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PRIMARY RESEARCH

The legal status of fiduciary guarantee belongs to members of save and loan cooperatives due to bankruptcy

Hassanain Haykal [1*], Ai Permanasari [2], Kevin Alim Rabbani [3]
[1, 2, 3] Faculty of Law, Maranatha Christian University, Bandung, Indonesia

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Abstract

Small and Medium Enterprises and young entrepreneurial business ventures seek capital support from financial institutions for their growth and survival. Especially in post-covid-19 times, it becomes vital for the revival of affected business areas. Thus current research aims to shed light on the scarcely researched phenomenon to contribute to the literature. A cooperative has such a serious nature in the Indonesian national economic system. Cooperatives in Law No. 25 of 1992 are said to be the "principal factor" of the nation's economy. The understanding of the backbone is essentially contained in Article 33 of the Constitution of the Republic of Indonesia year 1945 as the state constitution. In advancing the national economy, cooperatives form business units that focus on certain fields, one of which is the saving and loan cooperative. Saving and loan cooperative is alternative financing for Indonesian people, especially businesses with little capital. The mechanism is possible through an instrument of a loan agreement and by providing Guarantees in the form of a Fiduciary. However, there will be problems if the cooperative save borrow is declared bankrupt against the guarantee given by members of the cooperative in the form of micro-businesses. This study uses the normative approach to examine secondary data in existing legal fields as a literature review approach. The final results from the content analysis show that the legal status of fiduciary guarantees will still go into the bankruptcy model, whose management is carried out by the curator. However, the perpetrator still gets legal protection because the guarantee he gives is followed by the basic agreement, namely a loan agreement, so the curator can not sell the fiduciary guarantee before the basic agreement expires. These findings indicated a legislative gap in the cooperative framework and highlighted the need to grab the attention of policy institutions for better business outcomes. The study brings several key insights for policymakers, business scholars, business law experts, and entrepreneurs.

INTRODUCTION

Cooperatives have a long history in Indonesia, ranging from being used as a vehicle to improve the socio-economic standard of living to achieve independence. In short, cooperatives in Indonesia began to grow in 1896 in Purwokerto when a local government employee or known as a civil servant named R. Aria Wiria Atmaja founded a bank called "Hulph-en Spaaar Bank" (Bank for Relief and Savings), which was intended to provide financial assistance to civil servants at low interest using funds collected from the Bank's members. This Bank is referred to as a Savings and Loan Cooperative (KSP) in the modern era. After the independence phase, the Indonesian state gradually built an economic foundation that pivoted to the welfare of the people and the country's economic growth (Kartika, Sunarmi, Purba, & Harianto, 2021). The economic doctrine that was tried to be applied in the Indonesian economic system was first coined by Mohammad Hatta as the "Pancasila Economic Democracy System." This system is within the scope of people's economic empowerment that upholds the principles of kinship and cooperation (Stef, 2022). Every economic actor in Indonesia must see themselves as integrated with fellow business actors trying to improve the country's economy (Feith, 2006).

The essence of what the system is trying to convey is that to achieve mutual prosperity, business actors in Indone-

*corresponding author: Hassanain Haykal
†email: hassanain.haykal@gmail.com

sia must try to help each other and work together to realize the legislations mentioned in the fifth principle of Pancasila, namely social justice for all Indonesian people (Basterretxea, Cornforth, & Heras-Saizarbitoria, 2022). Because of this deep enough nature, the constitution of the Republic of Indonesia then mandates it in the 4th paragraph of Chapter XIV entitled "National Economy and Social Welfare," which consists of 2 (two) articles, namely Article 33 and Article 34. Article 33 emphasizes the national economy, and Article 34 emphasizes social welfare (Repushevskaya, Nasretdinova, Kuzyashev, Beschastnova, & Shamshovich, 2021).

Thus, based on the formulation of the paragraph, the presence of cooperatives in the Indonesian economic system is an instrument for implementing economic growth, which is meant in the essence of Pancasila economic democracy, which serves as a pillar and balancer between national economic growth and social welfare (Handayani, Anuraga, & Rachman, 2019). The government of Indonesia then formed a Law on cooperatives under the economic characteristics of the Indonesian people entitled "Law Number 25 of 1992 concerning cooperatives".

In the Law, cooperatives are placed as a business entity established by their members and get approval by the government through the minister so that the cooperative has the status of a legal entity (Ibratova, 2022). As a business entity in the form of a legal entity, cooperatives need capital to achieve their goals, develop, be productive, and compete with other large local and foreign companies (Kartika et al., 2021). Law Number 25 of 1992 concerning cooperatives, it is also explained that cooperative capital consists of own capital (derived from principal savings, mandatory savings, reserve funds, & grants) and loan capital (derived from members (other cooperatives or their members), banks, and institutions, issuance of bonds and other debt securities, other legal sources).

The capital that the cooperative collected was then used to run the cooperative business, which is directly related to the interests of the members to improve the business and welfare of the cooperative members. With this principle in place, cooperatives are placed in a very important and strategic position to drive and direct development in the economic field. Another factor is that cooperatives are often present in the community that is included in the micro-business category. Cooperative businesses are formed based on the interests of their members, so there are many types of cooperatives in Indonesia based on this, for example, Service Cooperatives (KJ), Consumer Cooperatives (KK), Producer Cooperatives (KP), and the most popular is Savings and Loan Cooperatives. (KSP). The current study is significant for legal awareness about the capital needs of small and medium enterprises, which are basic pillars of the national economy.

However, as a business entity, it is only natural that there are business risks in it, one of which is the risk of experiencing losses that it cannot bear anymore, so the cooperative is categorized as insolvent (a state of being unable to pay) which means that a cooperative can only take 2 (two) days (Kosasih, 2021; Shahbaz, Tiwari, Jam, & Ozturk, 2014). The way to resolve the problem of the loss is that it can be dissolved by the decision of the members' meeting or the government's decision regulated in government regulation number 17 of 1994 concerning the dissolution of cooperatives by the government, or it can be dissolved through Law Number 37 of 2004 concerning Bankruptcy and Suspension of debt payment obligations.

The dissolution of the cooperative will cause legal consequences, both for the cooperative and its members, including the savings and loans cooperative (Jam, Donia, Raja, & Ling, 2017; Li & Ponticelli, 2022). Savings and loans cooperatives obtain their legal basis is Article 1 point 1 and number 2 of Government Regulation Number 9 of 1995 concerning the implementation of savings and loan activities by cooperatives, in which this type of cooperative can raise funds and distribute them through their savings and loan business specifically for cooperative members who concerned, prospective members of the cooperative concerned and for other cooperatives and or for its members.

This savings and loan business will always be related to an agreement that, according to Civil Law Science, is supported by the opinion of Sri Soedewi, an engagement that supports economic development and is maintained in good faith requires guarantees in it (Maulidiana, 2017; Waheed & Hussain, 2010). This guarantee becomes a problem if there is a legal relationship between savings and loan agreements between cooperatives and their members in the form of micro-enterprises associated with the bankruptcy mechanism (Ali et al., 2010; Lipschütz & Schwarz, 2020). Based on Bankruptcy Law, savings and Loans Cooperative, as a subject of bankruptcy law declared Bankrupt by the commercial court, cannot file an objection against it. In this case, what is meant by cooperative is every organ in the cooperative.

The members of cooperatives in the form of micro-enterprises that have gone bankrupt will be jointly responsible. It is based on the principles of being open, voluntary, and jointly responsible. Based on this, if a savings and loans cooperative is declared bankrupt by the commer-

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cial court, then what is the status of the guarantee given by its members to the cooperative due to the loan agreement (Lumingkewas & Djajaputra, 2022). This deserves to be investigated further, especially in the form of a fiduciary guarantee regulated in the constitutional court Decision Number 18/PUU-XVII/2019. The current study addresses this research problem and gap in existing literature related to business law. Thus making this research a significant advance to the body of knowledge in this area.

A fiduciary is the transfer of ownership rights to an object based on trust in which the ownership rights of the object are transferred while the ownership is with the owner. The definition of Fiduciary Security itself is a guarantee right on movable objects. Fiduciary guarantees are based on the trust between the guarantee beneficiary and the guarantee provider (Jam, Akhtar, Hijazi, & Khan, 2010; Lumingkewas & Djajaputra, 2022; Waheed, Kaur, & Qazi, 2016).

From this, we know that both the guarantor and the guarantee have their respective rights and obligations. If it is associated with cooperative members who provide guarantees to savings and loan cooperatives, then the cooperative members still have the right to the guarantee. However, members in the form of micro cooperatives are hindered by the cooperative principles as stated in the previous paragraph, namely open, voluntary, and joint responsibility (Mbugua & Kinyua, 2020; Okyulov, Sh, Esenbekova, Burkhankhodzhaeva, & Ibratova, 2021). Even though the guarantee in the form of fiduciary control is still with the debtor and for micro-businesses, it will be very disadvantaged because the bankruptcy decision is immediate in the Bankruptcy Law. So related to the bank's activities, a cooperative business must be discontinued. All types of assets must be collected into a bankrupt model so that an in-depth study is needed to determine the status of guarantees for micro-business cooperative members when the cooperative goes into bankruptcy. The main objectives of current research are to shed light on legal business law issues for cooperatives and micro-business players to minimize their risk of bankruptcy in situations like Covid-19.

LITERATURE REVIEW

The cooperative principle is the basic joint of cooperatives or commonly referred to as the main guidelines that animate every step of the cooperative (Baswir, 2000). The cooperative principle distinguishes the characteristics of cooperatives from other business entities, so these principles have a very important role in distinguishing the pattern of managing cooperative organizations. these roles are as follows:

1. As a guideline for the implementation of cooperative business in achieving its objectives;

The purpose of the cooperative is to improve the welfare of its members and the country's economy in general. The business orientation sided with the people as a logical consequence of the nature of the cooperative, namely as a symbol of struggle and a symbol to get out of a low standard of living (Ahmad & Waheed, 2015; Runtulalo & Tanawijaya, 2022).

2. It is a characteristic that distinguishes cooperatives from other forms of enterprises.

The form or characteristic that exists in a cooperative is that its members are both owners and users of cooperative services, so more or less, the regulations contained in the cooperative are formed to regulate the internal problems of the cooperative, namely the working mechanism in the cooperative organization and the relationship between cooperatives. With the members involved. However, one of the principles of cooperatives that distinguishes them from other forms of business is the regulation of the relationship between cooperatives as business entities and their members and the relationship between cooperatives and companies outside the cooperative (Runtulalo & Tanawijaya, 2022). From the above principles, on the other hand, cooperatives are formed to improve the welfare of their members. On the other hand, cooperatives can also form a business activity with other companies that certainly aim to improve the economy of their members.

1. Principles of Cooperatives in Indonesia

Cooperative principles in general in Law Number 25 of 1992 concerning cooperatives are formulated in Article 5 paragraph (1), namely:

a) Membership is voluntary and open;
b) Management is carried out democratically;
c) The distribution of the remaining operating results is carried out fairly and proportionally with the number of services of each member;
d) Provision of remuneration is limited to capital; and
e) Independence (Runtulalo & Tanawijaya, 2022).

In addition, in the Regulation of the Minister of Cooperatives and SMEs Number 04/Per/M.KUKM/XII/2012, the cooperative principle is unity as the foundation of communal life, which consists of:

a) Membership is voluntary and open;
b) Management is carried out democratically;
c) The distribution of the remaining business results is carried out fairly in proportion to the number of business services of each member;
d) Provision of limited remuneration for capital;

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e) Independence;
f) cooperative education; and
g) Cooperation between cooperatives (Suganda, 2021).
Furthermore, according to Munir Fuady, the cooperative principles are as follows:
a) Voluntary nature and open to members;
b) The democratic nature of the family in its management;
c) The nature of the distribution of results that is fair and proportional (proportional) to the size of the service members;
d) Prioritizing the principle of member welfare; and
e) The principle of independence, self-sufficiency, and self-sufficiency (Waheed & Hussain, 2010; Suganda, 2021).
In addition, cooperatives must at least have the principles of education and cooperation between cooperatives in implementing and developing the goals. The existence of these two principles so that cooperatives have direction and goals to work together in managing cooperative activities and at the same time be independent in organizing them (Suganda, 2021).

1. Savings and Loan Cooperatives in Indonesia

In the Law on cooperatives 1967, cooperatives are defined as people's economic organizations with a social character, meaning that the objectives contained in the above discussion must be re-embodied into a form or business unit within the cooperative primarily aimed at the welfare of its members. One of the existing business units in cooperatives is the savings and loan business unit.
Cooperatives with savings and loan business units are often abbreviated as "KSP" (Savings and Loans Cooperative). When viewed from the term, through the interpretation of the legislation. The definition of savings in the Law on Cooperatives 2012 namely the amount of money deposited by members to savings and loan cooperatives by obtaining services from savings and loan cooperatives according to the agreement (Suganda, 2021). Then in the same law, loans are defined as the provision of money by savings and loan cooperatives to members as borrowers based on an agreement, which requires the borrower to repay within a certain time and pay for services. Then the philosophical basis for why there is a Savings and Loans Cooperative in Indonesia is to provide opportunities for its members to get funds easily and without burdensome interest. This is the same as the definition of Burhanuddin Susamto, which states that a savings and loan cooperative was established to provide opportunities for its members to obtain loans on a benevolent basis (Oedoyo & Marbun, 2020).
This foundation more or less affects the purpose of establishing a savings and loan cooperative which Subagyo (2014) formulated to improve the welfare of cooperative members (Subagyo, 2014). Furthermore, Subagyo (2014) then formulated how the savings and loan cooperative work systematic, namely using away at the end of the working period, the achievement of these goals must be displayed in the form of a member's financial promotion report; therefore, the achievement goals must be translated into a quantitative form that can be measured in units of money (Stef, 2022).

1. Membership in the Savings and Loans Cooperative

i. Members of savings and loan cooperatives with savings and loan units are owners and users of services, per Law Number 25 of 1992 concerning cooperatives and the decree of the minister of small and medium enterprises cooperatives number 351/KEP/M/XII/1998 concerning business implementation guidelines. Savings and loans by cooperatives and government regulation number 9 of 1995 concerning implementing savings and loans by cooperatives (Yunusova & Ibratova, 2021).
ii. Then the savings and loan cooperatives must provide education to their members and prospective members to improve the quality of the resources of the members of the savings and loan cooperatives so that in the future, both members and prospective members will understand the obligations they will receive when lending to savings and loan cooperatives (Setijaningrum, 2016).

2. Fiduciary Guarantee and Bankruptcy Against Cooperatives

a. Fiduciary Arrangements in Indonesia

b. Fiduciary arrangements in Indonesia began to emerge through Law Number 16 of 1985 concerning flats which regulates ownership rights to flat units that can be used as collateral for debts that fiduciary institutions can burden, then Law Number 4 of 1992 concerning housing and settlements. This also allows for burdening fiduciary guarantees to land owned by other parties (Setijaningrum, 2016). The fiduciary law affirms a fiduciary guarantee as collateral for material or material security, prioritizing the fiduciary recipient. Furthermore, in Article 27 of Law Number 42 of 1999 concerning fiduciary guarantees, the fiduciary recipient has priority rights over other creditors. The priority will not be removed due to bankruptcy for the fiduciary giver. Furthermore, Article 4 of Law Number 42 of 1999 concerning fiduciary guarantees clearly states that fiduciary guarantees are a follow-up or accessory (accessories) of the main agreement (Setijaningrum, 2016).
Article 1 point 2 of Law Number 42 of 1999 concerning fiduciary guarantees states that fiduciary guarantees are given as collateral for debt repayment. In addition, Article 1 point

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7 and Article 7 of Law Number 42 of 1999 concerning fiduciary guarantees further regulate the types of the type of debt. In connection with the two provisions, it needs to be emphasized here that what is meant by debt whose fulfillment can be guaranteed by fiduciary security is not limited to the meaning of debt as referred to in the two articles but includes every engagement (verbintenis) as referred to in articles 1233 and 1234 of the civil code. Debt that is born because of the law is, for example, the obligation to pay compensation due to an unlawful act (article 1365 of the civil code) and negotiorum gestio (zaakwaarneming) as regulated in articles 1354 – 1357 of the civil code, while debt that is born because of an agreement is an obligation to give something, to do something, or not to do something (Article 1234 of the civil code).

All types of debt mentioned above are debts that can be collected in court; therefore, these debts can be guaranteed with fiduciary guarantees. Concerning the types of debts mentioned above, it should be noted that debts born due to gambling and betting cannot be fulfilled (Article 1178 of the civil code). Therefore, it cannot be guaranteed by fiduciary or other guarantees. Fiduciary guarantees can be given to guarantee debts to more than one creditor as long as they are given simultaneously (Yunusova & Ibratova, 2021).

a. Bankruptcy Against Cooperatives

Cooperatives have the same position as the party filing the bankruptcy petition and the party who can be declared bankrupt in the Science of Bankruptcy Law (Yunusova & Ibratova, 2021). The subjects in Bankruptcy Law are as follows:

i. The party filing the petition for Bankruptcy;
ii. Debtor;
iii. Creditors;
iv. Public Prosecutor's Office;
v. Bank Indonesia;
vi. Capital Market Supervisory Agency/Financial Services Authority; and
vii. Minister of Finance.

2. Parties that can be declared bankrupt

Based on Article 2 of Law Number 37 of 2004 concerning bankruptcy and suspension of debt payment obligations, almost all legal subjects can be declared bankrupt by the commercial court as long as the legal subjects comply with the provisions in Article 2 of Law Number 37 of 2004 concerning bankruptcy and suspension of debt payment obligations the. The following parties can be declared Bankrupt by the commercial court (Yunusova & Ibratova, 2021).

i. Individuals, both married and unmarried men, and women. If the application for a declaration of bankruptcy is submitted by an individual debtor who is married, then the application can only be submitted with the approval of his/her husband/wife unless there is a prior separation agreement;
ii. Legal entities, such as limited liability companies, regional companies, and other associations that have legal entities in them;
iii. Inherited prope0072ty or inheritance of a person who has died may be declared bankrupt concerning the person who died is in a state of discontinuation of payment or his inheritance at the time of death of the testator is insufficient to pay his debts;
iv. Holding company, the bankruptcy law does not require that the application for bankruptcy against the parent company and its subsidiaries be filed in the same document. Applications, apart from being submitted in one application, can also be submitted separately as two applications;
v. A debt guarantee is an agreement in which a third party, for the benefit of the creditor, binds himself to fulfill the debtor's obligations if the debtor concerned cannot fulfill his obligations; and
vi. Banks, bankruptcy law, and suspension of debt payment obligations distinguish between bank debtors and non-bank debtors. The distinction is made in terms of who can apply for a declaration of Bankruptcy. If the debtor is a bank, the application for a declaration of bankruptcy can only be submitted by bank Indonesia because the bank is full of public money, which must be protected.
vii. Based on the explanation above, the cooperative will have the position of a debtor if its creditors apply for bankruptcy later and can also be bankrupt because its status is in the form of a legal entity that has been ratified by the ministry of law and human rights of the Republic of Indonesia.

RESEARCH METHODS

This legal research is normative legal research carried out by examining library materials or secondary data. The research conducted by the author was carried out by examining the legal principles the author did, namely by trying to take an inventory of positive laws. This inventory of positive laws is carried out through a critical analytical identification process and a logical, systematic classification process (Runtulalo & Tanawijaya, 2022). Empirical data support normative legal research through interviews to confirm the application of existing laws and regulations. A comprehensive and systematic literature search was carried out in secondary data using keywords related to study variables. Online studies, journals, books, law and business law-related

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magazines, periodicals, legislative documents, Indonesian legal documents, and other sources related to such subjects and constructs. All the collected studies and information were content analyzed to filter and exclude irrelevant information, and only related information was included in the study for analyses purpose. Ultimately, all the information was organized scientifically to arrange a study format.

RESULTS & ANALYSIS

a. Consequences of Bankruptcy on Assets of Bankrupt Cooperatives

The declaration of bankruptcy will result in legal consequences for cooperatives that have been declared bankrupt by the commercial court, including on bankruptcy assets and agreements made before and after bankruptcy. The result of the bankruptcy statement for the savings and loan cooperatives is the loss of civil rights to manage their assets (Toha & Retnaningsih, 2020). In Article 22 Paragraph (1) of Law Number 37 of 2004 concerning bankruptcy and suspension of debt payment obligations as of the date of the bankruptcy declaration decision. A bankrupt debtor, both husband and wife whose assets are bound, husband and wife who are not bound by their assets, legal entities, and assets inheritance, is not entitled and does not have the authority to take care of his property again.

Thus the rights of the debtor to manage and settle his assets will be transferred to the curator, but the bankrupt debtor only loses his right to manage and settle all of his assets included in the bankruptcy model. All of the civil rights contained in Article 19 and Article 22 Law Number 37 of 2004 concerning bankruptcy and suspension of debt payment obligations.

Furthermore, the consequences also impact the agreements made by the savings and loan cooperatives, both before and after the bankruptcy declaration (Ikhsan, 2011). A third party entering into an agreement with a bankrupt cooperative after the declaration of bankruptcy will not and cannot be paid from the bankruptcy estate, except when the engagement benefits the bankruptcy estate. In general, the consequences of a bankruptcy statement are as follows (Okyulov et al., 2021).

i. The assets of the bankrupt debtor who enter the assets of bankruptcy are general confiscation of the assets of the parties declared bankrupt;

ii. Bankruptcy only concerns the bankruptcy property, not concerning the bankrupt debtor self; for example, a person continues to get married even though he has been declared bankrupt;

iii. The bankrupt debtor, by law, loses the right to manage and control the assets which are included in the bankruptcy property as of the day the bankruptcy declaration decision is pronounced;

iv. Bankruptcy assets are managed and controlled by the curator for the benefit of all creditors and debtors, and the supervisory judge leads and controls the implementation of the bankruptcy process.

DISCUSSION

Based on the explanations in the previous sections, cooperatives are one of the subjects in bankruptcy law that can be filed for bankruptcy. In the bankruptcy, several legal consequences arise from the provisions in Article 22 paragraph (1) of Law Number 37 of 2004 concerning bankruptcy and suspension of debt payment obligations namely; the most important thing is that the bankrupt debtor will lose his civil rights to all assets (Toha & Retnaningsih, 2020).

The assets will later be managed by a curator chosen by the Judge of the commercial court or chosen based on the agreement of the creditors and the bankrupt debtor under Article 19 and Article 22 of Law Number 37 of 2004 concerning bankruptcy and postponement of debt payment obligations. Thus, all assets owned by the savings and loan cooperative declared bankrupt by the commercial court will be transferred to the curator (Toha & Retnaningsih, 2020).

The curator will take care of the settlement of the assets belonging to the savings and loan cooperative and include them in the bankrupt certificate. The property belonging to the savings and loan cooperative cannot be separated from the definition of objects in civil law science states that there are tangible and intangible objects.

This includes various forms of guarantees from the debtor of the bankrupt savings and loan cooperative. A fiduciary is the transfer of ownership rights to an object that can be used as an object of collateral provided that the fiduciary remains in the control of the object's owner. There are 2 (two) objects of fiduciary security, namely material and individual rights. Moreover, if it is associated with a savings and loan cooperative that lends funds to its members, including micro-enterprises, the collateral used is a fiduciary guarantee in the form of material (Toha & Retnaningsih, 2020).

By deeper analysis in Article 1131 of the civil code, in its formulation, it is stated that all material rights of the debtor, both movable or immovable and both existing and new ones that will come in the future, become dependents for all such engagements. Joint guarantee for all its creditors unless otherwise provided by law.

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Thus the fiduciary guarantee can be categorized as an object that will come in the future, plus the savings and loan cooperative has ownership rights to the object charged by the fiduciary guarantee (Sitorus & Yudi, 2022). Existing additional agreements follow the main agreement so that if the main agreement is declared complete, the additional agreement will automatically no longer be valid (Toha & Retnaningsih, 2020). The point is that when cooperative members, especially foreign nationals, can pay off or fulfill their obligations to the cooperative before the cooperative is declared bankrupt, the cooperative must automatically return the guarantee to the cooperative members.

From the above definition, we can state that the fiduciary guarantees given by micro-business actors to cooperatives as a result of their lending and borrowing agreements with the savings and loan cooperatives concerned will be included in the bankruptcy account, which the curator manages because of the nature of the object is the incoming guarantee (Sitorus & Yudi, 2022).

In the definition of tangible objects, even though the control is in the hands of micro-enterprises, the ownership is with the cooperative so that it can be included in the definition of assets collected to pay the obligations of the savings and loan cooperative in the event of bankruptcy.

Although it has been explained in the sub-chapter above that fiduciary guarantees are included in the bankruptcy code, there are interesting things in managing a bankruptcy because in bankruptcy law, if there is an engagement that will bring benefits to the bankruptcy estate, then the engagement will keep going (Sitorus & Yudi, 2022).

Furthermore, as an additional guarantee of the main agreement, it appears for the parties to fulfill an achievement contained in an achievement. In using the fiduciary guarantee, it is necessary to register the fiduciary guarantee deed, which can give birth to the executive power of the fiduciary guarantee. Including objects burdened with fiduciary guarantees outside the territory of the Republic of Indonesia must still be registered. This is under Article 11 of the fiduciary guarantee law Number 42 of 1999 (Sitorus & Yudi, 2022).

Registration of a fiduciary guarantee deed is imperative or coercive at home and abroad. Made by notarial deed in Indonesian. The Fiduciary Guarantee Deed is regulated in Article 5 of the Fiduciary Guarantee Law, which at least contains:

1) The identity of the Fiduciary Giver and Recipient;
2) Fiduciary guaranteed principal agreement data;
3) Description of the object that is the object of the Fiduciary Guarantee;
4) Guarantee value; and
5) Value of the object that is the object of the Fiduciary Guarantee.

The purpose of this fiduciary registration is to be used as a guarantee of certainty to other creditors regarding the truth of the object burdened with the fiduciary guarantee. Article 12 fiduciary guarantees, registration is carried out at the domicile of the fiduciary recipient by the principle of actor sequitur forum rei, namely fiduciary guarantees continue to follow the object that is the object of fiduciary guarantee in the hands of whomever the object is, unless its existence is based on the view of the right of credit. Thus, fiduciary security rights are absolute material rights.

Thus, the loan agreement made by the micro-business actor against the savings and loan cooperative will remain in effect because the agreement brings strategic advantages to the bankrupt bank so that the micro-business actor will get legal protection from the loan agreement he made together savings cooperative. Borrow before being declared bankrupt by the commercial court.

Then the fiduciary guarantee is also basically recognized by the government with the provisions in Article 13 paragraph (1) of the Fiduciary Guarantee Law, which contains:

1) The identity of the Fiduciary Giver and Recipient;
2) The date, number of the Fiduciary Guarantee deed, name, and domicile of the notary who made the Fiduciary Guarantee deed;
3) Fiduciary guaranteed principal agreement data;
4) Description of the object that is the object of the Fiduciary Guarantee;
5) Guarantee value; and
6) Value of the object that is the object of the Fiduciary Guarantee.

So that the fiduciary guarantee must remain attached to the main agreement, and the curator cannot directly execute the fiduciary guarantee because, basically, the micro-business actor still has the right to the fiduciary guarantee that he provides to the savings and loan cooperative as long as the micro business actor carries out his loan payment obligations as contained in the loan agreement with the savings and loan cooperative.

Furthermore, the abolition of the fiduciary guarantee is due to several things, including:

1) Elimination of debt guaranteed by fiduciary
2) Release of fiduciary security rights by Fiduciary Recipients
3) The destruction of objects that are objects of fiduciary guarantees.

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With the above provisions, the fiduciary guarantee will only be removed when the debt guaranteed by the fiduciary is also deleted or the micro-business owner as of the Debtor of the savings and loan cooperative releases the right to his fiduciary guarantee to the savings and loan cooperative. Valid and non-transferable under the provisions contained in the Law on Fiduciary Guarantees.

CONCLUSION

This study concludes that the status of fiduciary guarantees given by cooperative members in the form of micro-enterprises will be included in the bankrupt bank register, which the curator manages based on the provisions of Law Number 37 of 2004 concerning bankruptcy and delay of debt payment obligations. This is because the fiduciary guarantee is included in the assets of the savings and loan cooperative in the form of immovable property. Therefore it can be considered a payment to creditors of the savings and loan cooperative that has been declared bankrupt.

However, micro-business actors are still protected by the principle of private law, which states that the agreement applies as a law for the parties. The commercial court declares the debtor bankrupt, and if it can increase the value of the bankrupt assets, it will continue to run.

This means that the savings and loan agreement between the micro-business actor and the savings and loan cooperative is still running. Thus, the curator must consider the agreement; if the micro-business actor has completed his obligations, the fiduciary status will return to the concerned micro-business actor. There need to be some special legislative amendments regarding the fiduciary guarantee and its implications on micro-business actors in the country's economic environment.

Limitations and Future Research Directions

Like all other studies, this research also has some limitations worth mentioning so that they can be considered for future research attempts in this area. Due to the unique nature of the topic of fiduciary guarantee and its use in law and related issues, it was not easy to source the most relevant information from reliable sources. Thus current research is novel and provides significant evidence in business law-related topics from the unique Indonesian context.

A comparative study between multiple countries in the ASEAN region can be more beneficial to borrow best practices for such disputes and bankruptcy matters. Future scholars may also look for unique topics in business law that can affect micro, small, and medium enterprises in various countries.

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