

ABSTRACT

Soleh Hasan Wahid, Stundet ID Number 10220018, 2014. *Provisions of Refund Primary Deposits in Cooperative Law (the 1945 Constitution and Islamic Law Perspectives)*. Thesis, Sharia Business Law Department, Sharia Faculty, Maulana Malik Ibrahim Malang State Islamic University. Supervisor, Dr. Fakhruddin, M.H.I.

Key Words: Primary Deposit, Property, Shirkah, Cooperative

The appearance of the Law No.17/2012 on Cooperatives caused huge controversy among cooperatives practitioners. They indicated that some provisions in the Law no. 17/2012 on Cooperatives would eliminate the cooperative identity. Finally, judicial review is measures selected to advocacy by the cooperative actors and civil elements. The terms of which are highlighted in the provisions of Article 67 paragraph (1) which provides that the basic deposit can not be refunded. In the perspective of Islamic law, cooperative (*shirkah ta'awuniah*) is categorized as a form of new *shirkah* that is unknown to earlier *fuqaha*, the consequence is cooperative principal provisions in the legislation must be aligned and based on the terms *shirkah* provisions that have been agreed by the scholars in the past.

Based on the problem above, the writer examines deeply about how the provision of primary deposits in cooperative law is reviewed based on the 1945 Constitution and Islamic law.

In this study, the writer uses normative research method. The law is conceived as what is written in the legislation. A primary source in these studies is the principal payment provisions contained in Article 67 paragraph (1) of law 17/2012 on Cooperatives. Books, scientific works related to material issues have become secondary in this study. The approach used in this study is the approach to the law (*statute approach*) and comparative approach.

Based on the analysis conducted by the writer, the provisions of Article 28, paragraph H (4) of the 1945 Constitution expressly provides protection on private property. Therefore, the provision of primary deposits is non-refundable in the cooperative legislation contrary to article 28, paragraph 4 H 1945. In Islamic law Perspective, *shirkah* according *jumhur ulama* is categorized as *jaiz* contract (free/not binding). This raises the consequence; the *shirkah* agreement in cooperative that is restricting the ownership primary deposits of members is categorized as *fasid* contract. It's due to the nature defect (damage the *-Jaiz*) that *shirkah* contract. Therefore, the provision of primary deposits in cooperative laws is contrary to Islamic law.