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THE BANKRUPTCY CHARACTERISTICS OF COOPERATIVE LEGAL ENTITIES

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Abstract

This study aims to determine the construction of bankruptcy law associated with the characteristics of cooperative legal entities. The approach used is a statutory approach, a conceptualapproach, and case approach. The source of legal material consists of primary legal material and secondary legal material. The results of the study show that Cooperative legal entity is an activity carried out by a group of people or groups that prioritize family-based activities , cooperation, mutual cooperation based on equality, rights and obligations to achieve common goals, namely the welfare of all cooperative members. cooperatives, namely the social dimension and economic dimension, namely achieving prosperity through cooperation and mutual cooperation that works based on the ideal foundation, structural foundation and operational foundation. In the event of bankruptcy, the filing of cooperative bankruptcy should be carried out by the Ministry of Cooperatives after the efforts of guidance and supervision by the Ministry of Cooperatives.

Keywords

bankruptcy, legal entity, cooperative

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Introduction

Efforts to prosper the Indonesian people, carried out in various ways, among others, through the establishment of legal entities based on the spirit and family spirit and become one of basicof the Indonesian economy, namely of cooperatives regulated is Law No. 25 of 1992 concerning Cooperative. Cooperatives are legal entities in general has the aim of improving the welfare of its members and fostering a weak economic group. The cooperative operates all activities it is through cooperative organs, namely meeting members, administrators and supervisors. (Sutantya Rahardja Hadhikusuma, 2002). The management of the operation can result in the cooperative experiencing bankruptcy. A cooperative can be applied for bankruptcy if there are two or more creditors and do not pay in full at least one debt that has fallen due and can be declared bankrupt with a court decision in accordance with the conditions stipulated in the bankruptcy law and postponement of debt repayment obligations.

Bankruptcyof the cooperative basically refers to the bankruptcy law, however, the existence of cooperatives as a legal entity based on family with distinctive characteristics in view creates a problem because the dissolution of the cooperative after the bankruptcy decision of the commercial court will have an impact on the survival of the cooperative including this cooperative member who is the owner of the cooperative and bankruptcy arrangements in the Bankruptcy Law in the author's view has not at all reflected a legal substance that places the cooperative in its distinctive characteristics because it is applied equally to other commercial legal entities.

Another problem found is that there is no regulation either in the Bankruptcy Law or the Cooperative Law along with its implementing rules governing the mechanism that must be taken if a cooperative is proposed for bankruptcy by another party so that what is clearly seen in this problem is bankruptcy cooperatives are placed separately with the supervisory function and guidance functions by the Ministry of Cooperatives so that researchers interested in reviewing the problems of how to construct bankruptcy law associated with the characteristics of cooperative legal entities .

Research Methods

This research is directed at the normative nature of legal science (Philipus M Hadjon dan Tatiek Sri Djatmiati, 2005). So the type of research is normative legal research, namely research that examines the provisions of written positive law systematically related to the characteristics of bankruptcy on cooperatives. In legal research there are several approaches. Legal research is conducted to find solutions to problems arising from legal issues. The results to be achieved are giving prescriptions about what should be (Peter Mahmud Marzuki, 2009).

The approach used is a statutory approach, a conceptual approach, and case approach. The source of legal material consists of primary legal material and secondary legal material (Peter Mahmud Marzuki, 2009). The legislation that is used as a source of primary legal material includes; Constitution of the Republic of Indonesia 1945, the Civil Code, the Cooperative Law and the Bankruptcy Law. Secondary legal materials

in the form of literature, journals, research reports, scientific papers in the form of papers, magazines, newspapers relating to the problem being discussed.

Dimention of Cooperative

Economic policy makers in Indonesia regulate economic policy choices and the principles of certain principles in the field of economic rights and must make the Constitution of the Republic of Indonesia 1945 as the highest law and policy in the economic field. Constitution of NRI is said to be an economic constitution because it regulates provisions regarding economic policies as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia. This description shows that cooperatives were born and have grown naturally in the colonial era and after independence was renewed and given a very high position in the explanation of the Constitution and on that basis then gave birth to various interpretations of how to develop cooperatives.

Cooperative institutions from the beginning were introduced in Indonesia aimed at siding with the economic interests of the people known as the weak economic group. The existence of cooperatives in the course of Indonesian history is a separate phenomenon, because there is no other similar institution capable of matching it, but at the same time it is expected to be a counterweight to other economic pillars. Cooperative institutions by many circles, are believed to be very in accordance with the culture and order of life of the Indonesian people. Cooperatives contain self-help content, cooperation for mutual interests, and several other moral essences. Since independence was achieved, cooperative organizations always gained their own place in the structure of the economy and received attention from the government (Soetrisno, 2008).

Cooperative have broad and deep dimensions, namely as macro-ideology, micro-organization and as a movement for social change (social change movement) as well as space for individuality. In the macro-ideological concept the cooperative includes social, economic and political systems. Micro talk about democratic companies, professionalism, management and social entrepreneurship, as the individuality space of cooperatives moves to lift human self-esteem, while as a movement for social change cooperatives want to fight for the values of justice in a participatory democratic system. More broadly than that, because the cooperative is put on an idea of the concept of value, the cooperative is also referred to as a system of thought. A system of thinking that is different from capitalism, Marxist socialism, feudalism, authoritarianism and other systems of thought. the idea of living together while continuing to recognize individual rights and private ownership (Soetrisno, 2008).

The cooperative has a constitution and by-laws that become a reference in the implementation of its activities where for the implementation of these activities, cooperatives have 3 organs, namely the Meeting of Members, Managers and Supervisors who have their duties, functions and positions in the effort to achieve cooperative objectives. Furthermore, as a system, cooperatives are systems that want participatory socio-economic justice. An economic system is certainly not just an institutional device to satisfy existing needs and needs, but also as a way to create and

shape future desires. based on moral , political and economic. The cooperative also is an alternative to the existing system, which has a strong relevance to realize his goal as building socio-economic system that allows the realization of justice because there really is no justice without life together, and no living together without justice.

Cooperatives are carried out bottom-up by providing opportunities for community awareness assisted by the government to implement and choose its economy (cooperatives). The government becomes a facilitator and regulator in carrying out a populist economy in the form of a cooperative, the role of the government is to open up market for the work of the nation (Soetrisno, 2008).

The descriptions above show that the cooperative has a position as a teacher of the Indonesian economy even though in the amendments Constitution of of Republic of Indonesia 1945 was not reaffirmed in the explanation but this did not reduce the position of cooperatives as the only institution for economic development the people are based on the noble values of the Indonesian people, namely kinship, mutual cooperation and cooperation to achieve common prosperity.

Cooperatives is a legal entity that has distinctive characteristics both from the source of the fund and its purpose. Cooperatives in their existence prioritize capital or funds from members of cooperatives where the capital is managed responsibly by the management to achieve mutual prosperity through the distribution of the remaining proceeds of the business. Profit orientation for cooperatives is solely intended for the achievement of mutual prosperity so that the orientation in cooperatives is basically 2 (two), namely member oriented and profit oriented which brings consequences in the form of active participation of its members. Cooperative members have 2 (two) identities namely as owners and users of cooperative services so that as owners, members of cooperatives can contribute to cooperatives in the form of capital, implementation and supervision and as service users of cooperative members can receive cooperative business services.

The nature of cooperatives is activities carried out by a group of people or groups that prioritize activities that are cooperative in nature, mutual cooperation based on equality, rights and obligations to achieve a common goal, namely the welfare of all members of the cooperative. This is what gives birth to two dimensions of cooperatives, namely the social dimension and the economic dimension, namely achieving prosperity through cooperation and mutual cooperation.

Cooperatives are essentially not merely a form of legal entity (rechts person). Cooperatives have very deep ideological roots as a form of resistance to capitalism. In a time when capitalism was undergoing dramatic changes and causing bad temperament which was sustained by the industrial revolution when it was thought and also a movement of social change with the fundamental idea of cooperatives that wanted to live harmony in cooperation, and place human freedom as individuals to determine their own destiny Cooperative concepts believe that true justice exists only in living together and there is no living together without justice. The above view shows

that cooperatives are a form of criticism of the capitalist economic system which in reality at that time has caused injustice and the existence of cooperatives is expected to become a place that is able to create togetherness and justice and justice in togetherness.

The operation in its existence in Indonesia can be chosen in three aspects namely first, a normative aspect. Normatively the position of cooperatives in Indonesia can be seen from the interpretation of economic democracy in Indonesia as stipulated in the Constitution of the Republic of Indonesia 1945 , which is based on the principles of kinship and mutual cooperation. The assertion of cooperatives as business entities appointed to fulfill these criteria is indeed no longer in the explanation of the 1945 Constitution of the Republic of Indonesia after amendments but seen from the soul and foundation of the cooperative, only cooperatives are the only business entity that currently has family and mutual principles in carrying out its business activities Second, the legality specification, a cooperative is a business entity having the status of a legal entity since it fulfills the conditions stipulated in the Cooperative Law and with its status as a legal entity the cooperative has characteristics that are generally owned by a legal entity but this still does not eliminate the distinctive characteristics of cooperatives as a joint effort to achieve prosperity with its members. Third, an operational specification, cooperatives are business entities in the form of legal entities that can carry out commercial activities as other legal entities but these activities are carried out with the agreement of members of the cooperative. Operationally, cooperatives can take advantage of generally accepted economic theories as practical tools in their business and can also take economic principles of commercial enterprises but remain within the limits that do not exceed the characteristics of cooperatives as joint ventures based on distinctive values that distinguish them from other business entities, namely as a human alliance to achieve mutual prosperity, not a capital alliance to achieve profit for each individual owner, but cooperatives also do not work solely for social purposes because cooperatives must operate in an operation that has economic and social aspects which is placed in a balanced manner.

Bankruptcy of Cooperative

Cooperatives in their existence can experience bankruptcy which affects the bankruptcy process. All of the above provisions also apply to the implementation of bankruptcy of cooperative legal entities. The bankruptcy decision of a cooperative will be able to change the legal status of the cooperative as the debtor becomes incompetent to carry out legal actions, control and manage his assets since the decision on the bankruptcy statement is pronounced. In addition, the decision on a bankruptcy statement has legal consequences for ongoing claims, both in the capacity of the debtor as the defendant and the plaintiff. As a result of the bankruptcy decision, the consequences are that lawsuits originating from the rights and obligations of the bankrupt cooperative assets must be filed by or against the curator. If the claim is filed or forwarded by or against a bankrupt cooperative, then if the claim results in the conviction of the bankrupt cooperative, then the sentence does not have legal force on bankrupt assets.

The bankruptcy of a cooperative can cause the dissolution of the cooperative as stipulated in the Cooperative Law that the dissolution of the cooperative can be carried out based on the Decision of the Meeting of Members, the period of its establishment has ended and/ or the Minister's Decree. The Minister can dissolve the cooperative if the cooperative is declared bankrupt based on a court decision that has permanent legal force. This shows that in the case above, if there has been a court decision which has a permanent legal force, the cooperative can be declared bankrupt the government dissolves the cooperative concerned without being able to file an objection. This is in line with what is stipulated in Government Regulation Number 17 of 1994 concerning the Dissolution of Cooperatives by the Government.

Cooperative as a business entity that is a legal entity even though its position as a legal subject, but it is not a living creature like a human being but is still a legal entity. Cooperatives lose their thinking and will power because cooperatives cannot do their own legal actions. Unlike humans who can act alone, even cooperatives as legal entities are independent legal subjects so that a cooperative in terms of its management is very dependent on the organs in it, especially for administrators.

Cooperatives obtain legal entity status after their establishment deed was approved by the Government. In such a position, of course cooperatives are a legal entity so that quality as person in civil procedural law or also as a legal subject, meaning that the legal entity can also be a litigant party. In the Civil Procedure Code, legal entities are always represented, and those who represent them are entitled organs according to the law or statutes (vide Article 1655 KUHPdt) for example, in cooperatives namely "management" is the representative of the legal entity.

In its position as an independent legal subject, the existence of a cooperative, as a standard person in judicio (a legal subject who is capable and can act in law). Because, a civil act of some people simply cannot make an organization a legal entity, but must be based on law and/or by law (degeslotensyateem van rechtspersonen). The management of the cooperative which is usually called the management is one of the cooperative organs that must exist with the task of conducting management and representing cooperatives, both inside and outside the court. Managers to not be separated from their responsibilities, the management must oversee the implementation of business management tasks. This means that the management acts as a supervisor in an effort to maintain business continuity and organization, which in a limited liability company can be roughly equated with the role of the commissioner. The management remains fully responsible for managing the cooperative business. Therefore, in the matter of targeting and formulating the company's strategy, the management is the principal responsible (principal responsibility). The management of the cooperative which is usually called the management is one of the organs of the cooperative that must exist with the task of conducting management and representing cooperatives, both inside and outside the court

In the cooperative bankruptcy process, the cooperative can still carry out legal transactions against the second party, of course those who carry out legal actions of the

cooperative are curators or at least the mandate of the curator. So it is not possible if the cooperative legal entity has been temporarily unable to process the transaction.

In a bankruptcy process, the cooperative as a debtor becomes incompetent to carry out legal actions, controls and manages his assets since the decision on the bankruptcy statement is pronounced.In addition, the decision on a bankruptcy statement has legal consequences for ongoing claims, both in the capacity of the debtor as the defendant and the plaintiff. As a result of the bankruptcy decision it has the consequence that lawsuits originating from the rights and obligations of the bankrupt cooperative assets must be filed by or against the curator. If the claim is filed or forwarded by or against a bankrupt cooperative, then if the claim results in the conviction of the bankrupt cooperative, then the sentence does not have the legal force of the bankrupt asset.

Bankruptcy will cause losses to the cooperative and in accordance with the provisions of the Cooperative Law, in the event that such loss and loss is evidently caused by intentions or negligence of the management, the management has a joint responsibility to recover such losses. In company law the business rules of judgment rule applies, that a manager or member of the board of directors cannot be held personally accountable for his actions taken as a manager or director which is believed to be the best act for the corporation and carried out honestly in good faith and not contrary to applicable law. If the action turns out to be erroneous or unfavorable to the corporation and even detrimental, then the court or owners (shareholders) may not make second guesses about business decisions (business judgment) from the board of directors or management and if a corporation is a legal entity, management does mismanagement or conducting " ultra vires " activities or actions (deviating from the articles of association) and it turns out that assets or assets owned by the corporation are insufficient to fulfill obligations to third parties (creditors or related stakeholders) then the management is responsible jointly and full for all of these parties and each in private (proportional) and up to personal property (Sigit Priyono, 2005). This also applies to cooperative managers. In the event that a loss occurs not due to negligence or deliberation of the management, then he cannot be asked to account for it and vice versa if it occurs due to negligence or intentionally the loss borne by each manager where the loss is not borne by all members of the management to bear it but only to those who make such negligence or intentions so that the cooperative loses.

The main purpose of the bankruptcy process against cooperatives is to accelerate the liquidation process in the context of distributing cooperative assets in order to pay off the debts of cooperatives because cooperatives have experienced financial difficulties that cause it to be unable to pay debts that fall due. The existence of bankrupt cooperatives soon ended with the acceleration of the process of liquidating the assets of the cooperative. The main principle of bankruptcy of cooperatives is to hasten the process of liquidating cooperative assets to then distribute them to all creditors. The juridical existence of a bankrupt cooperative is still the existence of a legal entity. By being declared bankrupt it is not mutatis mutandis cooperative legal entity becomes non-existent. The dissolution of the cooperative applies in a Rule of Reason. For certain legal consequences of bankruptcy, the Rule of Reason applies , is that the legal

consequences do not automatically apply, but only take effect if applied by certain parties, after having a reasonable reason to apply. So it needs to be requested by certain parties and also needs certain institutional approvals. Researchers in this case view that based on the provisions of Law No. 37 of 2004, a legal entity not dissolved after the bankruptcy decision as well as cooperatives in Indonesia does not automatically dissolve the cooperative because it is still possible for the bankrupt cooperative to be rehabilitated if it is able to pay off its debts and the thing to note is that bankruptcy and cooperative dissolution are different legal institutions.

Bankruptcy decisions of cooperatives only make cooperatives lose their rights to manage and control the cooperative's assets. Debtors (cooperatives) who cannot pay their debts or do not have peace after being declared bankrupt, rehabilitation does not apply to this. Cooperative bankruptcy can end because there is no peace or cannot pay off the debt or has been declared insolvency, so in principle there is no rehabilitation. If this situation occurs, the legal action that will be taken is to dissolve the cooperative by the government followed by the cooperative settlement / liquidation.

The reason for the dissolution of cooperatives due to bankruptcy is the withdrawal of bankruptcy based on the decision of the commercial court that has permanent legal force, the bankruptcy of the cooperative is not enough to pay the costs and because the bankrupt assets of the cooperative are insolvent as stipulated in the Bankruptcy law. and Postponement of Obligations to Pay Debt. Thus only cooperatives that cannot pay off their debts or do not have peace after being sent to bankruptcy must be dissolved because if the cooperative has paid off its debts or peace has taken place, the cooperative can continue its business. However, it is different in the legal institutions for the dissolution of cooperatives, at where after the dissolution decision is issued, what must be done is liquidation/ settlement to settle the rights and obligations of the cooperative.

Cooperatives are a form of business with the status of a legal entity that was formed as a forum for the development of a populist economy in realizing people's welfare through community empowerment and a fair distribution of justice. The economic dimension and the social dimension of the cooperative place cooperatives as a form of business entity that is considered to be born of the noble values of the Indonesian people, namely kinship and mutual cooperation. This kinship and mutual cooperation began from the capital to the responsibility for all activities of the cooperative.

Bankruptcy Law relating to Article 1131 jo Article 1132 of the Civil Code. The formulation of Article 1131 of the Civil Code shows that every action taken by the legal subject in the field of civil law, especially in the field of legal property, will always have an effect on his assets, both those which increase the amount of his assets (debit). Thus, the assets possessed by legal subjects will always be in a dynamic state and always change from time to time, so that any agreements made or engagements that occur can result in the property of legal subjects increasing or decreasing (Hadi Subhan, 2008).

The current bankruptcy comes from western law before the enactment of law No. 37 of 2004 concerning Bankruptcy and Postponement of Obligation to Pay Debt (facilitation ensurseance van betaling). A provision that will be applied and applied in a jurisdiction should be in accordance with the intrinsic values that live in the community. Mismatch between rules and intrinsic values can cause many problems as empirical symptoms, Roscoe Pound provides a theory about law is the tool of engineering which in his opinion that law is a tool to manipulate society.

Law as social engineering is designed and created by the rulling class . Although in most cases, the substance of the legal product is not in accordance with the legal culture of the community. This can happen because the political system always dominates the legal system. Even such behavior sometimes destabilizes the legal order or maybe even changes the current legal system (Muin Fahmal, 2008). Friedman also stated that: "the people who make, apply, or use the law are human beings. Their behavior is social behavior" (people who make and apply, or who use law are human beings, their behavior is social behavior) (Achmad Ali, 2008). Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations has regulated several parties who can file a bankruptcy of at least two creditors, but for some legal entities special arrangements are given . Determination of parties who can submit a bankruptcy application in the Act is of course based on the basis and strong reasons. In 2010, there was an Insurance Company that voluntarily submitted a bankruptcy application to itself. At that time the business license was revoked. However, the Commercial Court rejected the request, and this decision was upheld at the appeal level. In its consideration the Panel of Judges of the Supreme Court (MA) argued that the applicant did not have the legality in submitting an application. As an insurance company in the field of loss and reinsurance losses, submission of bankruptcy applications is subject to specific provisions governing bankruptcy of insurance companies. Article 2 paragraph (5) Law No. 37 of 2004 stipulates that "In the event that the debtor is a company that is an insurance company, reinsurance company, pension fund, or State-Owned Enterprise that is engaged in the public interest, the application for bankruptcy statement can only be submitted by the Minister of Finance." Next Article 20 paragraph (1) Law No. 2 of 1992 concerning insurance business states that " by not reducing the entry into force of the provisions in the Bankruptcy Regulation, in the event that there is revocation of a business license as referred to in Article 18, the Minister, based on public interest, may request the Court to declare the company concerned bankrupt " This approval from the Minister of Finance limits the actions of insurance companies whose business licenses have been revoked in the case of voluntary filing for bankruptcy. This is done by the Minister of Finance in order to prioritize the public interest as well as legal protection for the clients of the insurance company concerned.

The granting of special authority to certain institutions as mentioned above is not a new thing in the Bankruptcy Act in Indonesia because actually, based on Article 1 paragraph (3) and Article 1 paragraph (4) of Law Number 4 of 1998 concerning Bankruptcy, the granting of this special authority has been given to Bank Indonesia

and BAPEPAM for banks and securities companies as companies whose presence, function and role are closely related to the public interest. Article 1 paragraph (3) of Law Number 4 Year 1998 concerning Bankruptcy states: "In the event that the debtor is a bank, the application for bankruptcy statement can only be submitted by Bank Indonesia." Article 1 paragraph (4) Law Number 4 Year 1998 concerning Bankruptcy states: "In the event that the debtor is a Securities Company, Stock Exchange, Clearing and Guarantee Institution, Depository and Settlement Institution, the application for bankruptcy statement can only be submitted by the Capital Market Supervisory Agency." Provision of special authority first given to Bank Indonesia and BAPEPAM in the Law Number 4 of 1998 concerning Bankruptcy, which among other things becomes the basis for consideration of the legislators to also give special authority to the Minister of Finance as stipulated in Article 2 paragraph (5) of Law Number 37 Year 2004 concerning Bankruptcy and Delaying Obligation to Pay Debt, because the Insurance Company has the same nature as the Bank, which is both a prudential financial institution, namely a financial institution that absorbs, manages,and mastering public funds and even a large portion of the company's wealth is public funds and only a small portion is the company's capital so that banks and insurance companies share relationships that are very important, inherent and inseparable from the public interest and have strategic positions and values Indonesia's economic development. Article 6 paragraph (3) of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Obligations of Debt Payment states: "The Registrar is obliged to reject the registration of the application for bankruptcy statements for the institution as referred to in Article 2 paragraph (3), paragraph (4), and paragraph (5) if done it is not in accordance with the provisions in those verses". From the provisions of Article 6 paragraph (3) above, it is very clear that the authority granted to the Registrar of the Commercial Court is in an effort to provide legal certainty, among others in the implementation of procedures for submitting bankruptcy statements against insurance companies as stipulated in Article 2 paragraph (5), where such authority has been expressly granted to the Minister of Finance, with another understanding, that a creditor wishes to submit an application for a bankruptcy statement against a debtor of an Insurance Company, the creditor cannot submit a bankruptcy application directly to the Commercial Court, but must submit it through the Minister of Finance who has the authority to file a bankruptcy application against the Insurance Company.

The authority granted to the Registrar of the Commercial Court to reject the bankruptcy petition filed by the bankrupt Applicant, among other things, against the Insurance Company, is basically to establish the firmness of the Commercial Court's attitude towards bankruptcy applicants that are not in accordance with the provisions of Article 2 Paragraph (5) of Law Number 37 Year 2004 concerning Bankruptcy and Delay of Obligation to Pay Debt because if the form of rejection of violation of Article 2 paragraph (5) must be carried out through a court decision, then the situation will cause a shock to the Insurance Company in in society, especially policyholders who are very large in number.

The authority granted to the clerk of the commercial court as stipulated in Article 6 paragraph (3) is not only to reject the bankruptcy application against the Insurance Company alone, but also the authority to refuse the bankruptcy application submitted towards banks without regard to the provisions referred to in Article 2 paragraph (3), to Securities Companies, Stock Exchanges, Clearing and Guarantee Institutions, Depository and Settlement Institutions submitted without regard to the provisions referred to in Article 2 paragraph (4) and to Pension Funds and State-Owned Enterprises (SOEs) engaged in the public interest regardless of the provisions referred to in Article 2 paragraph (5) of Law Number 37 Year 2004 concerning Bankruptcy and Delaying Obligations of Debt Payments.

The essence of justice values and the objectives contained in Article 6 paragraph (3) is intended to provide legal certainty, legal protection for the interests of many people (public) that are closely attached to Banks, Securities Companies, Stock Exchanges, Clearing and Guarantee Institutions, Storage Institutions and Settlement, Pension funds, State-Owned Enterprises including Insurance Companies and insurance policy holders.

Insurance companies as institutions that raise large funds from the public have been given exemptions in the interest of legal protection for insurance policy holders. The existence of the insurance policy holder has received enormous protection in law No. 37 of 2004 but unfortunately, cooperatives were apparently not given a regulation that could provide protection to members of cooperatives who could be disadvantaged when cooperatives were bankrupt. This is in the view of researchers as one of the weaknesses of the bankruptcy law in Indonesia. Cooperatives are given the same arrangements with other legal entities even though cooperatives in their existence have a position as institutions that have high goals and are very important for the interests of the national economy. The researcher in this case is of the view that the filing of bankruptcy applications for cooperative enterprises should be in the hands of the Ministry of cooperatives so that the bankruptcy application is actually submitted after all coaching efforts have been carried out by the cooperative ministry.

Conclusion

The conclusion of this study is a cooperative legal entities are activities carried out by a group of people or group that promotes activities that based of kinship, cooperation, mutual cooperation based on equality, rights and obligations to achieve the common goal of welfare being of all members of the cooperative This is which gave birth to two dimensions of the cooperative, namely the social dimension and the economic dimension, namely achieving prosperity through cooperation and mutual cooperation that works based on the ideal foundation, structural foundation and operational foundation. The implications of this case is natural event of bankruptcy, the filing of cooperative bankruptcy should be carried out by the Ministry of Cooperatives after the efforts of guidance and supervision by the Ministry of Cooperatives. In the event of a bankruptcy of a cooperative, it should not directly become the basis for the Ministry of Cooperatives to carry out dissolution but still carry out coaching and settlement efforts

so that as far as possible the cooperatives can run healthy again and the members' funds can be managed again for the benefit of cooperative member. It is necessary to establish a special institution for dispute resolution and control of cooperatives that can make preventive efforts on cooperatives that are in dispute or problems to minimize the occurrence of bankruptcy and dissolution of cooperatives.

References

Achmad Ali. (2008). *Menguak Tabir Hukum*. Jakarta : Yasrif.

Hadi Subhan. (2008). *Hukum Kepailitan, Prinsip, Norma dan Praktik di Peradilan*. Jakarta : Kencana.

Muin Fahmal. (2008). *Peranan Asas-asas Umum Pemerintahan yang Layak dalam Mewujudkan Pemerintahan yang Bersih*. Jakarta : Total Media.

Philipus M. Hadjon. (no year). *Merancang dan Menulis Penelitian Hukum Normatif (Teori dan Filsafat). Surabaya :* Universitas Airlangga.

Peter Mahmud Marzuki. (2009). *Penelitian Hukum*. Jakarta : Kencana Predana Media Group.

Philipus M Hadjon dan Tatiek Sri Djatmiati. (2005). *Argumentasi Hukum*. Yogyakarta : Gajah Mada University Press.

Sigit Priyono, (2005) *Akibat Hukum Perseroan Terbatas Yang Dijatuhi Pailit*. Semarang : Universitas Diponegoro.

Sutantya Rahardja Hadhikusuma. (2002). *Hukum Koperasi Indonesia*. Jakarta : Raja Grafindo Persada.