

Legal Protection Framework and Bankruptcy Risk Management: A Case Study of the Merah Putih Cooperative

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Article	Abstract
Keywords: Legal Protection; Merah Putih Cooperatives; Bankruptcy.	This study explores the legal protection of members of the Merah Putih Cooperative in Indonesia, focusing on the risks of losses that could lead to bankruptcy. The research problem lies in the inconsistency between the social character of cooperatives and the bankruptcy legal framework. Using a doctrinal legal analysis of Law Number 25 of 1992 on Cooperatives and Law Number 37 of 2004 on Bankruptcy and PKPU, the study identifies a gap in the legal provisions regarding the status of cooperative members in the bankruptcy process. Specifically, cooperative members, who are both owners and service users, lack clear legal standing as creditors, which exposes them to the loss of savings and economic rights. The study also finds that the principles of kinship, justice, and shared responsibility in cooperatives are not adequately integrated with the formalistic and corporatist approach of bankruptcy law. The study concludes that reformulating legal policies is necessary to accommodate the unique characteristics of cooperatives within the bankruptcy legal system. This includes recognizing the legal status of members and developing deposit protection mechanisms, ensuring
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a more just and responsive legal framework for the people's economy.



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Introduction

In Indonesia, several types of business entities are known, including cooperatives.¹ Cooperatives are family-based business entities, thus playing a vital role in the national economic system. By their very nature, cooperative members are both owners and users of services, making their existence directly related to their members' well-being. However, the development of the modern economic system and market liberalization require cooperatives to adapt to more competitive business mechanisms. Cooperatives have an ideal vision, mission, and goals, making it a noble achievement if they can develop rapidly, similar to private businesses or State-Owned Enterprises (SOEs).² One innovation in the development of modern cooperatives is the Merah Putih Cooperative program, which seeks to build professional village or sub-district cooperatives, oriented towards strengthening the local economy, and employing a management model similar to corporate business entities. Amidst these modernization efforts, a new challenge has emerged: the threat of bankruptcy, particularly when cooperatives are involved in complex financing schemes that are vulnerable to default.

The Merah Putih Cooperative was founded amidst economic challenges, responding to the community's need for mutual assistance. The name "Merah Putih" was chosen to symbolize the spirit of unity, courage, and devotion to the nation. From the beginning, the Merah Putih Cooperative has been committed to providing a platform for its members to grow, not individually, but collectively.³ The Merah Putih

¹ Dani Yuniadi et al., "Perlindungan Hukum Terhadap Nasabah Koperasi Simpan Pinjam," *DESANTA: Indonesian of Interdisciplinary Jurnal* 4, no. 1 (2023): 207–13, <https://doi.org/http://jurnal.desantapublisher.com/index.php/desanta/article/view/166>.

² Cynthia Kendati, Yuhelson Yuhelson, and Maryano Maryano, "Perlindungan Hukum Terhadap Anggota Terkait Koperasi Simpan Pinjam Yang Dinyatakan Pailit," *ARMADA: Jurnal Penelitian Multidisiplin* 2, no. 1 (2024): 20–31, <https://doi.org/10.55681/armada.v2i1.1121>.

³ Muhammad Afdan Rojabi, *Koperasi Merah Putih: Langkah-Langkah Mudah untuk Menjadi Anggota* (Afdan Rojabi Publisher, 2025).

Cooperative is a cooperative established with the initiative and direct support of the Indonesian government as part of efforts to strengthen the people's economy. The cooperative's formation aims to realize the principles of social welfare, economic equality, and community empowerment through a mutual cooperation-based economic system. The government established this cooperative as part of national strategic programs, such as distributing aid, developing MSMEs, strengthening the food sector, or other productive sectors. Thus, this cooperative serves not only as a business entity but also as an extension of the government in implementing inclusive economic policies

Legally, cooperatives are considered legal entities subject to the provisions of Law No. 17 of 2012 concerning Cooperatives, which replaced the previous Law No. 25 of 1992. However, this law was annulled by the Constitutional Court in Decision No. 28/PUU-XI/2012, creating a regulatory gap regarding cooperatives' legal status. Additionally, Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment (PKPU) has been amended by Law No. 4 of 2023 on Financial Sector Development and Strengthening (P2SK). Despite these changes, there remains ambiguity in how cooperatives are treated under bankruptcy law, particularly in relation to the legal standing of their members as creditors. It is important to update the analysis to reflect the current legal framework, considering these amendments and the gaps they have created in the regulation of cooperatives' legal positions in bankruptcy proceedings.

In this context, it is important to analyze how legal protection for cooperative members as the most vulnerable parties affected when cooperatives experience financial problems is regulated and guaranteed by applicable laws and regulations, especially in the increasingly complex modern economic system. Cooperatives as business entities based on family principles hold a vital position in the national economic system. Law No. 25 of 1992 concerning Cooperatives states that cooperatives are the pillars of the people's economy, aiming to improve the welfare of their members. The main principles of cooperatives, namely voluntary membership, democratic management, and fair distribution of business profits, distinguish cooperatives from other business entities such as limited liability companies.

However, entering the modern economic era marked by market liberalization, open competition, and digital integration, cooperatives are required to carry out their economic functions more professionally

and efficiently. One form of this transformation is realized through the Merah Putih Cooperative program, a village or sub-district cooperative model run with a corporate management scheme and multi-business activities. This modernization brings new legal consequences, particularly in terms of protection for cooperative members, when cooperatives face serious financial problems that could potentially lead to bankruptcy. Legally, cooperatives are legal entities that can be filed for bankruptcy under Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). However, this regulation emphasizes the protection of creditors, not cooperative members. Furthermore, there is no specific mechanism in the Cooperative Law that guarantees members' rights in the event of a cooperative's bankruptcy.

However, in practice, the Merah Putih Cooperative faces significant challenges, particularly in management, transparency, and accountability. Many government-established cooperatives have encountered operational losses, with some even facing bankruptcy. When this occurs, the cooperative's institutional structure is disrupted, posing direct financial and legal risks to its members. The key issue arises from a contradiction: cooperatives, which are meant to protect and support their members, instead place them in a vulnerable position during bankruptcy. Cooperative members, who are both the owners and users of cooperative services, find themselves at the greatest risk when financial difficulties threaten the cooperative's survival. This raises important questions about the adequacy of legal protection for cooperative members in such crises, highlighting a critical gap in the legal framework.

Several changes were made to the Job Creation Law (Law No. 6 of 2023), which amended several fundamental provisions of the Cooperatives Law, such as increasing the minimum number of cooperative founders from 20 (Article 14 of Law No. 25/1992) to only 3 (Article 74 of Law No. 6/2023), and expanding the scale of cooperative businesses to multi-business. These changes created a cooperative model similar to a company, but without strengthened regulations to maintain the principle of collectivity and legal protection for members. As a concrete example, several savings and loan cooperatives (such as KSP Indosurya and KSP Sejahtera Bersama) experienced defaults, resulting in significant losses for thousands of their members. Ongoing bankruptcy proceedings often failed to

provide adequate asset returns to members, as they were not legally positioned as preferred or separatist creditors.

In this context, the theory of Legal Protection serves as a crucial foundation. According to Satjipto Rahardjo, the law must exist to protect the weak or vulnerable, and not merely serve as a tool for formal certainty. The theory of legal protection stems from the idea that law exists not only as a set of rules, but also as a tool to protect the rights of citizens, especially those in weak or vulnerable positions. According to Satjipto Rahardjo, legal protection is a means to achieve substantive justice, not just procedural justice. Therefore, the law must actively protect people who are victims of power imbalances, systemic negligence, or abuse of authority. In the context of cooperatives, members are not only consumers or service users but also owners of the cooperative's capital. They are the foundation of the cooperative's existence. However, when a cooperative experiences financial problems that threaten bankruptcy, members are often the least protected, especially if the legal system prioritizes the interests of external creditors over the collective interests of the members. This demonstrates that the current legal protection mechanisms do not fully support members. There are no comprehensive provisions in the Cooperatives Law or the Bankruptcy Law that guarantee the position of cooperative members in the event of bankruptcy. Members are not automatically considered priority creditors and are sometimes not even included in the list of creditors entitled to asset repayment. This situation demonstrates that legal protection for cooperative members is not yet optimal and requires regulatory and institutional strengthening.

A review of various previous literature sources resulted in a series of studies that served as a reference for determining the direction and scope of the research to be carried out. As an extension of previous works, this study draws inspiration from research conducted by Cynthia Kendati, Yuhelson, and Maryano. The study discussed Legal Protection for Members Related to Savings and Loan Cooperatives Declared Bankrupt.⁴ A study addressing a similar topic was conducted by Ratih and Nin Yasmine Lisasih. The study discussed Legal Protection for Cooperative Members for Problematic Loans Using a Joint Liability System at the Kasih Indonesia Cooperative. This study

⁴ Kendati, Yuhelson, dan Maryano, *Loc.Cit*

focused on the Kasih Indonesia Cooperative.⁵ The research, conducted by the team of Dani Yuniadi, Andhyka Muchtar, and Muh Nasir, raised the topic of Legal Protection for Savings and Loan Cooperative Customers. This study focuses on legal protection for savings and loan cooperative customers covering several aspects, including the Consumer Protection Law, the Civil Code, and laws and regulations related to the financial services sector.⁶ Also followed by research conducted by Suci Binta Rihmaniya and Elfrida Ratnawati, entitled Legal Protection of Customers of Intidana Savings and Loan Cooperatives (KSP) Post-Bankruptcy. This research focuses on the protection of cooperative members related to the problems of the Intidana Savings and Loan Cooperative which is experiencing bankruptcy problems.⁷ Then there is also research conducted by Niken Raras Kusumastuti and I Made kanthika where this research raises the title Legal Protection of Members of the Sejahtera Bersama Savings and Loan Cooperative for Non-Optimal Homologation with the focus of research on legal protection for KSP-SB members who have not yet received payments in accordance with the peace agreement scheme approved by the homologation decision in this study the author analyzes based on the Case Study of Decision Number 238 / Pdt.Sus/ PKPU/2020/PN.NIAGA.Jkt.Pst.⁸

So, from several studies that have been described above, what differentiates this study from the existing ones is that this study focuses on the Merah Putih Cooperative, which in this case is a cooperative established on the initiative of the government, thus different from the research that has been described above. In this study, the author will discuss several problem formulations, namely: 1). How do positive legal regulations in Indonesia regulate legal protection for cooperative members affected by cooperative bankruptcy in the modern economic system? 2). How are the principles of cooperative and bankruptcy law

⁵ Nin Yasmine Lisasih Ratih, "Perlindungan Hukum Anggota Koperasi Atas Pinjaman Bermasalah Yang Menggunakan Sistem Tanggung Renteng Pada Koperasi Kasih Indonesia," *JCA of LAW* 2, no. 1 (2021): 78, <https://doi.org/https://jca.esaunggul.ac.id/index.php/law/article/view/294>.

⁶ Yuniadi et.al, *Loc.Cit.*

⁷ Elfrida Ratnawati Suci Binta Rihmaniya, "Perlindungan Hukum Nasabah Koperasi Simpan Pinjam (KSP) Intidana Pasca Pailit," *Jurnal Tana Mana* 4, no. 1 (2023): 74–75, <https://doi.org/https://doi.org/10.33648/jtm.v4i1.261>.

⁸ Niken Raras Kusumastuti dan I Made kanthika, "Jurnal cinta nusantara," *Jurnal Cinta Nusantara* 2, no. 2 (2024): 1–10, <https://doi.org/https://doi.org/10.63754/jcn.v2i04.58>.

applied in providing legal protection to members of the Merah Putih Cooperative who experience risks due to bankruptcy? Based on this description, it becomes an urgent need to analyze how the position of cooperative members can be legally protected when the cooperative experiences the threat of bankruptcy in the modern economic system, as well as how harmonization of norms between the Cooperative Law, the Bankruptcy Law, and the Job Creation Law can be realized for the sake of legal certainty and justice.

In Indonesia's national development agenda, cooperatives play a vital role in driving progress.⁹ Given this significance, examining legal protection mechanisms for members of the Merah Putih Cooperative has become increasingly important and demands immediate study. The research specifically investigates how government-established cooperatives safeguard their members through legal protection, particularly when facing potential financial losses and bankruptcy. The findings from this study aim to enhance both cooperative regulations and member protection frameworks within Indonesia's legal system.

Method

This article employs normative legal research methodology, focusing on analyzing laws and regulations. The investigation combines legislative and conceptual approaches.¹⁰ The analysis draws from three categories of materials: primary, secondary, and tertiary legal sources.¹¹ Through a legislative approach, this research examines the extent of legal protection for cooperative members facing bankruptcy threats in Indonesia. It specifically analyzes Law No. 17/2012 on Cooperatives (replacing Law No. 25/1992), Law No. 37/2004 on Bankruptcy and PKPU, and Law No. 6/2023 on Job Creation. The research employs a statutory approach to examine the relevant laws, a conceptual approach to understand the legal principles involved, and a comparative approach to assess similar legal frameworks in other jurisdictions. These approaches help to analyze and determine effective solutions in the legal protection of cooperative members in bankruptcy cases. The study primarily relies on statutory regulations as primary sources, while also incorporating secondary

⁹ Zainal Asikin, *Hukum Perbankan Dan Lembaga Pembiayaan Non Bank* (Depok: Rajawali Pers, 2020).

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakar: Kencana, 2017).

¹¹ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Pers, 2014).

materials such as academic publications, journals, research findings, and scholarly literature.

Result and Discussion

A. Regulations Regarding the Protection of Merah Putih Cooperative Members against the Risk of Bankruptcy in the Modern Economic System

Within Indonesia's legal framework, cooperatives hold a unique position that distinguishes them from traditional business entities. Unlike conventional businesses, these organizations operate on principles of collective action and reciprocal support, prioritizing member prosperity over profit maximization. According to Law Number 25 of 1992 concerning Cooperatives, these entities function as communally-owned ventures grounded in familial principles. The organizational structure of cooperatives promotes collaborative engagement and shared decision-making among members, moving away from individualistic approaches to foster societal equity and prosperity. Through community involvement and unified effort, cooperatives strive to establish economic self-reliance for the Indonesian population.

Within today's economic landscape, cooperatives continue to serve as alternative financial institutions rooted in family-based structures. Like any family enterprise, cooperatives encounter major obstacles, particularly the threats of default and bankruptcy. This raises a critical question regarding how effectively legal protection can safeguard cooperative members during financial difficulties, especially considering their dual role as both owners and service users.

Following his election victory and succession of Joko Widodo as Indonesia's President in 2025, Prabowo Subianto implemented Presidential Instruction No. 9 2025, directing key ministers and government bodies to form the Merah Putih Village Cooperative. This presidential directive sought to foster national autonomy through sustainable food independence. The initiative aimed to transform villages into development catalysts and promote economic equality across Indonesian communities.¹²

¹² Rusfian Effendi et.al, "Policy Analysis of the Establishment of the Koperasi Desa Merah Putih," *Journal of Artificial Intelligence and Digital Business (RIGGS)* 4, no. 3 (2025): 4419, <https://doi.org/10.31004/riggs.v4i3.2597>.

The village-level implementation of Merah Putih Cooperative represents a government initiative aimed at bolstering grassroots economic development. While this cooperative, comprising local community members, aims to enhance resident prosperity through financial services and business ventures, its top-down establishment approach may create potential legal challenges.¹³ Without proper legal education, institutional support, and monitoring systems, these cooperatives might deteriorate into ineffective entities that fail to truly empower their members. Though the government has introduced regulations governing the cooperative's legal framework, including organizational structure and membership protocols, their success hinges on practical implementation. To prevent mismanagement and protect member interests, it is crucial to reinforce independent oversight, accountability systems, and legal protection mechanisms.¹⁴

In Indonesia, the fundamental legal protection for cooperatives stems from Law Number 25 of 1992. This legislation defines core cooperative principles, outlines member responsibilities and rights, and safeguards cooperatives as economic entities rooted in community development. This framework serves as the regulatory foundation for Indonesian cooperatives.¹⁵

Legal protection encompasses preventive and repressive instruments designed to safeguard legal subjects. For members of cooperatives, preventive legal protection is established under Undang Undang No.25 Tahun 1992 regarding Cooperative. This preventive legal protection framework consists of two distinct categories: internal and external measures.

The cooperative's direction is shaped by two key mechanisms. At the internal level, member assemblies serve as the supreme decision-making body, significantly influencing whether the cooperative thrives or declines. At the external level, governmental bodies provide supervision, support, and monitoring of cooperatives through developmental initiatives. Yet, a notable gap exists in the current legal

¹³ Zulkifli dan Reslyanty Rachim, "Pemahaman Tata kelola Koperasi Kelurahan Merah Putih bagi Pengurus Koperasi Kelurahan Merah Putih Kota Samarinda," *Jurnal Pengabdian Masyarakat Dharma Gama* 3, no. 2 (2021): 32, <https://jurnal.fekon uwgm.ac.id/index.php/dharmagama/article/view/417>.

¹⁴ Meryy Aryanti and Zainal Arifin Hoessein, "Analysis Of Cooperative Law Reform In Indonesia In Guaranteing Legal Protection Rights For Cooperative," *Journal of Social and Economics Research (JSER)* 7, no. 1 (2025): 680, <https://doi.org/10.54783/jser.v7i1.944>.

¹⁵ Suci Binta Rihmaniya, *Loc.Cit.*

protection framework, as it fails to address member safeguards during bankruptcy situations.¹⁶

Additional regulations, specifically Law Number 37 of 2004 regarding bankruptcy and PKPU, establish that cooperatives may face bankruptcy declarations when they meet the criteria of having overdue and unsettled debts. Since this legislation treats cooperatives identically to other business entities, it conflicts with the fundamental purpose of cooperatives as community economic institutions, particularly because members who have invested funds lack preferential rights during asset distribution following bankruptcy.

While various regulations exist, including Government Regulation Number 7 of 2021 on facilitating and empowering cooperatives and small businesses, they only offer indirect legal protection to members. When facing bankruptcy, members of the Merah Putih Cooperative lack specific protective measures. Since these cooperatives typically function as the main financial institution in rural areas, their bankruptcy creates immediate adverse effects on village communities.

In modern legal systems, cooperative members face significant risks due to insufficient deposit protection, as evidenced in the Merah Putih Cooperative case. Since members are classified as regular creditors for their deposits, they receive no preferential treatment and risk complete loss of their savings. Current positive law reveals significant gaps, including inadequate supervision, limited transparency, and no clear regulations requiring cooperatives to implement risk management practices or restrict high-risk operations.

Operating as a village-level microfinance entity, the Merah Putih Cooperative manages community funds through collection and distribution activities. The absence of effective monitoring and risk control mechanisms could trigger bankruptcy. This situation necessitates regulatory measures to safeguard members from financial losses in the event of cooperative failure. To enhance legal protection for members, who form the cooperative's core foundation, existing regulations require appropriate modifications.

¹⁶ Ni Nyoman Diani Tri Widia Ardani dan Ari Rahmad Hakim B.F, "Perlindungan Hukum bagi Anggota Koperasi terhadap Koperasi yang sudah Bubar ditinjau dari Undang Undang Koperasi Nomor 25 Tahun 1992," *Jurnal Commerce Law* 5, no. 1 (2025): 70, <https://doi.org/10.29303/commercelaw.v5i1.2929>.

B. Legal Protection Framework for Members of the Merah Putih Cooperative against the Risk of Bankruptcy

According to Article 33 of the 1945 Constitution, cooperatives in Indonesia have the authority to engage in various economic sectors and serve a vital function in the nation's economic activities.¹⁷ In the context of bankruptcy proceedings, the distribution of bankrupt assets represents a crucial phase.¹⁸ Under Article 1 number 1 of Law Number 37 of 2004 on Bankruptcy and PKPU (UUK-PKPU), bankruptcy involves the comprehensive seizure of a debtor's entire assets.¹⁹ For cooperatives, including Savings and Loan Cooperatives (KSP), legal protection through bankruptcy proceedings can be initiated at the Commercial Court when specific conditions are met.²⁰ These conditions require the presence of two or more creditors and the inability to fulfill at least one matured debt obligation. When bankruptcy occurs, the cooperative loses its authority over asset management as outlined in Article 24 paragraph (1) of UUK-PKPU, with a curator assuming control of management and settlement responsibilities.²¹

According to Article 55 of Law Number 25 of 1992 on Cooperatives (the Cooperative Law), when bankruptcy occurs, cooperative members face financial responsibility only up to the extent of their principal savings, mandatory savings, and equity

¹⁷ Refhanti Chairanie dan Anita Afriana, "Kedudukan Anggota Koperasi Simpan Pinjam Sebagai Kreditor Pada Koperasi Simpan Koperasi Pandawa Mandiri Group Yang Telah Dinyatakan Pailit Atas Disitana Boedel Pailit Oleh Negara," *PANJI KEADILAN: Jurnal Ilmiah Nasional Mahasiswa Hukum* 4, no. 1 (2021): 2, <https://doi.org/10.36085/jpk.v4i1.1277>.

¹⁸ Nindita Widi Afreeportamara dan Pujiyono, "Hambatan Kurator Dalam Menyelesaikan Piutang Koperasi Yang Diputus Pailit," *Jurnal Hukum dan Pembangunan Ekonomi* 7, no. 2 (2019): 244, <https://doi.org/10.20961/hpe.v7i2.43014>.

¹⁹ Rai Mantili, Putu Eka, and Trisna Dewi, "Perlindungan Kreditor Konkuren Dalam Hukum Kepailitan," *Jurnal Akses* 12, no. 2 (2020): 97–98, <https://doi.org/https://doi.org/10.70358/jurnalakses.v12i2.681>.

²⁰ Febriansyah Ramadhan et al., "Bureaucratic Actors vs Legitimate Actors: Explaining the Choice of Interim Presidents in Filling the Dual Vacance of the President and the Vice President," *Societas et Iurisprudentia* 12, no. 2 (2024): 19–59, <https://doi.org/10.31262/1339-5467/2024/12/2/19-59>.

²¹ Kendati, Yuhelson, dan Maryano, "Perlindungan Hukum terhadap Anggota Terkait Koperasi Simpan Pinjam yang Dinyatakan Pailit."

participation.²² This legal protection serves as a preventive measure, safeguarding members' personal assets from potential losses. Such an arrangement reflects the fundamental concept of separate legal entity within corporate law, where cooperatives maintain distinct assets independent from their members' personal holdings.²³

When a cooperative faces bankruptcy, its dissolution can proceed through a definitive court ruling, as stipulated in Article 47 paragraph (1) of the Cooperatives Law and Article 3 paragraph (1) letter c of Government Regulation No. 17 of 1994.²⁴ The finality of this decision means that neither cooperative management nor its members have the right to contest it. This mechanism serves as repressive legal protection, ensuring legal certainty (rechtszekerheid) for all involved parties, including members, which prevents prolonged bankruptcy proceedings.²⁵

Following a bankruptcy declaration, the curator assumes complete control over the debtor's authority as stipulated in Article 16 paragraph (1) of the UUK-PKPU.²⁶ In managing bankrupt assets, the curator's responsibilities include asset liquidation through either auction or private transactions, followed by distributing proceeds to creditors proportionally according to Article 1132 of the Civil Code. To protect all parties involved, particularly cooperative members, the distribution of bankrupt assets is governed by principles of justice and balance within bankruptcy law.²⁷

When examining legal protection, it is important to understand that individuals who join savings and loan cooperatives are assured that their financial liability is limited to their initial capital

²² Indranas Gaho, *Gagal Bayar Simpanan Peran Koperasi*, CV.Diva Pustaka (Purbalingga, 2015).

²³ Kendati, Yuhelson, dan Maryano, *Loc.Cit*

²⁴ Ramlani Lina Situmorang dan Fernando Situmorang, dan Mohamad Ismed, "Kajian Hukum tentang Kedudukan SEMA No. 2 Tahun 2022 atas Undang-Undang Kepailitan Nomor 37 Tahun 2004," *Jurnal Studi Interdisipliner Perspektif* 22, no. 2 (2022): 120, <https://ejournal-jayabaya.id/Perspektif/article/view/100>.

²⁵ Kendati, Yuhelson, dan Maryano, *Loc.Cit*.

²⁶ Andhika Rizky Pratiwi, Dan Thomas Yanuar Joko Prabowo Pradana, dan Irfannaufal Raditya, "Sita Umum dan Penjualan Saham Debitor Pailit oleh Kurator," *Ensiklopedia Social Review* 2, no. 3 (2020): 235, <https://jurnal.ensiklopediaku.org/ojs-2.4.8-3/index.php/sosial/article/view/556>.

²⁷ M. Ali Husaen Mubaroq, "Rekonseptualisasi materi hukum kepailitan untuk memberikan perlindungan hukum terhadap debitör berbasis asas keseimbangan" (Fakultas Hukum Universitas Islam Indonesia, 2023), <https://dspace.uii.ac.id/handle/123456789/45774>.

investments. This concept of restricted liability is grounded in Satjipto Rahardjo's definition of legal protection, which he views as a mechanism designed to safeguard individual interests through rights granted by law. However, this legal provision must be critically examined through the lens of Rawls' Justice Theory, which emphasizes fairness and equality. From this perspective, while the legal protection of cooperative members limits liability, it may not fully address the justice of outcomes for all stakeholders, particularly in bankruptcy situations where members may still face significant financial risks. The integration of Rahardjo's and Rawls' theories allows for a deeper evaluation of whether the legal framework genuinely protects cooperative members in a way that aligns with both individual rights and broader principles of justice. Consequently, in the event of bankruptcy, cooperative members cannot face legal claims beyond their committed capital contributions.

Today's economic landscape, characterized by market accessibility and worldwide competition, requires cooperatives to embrace sound business practices and governance standards. Stakeholder theory suggests that bankruptcy legal protection extends beyond safeguarding creditors' interests to encompass cooperative members who simultaneously serve as both owners and service users.²⁸ The legal protection afforded to members of the Merah Putih Cooperative reflects fundamental principles of justice and legal certainty, as outlined in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which upholds every individual's right to fair legal recognition, assurance, and protection.²⁹

The KPKPU Law governs cooperative bankruptcy, specifically stating that debtors with multiple creditors who default on even a single due payment may face bankruptcy declaration.³⁰ This regulation extends to all cooperatives, including the Merah Putih Cooperative,

²⁸ Indah Supria Berlianti Sianturi dan Adhitya Widya Kartika, "Analisis Civiliter Mortuus Pengurus Koperasi Sebagai Akibat Hukum Kepailitan Koperasi Simpan Pinjam," *JIIP - Jurnal Ilmiah Ilmu Pendidikan* 7, no. 12 (2024): 14127, <https://doi.org/https://doi.org/10.54371/jiip.v7i12.6610>.

²⁹ Aditya Fadhil Avisena dan Dhea Ranissya Diza Liestiara Liestiara, "Reformasi Hukum Kepailitan Terhadap Koperasi: Pembatasan Permohonan Pailit Terhadap Koperasi Oleh Anggota," *Legislatif* 6, no. 1 (2022): 6, <https://doi.org/10.20956/jl.v6i1.23885>.

³⁰ Herry Anto Simanjuntak, "Akibat Hukum Terhadap Kreditur Lain Apabila Salah Satu Kreditur Mengajukan Pernyataan Pailit (Due To The Law On The Other Creditors If One Of Creditors Submitting Statement Pailit)," *Jurnal Justika* 2, no. 1 (2020): 47, <https://doi.org/http://dx.doi.org/10.36764/justika.v2i1.329>.

without requiring additional criteria. Members retain legal protection through the *pari passu pro rata parte* principle outlined in Articles 1131 and 1132 of the Civil Code, which ensures that debtor assets serve as collective security and creditors receive equitable distribution. The bankruptcy framework thus serves dual purposes: safeguarding against improper asset claims while upholding members' rights as cooperative creditors.

Members of cooperatives receive legal protection through the kinship principle outlined in Article 2 of the Cooperatives Law, which aims to enhance member welfare. When cooperatives face bankruptcy due to management's mistakes or negligence, Article 27 mandates that managers bear full responsibility for any losses incurred. The KPKPU Law also enables cooperatives to seek reconciliation (homologation) and rehabilitation, preventing immediate dissolution and allowing reputation recovery. This approach creates equilibrium between kinship values and business efficiency principles, safeguarding Merah Putih Cooperative members' interests during potential bankruptcy situations.

C. Application of the Principles of Cooperative and Bankruptcy Law in Providing Legal Protection to Members of the Merah Putih Cooperative

Cooperatives function as distinct legal entities that operate on specialized principles unlike traditional businesses. Yet when facing bankruptcy, these foundational values often become secondary to standard legal frameworks, particularly in bankruptcy law. During bankruptcy proceedings, the law treats cooperatives similarly to standard corporations, disregarding their principle of kinship in the decision-making process. The distinctive nature of cooperatives stems from their kinship-based structure, which establishes specific legal principles as the foundation for their operations.

These cooperative legal principles include: *Family Principle*. In Indonesia, the fundamental essence of cooperatives lies in the family principle. This core value emphasizes member equality, collective participation, and mutual solidarity. Members hold equal voting rights in cooperative decisions, regardless of their financial contributions. As stipulated in Article 2 of Law Number 25 of 1992 on Cooperatives, these organizations operate on the foundation of familial bonds and mutual assistance. This framework stands in contrast to traditional

corporate structures that prioritize capital-based authority and profit maximization, instead focusing on communal social values. Yet, this principle faces significant challenges during legal difficulties, particularly in cases of bankruptcy. When cooperatives face bankruptcy, the family principle often fails to provide sufficient legal protection for members, who frequently suffer the loss of their deposits without clear mechanisms for recovery.

Principles of Justice and Balance. The concept of justice and equilibrium dictates that cooperative members should receive economic advantages proportional to their involvement and input. This notion encompasses shared accountability for both achievements and setbacks within the cooperative. When bankruptcy occurs, the distribution of burdens and obligations among members should reflect fairness and proportionality, taking into account their dual roles as owners and service users.³¹ Yet, current legal protection frameworks lack specific provisions addressing equitable asset distribution during cooperative liquidation following bankruptcy. The existing legal system merely follows creditor classifications outlined in the bankruptcy law, without clear stipulations regarding members' legal standing.

The Principle of Shared Responsibility. As economic entities, cooperatives fundamentally operate on mutual accountability where both gains and losses are distributed among members.³² Yet, when facing bankruptcy, legal protection typically focuses on the cooperative entity itself, leaving members out of both restructuring and key decisions. From a philosophical standpoint, when cooperatives fail, the process should incorporate both accountability measures and safeguards for their membership base.

Consider the case study of the Merah Putih Cooperative, whether actual or hypothetical, where financial collapse resulted in bankruptcy. The members who deposited and invested their money in the cooperative suffered the most severe impact. Their deposits and investments faced potential complete loss without guaranteed

³¹ Ira Fadilla Rohmadanti, Febriansyah Ramadhan, dan Ilham Dwi Rafiqi, "Disharmony of Domestic Refining Provisions for Mineral and Coal in Indonesian Laws and Regulations," *Pandecta Research Law Journal* 17, no. 1 (2022), <https://doi.org/10.15294/pandecta.v17i1.31236>.

³² Mia Hadiati dan Febriansyah Ramadhan, "Observing The Differences in Constitutional Court Decision About the Legal Age of Marriage," *Jurnal Konstitusi* 19, no. 3 (2022), <https://doi.org/10.31078/jk1937>.

compensation. In contrast, external creditors, particularly financial institutions, were given preferential treatment in the distribution of bankruptcy assets.

This situation necessitates an examination of fundamental bankruptcy law principles, specifically: *Principle of Balance*. The principle of balance in bankruptcy law emphasizes fair and proportional treatment for all stakeholders, encompassing creditors, debtors, and cooperative members. This principle extends beyond mere legal protection, taking into account practical circumstances and community impact. The implementation of bankruptcy procedures should avoid causing excessive harm to any party, particularly vulnerable individuals like cooperative members who have placed their trust and savings in these institutions due to their limited legal knowledge.

Principle of Business Continuity. The fundamental aim of bankruptcy and debt payment suspension regulations extends beyond merely terminating struggling enterprises. Instead, these legal protection mechanisms are designed to allow businesses time to recover financially, reorganize their operations, and fulfill their debt obligations progressively. When companies, including cooperatives, face financial difficulties, the going concern principle emphasizes the importance of maintaining their operational viability whenever possible, rather than immediately pursuing dissolution or liquidation procedures. This study recognizes that sustaining business operations takes precedence over immediate closure.

Principle of Justice. Decisions and actions must align with established standards to be considered equitable.³³ All parties possessing economic rights deserve equitable consideration. In bankruptcy proceedings, this principle demands impartial distribution of assets among all creditors. The system should not discriminate between creditors of similar standing.³⁴ In cooperatives, however, members who contribute funds often lack clear legal protection as creditors. Yet from a substantive fairness standpoint, these members

³³ Serlika Aprita dan Rio Adhitya, “Penerapan ‘Asas Keadilan’ Dalam Hukum Kepailitan Sebagai Perwujudan Perlindungan Hukum Bagi Debitor,” *Jurnal Hukum Media Bhakti* 3, no. 1 (2019): 53, <https://doi.org/10.32501/jhmb.v3i1.44>.

³⁴ Febriansyah Ramadhan, Xavier Nugraha, dan Patricia Inge Felany, “Penataan Ulang Kewenangan Penyidikan Dan Penuntutan Dalam Penegakan Hukum Pelanggaran Ham Berat,” *Veritas et Justitia* 6, no. 1 (2020): 172–212, <https://doi.org/https://doi.org/10.25123/vej.v6i1.3514>.

hold the highest stake in the cooperative's viability and suffer the most severe consequences when it fails to meet its commitments. Therefore, the bankruptcy study must establish balanced legal protection that serves both creditors and debtors fairly.³⁵ Rawls's theory of justice maintains that any inequalities can only be justified when they work to advantage society's most vulnerable members. Within this framework, members of cooperatives warrant the strongest legal protection since they hold less negotiating power compared to institutional investors and financial organizations.

Principle of Integration. The integration principle emphasizes that no legal regulation can function in isolation - it must be interconnected with broader legal frameworks in terms of standards, purposes, and practical application. This means that when applying laws, including those governing bankruptcy, we must examine the interplay between different legal provisions, community values, economic factors, and social fairness rather than focusing on a single regulation.

Written norms derive their fundamental essence from underlying principles in legal theory. However, discrepancies between these principles and established regulations can result in significant unfairness, particularly in the context of legal protection for cooperative members during bankruptcy proceedings. While cooperatives are grounded in principles of mutual support, shared responsibility, and equitable treatment, existing bankruptcy regulations—especially those under Law No. 37/2004 on Bankruptcy and PKPU—fail to account for the distinctive nature of cooperatives as membership-driven organizations. This issue has persisted despite recent changes under Law No. 4/2023 on Financial Sector Development and Strengthening (P2SK), which amended provisions related to financial entities, including cooperatives.

The integration of cooperative principles with bankruptcy law remains insufficient, as evidenced by several case studies, such as KSP Indosurya and KSP Sejahtera Bersama, where cooperative members faced devastating losses during bankruptcy proceedings. These cases highlight how members, despite being the core foundation of the cooperative, were not treated as priority creditors, leaving their

³⁵ Izzy Al Kautsar dan Danang Wahyu Muhammad, "Urgensi Pembaharuan Asas-Asas Hukum Pada Undang-Undang No 37 Tahun 2004 Berdasarkan Teori Keadilan Distributif" 5, no. 2 (2020): 190, <https://doi.org/https://doi.org/10.21067/jph.v5i2.4529>.

deposits vulnerable with no adequate legal recourse for recovery. In these instances, the lack of protective measures for cooperative members reflects a fundamental gap in the legal framework.

To address these issues, a harmonious integration of both cooperative and bankruptcy principles is required. The legal system must recognize the unique position of cooperative members as both owners and service users, offering them legal protection comparable to that of other stakeholders. One potential reform is the establishment of a deposit protection scheme for cooperative members, similar to the Indonesia Deposit Insurance Corporation (LPS). Such a system would ensure that cooperative members' deposits are protected, mitigating the financial risks they face in the event of bankruptcy. Furthermore, this system would create a more balanced legal structure, ensuring that the principles of fairness, justice, and the social responsibility of cooperatives are upheld in both the cooperative and bankruptcy frameworks.

From a theoretical standpoint, cooperative values of mutual support, fairness, and collective responsibility should guide bankruptcy proceedings involving cooperatives. Similarly, bankruptcy principles emphasizing fairness, legal predictability, and safeguarding vulnerable parties must be implemented meaningfully rather than procedurally. The absence of such integrated principles in current regulations perpetuates inequitable legal protection for cooperative members, contradicting constitutional mandates for social justice.

Current evidence reveals that bankruptcy proceedings in cooperatives often fail to adequately protect members, leaving them in vulnerable positions. This highlights a significant tension between the foundational principles of cooperatives and the conventional corporate bankruptcy framework. Under the existing legal system, cooperative members, who are both owners and users of cooperative services, are frequently left at a disadvantage when financial distress or bankruptcy occurs. The lack of legal recognition for members as preferential creditors exacerbates this issue, as seen in real-world examples such as KSP Indosurya and KSP Sejahtera Bersama, where members' savings were lost without adequate compensation.

The existing regulatory framework, particularly under Law No. 37/2004 on Bankruptcy and PKPU, fails to account for the unique nature of cooperatives as membership-driven organizations. While bankruptcy law focuses on creditor protection, it overlooks the cooperative principles of mutual support and shared responsibility.

This creates a discrepancy between legal norms and the social objectives of cooperatives, which are supposed to safeguard their members, especially in times of crisis.

From a contemporary legal perspective, this issue calls for a reevaluation of how bankruptcy law intersects with cooperative law. As John Rawls argues in *A Theory of Justice*, a just social system must prioritize the protection of its most vulnerable members.³⁶ His concept of distributive justice demands that the burdens of a crisis, like bankruptcy, be shared equitably, particularly by those with the least power—cooperative members in this case. When cooperative members bear the brunt of financial losses, despite their foundational role in these organizations, it underscores the failure of the legal system to deliver practical justice.

To address this, it is essential to incorporate a more nuanced understanding of cooperative structures within bankruptcy law. Updated statutory reforms, such as the recognition of cooperative members as preferential creditors, and the establishment of a deposit protection scheme similar to that of the Indonesia Deposit Insurance Corporation (LPS), are crucial steps toward bridging this legal gap. These changes would ensure that cooperatives live up to their mission as "*the people's economic home*," rather than becoming institutions that exacerbate the financial vulnerabilities of their own members during times of crisis.

Conclusion

This study highlights key findings regarding the legal disharmony between cooperative laws and bankruptcy regulations in Indonesia. The research reveals a significant gap in legal protection for cooperative members, especially in the event of bankruptcy. While cooperatives are designed to protect and support their members, the current legal framework often leaves them vulnerable. Despite regulatory reforms, such as changes in the Cooperative Law and Bankruptcy Law, cooperative members continue to face substantial risks during bankruptcy proceedings, as they lack clear legal standing as creditors. The ongoing vulnerability of cooperative members is

³⁶ Febriansyah Ramadhan dan Ilham Dwi Rafiqi, "Antinomy of Community Participation Rights in the Law on the Environmental Sector," *Jurnal Daulat Hukum* 4, no. 3 (16 September 2021): 171, <https://doi.org/10.30659/jdh.v4i3.17212>.

further exacerbated by the lack of a comprehensive deposit protection system. Current laws fail to prioritize members' interests during liquidation, leaving them at a disadvantage compared to external creditors. Additionally, the integration of cooperative principles such as kinship, shared responsibility, and justice with bankruptcy law remains insufficient, leading to inconsistent legal outcomes for members.

To address these issues, practical policy recommendations are necessary. First, there should be a harmonization between cooperative law and bankruptcy law to ensure that cooperative members are recognized as preferential creditors in bankruptcy proceedings. Second, a cooperative deposit protection system should be established, providing clear safeguards for members' savings in the event of financial difficulties. These reforms would enhance legal certainty and fairness, aligning the legal system with both the cooperative model's social principles and broader concepts of justice, ultimately creating a more just and responsive legal framework for Indonesia's cooperatives.

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