fully regulated by the government. Therefore, the potential for conflict is great and the protection of Credit Union and the service users is institutionally very vulnerable. Based on the juridical and empirical facts above, the legal problem is formulated as follow: How the conflict potential arises from the relationship between the Credit Union financial institution and its service users. The purpose of this study was to find the identification of conflict potential arising from the relationship between service users and Credit Union, and the proposed solution concept to the conflict potential.

2. Methods of Research

This normative research focused on reviewing regulations. Secondary data, the main data, were in the form of primary and secondary legal materials, completed by information from interviewees in the Financial Services Authority or Credit Union Institution. The data were then analyzed by using qualitative data analysis – carried out at the first by sorting all the obtained data, both secondary data and primary data. All of these data were selected in accordance with the subject matter, namely the data relating to financial literacy and inclusion regulations as the primary legal materials and also the main data, and journals, books and opinions of Financial Services Authority or Credit Union Institution official as the secondary legal materials. All already selected data were



later described and then analyzed qualitatively. Finally, the conclusion in this paper was conducted by a deductive conclusion technique.

3. Result Of Research

3.1. Overview of Credit Union Financial Institution

Financial institutions in Indonesia consist of formal and non-formal financial institutions. Formal financial institutions are divided into banking and non-banking financial institutions. Non-banking financial institutions include venture capital, factoring and insurance companies. They are those growing in the community both in the form of legal entities such as cooperatives and only in the form of associations. The existence of these financial institutions depends on public trust. There are several factors influencing public trust on financial institutions both in the form of banking and non-banking (Theresia & Maria, 2009). These financial institutions with all characteristics are needed by the community to empower the economic sector in Indonesia.

From the aspect of the legal protection mechanism, formal financial institutions are both established and supervised by the Financial Services Authority. The Financial Services Authority is an institution since 2011 having the authority to supervise and regulate all financial institutions in Indonesia (Theresia & Sumarsono, 2012). The empirical fact shows that many non-formal financial institutions are trusted by the public. On the other hand, those non-formal financial institutions are financial institutions carrying out activities as an intermediary institution not yet been specifically affected by government regulations. The Financial Services Authority does not have the authority to give licenses, supervision or sanctions to non-formal financial institutions.

The emerging legal problem requires the existence of a legal protection mechanism for the community (Theresia & Endang, 2007) especially for service users of non-formal financial institutions that factually are in great demand by the public. In fact, there are more than 2,731,242 members (Cuccoindo, 2018) of savings and loan cooperatives in Indonesia. This fact shows that many people use financial institutions sociologically accepted by the community. On the other hand, the presence of sociologically accepted financial institutions has not provided legal protection for the community because there is a dualism of licensing and supervision of financial institutions.

3.2. Credit Union Regulations in Indonesia

Credit Union is an institution engaged in savings and loans seeking to improve the welfare of its members. As stated by Ginta Railene & Lina S., credit union as a finance institution is valued by financial ratio although they have a social aim as well (Raileness, Ginta and Lina S., 2015) As also stated by Carol Power, Ray O'Connor, Olive McCarthy and Michael Ward, a key differentiating characteristic of credit union is the concern of community and social responsibility (O'Connor et al, 2012). This characteristic is manifested by providing training and education so that the members have good financial management skills. The relationship among the members is the dominant element. This distinctive feature distinguishes savings and loan cooperatives in



general from Credit Union. Though the development of this element is sometimes not prioritized, as said by Noreen Byrne, Olive McCarthy, Michael Ward and JJ Mac Murtry, when member value is discussed, it tends to be confined to the core product aspects, such as increased range of services and better rates rather than relational aspects (Byrne, Noreen et al, 2012: The Credit Union is in the form of a cooperative law.

At present there is no regulation in Indonesia specifically providing regulations regarding Credit Union. The existing regulation linked to the existence of Credit Union is Act No.25 of 1992 regarding Cooperatives because the legal form of Credit Union is Cooperative. The Act regulates the establishment, guidance and supervision, carried out by the Minister of Cooperatives and Small and Medium Enterprises. As a consequence, the existence of Credit Union is under the authority of Ministry of Cooperatives and Small and Medium Enterprises.

Act No.25 of 1992 states that Cooperatives obtain the legal entity status after their deed of establishment is approved by the government. Furthermore, Article 3 of Government Regulation No.4 of 1994 concerning Requirements and Procedures for Ratifying the Deed of Establishment and Amendment to the Articles of Association regulates Cooperative Legal Entity Status. The article states that the Cooperatives obtain the status of a legal entity after the deed of establishment is approved by the Minister, in this case by the Minister of Cooperatives and Small and Medium Enterprises. Thus, the Credit Union is under the Department of Cooperatives and Small and Medium Enterprises.

In relation to cooperatives engaging in saving and borrowing activities, there is Government Regulation No.9 of 1995 concerning the Implementation of Savings and Loans Activities by Cooperatives. Credit Union works within the savings and loan so that it is subject to the requirement of Government Regulation No.9 of 1995 concerning the Implementation of Savings and Loan Activities by Cooperatives. The Government Regulation constitutes the implementation of Act No.25 of 1992 concerning Cooperatives. This regulation further regulates the form of the company and the establishment of cooperatives carrying out savings and loan activities. The regulation regulates organizations, capital, business activities, fostering and dissolution of cooperatives which have savings and loan activities. Establishment of Cooperatives is related to the existence of legal status since the ratification of the cooperative establishment deed by the Minister. The ratification of the establishment deed of the Savings and Loan Cooperative is valid as a business permit. Based on this provision, the ratification of the Cooperative's establishment deed also applies as the business permit for the cooperatives. The Government Regulation No.9 of 1995 also regulates guidance and supervision by the Minister of Cooperatives. This means that the Minister of Cooperatives has the authority to regulate and supervise Cooperatives with Savings and Loans activities.

The next regulation is the Regulation of Minister of Cooperatives and Small and Medium Enterprises of Republic of Indonesia Number 15/Per/M.KUKM/IX/2015 concerning Savings and Loans by Cooperatives. The ministerial regulation is an implementation of regulation concerning the legality of licensing of cooperatives that carry out savings and loan activities. This ministerial regulation stipulates that the business legality is in the form of a savings and loan business permit,



given to the Savings and Loan Cooperatives and the Cooperative Savings and Loan Unit only after the deed of establishment. The issuance of a savings and loan business permit is stipulated by the Regent/Mayor who issues a business permit if the members of Savings and Loan Cooperatives/the Cooperative Savings and Loan Unit are within one region. The permit will be issued by Governor if the members are cross-regional members, but still within one province.

Then, the business permit will be issued by the Minister if the members are cross-provincial. For the fostering, the Minister will conduct the fostering to the Primary and Secondary Savings and Loan Cooperatives and the Cooperative Savings and Loan Unit. Meanwhile, the technical guidance will be carried out by the Regent/Mayor, the Governor and Deputy of the Finance Sector, depending on the area of membership. In the field of supervision, the Savings and Loan Cooperative is required to make a report to the party giving the savings and loan business permit. Local government also has the authority to conduct growth-level assessment of Savings and Loan Cooperatives and the Cooperative Savings and Loan Unit. Based on the above regulation, Credit Union is normatively in the form of cooperative carrying out savings and loan activities and subject to the legality of establishment under the Minister of Cooperatives and Small and Medium Enterprises, and the guidance and supervision are technically carried out by the Regent/Mayor, the Governor and the Deputy of the Finance Sector, depending on the area of membership.

3.3 Financial Services Authority Existence in the Regulation and Supervision of Credit Union

The Financial Services Authority is an institution that has the objectives set out in Article 4 stating that Financial Services Authority is formed with the aim that all activities in the financial service sector are organized regularly, fairly, transparently and accountably, able to realize a financial system that grows sustainably and stably, and able to protect the interests of consumers and community. Financial institutions in Indonesia are the domain of Financial Services Authority supervision, namely Banking, Capital Market, and Non-Banking Financial Institution. The Non-Banking Financial Institutions consist of insurance, financial institution, specialized financial institution, and microfinance institution. Act No.1 of 2013 concerning Microfinance Institution provides the definition of a microfinance institution as a financial institution specifically established to provide business development services and community empowerment through loans or financing in micro-scale businesses to the members and community, deposit management, and business development consultation and is not merely seeking profit. Credit Union is an institution that can be categorized as Microfinance Institution if viewed from the operational aspects in which the supervision and regulation is under the Financial Services Authority realm. As a consequence, each microfinance institution must obtain a business permit issued by the Financial Services Authority. Meanwhile, the empirical fact in Indonesia is that the legality of establishing, operating, fostering and supervising Credit Union is not under the Financial Services Authority normatively carrying out the control and supervision of the entire financial service sectors due to the limited



human resources and the large number of financial institutions currently under the supervision and regulation of the Financial Services Authority (Indonesian Banking Statistic, 2019).

The dualism situation of the regulation and supervision of Credit Union as an institution engaging in savings and loan activities factually driving the economy condition raises conflict potential able to affect public trust to financial institutions. The dualism can be shown by the normative juridical regulation and supervision of Credit Union that should be under the authority of the Financial Services Authority. On the other hand, empirically viewed from the aspects of legality, establishment, business permit, guidance and supervision, Credit Union is under the Ministry of Cooperatives and Small and Medium Enterprises. This dualism results in the undesirable potential of public distrust to Credit Union particularly and financial institutions generally.

3.4. Identification of Conflict Potential Emerging from the Relationship Between Credit Union and the Service Users

Based on the above arrangement Credit Union in the form of a cooperative has not yet normatively become the Financial Services Authority's supervision and regulation realm. On the other hand, there are two forms of legal protection given to the society on the fund entrusted to financial institution in the domain of the Financial Services Authority supervision. The first form is preventive legal protection in the form of Financial Services Authority obligation through financial institutions related to financial literacy and inclusion, and the existence of Financial Services Authority competency to carry out regulatory and supervisory duties as stipulated in the

Act of Financial Services Authority. The second form is repressive legal protection in the form of the existence of Financial Services Authority competency arrangement to facilitate the dispute settlement to people or parties who do not get their rights or feel disadvantaged by the operation of financial institutions. Because Credit Union has not been under the supervision and regulation of the Financial Services Authority which has the duty to regulate and supervise all financial service sectors, both banking and non-banking, consequently the legal protection mechanism provided by Financial Services Authority to society as users of financial service institutions cannot be benefited by users of Credit Union services. Users of credit union services will not be able to receive both preventive and repressive legal protections. In the event that credit union legal obligations to its users cannot be fulfilled due to the bad growth and other external factors, Credit Union service users cannot use the dispute settlement mechanism provided by Financial Services Authority. The users can obtain repressive legal protection through general civil and criminal processes.

The proposed solution is that the fostering, regulating, and supervising of microfinance institutions is conducted by the Financial Services Authority (Article 28 paragraph 1 Act on

Microfinance Institutions¹). In conducting fostering, the Financial Services Authority coordinates with the Ministry performing the cooperative affairs and Ministry of Home Affairs. Furthermore, the guidance and supervision of Microfinance Institutions are delegated to



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regional/city government. This arrangement is a form of legal protection so that the Microfinance Institutions' activities can run in accordance with the objectives of this law. The Financial Services Authority has the authority to give permission, guidance, regulation and supervision. Guidance and supervision are carried out in coordination with the Ministry of Cooperatives and local government from Financial Services Authority.

According to Bentham's utilitarianism theory (Sudikno, 2010), the purpose of law is to provide the greatest benefit and happiness to as many people as possible. So, the concept puts benefit as the main purpose of the law. Its measurement is the maximum happiness for as many people as possible. The assessment of the goodness and justice of the law depends on the ability of the law to provide happiness to human beings. The expediency is interpreted as happiness, in which the essence of it is pleasure and a life free from misery. To realize the happiness of individuals and society, legislation must reach four goals (peter, 2008): (1) to provide subsistence (a living); (2) to provide abundance food; (3) to provide security; and (4) to attain equity. The development of Credit Union is the answer to the difficult situation in getting business capital for rural communities. The provisions governing Credit Union should base on the existence of Credit Union. Institutionally, it has become the community understanding that generally it is an institution in the form of a cooperative. On the other hand, the Credit Union business activities are related to financial management and in substantially must be managed professionally in accordance with professional financial management standard.

The effort to overcome conflict potential that may occur can be minimized from the institutional and functional aspects, and the managerial aspect of the substance. From the institutional and functional aspects, the existence of Credit Union is essential to be maintained in the framework of sustainability. The conflict potential from the aspect of the institution authorizing in granting permit, supervision and sanction can be prevented through the rules of either the Microfinance Institution or the Savings and Loan Cooperative ruling as the Regional Government in supervision. Therefore, the role optimization of the Regional Government in the coordination of the Ministry of Cooperatives and Financial Services Authority needs to be optimized. From the managerial aspect, the management of Credit Union requires assistance so that it can be expected that Credit Union can provide funding solution as well as investment media for society. The presence of the Financial Services Authority in conducting managerial supervision is very important because the Financial Services Authority carries out the mandate of the law to conduct the supervision.

4. Conclusion

Based on the above discussion, normatively Credit Union in the form of a cooperative, carrying out savings and loan activities, is subject to the legality of establishment under the Minister of Cooperatives and Small and Medium Enterprises and technical guidance and supervision by the Regent/Mayor, Governor and Deputy of Finance Sector, depending on the area of membership. The Credit Union has not factually been under the supervision and regulation of



the Financial Services Authority which normatively has the duty to regulate and supervise all financial service sectors in the forms of both banking and non-banking.

The identification of emerging conflict potential is a consequence of the situation of dualism in regulation and supervision that the preventive and repressive legal protection mechanisms provided by the Financial Services Authority to public as the users of financial service institutions cannot be benefited by Credit Union service users. If there is a conflict by which Credit Union cannot meet its legal obligations to its service users due to bad growth and other external factors, Credit Union service users are not able to use the dispute settlement mechanisms provided by the Financial Services Authority. They can obtain repressive legal protection through general civil and criminal processes. The proposed solution concept for optimizing the role of the Regional Government in coordinating with the Ministry of Cooperatives and the Financial Services Authority needs to be optimized. As from the managerial aspect, the management of Credit Union requires assistance so that Credit Union can be expected to provide funding solutions as well as an investment media for society. The presence of Financial Services Authority in conducting managerial supervision is very essential because the Financial Services Authority carries out the mandate of the law in supervision.

References

Anita Christiani, Th. and Endang Sumiarni, (2007). *Problematik Hukum Perlindungan Nasabah Bank*, Hibah Bersaing , Direktorat Jendral Pendidikan Tinggi.

Anita Christiani, Th. (2009), *Analisis terhadap Faktor-faktor Yang Mempengaruhi Kepercayaan Masyarakat Berpotensi Terhadap Bank Syariah Di kota Yogyakarta*, LPPM, Universitas Atma Jaya Yogyakarta.

Anita Christiani, Th and Sumarsono Raharjo, (2012). *Penyelesaian Dikotomi Pengkajian Hukum Sebagai Obyek Study*, Hibah Fundamental, Direktorat Jendral Pendidikan Tinggi.

Anita Christiani, Th.and Maria Hutapea, (2014). *Metode Pendekatan Penelitian Hukum Sebagai Upaya Penyelesaian Inkonsistensi Hukum Lahirnya Undang-Undang Otoritas Jasa Keuangan*, Hibah Fundamental, Direktorat Jendral Pendidikan Tinggi

Ginta Raileness and Lina S, (2015). "Perfomance Valuation of Credit Union Having Sosial and Self Sustaining aim," *Procedia Sosial Behavioral Sciences*, 213 (2015) pp. 2213-429.

<http://www.cucoindo.org/>. Retrieved August 17, 2018.

<http://www.cucoindo.org/index.php>. Retrieved August 10, 2018.

<http://www.neraca.co.id/article/90887/meneropong-pajak-credit-union>. Retrieved May 18, 2019.



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<https://swa.co.id/swa/trends/mengejutkan-potensi-pajak-credit-union>. Retrieved May 8, 2019.

<https://www.ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/Siaran-Pers-OJK-Indeks-Literasi-dan-Inklusi-Keluangan-Meningkat.aspx>, Retrieved August 8, 2018.

Noreen Byrne, et al., (2012). Credit Union Restructuring : “Don’t , Forget The Member,” *International Journal of Co-Operative Management* , Vol 2, No 1.1, October 2012.

Peter Mahmud Marzuki, (2008). *Pengantar Ilmu Hukum*, Pranada, Jakarta.

www.ojk.go.id Statistic Perbankan Indonesia, Volume 17, No 2, Januari 2019., Retrieved August 31 Maret 2019.

Ray O Connor, al al., (2012), “Credit Unions and Community in Ireland: Towards Optimizing the Principle Of Social Responsibility,” *International Journal of Co-Operative Management* , Vol 6, No 1.1, October 2012.

Sudikno Mertokusumo, (2010), *Mengenal Hukum*, Liberty, Yogyakarta.