

LEGAL PROTECTION OF CUSTOMERS' FUNDS IN TERMS OF TORT AT KOPERASI CINTA KASIH, MEDAN, INDONESIA

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ABSTRACT: *Cooperative is one form of business entity that has a strategic role for the empowerment and strengthening people's economy. Cooperative as an economic institution of the people who have long known in Indonesia and the normative cooperative is a business entity with legal entity No. 154 / BH / 2006 which carry out the main business activities (the needs of facilities and infrastructure development) and savings and loan activities. This research aims to analyze the legal protection provided to customers' funds at Koperasi Cinta Kasih Medan which carries out capital investment business which then experienced tort/default and is a normative legal research with related literature approach and legislation. The conclusion of this paper is if the loss of the cooperative due to the negligence of the cooperative management then the loss of the customer is borne by the cooperative management in accordance with the cooperative budget and if the cooperative suffers losses due to tort then the protection can be done through a default lawsuit.*

KEYWORDS: Client's Fund, Cooperative, Tort, Law

INTRODUCTION

The cooperative acts as one of the financial institutions aimed at providing credit and other financial services. Cooperative as a people's economic institution has long been known in Indonesia is a Joint Business Entity engaged in the economy, consisting of those who generally its members from low class family, who joined voluntarily, based equality of rights and obligations to undertake a business aimed at meeting the needs of its members. Because through this cooperative container members can get assistance in the form of capital, it is in can with the help of savings and loan cooperatives in the form of capital. Normatively Cooperative is a business entity with legal status. 154 / BH / 2006 performing basic business activities and savings and loan activities. Cooperative becomes problematic when in conducting business activities that have deviated from the provisions of applicable legislation, one example in Medan that is Koperasi Cinta Kasih has run capital participation activities which are then named capital investment (investment agreement) or collection of public funds made by collecting funds from the community in the form of savings and channeling funds to the community in the form of credit. In the execution of an agreement if two persons enter into an agreement, then their respective objective is to obtain the achievement of the opposite party. However, in the execution of this short-term or short-term saving agreement it has not fulfilled its performance or obligations. This research aims to understand and analyze the responsibilities of the cooperative against customer funds in terms of interpretation. In addition, this paper aims to understand and analyze how the legal protection provided to the client funds Cooperatives conducting capital investment business which then experienced tort.

LITERATURE REVIEW

Tort

A tort in common law jurisdictions, is a civilian that causes someone else to suffer loss or harm resulting in legal liability for the person who commits the tortious act. The person who commits the act is called a tortfeasor. Although crimes may be torts, the cause of legal action is not necessarily a crime, as the harm may be due to negligence which does not amount to criminal negligence. The victim of the harm can recover their loss as damages in a lawsuit. In order to prevail, the plaintiff in the lawsuit, commonly referred to as the injured party, must show that the action or lack of action is the legally recognizable cause of the harm. The equivalent of tort in civil law jurisdictions is delict.

Legal injuries are not limited to physical injuries and may include emotional, economic, or reputational injuries as well as violations of privacy, property, or constitutional rights. Torts comprise such varied topics as automobile accidents, false imprisonment, defamation, product liability, copyright infringement, and environmental pollution (toxic torts). While many torts are the result of negligence, tort law also recognizes intentional torts, where a person has intentionally acted in a way that harms another, and in a few cases (particularly for product liability in the United States), strict liability, which allows recovery without the need to demonstrate negligence.

Tort Law is different from criminal law in that:

- (1) tort lawsuits as well as intentional or criminal actions and
- (2) tort lawsuits have a lower burden of proof le doubt.

Sometimes a plaintiff may prevail in a tort case even if the person who is allegedly caused harm was trial. For example, O. J. Simpson was acquired in the criminal court of murder but later found liable for the tort of wrongful death.

Client

Client is somebody who buys goods or pays for services. Companies and other organizations may also be clients. As opposed to customers, you are a customer if you buy a cup of coffee at a train station from a cafe stall. However, the stall owner is the client of the coffee supplier, especially if there are credit terms. In other words, the stall owner is a client of the coffee supplier because they have an arrangement. When paying for physical goods, we use 'client' and 'customer' interchangeably. Therefore, the stall owner is also the coffee supplier's customer. However, only clients pay for the services of a professional. For example, if you pay for the services of a lawyer, you are the client. Even if you have no business arrangement with the lawyer, you are still the client and not the customer.

Some definition of client:

- a. A customer, a buyer or receiver of goods or services
- b. Computing

The person who receives help from a professional person (ex. a lawyer, an accountant, a social worker, a psychiatrist, etc.)

(law) A person who employs or retains an attorney to represent him or her in confidence matters to an attorney while pursuing professional assistance without subsequently retaining the attorney.

METHODOLOGY

This research is a normative legal research, namely the study of literature law data obtained from reviewing library materials, which is commonly referred to as secondary data. Approach used in the writing of this paper is a study that examines the study documents, which uses various secondary data such as regulations legislation, and may be in the opinion of scholars. Discussion of Legal Protection is a protection granted to legal subjects in the form of both preventive and repressive legal instruments, both written and unwritten. And textually the legal protection by means of legal means or protection provided by law. In other words, the protection of the law as an illustration of the function of law that is the concept of law can provide justice, certainty and usefulness. In addition, the law is also a set of rules and principles governing human life in society.

The Cooperative Act does not specifically mention the legal protection for client funds while for its protection clients is seen in article 7 and article 8 of Government Regulation Number. 33 of 1998 on Equity Participation in Cooperatives.

In Article 7, it states that: (1) Financiers also take risks and are responsible for losses of business funded by equity capital to the value of capital invested in cooperatives ".

in Article 8 it states that "Investors are entitled to a share of the profits from business financed capital participation". But in the legal protection of the customer's funds before the occurrence of the problem is seen with the agreement made by the Parties Cooperative with the funds of customers. If the agreement is not exercised by either party, either party may be sued in court. If the loss suffered by the customers is due to the policy agreed upon in the member meeting then the responsible is all members or the owner of the cooperative, or if the loss is due to the negligence of the committee then who is responsible here is the board.

DISCUSSION

The agreement should be implemented as it should be without interruption or obstruction. But at certain times, which cannot be expected by the parties, there are often obstacles that the implementation of the agreement cannot be implemented properly or cannot be said to fulfill its performance. Default has a very close relationship with the summons. Default is not fulfilling or failing to perform the obligations as specified in the agreement made between the creditor and the debtor. Due to tort made by Koperasi Cinta Kasih may cause harm to the creditor, sanction or legal consequences for Koperasi Cinta Kasih that default there are 4 kinds, namely:

1. Koperasi Cinta Kasih should pay compensation suffered by the creditor (article 1243 the Civil Law Act).
2. Cancellation of the agreement accompanied by payment of compensation (Article 1267 of the Civil Code).

3. Transition of risk to the debtor from the time of default (Article 1237 paragraph 2 of the Civil Code).
4. Payment of legal fees if required before the law.

In case of default done by the Cooperative responsible for the occurrence of wanprestasi is cooperative management in accordance with the AD / ART (articles of association / household budget). If the cooperative suffers a loss due to the actions of the board, whether intentional or unintentional or due to negligence, the board must be held liable for such losses. If, if the act of harming the cooperative is due to intent, the board may be prosecuted in court. The responsibility of the cooperative against the customer's funds in the event of default is by way of returning the customer's funds in terms of time deposits with interest rate in accordance with the contents of the agreement made by the cooperative with the members of the customer.

CONCLUSION

Legal protection of customer funds before the occurrence of the problem that is in the form of direction and guidance from the supervisor. If the negligence of the cooperative board is then the customer losses are borne by Koperasi Cinta Kasih board itself. If the cooperative suffers losses due to tort then the protection can be done through a breach of default. The responsibility of Koperasi Cinta Kasih in default is to indemnify the customer's funds by returning the customers' time deposits and the amount of interest from the plaintiff's savings.

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