

Liability of Debtors for Default on Credit Agreements In Savings and Loan Cooperatives

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Abstract

Introduction: Cooperatives are one of the people's choices to develop their business by lending business capital, in the implementation of credit in savings and loan cooperatives, there are often problems such as late payments (bad loans) to defaults that cause losses for the cooperative, where savings and loan cooperatives have provided benefits to the community according to the purpose of the cooperative.

Purposes of the Research: To analyze and review the Debtor's Responsibility for the Default of Credit Agreement in the Savings and Loan Cooperative.

Methods of the Research: The research method used is normative juridical with the approach used in this study is a conceptual approach, to answer existing problems, the author collects legal materials through literature studies and analysis with descriptive analysis methods.

Findings of the Research: The results of this study show that the implementation of credit in savings and loan cooperatives that occur in the community has not gone well, because there are often verbal credit agreements that cause problems. If the debtor does not resolve the default can be attributed as a default, and the default can be accounted for in court. So that the credit agreement in the savings cooperative must be in writing so that it can be strong evidence and not be a problem, so that the government is obliged to carry out supervision on cooperatives, especially for collection officers who directly go down to the community.

Keywords: Debtor; Default; Savings and Loan Cooperative.

Submitted: 2025-02-20

Revised: 2025-04-23

Accepted: 2025-04-24

Published: 2025-04-30

How To Cite: Jelien Bridelia Noya, Merry Tjoanda, Nancy Silvana Haliwela, and Roy Prabowo Lenggono. "Liability of Debtors for Default on Credit Agreements In Savings and Loan Cooperatives." TATOHI: Jurnal Ilmu Hukum 5 no. 2 (2025): 69 - 73.

<https://doi.org/10.47268/tatohi.v5i2.2968>

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INTRODUCTION

Financial institutions are here to help both business actors to finance the business run by them and people who want to buy certain goods for personal consumption. One of the efforts made by the state is to issue a policy to provide loans. Money lending activities have been carried out for a long time in the lives of people who have known money as a means of payment. It is known that almost all people have made borrowing money as something indispensable to support the development of a person's economic activities and to improve their standard of living.¹

A cooperative is one of the non-bank financial institutions that in principle is a place where people who have relatively diverse interests, gather and rally to improve their welfare. In the implementation of its activities, cooperatives are based on values and principles that characterize them as an economic institution that is loaded with business

¹ Ashibly, *Hukum Jaminan*, Bengkulu: MIH Unihaz, 2018, p. 1

ethical values. Cooperatives as regulated in Law Number 17 of 2012 concerning Cooperatives (hereinafter referred to as the Cooperative Law) regulates the definition of a cooperative, namely an association of individuals or business entities that has a purpose as regulated in the Cooperative Law Article 4 stipulates that: "Cooperatives aim to improve the welfare of members in particular and society in general, as well as an inseparable part of the democratic and just national economic order".²

A credit agreement in a cooperative can be made with its cooperative members as debtors who borrow from the cooperative as creditors. This can be done because the cooperative and its members have a legal relationship, which is protected by legal rules. A legal relationship is a relationship governed by law. This means that a relationship that is not regulated by law is not a legal relationship. Legal relationships can occur between fellow legal subjects and between legal subjects and goods. Relationships between fellow legal subjects can occur between one person and another, between one person and a legal entity, and between a legal entity and another legal entity.

In the implementation of credit agreements or borrowing in cooperative business activities, it is not uncommon to encounter problems that arise between the two, namely between the cooperative as creditors and also cooperative members as debtors, the problems that often occur are, problems related to arrears in loan installment payments (bad loans) which will affect the payment date that is not on time. The development of cooperatives is certainly not without the slightest challenge of various legal problems related to lending to debtors (the community).

One of the cases related to a credit agreement in a savings and loan cooperative carried out by a housewife with the initials "T.P" in a savings and loan cooperative with the initials "O" which is located in Kusu-kusu Sereh Village, Sirimau District, Ambon City. The mother made a loan to the cooperative of Rp. 5,000,000 (five million rupiah) through a verbal agreement. The provisions for repayment of credit to cooperatives are determined through an oral agreement with provisions in the form of a payment amount of Rp.200,000 (two hundred thousand) per day with a loan term of one year (February 2022 to April 2023). However, the debtor does not fulfill his obligation to repay until April 2024.

METHODS OF THE RESEARCH

In accordance with the problems presented. So, this type of research is normative juridical research, according to Peter Mahmud Marzuki, normative juridical research or literature law research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced. The approach used is a conceptual approach with primary, secondary and tertiary legal sources. This writing applies the method of literature study, then it is connected between legal materials and legal issues that are the focus of this writing, with the aim of achieving a comprehensive conclusion

RESULTS AND DISCUSSION

A. Credit Implementation in Savings and Loan Cooperatives

Savings and Loan Cooperatives are financial institutions and are included as intermediary institutions, although this financial institution has special characteristics in

² Etty Puji Lestari, *Modul Ekonomi Koperasi*, Jakarta, 2016, p. 22

accordance with cooperative principles. Savings and Loan Cooperatives as one of the types of cooperatives in Indonesia are growing gradually. The attitude and desire to help each other among the members is the key to the success of the savings and loan cooperative movement in Indonesia.³

Types of cooperatives can be classified on certain basis, namely the basis of the business field, the basis of the type of business, the basis of the profession of the cooperative members, and the work area. Cooperatives in terms of business fields, can be distinguished into consumption cooperatives, production cooperatives, and savings and loan cooperatives. One type of cooperative discussed in this writing is credit cooperatives or savings and loans. Therefore the subject of the agreement (credit) is the parties who are bound by the conclusion of an agreement (credit), including:⁴ a) Creditors are parties who are entitled to achievements which are then commonly referred to as lenders or credits; b) Debtors are parties who are obliged to perform which are then commonly called loan or credit recipients.

According to the Civil Code, an agreement is declared valid if it meets the conditions of the agreement as described in article 1320 of the Civil Code, namely: 1) Agreement of the parties, In the agreement made, an agreement must be realized as proof of agreement between the parties who make the agreement. 2) Competence of the parties, Proficiency shows a person's ability both physically and seen from age, so that he can carry out agreements and be responsible for the agreements made. 3) The terms of certain things in the agreement, There are achievements that are fulfilled by the parties in carrying out the agreement, both in the form of objects and other provisions that must be met. 4) A cause that is lawful in the covenant, The agreement made does not contradict the law, public order, decency and norms that apply in society.

Every agreement made, if the conditions of the agreement as stipulated in Article 1320 of the Civil Code have been met, then based on the provisions of Article 1338 Paragraph (1) of the Civil Code stipulate that "All agreements made legally shall be valid as laws for those who make them". Thus, the agreement made by the parties will be binding on the parties, for which the rights and obligations of the parties must be fulfilled in accordance with the agreement made.

The Credit Agreement at the Savings and Loan cooperative is carried out orally between the savings and loan cooperative and the debtor with the initials T.P located in Kusu-Kusu Sereh Village, Sirimau District, Ambon City, since February 2022 with a sum of Rp. 5,000,000, (five million rupiah) and must make a deposit per day of Rp. 200,000, (two hundred thousand rupiah) since February 2022 and must be comfortable in early April 2023, However, until April 2024, it has not been paid in full due to family problems. So it is difficult to settle it by the Simapn Loan Cooperative.

Oral Credit Agreements, currently do have weaknesses in the event of legal risks. In a credit agreement, which is done orally, there will be difficulties if, one of the debtors (borrowers) defaults. Considering that to prove that a money or credit loan agreement has occurred, written evidence is required, so that the debtor can easily be held accountable. Oral agreements have weaknesses in proof, and nowadays oral agreements must be

³ Dewi Atriani, Dkk, *Penyelesaian Hukum Wanprestasi Berbentuk Nasabah Gagal Bayar Terhadap Koperasi Simpan Pinjam*, *Jurnal Ilmu Hukum, Sosial, dan Humaniora*, 2 no 6 (2024).

⁴ Mariam Darus Badruzaman, *KUHPerdata Buku III*, Bandung: Alumni, 2006, p.3

upgraded to written agreements. Similarly, in the Savings and Loan Cooperative, it cannot only use verbal agreements, because it results in weak evidence. Thus, the credit agreement at the Savings and Loan Corporation must use a written agreement.

B. Debtor's Responsibility for Credit Default in Savings and Loan Cooperatives

The credit agreement in the Savings and Loan Cooperative between the cooperative and the debtor results in the rights and obligations of the parties. If one of the parties does not perform its rights or obligations, it can be categorized as an act of default. Furthermore, according to Subekti in the Law of Agreements, elements of default, including:⁵ 1) Not doing what is promised or not doing what is promised; 2) Doing what is promised, but not as promised; 3) Doing what was promised, but too late; 4) Doing something that according to the agreement should not be done.

Credit default includes injury to promise or default. Default is a term in the law of engagement which means the injury of a promise. Injury to promise (default) as referred to in article 15 paragraph (3) of Law Number 42 of 1999, of course, is interpreted as an injury to the promise to the Principal Agreement. According to the Civil Code, to determine that a person has committed a default is based on the provisions of article 1238 of the Civil Code. The meaning of responsibility in the legal dictionary is termed liability and responsibility. The term liability refers to legal liability, namely liability due to wrongdoing committed by the subject of law, which includes all the actual or potential characters of rights and obligations such as losses, threats, crimes, costs or conditions that create the duty to carry out the law.⁶

In the case of credit default by the Credit Agreement between the debtor with the initials T.P against the Savings and Loan Cooperative located in Kusu-Kusu Sereh Village, Sirimau District, Ambon City, since February 2022 with a sum of Rp. 5,000,000, (five million rupiah) and had to make a daily deposit of Rp. 200,000, (two hundred thousand rupiah) since February 2022, but until April 2024 it has not been paid in full due to family economic problems. The payment is a form of the debtor's responsibility for the funds that have been lent by the Savings and Loan Corporation. As has been stipulated in article 1338 of the Civil Code, that a legally made agreement will have legal consequences as a law for the parties. Legal consequences, the defaulting party is responsible for its actions. Thus, the Savings and Loan Cooperative has the right to demand the responsibility of the debtor, the debtor's actions cannot be canceled due to family problems or other problems, according to the agreement made and the funds that have been received by the debtor from the Savings and Loan Cooperative must be returned along with interest and fines, as a legal consequence of the agreement that has been made. If the debtor is unable to carry out its responsibilities, then the cooperative can hold the debtor accountable through legal mechanisms, namely non-litigation and litigation liability.

Non-litigation legal liability can be carried out through deliberation between the debtor and the cooperative, which can be done as a solution to the solution to the problem of defaulted loans. Furthermore, the form of liability through litigation is carried out through the court, by filing a lawsuit due to default committed by the Debtor. Based on liability in litigation through a lawsuit to the court, so that the claim of default can be accounted for to

⁵ R, Subekti, *Hukum Perjanjian*, Jakarta: Intermassa, 2008, p. 34

⁶ Nancy Silvana Haliwela, *Esensi Pengawasan Pemerintah Daerah pada Pelaksanaan Tanggung Jawab Sosial dan Lingkungan Perseroan Terbatas*. Disertasi: Universitas Hasanuddin, Makassar, 2021.

perform its achievements as a legal consequence in carrying out the valid agreement between the debtor and the cooperative on the credit agreement.

CONCLUSION

The implementation of credit in savings and loan cooperatives is carried out without going through a written agreement, this is in accordance with the provisions of the agreement in the Civil Law which recognizes the form of oral agreement or written agreement, based on the principle of freedom of contract that the parties can enter into an agreement in written or oral form, as long as it meets the requirements for the validity of the agreement. An oral credit agreement still has legal force for the parties, so the parties are obliged to carry out their rights and obligations in accordance with the agreement made. The debtor who defaults on the credit agreement with the Cooperative, then his act is categorized as an act of default, so he can be held responsible for making compensation. The debtor's responsibility for Credit Default in the Savings and Loan Cooperative based on the oral agreement that has been made, still has the legal force to be held accountable from the debtor. The form of liability can be carried out through non-litigation or litigation channels, to ask the debtor for the responsibility of the debtor for the credit default against the cooperative as a form of default committed by the debtor against the cooperative, so that the debtor's responsibility to the savings and loan cooperative can be fulfilled, either by deliberation or submitted to the court for the fulfillment of the debtor's responsibility for the act of credit default against the cooperative.

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