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Deposit Guarantee Institutions in Microfinance Institutions in Indonesia: A Hope?

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Abstract

This study aims to analyze legal protection for depositors of funds in MFI through the existence of the Deposit Insurance Corporation. This legal research uses both a statutory and a conceptual approach. The establishment of a Deposit Insurance Corporation in Microfinance Institutions has been mandated since 2013 in the Microfinance Institutions act which aims to guarantee the deposits of MFI members and communities, but the promulgation of the Financial Sector Development and Strengthening Act has not been formed. Despite, provisions on preventive protection for depositors of funds in MFI have been regulated in the Microfinance Institutions Act, the Financial Sector Development and Strengthening Act as well as POJK 10/2021 and POJK 19/2021, the existence of the Deposit Insurance Corporation at Microfinance Institutions is still needed to guarantee deposits at banks. The existence of a Deposit Insurance Corporation in Microfinance Institutions is very important in order to ensure the payment of deposits from members and the public if the Microfinance Institution has its revoked license by the Financial Services Authority and to maintain the trust of members and the public. Due to the lack of position, the depositor of funds in Microfinance Institutions is only a concurrent creditor so that potentially deposits are not fully paid.

Keywords: Microfinance Institution; Deposit; Deposit Insurance Corporation.

Introduction

Microfinance Institutions (hereinafter referred to as MFI) are financial institutions specifically intended for members and the community through loans or financing for micro-scale businesses as well as managing savings in the form of savings and/or deposits. In addition, the existence of Microfinance Institutions (hereinafter referred to as MFI) is expected to increase and equalize

the welfare of poor and/or low-income communities. Beisland¹ found that MFI are oriented toward providing financial services to economically disadvantaged customers and the profits obtained are used to expand and improve the standard of living of MFI customers. Likewise, Dutta stated that microfinance through MFI has been recognized throughout the world as an effective instrument for reducing poverty and simultaneous long-term growth through the creation of entrepreneurship. In fact, in many cases it has succeeded in reducing poverty, especially among poor women.²

One of the activities carried out by MFI is managing deposits, as in bank deposits which are guaranteed by the Deposit Insurance Corporation (hereinafter referred to as LPS); deposits in MFI are also guaranteed by the MFI Deposit Guarantee Institution (LPS and MFI) as mandated in Article 19 of Law Number 1 of 2013 Concerning Microfinance Institutions (MFI Law). The aim of establishing LPS MFI is to guarantee public savings in MFI. Ten years since the promulgation of the MFI Law, the LPS MFI was formed. The formation of LPS MFI can be carried out by MFI associations, regional governments, collaboration between regional governments and MFI associations or can be formed directly by the central government.

Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (hereinafter referred to as PPSK Law) has changed, deleted and/or established new regulations for several provisions, one of which is the MFI Law. One of the principles underlying the PPSK Law is consumer protection which aims to increase guidance, supervision and protection of consumers. What is meant by the “principle of Consumer Protection” in the PPSK Law is to provide guarantees for protection to consumers in the use and utilization

¹ Leif Atle Beisland, Bert D’Espallier and Roy Mersland, ‘The Commercialization of the Microfinance Industry: Is There a “Personal Mission Drift” Among Credit Officers?’ (2019) 158 *Journal of Business Ethics*. [119-134].

² Arijita Dutta and Sharmita Banerjee, ‘Does Microfinance Impede Sustainable Entrepreneurial Initiatives among Women Borrowers? Evidence from Rural Bangladesh’ (2018) 60 *Journal of Rural Studies*. [70].

of services in the financial sector. However, the PPSK Law does not mention LPS and MFI at all, which aims to provide legal protection for depositors by guaranteeing their deposits, even though in the amendments to the MFI Law by the PPSK Law there are several regulations aimed at protecting members and the community.

The existence of LPS and MFI is very important in order to maintain the trust of MFI members and the community. This trust is gained if there is a guarantee of legal certainty that member and community savings in the form of savings and deposits can be returned intact if the MFI's license is revoked. Maintained trust has an impact on the business continuity of the MFI. For example, in the case of the Indosurya Savings and Loans Cooperative (hereinafter referred to as KSP) which embezzled funds reaching IDR 106 trillion with losses of IDR 23,000. In the Supreme Court's decision, Henry Surya, the leader of KSP Indosurya, was sentenced to 14 years in prison. However, the prison sentence imposed on Surya does not guarantee that the funds from KSP Indosurya members will be paid.³ There are many cases affecting cooperatives such as KSP Indosurya which experienced default with potential losses of up to IDR 14 trillion. In this case, cooperative members feel disadvantaged because there is a possibility that customers will not get back the funds that have been deposited in KSP.

The absence of guarantees for savings funds in KSP can erode public trust in the savings and loan system implemented by KSP. This is different from banking which has a deposit guarantee system through LPS, where customers can submit deposit claims to the bank if their business license is revoked by the Financial Services Authority (OJK) and LPS is obliged to pay guarantee claims to customers who are eligible. The provisions governing savings and loan activities carried out by cooperatives have not been able to provide legal certainty regarding the protection of members' savings in savings and loan cooperatives. The existing provisions

³ Hilda Yunita Sabrie, 'Urgency Eksistensi Lembaga Penjamin Simpanan Terhadap Koperasi Simpan Pinjam' (*Unair News*) <<https://news.unair.ac.id/2022/01/25/urgensi-eksistensi-lembaga-penjamin-simpanan-terhadap-koperasi-simpan-pinjam-2/?lang=id>> accessed 20 October 2023.

regulate only preventive aspects, they cannot provide guarantees for members' savings in them as is done by LPS for customer deposits in banking.⁴

The regulations regarding the existence of LPS MFI in the MFI Law are clear; however, the existence of this institution has not been established to date so there is no optimal legal protection for depositors of funds in MFI if the Islamic MFI business license is revoked by the OJK and there is a potential for their deposits to go unpaid. Based on this background, the problem analyzed in this research is legal protection for depositors of funds in MFI through LPS.

Characteristics of Microfinance Institutions in the Form of Cooperatives and Companies

The forms of legal entity that are possible for establishing an MFI are cooperatives and limited liability companies. However, based on the latest data in April 2023 from the OJK, the form of legal entity most often used by Islamic MFI is cooperatives compared to limited liability companies. There are 92 conventional Islamic MFI which are in the form of cooperative legal entities, while there are 62 in the form companies entities, although only one Islamic MFI is formed as a company entity, while the cooperative are 80 entities.⁵

There are several possible reasons for choosing a cooperative legal entity form compared to a limited company when referring to the characteristics of cooperatives and limited companies, as follows:

⁴ Hilda Yunita Sabrie and Ananda Tasya, 'Urgensi Eksistensi Lembaga Penjamin Simpanan Terhadap Koperasi Simpan Pinjam' (2021) 5 *Halu Oleo Law Review* <<http://ojs.uho.ac.id/index.php/holrev/article/view/19857>>. [194]

⁵ Otoritas Jasa Keuangan (OJK), 'Statistik Lembaga Keuangan Mikro Indonesia Periode 2023' (*Laman Resmi OJK*, 2023) <<https://ojk.go.id/id/kanal/iknb/data-dan-statistik/statistik-lkm/Pages/Statistik-Lembaga-Kuangan-Mikro-Indonesia-Periode-April-2023.aspx>> accessed 30 October 2023.

Table 1. Comparison of the characteristics of Cooperative and Company legal entities

Information	Cooperative (Based on Law number. 25 of 1992 concerning Cooperatives)	Limited liability company (Based on Law Number 40 of 2007 concerning Companies)
Legal entity status	Legal entity The status of a cooperative legal entity is obtained after its deed of establishment is ratified by the Ministry of Law and Human Rights (Kemenkum and HAM).	Legal entity A company is a legal entity which is a capital association The Company's legal entity status is obtained on the date of publication of the decision of the Ministry of Law and Human Rights (Kemenkum and HAM) regarding the legalization of the Company's legal entity.
Objective	The aim of cooperatives is to advance the welfare of members in particular and society in general and to help build the national economic order in order to create an advanced, just and prosperous society based on Pancasila and the 1945 Constitution.	The Company's aims, objectives and business activities do not conflict with the provisions of laws and regulations, public order and/or morality. Meanwhile, the company's objectives are regulated and determined in the Company's Articles of Association.
Establishment	There are two forms, namely a. Primary Cooperatives formed by at least 20 people. a. Secondary Cooperatives are formed by at least three Cooperatives.	The Company is established by two or more people with a notarial deed made in Indonesian.
Organ	The cooperative organizational structure consists of: a. Member Meeting; b. Management; c. Supervisor.	The Company's organs are the General Meeting of Shareholders, Directors and Board of Commissioners.
Representation	Authorized management a. representing the Cooperative inside and outside the court; b. decide on the acceptance and rejection of new members as well as the dismissal of members in accordance with the provisions in the Articles of Association; c. carry out actions and efforts for the interests and benefits of the Cooperative in accordance with	1) The Board of Directors represents the Company both inside and outside the court. 2) In the event that the members of the Board of Directors consist of more than one person, the authority to represent the Company is each member of the Board of Directors, unless otherwise specified in the articles of association. 3) The authority of the Board of

its responsibilities and the decisions of the Member Meeting.

Directors to represent the Company is unlimited and unconditional, unless otherwise stipulated in this law, the articles of association, or the resolutions of the GMS.

- 4) GMS decisions must not conflict with the provisions of this Law and/or the Company's articles of association.

Membership	<ol style="list-style-type: none"> 1. Cooperative members are owners and users of cooperative services. 2. Cooperative membership is recorded in the member register book. 	There are no members in the Company. However, it is regulated that every founder of the Company is obliged to take shares when the Company is founded. So the founder will automatically become a shareholder in PT.
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Capital	<p>Cooperative capital consists of own capital and loan capital.</p> <p>Own capital can come from:</p> <ol style="list-style-type: none"> a. principal savings; b. mandatory savings; c. reserved fund; d. grant. <p>Loan capital can come from:</p> <ol style="list-style-type: none"> a. members; a. other cooperatives and/or their members; b. banks and other financial institutions; c. issuance of bonds and other debt securities; d. other legitimate sources. 	<p>Capital in a PT consists of authorized capital, issued capital and paid-up capital.</p> <p>The company's authorized capital consists of the entire nominal value of the shares. The company's authorized capital is at least Rp. 50,000,000,- and at least 25% of the authorized capital must be placed and fully paid up.</p>
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Especially for cooperatives that conduct business as Microfinance Institutions. So based on Article 5 (1) POJK Number 10 /POJK.05/2021 concerning Business and Institutional Licensing of Microfinance Institutions, apart from being regulated that the source of capital cannot come from loans, it is also regulated as follows:

Paid-in capital or principal savings, mandatory savings, and MFI grants are determined based on the scope of the business area which includes villages/sub-districts, sub-districts, or districts/cities.

The amount of paid-up capital or principal savings, mandatory savings and grants for MFI that will apply for a business license is determined to be at least:

- a. IDR 300,000,000.00 (three hundred million rupiah), for village/district business area coverage;
 - b. Rp. 500,000,000.00 (five hundred million rupiah), for sub-district business area coverage; or
 - c. IDR 1,000,000,000.00 (one billion rupiah), for district/city business area coverage.
- (3) At least 50% of the paid-up capital or principal savings, mandatory savings and grants must be used for working capital.

Management	<p>The management is responsible for all management activities of the Cooperative and its business at the Member Meeting or Extraordinary Member Meeting.</p>	<ol style="list-style-type: none"> 1. The Board of Directors carries out the management of the Company for the interests of the Company and in accordance with the aims and objectives of the Company. 2. The Board of Directors has the authority to carry out management in accordance with policies deemed appropriate, within the limits specified in this law and/or the articles of association. 3. The Company's Board of Directors consists of one member or more.
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4. Companies whose business activities are related to collecting and/or managing public funds, companies that issue debt acknowledgment letters to the public, or public companies are required to have at least two members of the Board of Directors.
5. In the event that the Board of Directors consists of two members or more, the distribution of duties and management authority among the members of the Board of Directors is determined based on the decision of the GMS.
6. In the event that the GMS does not determine, the distribution of duties and authority of members of the Board of Directors is determined based on the decision of the Board of Directors.
7. The Board of Directors is responsible for the management of the Company.
8. Management must be carried out by every member of the Board of Directors in good faith and with full responsibility.
9. Each member of the Board of Directors is fully personally responsible for losses to the Company if the person concerned is guilty or negligent in carrying out their duties.
10. In the event that the Board of Directors consists of two members or more, the responsibility applies jointly to each member of the Board of Directors.

11. The Board of Directors submits an annual report to the GMS after being reviewed by the Board of Commissioners no later than six months after the Company's financial year ends.

Based on the comparison table, it can be formulated that the characteristics between Cooperatives and PTs which are legal entities, have similarities in essence, namely that the organ element consists of member meetings/GMS, having administrators/Directors who will carry out management actions, as well as being known to the Supervisor/Board of Commissioners. These organs are tasked with representing the legal actions of the legal entity concerned and have limited responsibility. Provisions regarding capital between cooperatives and PTs have differentiating elements, namely:

1. That the founder of the PT will become a shareholder of the PT and upon his participation is entitled to ownership of shares whose profit distribution mechanism is based on the provisions of the GMS based on the profits obtained by the company, which will then be distributed to the shareholders in the form of dividends.
2. That in a Cooperative the founders will become members and the capital in the Cooperative is basically used for the benefit of the members and not just to make a profit. Therefore, remuneration for capital provided to members is also limited, and is not based solely on the amount of capital provided. What is meant by limited is reasonable in the sense that it does not exceed the interest rates prevailing in the market.
3. The supervisory function in PT carried out by the Board of Commissioners is more embedded so that the annual report is not only given to the GMS, but must first be reviewed by the Board of Commissioners.
4. In a PT, when the Board of Directors takes management action, the policy provisions deemed appropriate apply, which means carrying out management in good faith and in accordance with Good Corporate Governance, whereas in cooperatives there are no such provisions.

So, running an MFI with a cooperative legal entity will make it easier for the management to carry out management actions and determine the distribution of profits.

MFI business activities as regulated in Article 11 of the MFI Law have undergone changes by the PPSK Law, as in the table below:

Table 2. Changes to Articles of the MFI Law by the PPSK Law

Article 11 of the MFI Law	Article 11 of the PPSK Law
1) MFI business activities include business development and community empowerment services, either through loans or financing for micro-scale businesses to members and the community, managing savings, as well as providing business development consulting services.	1) MFI business activities include: <ol style="list-style-type: none"> a. business development and community empowerment services, through: <ol style="list-style-type: none"> 1. Loans or financing in micro scale businesses to members and the community; 2. savings management; or 3. providing business development consulting services; And b. other business activities determined by the Financial Services Authority.
2) Provisions regarding loan interest rates or financing returns are regulated in Government Regulations.	2) Further provisions regarding business development and community empowerment services, loans or financing, savings management, and the provision of consulting services as referred to in paragraph (1) are regulated in the Financial Services Authority Regulations.

If you refer to the table above, it is possible for loans or financing to be given to other than members, namely to the community, so that the addition of Article 44 B paragraph (2) letters a, b and c to Law Number 25 of 1992 concerning Cooperatives by the PPSK Law becomes relevant. MFI in the form of cooperatives can collect funds not limited to cooperative members but also outside cooperative members or from other cooperative members. Likewise, loan distribution can be given to members of the cooperative or to other cooperative members. In addition, Article 44 B paragraph (2) in letter e of the PPSK Law allows MFI in the form of cooperatives to provide financial services outside of savings and loan businesses such as banking businesses, insurance businesses, pension program businesses, capital markets, financial institution businesses, and other activities or other businesses stipulated in the law regarding the financial services sector, so that there is an expansion of business activities carried out by cooperatives based on the PPSK Law. However, if an MFI in the form of a cooperative provides financial services in the banking business sector, it must still pay attention to the provisions in the MFI Law

which prohibit MFI from accepting deposits in the form of demand deposits and participating in payment traffic, as stated in Article 14 of the MFI Law.

Savings are permitted to be collected by MFI in the form of savings and/or deposits based on a fund deposit agreement as regulated in Article 1 number 2 of the MFI Law. The MFI Law does not explain what is meant by a fund deposit agreement. This is the same as Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 (Banking Law) which also does not explain the meaning of a fund deposit agreement. However, in essence the fund deposit agreement is an anonymous agreement considering that it does not exist in *Burgerlijk Wetboek* (hereinafter referred as BW). The fund deposit agreement is real, meaning that the agreement is not just an agreement, but it is still necessary to hand over money by the depositor to the MFI. Funds entrusted by the community must be returned by the MFI accompanied by a counter-performance according to the agreement in the form of interest or profit sharing if it is an Islamic MFI. In addition, when the funds are deposited in the MFI, they become the property of the MFI so that the MFI can distribute these funds in the form of loans or financing to members and the community. The characteristics of a fund deposit agreement are similar to a loan and borrowing agreement as regulated in Articles 1754-1762 BW.

Legal Protection of Fund Depositors in MFI

To create healthy MFI, the OJK determines the level of health and precautionary principles. One of the aims of this is to protect public savings in MFI. Referring to Isnaeni's opinion, legal protection in terms of its source can be divided into two types, namely "external" legal protection and "internal" legal protection. Internal legal protection is essentially packaged by the parties themselves when making an agreement; when packaging the contract clauses, both parties want their interests to be accommodated on the basis of an agreement. This includes all types of risks which are endeavored to be prevented through clauses which are designed on the basis of agreement, so that, with these clauses, balanced legal protection can be obtained by both parties. Meanwhile, external

legal protection is legal protection created by the authorities through regulations for the interests of weak parties. Bearing in mind that it must be in accordance with the essence of statutory regulations which must not be one-sided and take sides, proportionally it is also mandatory to provide balanced legal protection as early as possible to other parties.⁶ Meanwhile, Hadjon's opinion categorizes legal protection into preventive legal protection and repressive legal protection. Preventive legal protection seeks to prevent disputes from occurring, while repressive legal protection aims to resolve disputes.⁷

This is in line with what was stated by Rahma, namely that the legal protection provided to legal subjects is both preventive and repressive, both verbal and written. Legal protection functions to fulfill justice, order, certainty, benefit and peace.⁸ Astutik also mentioned that the essence of financial services consumer protection is to protect the interests of financial services consumers and the risk of loss they suffer. The Consumer Protection Law is implemented based on the principles of benefit, justice, balance, safety, security and legal certainty based on Pancasila.⁹ This was also emphasized by Ariadi that consumer protection is a natural human right. However, in practice, the implementation of consumer protection often does not work as it should. Consumers often become the object of business activities from business actors through advertising, promotions, sales techniques and the implementation of standard agreements that harm consumers. This is due to low consumer education and low consumer awareness of their rights and obligations.¹⁰

⁶ Moch Isaeni, *Pengantar Hukum Jaminan Kebendaan* (Revka Perta Media 2016).[159-163].

⁷ Philipus M Hadjon, *Pengkajian Ilmu Dogmatik (Normatif)* (Fakultas Hukum Universitas Airlangga 1994).[2].

⁸ Iftiany Shaumi Rahma and others, 'Indonesian Legal Protection for Consumers on the Validity of Electronic Contracts in the E-Commerce Transactions' (2022) 37 *Yuridika* <<https://e-journal.unair.ac.id/YDK/article/view/36976/23317>>.[698].

⁹ Sri Astutik and Irawa Soerojo, 'The Role of The Financial Services Authority in Setting the Interest Rate For Financial Technology Loans As Consumer Protection of Financial Services' (2023) 38 *Yuridika* <<https://e-journal.unair.ac.id/YDK/article/view/40064/25721>>.[443].

¹⁰ Bambang Sugeng Ariadi Subayono, Zahry Vandawati Chumaida and Mochamad Kevin Romadhona, 'Enforcement of Consumer Rights Through Dispute Settlement Resolution Agency to Improve the Consumer Satisfaction Index In Indonesia' (2023) 37 *Yuridika* <<https://e-journal.unair.ac.id/YDK/article/view/34943>>.[673].

In principle, the MFI Law, PPSK Law, POJK 10/2021 and POJK 19/2021, have regulated legal protection for MFI fund depositors in a preventive manner, namely as in the following articles:

1. In relation to licensing, before carrying out business activities, an MFI must have a business permit from the OJK. This is clearly detrimental to the community if the MFI has not received a permit, so criminal sanctions are regulated by a fine of at least IDR 1,000,000,000 (one billion rupiah) and a maximum of IDR 2,000,000,000 (two billion rupiah).
2. Regulations relating to the amount of MFI capital divided by region:
 - a. Whereas for village/sub-district business area coverage, the amount of paid-up capital or principal savings, mandatory savings and grants for MFI is at least Rp. 300,000,000,-
 - b. Sub-district business area coverage is at least IDR 500,000,000,-
 - c. Regency/city business area coverage is at least 1,000,000,000.-.
3. MFI that are based on Sharia Principles must have a Sharia Supervisory Board (DPS). The existence of DPS is to supervise and provide advice to MFI directors so that LKN business activities comply with sharia principles. That MFI business activities based on sharia principles must be carried out in accordance with the sharia Fatwa issued by DSN-MUI so that if they do not carry them out they will be subject to administrative sanctions, in the form of:
 - a. written warning;
 - b. dismissal and/or replacement of MFI directors or administrators;
 - c. freezing of business activities for some or all business activities;
 - d. administrative fines; and/or
 - e. revocation of business license.

Likewise, if an MFI based on sharia principles does not form a DPS, it will be subject to administrative sanctions.
4. There is a prohibition on business activities carried out by MFI, namely accepting deposits in the form of demand deposits and participating in payment traffic, carrying out business activities in foreign currency, carrying out insurance business as an underwriter, acting as a guarantor, providing loans or financing to other MFI, except in order to overcome liquidity difficulties for other MFI in the same district/city area.
5. MFI are required to administer deposits and provide proof of savings.
6. The obligation to carry out an analysis of the feasibility of distributing loans or financing can be carried out based on an assessment of:
 - a. Customer's ability to pay loans or financing (capacity); and
 - b. Track record/customer character (character), which are some of the principles in 5C (character, capital, capacity, condition of economy, and collateral).
7. In managing risks regarding lending or financing, MFI can transfer these risks through credit guarantee mechanisms.
8. Regulations regarding determining the maximum interest rate on loans or

maximum returns on financing. MFI are prohibited from charging loan interest rates or financing returns that exceed the maximum loan interest rate or maximum financing service fees last reported to the OJK. Apart from that, MFI are also obliged to announce the maximum interest rate on loans or maximum returns on financing through announcements in the MFI office or local daily newspapers.

9. MFI are prohibited from disbursing loans or financing that exceeds the maximum limit for disbursing loans or financing. The maximum limit for lending or financing is set at a maximum of 10% of equity for one customer. For customers who have a good track record in MFI and disbursing loans or financing accompanied by collateral or credit guarantees, the maximum limit for disbursing loans or financing is set at a maximum of 20% of the equity for that customer.
10. MFI must maintain equity of at least 75% of paid-in capital for MFI in the form of PT or principal savings, mandatory savings and grants for MFI in the form of cooperatives.
11. MFI must maintain a health level which includes liquidity ratios and solvency ratios. The liquidity ratio is set at a minimum of 4% while the solvency ratio is set at a minimum of 110%.
12. There are requirements that must be met before becoming a director and board of commissioners, namely:
 - a) is not included in the list of parties prohibited from becoming the main management party;
 - b) not recorded on the list of bad debts in the financial services sector;
 - c) has never been convicted of committing a criminal offense in the financial services and/or economic sector based on a court decision that has permanent legal force;
 - d) has never been convicted of committing a crime based on a court decision that has permanent legal force within the last five years;
 - e) has never been declared bankrupt or caused a business entity to be declared bankrupt based on a court decision that has permanent legal force within the last five years;
 - f) one of the Directors must have operational experience in the field of microfinance institutions or other financial service institutions for at least one year; and
 - g) one of the Directors must have operational experience in the field of sharia microfinance institutions or other sharia financial service institutions for a minimum of one year for MFI that carry out business activities based on sharia principles.
13. There is a prohibition on directors holding concurrent positions as directors in other MFI, but they are still permitted to hold concurrent positions as board commissioners in a maximum of two other MFI. Meanwhile, the Board of Commissioners can hold concurrent positions as Board of Commissioners

members in a maximum of three MFI. Referring to the opinion of Samawati,¹¹ if multiple positions occur it will result in ineffective implementation of authority and there will be a conflict of interest.

14. MFI in the interests of service users must provide open information regarding the authority and responsibilities of the MFI; terms and conditions that depositors and borrowers need to know and possible risks of loss arising in MFI transactions with other parties.
15. Guidance and supervision of MFI according to their business scale. If the business is small scale, it is carried out by the district/city Regional Government with reference to the provisions stipulated by the OJK, while for medium-scale and large-scale businesses it is carried out by the OJK.
16. Medium-scale and large-scale MFI are obliged to submit to the OJK in the form of: periodic financial reports, annual financial reports that have been audited by a public accountant for MFI that meet certain requirements and other reports stipulated in OJK regulations. Meanwhile, small-scale businesses are required to submit them to the district/city Regional Government with a copy to the OJK in the form of periodic financial reports and other reports as stipulated in OJK regulations. The obligation to announce financial reports is in the context of realizing the principle of openness.
17. Members of the Board of Commissioners, Directors, employees and affiliated parties of MFI are required to keep deposit and savings information confidential. However, the obligation to keep confidentiality does not apply if information about the depositor and his savings is for tax purposes, judicial interests in criminal cases, judicial interests in civil cases or requests for information from legal heirs if the depositor dies.

The Urgency of Deposit Insurance Institutions in MFI

Reflecting on guarantees for bank deposits, the guarantee is limited, not unlimited, because if there are no restrictions, it will create moral hazard for banking players and customers. Guaranteeing bank customer deposits is still necessary to maintain public trust in banks.¹² Likewise, Hariati stated that deposit insurance is one of the tools used to stabilize the banking system. In the deposit guarantee mechanism, what is guaranteed is the risk of the bank's failure to fulfill

¹¹ Putu Samawati, 'Argumen Hukum Mengenai Larangan Jabatan Rangkap Komisaris Dan Direktur Dalam Sebuah Perseroan Terbatas' (2017) 24 *Majalah Ilmiah Fakultas Hukum Universitas Sriwijaya* <<https://journal.fh.unsri.ac.id/index.php/simburcahaya/article/view/78>>. [4862].

¹² Prawitra Thalib, Faizal Kurniawan and Hilda Yunita Sabrie, 'The Function of Deposits Insurances Institutions to Create a Solid Banking System For The Sake Of Continuity of Infrastructure Development in Indonesia' (2019) 5 *International Journal of Innovation, Creativity and Change* <https://www.ijicc.net/images/Vol5iss2_/26_Thalib_P390_2019R.pdf>. [391].

its obligations to customers when they are due.¹³ Nguyen also stated that deposit insurance schemes are an integral part of financial safety net arrangements in many countries, providing valuable protection for insured depositors from the negative impacts arising from contagious bank failures and bank failures. However, the security provided through deposit insurance schemes can also give rise to moral hazard problems by encouraging depositors and financial institutions to act recklessly.¹⁴ Likewise, Vernikov stated that the urgency of protecting deposits at banks is to protect depositors and the bank itself because if there is a massive withdrawal of deposit funds simultaneously triggered by an event, it will cause the bank to fail in fulfilling its obligations; this is clearly detrimental for all parties so that the existence of deposit insurance is a good idea.¹⁵

Likewise, for public savings in MFI, legal protection is also needed in the form of deposit guarantees. As an example of the revocation of the permit for the Gapoktan Mekar Wangi Agribusiness Microfinance Institution Cooperative through the Decree of the Board of Commissioners of the Financial Services Authority Number KEP-9/KO.0303/2023 dated March 27 2023, it is stated that the settlement of the rights and obligations of the Gapoktan Mekar Wangi Agribusiness Microfinance Cooperative will be carried out by the Liquidation Team, which will be formed in accordance with applicable provisions and laws.¹⁶ Likewise, in the revocation of the business license of the Islamic MFI Wesal Finance Sharia Cooperative based on the Decree of the Board of Commissioners of the Financial Services Authority Number KEP-95/KR.02/2023 dated 25 July, 2023, it was stated that to settle the rights and obligations of the Islamic MFI Wesal Finance Syariah

¹³ N Hariati, M Yunus and ERM Putri, 'Valuation Risk Adjusted Deposit Insurance on Heston Model' (2019) 1397 Journal of Physics: Conference Series <<https://iopscience.iop.org/article/10.1088/1742-6596/1397/1/012078>>.[1-10].

¹⁴ Lin Nguyen and others, 'Deposit Insurance and Credit Union Lending' (2022) January 27 Journal of Financial Stability, Forthcoming <<https://ssrn.com/abstract=3821558>>.[1-50].

¹⁵ Andrei Vernikov, 'Deposit Protection in A Paternalistic State: The Russian Case' (2020) 18 Terra Economicus <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3563049>. [31].

¹⁶ Otoritas Jasa Keuangan (OJK), 'OJK Cabut Izin Usaha Koperasi Lembaga Keuangan Mikro Agribisnis Gapoktan Mekar Wangi' (2023) <<https://ojk.go.id/id/berita-dan-kegiatan/pengumuman/Pages/OJK-Cabut-Izin-Usaha-Koperasi-Lembaga-Kuangan-Mikro-Agribisnis-Gapoktan-Mekar-Wangi.aspx>>.

cooperative, a liquidation team would be formed. in accordance with applicable provisions and legislation.¹⁷

In the two examples above, the revocation of the Cooperative Microfinance Institution's license by the OJK will clearly have an impact on the fate of public savings in the MFI. It is stated that the settlement of the MFI's obligations will be carried out by the liquidation team. When referring to Article 28 POJK 10/2021, OJK revokes business permits, in the case of MFI:

- a. Sanctions are given to revocation of business license;
- b. As a result of a merger or consolidation, the MFI is disbanded;
- c. Failing to carry out restructuring efforts when overcoming liquidity and solvency difficulties as intended in the Financial Services Authority Regulations regarding the operation of MFI businesses; or
- d. Submit an application for business license revocation based on the decision of the general meeting of shareholders or members' meeting.

If the revocation of business permits is carried out by the OJK due to unsuccessful efforts to revitalize MFI to overcome liquidity and solvency difficulties, based on Article 29 POJK 10/2021, OJK orders the Board of Directors to immediately hold a general meeting of shareholders or members' meeting to dissolve the MFI legal entity and form a liquidation team.¹⁸ in accordance with statutory provisions, as well as announcing the end or dissolution of the MFI legal entity. The dissolution of the MFI legal entity, the formation of a liquidation team, and the settlement of rights and obligations are carried out in accordance with the provisions of statutory regulations. Shareholders or MFI members are responsible for all outstanding MFI obligations if they arise at a later date from the date the business license is revoked.

If the MFI is in the form of a cooperative, then the dissolution of the cooperative is carried out by a resolution called settlement. Based on Article 52 of Law Number 25 of the Year concerning Cooperatives, settlement is carried out by dissolution, hereinafter referred to as settlement. If settlement is based on a decision

¹⁷ Otoritas Jasa Keuangan (OJK), 'OJK Cabut Izin Usaha Koperasi LKMS Wesal Keuangan Syariah' (2023) <<https://ojk.go.id/id/berita-dan-kegiatan/pengumuman/Pages/OJK-Cabut-Izin-Usaha-Koperasi-LKMS-Wesal-Kuangan-Syariah.aspx>>.

¹⁸ Article 29, Financial Services Business Licensing and Institutional Status of Microfinance Institutions 2021 Number 10/POJK.05/2021.

of the Members' Meeting, then the Settler is appointed by the Members' Meeting. If the settlement is based on a Government decision, the Settler is appointed by the Government, in this case the OJK. During the settlement process, the Cooperative continues to exist as "Cooperative in progress." The resolver has the following rights, authority and obligations:

- a. carry out all legal actions for and on behalf of the "Cooperative in progress";
- b. collect all necessary information;
- c. summon the Management, certain members and former members as necessary, either individually or collectively;
- d. obtain, examine and use all Cooperative records and archives;
- e. determine and carry out all payment obligations that take precedence over payment of other debts;
- f. use the remaining assets of the Cooperative to settle the remaining obligations of the Cooperative;
- g. distribute the remaining settlement proceeds to members;
- h. make a settlement report.

Referring to Article 55 of Law Number 25 of the Year concerning Cooperatives, in the event of the dissolution of the cooperative, members will only bear losses limited to the principal savings, mandatory savings and participation capital they have. So cooperative members bear the loss of their principal savings, mandatory savings and participation capital if the cooperative is dissolved. However, according to Abib's opinion:¹⁹

Each cooperative bears the burden of returning money belonging to cooperative members as a result of dissolution, liquidation or bankruptcy. This is the burden and responsibility of cooperatives, therefore cooperatives must carry out good corporate governance in order to anticipate refunds to cooperative members and at the same time avoid revocation of business permits.

If we refer to the opinion above, cooperative members only have limited liability for their principal savings and mandatory savings as well as their investment capital in the event of the dissolution of the cooperative so that the savings of cooperative members outside of the principal savings and mandatory savings must be returned by the cooperative. So the meaning of Article 19 of the MFI Law is

¹⁹ Agus Saiful Abib, B Rini Heryanti and Dhian Indah Astanti, 'Koperasi Lembaga Penjamin Simpanan Pada Koperasi Indonesia' (2020) 13 Arena <<https://arenahukum.ub.ac.id/index.php/arena/article/view/942>>. [469].

that the existence of the Deposit Guarantee is aimed at guaranteeing public savings in Microfinance Institutions (MFI). If the MFI is in the form of a cooperative then what is guaranteed is the savings of cooperative members apart from principal savings and mandatory savings.

The urgency of the existence of LPS in cooperative-shaped MFI today is not only aimed at cooperative members, but also at the general public. The position of depositors in MFI is only as a concurrent creditor, not as a preferred creditor. This refers to the fund storage agreement as mentioned above. The position of the concurrent creditor is unfavorable because the birthright is a relative personal right so that it can only be defended against the counterparty to the contract. In addition, because his position is only guaranteed by a general guarantee as regulated in Article 1131 BW, it is possible that his rights will not be fulfilled because he has to compete with other concurrent creditors. Because the position of depositors in MFI is only as concurrent creditors, there is a potential for their savings not to be returned in full, so the existence of Deposit Guarantee in MFI becomes very important.

Conclusion

The mandate to establish LPS in LKS has been mandated since 2013 in the MFI Law; however, until the promulgation of the PPSK Law, this institution had not been formed. In the MFI Law and PPSK Law as well as in POJK 10/2021 and POJK 19/2021, preventive protection for depositors of funds in MFI has been regulated. However, the existence of LPS in MFI is still needed as is the existence of LPS which guarantees deposits in banks.

The existence of LPS in MFI is very important in order to guarantee the payment of savings from members and the public if the MFI's license is revoked by the OJK. However, it is also to maintain the trust of members and the public in MFI. Considering that the position of depositor of funds in an MFI is only as a concurrent creditor, there is the potential for all of their savings not to be repaid.

So it is recommended that LPS be immediately established at MFI and guarantees for savings funds of MFI members and the public must be limited to the

maximum amount guaranteed. Bearing in mind that, without restrictions on deposit guarantees, it will create a moral hazard for the MFI. As is also done by LPS with guaranteed customer deposits at banks of up to 2 billion.

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