The Legal Consequences Of Default On A Saving And Loan Agreement To Joint Responsibility Groups

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Abstract

This study aims to raise the issue of the legal consequences of default on savings and loan agreements to joint responsibility groups in Cooperative X. This study uses a Jurisdictional Normative method which is a study to find the truth based on legal scientific logic from the normative side. Sources of data obtained from literature, applicable regulations, and interviews with relevant parties. The results of the study can be concluded that the default carried out by one group member who is in a joint responsibility group will cause other members of the group to participate in fulfilling these obligations because it has been stated explicitly when the prospective member wants to register as a member in Cooperative X. Regulations relating to the implementation of the joint responsibility system itself are regulated in Article 1278 through Article 1295 of the Indonesia Civil Code. When there is a default in the joint responsibility group, in order to the obligations for the Savings and Loans Agreement previously submitted can be fulfilled, a discussion should be held on this matter through deliberations at a group meeting through a mechanism that will be further explained.

Keywords: Default, Joint Responsibility Groups, Joint Responsibility, Legal Consequences, Saving and Loan Agreement

I. Introduction

Human being always struggle to achieve prosperity in their livelihood and will be always carry out various kind of activities to fulfill those needs, the existence of capital lender promotes the means for economic activities, in parallel with the increase of national development that focused on field of economy to manage potential economic power into real by utilizing existing capital facilities as primary support in National development require provision of substantial amount of funds.

The Role of Society in funding it will be even greater, this is because the amount of fund that need in the development originated or collected through the bank before later distributed back to the Society in form of Credit grants in order for Society to be more productive, the funding distribution itself must be guaranteed so that it become a real source of financing, then funds that sourced from Credits are absolutely necessary.
This triggers development of various financial instrument that born in the society parallel with the development from the financial agencies itself, Indonesia as part of international community also involved in that development, this is reflected in the growth of various financial institution and non-bank financial institution one of them is cooperative.

Cooperative is a people’s economic movement that in accordance with what is mandated by the Indonesia constitution, the implementation of which is based on the principle of kinship as referred to in cooperative legislation. The purpose of the cooperative itself is to improve the living standards and welfare of its members and meet the needs of its members. One of the fields of cooperative business increasingly needed by the community is the problem of savings and loans. One such privileges of cooperatives, among others, is credit grant in cooperatives carried out by members banded out and working together to obtain the credit needed and provide benefits with favorable conditions and low interest on the basis of the trust of the parties by working together to ease their burden.

Credit Grant can be given by banking financial institutions and non-banking financial institutions including cooperatives, however for banking institutions credit is given based on the conditions that are quite difficult for some groups of people. This is different from loans given by non-banking institutions, especially cooperatives through savings and loan procedures. Provision of credit by savings and loan cooperatives can ease the burden on the community, because credit provided by savings and loan cooperatives without going through difficult procedures, and no guarantees are required, especially guarantees, material, which has been an obstacle for low economic groups.

The role of field officers is very large in the case of the distribution of unsecured loans, either through a written agreement or without the written agreement to the public, because they are the ones who draw conclusions and decisions that the prospective debtor can be trusted to receive the credit offered, so in terms of lending without collateral and without this written agreement the community does not need to come to the credit granting cooperative.

In practice in Cooperative X, credit application can be determined or not determined by members who are members of each joint responsibility group, each joint responsibility group can determine whether or not the credit agreement to be submitted by members
who are members of the joint responsibility group it is through a deliberation. If in the future there is a default, which results in the cooperative members being unable to fulfill their achievements. Thus, the field officer in this case is the person in charge of the group must report the matter to the cooperative which requires all members who are members of the joint responsibility group concerned to jointly bear the joint contract by paying the achievement concerned. This will certainly be very unfair to other members who bear the joint contract default, because there is no blame on them but on members who are jointly borne. So, it is necessary to clarify the return of money from members who have borne the joint contract defaults from members who are jointly borne, as well as the consequences that can be received by members who are jointly borne so that he can return the money of other members who bear the joint collateral.

This study aims to find out 1) What are the legal consequences for joint responsibility group members, one of which has a default in the implementation of savings and loan agreements in Cooperative X ?. 2) What are the efforts that can be carried out by joint responsibility groups when their members default on savings and loan agreements?

II. Method

The type of legal research used in this study is normative juridical research, or what is often referred to as normative legal research or doctrinal law research. Normative legal research is a scientific research procedure to find the truth based on legal scientific logic from the normative side. In the case of normative legal research, the authors conduct research on statutory regulations and various related legal literature. To produce a legal analysis sharpness based on the doctrines and norms set in the legal system. According to Peter Mahmud, legal research is carried out to produce new arguments, theories or concepts as a prescription in solving the problem at hand. In other words, a research conducted on the actual situation or real situation that occurs in the community with the intention to find out and find the facts and data needed, after the required data is collected then focus on identifying the problem that ultimately leads to the resolution problem.¹

In this normative research, the legal approach that will be examined is various legal rules which become the focus of research comprehensively and systematically. The approach

to statutory regulations allows research to evaluate the legal norms by evaluating the compatibility between one legal principle with another legal principle, or with legal principles recognized in existing legal practice. The regulation referred to in this study is the Law of the Republic of Indonesia Number 25 of 1992 Concerning Cooperatives, Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 15 / Per / M.KUKM / IX / 2015 Concerning Cooperative Savings and Loans by the Cooperative and the Law Law on Indonesia Civil Law (Civil Code).

In addition, this research writing will use an analytical approach as an approach to analyze legal material to find out the meaning used in legislation conceptually while analyzing its application in practice and legal decisions. In general, research is distinguished between data obtained directly from the community and from library materials. In this type of legal research the source of the data obtained comes from Secondary Data, namely data obtained from official documents, books relating to the object of research, research results in the form of reports, and legislation. The regulations include, Law of the Republic of Indonesia Number 25 of 1992 Concerning Cooperatives, Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 15 / Per // M. KUKM / IX / 2015 Regarding Savings and Loans Business by Cooperatives, as well as the Indonesia Civil Code.

III. Main Heading of the Analysis or Results

A. Agreement between group members who are jointly borne and other members who bear joint debt

Arrangements related to agreements are regulated in book III of the Indonesia Civil Code on Engagement. Of the various types of agreements set out in book III of the Indonesia Civil Code, an agreement is known as a joint or joint responsibility. Pursuant to Article 1278 of the Civil Code explains that an agreement to bear responsibility is an engagement that occurs between several creditors, which in their agreement the agreement must state explicitly that each party is given the right to demand the fulfillment of debt. In addition, payments made by one can free the other from the fulfillment of the debt.

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Cooperative X in its savings and loan business applies a joint responsibility system to overcome bad credit. The implementation of the joint responsibility system itself is basically carried out as an option given by Article 25 paragraph 1 of the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 15 / Per / M. KUKM / IX / 2015 concerning Savings and Loans by the Cooperative which explains that cooperatives have several options to reduce the risk of lending in their savings and loan businesses, one of which is to be able to implement a joint responsibility system in the operation of their savings and loans business.

In Cooperative X the implementation of joint responsibility system is a necessity that must be agreed upon by prospective members when filling a Request to become a Member to be able to join as a group member incorporated in Cooperative X, even new members will be educated about the implementation of joint responsibility in the savings and loan agreement in Cooperative X. In the Application for Membership there is a statement confirming the implementation of the joint responsibility system. This is in accordance with Article 1282 of the Indonesia Civil Code. In addition, in the Application to become a Member, it must be agreed and signed by at least 50% + 1 of all group members who have joined the joint responsibility group that the prospective member wants to enter.

So that the process of being able to become a group member in Cooperative X is not arbitrary. Because it has to be done in advance with the agreement of all other group members because they will be mutually bound together in fulfilling the obligations of a savings and loan agreement that they can submit in the future if there is a default, it is regulated in Article 14 of the Cooperative X’s Articles of Association that each members who are members of Cooperative X are obliged to share equally the losses incurred by the borrowing members in their group with a joint responsibility system. The implementation of the joint responsibility system itself can reduce the problem of payments to the Cooperative, because each member will control each other and remind that other members are not negligent in fulfilling their obligations.3

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From this the authors raised the case of defaults that occurred in Cooperative X based on interviews with Mr. Yulkarnaen as Head of Loan Application in Cooperative X as for an estimate of at least 4 to 5 loan applications that are usually submitted by each joint responsibility group, while the joint responsibility group itself there are around 500 groups. Then at least every month there are 4 to 15 cases where there is a joint responsibility carried out by the group for one or more of its members who do not pay installments on the loans that have been proposed. An example is the case that occurred in Mrs. Y and Mrs. X. In the case of Mrs. Y who is a member of group Y who is a member of Cooperative X, based on the Credit Recognition Letter she has applied for a loan of Rp 7,500,000 which should be paid 20 times. However, in September 2019 she did not attend the group meeting so that on September 6, 2019 group Y, through deliberations in the group meeting, had agreed to bear a number of Mrs. Y installments amounting to Rp 2,662,150 taken from the group Y’s savings.

Next also there are cases of Mrs. X who is a member of group X who is a member of Cooperative X. Previously, based on the Credit Recognition Letter Mrs. X has a loan with an obligation of Rp 13,000,000 which is paid in installments for 20 times. where Mrs. X could not fulfill her obligation to pay installments on these obligations several times, and did not attend group meetings, so at the X group meeting. On May 11, 2019 other members through a meeting agreed to bear a series of Mrs. X installments in the amount of Rp. 773,375 by making a Statement to take deposits of group X in Cooperative X. The statement contained the name Mrs. X then the amount of the loan borne jointly by other members taken from group savings amounting to Rp 773,375. Then, it was signed by the group X members and the Field Extension Advisor of the group accompanied by a stamp duty.

**B. The legal consequences for joint responsibility group members, one of which is a member of the contract in the implementation of savings and loan agreements**

In joint responsibility there are 2 forms of joint responsibility, namely active joint responsibility and passive joint responsibility. In active joint responsibility there are more than one creditor joint responsibility with a debtor, whereas in passive joint responsibility there is only one creditor joint responsibility with a debtor. In passive joint responsibility, there is only one person who is jointly responsible to fulfill the debt obligation of the debtor. In active joint responsibility, more than one person is jointly responsible. The result is that if the debtor is unable to fulfill the debt obligation, the joint debtor is also responsible to fulfill the debt obligation with the debtor. In active joint responsibility, more than one person is jointly responsible. The result is that if the debtor is unable to fulfill the debt obligation, the joint debtor is also responsible to fulfill the debt obligation with the debtor.
responsibility there are more than a debtor joint responsibility with only a creditor. In Cooperative X the joint responsibility applied is passive rent because there is only one creditor, that is Cooperative X. While the debtor is the joint responsibility, the members of the joint responsibility group who are members of Cooperative X. Based on Article 1280 the Indonesia Civil Code explains that on the debtor there is an engagement liability with the provisions that give them the same obligations, then one of the debtors can be sued for all repayments from one of the debtors and can also free other debtors who have the same obligations to creditors. This provision is reaffirmed through Article 1285 of the Indonesia Civil Code.

From both of these arrangements we can understand that although there is only one person who gain benefit of the savings and loan agreement, for example is the case of Mrs. Y and Mrs.X where he is the only one who receives a loan from Cooperative X. However, as the nature of the joint responsibility itself, those who take part in the joint responsibility debtor, for example, are other members of the joint responsibility groups Y and X. They are obliged to participate in carrying out the obligations of Mrs. Y and Mrs. X when an achievement occurs.

In the Special Regulations for Cooperative X No. 5 Regarding the Sanctions of Rentable Groups, some sanctions are imposed on the Rentable Groups in the form of group ceilings, falling 0.5 times the specified ceiling index and so on, group deposits can be taken by officers at the meeting, as long as they are subject to Person in Charge sanctions they do not get incentive money, loan application letter cannot be issued. The sanction is valid for three consecutive months, except if the group changes the date of the meeting without notification then the sanction will be sanctioned for 1 additional month.

**C. Efforts For Completion For Joint Responsibility Groups That Doing Default On Loan Savings Agreement**

Settlement efforts related to defaults can generally be resolved in 2 ways, namely through litigation and non-litigation. In terminology deliberation is collective bargaining between two or more parties to get the best decision in solving a problem. Settlement

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through deliberations includes non-litigation settlements such as arbitration, mediation, consultation, negotiation and conciliation. The use of the deliberation method is carried out with the aim that the obligations are expected to continue to be paid by mutual agreement. So it takes a cooperative relationship in completing defaults because someone can do defaults for various reasons, a person may not be able to fulfill their achievements because the conditions are indeed not possible either because of the economy or other things.

In one group there is a group Person in Charge whose job is to coordinate group activities. Everything that concerns the group’s interests including the acceptance of group members will be decided based on group agreement which is carried out through group meetings held once a month. So that any consequences of decisions made at the group meeting will be the responsibility of the group as a whole. In addition, new members are also required to pay the principal savings in the amount of Rp 500,000 which is paid when they first enter the group and a minimum required deposit of Rp 20,000 is paid monthly. Also based on Special Regulations for Cooperative X No. 7 Regarding Loans, members who have just joined are also given a limitation in their loan application, namely in Phase I Loans, they can only borrow IDR 1,000,000 and Phase II Loans, IDR 1,500,000.

These provisions are preventive measures to sort each prospective member who will enter so that there is no default on the savings and loan agreement involving members of their respective groups. Based on interviews conducted by the author in the event of default on the Savings and Loan Agreement conducted by one member of the joint responsibility group. Then all members of the joint responsibility group who are members of the group are obliged to discuss the matter of settling the default on the savings and loan agreement of one of its members, a deliberation will be held to agree that they must participate in fulfilling the obligations that should be paid by one of its members through joint responsibility group savings or through spontaneity of the joint responsibility group members.

The agreed nominal money is then poured in a Statement which contains some of the contents as stated in the previous chapter. Then, it is signed by the other group members and the group Person in Charge, as well as the group Field Facilitator for later reported to Cooperative X.
Then, if it is felt that the joint responsibility is repeated over and over and it is felt that there is no good faith from one of the members performing the default either to pay their own installments or to compensate for the losses suffered by other joint responsibility group members in order to pay the obligations that they should fulfill themselves. Then the joint responsibility group can exclude the default member by first taking out all of the deposits owned by the default member to pay the entire remaining obligation, then only if the deposit is insufficient to fulfill its obligations. Then issued a sum of money from group savings to cover the remainder of their obligations.5

Based on Mrs. X's case, the joint liability carried out by her is a permanent joint liability, because she feels that it is impossible for Mrs. X to pay all of its obligations and there is no good intention from Mrs. X to return the amount of money spent by group X to pay Mrs. X's obligations. So in July 2019 Mrs. X was expelled from her membership in group X by first cutting the savings owned by Mrs. X as much as Rp 6,031,708 in order to pay all of the remaining obligations of Ms. X, even that amount was not enough and was again taken from group savings of Rp 927,116. Besides that, as a sanction, Mrs. X, it is no longer possible to join as a member in another group incorporated in Cooperative X until he can complete his affairs with the group in accordance with Cooperative Special Regulation No. 13 Concerning Resignation for Members, which states that for members who resign and or are expelled by groups with no good reason cannot be accepted back as a member of Cooperative X, except back to the original group.

For group X, they can collect the amount of money that they spend to pay the obligations of the members they bear because their rights are protected by Article 1295 of the Indonesia Civil Code which states that they can receive compensation for that. The article has emphasized that other members, as debtors, should be jointly and severally able to get compensation from them in exchange for paying their obligations, especially in the case of Mrs. X, jointly and repeatedly responsibility.

The application of joint liability to savings and loan agreements at Cooperative X itself is indeed very effective in dealing with bad credit. However, on the other hand it will be very vulnerable to defaults which cause joint responsibility groups to spend a sum of

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5 Interview with Mrs. Rasa Edi Wisnu Wardhani as Person in Charge of the group, at 7 December 2019.
money to pay the obligations of their members. So the application of joint responsibility itself can be detrimental.

Things like this in the case of Mrs. X can be avoided if Group X can be more observant before approving loans from these members. Thus, if it is indicated that the members will have difficulties in carrying out their obligations in the future, the group can refuse the loan proposal from the member, giving the member the option to apply for a loan with material security to Cooperative X only. Because instead of increasing their welfare, they could actually suffer losses.

IV. Conclusion

Cooperative X has implemented joint responsibilities in such a way that is regulated in the Indonesia Civil Code. Starting from the Request to join, which has confirmed that it must agree on the implementation of a joint responsibility system in the group. Then, as a preventive effort to join the joint responsibility group members in Cooperative X, prospective members are required to come and attend group meetings conducted by the group they want to enter. Because if there is a default on the savings and loan agreement they will also bear it. This was done because the basic principles of the cooperative itself should be based on the principle of kinship. However, in reality there are still cases of default that occur related to Savings and Loans Agreements, this is certainly very detrimental to other members who are members of the group because it causes them to have to participate in fulfilling the debt obligations.

Efforts can be made for groups whose members default on savings and loan agreements in Cooperative X is to hold meetings at group meetings to immediately pay the obligations of members who default. Then, the Person in Charge of the group can immediately report the matter to Cooperative X, for immediate action. If it turns out that the member does not have the good intention to pay his own obligations or return the money that has been spent by the group members, then the group members have the freedom to be able to immediately expel the member who defaults and as a penalty he cannot join the other joint responsibility group incorporated in Cooperative X.

Acknowledgments

1. Mr. Dr. H. Sutrisno, S.H., M. Hum as the dean of the Law Faculty of National Development University ‘Veteran’ East Java.
2. Mrs. Mas Anienda Tien F., SH, MH. As Vice Dean I Faculty of Law of National Development University 'Veteran' East Java
4. Mr. Fauzul Aliwarman, SHI., M. Hum as Vice Dean III of Law Faculty of National Development University 'Veteran' East Java.
5. Mr. Eko Wahyudi, S.H., M.H. as the Coordinator Program of legal Sciences Faculty of National Development University 'Veteran' East Java,
6. Mr. Hariyo Sulistiyantoro, S.H., M.H. as a mentor lecturer who has guided and directed the author in the making of this thesis.
7. Mr. and Mrs. Lecturer of the Law Faculty of National Development University 'Veteran' East Java.
8. Head of Administration of the Faculty of Law and administration staff of the Faculty of Law, National Development University 'Veteran' East Java.
9. Thanks to both my parents who have provided moral support as well as prayers, blessing and always give encouragement so far.
10. Friends of the Faculty of Law UPN 'Veterans' of East Java who have provided support and assistance.

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