

Analysis of Judgement on Cancellation of Bankruptcy of Intidana Saving and Loan Cooperative (Review of the Authority to File for Bankruptcy and PKPU against Cooperatives)

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Submission Track:	ABSTRACT
Received: May 12, 2023	Purpose: This scientific paper aims to analyze the review of the cancellation of the Intidana Cooperative bankruptcy associated with the authority to submit bankruptcy and PKPU to the cooperative. Methodology: Using normative legal research methods, this study examined primary legal materials, including Law Number 37 of 2004 concerning Bankruptcy and PKPU, Law Number 25 of 1992 concerning Cooperatives, and Decision Number 43 PK/Pdt.Sus-Pailit/2022, as well as secondary journals, books, and scientific publications related to cooperative bankruptcy.
Final Revision: June 16, 2023	Results: Bankruptcy proceedings against cooperatives do not have any special requirements, like those against other institutions such as banks, securities companies, stock

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exchanges, clearing and guarantee agencies, and other institutions. In this case, a cooperative can be petitioned for bankruptcy in the Commercial Court if it has two or more creditors and against whom a debt that is due and collectible has not been paid. The application can be filed by 2 (two) parties, namely the cooperative itself as the debtor and its creditors. The absence of regulations governing the mechanism for filing for bankruptcy in cooperatives has a negative impact on the sustainability of cooperatives. Currently, many problematic cooperatives are filing for bankruptcy and PKPU. One of the problematic cooperatives that the authors are currently studying is the Intidana Cooperative. To overcome the problems in these troubled cooperatives, the government issued SEMA Number 1 of 2022 on the Special Civil Chamber Law Formulation regarding Bankruptcy and Suspension of Debt Payment Obligations for Cooperatives, where applications for bankruptcy and PKPU statements against cooperatives can only be submitted by the Minister in charge of government affairs in the field of cooperatives, i.e., the Minister of Cooperatives and SMEs and Cooperatives that run the business of Microfinance Institutions whose licenses are from OJK can only be submitted by OJK.

Applications of the study: The government is expected to immediately make changes to the Bankruptcy Law and the Cooperatives Law in terms of the mechanism for filing bankruptcy and PKPU for cooperatives, determining clear and firm boundaries between open loop and close loop cooperatives, and where OJK will supervise cooperatives that carry out financial services business activities.

Novelty/Originality of this study: Analyzing the decision of the judge's cancellation of the Intidana Cooperative Bankruptcy in the Decision of Reconsideration is associated with the authority to submit bankruptcy and PKPU in SEMA Number 1 of 2022.

Keywords: Decision, Bankruptcy, Cooperative.

ABSTRAK

Tujuan: Tulisan ilmiah ini bertujuan untuk menganalisis kajian pembatalan pailit Koperasi Intidana terkait dengan kewenangan mengajukan pailit dan PKPU kepada koperasi.

Metodologi: Dengan menggunakan metode penelitian hukum normatif, penelitian ini mengkaji bahan hukum primer, antara lain Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan PKPU, Undang-Undang Nomor 25 Tahun 1992 tentang Perkoperasian, dan Putusan Nomor 43 PK/Pdt.Sus-Pailit/2022, serta jurnal sekunder, buku, dan publikasi ilmiah yang berkaitan dengan kepailitan koperasi.

Temuan: Perkara pailit terhadap koperasi tidak memiliki persyaratan khusus, seperti terhadap lembaga lain yakni bank, perusahaan sekuritas, bursa efek, lembaga kliring dan penjaminan, dan lembaga lainnya. Dalam hal ini, koperasi dapat dimohonkan pailit di Pengadilan Niaga jika mempunyai dua atau lebih kreditur dan terhadapnya suatu utang yang telah jatuh tempo dan dapat ditagih belum dibayar. Permohonan

dapat diajukan oleh 2 (dua) pihak, yaitu koperasi itu sendiri sebagai debitur dan krediturnya. Tidak adanya peraturan yang mengatur tentang mekanisme pengajuan pailit pada koperasi berdampak negatif terhadap keberlangsungan koperasi. Saat ini, banyak koperasi bermasalah yang mengajukan pailit dan PKPU. Salah satu koperasi bermasalah yang sedang dikaji oleh penulis adalah Koperasi Intidana. Untuk mengatasi permasalahan pada koperasi bermasalah tersebut, pemerintah menerbitkan SEMA Nomor 1 Tahun 2022 tentang Perumusan Undang-undang Kamar Perdata Khusus tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang Koperasi, dimana permohonan pailit dan pernyataan PKPU terhadap koperasi hanya dapat diajukan oleh Menteri yang menyelenggarakan urusan pemerintahan di bidang koperasi, yaitu Menteri Koperasi dan UKM yang menyelenggarakan usaha Lembaga Keuangan Mikro, dimana izin dari OJK hanya dapat diajukan oleh OJK.

Kegunaan: Pemerintah diharapkan segera melakukan perubahan terhadap UU Kepailitan dan UU Koperasi dalam hal mekanisme pengajuan pailit dan PKPU bagi koperasi, penetapan batasan yang jelas dan tegas antara koperasi open loop dan close loop, dan keberadaan OJK akan mengawasi koperasi yang melakukan kegiatan usaha jasa keuangan.

Kebaruan/Originalitas: Menelaah Putusan Hakim Pembatalan Pailit Koperasi Intidana dalam Putusan Peninjauan Kembali dikaitkan dengan kewenangan mengajukan Pailit dan PKPU dalam SEMA Nomor 1 Tahun 2022.

Kata kunci: Putusan, Pailit, Koperasi

INTRODUCTION

A cooperative is a business entity consisting of a person or legal entity of cooperatives based on the principle of cooperatives and the people's economic movements based on the principle of kinship. Structurally, cooperatives have a formal form that distinguishes them from other forms of businesses. because cooperatives actually aim to institutionalize a specific set of values in the economic field (Sumiyati, 2022). Cooperatives are business entities formed as builders of the Indonesian state economy based on the kinship spirit (Soeharto, 2019). Cooperatives are also organizations consisting of bodies and people and are governed by regulations that ensure the welfare of their members. Until now, cooperatives have undergone numerous developments.

The Central Statistics Agency recorded 130,354 active cooperatives with a business volume of IDR 197.88 trillion in 2022, which then increased by 1.96% from 2021 to as many

as 127,846 with IDR 182.35 trillion. The number of active cooperatives grew from 2011 to 2017, according to the trend. However, the number declined by 16.97% to 126,343 units in 2018. This condition occurred along with the dissolution of cooperatives by the Ministry of Cooperatives and SMEs (Kemenkop UKM). It was to change the paradigm of cooperative empowerment from quantity to quality. Indonesia's number of active cooperatives fell again by 2.61% to 123,048 units in 2019. Nevertheless, the number has increased again in the last three years. Meanwhile, the most active cooperatives are in East Java, with 22,979 units. West Java and Central Java occupy the following positions with 16,310 units and 10,081 units of active cooperatives, respectively. Meanwhile, North Kalimantan has the least active cooperatives, with 667 units. Above them are Bangka Belitung and West Papua, with 735 and 760 active cooperatives, respectively (Rizaty, March 2, 2023, 11:00 AM).

The rapid growth of cooperatives also impacts the number of cooperatives with problems with the law—coupled with the COVID-19 pandemic that hit almost all countries in the world and had a destructive impact on the global economy. In Indonesia, COVID-19 also has a negative impact on business people, primarily cooperatives, making cooperatives unable to carry out business activities as before, which results in the absence of income obtained by cooperatives to fulfill their obligations to their members (Fibriani, 2022). The COVID-19 emergency, which is determined as a force majeure, has the understanding that the legal subject (person) is unable to carry out his obligations or perform achievements due to a sudden situation that occurs, and the event cannot be believed to exist at the time an agreement is made; therefore, these circumstances cannot be held responsible in law (Fuady, 2015). It has led to many cooperatives being dissolved and going bankrupt due to the COVID-19 pandemic. According to data from the Troubled Cooperative Task Force (*Satuan Tugas Koperasi Bermasalah*), in 2020 and 2021, 38 cooperatives (savings and loans) submitted bankruptcy and PKPU applications to the Commercial Court. The details were 20 cases in Jakarta, seven in Surabaya, ten in Semarang, and one in Medan. It is the first case in Indonesia, where there have never been more than 22 bankruptcy filings against cooperatives. Most of the petitions were filed by members of the cooperatives themselves (hukumonline, 2022).

According to Article 1 Paragraph 1 of Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, bankruptcy is the total seizure of all assets owned by an insolvent debtor, whose management is carried out by a curator under the direction of a judge. In addition to regulating bankruptcy, the Bankruptcy Law

in Indonesia also regulates the Suspension of Debt Payment Obligations (hereinafter referred to as PKPU). PKPU is a period a Commercial Court that a Judge gives to the debtor and creditors to negotiate ways of paying the debtor's debts, partially or in full, including restructuring the debt if necessary. Regarding the filing of bankruptcy and PKPU against cooperatives in this study, it was found that so far, no rules governed the mechanism of filing for bankruptcy and PKPU before the issuance of Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung*), hereinafter abbreviated as SEMA Number 1 of 2022 regarding the Mechanism of Authority to File for Bankruptcy and PKPU for Cooperatives. The absence of rules in the Bankruptcy Law that allow or prohibit cooperative members from filing bankruptcy petitions and who is authorized to file them has caused many legal problems. The provisions in the Bankruptcy Law do not limit who can file a bankruptcy petition against a cooperative. An application to declare bankruptcy can be filed by a creditor of the cooperative concerned. The Bankruptcy Law also broadly defines debt, which is the root of the problem in bankruptcy. This situation results in cooperative members who do not obtain their funds from the cooperative being able to immediately file a bankruptcy petition against the cooperative in the event of default. Such conditions are, in fact, contrary to the principle of kinship that underlies the formation of cooperatives.

Additionally, a cooperative is a legal entity whose legal responsibility is carried out by the management responsible for its management, and in the event of bankruptcy, problems will be borne together. Before the bankruptcy lawsuit and dissolution of the cooperative, it should be resolved by deliberation first because the establishment of cooperatives uses the principle of kinship, where the existence of cooperatives aims for the welfare of their members. Cooperative members should express a sense of belonging to their respective cooperatives. However, many cooperative members seem like customers with bank savings accounts. Due to the weakness point, cooperatives have become a sector that is easy to bankrupt, i.e., the cooperative management element can be a creditor with the right to file a bankruptcy petition. Indonesian cooperatives should recognize that within themselves exists an Indonesian personality as a reflection of the growth line of the Indonesian nation, which is determined by the life of the Indonesian nation (Afifudin, 2018).

Specifically, the type of savings and loan cooperative is one type that is vulnerable to bankruptcy at this time. In a savings and loan cooperative, the legal relationship between the cooperative and the depositor is based on a lending and borrowing agreement, as seen from the

provisions of Government Regulation Number 9 of 1995 concerning the Implementation of Savings and Loan Business Activities by Cooperatives. As a result, if a cooperative member deposits funds into a savings and loan cooperative, the cooperative should return the funds when the member requests the return. It is stated in the savings and loan agreement's supporting document, Article 1754 of the KUHPerdata. In this research, the authors analyze one of the viral cooperative bankruptcy cases, namely the bankruptcy case of Intidana Saving and Loan Cooperative (*Koperasi Simpan Pinjam*), hereinafter abbreviated as KSP Intidana. Based on the Decree of the Minister of State for Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 14020.BH/KWK.11/V/2001 dated 2001, KSP Intidana is a primary cooperative engaged in the savings and loan business field. KSP Intidana was legally established on May 21, 2001, in the Membership Territory of Central Java Province. Since its establishment, KSP Intidana is believed to have developed rather well; this is based on indicators of increased assets, the number of branch offices, and members or prospective members served; in fact, KSP Intidana was formerly ranked 13th among large cooperatives in Indonesia (Suara.com, 2022).

This research becomes very urgent and fascinating because the bankruptcy case of KSP Intidana went viral. After all, it involved the corruption of Supreme Court officials. KSP Intidana was filed for bankruptcy by two of its creditors, HT and IDKS, represented by their attorneys until the cassation level at the Supreme Court. It is very simple to file for bankruptcy, and according to the Bankruptcy Law, the cooperative must have at least two creditors and not have paid in full at least one debt that has become due and receivable for a bankruptcy declaration to be made against it. It results in the right of cooperative members to file a petition for a declaration of bankruptcy against the cooperative concerned. Furthermore, the bankruptcy provisions in Indonesia since the enactment of the FV until the current Bankruptcy Law do not regulate the application for bankruptcy declaration against cooperatives separately so that cooperative members can file for bankruptcy against cooperatives. Whereas, in practice, many parties depend on the sustainability of the cooperative. It is because the community has placed trust in cooperatives to make investments. Based on the aforementioned background, the authors analyze the Decision of the Judicial Review on the cancellation of the bankruptcy of KSP Intidana concerning the authority to file for bankruptcy and PKPU against cooperatives.

RESEARCH METHOD

The normative legal research method is the one that academics employ. Legal principles research, legal systematics research, legal synchronization research, legal history research, and comparative legal research are all examples of normative legal research (Bambang Sunggono, 2002). A normative juridical strategy, often known as library legal research, was used in this study to conduct the legal research. The legal perspective can conclusively explain why a connected perspective refers to the law and applicable legislation (Taufani, 2020).

The statutory approach examines all laws and rules concerning legal issues (Marzuki, 2007). The laws and rules that still apply and regulate the existing facts are connected to them. Law Number 37 of 2004 concerning Bankruptcy and PKPU, Law Number 25 of 1992 concerning Cooperatives, and Decision Number 43 PK/Pdt.Sus-Bankruptcy/2022 were the laws and regulations used in this study. The conceptual approach, however, deviates from the legal science views and doctrines found in books and journals on Bankruptcy and PKPU (Marzuki, 2007). All legal materials were analyzed using the deductive method, i.e., by analyzing legal provisions as a general matter and then drawing specific conclusions. In this research, the method of collecting legal materials was carried out using research methods sourced from laws and regulations, books, official documents, publications, and research results (Asikin, 2010).

RESULTS AND DISCUSSION

The Supreme Court granted the Judicial Review (PK) in Decision Number: 43 PK/Pdt.Sus-Bankruptcy/2022 on October 13, 2022, filed by KSP Intidana, and annulled Cassation Decision Number: 874 K/Pdt.Sus-Bankruptcy/2022, dated May 31, 2022, declared the Intidana Savings and Loan Cooperative back in its original state and not in a state of bankruptcy. Previously, Intidana Savings and Loan Cooperative had agreed to reconcile and had signed a Deed of Peace dated December 7, 2015, which was then accepted and ratified (homologated) by the Panel of Judges of the Commercial Court at the Semarang District Court as outlined in the Peace Decision (Homologation) Number 10/Pdt.Sus-PKPU/2015/PN.Niaga.Smg dated December 17, 2015, in the case of PKPU. Then, because the Chairman of the Management had been found guilty of committing a criminal offense in connection with the management of the cooperative based on a court decision with permanent legal force, the management of KSP Intidana as specified in the Peace Verdict (Homologation)

had to be replaced by the management designated through a Special Members Meeting so that it is no longer eligible to become a board, and the secretary and treasurer have stated their resignation. Since the Intidana Savings and Loan Cooperative (KSP)'s management change was implemented through the Members' Meeting, the cooperative's highest authority, it did not contravene or conflict with the appropriate legal provisions. It is governed by Law Number 25 of 1992, Article 23 Letter (c), which states: "The Members' Meeting determines the election, appointment, and dismissal of management and supervisors."

During homologation, two KSP Intidana creditors filed a request to cancel Homologation Decision Number 10/Pdt.sus-PKPU/2015/PN Niaga Smg dated December 17, 2015, with the argument that KSP Intidana has been negligent or defaulted in fulfilling the peace deed dated December 7, 2015, while KSP Intidana has denied the arguments of the Petitioners and stated that the Respondent was not negligent in conducting the Peace Deed dated December 7, 2015, which Decision Number 10/Pdt.Sus-PKPU/2015/PN Niaga Smg has ratified. As a result, the Supreme Court granted the request to cancel the homologation agreement and declared KSP Intidana bankrupt with all its legal consequences. KSP Intidana was declared to have failed to fulfill the contents of the peace deed that had been ratified by the Peace Decision (homologation) in Cassation Decision Number: 874 K/Pdt.Sus-Bankruptcy/2022, dated May 31, 2022. To counter the Cassation Decision, KSP Intidana filed a Judicial Review (PK), and the Supreme Court granted the Judicial Review (PK) filed by KSP Intidana and annulled the Cassation Decision Number: 874 K/Pdt.Sus-Bankruptcy/2022, dated May 31, 2022, stating that KSP Intidana was back in its original state and not in a state of bankruptcy. In managing the cassation, it was proven that a criminal conspiracy was committed by the litigants involving Supreme Court officials. They include Supreme Court Judges, Judicial Judges/Substitute Registrars of the Supreme Court, civil servants at the Supreme Court Registry, Supreme Court civil servants, lawyers for the cassation applicant, and KSP Debtors as bribe givers.

The basic regulation on bankruptcy in Indonesia was first introduced in 1905 by the Dutch Government Faillissements-Verordening, Staatsblad 1905-216 jo. Staatsblad 1906-348. After independence, Government Regulation Number 1 of 1998 and Law Number 4 of 1998 were amended and used until now with Law Number 37 of 2004. The legal reform encouraged the creation of the rule of law (Rusli, 2019). In addition, bankruptcy is also regulated in Articles 1131–1134 of the Civil Code. Bankruptcy law is basically civil law (Ridwan, 2018).

The bankruptcy process against cooperatives does not have a special requirement like other institutions such as banks, securities companies, stock exchanges, clearing and guarantee institutions, and other institutions regulated in Article 2 of the Bankruptcy Law. In this case, a cooperative can petition the Commercial Court for bankruptcy if it has two or more creditors against whom a debt that has become due and collectible has not been paid. The application can be filed by 2 (two) parties, namely the cooperative itself as the debtor and its creditors. Furthermore, if the judicial process related to the bankruptcy petition is continued and the court declares the cooperative bankrupt, the cooperative will lose its right to control and manage its assets included in the bankruptcy assets as regulated in Articles 21 and 22 of the Bankruptcy Law. Cooperatives are legal subjects capable of entering into agreements and carrying out their activities represented by cooperative management with separate capital from the assets owned, so cooperatives are legally valid legal entities because the basic establishment is the AD/ART with the agreement of the members and the cooperative management (Asshiddiqie, 2012). Because the cooperative is a legal entity, the declaration of bankruptcy against the cooperative only affects the cooperative. In this case, management is released from responsibility for fulfilling the obligations of the cooperative declared bankrupt to its creditors. However, there is an exception if the deliberate actions or negligence of the management causes bankruptcy. Suppose the bankruptcy is caused by the fault of the cooperative management, based on Article 34 paragraph (1) of Law Number 25 of 1992 concerning Cooperatives. In that case, the management is jointly or individually responsible for bearing the losses suffered by the cooperative.

Furthermore, the dissolution of the cooperative must pay attention to the participants and the original purpose of establishing the cooperative based on the principle of kinship (Ridwan, Hukum Administrasi Negara, 2006). There are various ways to dissolve a cooperative, namely dissolution in accordance with the Cooperative Law, Presidential Decree, or a meeting held by members and obtaining a joint decision. The dissolution decision held in a meeting attended by all members results in a final and inviolable decision because it is a joint decision attended by all members, who also play an important role as people with ownership of the cooperative (Kartasapoetra, 1989). The joint decision results are recorded and promised by members to dissolve the cooperative, which must be obeyed and contain definite and binding legal elements for all members. The bankruptcy process against cooperatives actually has one essence: accelerating the liquidation process to distribute cooperative assets to fulfill

cooperative obligations to its creditors (Soeharto, 2019). However, the current bankruptcy mechanism for cooperatives is actually contrary to the family principle that underlies the establishment of cooperatives, as stipulated in Article 2 of the Cooperatives Law. Article 33 of the 1945 Constitution of the Republic of Indonesia essentially mandates the application of the kinship concept in creating cooperatives. Additionally, unlike other legal companies, cooperatives truly exist to advance the welfare of their members and society rather than to maximize profit.

Concerning the implementation of this principle, the bankruptcy process against cooperatives can actually be claimed to be contrary to the principle of kinship. The KPKPU and Cooperatives Laws both have sections that demonstrate this, which do not limit which parties can file a bankruptcy petition against a cooperative. In this case, members are given the right to file a bankruptcy petition against the cooperative, both with and without considering the fate of other cooperative members (Fibriani, 2022). Furthermore, with the bankruptcy petition, there is a possibility that the cooperative can be dissolved due to the bankruptcy declaration filed against it. As a result, the dissolution of the cooperative's business activities can have implications for the welfare of the cooperative members if they do not submit the application (Adyatama, 2022). In addition, filing a bankruptcy petition against a cooperative by its members can potentially decrease the cooperative's credibility due to its vulnerability to bankruptcy petitions (Hayati, 2022). Considering the abovementioned explanation, it can be stated that the bankruptcy process against cooperatives will have an adverse impact. In addition, this process actually injures members' interests and does not heed the family principle of the cooperative itself.

Regarding the parties authorized to file for bankruptcy and PKPU, the provisions have been stated in Article 2 for bankruptcy and Article 222 of the Bankruptcy Law. However, there have been some changes along with many recent regulations, among them:

1) Debtor

It is in the event that there are more than one creditor for the debtor. In order to propose a peace plan that includes an offer to pay part or all of the debt to creditors, debtors who are unable or anticipate being unable to continue paying their due and collectible debts may apply for PKPU (see Article 222 paragraphs (1) and (2) UUK and PKPU).

2) Creditors

In order to give the debtor time to submit a peace plan that includes an offer to pay some or all of its creditors, creditors who file for PKPU with the expectation that the debtor will not be able to continue paying its debts that are due and collectible may request that the debtor be granted a suspension of the obligation to pay debts (Paragraph (3) of Article 222).

3) Financial Services Authority

The Financial Services Authority (*Otoritas Jasa Keuangan*), hereinafter abbreviated as OJK is governed by Law Number 21 of 2011 (the OJK Law), which states in Article 55:

- a) Since December 31, 2012, the functions, duties, and authority to regulate and supervise financial services activities in the Capital Market, Insurance, Pension Funds, Financing Institutions, and Other Financial Services Institutions sectors have been transferred from the Minister of Finance and the Capital Market and Financial Institutions Supervisory Agency to OJK.
- b) As of December 31, 2013, OJK has taken over the roles, responsibilities, and power from Bank Indonesia to oversee and regulate financial services activities in the banking sector.

OJK's responsibilities are governed by Article 6 of the OJK Law, which states: OJK is responsible for regulating and supervising:

- a. banking industry financial services activity;
- b. activities related to financial services in the capital market sector; and
- c. financial services provided by pension funds, financing institutions, insurance companies, and other financial services organizations.

Only the Capital Market Supervisory Agency (Bapepam-LK) transmits all tasks, duties, and authority of financial regulation and supervision in the Capital Article sector to the OJK in accordance with the stipulations of Article 55 of the OJK Law. Bank Indonesia and the Minister of Finance continue to carry out their other responsibilities and powers in accordance with the provisions of the applicable laws and regulations, and they continue to submit bankruptcy applications on behalf of banks, pension funds, and state-owned businesses that serve the public interest (Krista Yitawati, 2022).

However, Sutan Remy Sjahdeini, in his book *History, Principles, and Theory of Bankruptcy Law*, has a different opinion. According to him, indeed, in Article 2 paragraph (3) of Law Number 37 of 2004, in the event that the debtor is a bank, the bankruptcy application is submitted by BI. Nevertheless, after the enactment of the OJK Law, the function of filing for

bankruptcy, as mentioned in Article 2 paragraph (3) of Law Number 37 of 2004, is no longer carried out by BI but by OJK (Sjahdeini, 2016).

Meanwhile, the regulation regarding who is authorized to file for bankruptcy and PKPU against cooperatives is not regulated in Law Number 37 of 2004 on Bankruptcy and PKPU or Law Number 25 of 1992 on Cooperatives. It has an adverse impact because, eventually, any party, including members of the cooperative who provide loans to the cooperative, can file a bankruptcy petition against the cooperative. Whereas in practice, many parties depend on the sustainability of the cooperative. It is because people have placed their trust in cooperatives to save money. In addition, many see cooperatives as investment institutions because, at present, many cooperatives promise profit sharing at a specific rate, so many members depend on the existence of cooperatives. Thus, there is an urgency for the state to authorize a particular medium concerning bankruptcy petitions against cooperatives so that cooperatives are not easily petitioned for bankruptcy under pretexts that are not in accordance with the principle of kinship in the nature of the cooperative establishment.

However, bankruptcy and PKPU proceedings against cooperatives are no longer permitted arbitrarily with the publication of the SEMA Number 1 of 2022. The Supreme Court held a Chamber Plenary Meeting from November 13 to November 15, 2022, to consider judicial technical and non-technical concerns in each chamber. The Supreme Court has published Circular Letter Number 1 of 2022 on the Application of the Formulation of the Results of the Supreme Court Chamber's 2022 Plenary Meeting as Guidelines for the Implementation of Tasks for Courts in the Formulation of the Special Civil Chamber's Law regarding Bankruptcy and Suspension of Debt Payment Obligations for Cooperatives. The process for submitting a bankruptcy declaration application is as follows (Special Civil Chamber Law Formulation SEMA Number 1 of 2022):

1. Application for Bankruptcy Declaration and Application for PKPU against Cooperatives can only be submitted by the Minister in charge of government affairs in the field of cooperatives.
2. Application for Bankruptcy Declaration and Application for PKPU against Cooperatives that run the business of Microfinance Institutions (MFIs) whose license is from the OJK can only be submitted by OJK.
3. Application for PKPU filed by creditors whose peace plan is rejected by creditors can be filed for cassation. If the cassation appeal is granted, the ruling cancels the commercial

court's decision at the District Court and declares that the debtor is not in a state of bankruptcy.

4. Decisions on Temporary PKPU or Permanent PKPU cannot be appealed in cassation.

A significant development is the SEMA Number 1 of 2022, which addresses specific civil matters that govern the bankruptcy process and PKPU. According to the SEMA, only the Minister responsible for overseeing government matters about cooperatives, i.e., the Minister of Cooperatives and SMEs, may submit applications for bankruptcy declaration and PKPU against cooperatives. Because of this rule, dishonest cooperative managers can no longer employ the bankruptcy and PKPU mode schemes. According to the Small and Medium Enterprises (SMEs) and Cooperatives Ministry's official website, several cooperatives have problems, causing losses to member funds. This loss reaches a fantastic figure—to be precise, IDR 26 trillion. The cooperatives in question include KSP Sejahtera Bersama, KSP Indosurya, KSP Pracico Inti Sejahtera, KSPPS Pracico Inti Utama, KSP Intidana, Koperasi Jasa Wahana Berkah Sentosa, KSP Lima Garuda, and KSP Timur Pratama Indonesia. The Ministry of Cooperatives had difficulties mitigating the eight problematic cooperatives that cost the public IDR 26 trillion, as Law Number 25 of 1992 on Cooperatives does not have the authority to supervise cooperatives. The law states that cooperative supervision is conducted internally within the cooperative itself.

SEMA Number 1 of 2022 is also a significant breakthrough in resolving cooperative bankruptcy issues to protect cooperatives and their members and encourage cooperatives to settle payment obligations to their members to the maximum extent by optimizing cooperative assets as payment sources. For this reason, it is essential to immediately reconstruct the Bankruptcy and Cooperatives Laws by including a mechanism for filing bankruptcy and PKPU for cooperatives to provide legal certainty.

CONCLUSION

The issuance of SEMA Number 1 of 2022 related to special civil matters that regulate the mechanism of bankruptcy and PKPU is a significant breakthrough in resolving cases of troubled cooperatives, one of which is the decision that the authors reviewed, namely Judicial Review Decision Number: 43 PK/Pdt.Sus-Bankruptcy/2022. With the issuance of the SEMA, requests for bankruptcy statements and PKPU requests against cooperatives can only be submitted by the Minister in charge of government affairs in the field of cooperatives, namely

the Indonesian Minister of Cooperatives and SMEs. The regulation's issuance results from the many problems in cooperatives that harm many parties, especially their members. Moreover, in the future, the government needs to immediately make changes to the Bankruptcy Law and the Cooperatives Law in terms of the mechanism for filing bankruptcy and PKPU for cooperatives, determining clear and firm boundaries between open loop and close loop cooperatives, and ensuring that cooperatives that carry out financial services business activities will be supervised by the OJK. In comparison, in close-loop cooperatives, supervision is still carried out by KemenkopUKM so that legal certainty will be created and there will be no more cooperative practices that harm the community.

REFERENCES

- Adyatama, E. (2022). Bankruptcy Alert for Other Troubled Cooperatives.
- Afifudin. (2018). Business Monopoly of Saving and Loan Cooperatives in Review of Law No.25 of 1992 on Cooperatives. *Journal of USM Law Review*, 1(1), 106-126.
- Agitha Putri (2021). Delay in the Ratification of Peace in the Delay of Debt Payment Obligations by Judges Associated with the Principle of Legal Certainty. *Journal of Padjadjaran Poros Law Vol 3, Number 1*, 33.
- Asikin, A. d. (2010). *Introduction to Legal Research Methods*. Jakarta: Rajawali Press.
- Asshiddiqie, J. D. (2012). *Hans Kelsen's Theory of Constitutional Law*. Jakarta: Press.
- Bardan, (2021, September 7). Retrieved 4 8, 2022, from kontan.co.id: <https://nasional.kontan.co.id/news/government-considers-moratorium-on-pkpu-and-bankruptcy-this-is-the-reason>
- Bambang S (2002). *Legal Research Methods*. In B. Sunggono, *Legal Research Methods* (pp. 42-43). Jakarta: Raja Grafindo Persada.
- Dewi (2016). *Business Law Review: Urgency of Postponement of Debt Payment Obligation (PKPU) in Bankruptcy*. *Journal of Access, Institute for Research and Community Service (LPPM) Ngurah Rai University, Denpasar, Volume 8 Number 1 June, I*.
- Fibriani, R. (2022). *Legal Review of Bankruptcy when Defaulting on Payments during the Pandemic*. *Journal of Ius Constituendum*, 7(1), 91-92.
- Fibriani, R. (2022). *Legal Review of Bankruptcy when Defaulting during the Covid-19 Pandemic*. *Journal of Ius Constituendum*, 7(1), 88.
- Fuady, M. (2015). *Concept of Civil Law*. Jakarta: PT Raja Grafindo Persada.
- Hayati, A. N. (2022). *Juridical Study on Cooperative Legal Entity Bankruptcy Submissions*. *Journal of Legal Research De Jure*, 22(2), 263.
- hukumonline. (2022, January 29). <https://www.hukumonline.com/berita/a/upaya-memperjelas-koperasi-dalam-proses-kepailitan-dan-pkpu-lt61f51d9d81b69/>. Retrieved May 2, 2023
- Kartasapoetra. (1989). *Indonesian Cooperatives Based on Pancasila and the 1945 Constitution*. Jakarta: Bina Aksara.
- Kheriah. (2021). *Independence of Debt Payment Obligation Delay (PKPU) Management in Bankruptcy Law*. *Journal of Legal Science Volume 3 No. 2*, 245.
- Krista Yitawati, P. A. (2022). *Decision 23/PUU-XIX/2021 of the Constitutional Court: Analysis of the Judges' Considerations Is Cassation Allowed Against Decisions to Delayed Debt Payment Obligations?* *Journal of Jurisprudence*, 12(1), 18-19.

- Nugroho, S. A. (2018). *Bankruptcy Law in Indonesia in Theory and Practice and its Legal Application*. Jakarta: Prenadamedia Group.
- Peter M. (2007). *Legal Research*. Jakarta: Kencana Prenada Media Group.
- Rai Mantili, P. E. (2021). Postponement of Debt Payment Obligations (PKPU) Related to the Settlement of Debts and Receivables in Bankruptcy. *Journal of Actual Justice*. Vol.6, No.1, 18.
- Ridwan. (2006). *State Administrative Law*. Jakarta: Raja Grafindo.
- Ridwan. (2018). The Position of the Curator in Executing Bankruptcy Budel with Implications for Criminal Reporting A Study of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. *Journal of Ius Constituendum*, 3(2), 125-146.
- Rizaty, M. A. (March 2, 2023 - 11:00 AM). Number of Active Cooperatives Increases to 130,354 Units in 2022. <https://dataindonesia.id/bursa-keuangan/detail/jumlah-koperasi-aktif-meningkat-jadi-130354-unit-pada-2022>.
- Rusli, T. (2019). *Bankruptcy Law in Indonesia*. Lampung: UBL Press.
- Sentosa Sembiring. (2006). *Bankruptcy Law and Legislation Related to Bankruptcy*. Bandung,: CV Nuansa Aulia.
- Sjahdeini, S. R. (2016). *History, Principles, and Theory of Bankruptcy Law*. Jakarta: Prenadamedia Group.
- Soeharto, R. (2019). "Characteristics of Bankruptcy of Cooperative Legal Entities." *Lex Journal: Legal Studies*, 3(1), 2.
- Suara.com. (September 23, 2022). History of KSP Intidana that made Supreme Court Justice Sudrajad a KPK suspect, One of the Largest Cooperatives in Indonesia. <https://www.suara.com/news/2022/09/23/150023/sejarah-ksp-intidana-hingga-bikin-hakim-agung-sudrajad-tersangka-kpk-masuk-salah-satu-koperasi-terbesar-di-indonesia>.
- Sumiyati, R. N. (2022). Legal Protection of Members as Concurrent Creditors in the Bankruptcy of a Savings and Loan Cooperative during the Covid-19 Pandemic. *Bandung Conference Series: Law Studies 2 No. 1*, 515.
- Sunarmi. (2010). *The Principle of Balance in Bankruptcy Law in Indonesia*, 2nd Edition: SoftMedia.
- Taufani, S. d. (2020). *Legal Research Methodology (Philosophy, Theory, and Practice)*. Depok: PT RajaGrafindo Persada