

The New Cooperative Law

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OVERVIEW

Since the colonial times, cooperatives have played a significant role in Indonesian economy. So much so that they have been declared as the backbone of the national economy under the elucidation of Article 33 of the 1945 Constitution, which states that the national economy is to be organized according to cooperative and family principles.

This importance is also illustrated by the significant growth of cooperatives and their members in Indonesia. According to the Ministry of Cooperative and Small-Medium Businesses, in 2012, the number of cooperatives reached 192,443 units, where 7,831 are savings and loan cooperatives. Members of registered cooperatives are comprised of 33,687,417 Indonesian citizens. In terms of capital, cooperatives have raised USD 9.14 billion and generated USD 642.64 million in profit.¹

Despite the acknowledgement of being the backbone of national economy, Indonesian cooperatives are not immune to economic changes, especially with the 1997 economic crisis aftermath that resulted in huge government debt, collapse of the banking sector, and bankruptcy of many companies. These events have directly and indirectly influenced the cooperatives business climate and its development.

Another concern is that the reputation of cooperatives was damaged due to several businesses using the cooperative entity as a vehicle for crime. For example, one of the biggest cases, Koperasi Langit Biru case, included 125,000 members investing in the cooperative's meat commodity, which resulted in IDR 6

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trillion being raised. However, after a police investigation, it was revealed that the Koperasi Langit Biru was a Ponzi scheme.²

In order to address issues with cooperatives and to reinforce cooperative's status as the backbone of the national economy, on 18 October 2012, the House of Representatives passed the Bill on Cooperatives.

¹ Syarifuddin Hasan's presentation, The UN 2012 IYC Closing Ceremony New York, 19-20 November 2012.

²<http://megapolitan.kompas.com/read/2012/06/07/16480393/Inilah.Modus.Investasi.Bodong.ala.Koperasi.Langit.Biru.dan.PT.GAN>



The Bill on Cooperatives has been signed by the President and registered as [Law No. 17 of 2012](#) on Cooperative ("Law"). It is listed as the State Gazette No. 212 of 2012, while its elucidation is listed as State Gazette Supplement No. 5355. The Law has been in force since 30 October 2012. The Law repeals and replaces Law No. 15 of 1992 on Cooperatives ("1992 Law").

Purpose

This edition of Indonesian Law Digest ("ILD") will discuss and elaborate the key provisions of the Law. To this end, this ILD will focus on the following issues:

1. Cooperatives in Brief
2. Cooperative Capital Structure
3. Sertifikat Modal Koperasi
4. Cooperative Management
5. Types of Cooperatives
6. Savings and Loan Cooperatives
7. Cooperative Deposit Guarantee Agency (*Lembaga Penjamin Simpanan*)

Cooperatives in Brief

Since the issuance of Law No. 12 of 1967 on Cooperatives and until now, the government has been aiming to establish cooperatives as part of the people's grassroots economy. As a result, the ultimate goal of the Law is to strengthen the role of the cooperatives within the economy. This is evident as many micro, small, and medium enterprises are legally formed as cooperatives.

Out of the three incorporated entities - limited liability company, foundation, and cooperative - that are recognized under Indonesian law, only cooperatives enjoy special treatment from the government.

To elaborate, the government set up the following special institution that validates cooperatives' deed of incorporation and amendments: Minister of

Cooperative and Small and Medium Business ("Cooperative Minister").

It should be noted that the other two legal entities receive validation from the Minister of Law and Human Rights. (See [Government Regulation No. 4 of 1994](#) on Requirements and Procedures to Validate Cooperative Memorandum and Articles of Association *juncto* Articles 10 and 13 of the Law).

Overall, the Law is comprised of 126 articles, 59 articles more compared to the 1992 Law (67 articles). Some major improvements to the Cooperative regulatory framework include specifications on: types of cooperatives; capital structure; cooperative management; and government's role to support cooperative growth.

Capital Structure

Unlike Article 32 of [Law No. 40 of 2007](#) on Limited Liability Company, which sets the minimum start-up capital of IDR 50 million, the Law does not set any specific figure. This is reasonable because the essence of the Law is to strengthen micro, small, and medium enterprises.

The Law provides that the source of cooperative's capital may derive from (Art. 66):

1. Start-up capital (comprised of primary deposit (*setoran pokok*) and cooperative's capital certificate (*Sertifikat Modal Koperasi*, a document that proves a member's equity in the cooperative's start-up capital (see Art. 1 (9)),
2. Bequest,
3. Equity,
4. Loans (from members, other cooperatives, banks and financial institutions, bond issuance, or central/regional government), or
5. Other sources permitted by the prevailing laws and regulations.



Sertifikat Modal Koperasi

The Law introduces a concept of cooperatives capital certificate (*Sertifikat Modal Koperasi*) as one of the capital sources for cooperatives. This was not recognized under the 1992 Law. Basically, it allows cooperatives to raise funds by issuing valuable documents, similar to companies selling stocks.

The value of *Sertifikat Modal Koperasi* must be in rupiah currency (Art. 69 (3)). The deposit to acquire a *Sertifikat Modal Koperasi* can be made in cash or other forms that have monetary value, such as land ownership certificate or vehicle ownership certificate. It should be noted that the land or vehicle ownership title must be transferred to the issuing cooperative in order for the *Sertifikat Modal Koperasi* to be legally valid (Art. 69 Elucidation).

Sertifikat Modal Koperasi can be transferred between members of the respective cooperatives under the condition that it is possessed by the owner for one year at minimum and that the transfer is reported to the management (Art. 70 (2)).

The Law also introduces a safeguard provision that ensures that the *Sertifikat Modal Koperasi* value does not devaluate as it obliges cooperatives to purchase members' *Sertifikat Modal Koperasi*. This scheme is only to be used as a last resort if other members or new members are not willing to purchase an issued *Sertifikat Modal Koperasi*.

Cooperative Management

One of the most notable provisions that will improve the management of cooperatives is the mandatory profit allocation to the cooperative reserve fund. Pursuant to Article 81, cooperative management must allocate 20 percent of its profit to the reserve fund. The 1992 Law left such matters to be regulated by the management.

Pursuant to Article 40, the Law stipulates that cooperatives' financial statements must be audited by

a public accountant if requested by the Cooperative Minister or by the Members Meeting (similar to a GMA under Company Law). This obligation was not mandatory under the previous Law (Art. 40, 1992 Law elucidation).

It seems that Article 40 mostly affects savings and loan cooperatives, as they will no longer be able impose an interest rate that is above the government approved rate, which will ultimately deter cooperatives from laundering money and funding terrorism.

Types of Cooperatives

The Law classifies cooperatives into two categories (Art. 7): The Primary cooperative (formed by 20 persons at least) and the Secondary cooperative (formed by three Primary cooperatives at least). This stipulation did not change from Article 6 of the 1992 Law.

Based on types of businesses, the two cooperative classes are divided further into four types (Art. 83):

1. Consumer cooperative;
2. Producer cooperative;
3. Service cooperative; and
4. Savings and loan cooperative.

These business types, pursuant to Article 82, must be affixed in the cooperative's constitution. Note that previously, the 1992 Law did not explicitly sub-classify cooperatives into four types, it was only mentioned in its elucidation (See Art. 16, 1992 Law Elucidation).

This clarification means that it is illegal for cooperatives to engage in businesses outside the mentioned four types of cooperatives. It could also be construed that a business unit within a cooperative is prohibited from carrying out a different type of business from what is affixed in the cooperative's constitution (i.e., consumer cooperative may not have a business unit providing savings and loans).



Savings and Loan Cooperative

Savings and loan cooperative is one of the most popular types of cooperatives in Indonesia. Its rapid growth is attributed to its ability to provide low interest credit rate that is more competitive compared to commercial banks or even rural banks. Thus, it is no wonder that the Law dedicates a specific chapter to this type of cooperative.

Under the Law, savings and loan cooperatives are only allowed to conduct savings and loan activities (Art. 1 (15)). The activities, pursuant to Article 89, are limited to collecting funds from its members, providing credit to its members, and placing its funds in a secondary savings and loan cooperative.

Savings and loan cooperatives are obliged to re-distribute the collected funds as credits to the members (Art. 93 (6)). This function is similar to the intermediary function known in the banking sector. Furthermore, savings and loan cooperatives are obliged to implement a prudent principle in their operation (Art. 93 (1)). They are also obliged to disclose the risk of loss of savings to the members.

In order to conduct these activities, savings and loan cooperatives must fulfill the requirements from the Minister of Cooperatives and Small-Medium Business (Art. 88 (2)). The requirements and procedures for savings and loan cooperatives are stipulated under the State Minister of Cooperatives and Small-Medium Businesses Decree No. 104.1/Kep/M.Kukm/X/2002 on Guidelines in Cooperative Establishment, Validation and Amendment of Cooperative Constitution.³

Savings and loan cooperatives may create their own network for the purpose of service improvement for their members (Art. 90). The network can be built by establishing branch offices, supporting branch offices (*kantor cabang pembantu*), and cash offices (Art. 90).

As mentioned earlier, one of the savings and loan cooperative activities is to place funds in a secondary savings and loan cooperative. Pursuant to Article 91 (2), the secondary cooperative may provide the following services to its members: savings and loans, risk management service, consultation, training and education in savings and loan activities, and so forth (Art. 91 (2)).

Unlike a common cooperative - which is established by individuals - a secondary cooperative is established by a set of cooperatives, where members may only be artificial persons, not natural persons. The consequence of this type of cooperative is that it is prohibited from providing credit to individual members; it may only provide credit to other cooperatives (Art. 91 (3)).

Deposit Guarantee Agency

One of the most interesting provisions under the Law is the deposit guarantee agency (*lembaga penjamin simpanan* – “LPS”) for savings and loan cooperatives. Pursuant to Article 94 (2), the Government may establish an LPS for savings and loan cooperatives, which will guarantee the savings of cooperatives’ members. LPS for savings and loan cooperatives will be further stipulated under a government regulation.

A comparable institution to LPS is the [Indonesia Deposit Insurance Corporation](http://www.lps.go.id/), which insures depositors’ funds in banks and actively participates in maintaining stability in the banking system in accordance with its authorized mandate.

While the Law does not clearly state the background regarding the reason why an LPS needs to be established, it is quite clear that this provision is addressed to prevent another Koperasi Langit Biru case.⁴

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<http://megapolitan.kompas.com/read/2012/06/07/16480393/Inilah.Modus.Investasi.Bodong.ala.Koperasi.Langit.Biru.dan.PT.GAN>

³ <http://www.koperasiukm.com/tag/kep-menkop-104-1kep-m-kukmx2002>



As background information, the Koperasi Langit Biru case was masterminded by Jaya Komara. The story began with Jaya's invitation of a limited number of residents to invest large sums of money to buy meat from producers to be sold to retailers, in exchange investors would receive hefty monthly dividends. He offered returns of up to 240 percent in just 10 months, which resulted in many people investing in his business scheme.

In order to legitimize his business operation, Jaya established Koperasi Langit Biru which successfully gained 125,000 members.⁵ The Ponzi scheme was revealed in June, when Jaya disappeared after failing to pay out the dividends for that month. Four members reported him to the police for fraud, claiming that they had lost a combined of IDR 107 million.

CONCLUSION

The goal of the Law is to improve the role of cooperatives as the backbone of the national economy, as stated in Article 33 of the Constitution. The current actual condition of Indonesian cooperatives is at a stage of "*hidup segan mati tak mau*". If cooperatives can achieve this, Indonesia's economic growth can reach a rate higher than the estimated 6.8% rate for 2013.

The Law could also reaffirm Indonesia's status as the most successful country to implement cooperatives in its economic system. It is noteworthy that the United Nations has awarded Indonesia for having the world's most successful cooperative programs, along with Malta, Panama and Trinidad, and Tobago.⁶

⁵ <http://www.thejakartaglobe.com/home/meat-trader-arrested-in-rp-6t-ponzi-scheme/532710>

⁶ <http://www.thejakartaglobe.com/home/united-nations-recognizes-indonesia-for-successful-cooperatives/558040>

