

## The Indonesian Consumer Protection Law for Credit Union Depositors in Credit Union Failures: Quo Vadis?

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### Article History:

Submitted:

23-12-2024

Received:

02-01-2025

Accepted:

09-02-2025

### Keywords:

legal protection;  
consumer; savings;  
credit union

### Abstract

The 2023 credit union reforms in Indonesia have yet to thoroughly manage the protection system for credit union customers. Discriminative settlements are applied when credit unions fail to return savings. Unlike insurance companies and banks, their customers are fully protected by the Deposit Insurance Corporation when the financial institutions become insolvent. The study aims to analyze the consumer protection law implemented for credit union depositors upon the enactment of Law No. 4 of 2023 by focusing on 3 crucial issues: dual settlement of credit union regulation and credit union is covered in the Financial Services regime as well as consumer law protection should credit unions encounter failures. It is a normative and conceptual study which employs statutory law approaches to draft legal arguments on quo vadis credit union consumer protection law. The study shows that regulation reforms have successfully ended the dual settlement. However, the regulation reforms merely demonstrate the inclusion of credit unions within the financial services regime under the Financial Services Authority without providing any protection regulation addressed to credit union customers should credit unions fail. As a result, credit union depositors are unable to retain their rights due to the legal protection unavailability.

## 1. Introduction

Up to now the government has yet provided protection to credit union depositors. The P2SK Laws enactment was previously deemed to promote resolutions to any problems adhered to credit union. Conversely, the laws are unable to dispense protection for credit union depositors due to the government ignorance towards credit union institutions. Instead of supervising and protecting credit unions the government merely places more concentrations on bank customers and insurance policyholders. The Indonesian Financial Services Authority hardly addresses full supervision towards 130,000 credit unions widespread across Indonesian regions<sup>1</sup>. Consequently, unsupervised credit unions mushroomed and losses are common cases suffered by the credit union depositors. When credit unions become insolvent, consumers deposits are harmed because their savings are unlikely reimbursed. From 2019-2023 there were approximately 81,686 closed credit unions. Thus, the closures simultaneously affected the members since the credit unions failed to return their savings<sup>2</sup>. The depositors' predicament worsens as the Indonesian Financial

<sup>1</sup> "Diffa Ayu Nindyatami Savitri, Siska Puspitasari, and Clara Arneta Maharani", ""Peranan Ojk Terhadap Pengawasan Keuangan Koperasi Simpan Pinjam,"" *CEMERLANG: Jurnal Manajemen Dan Ekonomi Bisnis* 3, no. 3 (June 12, 2023): 1-7, "<https://doi.org/10.55606/cemerlang.v3i3.1320>".

<sup>2</sup> Fathya Kamila et al., "Pengaruh Transparansi Terhadap Perkara Koperasi Simpan Pinjam Indosurya," *Coopetition: Jurnal Ilmiah Manajemen* 14, no. 3 (2023): 599-606, <https://doi.org/10.32670/coopetition.v14i3.3857>.

Services Authority (referred to as OJK) does not cover their savings. Subsequently, the public tend to lose faith and security in credit unions<sup>3</sup>.

Furthermore, credit unions' existence tends to be ambivalent or paradoxical<sup>4</sup>. On the one hand, a credit union is a member-oriented, nonprofit cooperative financial institution which mainly aims to provide financial services to its members<sup>5</sup>. On the other, in its operation as a financial service institution, a credit union requires a set of discreet laws<sup>6</sup>. Prior to regulation reforms, credit unions were excluded from the regime of financial service sectors. Credit unions subsequently acquired recognition as mainstream financial institutions which also cater for non-members with respect to accepting savings and capital classified as subsystem to financial sectors, thanks to the P2SK Laws enactment. As such, credit unions that accept deposits from the non-member, *mutatis mutandis*, should be under OJK supervision. Nonetheless, there is a dualism in credit union regulation, supervision and assistance. On one hand, it is mandatory that a credit union operate as a micro financial institution (referred to as LKM) to propose the LKM business licence to OJK. On the other hand, in the event of credit union failures or violations, OJK simply imposes no sanctions upon any failures or violations committed by credit unions given the considerations that it is unauthorized to close down credit unions<sup>7</sup>. Such authority is granted, otherwise, to the Ministry of Cooperatives and MSMEs. The establishment and validation of a credit union operating as a micro financial institution is within the jurisdiction of the Ministry of Cooperatives and MSMEs albeit the credit union legal permit be proposed to the OJK.

The dual regulation of credit unions brings up legal uncertainty which subsequently affects credit union customers if credit unions fail and their customers are literally unable to withdraw their money due to credit union insolvencies. Undoubtedly, credit union customers are deprived of their rights. Thus, their losses increase as there are no governance regulations stated in the enacted statutory laws by which authorized institutions are assigned to provide protections for credit union customers in case credit unions fail to repay the customer's deposits. Therefore, it is crucial that a study on legal protection granted to credit union customers be conducted in the event of credit union failures after the establishment of regulation reforms. This review is deemed necessary to provide further information on whether credit unions are feasible for IDIC protection following the credit

<sup>3</sup> Lintar Bagas Putra Efrianto and Diana Wiyanti, "Tanggung Jawab Bank Terhadap Nasabah Yang Dananya Terbukti Digunakan Oleh Karyawan Bank", *Jurnal Riset Ilmu Hukum*, 2022, 107-12, <https://doi.org/10.29313/jrih.v2i2.1457>.

<sup>4</sup> Keldon Bauer, "Detecting Abnormal Credit Union Performance", *Journal of Banking & Finance* 32, no. 4 (2008): 573-86, <https://doi.org/https://doi.org/10.1016/j.jbankfin.2007.04.022>.

<sup>5</sup> "John Goddard, Donal G McKillop, and John O S Wilson", "Who Consumes the Credit Union Subsidies?," *Journal of Financial Stability* 69 (2023): 101176, <https://doi.org/https://doi.org/10.1016/j.jfs.2023.101176>.

<sup>6</sup> "Ginta Railienė and Lina Sinevičienė", "Performance Valuation of Credit Unions Having Social and Self-Sustaining Aim", *Procedia - Social and Behavioral Sciences* 213 (2015): 423-29, <https://doi.org/https://doi.org/10.1016/j.sbspro.2015.11.561>.

<sup>7</sup> Dwinoven Lumban Tobing, Reka Dewantara, and Setiawan Wicaksono, "Batasan Kewenangan Otoritas Jasa Keuangan Terhadap Lembaga Keuangan Mikro Berbentuk Badan Hukum Koperasi Simpan Pinjam Dalam Hal Terjadi Gagal Bayar", *Warkat* 1, no. 2 (2021): 92-100, <https://doi.org/10.21776/warkat.v2n2.1>.

union classification as a financial services institution under the laws of the OJK (Indonesian Financial Services Authority) regime in accordance with the regulation reforms.

Previous studies have been conducted on the protections afforded to credit union customer deposits, and they have concentrated heavily on the implementation of protections by the IDIC (LPS). While other studies focused more on the impact of deposit insurance on behaviours addressed to credit union loans<sup>8</sup>, the revenue tax exemption granted to credit unions<sup>9</sup>, the credit union disciplinary drives owned by credit union depositors<sup>10</sup>, the best locations on which credit unions be placed within financial services industries to financially affect the marginal<sup>11</sup>, and the implementation of Basel III management regarding the additional capital contributions to credit unions applied for discreet regulations<sup>12</sup>.

Meanwhile, in a study on the Legal Protection of Depositors due to Credit Union Failure in Indonesia, are study by Harry A. Tuhumury, et al,<sup>13</sup> entitled Legal Protection for Members and Customers of Savings and Loan Cooperatives, but the analysis uses Government Regulation Number 9 of 1995, has not examined the P2SK Law. Arif Budi Sosiawan and Suparno's research<sup>14</sup> entitled The Urgency of Establishing a Cooperative Deposit Insurance Agency to Protect Legally Members of Savings and Loan Cooperatives, this study does not examine the reforms voiced by the P2 SK Law but rather emphasizes the need to revise Cooperative Law No. 25 of 1992. Suci Binta Rihmaniya and Elfrida Ratnawati's research<sup>15</sup> entitled "Legal Protection of Customers of Savings and Loan Cooperatives" (KSP) Intidana Post-Bankruptcy, the focus of the study is based on Bankruptcy Law No. 7 of 2004. So far, there has been no study conducted regarding the protection provided for customer deposits due to credit union failures after the enactment of the 2023 P2SK Law, where credit unions are now qualified by the 2023 P2SK Law as a type of financial services institution that is supervised by the financial services authority (not the Ministry of Cooperatives and SMEs). This study aims to fill this gap. Specifically, the purpose of this study is to identify

<sup>8</sup> Linh H. Nguyen et al., "Deposit Insurance and Credit Union Lending," *Journal of Financial Stability* 60 (June 2022): 101003, <https://doi.org/10.1016/j.jfs.2022.101003>.

<sup>9</sup> James D Brushwood, Curtis M Hall, and Stephen J Lusch, "Credit Unions and Earnings Management to Mitigate Political Scrutiny over Tax-Exempt Status," *Journal of Accounting and Public Policy* 41, no. 4 (2022): 106907, <https://doi.org/https://doi.org/10.1016/j.jaccpubpol.2021.106907>.

<sup>10</sup> Javier Gomez-Biscarri, Germán López-Espinosa, and Andrés Mesa-Toro, "The Risk Implications of the Business Loan Activity in Credit Unions," *Journal of Financial Stability* 56, no. July (2021), <https://doi.org/10.1016/j.jfs.2021.100932>.

<sup>11</sup> Paul A Jones, "From Tackling Poverty to Achieving Financial Inclusion – The Changing Role of British Credit Unions in Low Income Communities," *The Journal of Socio-Economics* 37, no. 6 (2008): 2141–54, <https://doi.org/https://doi.org/10.1016/j.jsocec.2007.12.001>.

<sup>12</sup> Helyoth Hessou and Van Son Lai, "Basel III Capital Buffers and Canadian Credit Unions Lending: Impact of the Credit Cycle and the Business Cycle," *International Review of Financial Analysis* 57 (2018): 23–39, <https://doi.org/https://doi.org/10.1016/j.irfa.2018.01.009>.

<sup>13</sup> Harry A Tuhumury et al., "Perlindungan Hukum Bagi Anggota Dan Nasabah Koperasi Simpan Pinjam" 8, no. 4 (2023): 5401–7, <https://doi.org/https://doi.org/10.24815/jimps.v8i4.27359>.

<sup>14</sup> Arif Budi Sosiawan and Suparno Suparno, "Urgensi Pembentukan Lembaga Penjamin Simpanan Koperasi "Dalam Upaya Perlindungan Hukum Terhadap Anggota Koperasi Simpan Pinjam," *Rio Law Jurnal* 5, no. 2 (2024): 455–64, <https://doi.org/http://dx.doi.org/10.36355/.v1i2>.

<sup>15</sup> Suci Binta Rihmaniya and Elfrida Ratnawati, "Perlindungan Hukum Nasabah Koperasi Simpan Pinjam (KSP) Intidana Pasca Pailit," *Jurnal Tana Mana* 4, no. 1 (2023): 72–83, <https://doi.org/https://doi.org/10.33648/jtm.v4i1.261>.

reforms to the regulation of credit unions that are qualified as financial services institutions by the P2SK Law Number 4 of 2023, especially regarding customer protection for their savings. Therefore, this study encourages the urgency of regulating the protection of credit union customer deposits. Otherwise, customer deposit withdrawals are almost never realized and trigger legal injustice.

## 2. Methods

This is a normative study that employs a conceptual and statutory law approach. The conceptual approach is used to analyze amendments within the credit union concepts stated in Number 4 of the 2023 Laws on Financial Sector Development and Reinforcement (regulation and governance reforms). Whereas, the approach of statutory laws is applied to analyze legislative materials of consumer protection within the implemented laws. The study resources involve primary and secondary legal sources. Primary legal sources comprise statutory laws and court decisions related to legal protections given to credit union customer deposits. The statutory laws on credit unions include Number 25 of the 1992 Cooperative Laws, Number 21 of the 2011 OJK Laws, Regulation of OJK No 14/POJK.05/2014, the Supreme Court Decision No.1292/K.Pdt.Sus-Pailit/2020. Moreover, the secondary legal sources consist of journals, and literature which highlight and add information as well as ideas of providing protection for credit union customer deposits. The legal source collection method applied is through intensive reading, summarizing each document, legal journal, and others with respect to the study's main issues in order to draft, classify, understand and criticize the research problems. Furthermore, a systematic and teleological interpretation to broaden logical legal argumentations about the quo vadis legal protection addressed to credit union depositors, mainly when credit unions fail.

## 3. Results and Discussion

### 3.1. Dual Regulation on The Credit Union Closure

Legal Credit unions are widely known across several regions in Indonesia and are commonly called cooperative credit or savings and lending institutions<sup>16</sup>. A credit union is defined as a group of people who cordially trust each other they agree to put a large amount of money to create a shared capital to be lent by themselves at a commonly accepted interest rate for fostering productivity as well as welfare<sup>17</sup>, as non-profit financial institutions whose surplus they produce be reinvested in credit unions or returned to the credit union members in form of dividends or discounted interest rates<sup>18</sup>, financial cooperatives that accept deposits

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<sup>16</sup> Muhamad Sofyan Solahudin and Zeehan Fuad Attamimi, "Perlindungan Hukum Bagi Koperasi Simpan Pinjam Dalam Penyelesaian Kredit Macet (Studi Lembaga Keuangan Mikro Dana Yaksa Mino Saroyo Kabupaten Cilacap)", *Journal Equitable* 9, no. 2 (2024): 16-33, <https://doi.org/https://doi.org/10.59066/harmonization.v2i1.573>.

<sup>17</sup> "Dicky Perwira Ompusunggu", "Depy Rizkika Indria Sutrisno, and Alexandra Hukom", "Konsistensi Dan Efektivitas Peran Lembaga Keuangan Non Bank (Koperasi Simpan Pinjam) Sebagai Penggerak Perekonomian Indonesia", *Jurnal Cahaya Mandalika ISSN 2721-4796 (Online)* 4, no. 1" SE-Articel (February 3, 2023): 689-96, <https://doi.org/10.36312/jcm.v4i1.1449>.

<sup>18</sup> "Donal G McKillop and Barry Quinn", "Irish Credit Unions: Differential Regulation Based on Business Model Complexity", *The British Accounting Review* 49, no. 2 (2017): 230-41, <https://doi.org/10.1016/j.bar.2016.07.001>.



solely from their members<sup>19</sup>, financial cooperatives operated on ethical missions<sup>20</sup>. Credit unions are called differently in different continents; in Africa and Asia, they are so-called SACCO<sup>21</sup>. While in the US, they are so-called credit unions<sup>22</sup>, in Europe they are so-called cooperative bank<sup>23,24</sup>, and in Japan, they are so-called shinkin banks.<sup>25</sup>

In Indonesia, credit unions were initially prohibited from collecting funds from the public<sup>26</sup>. Nowadays, credit unions can collect and transfer funds through loans and deposit transactions from and for the related cooperative members, the future members of the respective cooperatives, other cooperatives and/or their members<sup>27</sup>. Learning from the Australian financial reforms has changed the credit union objectives: in addition to providing services to members at most, credit unions are obliged to elevate financial efficiency<sup>28</sup>. Meanwhile, in Northern Ireland, in 2012, credit unions were compelled to protect solvability. In Kenya, SACCO has converted its orientation to a financial one<sup>29</sup>. Thus, credit unions were previously known as organizations that provided financial services to their members. In recent years, they have expanded their financial services to external customers<sup>30</sup>.

According to the data reported by the Central Agency of Statistics (referred to as BPS), the number of credit unions in Indonesia in 2020 peaked at 7,823 units with the deposit amount

<sup>19</sup> Harold O Fried, C A Knox Lovell, and Philippe Vanden Eeckaut, "Evaluating the Performance of US Credit Unions," *Journal of Banking & Finance* 17, no. 2 (1993): 251-65, [https://doi.org/https://doi.org/10.1016/0378-4266\(93\)90031-8](https://doi.org/https://doi.org/10.1016/0378-4266(93)90031-8).

<sup>20</sup> Marianna Pavlovskaya and Rob Eletto, "Credit Unions, Class, Race, and Place in New York City," *Geoforum* 127 (2021): 335-48, <https://doi.org/10.1016/j.geoforum.2018.05.020>.

<sup>21</sup> David M Mathuva, "Drivers of Financial and Social Disclosure by Savings and Credit Cooperatives in Kenya: A Managerial Perspective," *Journal of Co-Operative Organization and Management* 4, no. 2 (2016): 85-96, <https://doi.org/10.1016/j.jcom.2016.08.001>.

<sup>22</sup> Javier Gomez-Biscarri, Germán López-Espinosa, and Andrés Mesa-Toro, "The Risk Implications of the Business Loan Activity in Credit Unions," *Journal of Financial Stability* 56, no. July (October 2021): 100932, <https://doi.org/10.1016/j.jfs.2021.100932>.

<sup>23</sup> Adele Caldarelli et al., "Managing Risk in Credit Cooperative Banks: Lessons from a Case Study," *Management Accounting Research* 32 (2016): 1-15, <https://doi.org/10.1016/j.mar.2015.10.002>.

<sup>24</sup> Donal McKillop et al., "Cooperative Financial Institutions: A Review of the Literature," *International Review of Financial Analysis* 71, no. May (2020): 101520, <https://doi.org/10.1016/j.irfa.2020.101520>.

<sup>25</sup> Kimie Harada, "Pre- and Post-Merger Performances of Shinkin Banks in Japan," *Corporate Governance and Sustainability Review* 2, no. 2 (August 20, 2018): 13-29, <https://doi.org/10.22495/cgsrv2i2p2>.

<sup>26</sup> Siti Nur Azizah and Vita Mahardhika, "Analisis Hukum Penjatuhan Pidana Pelaku Tindak Pidana Penipuan Dan Penggelapan Koperasi Simpan Pinjam" *Indosurya, Novum: Jurnal Hukum*, 2024, 190-201, <https://doi.org/https://doi.org/10.2674/novum.v0i0.61472>.

<sup>27</sup> Yeti Sumiyati et al., "Konstruksi Hukum Terhadap Penetapan Bunga Tinggi Pada Investasi Yang Diselenggarakan Koperasi Simpan Pinjam," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 2 (July 30, 2021): 385, <https://doi.org/10.24843/JMHU.2021.v10.i02.p14>.

<sup>28</sup> Andrew C Worthington, "Determinants of Merger and Acquisition Activity in Australian Cooperative Deposit-Taking Institutions," *Journal of Business Research* 57, no. 1 (January 2004): 47-57, [https://doi.org/10.1016/S0148-2963\(02\)00283-7](https://doi.org/10.1016/S0148-2963(02)00283-7).

<sup>29</sup> David Mutua Mathuva and Josephat Mboya Kiweu, "Cooperative Social and Environmental Disclosure and Financial Performance of Savings and Credit Cooperatives in Kenya," *Advances in Accounting* 35 (2016): 197-206, <https://doi.org/10.1016/j.adiac.2016.09.002>.

<sup>30</sup> Angshuman Hazarika and Komal B T - Reference Module in Social Sciences Ray, "Cooperative Banks" (Elsevier, 2023), <https://doi.org/10.1016/B978-0-44-313776-1.00084-2>.

worth IDR 2.65 billion and the credit union assets of IDR 5.86 billion. The credit union number decreased by 10.46 per cent if compared to the 2019 figure with a total deposit of IDR 2.80 billion and credit union assets of IDR 6.65 billion. The number credit union 2016-2020 as follows:

**Table 1** The number of credit unions in Indonesia in 2016-2020

Year	Number of CU	Amount of deposit	Assets of credit union
2016	7.119	1,16 billion	3,35 billion
2017	7.612	2,81 billion	6,24 billion
2018	9.899	3,01 billion	6,90 billion
2019	8.869	2,80 billion	6,65 billion
2020	7.823	2,65 billion	5,86 billion

Source: BPS-Statistics Indonesia, 2022

The flourishing credit unions were alongside the rising cases of credit unions in trouble which resulted in an IDR 26 trillion loss. In 2020, there were numerous failing credit unions; those which accept non-members' deposits. The efforts to collect public funds are implemented for profit-making<sup>31</sup>. Such profits are expected obtained by rising the credit union participans<sup>32</sup>. The increased members and customers results in credit union governance problems<sup>33</sup>, and diminishes the responsibility compelled to governance controls<sup>34</sup>. In addition, credit unions in trouble are rooted in dual regulation regarding whoever is viable for the credit union membership and provided with credit union services.

Cooperative law influences the dynamics of credit union development in Indonesia. Through the law, credit unions are determined to be regulated, fostered, and supervised. The government, as the legislator, has an important role in determining the existence of credit unions and influencing the development of credit unions in Indonesia.<sup>35</sup> Article 17 of the Cooperative Laws describes that "a cooperative member is the holder and the user of cooperative services". Moreover, Article 43 of the cooperatives laws describes a cooperative as "an enterprise whose business is closely related to satisfying the member's needs and welfare". The membership is closed to fully cater for members to meet their welfare. On the other hand, the 1995 government regulation mentioned in Article 18, number 9 strengthened by Number 6 of Article 86 in the 2023 omnibus law on job creation whereby these two stipulations have amended the cooperative laws and organized credit unions as entities

<sup>31</sup> Worthington, "Determinants of Merger and Acquisition Activity in Australian Cooperative Deposit-Taking Institutions."

<sup>32</sup> Hazarika and Ray, "Cooperative Banks."

<sup>33</sup> "Keith J Leggett and Robert W Strand", "Membership Growth, Multiple Membership Groups and Agency Control at Credit Unions," *Review of Financial Economics* 11, no. 1 (2002): 37-46, "https://doi.org/10.1016/S1058-3300(01)00032-5".

<sup>34</sup> "Sonja Novkovic, Anu Puusa, and Karen Miner", "Co-Operative Identity and the Dual Nature: From Paradox to Complementarities," *Journal of Co-Operative Organization and Management* 10 no. 1 (2022): 100162, "https://doi.org/10.1016/j.jcom.2021.100162".

<sup>35</sup> Salma Bugi Aristawati and Sri Hartati, "Perkembangan Koperasi Di Indonesia Sebagai Implementasi Ekonomi Pancasila," *JEB17: Jurnal Ekonomi Dan Bisnis* 7, no. 02 (September 30, 2022): 97-110, "https://doi.org/10.30996/jeb17.v7i02.7360".

directly related to the member demands, increasing the memberships as well as the members' or non-members' welfare.

The new stipulation to provide services to "non-members" has been exercised by credit unions; i.e. by serving non-members or the credit union's future members, other cooperatives and their members<sup>36</sup>. Since credit union members are normally limited, and the credit union income relies on the number of its members, credit unions exercised the 1995 Government Regulation and the 2023 Omnibus Law on Job Creation to provide financial services to the non-members in an effort to gain a profitable rate of business scale<sup>37</sup>. Numerous strategies have been implemented by credit union operators to attract customers to place their deposits at credit unions. The credit union modus operandi is similar to the credit union depositors' expectations of gaining great rewards<sup>38</sup>. The credit union operators to attract the interest of non-members by promising a high interest rate ranging from 9-12 per cent rate for their savings which are higher than those of conventional bank deposit rates ranging from 5-7 per cent.<sup>39</sup>

The existence of dual regulation has an impact on the operational accountability of credit unions. Instead of running the firm, credit union operators violated the regulation<sup>40</sup> and were involved in embezzlements<sup>41</sup>. Furthermore, the annual member meeting was not held by the credit union operators despite the mandate of conducting it at least once a year.<sup>42</sup>, no mandatory annual report was submitted<sup>43</sup>, and differences in notes were found in the annual report<sup>44</sup>, not to mention the numerous credit unions which failed to return the

<sup>36</sup> Kamaluddin Pane; Bismar Nasution; Sunarmi Sunarmi; Mahmul Siregar, "Pengawasan Dan Penindakan Sebagai Upaya Perlindungan Hukum Terhadap Dana Masyarakat Yang Disimpan Di Lembaga Koperasi Simpan Pinjam (KSP)", "USU Law Journal", Vol 7, No 2" (2019): 57-67, <https://jurnal.usu.ac.id/index.php/law/article/view/23767/10424>.

<sup>37</sup> U S Agency and International Development, "Koperasi Simpan Pinjam Terdampak Pandemi Covid-19 Studi Diagnostik Likuiditas Koperasi Simpan Pinjam Terdampak Pandemi Covid-19," ed. USAID EGSA, 2021.

<sup>38</sup> "John Goddard, Donal G. McKillop", and John O.S. Wilson", "Who Consumes the Credit Union Subsidies?," "Journal of Financial Stability 69", no. August (2023): 101176", "<https://doi.org/10.1016/j.jfs.2023.101176>".

<sup>39</sup> "Sumiyati et al.", "Konstruksi Hukum Terhadap Penetapan Bunga Tinggi Pada Investasi Yang Diselenggarakan Koperasi Simpan Pinjam"., "Jurnal Magister Hukum Udayana" 10, 2 (2021), DOI: 10.24843/JMHU.2021.v10.i02.p14

<sup>40</sup> "Carlos E Cuevas and Juan Buchenau", "Financial Cooperatives: Issues in Regulation, Supervision, and Institutional Strengthening" (Washington: The World Bank Group, 2018").

<sup>41</sup> "Marc-Andre Pigeon", "Against the Grain: The Unusual Case of Saskatchewan's Credit Union Deposit Insurance Scheme" (Saskatoon: CCSC, 2020).

<sup>42</sup> "Muhammad Irfan Dadi, Muhammad Rizal, and Tetty Herawaty", "Good Corporate Governance Dan Peran Otoritas Jasa Keuangan Dalam Kasus Penggelapan Dana Anggota Koperasi Simpan Pinjam (KSP) Indosurya", "Jurnal Bina Bangsa Ekonomika 16, no. 2 (2023): 516-28, <https://doi.org/10.46306/jbbe.v16i2.388>.

<sup>43</sup> Mathuva, "Drivers of Financial and Social Disclosure by Savings and Credit Cooperatives in Kenya: A Managerial Perspective"., "Journal of Co-operative Organization and Management 4", 2 (2016): 85-96, "<https://doi.org/10.1016/j.jcom.2016.08.001>"

<sup>44</sup> Kamila et al., "Pengaruh Transparansi Terhadap Perkara Koperasi Simpan Pinjam Indosurya". "Coopetition: Jurnal Ilmiah Manajemen 14, 3" (2023): 599-606, "<https://doi.org/10.32670/coopetition.v14i3.3857>".

customer's deposits<sup>45</sup>. The credit union operators ran diverse businesses such as in the hotel industry and transportation services. When such a business collapsed, the business liquidity was low<sup>46</sup>, and as a result, the depositors were engaged in a mass deposit withdrawal and credit unions underwent failure<sup>47</sup>. Due to poor operational accountability, credit unions were declared bankrupt<sup>48</sup>, and 11 credit unions requested a delay in paying off their debts (PKPU) at the state court of Central Jakarta<sup>49</sup>. Several credit unions collected trillions from the customer's deposits which ended up failing to return the deposits in terms of the profits including the basic savings account. Similarly, Cipaganti and Langit Biru credit unions were reported to suffer from approximate insolvency of IDR 3.2 trillion. Whereas the Pandawa credit union incurred at IDR 3.39 trillion. Detailed data regarding problematic credit unions and the magnitude of losses experienced by depositors are mentioned in Table 2.

**Table 2** Credit unions in trouble and the amount of depositors' losses

No.	Credit unions	Loss Amount (IDR)
1	Indosurya	14.6 trillion
2	Sejahtera Bersama	8.8 trillion
3	Langit Biru	6 trillion
4	Pandawa	3,39 trillion
5	Cipaganti	3.2 trillion
6	Intidana	930.1 billion
7	Pracico Inti Sejahtera	632.2 billion
8	Pracico Inti Utama	763.8 billion
9	Timur Pratama Indonesia	400 billion
10	Lima Garuda	570,5 billion
11	Jasa Berkah Wahana	226,7 billion

Source: the secondary data processed in 2023

Dual regulation also occurs in the regulation of cooperatives as microfinance institutions. According to Law Number 1 of 2013 on Microfinance Institutions, the regulation, supervision, and guidance of cooperatives as microfinance institutions are carried out by the Financial Services Authority. In carrying out guidance, the OJK can coordinate with the Ministry of Cooperatives and Small and Medium Enterprises. However, Law Number 11 of 2011 on OJK does not give the OJK the authority to regulate and supervise

<sup>45</sup> Tobing, Dewantara, and Wicaksono, "Batasan Kewenangan Otoritas Jasa Keuangan Terhadap Lembaga Keuangan Mikro Berbentuk Badan Hukum Koperasi Simpan Pinjam Dalam Hal Terjadi Gagal Bayar", *Warkat 2, 2* (2022), "<https://doi.org/10.21776/warkat.v2n2.1>".

<sup>46</sup> "Luisa A Unda and Dinithi Ranasinghe", "To Pay or Not Pay: Board Remuneration and Insolvency Risk in Credit Unions", *Pacific-Basin Finance Journal* 66" (2021): 101128, "<https://doi.org/https://doi.org/10.1016/j.pacfin.2019.03.005>".

<sup>47</sup> "Sumiyati et al.", "Konstruksi Hukum Terhadap Penetapan Bunga Tinggi Pada Investasi Yang Diselenggarakan Koperasi Simpan Pinjam".

<sup>48</sup> "Dadi, Rizal, and Herawaty", "Good Corporate Governance Dan Peran Otoritas Jasa Keuangan Dalam Kasus Penggelapan Dana Anggota Koperasi Simpan Pinjam (KSP) Indosurya".

<sup>49</sup> "Sumiyati et al.", "Konstruksi Hukum Terhadap Penetapan Bunga Tinggi Pada Investasi Yang Diselenggarakan Koperasi Simpan Pinjam".



credit unions that collect funds from non-members. Thus, regulation inconsistency then culminates in the case of the Indosurya Cipta credit union, which is suspected of collecting funds without licensing and is not supervised by the OJK so resulting in losses of IDR 14.6 trillion from 5,700 customers.

To take action about credit unions in trouble, the government conducts regulation reforms<sup>50</sup> on credit unions by enacting the P2SK laws which amended laws number 25 of 1992 on cooperatives (the Cooperative Laws) as well as ending dualism of regulating credit unions. Regulation reform by adding one point namely Article 44 B (between Article 44 A and Article 45) Laws Number 25 of 1992, when credit unions collect funds from non-members are required to be cooperatives in the financial sectors. Cooperatives in the financial sector are those which collect funds from the cooperative non-members; collect funds from the members of other cooperatives; transfer loans to parties other than members and/or to the members of other cooperatives; accept funds from banks or other financial institutions that exceed the maximum limits determined by the cooperative minister; offer other financial services such as banking, insurance, pension scheme, capital investment, financing and other respective financial businesses. Derived from the definition, credit union membership is no longer a limited membership. It is, otherwise, an open membership<sup>51</sup>.

By enacting the P2SK laws, credit union memberships are open to credit union non-members and P2SK laws qualify credit unions as financial services institutions; there are worries addressed to credit unions as they may lose their cooperative identity and turn them into banking businesses oriented to profitmaking<sup>52</sup>. In fact, by its nature, credit unions remain cooperatives owned by their members, each member owns one single vote regardless of the amount of their savings so that members can influence the decision-making process and priorities of the institution<sup>53</sup>. Related to this open membership, Indonesia can follow the example of NCUA which has allowed several groups in one area of membership NCUA aims to serve small employees who are not related to the company. The next action shows NCUA's caring efforts, NCUA added a community development credit union office, in addition to the corporate credit union office. The name of this community development credit union development office then changed twice, namely to the Credit Union Initiative Office in 2004, and to the Credit Union Resource and Expansion Office in 2017.<sup>54</sup> All of this reflects the function of NCUA which is responsible for the formation of charters, membership areas, and preservation of minority depository institutions.

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<sup>50</sup> "Carlos E Cuevas and Juan Buchenau", *Financial Cooperatives: Issues in Regulation, Supervision, and Institutional Strengthening* ("Washington: The World Bank Group, 2018").

<sup>51</sup> Angshuman Hazarika and Komal B T - Reference Module in Social Sciences Ray, "Cooperative Banks" ("Amsterdam: Elsevier", 2023), "<https://doi.org/https://doi.org/10.1016/B978-0-44-313776-1.00084-2>".

<sup>52</sup> "Jordan van Rijn", "The Cooperative Identity at U.S. Credit Unions," *Journal of Co-Operative Organization and Management* 10, no. 1 (2022): 100152, "<https://doi.org/https://doi.org/10.1016/j.jcom.2021.100152>".

<sup>53</sup> "van Rijn".

<sup>54</sup> "McKillop et al.", "Cooperative Financial Institutions: A Review of th Literature."

### 3.2. Regulation and Supervision of Credit Unions by The Financial Services Authorities

The implementation of the P2SK Law as a regulatory reform determines that licensing, regulation and supervision of credit unions are organized by the financial services authorities (OJK). Article 44 B of the P2SK laws organize licensing, management and control over credit unions performed by the OJK. Meanwhile, such standard operating procedures have yet to be released. As a result, it leads to the ongoing dual regulation. The credit union is a variant of cooperatives under the regime of the cooperative laws; it is under the regime of cooperative and MSMEs ministry authorities. Article 9 number 1 of the 2013 Micro-Financial Institution Laws defines that the establishment and validation of a micro-financial institution based on the cooperative legal entity be done by the cooperative and MSMEs ministry<sup>55</sup>. On the contrary, the assistance, management and supervision of micro-financial institutions on a cooperative basis be conducted by the OJK as practised by some countries<sup>56</sup>. So, the enactment of the P2SK Law, credit unions are defined as the ecosystem of the financial sector by the P2SK laws, however, licensing, regulation and supervision are implemented by the OJK. Hence, along with the non-existing regulations as an operating statutory, the OJK subsequently employs the OJK regulation no.14/POJK.05/2014 article 2 as the legal basis for delegating supervision on micro-financial institutions on the cooperative basis (microfinance/LKM) to the local government or other assigned parties by coordinating with the Ministry of Cooperative and MSMEs.

There are weaknesses in credit union supervision delegated to the regional government owing to the limited capacity and supervision infrastructures authorized to the Ministry of Cooperatives and MSMEs (micro, small, and medium enterprises)<sup>57</sup>. The existing controls have yet to supply comprehensive mechanisms for such implementation<sup>58</sup>. Up to this point, only the Loans and Savings Control Commission (referred to as KPKS) is viable to prevent any fraud committed by credit union operators against credit union consumer deposits despite its insufficient powers. The KPKS is a newly established commission, whose task force is in accordance with the Mayoral/ Regent Administrative Decision; thus, it holds limited jurisdictions.<sup>59</sup>

<sup>55</sup> Tobing, Dewantara, and Wicaksono, "Batasan Kewenangan Otoritas Jasa Keuangan Terhadap Lembaga Keuangan Mikro Berbentuk Badan Hukum Koperasi Simpan Pinjam Dalam Hal Terjadi Gagal Bayar", "Warkat 2, 2" (2022), "<https://doi.org/10.21776/warkat.v2n2.1>".

<sup>56</sup> "John Forker and Anne Marie Ward", "Prudence and Financial Self-Regulation in Credit Unions in Northern Ireland", "The British Accounting Review 44", no. 4 (December 2012): 221-34, <https://doi.org/10.1016/j.bar.2012.09.001>.

<sup>57</sup> Kamila et al., "Pengaruh Transparansi Terhadap Perkara Koperasi Simpan Pinjam Indosurya", "Coopetition: Jurnal Ilmiah Manajemen 14", 3" (2023): 599-606, "<https://doi.org/10.32670/coopetition.v14i3.3857>".

<sup>58</sup> "Nabil Messabia, Edouich Beauvoir", and Chokri Kooli, "Governance and Management of a Savings and Credit Cooperative: The Successful Example of a Haitian SACCO", "Vision" 27, no. 3 (February 13, 2022): 397-409, "<https://doi.org/10.1177/09722629221074130>".

<sup>59</sup> "Salwa Faeha Hanim", "Pengawasan Koperasi Simpan Pinjam Dan Pembiayaan Syariah Pasca Undang-Undang No 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan", "Jurnal Hukum Bisnis" 12, no. 02 (April 6, 2023): 91-99, <https://doi.org/10.47709/jhb.v12i02.2231>.

Moreover, the managers play key roles in managing credit unions: they are responsible for conveying fact findings to affect their decisions<sup>60</sup>. The annual report of the credit union provides value indications and important aspects of the cooperative<sup>61</sup>. The main challenge arising from the supervision of financial cooperatives is the poor controls addressed to the internal management and information systems the low capacity owned by the staff<sup>62</sup>. The government sets a proportional policy framework and control mechanisms highly needed for credit union development<sup>63</sup>. Numerous casual opportunists shall take advantage of the authority's weak controls and assistance as well as the authority's least strict enforcement over credit unions<sup>64</sup> by conducting unlawful credit union operations targeted to deprive society of their legal rights from which society suffers major losses<sup>65</sup>. Despite the absence of discreet principles applied<sup>66</sup>, credit unions in trouble in Indonesia also manipulate customer funds aimed to develop the company business to cater for their members and customers<sup>67</sup>. The Indosurya credit union operators purchased lands, buildings, and cars on their private behalf<sup>68</sup>. In the case of Intidana Credit Union, the bankruptcy petition is filed due to insolvency for repaying periodic savings or deposits placed by its customers<sup>69</sup>. Consequently, the credit union was declared bankrupt by the Indonesian Supreme Court as stated in No. 1292 K/Pdt.Sus-Pailit/2020 dated October 6, 2020.

Up to this point, numerous efforts have been made by the Ministry of Cooperatives to improve credit union operators' knowledge and compliance towards higher transparency and accountability in running credit unions<sup>70</sup>. One of which is to be the issuance of the minister of cooperative and MSMEs decision Number 96/KEP/M.KUKM/IX/2004 on the management standard operating guidelines for credit unions followed by the circular letter number 33 of 2021 written by the Deputy in the Cooperative Department regarding feasibility and conformity testing addressed to cooperative operators and supervisors.

<sup>60</sup> Unda and Ranasinghe, "To Pay or Not Pay: Board Remuneration and Insolvency Risk in Credit Unions."

<sup>61</sup> "Mathuva, ""Drivers of Financial and Social Disclosure by Savings and Credit Cooperatives in Kenya: A Managerial Perspective"."

<sup>62</sup> Cuevas and Buchenau, *Financial Cooperatives: Issues in Regulation, Supervision, and Institutional Strengthening*.

<sup>63</sup> Cuevas and Buchenau.

<sup>64</sup> Cuevas and Buchenau.

<sup>65</sup> "Forker and Ward", ""Prudence and Financial Self-Regulation in Credit Unions in Northern Ireland"."

<sup>66</sup> "Railienė and Sinevičienė", ""Performance Valuation of Credit Unions Having Social and Self-Sustaining Aim"."

<sup>67</sup> "Olga Ferraro, Elena Cristiano", and Stefania Veltri", ""The Quality of Voluntary Sustainability Reports in the Italian Cooperative Credit Banks", " *Journal of Co-Operative Organization and Management* 12", no. 1 (2024): 100230, <https://doi.org/https://doi.org/10.1016/j.jcom.2024.100230>.

<sup>68</sup> "Dadi, Rizal, and Herawaty", ""Good Corporate Governance dan Peran Otoritas Jasa Keuangan Dalam Kasus Penggelapan Dana Anggota Koperasi Simpan Pinjam (KSP) Indosurya"."

<sup>69</sup> "Rihmaniya and Ratnawati", ""Perlindungan Hukum Nasabah Koperasi Simpan Pinjam (KSP) Intidana Pasca Pailit"."

<sup>70</sup> Messabia, Beauvoir, and Kooli, "Governance and Management of a Savings and Credit Cooperative: The Successful Example of a Haitian SACCO."

Governance regulation and supervision involve providing reports on credit union activities in the credit union member meetings<sup>71</sup>, it is held at least once a year, providing reports on data changes and branch office openings. Prudence concepts<sup>72</sup> and good governance<sup>73</sup> are the basis of credit unions to elevate the welfare of its members<sup>74</sup>. The assessment of the firm soundness is conducted by the central and local government based on the membership areas. The supervision over credit unions whose membership is located within a regency is conducted by a regent. The supervision exercised on credit unions whose membership areas are cross-regional and located in a regency/ city within one (1) province is carried out by a governor. Whereas, the supervision of credit unions whose memberships are cross-provincial is conducted by the deputy of the supervisory department of ministry of cooperatives and micro, small and medium enterprises<sup>75</sup>. Meanwhile, in the US, credit unions are overseen by the National Credit Union Administration (NCUA). The NCUA Board has been chartered by the Federal Credit Union Act to supervise the American credit union system and manage the national Credit Union Share Insurance Fund. The NCUA also has statutory responsibility for supervising compliance and enforcing laws and regulations that protect all credit union members. The NCUA has two levels: federal and state levels. The federal-level supervises credit unions whose assets are above US 10 billion dollar, whereas credit unions with lower assets are under the supervision of the existing branch offices within a state.<sup>76</sup>

The enacted P2SK law is an effort to reinforce supervision and regulation for inter-governmental institutions in financial sectors. The regulation comprises formulations of norms, procedures of inter-financial service institutions procedures and supervision. The P2SK laws have also amended the OJK Laws No. 21 of 2011 by extending its jurisdiction to regulate and supervise all financial service institutions<sup>77</sup> by which credit unions are included. Hence, the supervision against credit unions that collect public funds from cooperative non-members is under the OJK jurisdiction<sup>78, 79</sup>.

<sup>71</sup> "Railienė and Sinevičienė", "Performance Valuation of Credit Unions Having Social and Self-Sustaining Aim".

<sup>72</sup> "J Colin Glass, Donal G McKillop", and Syamarlah Rasaratnam", "Irish Credit Unions: Investigating Performance Determinants and the Opportunity Cost of Regulatory Compliance", "Journal of Banking & Finance 34", no. 1 (2010): 67-76, <https://doi.org/https://doi.org/10.1016/j.jbankfin.2009.07.001>.

<sup>73</sup> Nguyen et al., "Deposit Insurance and Credit Union Lending."

<sup>74</sup> "Dadi, Rizal, and Herawaty", "Good Corporate Governance Dan Peran Otoritas Jasa Keuangan Dalam Kasus Penggelapan Dana Anggota Koperasi Simpan Pinjam (KSP) Indosurya".

<sup>75</sup> "Hanim", "Pengawasan Koperasi Simpan Pinjam Dan Pembiayaan Syariah Pasca Undang-Undang No 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan".

<sup>76</sup> "Industry Overview – Credit Unions", in "Depository and Lending Institutions: Banks and Savings Institutions, Credit Unions, Finance Companies, and Mortgage Companies", 2017", 33-59", <https://doi.org/https://doi.org/10.1002/9781119473404.ch2>.

<sup>77</sup> "Maychellina Maychellina and Abraham Ferry Rosando", "The Financial Services Authority's Regulatory Role in Backdoor Listings in Indonesia", "Jhbbc", 2024, 1-9, <https://doi.org/https://doi.org/10.30996/jhbbc.v7i1.9843>.

<sup>78</sup> "H N Alfiani et al.", "Peran Otoritas Jasa Keuangan (OJK) Dalam Mengawasi Koperasi Simpan Pinjam Dan UMKM Di Indonesia", "Jurnal Pendidikan ... 7" (2023): 3957-65, <https://doi.org/https://doi.org/10.31004/jptam.v7i1.5875>.

<sup>79</sup> Forker and Ward, "Prudence and Financial Self-Regulation in Credit Unions in Northern Ireland."



To foster credit union assistance and supervision, the P2SK Laws classifies credit unions as small, medium and large businesses. However, the P2SK Law has not yet regulated the boundaries of grouping small, medium, and large businesses, as well as the substance of their supervision. The P2SK Law has not regulated the threshold for grouping small, medium and large enterprises-likewise, the substance of supervision. The P2SK Law has not been regulated and the OJK has not issued an OJK regulation (POJK). Meanwhile, provisions regarding the supervision of cooperatives and credit unions have been regulated by the Regulation of the Minister of Cooperatives and SMEs Number 9 of 2020. Technical details are regulated by Instructions of the Deputy for Cooperatives Number 15 of 2021 concerning the Guidelines of Cooperative Health Examination Working Paper (KKPKK) which was refined by the Regulation of the Minister of Cooperatives and SMEs Number 8 of 2023. Supervision includes the health of credit unions based on governance, risk profile, financial performance and capital, and business licenses.<sup>80</sup> Business licenses include risk-based savings and loan business licenses, and branch office/sub-branch office/cash office service networks. Governance consists of the cooperative principles, institutions, and management including a feasibility test for managers and supervisors of Cooperatives for KUK 3<sup>81</sup> and KUK 4<sup>82</sup>. Risk Profile includes inherent risk assessment and implementation of risk management. Financial Performance includes assessment of financial governance, financial management and earning sustainability. Capital includes capital adequacy and capital management adequacy<sup>83</sup>.

OJK as a credit union supervisor after the enactment of the P2SK Law can learn from NCUA which has implemented a Risk-Focused Examination (RFE) Program since 2002. The RFE process includes a review of seven risk categories: Credit, Interest Rate, Liquidity, Transaction, Compliance, Strategic, and Reputation. Then in 2009, a new examination policy was developed that resulted in additional minimum examination procedures required based on a national risk review. NCUA has also used the CAMEL Rating System to examine credit unions and provide an accurate and consistent assessment of their financial condition and operations. CAMEL ratings include consideration of key ratios, supporting ratios, and trends. NCUA establishes a uniform credit union supervision process for all regions. In 2011, all federal credit unions, regardless of asset size, and all federally insured state credit unions

<sup>80</sup> "Maria Mu'ti Wulandari", Anggitariyani Larasati Siswant'a, and Nur Wakhid", "Analisis Hukum Pengawasan Koperasi Simpan Pinjam Oleh Dinas Tenaga Kerja, Koperasi dan UKM Kabupaten Banyumas", in *Prosiding Seminar Nasional LPPM UNSOED*, vol. 13", 2023", 77-84", <https://doi.org/https://doi.org/10.20884/1.semnaslppm.2024.13.1.10574>.

<sup>81</sup> KUK 3 has a member count of more than 10.000 (ten thousand) people up to a maximum of 30.000 (thirty thousand) people, the amount of Own Capital is "more than IDR 15.000.000.000.00 (fifteen billion rupiahs) up to a maximum of IDR 50.000.000.000.00 (fifty billion rupiahs)", and/or "the amount of Assets is more than IDR 100.000.000.000.00" (one hundred billion rupiahs") up to a maximum of IDR 500.000.000.000.00" (five hundred billion rupiahs").

<sup>82</sup> KUK 4 has a member count of more than 30.000 (thirty thousand) people, the amount of Own Capital is more than IDR 50.000.000.000.00 (five tens of billion rupiahs), and/or total assets of more than IDR 500.000.000.000.00 (five hundred billion rupiahs).

<sup>83</sup> "Dewi Rahmawati and Angga Septian Prayoga", "Analisis Pemeriksaan Kesehatan Koperasi Syariah Berdasarkan Petunjuk Teknis Deputi Perkoperasian Nomor 15 Tahun 2021", *Jurnal Akuntansi, Bisnis Dan Ekonomi Indonesia (JABEI)* 3", no. 1" (2024): 20-27, <https://doi.org/https://doi.org/10.30630/jabei.v3i1.189>.

with assets of more than \$250 million, were required to undergo an annual examination completed each calendar year<sup>84</sup>.

After the P2SK Law was enacted, the supervision of credit unions that collect funds from non-members became the authority of the OJK. Since there were no implementing regulations, the OJK assigned central and/or regional government agencies whose task forces and functions were relevant in guiding credit unions and micro and small businesses. Furthermore, assistance and supervision of credit unions were carried out by the OJK guidelines through its regulation. Subsequently, the outcomes are periodically reported to the OJK. On the contrary, assistance and supervision imposed on medium and big enterprises are directly conducted by the OJK. Such a supervision model resembles banking supervision which differs in each classification<sup>85</sup> OJK can learn from Canada's experience. Credit unions in Canada are chartered, incorporated, and organized by province, and each province has its centre. Each province has a provincial Credit Union Act regime. In its development, there have been mergers, amalgamations, and consolidations among credit unions in provincial centres and one centre. The centre manages liquidity reserves and service delivery systems consisting of risk management, human resources, consulting and support, and marketing and communication planning. Through the provincial centre's relationship with the Credit Union Central of Canada (CUCC), the centre can also connect with other provincial centres, and federal and provincial regulatory agencies that provide payment processing and insurance services.<sup>86</sup> CUCC and several federally incorporated provincial headquarters are subject to provincial and federal credit union regulations. In addition, there is something called a federated network model, consisting of autonomous entities affiliated with caisses populaires and they are united in one network. This is known as the Desjardins group.<sup>87</sup> In 2010, credit union regulatory reforms took place. These changes provided opportunities for credit unions to grow further. Credit unions were allowed to operate nationally, conduct business across Canada under the supervision of one federal regulator, the Office of the Supervisory of Financial Institutions (OSFI), merge with other credit unions in various Canadian jurisdictions and accept non-member deposits.<sup>88</sup>

Up to this point, the P2SK Laws have yet to regulated the thresholds details functioning as the grouping basis of small, medium, and large enterprises, other than stating further actions to be implemented within the OJK regulations. The absence of implementing regulations on the grouping of small, medium, and large credit union businesses whose supervision is adjusted to the business classification, results in legal uncertainty regarding the supervision of the credit union. Supervision is a means of customer control over the credit union to minimize manipulation of customer or member funds. The absence of legal

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<sup>84</sup> Darryl E Getter, "The Credit Union System: Developments in Lending and Prudential Risk Management", "Congressional Research Service. Retrieved December", vol. 1, 2021.

<sup>85</sup> "Diffa Ayu Nindyatami Savitri", Siska Puspitasari", and Clara Arnetta Maharani", ""Peranan OJK Terhadap Pengawasan Keuangan Koperasi Simpan Pinjam"."

<sup>86</sup> Peter Goth, "Donal McKillop", and John Wilson", "Corporate Governance in Canadian and US Credit Unions", Madison, WI: "Filene Research Institut"e, 2012.

<sup>87</sup> "McKillop et al.", ""Cooperative Financial Institutions: A Review of the Literature"."

<sup>88</sup> Cuevas and Buchenau, *Financial Cooperatives: Issues in Regulation, Supervision, and Institutional Strengthening*, (Washington: The World Bank Group, 2018).

certainty of supervision has the potential to cause losses for members, especially credit union deposit members. As for the violations committed by the credit union itself, such as the lack of discipline of credit union management in submitting reports to the Annual Members Meeting and credit union management officials who exploit the cooperative for personal gain.<sup>89</sup>

Regulatory reform has expanded credit union membership to include non-members. Enactment of the P2SK Law, credit unions are divided into two types, namely close-loop credit unions and open-loop credit unions. Open loop credit unions are credit unions that serve the financial services sector, under the supervision of the OJK. Close-loop credit unions are credit unions that operate as pure credit unions, under the supervision of the Ministry of Cooperatives and SMEs by the regime of Law Number 25 of 1992 concerning cooperatives<sup>90</sup>. To maintain the balance of the cooperative's identity as a social institution while being profit-oriented, the P2SK Law is a momentum to increase the credit unions business. The P2SK Law plays an important role in forming the structure and governance of credit unions by regulating the roles and responsibilities of each key individual. Important individuals in credit unions, such as the chairman, treasurer, administrators, and board of supervisors are always directed to carry out their duties based on the cooperative's identity and meet the supervision standards in the financial sector.

To implement the authority of the OJK as a supervisor of credit unions after regulatory reform, the OJK has currently added two members of the board of commissioners (ADK), one of which is the ADK PVML, namely the chief executive of the supervisor of financing institutions, venture capital companies, microfinance institutions and other financial services institutions (PVML). Cooperatives in the financial sector or credit unions that collect non-member funds are qualified as other financial services institutions that are included in the financial services industry under the supervision of the ADK PVML. With the formation of these OJK boards of commissioners, the effectiveness of the credit union supervision function by the OJK can be realized.

### 3.3. Depositors Protection Against Credit Union Failures

If a credit union were to undergo insolvency, its depositors would most likely be at risk. Due to its failure, a credit union may declare bankruptcy, be liquidated or closed down. The appeal of Intidana Credit Union, which initially filed for a bankruptcy petition, was denied by the Indonesian Supreme Court as declared in the 1292 /K/Pdt.SusPailit/2020 supreme court decision strengthening the decisions of Semarang commercial court decision to sell the assets of Intidana credit union to pay off its creditors and customers<sup>91</sup>. The court decision No. 14/Pdt.Sus-Pailit/2020/PN Smg reveals the court's approval for the proposal of the asset sale of Intidana Credit Union to disburse its debts owed to creditors and

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<sup>89</sup> Fitrianiingsih Dwi Lestari and Munawar Kholil, "Efektifitas Pembinaan Dan Pengawasan Koperasi Oleh Pemerintah Daerah (Studi Di Dinas Perdagangan, Tenaga Kerja, Koperasi Dan Usaha Kecil Menengah Kabupaten Karanganyar)," *Jurnal Privat Law* 6, no. 1 (2018): 46-59, <https://doi.org/https://doi.org/10.20961/privat.v6i1.19226>.

<sup>90</sup> "Hanim, "Pengawasan Koperasi Simpan Pinjam Dan Pembiayaan Syariah Pasca Undang-Undang No 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan"."

<sup>91</sup> Rihmaniya and Ratnawati, "Perlindungan Hukum Nasabah Koperasi Simpan Pinjam (KSP) Intidana Pasca Pailit."

customers. The payoff is carried out accordingly based on a priority order decided by bankruptcy law.<sup>92</sup> The credit union customer deposits are not cashable as long the credit union is in operation. However, in the event of bankruptcy declaration, all deposits are the second priority after the payoff of credit union debts<sup>93</sup>. Moreover, the cooperative laws determine the credit union closure settlement to be conducted to satisfy the creditors and members. As such, the settlement can be applied by using the remaining assets of the credit union<sup>94</sup>.

Credit union depositors are also the creditors thereby they are entitled to file claims for savings withdrawal as well as retaining other credit union rights. Such claims over credit union assets should be proposed to the court through a curator appointed by the court. They can also propose claim settlements and pay off debts. Each credit union is liable for returning membership fees by putting aside the remaining assets for the settlement of credit union liabilities<sup>95</sup>. In the event of insufficient funds, the credit union depositors can retain their savings according to the remaining assets of the credit union<sup>96</sup>.

As defined by the Indonesian Cooperative Laws, the operators of failing and insolvent credit unions are held responsible in the event of their inability to return the consumer's savings. Credit union operators are responsible for their business activities and governance. They either take individual or shared responsibilities for any unintentional or deliberately incurred losses<sup>97</sup>. However, there is evidence that shows the credit union's incapability of paying back deposits despite the commercial court settlement through instalment schemes under their ability. It remains unclear how long should the payoff be done<sup>98</sup>.

Post-financial reform, where the UUP2SK has confirmed open-loop credit unions as financial service institutions under the control and supervision of the OJK. Therefore, the supervision of financial service institutions in Indonesia is classified as integrated supervision under the OJK regime.<sup>99</sup> Meanwhile, closed-loop credit unions are still under the Cooperative Law regime, under the control and supervision of the Ministry of Cooperatives and SMEs. Protection for members of credit unions who fail to pay has never been regulated in Cooperative Law Number 25 of 1992 but is regulated in Law Number 17 of 2012 concerning Cooperatives, but the 2012 Cooperative Law was later declared to have no permanent legal force by the Constitutional Court Decision Number 28/PUU-XI/2013.

<sup>92</sup> Rihmaniya and Ratnawati.

<sup>93</sup> Rihmaniya and Ratnawati.

<sup>94</sup> A"gus Abib, B. Heryanti", and Dhian Astanti", "'Konsep Lembaga Penjamin Simpanan Pada Koperasi Indonesia", " *Arena Hukum* 13", no. 3 (2020)": 460-78", "<https://doi.org/10.21776/ub.arenahukum.2020.01303.4>".

<sup>95</sup> Abib, Heryanti, and Astanti.

<sup>96</sup> "Rihmaniya and Ratnawati", "'Perlindungan Hukum Nasabah Koperasi Simpan Pinjam (KSP) Intidana Pasca Pailit".

<sup>97</sup> Tobing, Dewantara, and Wicaksono, "'Batasan Kewenangan Otoritas Jasa Keuangan Terhadap Lembaga Keuangan Mikro Berbentuk Badan Hukum Koperasi Simpan Pinjam Dalam Hal Terjadi Gagal Bayar".

<sup>98</sup> "Dadi, Rizal, and Herawaty", "'Good Corporate Governance dan Peran Otoritas Jasa Keuangan Dalam Kasus Penggelapan Dana Anggota Koperasi Simpan Pinjam (KSP) Indosurya".

<sup>99</sup> Antoni Tjandra, "'Kekosongan Norma Penentuan Bunga Pinjaman Financial Technology Peer to Peer Lending", " *Jhbhc*, 2020", 90-103, "<https://doi.org/https://doi.org/10.30996/jhbhc.v3i1.3077>".



Then the Regulation of the Minister of Cooperatives and SMEs Number 8 of 2023 concerning Savings and Loan Businesses by Cooperatives, Article 26 paragraph (4) explains that cooperatives can insure savings of members and other cooperatives with Insurance Companies. Insurance companies in this Ministerial Regulation designate insurance companies that are different from The Indonesia Deposit Insurance Corporation (LPS). So far, in Indonesia, only bank customers are protected by LPS, an institution authorized to guarantee deposits. Bank depositors as consumers of bank financial services institutions receive protection from the LPS when the bank defaults. Enactment P2SK Law, LPS's authority was expanded to protect customers holding insurance policies. Meanwhile, various cases of losses experienced by credit union depositor members do not receive protection. The impact of credit union default cases in Indonesia indicates that the credit union sector has failed to utilize and adapt to the greater public interest. Members have to pay very heavily for the inefficiency of credit union managers. Therefore, the role of the government is important.

Depositor justice will be realized when all depositors of this financial services institution can become beneficiaries of various financial reforms carried out by the country's regulatory authorities. The key to successful financial reform is ensuring distributive justice for the community, especially credit union depositors when they default. Credit union depositors as consumers<sup>100</sup> have the right to be treated fairly and have the right to get their deposits back.

The Paradigm of the Opening of the 1945 UUDNRI which is then explained in Article 33 paragraph (4) of the 1945 UUD NRI outlines that the law desired by the Indonesian people is a law that can realize justice. Law in Indonesia must be directed at efforts to eliminate all exploitation of humans by humans to realize humane and just laws. Based on this argument, the absence of protection for the rights of credit union depositors when they fail to pay is the same as giving the credit union room to exploit the rights of credit union depositors. According to John Rawls' theory of distributive justice, the distribution of benefits and burdens in a society is just if: Everyone has an equal right to the most extensive basic liberty compatible with equal liberty for all; b) Social & economic inequalities are so arranged that 1) they are conducive to the greatest benefit of the least advantaged; 2) they are associated to offices and positions open to all under conditions of fair equality of opportunity. The principle of equal liberty states that the liberties of each citizen must be protected from invasion by others and must be equal to each other.<sup>101</sup> These basic liberties include the right to vote, freedom of speech, freedom to own private property, other civil liberties, and freedom from being arrested arbitrarily. If the Implementation of the principle of equal liberty is true, then it implies that giving disadvantages to their customers by business institutions is unjust. Furthermore, everyone should be given an equal opportunity to qualify

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<sup>100</sup> "Selvia Nola, Suci Zalsabilah Basri", and Sylvi Nur Hafiza", "'Legal Protection for Customer of Bankrupt Rural Bank (Bpr) in Indonesia'," *Jurnal Hukum Bisnis Bonum Commune* Volume 4, Nomor 1 Februari 2021, 2021, 109, "<https://doi.org/https://doi.org/10.30996/jhbcc.v4i1.4485>".

<sup>101</sup> "Andreas Follesdal", "John Rawls' Theory of Justice as Fairness BT - "Philosophy of Justice"," ed. Guttorm Fløistad" ("Dordrecht: Springer Netherlands, 2015"), "311-28, "[https://doi.org/10.1007/978-94-017-9175-5\\_18](https://doi.org/10.1007/978-94-017-9175-5_18)".

for the most privileged positions in society as the principle of fair equality of opportunity. By Rawls, the principle of justice provides a way to place rights and obligations in the basic institutions of society. Based on Rawls' theory of justice, Authority control in the form of consumer protection regulations for credit union depositors is a form of distributive justice carried out by the state. In other words, fair legal protection is the protection provided by law for the rights of credit union depositors as a manifestation of distributive justice.

Deposit insurance is intended to increase and maintain public trust<sup>102</sup> in the placement of deposits in the financial system<sup>103</sup>, especially if many financial service institutions fail to pay<sup>104</sup>. Credit union depositors are customers who are not legally protected. Credit union depositors have the right to get their deposits back when the credit union fails to pay. However, the fulfilment of these consumer rights is still far from reality because there are no rules for guaranteeing savings for credit union customers. The P2SK Law has expanded the authority of LPS, in addition to insuring bank deposits, and insurance policies, it is now also tasked with actively maintaining stability of financial system by its authority. Stability of financial system is characterized by the equal distribution of public rights. Thus, the citizen, especially customers of credit unions, really want fair protection of their rights. The government must immediately form a credit union Guarantee Institution that organizes a Deposit guarantee program for Members of credit unions so that members who save their funds in the credit union believe in the security of their savings.

In the US experience, Deposit Insurance protection will maintain public confidence, especially if the credit union suffers a major loss or goes bankrupt. Credit union deposit insurance protection ensures financial stability by preventing depositors from withdrawing funds.<sup>105</sup> Credit unions are vulnerable to massive withdrawal and deposit insurance is needed to avoid this. A systemic credit union failure encourages other credit union depositors to withdraw funds. Consumer protection is the objective primary legislative at the state and federal level. Therefore, the establishment of one or more organizations to protect the deposits of all credit union members through stabilization funds and member deposit insurance is a compulsory authorized by all provincial and federal credit union laws. Deposit insurance institutions operate under the direct auspices of their respective provincial credit union regulatory authorities. These deposit insurance institutions are mostly state-owned enterprises. These deposit insurance institutions function to collect premiums and payout funds. In addition, these institutions also set minimum requirements related to

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<sup>102</sup> Andika Persada Putera, "Prinsip Kepercayaan Sebagai Fondasi Utama Kegiatan Perbankan," *Jurnal Hukum Bisnis Bonum Commune* 3, no. 1 (2020): 457294, [https://doi.org/10.30996/jhbhc.v3i1.2984](https://doi.org/DOI:https://doi.org/10.30996/jhbhc.v3i1.2984).

<sup>103</sup> Rihantoro Bayuaji, Suwarno Abadi, and Dwi Elok Indriastuty, "Ensuring Legal Certainty: The Disbursement of Bank Guarantees," *Jhbhc*, 2024, 21-31, <https://doi.org/https://doi.org/10.30996/jhbhc.v7i1.9747>.

<sup>104</sup> «Kevin M G Hannafin and Donal G McKillop», "Deposit Insurance and Credit Unions: An International Perspective", *Journal of Financial Regulation and Compliance* 15, no. 1 (January 1, 2007): 42-62, <https://doi.org/10.1108/13581980710726787>.

<sup>105</sup> Hannafin and McKillop.

capitalization, reserves, liquidity, loan delinquencies, asset quality, asset management and liability.<sup>106</sup>

All credit unions are insured by the National Credit Union Administration (NCUA). The NCUA is an independent federal agency in the United States that regulates and insures federally licensed credit unions. The NCUA is responsible for the National Credit Union Share Insurance Fund (NCUSIF) which is backed by the U.S. government.<sup>107</sup> The NCUA works with the Federal Reserve Board and the Treasury Department to stabilize the system and resolve problems at individual corporate credit unions and the NCUA was able to increase the central liquidity lending facility limit from US \$1.5 billion to US \$41.5 billion. With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act by Congress on July 15, 2010, federal deposit insurance coverage was increased from US \$100,000 to US \$250,000 per account. However, credit unions in the United States are still exempt from paying corporate taxes.<sup>108</sup>

The United States' experience with credit unions is a unique system called "Natural Person Credit Unions" (NPCUs), which are tax-exempt credit unions where depositors are also borrowers.<sup>109</sup> Credit unions insured by NCUSIF become guarantors of each other and are responsible for meeting any shortfalls in funds. Strengthens the cross-monitoring of deposits across credit unions and the risk-taking of other credit unions, it is called coinsurance<sup>110</sup>. Credit unions in the US are subject to prudential regulations consisting of deposit insurance and capital regulation overseen by the NCUA as a regulator<sup>111</sup>. Deposit insurance schemes are an integral part of the financial safety net arrangement that protects depositors from the negative impacts arising from contagious credit union failures. The security provided by deposit insurance schemes can also create moral hazard by encouraging depositors and credit unions to act recklessly<sup>112</sup>. However, asset quality and liquidity of credit unions improved during the post-insurance period in addition to changes in regulatory capital requirements.<sup>113</sup>

<sup>106</sup> "Goth, McKillop", and Wilson", "Corporate Governance in Canadian and US Credit Unions".

<sup>107</sup> "Nicholas Ryder and Clare Chambers", "'The Credit Crunch - Are Credit Unions Able to Ride out the Storm?'," *Journal of Banking Regulation* 11, no. 1 (December 21, 2009): 76-86, "https://doi.org/10.1057/jbr.2009.14".

<sup>108</sup> "van Rijn", "'The Cooperative Identity at U.S. Credit Unions'."

<sup>109</sup> "Robert J Boldin, Keith Leggett", and Robert Strand", "'Credit Union Industry Structure: An Examination of Potential Risks,'" *Financial Services Review* 7, no. 3 (1998): 207-15, "https://doi.org/https://doi.org/10.1016/S1057-0810(99)00010-4".

<sup>110</sup> "Javier Gómez-Biscarri", Germán López-Espinosa", and Andrés Mesa-Toro", "'Drivers of Depositor Discipline in Credit Unions,'" *Annals of Public and Cooperative Economics* 93, no. 4 (December 6, 2022): 849-85, "https://doi.org/10.1111/apce.12352".

<sup>111</sup> Nguyen et al., "'Deposit Insurance and Credit Union Lending'."

<sup>112</sup> Nguyen et al.

<sup>113</sup> "Gordon V Karels and Christine "A McClatchey", "'Deposit Insurance and Risk-Taking Behavior in the Credit Union Industry,'" *Journal of Banking & Finance* 23, no. 1 (1999): 105-34", "https://doi.org/https://doi.org/10.1016/S0378-4266(98)00074-0".

Deposit insurance for credit unions is increasingly important because credit union members' savings are protected from the risk of institutional failure.<sup>114</sup> By Rawls' theory of justice, a fair law is a law that provides results that are impossible to deviate from by making consumers of one financial services institution better off but making consumers of other financial services institutions worse off. Furthermore, fair financial services institution laws are financial services institution laws that protect the rights of all customers of financial services institutions. Based on Rawls' theory of justice, justice for consumers of financial services institutions means equal treatment for all consumers of the financial services institutions, both credit union consumers, bank consumers, and insurance consumers<sup>115</sup>.

Justice for credit union depositors as the credit union fails to pay, depositors can obtain their rights and carry out their obligations fairly. The absence of protection of depositor rights is the same as providing space for credit unions to exploit depositor rights, which is feared to cause injury to depositor justice. Based on distributive justice, safeguard the credit union depositor rights comply through the regulation and realization of a deposit insurance institution for credit union members. Fair protection of credit union depositors that covering provides equal treatment to depositors from various financial service institutions without differentiating one depositor from another, without making depositors of one financial service institution better but making depositors of other financial service institutions worse.

Distributive justice is realized by creating legislation to protect credit union depositors when they default or go bankrupt. Justice is the basis for the formation of credit union deposit guarantee laws. The United States' experience with deposit insurance schemes has not led credit union members to engage in risk-shifting behaviour, which can be taken by the Indonesia Government in making credit union deposit insurance legislation, Credit union deposit insurance is consistent with NCUSIF best practice guidelines in terms of membership, funding coverage, management, and supervision, indicating a lack of moral hazard.<sup>116</sup>The insurance membership scheme is mandatory. Credit unions are subject to safety and soundness policies, risk-based capital adequacy requirements, and a prompt corrective action system<sup>117</sup>. NCUSIF has relatively strict supervisory protections. All credit unions in the United States are required to deposit 1 per cent of their insured deposits into NCUSIF and may be subject to additional premiums if necessary<sup>118</sup>. The insurance premium scheme is risk-based, the premium charged reflects the risk of each credit union's asset portfolio.<sup>119</sup> With this deposit insurance, credit unions can compete in the savings market with other financial institutions including banks<sup>120</sup>. The insurance is managed by the public.

<sup>114</sup> "Yaojie Zhang and Benshan Shi", "Systematic Risk and Deposit Insurance Pricing", *China Finance Review International* 7, no. 4 (October 11, 2017): 390–406, <https://doi.org/10.1108/CFRI-12-2016-0133>.

<sup>115</sup> "Zulkifli Zulkifli, Wetria Fauzi", and Arya Putra Rizal Pratama", "Pengawasan Terhadap Perlindungan Hukum Konsumen Perbankan Oleh Otoritas Jasa Keuangan di Kota Padang", *Jhbhc*, 2022, 25–41, <https://doi.org/https://doi.org/10.30996/jhbhc.v5i1.5781>.

<sup>116</sup> "McKillop et al.", "Cooperative Financial Institutions: A Review of the Literature".

<sup>117</sup> "Gomez-Biscarri, López-Espinosa", and Mesa-Toro", "The Risk Implications of the Business Loan Activity in Credit Unions", 2021.

<sup>118</sup> Nguyen et al., "Deposit Insurance and Credit Union Lending".

<sup>119</sup> Karels and McClatchey, "Deposit Insurance and Risk-Taking Behavior in the Credit Union Industry."

<sup>120</sup> Fried, Knox Lovell, and Eeckaut, "Evaluating the Performance of US Credit Unions."



However, the scheme is only for credit unions and is funded only by credit unions. Credit unions that are mandatory and have high credibility can prevent withdrawals and moral hazard is addressed by supervisory authorities.<sup>121</sup>

Credit union deposit insurance legislation in Indonesia is urgent in order to maintain public trust in credit unions which will lead to maintaining the stability of the financial system. The stability of the financial system is marked by the equalization of public rights. Thus, equal rights are highly expected by the community, especially credit union customers. Therefore, credit union deposit insurance needs to be resolved immediately to maintain the stability of the financial system as a manifestation of the ideals of the financial reform that has been initiated.

#### 4. Conclusions

Credit unions have so far been known as community-oriented and nonprofit financial institutions. In the context of credit unions, non-profit means that they only provide services to their members, consequently, they hardly earn profits. Due to regulation reforms, credit unions have converted to mainstream financial service institutions from which they can also provide services to credit union non-members making them more profit-oriented financial institutions. Financial Services Institutions are under the control and supervision of the Indonesian Financial Services Authority regime. Regulatory reforms are highly desired to discontinue the dual settlement in case credit unions face insolvencies for it most likely leads to legal injustice. Despite their qualification in the financial services institution regime mentioned in P2SK Laws, credit unions have yet to be equipped with such laws or regulations concerning protections, particularly for their depositors, against the likely event of a credit union failure. Protections for credit union consumers savings are form of distributive justice by the state. In other words, should the savings be unprotected, the justice of consumer rights are simultaneously overlooked. Ignorance savings consumer rights by government in likelihood of the credit union failure implies the nonexistent of legal justice. The deposit protection scheme implemented by the United States can be an alternative legal protection for credit union depositors in the event of bankruptcy. Thereby, policy makers should to revise the Cooperatives Law and the enactment of a Credit Union Depositor Insurance Law in likelihood if the credit union failure as a manifest of distributive justice.

#### 5. Acknowledgements

Thanks to the Faculty of Law, Universitas Trunojoyo Madura for supporting the completion of this research.

#### 6. Funding (optional)

No funding was received for this study.

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