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The Boundary between Business Risk and Criminal Liability in Failed Cooperative Payment Schemes: A Study of Supreme Court Decision No. 2113 K/Pid.Sus/2023

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Abstract

The criminalisation of failed business activities raises a persistent challenge in economic criminal law: distinguishing legitimate commercial risk from conduct that satisfies the elements of a criminal offence. This problem is particularly relevant in cooperative and financial activities where losses may result from liquidity problems, mismanagement, regulatory violations, or fraudulent conduct. This study examines Supreme Court Decision No. 2113 K/Pid.Sus/2023 concerning Henry Surya to analyse the boundary between business risk and criminal liability in a failed cooperative payment scheme. The Supreme Court's official directory classifies the case under special criminal offences concerning banking and records that the decision was rendered on 16 May 2023. The study aims to identify the criteria used by the court to distinguish civil or commercial failure from criminal conduct and to assess the role of intent, regulatory obligations, and financial representations in establishing criminal responsibility. A normative juridical approach is adopted through statutory, conceptual, and case analysis. The research examines banking and cooperative regulations, criminal-law principles, and the judicial reasoning underlying the decision. The study argues that financial losses alone should not automatically generate criminal liability. Criminalisation requires proof of conduct satisfying specific statutory elements, including unlawful acts and the requisite mental element where applicable. The case illustrates the importance of maintaining a principled boundary between commercial risk and criminal fraud while ensuring accountability for conduct that deliberately undermines financial trust.

[*Kriminalisasi kegiatan bisnis yang gagal menimbulkan tantangan yang terus-menerus dalam hukum pidana ekonomi: membedakan risiko komersial yang sah dari perilaku yang memenuhi unsur-unsur tindak pidana. Masalah ini* *sangat relevan dalam kegiatan koperasi dan keuangan di mana kerugian dapat terjadi akibat masalah likuiditas, salah urus, pelanggaran peraturan, atau perilaku curang. Studi ini meneliti Putusan Mahkamah Agung No. 2113 K/Pid.Sus/2023 tentang Henry Surya untuk menganalisis batasan antara risiko bisnis dan tanggung jawab pidana dalam skema pembayaran koperasi yang gagal. Direktori resmi Mahkamah Agung mengklasifikasikan kasus tersebut dalam tindak pidana khusus yang berkaitan dengan perbankan dan mencatat bahwa putusan tersebut dikeluarkan pada tanggal 16 Mei 2023. Studi ini bertujuan untuk mengidentifikasi kriteria yang digunakan oleh pengadilan untuk membedakan kegagalan perdata atau komersial dari perilaku kriminal dan untuk menilai peran niat, kewajiban peraturan, dan representasi keuangan dalam menetapkan tanggung jawab pidana. Pendekatan yuridis normatif diadopsi melalui analisis hukum, konseptual, dan kasus. Penelitian ini meneliti peraturan perbankan dan koperasi, prinsip-prinsip hukum pidana, dan penalaran yudisial yang mendasari putusan tersebut. Studi ini berpendapat bahwa kerugian finansial saja tidak seharusnya secara otomatis menimbulkan tanggung jawab pidana. Kriminalisasi memerlukan bukti perilaku yang memenuhi unsur-unsur hukum tertentu, termasuk tindakan yang melanggar hukum dan unsur mental yang diperlukan jika berlaku. Kasus ini menggambarkan pentingnya menjaga batasan yang berprinsip antara risiko komersial dan penipuan kriminal sambil memastikan akuntabilitas atas perilaku yang sengaja merusak kepercayaan finansial.*]

Keywords: business risk, criminal liability, cooperative, banking crime, failed payment

Introduction

The criminalisation of failed business activities presents a persistent challenge for contemporary economic criminal law because financial loss, business failure, and criminal wrongdoing may arise from superficially similar circumstances but carry fundamentally different legal consequences. Commercial enterprises operate under conditions of uncertainty, and decisions that appear reasonable when made may subsequently produce substantial losses because of market volatility, liquidity constraints, managerial error, regulatory changes, or unexpected economic conditions. The existence of loss therefore cannot, by itself, establish criminal liability. Criminal law requires a more demanding inquiry into whether the defendant's conduct satisfies the elements of a defined offence and, where required, whether the requisite mental element can be attributed to the accused. The distinction is particularly important in financial activities because the criminalisation of every failed business decision may discourage legitimate economic activity and undermine the principle of legality.

The problem becomes considerably more complex in the cooperative financial sector. Cooperatives occupy a distinctive position because they are simultaneously private legal entities, instruments of collective economic activity, and, in the case of savings and loan cooperatives, institutions that may handle substantial amounts of money belonging to their members. The legal structure of a cooperative can therefore create opportunities for legitimate financial intermediation while also creating risks of regulatory evasion when the cooperative form is used to conduct activities that substantively resemble banking. Indonesian law draws an important distinction between cooperative savings-and-loan activities and the unauthorized collection of funds from the public. The Banking Law criminalizes the collection of funds from the public in the form of deposits without the required banking authorization. The significance of this regulatory boundary is central to the Henry Surya case because the Supreme Court ultimately concluded that the cooperative structure did not shield the underlying activity from banking-crime liability.

Supreme Court Decision No. 2113 K/Pid.Sus/2023 provides a particularly important case study because the judicial trajectory illustrates the precise tension between civil-commercial failure and criminal responsibility. The Jakarta West District Court, in Decision No. 779/Pid.B/2022/PN Jkt.Brt, treated the defendant's conduct as falling outside criminal liability and released him from all charges. The District Court's reasoning was influenced, among other things, by the cooperative relationship between Indosurya and its customers and by the existence of proceedings concerning the suspension of debt-payment obligations (*Penundaan Kewajiban Pembayaran Utang*, or PKPU). The Supreme Court took a fundamentally different approach. It held that the first-instance court had misapplied the law because the factual circumstances demonstrated that funds had been collected from a broad group of persons without the required banking authorization. It consequently annulled the District Court judgment and adjudicated the matter itself.

The factual scale of the case further explains its significance. According to the Supreme Court's judgment, between 2012 and 2020, approximately Rp106.63 trillion was collected from 23,362 customers without authorization from the competent financial authorities. The Court also considered evidence concerning the transfer of approximately Rp10.51 trillion to thirty affiliated companies and identified approximately Rp2.55 trillion in flows from fifteen of those companies to the defendant. The judgment further referred to losses suffered by at least 6,193 customers in an amount of approximately Rp16.09 trillion. These figures do not, in themselves, establish criminal liability; rather, their significance lies in the factual context through which the Court assessed the nature of the underlying financial activity, the defendant's role, the absence of regulatory authorization, and the subsequent movement of funds.

The case is also significant because the Supreme Court did not merely rely upon the fact that customers had experienced failed payments. Its reasoning emphasized the substantive character of the financial scheme. The Court found that customers were promised returns of approximately 7 to 11 percent per annum, that the returns were not structured as ordinary cooperative profit-sharing through *Sisa Hasil Usaha* (SHU), and that the customers were not in fact functioning as ordinary cooperative members. The judgment further identified irregularities in the cooperative's organizational structure, including the absence of regular member meetings, the presence of corporate entities among purported members, nominee founders, fictitious meeting minutes, and customers who had never registered as cooperative members or received membership numbers. The Supreme Court therefore approached the case not simply as an unsuccessful investment but as an operation that allegedly used the legal form of a cooperative to conduct activities outside the cooperative's legitimate regulatory framework.

The doctrinal question arising from this case is therefore more precise than whether financial loss can result in criminal liability. The relevant question is what additional circumstances transform commercial failure into criminal conduct. The answer requires distinguishing at least four elements: the existence of a legally prohibited act, violation of a regulatory obligation, the defendant's knowledge or intention, and the connection between the prohibited conduct and the resulting harm. Business risk may explain why a legitimate enterprise fails to meet its payment obligations; it does not explain away deliberate regulatory circumvention, deceptive representations, unauthorized financial intermediation, or subsequent transactions designed to conceal or move proceeds derived from unlawful conduct.

Previous scholarship has examined the legal responsibility of cooperative managers in banking-related offences. Sugiantari's study of cooperative administrators argues that cooperative managers may incur criminal responsibility when cooperative activities cross the statutory boundaries of banking regulation, particularly where funds are collected in circumstances that satisfy the elements of a banking offence (Sugiantari 2021). More recent research specifically examining the Indosurya case has focused on the Supreme Court's reversal of the District Court's release judgment and the relationship between the cooperative's failed payment obligations and criminal liability. Ghifary and Prasetyo, for example, analyze the Supreme Court's decision in the context of the alleged embezzlement of customer funds and emphasize the significance of the Court's rejection of the first-instance characterization of the conduct as purely civil. Other scholarship has examined asset seizure and money-laundering dimensions arising from the same case.

At the same time, broader scholarship concerning the Business Judgment Rule (BJR) provides an important conceptual framework for distinguishing legitimate business decisions from unlawful conduct. Although BJR doctrine is most directly developed in corporate governance and is not automatically applicable to every cooperative dispute, its underlying principle is relevant: decision-makers should not ordinarily incur liability merely because a business decision subsequently produces losses, provided the decision was made in good faith, within authority, on an informed basis, and without conflicts of interest or fraudulent purposes. Recent Indonesian scholarship emphasizes that excessive criminalisation of business decisions may undermine legal certainty and generate excessive risk aversion among managers. Conversely, business-risk protection cannot extend to conduct involving manipulated information, fictitious transactions, concealed conflicts, or deliberate circumvention of regulatory requirements.

The urgency of the present study arises from the need to prevent two opposite errors in economic criminal law. The first is over-criminalisation, whereby ordinary commercial losses are retrospectively reconstructed as evidence of criminal intent. The second is under-criminalisation, whereby sophisticated financial misconduct is characterized as merely a failed business venture simply because the legal entity involved is formally a cooperative or because customers have contractual claims. The Henry Surya case demonstrates the importance of avoiding both extremes. Criminal law should not become an instrument for guaranteeing the success of business ventures, but neither should the language of "business risk" become a legal shield for deliberate violations of banking regulation and fraudulent financial practices.

This study employs a normative juridical methodology using statutory, conceptual, and case approaches. The statutory approach examines the Banking Law, the Anti-Money Laundering Law, cooperative legislation, and relevant regulations governing savings-and-loan cooperatives. The conceptual approach examines business risk, criminal liability, *mens rea*, regulatory offences, legality, and the distinction between civil breach and criminal wrongdoing. The case approach focuses on Supreme Court Decision No. 2113 K/Pid.Sus/2023 and the underlying Jakarta West District Court Decision No. 779/Pid.B/2022/PN Jkt.Brt. Primary legal materials consist principally of legislation and judicial decisions, while secondary materials include scholarly journal articles concerning cooperative regulation, economic criminal law, business judgment, and corporate accountability.

The contribution of this study lies in developing a four-stage doctrinal test for distinguishing business failure from criminal liability: first, whether the activity was legally authorized; second, whether the defendant's conduct departed from the legally permitted purpose and structure of the enterprise; third, whether there is evidence of intentional or knowing misconduct beyond mere inability to pay; and fourth, whether subsequent movement or use of funds independently satisfies the elements of another offence, such as money laundering. The study argues that this framework provides a more principled method for evaluating failed cooperative payment schemes because it prevents financial loss from functioning as an automatic substitute for proof of criminal conduct while simultaneously recognizing that the cooperative form cannot immunize substantively unlawful financial activities.

The Legal Difference between Business Failure and Criminal Conduct

The distinction between business risk and criminal liability begins with a fundamental proposition of criminal law: economic loss is not equivalent to criminal wrongdoing. Business activity necessarily involves uncertainty, and legal systems generally permit private actors to make decisions that may ultimately fail. If every unsuccessful business decision could retrospectively be interpreted as criminal conduct, the boundary between private economic regulation and criminal law would become unstable. This principle is particularly important where the alleged harm consists of a failure to repay money. A debtor's inability to satisfy a contractual obligation may ordinarily give rise to civil remedies, insolvency proceedings, restructuring, or other mechanisms of private law. The mere fact that a creditor loses money does not automatically establish fraud, embezzlement, or another criminal offence. The decisive issue is whether the defendant's conduct falls within a criminal prohibition and whether the relevant elements—including the applicable mental element—are established.

This distinction was central to the first-instance judgment in the Henry Surya case. The Jakarta West District Court treated the defendant's conduct as non-criminal and released him from the charges. The judgment considered, among other matters, the existence of the PKPU process involving Indosurya and its members and the cooperative relationship between the parties. The District Court's approach illustrates the proposition that a failed payment obligation may belong to the sphere of civil or commercial law when the underlying transaction itself is legitimate.

However, the Supreme Court rejected the proposition that the existence of civil or insolvency proceedings necessarily excludes criminal liability. This is doctrinally important. A commercial dispute and a criminal offence can arise from the same factual circumstances because civil and criminal law protect different interests and operate according to different legal tests. The existence of a debt-restructuring mechanism does not erase an independent criminal offence committed in the process of creating or managing that debt.

The Supreme Court explicitly characterized the first-instance court's reasoning as an incorrect application of law. It found that the District Court had failed to properly assess whether the activity constituted the unauthorized collection of funds from the public under Article 46(1) of the Banking Law. The Court's approach therefore shifted the analytical focus from the consequence of the business activity—failed payment—to the legal character of the activity that generated the payment obligation.

This distinction is critical. If an authorized cooperative legitimately accepts member deposits and subsequently experiences liquidity problems because of unexpected market conditions, the resulting failure to repay may ordinarily be addressed through civil, cooperative, or insolvency mechanisms. If, however, an entity uses the cooperative form to collect funds from thousands of persons who are not genuine members, promises returns inconsistent with cooperative operations, lacks the required banking authorization, and then channels the collected funds into affiliated businesses, the legal analysis changes fundamentally. The concept of business risk therefore has a limited but important function. It protects legitimate economic decision-making from retrospective criminal judgment. It does not protect decisions that are themselves unlawful.

This conceptual distinction is consistent with broader scholarship concerning the Business Judgment Rule. Aprita and Hayatuddin emphasize that business decision-makers should not automatically be held legally responsible for losses where decisions are made in good faith, prudently, within authority, and on adequate information. Similarly, recent research concerning BJR and criminal liability argues that the existence of loss should not replace proof of *mens rea* or unlawful conduct. Although the Henry Surya case does not constitute a conventional BJR case, the underlying distinction is analytically useful. The case demonstrates a situation in which the problem was not merely that a business decision failed but that the legal character and purpose of the underlying financial activity were contested. Consequently, the first criterion for distinguishing business risk from criminal conduct should be legality at the point of entry. A court should first ask whether the defendant was conducting an activity that the law permitted the relevant legal entity to conduct. If the answer is negative, subsequent losses cannot simply be characterized as ordinary business risk.

The Cooperative Form and the Prohibition against Unauthorized Banking Activities

The Supreme Court's most significant doctrinal contribution in Decision No. 2113 K/Pid.Sus/2023 lies in its refusal to allow the formal identity of Indosurya as a cooperative to determine the legal classification of its substantive activities. The cooperative form carries legal consequences. A savings-and-loan cooperative is intended to conduct savings and lending activities within the cooperative framework and for the benefit of its members. The existence of a cooperative certificate or legal personality does not, however, automatically authorize the entity to perform activities reserved for banking institutions.

The Supreme Court found that Indosurya had collected funds from a very large number of persons. According to the judgment, approximately Rp106.63 trillion was collected from 23,362 customers between 2012 and 2020 without authorization from the competent authorities. The Court regarded this activity as satisfying the elements of unauthorized collection of public funds under Article 46(1) of Law No. 10 of 1998.

The factual distinction between genuine cooperative membership and the broader customer base was particularly significant. The Court found that many customers were not registered as cooperative members and did not possess cooperative membership cards or numbers. The judgment also identified corporate entities among purported cooperative members, nominee founders, and fictitious minutes of meetings. These facts were relevant because they undermined the proposition that the funds were being collected exclusively through ordinary member-based cooperative activity. The Court further considered the economic promises made to customers. According to its reasoning, customers were offered annual returns of approximately 7 to 11 percent, which were allegedly not based upon the distribution of cooperative surplus (*SHU*). This circumstance strengthened the Court's conclusion that the financial arrangement did not correspond to the ordinary economic logic of cooperative savings and lending.

This approach can be understood through the principle of substance over form. A legal entity's formal classification should not determine criminal liability when the actual conduct falls outside the statutory purposes and regulatory conditions applicable to that entity. Otherwise, regulatory prohibitions could be circumvented simply by placing an unlawful financial activity inside a formally lawful organizational structure.

This issue has broader relevance beyond cooperatives. Financial regulation frequently relies on licensing systems because the collection of funds from the public creates systemic risks that ordinary contractual regulation cannot adequately address. Depositors may lack sufficient information to evaluate the solvency and management practices of financial intermediaries. Licensing therefore functions not merely as administrative bureaucracy but as a mechanism for protecting public confidence and financial stability. Sugiantari's analysis of cooperative administrators similarly demonstrates that cooperative managers may face criminal responsibility when cooperative operations cross the boundary into regulated banking activities. The Henry Surya case provides a particularly consequential application of this principle because the scale of the activity was extraordinary.

The Supreme Court's reasoning also provides an important answer to the argument that customers voluntarily entered into financial arrangements with Indosurya. Voluntary participation does not necessarily eliminate the regulatory prohibition against unauthorized financial intermediation. Financial regulation is designed precisely because private consent does not remove systemic risks or transform an unauthorized activity into a lawful one.

The distinction can therefore be formulated as follows: A cooperative's failure to repay money may constitute business or civil risk where the underlying financial activity was lawful and genuinely cooperative. The same failure may become evidence of criminal conduct where the payment obligation arose from an unauthorized financial scheme that departed from the cooperative's statutory purpose. This formulation preserves the legitimate space of business risk while preventing corporate or cooperative form from becoming an instrument of regulatory circumvention.

The Role of *Mens Rea*: From Failed Payment to Deliberate Financial Misconduct

The existence of an unauthorized activity is important, but the analysis of criminal liability cannot stop at regulatory non-compliance. Criminal responsibility requires individualized attribution of the prohibited conduct to the defendant, together with the relevant mental element where required by the offence. The Supreme Court's reasoning is particularly important because it did not merely infer criminality from the fact that Indosurya experienced payment difficulties. Instead, the Court identified a series of circumstances that it considered evidence of deliberate conduct. These included the expansion of the cooperative's operational territory, the collection of funds from a very large number of customers, representations concerning returns, organizational irregularities, transfers of funds to affiliated companies, and the absence of genuine cooperative membership among customers.

The Court expressly characterized the defendant's conduct as involving *mens rea*. Its reasoning stated that the defendant had, from the establishment of the cooperative, an intention to collect funds from the public under the legal cover of a cooperative entity and that the funds were not used solely for the welfare of cooperative members but were transferred to affiliated companies.

This is precisely where the Henry Surya case departs from an ordinary business-failure scenario. Consider two hypothetical situations. In the first, a legitimate cooperative collects deposits from genuine members in accordance with applicable regulations. It invests those funds in lawful projects, but a sudden economic downturn causes several investments to fail and prevents the cooperative from meeting withdrawal obligations. The existence of loss and non-payment does not, without more, establish fraud or another criminal offence.

In the second, an entity deliberately creates the appearance of a cooperative, solicits funds from thousands of persons who are not genuine members, promises unusually attractive returns, operates without the required authorization, and channels substantial sums into affiliated companies. The subsequent inability to repay is not the source of criminality; rather, it forms part of a broader factual pattern demonstrating the nature of the underlying activity.

This distinction is consistent with the broader literature on the criminalisation of business decisions. Recent scholarship argues that *mens rea* is essential to preventing the criminal law from treating every adverse business outcome as an offence. Conversely, research on fraudulent investment schemes emphasizes that deliberate manipulation, fictitious transactions, concealment, and misuse of information can remove conduct from the protection ordinarily associated with legitimate business judgment.

The Supreme Court's factual reasoning also demonstrates that *mens rea* can be inferred from a cumulative pattern of conduct rather than necessarily from a single explicit confession or document. The absence of genuine members, fictitious organizational documentation, unauthorized collection, unusually high promised returns, transfers to affiliated companies, and personal financial flows may collectively establish a sufficiently coherent inference concerning the defendant's knowledge and purpose.

Nevertheless, judicial inference must remain disciplined. The danger of relying on circumstantial evidence in economic crime is that a court may retrospectively interpret every unsuccessful decision as evidence of prior criminal intent. The proper methodology therefore requires the court to distinguish between facts that merely demonstrate financial failure and facts that demonstrate deliberate deviation from lawful business practice. A useful doctrinal test is therefore to ask:

1. Was the defendant legally authorized to conduct the activity?
2. Did the defendant knowingly depart from the statutory purpose of the entity?
3. Were material representations made to customers false or misleading?
4. Were funds intentionally transferred for purposes inconsistent with the stated financial arrangement?
5. Did the defendant personally or through affiliates obtain benefits from the transactions?
6. Do the circumstances collectively demonstrate knowledge or intention beyond ordinary commercial misjudgment?

The more affirmative answers a case produces, the weaker the argument that the conduct represents merely business risk. In this respect, the Henry Surya case should not be interpreted as establishing a general principle that failed cooperative payments are criminal. Its significance is narrower and more defensible: failed payment becomes criminally relevant when it forms part of a proven course of conduct satisfying specific statutory offences.

Money Laundering and the Transformation of Commercial Failure into Economic Crime

The second major dimension of the Supreme Court's decision concerns money laundering. The Court found Henry Surya guilty not only of unauthorized collection of funds but also of money laundering under Article 3 in conjunction with Article 10 of Law No. 8 of 2010. The money-laundering finding is significant because it demonstrates that criminal liability may arise not only from the initial collection of funds but also from subsequent transactions involving the proceeds of the underlying offence. The Supreme Court considered evidence that approximately Rp10.51 trillion collected through Indosurya was transferred to thirty affiliated companies. It further identified approximately Rp2.55 trillion in flows from fifteen affiliated companies to the defendant. The Court regarded transfers to companies unrelated to legitimate cooperative purposes as relevant to the money-laundering offence.

This creates an important distinction between loss allocation and proceeds manipulation. In a legitimate business failure, money may be lost because an investment performs badly, a borrower defaults, or liquidity becomes unavailable. The movement of funds between legitimate business accounts in accordance with ordinary commercial operations does not automatically become money laundering simply because the business later fails. By contrast, the deliberate transfer, conversion, placement, or use of funds derived from an underlying criminal offence can generate an independent criminal liability. Money laundering therefore changes the legal significance of subsequent financial transactions because the question is no longer simply whether the business failed but whether the proceeds of unlawful conduct were subsequently dealt with in a manner prohibited by the Anti-Money Laundering Law.

This distinction is particularly important in large financial schemes because the complexity of transactions can otherwise obscure individual responsibility. Criminal proceeds may move through affiliated companies, investment vehicles, property acquisitions, financial instruments, or personal accounts. The Supreme Court's treatment of the Indosurya transfers illustrates how the movement of funds may become evidence connecting the original offence with subsequent financial conduct.

The case also demonstrates why criminal law should not use financial loss as the sole bridge between the predicate offence and money laundering. Loss demonstrates the economic consequence of the conduct, but money laundering requires a separate assessment of the nature of the transactions involving the relevant property. The legal inquiry must therefore identify the property involved, establish its connection with the predicate offence, and determine whether the defendant's conduct falls within the statutory forms of laundering. This distinction is valuable for preserving the boundary between legitimate commercial activity and economic crime. Otherwise, every unsuccessful business investment involving movement of funds could theoretically be characterized as laundering merely because the investment later produced losses.

The Supreme Court's decision is more appropriately understood as involving a broader pattern: unauthorized public fundraising, deliberate departure from cooperative purposes, substantial transfers to affiliated companies, and evidence that those funds were connected to the underlying criminal activity. The money-laundering component therefore reinforces the central argument of this study. Criminal liability should arise from the unlawful character of conduct and the legally defined mental element, not from the magnitude of financial loss alone.

A Doctrinal Framework for Distinguishing Business Risk from Criminal Liability

The Henry Surya case permits the development of a structured analytical framework for future cases involving failed financial enterprises. Such a framework is necessary because economic criminal cases frequently involve overlapping civil, administrative, and criminal dimensions.

First, Regulatory Legality. The first question should be whether the defendant and the relevant entity were legally authorized to conduct the activity. Licensing is particularly significant in financial activities because unauthorized public fundraising may constitute a specific statutory offence. In Decision No. 2113 K/Pid.Sus/2023, the Supreme Court concluded that the collection of funds from the public occurred without the required authorization. If the activity was lawful, subsequent payment failure should ordinarily begin from the presumption that the dispute concerns business or civil risk unless additional criminal elements are established.

Second, Substantive Compliance with the Entity's Legal Purpose. The second question is whether the activity actually corresponds to the legal purpose of the entity. The formal existence of a cooperative cannot automatically determine the legality of every financial activity conducted under its name. In the Henry Surya case, the Court emphasized that customers were not genuinely functioning as cooperative members and that the cooperative structure was used to collect funds from a much broader public. This distinction demonstrates the importance of evaluating substance rather than organizational form alone.

Third, Evidence of *Mens Rea.* The third question is whether the defendant acted knowingly or intentionally in circumstances satisfying the applicable mental element. Business losses may arise without criminal intent. Criminal liability requires more. The Court found *mens rea* based upon the cumulative circumstances surrounding the establishment and operation of the financial scheme, including the use of the cooperative structure, unauthorized public fundraising, promised returns, organizational irregularities, and transfers to affiliated entities.

Fourth, Independent Criminality of Subsequent Transactions. The fourth question concerns what happened to the funds after they were collected. If the funds were used in legitimate business activities and the business subsequently failed, the matter may remain commercial. If, however, funds derived from an unlawful activity are transferred, concealed, converted, or otherwise dealt with in a manner satisfying the Anti-Money Laundering Law, a separate criminal offence may arise.

Fifth, Causation and Individual Attribution. Finally, the court must connect the unlawful conduct to the individual defendant. The mere existence of wrongdoing within a cooperative or corporation should not automatically result in the criminal liability of every manager or officer. The prosecution must establish the defendant's role, participation, authority, knowledge, and contribution to the prohibited conduct.

This last element is particularly important in complex economic crimes. Criminal law is based on individualized responsibility. The fact that an organization incurred losses or committed regulatory violations cannot substitute for proof concerning the particular defendant. The resulting analytical model may therefore be summarized as follows:

Stage	Question	Business Risk	Criminal Liability
Authorization	Was the activity legally permitted?	Yes	No/violated
Legal purpose	Did the activity correspond to the entity's purpose?	Generally yes	Material deviation
Mental element	Was the conduct a good-faith business decision?	Yes	Knowledge/intent where required
Financial transactions	Were funds used through legitimate commercial channels?	Generally yes	Concealment/transfer/use of criminal proceeds
Individual attribution	Is the defendant personally connected to the unlawful conduct?	No criminal attribution	Proven participation/responsibility

This framework also helps prevent excessive reliance upon the Business Judgment Rule. BJR should not be transformed into a general immunity for financial managers. Recent research emphasizes that legitimate business-risk protection is defensible only when decisions are made in good faith, within authority, with adequate information, and without fraudulent manipulation.

Accordingly, the proper principle is not "business decisions cannot be criminalized," but rather "business losses cannot substitute for proof of criminal elements." This distinction is particularly important for cooperative financial institutions because their legal form may otherwise generate false confidence among customers and regulators. Where the cooperative structure is genuinely used to conduct cooperative activities, ordinary commercial risks should remain outside criminal law unless other elements are established. Where the structure is deliberately used to conduct unauthorized financial intermediation or facilitate the movement of criminal proceeds, criminal liability may properly arise.

Conclusion

Supreme Court Decision No. 2113 K/Pid.Sus/2023 demonstrates that the boundary between business risk and criminal liability cannot be determined solely by examining whether a financial enterprise ultimately failed to meet its payment obligations. The existence of unpaid deposits, customer losses, insolvency, or restructuring proceedings does not automatically transform a commercial dispute into a criminal offence. The decisive inquiry concerns the legal character of the underlying activity, the defendant's compliance with regulatory requirements, the existence of the relevant mental element, and the defendant's individual participation in conduct prohibited by criminal law. The Supreme Court's reversal of the Jakarta West District Court's judgment was therefore significant because it shifted the analysis from the mere existence of a failed payment scheme toward the substantive characteristics of the financial operation itself.

In the Henry Surya case, the Supreme Court found that the cooperative structure had been used to collect funds from a broad public without the required banking authorization and that the actual operation departed materially from ordinary cooperative activities. The Court relied on evidence concerning the scale of fundraising, the absence of genuine cooperative membership among customers, promised returns, organizational irregularities, transfers to affiliated companies, and the defendant's financial benefit. It consequently found the defendant guilty of unauthorized collection of public funds and money laundering and imposed eighteen years' imprisonment and a Rp15 billion fine. The decision should therefore not be read as establishing that every failed cooperative payment scheme is criminal; rather, it demonstrates that the concept of business risk loses its protective force when the underlying conduct itself violates regulatory prohibitions and satisfies the elements of specific criminal offences.

The study concludes that a principled distinction between business risk and criminal liability should be constructed through five considerations: regulatory authorization, compliance with the legal purpose of the business entity, proof of the applicable mental element, the criminal character of subsequent financial transactions, and individualized attribution of responsibility. This framework preserves legitimate entrepreneurial and managerial discretion while preventing “business failure” from becoming a shield for deliberate financial misconduct. The Henry Surya case consequently provides a broader lesson for Indonesian economic criminal law: criminal justice should neither criminalize unsuccessful entrepreneurship merely because it causes losses nor permit sophisticated financial schemes to escape criminal accountability merely because they are formally organized as lawful businesses or cooperatives. The proper boundary lies in the proven existence of unlawful conduct and culpability, not in the size of the financial loss alone.

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