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TOPIC

LAW ON CREDIT INSTITUTIONS AS COOPERATIVES

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INTRODUCTION

1. The urgency of the topic

The system of Credit Institutions as Cooperatives in Vietnam was established in 1993 with the pilot project of establishing a People's Credit Funds (PCFs) system to replace the weak and collapsing credit cooperative system. Up to the present time, the system of Credit Institutions as Cooperatives has been established and existed for two decades, although existing with a small scale of capital, limited scope of operations but with the number of 1,182 PCFs and 1,711,618 members (average 1,448 members / fund)¹, the system of Credit Institutions as Cooperatives is playing an important position and role in the economy.

In addition to the results achieved, the organization and operation of the system of Credit Institutions as Cooperatives has many problems that need to be solved, which is the phenomenon of PCFs developing on a large scale, operating area is too wide to manage; there are many mistakes in lending; governance, administration and control have not complied with regulations; the systematic linkage is overlooked and especially the phenomenon that some PCFs are organized and operated away from the principle of *"For member and from member"*, the most important principle in the organization and operation of cooperatives in general and Credit Institutions as Cooperatives in particular.

To overcome the weaknesses of the system of Credit Institutions as Cooperatives, the Prime Minister has approved the project "Restructuring the system of Credit Institutions in the period 2011-2015"². After more than 08 years of implementation, the system of Credit Institutions as Cooperatives has shown positive changes, the systematic connection has been strengthened and improved; Many problems in the organization and operation of the PCFs system have been rectified and consolidated. However, a comprehensive assessment of the organization and operation of the system of Credit Institutions as Cooperatives still has many limitations and shortcomings. The main cause of the above shortcomings stems from the lack of a uniform legal system, the provisions of the law governing the organization and operation of the Credit Institutions as Cooperatives defined in many different legal documents; legal documents are regularly amended and supplemented, leading to the lack of

¹ Data source: Vietnam Association of PCF (2020), Report on operation results in 2020 and directions and tasks for 2020

² Together issued under Decision No. 254/QĐ-TTg dated March 1, 2012 of the Prime Minister approving the project "Restructuring the system of credit institutions in the period 2011-2015"

necessary stability, inconsistency, and contradictions between legal documents; Many issues are not properly regulated and need to be revised.

The above reasons indicate the need to have in-depth studies on Credit Institutions as Cooperatives under both the theoretical and practical perspective. That is why I have chosen the topic **“Law on Credit Institutions as Cooperatives”** as Doctoral thesis’s topic.

2. Research purposes and tasks

The research purpose of the thesis is to clarify the basic theoretical issues about Credit Institutions as Cooperatives and the law on Credit Institutions as Cooperatives; on the basis of theoretical issues, assess the suitability, shortcomings and limitations in current legal regulations on Credit Institutions as Cooperatives as well as point out the causes of the limitations and shortcomings of the statutory law; thereby propose solutions to perfect the provisions of the laws governing Credit Institutions as Cooperatives. For the above research purposes, the research tasks of the Thesis include:

- Clarify the basic theories about Credit Institutions as Cooperatives and the law governing Credit Institutions as Cooperatives, including: The concept of Credit Institutions as Cooperatives, the characteristics of Credit Institutions as Cooperatives compared to other types of Credit Institutions; types of Credit Institutions as Cooperatives; the role of Credit Institutions as Cooperatives in the economy; the system of legal documents governing Credit Institutions as Cooperatives, the content of the law on Credit Institutions as Cooperatives and dominant factors affecting the law governing Credit Institutions as Cooperatives.

- Research and evaluate the current situation and practice of law enforcement on Credit Institutions as Cooperatives, thereby point out the positive sides, limitations and shortcomings that need to be improved, and at the same time find out the cause of the limitations and difficulty as basis for proposing solutions to perfect the law governing Credit Institutions as Cooperatives.

- Analyze and clarify the viewpoints of improving the law on Credit Institutions as Cooperatives, propose specific solutions to improve the law on Credit Institutions as Cooperatives in Vietnam.

3. Object and scope of the research

As for content: The law on Credit Institutions as Cooperatives is a very wide issue with many contents. However, in this thesis, it will only go into research on the most

important legal issues where the current regulations as well as practical implementation still have many shortcomings and limitations. Specifically, the thesis will research and solve the problems;

- *The law on the organizational model of the system of Credit Institutions as Cooperatives;*

- *Law on establishment of Credit Institutions as Cooperatives;*

- *Law on the organizational structure, governance and administration of Credit Institutions as Cooperatives;*

- *Law on activities of Credit Institutions as Cooperatives;*

- *Laws on reorganization, dissolution and bankruptcy of Credit Institutions as Cooperatives.*

As for space: The thesis researches the law of Credit Institutions as Cooperatives in Vietnam. In order to have a full theoretical and practical basis to analyze and evaluate the provisions of the law as well as to offer solutions to perfect the legal provisions on credit institutions as cooperatives, during the research process, the thesis will refer to the construction experience and law enforcement on Credit Institutions as Cooperatives of some countries.

As for time: The thesis will study the current status of the provisions of the law on Credit Institutions as Cooperatives and their practical implementation in the period from 1993 to now, which mainly focuses on the period from 2010 to present.

4. Research Methods

As a research topic in the field of legal science, in order to achieve the research objectives, different research methods have been used in accordance with the requirements of the topic such as: Systematization method; history; analysis; generalization synthesis; expert interview; law comparison; survey; statistics, etc. These methods are applied to study and clarify each specific content in order to complete the identified tasks of the thesis.

5. New viewpoints of the thesis

- The thesis clarifies a number of theoretical issues about Credit Institutions as Cooperatives, including: The concept of Credit Institutions as Cooperatives; types of Credit Institutions as Cooperatives; organizational model, the systematic linkage between types of Credit Institutions as Cooperatives.

- The thesis will study the current status and practice of law enforcement on Credit Institutions as Cooperatives and give analysis and assessment of the advantages as well as limitations and shortcomings in the provisions of the law governing Credit Institutions as Cooperatives.

- The thesis builds a perfect viewpoint and proposes specific solutions to improve the law on Credit Institutions as Cooperatives.

6. The scientific and practical significance of the thesis

The thesis is an intensive and comprehensive scientific work, which has both theoretical and practical meanings. Research results of the thesis is a useful source of documents for competent state agencies in evaluating the effectiveness of legal provisions on Credit Institutions as Cooperatives, serving as a basis for legal improvement and as valuable source of documents for scientific research, teaching and learning.

Based on the research and clarifying the theoretical issues about Credit Institutions as Cooperatives and the law of Credit Institutions as Cooperatives, the thesis has provided a general picture of the current legal status of Credit Institutions as Cooperatives, thereby pointing out the limitations, shortcomings and proposing solutions to perfect the law on Credit Institutions as Cooperatives.

7. Structure of thesis

With the research purposes and tasks set out above, in addition to the introduction, the overview of the research problem, the conclusion, the list of references, the content of the thesis includes 3 chapters:

Chapter 1. The theory of Credit Institutions as Cooperatives and the Law on Credit Institutions as Cooperatives

Chapter 2. The legal status and practice of implementing the Law on Credit Institutions as Cooperatives

Chapter 3. The solution to perfecting the Law on Credit Institutions as Cooperatives

OVERVIEW OF RESEARCH ISSUES

1. Overview of the research situation related to the thesis

1.1. Overseas research situation

In order to facilitate the research and evaluation of results of foreign research works related to the thesis. Considering in relation to the research content of the thesis, foreign research works on Credit Institutions as Cooperatives are arranged into groups with the following specific research contents:

Firstly, the group of research works related to theoretical aspects of the thesis

Secondly, the group of research works on organizational model of the system of Credit Institutions as Cooperatives

Thirdly, the group of research works on establishing Credit Institutions as Cooperatives

Fourthly, the group of research works on organizational structure, governance and administration of Credit Institutions as Cooperatives

Fifthly, the group of research works on Credit Institutions as Cooperatives

1.2. Domestic research situation

Based on the research content, the domestic research works are arranged into groups with specific contents as follows:

Firstly, the group of research works related to theoretical aspects of the thesis

Secondly, the group of research works on organizational model of the system of Credit Institutions as Cooperatives

Thirdly, the group of research works on establishing Credit Institutions as Cooperatives

Fourthly, the group of research works on organizational structure, governance and administration of Credit Institutions as Cooperatives

Fifthly, the group of research works on Credit Institutions as Cooperatives

Sixthly, the group of research works on the dissolution and bankruptcy of Credit Institutions as Cooperatives

2. General assessment of the research situation related to the thesis

Through researching the published scientific works on Credit Institutions as domestic and foreign Cooperatives, the thesis draws some assessments as follows:

2.1. General assessment of research situation overseas

First, the advantages and problems have been resolved that the thesis will inherit and continue to develop

Firstly, foreign research works have clarified the issues related to the origin and role of a type of Credit Institutions as Cooperatives, proving that the establishment and existence of a type of credit institution as cooperatives is necessary and inevitable.

Secondly, research works on Credit Institutions as foreign Cooperatives have analyzed, evaluated and clarified the characteristics and differences of Credit Institutions as Cooperatives compared to Commercial Banks. The authors have proven the need to have a separate legal regulation for Credit Institution as Cooperatives other than the legal regulation governing Commercial Banks.

Thirdly, some specific legal issues related to the control and management of Credit Institutions as Cooperatives such as control mechanism, principles of organization and operation, organizational structure, legal representative in litigation, relationship between members have been mentioned and resolved. With the above legal issues, the authors have partly analyzed, evaluated, pointed out the shortcomings of the law and proposed complete solutions.

Fourthly, foreign studies have clarified the issues related to risks in the operations of Credit Institution as Cooperatives as well as opportunities and challenges for the type of Credit Institution as Cooperatives.

Second, the limitations, the issues that have not been resolved or need further research

Firstly, in terms of the scope of research, most of the foreign research works on Credit Institution as Cooperatives-related issues in the context of a specific country and mostly in countries with developed economy. That fact raises the problem, to get an overall view of Credit Institutions as Cooperatives and offer solutions to promote the development of the system of Credit Institutions as Cooperatives on a global scale, especially in developing and underdeveloped countries; there is a need to continue to study similar problems in other countries or on a broader scale.

Secondly, in terms of time, foreign research works on Credit Institutions as Cooperatives were carried out many years ago, at a time too far from the present. Therefore, up to the present time, many research projects have almost no scientific and practical value.

Thirdly, the overseas research works are done mainly under the level of scientific

reports. Therefore, each research mentioned to solve a small problem related to Credit Institutions as Cooperatives. In fact, the contents mentioned and resolved in foreign research projects are quite limited, many issues have not been mentioned and resolved.

Fourthly, the content of foreign research works has focused on a number of issues such as: Theory of Credit Institution as Cooperatives; the organizational model of the system of Credit Institution as Cooperatives; establish a Credit Institution as Cooperatives; the organizational structure of the management and administration of the Credit Institution as Cooperatives; activities of Credit Institution as Cooperatives. However, the researched issues are still at a general level, have not yet studied the specific contents and regulations. There are still many legal issues related to Credit Institution as Cooperatives have not been studied in foreign research works such as: The legal regulations on reorganization, dissolution and bankruptcy of Credit Institution as Cooperatives

2.2. General assessment of domestic research situation

First, the advantages and issues have been resolved that the thesis will inherit and continue to develop

Firstly, domestic research works have analyzed and evaluated the characteristics of the nature, operational objectives and legal form of Credit Institution as Cooperatives compared to other types of Credit Institutions; it solves some basic concepts such as PCFs, basic PCFs, PCFs system, Credit Institutions as Cooperatives.

Secondly, domestic research works have studied the history of birth and development of the system of Credit Institutions as Cooperatives in Vietnam, analyzed, evaluated and demonstrated the important role of the Credit Institutions as Cooperatives in general and PCFs in particular in socio-economic development, especially in rural, remote and isolated areas where the branch system, transaction offices of commercial banks that have not reached.

Thirdly, domestic studies have analyzed the opportunities and challenges posed by the Credit Institutions as Cooperatives in the current period, as well as the views and orientations of the Party and State in the development of the system of Credit Institutions as Cooperatives.

Fourthly, issues related to organization, operation, safety solutions, and interconnection in the system of Credit Institution as Cooperatives have been analyzed, evaluated and proposed completely by the authors. Although they are research works from

an economic perspective, the authors have partly analyzed and evaluated the relevant laws and proposed legal solutions.

Fifthly, the issues of experience in improving the organization, operation, connectivity and safety measures in the operation of the system of Credit Institution as Cooperatives in some countries such as Canada and Germany have been studied to draw a lesson for Vietnam.

Second, the limitations and issues that have not been resolved or need further research

In addition to the above results, the research results of domestic research works on Credit Institutions as Cooperatives show that there are still some limitations and issues that have not been thoroughly resolved, which need further research.

Firstly, most of the domestic research works on Credit Institutions as Cooperatives have been done from an economic perspective. Research works on Credit Institutions as Cooperatives under jurisprudence are not only limited in quantity, but also limited in terms of level and depth. Although the content of the thesis has been mentioned in domestic research works, it is mentioned from the economic perspective, however, if it is viewed from the perspective of jurisprudence, it is still very primitive. Only in terms of describing the law that many legal provisions have been abolished or amended or replaced. Therefore, it is very important to research and evaluate comprehensively, fully, comprehensively and in detail the provisions of the Law on Credit Institutions as Cooperatives to propose solutions to perfect the legal regulations.

Secondly, in terms of time, the basic legal documents governing Credit Institutions as Cooperatives are the 2010 Law on Credit Institutions, the 2012 Law on Cooperatives, while the research works on Credit Institutions as domestic Cooperatives were mostly done from 2010 and earlier. Therefore, the legal issues cited, analyzed and evaluated by the authors are no longer of practical value.

Thirdly, Credit Institution as Cooperatives that exist systematically, in which standing at the center with the role of system linkage, financial support and regulation is the Vietnam Cooperative Bank (formerly known as the central PCF). Therefore, researching the above two types of subjects in the system linkage is essential to get an overall view of the entire system of Credit Institutions as Cooperatives. This issue has been approached and solved by studies from an economic perspective. However, the research works are done in

terms of jurisprudence, only stop at the research approach to a type of subject which is institutional PCF.

3. Research questions, research hypotheses and expected research results of the topic

In order to achieve the purposes and tasks of research, the thesis needs to answer the following research questions:

Theoretically, Cooperatives in general and Credit Institutions as Cooperatives in particular are an enterprise or an entity independent from the enterprise?

Credit Institutions as Cooperatives organized and operating as independent entities, without systematic linkage between Credit Institutions as Cooperatives or Cooperatives organized and operating in the system linkage to ensure efficiency and safety in the organization and operation?

Has Vietnam established a complete, synchronous and appropriate legal system regulating the organization and operation of the system of Credit Institutions as Cooperatives?

Does there really exist the following phenomena: (i) Some Credit Institutions as Cooperative are organized and operating more differently from the specific principles of Cooperatives; (ii) Enterprises hide behind PCFs to enjoy preferential policies of the Law towards Credit Institutions as Cooperatives.

3.2. Research hypothesis

The thesis is implemented with the following research hypotheses:

(1) Cooperatives in general and Credit Institutions as Cooperatives in particular are a type of enterprise organized under the cooperative model; Credit Institutions as Cooperatives are organized in the system linkage to ensure efficiency and safety in organization and operation; The law on Credit Institutions as Cooperatives in Vietnam is not strict enough, still has many limitations and shortcomings which is one of the reasons leading to the following phenomena: (i) Credit Institutions as Cooperatives organized and operating fail to comply with the specific principles of Cooperatives; (ii) Enterprises hide behind PCFs to enjoy preferential policies of the Law towards Credit Institutions as Cooperatives.

(2) Cooperatives in general and Credit Institutions as Cooperatives in particular are not a type of enterprise due to the difference in principles of organization and operation;

Credit Institutions as Cooperatives organized and existing as independent entities, without systematic linkage between Credit Institutions as Cooperatives; Vietnam has established a complete, synchronous and appropriate legal system regulating the organization and operation of the system of Credit Institutions as Cooperatives; In fact, there are no phenomena like: (i) Credit Institutions as Cooperatives organized and operating fail to comply with the specific principles of the Cooperatives; (ii) Enterprises hide behind PCFs to enjoy preferential policies of the Law towards Credit Institutions as Cooperatives.

3.3. Expected research results of the thesis

Firstly, the thesis will be the first research work at the level of Doctoral thesis on the laws governing Credit Institutions as Cooperatives in Vietnam.

Secondly, based on researching the theoretical issues about Credit Institutions as Cooperatives and the Law on Credit Institutions as Cooperatives, the thesis draws out the concepts of Credit Institutions as Cooperatives, cooperative banks, PCFs, the system of Credit Institutions as Cooperatives.

Thirdly, on the basis of research, analysis and assessment of the legal status of Credit Institutions as Cooperatives by five groups of issues, including: System organization model; statute of establishment; management organization structure; activities of Credit Institutions as Cooperatives; reorganization, dissolution, bankruptcy, the thesis pointed out the advantages as well as the limitations and shortcomings of the law.

Fourthly, on the basis of research results on theories and the legal status of the thesis, the thesis proposes solutions to perfect the Law on Credit Institutions as Cooperatives to meet practical requirements.

CONCLUSION OF OVERVIEW

CHAPTER 1

THE THEORY OF CREDIT INSTITUTIONS AS COOPERATIVES AND THE LAW ON CREDIT INSTITUTIONS AS COOPERATIVES

1.1. The theory of the Credit Institutions as Cooperatives

1.1.1. *The concept of Credit Institutions as Cooperatives*

On the basis of analyzing the concepts: Credit cooperatives in Ordinance on banks, credit cooperatives and finance companies in 1990; Cooperative Credit Institutions in the Law on Credit Institutions 1997 and Credit Institutions as Cooperatives in Law on Credit Institutions 2010, the thesis draws out the characteristics of credit institutions as cooperatives as follows:

First; Credit Institutions as Cooperatives are enterprises organized in the form of cooperative.

Second; The main operational objective of Credit Institutions as Cooperatives, which is mutual support and assistance among members.

Third; Credit Institutions as Cooperatives face greater risks, and the risk of system failure is higher than that of other types of Credit Institutions.

Fourth; Credit Institutions as Cooperatives with limited scope of operation compared to other types of Credit Institutions

Fifth; Credit Institutions as Cooperatives that include specific types and exist in an organizational system model.

From the above analysis, the thesis gives a definition: *Credit Institutions as Cooperatives is a general concept to refer to all types of Credit Institutions under collective ownership, operating with the goal of “For member and from member”, organized into a separate system existing in the organizational system model. The system of credit institutions in general, has a more limited scope than other types of credit institutions in terms of customers, the allowed banking operations and operating areas.*

1.1.2. *Types of Credit Institutions as Cooperatives*

Research on the organizational model of Credit Institutions as Cooperatives in some countries such as: Canada, Germany, Netherlands, Thailand, and China show that in fact there exist two models of the system of Credit Institutions as Cooperatives, that is two-level organization model and three-level organization model. In countries where the system of Credit Institutions as Cooperatives organized in a three-level model, the system of Credit Institutions as Cooperatives includes: Credit Institutions as Central Cooperatives, Credit Institutions as Regional Cooperatives and Credit Institutions as Institutional Cooperatives.

In countries where the system of Credit Institutions as Cooperatives organized in a two-level model, the system of Credit Institutions as Cooperatives includes: Credit Institutions as Central Cooperatives and Credit Institutions as Institutional Cooperatives.

1.1.2.1. Credit Institutions as Central Cooperatives

Credit Institutions as Central Cooperatives is the leading system of Credit Institutions as Cooperatives, is also the National Credit Institutions as Cooperatives Union that are Regional Cooperatives and Credit Institutions as Institutional Cooperatives operating with the main objectives of system linkage, financial support, capital regulation in the system of Credit Institutions as Cooperatives.

1.1.2.2. Credit Institutions as Regional Cooperatives

Credit Institutions as Regional Cooperatives are part of the system of Credit Institutions as Regional Cooperatives of each country, being the focal point organization of the system of Credit Institutions as Regional Cooperatives in a province (region level), the provincial cooperative union (credit institutions as institutional cooperatives, operating with the main goal of systematic linkage, financial support, capital regulation in the system of Credit Institutions as Cooperatives in the area under their charge.

1.1.2.3. Credit Institutions as Institutional Cooperatives

Credit Institutions as Institutional Cooperatives are the smallest units in the system of Credit Institutions as Cooperatives of each country, directly conducting business activities with the main objective of mutual assistance between members, enhancing high efficiency in production and business.

1.1.3. The role of the Credit Institutions as Cooperatives in socio-economic development

Firstly, to address the credit needs of individuals, poor households, small production workers, especially in difficult socio-economic areas, remote and isolated areas.

Secondly, take advantage of local capital to contribute to the achievement of hunger eradication, poverty reduction and limit the situation of "black credit", usury.

Thirdly, to create jobs, promote socio-economic development in economically difficult, remote and isolated areas.

1.2. Theory of the law governing the Credit Institutions as Cooperatives

1.2.1. Laws governing Credit Institutions as Cooperatives

As analyzed above, the characteristic of Credit Institutions as Cooperatives compared to other types of credit institutions is not only that Credit Institutions as Cooperatives established in the form of cooperatives but also derived from the nature, operational

objectives, scope of activities, size, target customers, etc. Therefore, national laws must have separate adjustments for Credit Institutions as Cooperatives compared with general regulations for the system of credit institutions. The general provisions of the law governing the system of credit institutions and the specific regulations for Credit Institutions as Cooperatives make up the legal system of Credit Institutions as Cooperatives.

Regarding the subject of regulation, the Law on Credit Institutions as Cooperatives regulating social relations arising in the process of establishment, organization and operation of Credit Institutions as Cooperatives.

In terms of the legal source of Credit Institutions as Cooperatives, Credit Institutions as Cooperatives are subject to the regulation of three systems of legal documents: (1) legal documents that govern different types of Credit Institutions; (2) legal documents that govern the cooperatives generally; (3) legal documents specifically for Credit Institutions as Cooperatives.

In terms of content, the Law on Credit Institutions as Cooperatives regulates all issues related to the establishment, organization and operation of credit institutions as cooperatives, including the following main contents:

First, the provisions on the organizational model of the system of Credit Institutions as Cooperatives.

Second, the regulations on the establishment of Credit Institutions as Cooperatives.

Third, the provisions on the organizational structure, governance and management of Credit Institutions as Cooperatives.

Fourth, the regulations on the operation of Credit Institutions as Cooperatives.

Fifthly, the regulations on reorganization, dissolution and bankruptcy of Credit Institutions as Cooperatives.

1.2.2. Factors that govern the law governing Credit Institutions as Cooperatives

1.2.2.1. Socio-economic conditions of each country

1.2.2.2. The history of development and the current status of the system of Credit Institutions as Cooperatives in different countries

1.2.2.3. The impact of international economic integration

1.2.2.4. Completing the law on a Credit Institutions as foreign Cooperatives

1.2.2.5. Socio-economic development guidelines and policies government

CONCLUSION OF CHAPTER 1

CHAPTER 2

THE LEGAL STATUS AND PRACTICE OF IMPLEMENTING THE LAW ON CREDIT INSTITUTIONS AS COOPERATIVES IN VIETNAM

2.1. Actual situation of the law and law enforcement practice on the organizational model of the system of Credit Institutions as Cooperatives

2.1.1. The law on the organizational model of the system of Credit Institutions as Cooperatives in the period from 1993 to 2000 (pilot phase of establishment with the organizational model of the system of Credit Institutions as 3-level Cooperatives).

2.1.2. The law on the organizational model of the system of Credit Institutions as Cooperatives in the period from 2000 to 2013 (the implementation phase of Directive No. 57/CT-TW dated October 10, 2000 of the Central Executive Committee on consolidation, improvement and development of the PCFs system (transforming the organizational model of the system of Credit Institutions as Cooperatives from three-level model to two-level model)).

2.1.3. The law on the organizational model of the Credit Institutions as Cooperatives from 2013 to the present (the stage of completing the organizational model of the system of Credit Institutions as two-level Cooperatives).

2.2. Actual situation of the law and law enforcement practice on establishing Credit Institutions as Cooperatives

2.2.1. Provisions of the law on establishment of People's Credit Funds (PCFs)

2.2.1.1. Provisions of the law on members of PCFs

First, as for subjects who have the right to participate in PCFs as members

Second, as for conditions for subjects to participate in PCFs as members

Third, as for people are not allowed to participate in PCFs as members

*2.2.1.2. Provisions of the law on order, procedures and conditions for the
establishment of People's Credit Funds*

The conditions for granting PCFs license

2.2.2. Provisions of the law on the establishment of cooperative banks

2.3. Actual situation of law and law enforcement practice on the organizational structure of governance and administration of Credit Institutions as Cooperatives

*2.3.1. Provisions of the law on organizational structure of management and
administration of People's Credit Funds*

2.3.1.1. Organizational model of PCFs management and administration apparatus

2.3.1.2. Members' General Meeting of the People's Credit Funds

Provisions of the law on members 'General Meeting of PCFs are studied with the following basic contents: (i) Legal position and authority of Members' General Meeting of PCFs; (ii) operation and organization form. Members' General Meeting of PCFs; (iii) convene a meeting of the Members' General Meeting PCFs; (iv) conditions for conducting the Members 'General Meeting of PCFs; (v) voting and approving the decisions of the Members' General Meeting of PCFs.

2.3.1.3. Administrative Council of the People's Credit Funds

Provisions of the law governing basic issues about PCFs' Board of Directors are studied with the following contents: (i) Legal position, authority, term of office and number of members of the Board of Directors; (ii) standard conditions for a member of the Board of Directors, Chairman of the Board of Directors; (iii) Board of Directors' meeting.

2.3.1.4. Supervisory Board of the People's Credit Funds

Provisions of the law governing PCF's Supervisory Board are studied with the following contents:

First, legal position, duties, powers, number of members of the Supervisory Board

Second, the criteria and conditions for members of the Supervisory Board of PCFs.

2.3.1.5. Director (General Director) of the People's Credit Funds

Legal provisions governing the Director (General Director) of the PCFs are studied with the following contents:

First, the legal position, duties and powers of the Director (General Director) of the PCFs

Second, the conditions and criteria for the Director (General Director) of the PCFs

2.3.2. Provisions of the law on the organizational structure of governance and administration of the cooperative bank

2.3.2.1. General meeting of cooperative bank members

2.3.2.2. Cooperative Bank's Board of Directors

2.3.2.3. Cooperative Bank's Supervisory Board

2.3.2.4. General Director of the Cooperative Bank

2.4. Actual situation of the law and practice of law enforcement on business activities of the Credit Institutions as Cooperatives

2.4.1. Provisions of the law on business operations of People's Credit Funds

The thesis researches and analyzes the legal regulations on the area of operation, the scope of business activities of PCFs allowed to conduct and the provisions of the law governing capital mobilization and lending activities of PCFs, the two main business activities of PCFs.

2.4.2. Provisions of the law on the business operations of a cooperative bank

The thesis studies the business activities of a cooperative bank with two different types of customers, including: (i) Operations for customers who are members of PCFs; (ii) Operations for customers who are not members of PCFs.

2.5. Actual situation of law and law enforcement practice on reorganization, dissolution and bankruptcy of Credit Institutions as Cooperatives

2.5.1. Provisions of the law on the reorganization of Credit Institutions as Cooperatives

Because of the characteristics of the Credit Institutions as Cooperatives, the issue of Credit Institutions as Cooperatives does not set out for Vietnam Cooperative Bank and is not done under the form of conversion to legal form. The thesis researches legal provisions on PCFs reorganization with the following specific contents:

First, on the forms of PCFs reorganization.

Second, on the authority to decide the reorganization of PCFs

Third, on the conditions for PCFs reorganization

Fourth, the Council reorganizes and plans to reorganize PCFs

Fifth, the order of approving the reorganization of PCFs

2.5.2. Provisions of the law on dissolution of Credit Institutions as Cooperatives

2.5.2.1. Provisions of the law on dissolution of People's Credit Funds

2.5.2.2. Provisions of the law on dissolution of cooperative banks

2.5.3. Regulations of law on bankruptcy of Credit Institutions as Cooperatives

According to the provisions of the Law on Bankruptcy 2014, the bankruptcy procedures for Credit Institutions in general and the bankruptcy procedures for Credit Institutions as Cooperatives in particular are implemented according to the regulations on corporate bankruptcy, cooperatives in general and applicable regulations only for Credit Institutions. The thesis does not study the regulations on bankruptcy of enterprises and cooperatives in general, but only researches and evaluates the provisions of the Law on Bankruptcy 2014 that apply exclusively to credit institutions, including Credit Institutions as Cooperatives.

First, bankruptcy procedures for Credit Institutions as Cooperatives only after the State Bank has issued a document terminating special control or a document terminating the application or not applying solvency restoration measures of which the Credit Institutions as Cooperatives still insolvency.

Second, the State Bank is the subject that has the right to file for bankruptcy procedures for Credit Institutions as Cooperatives.

Third, regarding transactions of Credit Institutions as Cooperatives in the stage of special control or applying solvency restoration measures

Fourth, do not apply recovery procedures, there is no creditors meeting in bankruptcy procedures for Credit Institutions as Cooperatives.

Fifth, on the order of asset division when liquidating assets for Credit Institutions as Cooperatives declared bankrupt.

CONCLUSION OF CHAPTER 2

CHAPTER 3

THE SOLUTION TO PERFECTING THE LAW ON CREDIT INSTITUTIONS AS COOPERATIVES

3.1. The legal perfect point of view about Credit Institutions as Cooperatives

On the basis of the Politburo's Directive No. 57-CT-TW dated October 10, 2000 on strengthening, perfecting and developing the PCFs system (hereinafter referred to as Directive No. 57-CT-TW); The PCFs system development point of view and objectives are specified in the Project on strengthening and developing the PCFs system to 2020 with vision to 2030 (Issued together with Decision No. 209/QĐ-NHNN dated January 31, 2019 of the Governor of the State Bank) (hereinafter referred to as Scheme No. 209) and the research results of Chapter 1, Chapter 2 of the Thesis, the following content will be researched, analyzed and given the guiding viewpoints for completing the law on Credit Institutions as Cooperatives.

First, thoroughly grasp the guidelines and viewpoints of the Party, the National Assembly and the Government in building and developing the system of Credit Institutions as Cooperatives.

Second, the law on Credit Institutions as Cooperatives must ensure that Credit Institutions as Cooperatives are organized and operate in accordance with the principles and principles of the collective economic model.

Third, completing the law on Credit Institutions as Cooperatives associated with the orientation of controlling the development of PCFs, building a system of credit institutions as sustainable cooperatives with high safety ratio.

Fourth, PCFs and cooperative banks need to be built and organized in a separate systematic model that exists in the general system of Credit Institutions.

Fifth, it is necessary to consider and evaluate Credit Institutions as Cooperatives a specific type of enterprise, cooperative and credit institution.

3.2. Solutions to perfect the law on Credit Institutions as Cooperatives

3.2.1. Completing the law on system organizational models of Credit Institutions as Cooperatives

First, in terms of the name of Credit Institutions as Cooperatives and the concept of Credit Institutions as Cooperatives

Second, the law on the organizational model of the system of Credit Institutions as

Cooperatives needs to supplement regulations on the organizational model of the system of Credit Institutions as Cooperatives.

Third, the law on the organizational model of the system of Credit Institutions as Cooperatives needs to have more specific and clearer regulations on the concept and legal position of the cooperative bank.

Fourth, it is necessary to specify that PCFs are obliged to participate as a member of the Vietnam Cooperative Bank.

3.2.2. Perfecting the law on establishment of Credit Institutions as Cooperatives

3.2.2.1. Completing the law on the establishment of PCFs

First, the solution group completes the law on PCFs membership

Firstly, completing regulations on who have the right to participate in PCFs as members

Secondly, completing regulations on conditions for individuals to participate in PCFs as members

Thirdly, complete regulations on those who are not allowed to participate in PCFs as members

Fourthly, complete the regulations on annual capital contribution

Second, perfecting the provisions of law on the order, procedures and establishment of conditions of PCFs

3.2.2.2. Completing the law on the establishment of Cooperative Bank

3.2.3. Perfecting the law on the organizational structure of governance and administration of the Credit Institutions as Cooperatives

3.2.3.1. Perfecting the law on the organizational structure of governance and administration of People's Credit Funds

Firstly, amending regulations on the deadline for sending notices to convene the Members' General Meeting as provided for in Article 33 of Circular No. 04/2015/TT-NHNN

Secondly, amending regulations on conditions for conducting Members' General Meeting of PCFs

Thirdly, amending regulations on conditions for passing resolutions of PCFs' General Meeting

Fourthly, amending regulations on the number of members of the Board of Directors of PCFs

Fifthly, amending regulations on the number of members of the Supervisory Board of PCFs

3.2.3.2. Completing the law on the organizational structure of governance and administration of the cooperative bank

First, amending regulations on the authority to decide how to organize the Members' General Meeting of the cooperative bank

Second, amending regulations on the conditions for conducting the Members' General Meeting of the cooperative bank

Third, amending the provisions on the conditions for passing resolutions of the Members' General Meeting of the cooperative bank

Fourth, amending regulations on the number of members of the Board of Directors of a cooperative bank

Fifth, amending regulations on the number of members of the Supervisory Board of a Cooperative Bank

3.2.4. Completing the law on business activities Credit Institutions as Cooperatives

3.2.4.1. Completing laws on business activities of People's Credit Funds

First, complete the transition regulations on PCFs' operating areas

Second, completing regulations on customers who are allowed to borrow loans at PCFs

Third, complete regulations on PCFs profit distribution

3.2.4.2. Completing the law on business operations of the Cooperative Bank

Firstly, it is necessary to add a regulation that limits the deposit receiving activities of cooperative banks for customers who are not member of the PCFs.

Secondly, amending regulations to limit lending activities of cooperative banks to customers who are not member of the PCFs.

Thirdly, it is necessary to specify when the State Bank has the right to issue regulations restricting the business operations of cooperative banks to customers who are not member of the PCFs.

3.2.5. Perfecting laws on reorganization, dissolution and bankruptcy of Credit Institutions as Cooperatives

3.2.5.1. Perfecting the law on reorganization Credit Institutions as Cooperatives

Firstly, there should be clear regulations on a cooperative bank not subject to the application of forms of reorganization of credit institutions

Secondly, amending the phrase "requirements for PCFs reorganization" to "conditions for PCFs reorganization".

3.2.5.2. Completing the law on dissolution of Credit Institutions as Cooperatives

Firstly, adding provisions on the conditions for dissolution of PCFs and cooperative banks

Secondly, amending regulations on procedures for approving dissolution decisions and preparing documents to request dissolution of PCFs, cooperative banks

Thirdly, amending the regulations on the revocation of a license in the dissolution process of PCFs and the order and procedures for the dissolution of cooperative banks

3.2.5.3. Perfecting the law on bankruptcy of Credit Institutions as Cooperatives

First, the State Bank's responsibility to send documents to the Court confirming the termination of the special control because the credit institutions cannot restore its solvency, does not apply or terminate the application of rehabilitation measures but the Credit Institutions still loses its solvency

Second, about the responsibilities of the State Bank in filing bankruptcy requests for credit institutions in general and Credit Institutions as Cooperatives in particular.

Third, on the order of asset division of the credit institutions declared bankrupt

CONCLUSION OF CHAPTER 3

GENERAL CONCLUSION

Credit Institutions as Cooperatives is a general concept that refers to the types of Credit Institutions organized and operated according to the Cooperative model, existing in the systematic linkage, operating in the banking sector with the goal of “For member and from member”. Depending on the organizational model of the system of credit institutions that are cooperatives of each country, it can be a two-level model or a three-level model with specific types of credit institutions being specific cooperatives existing with different positions and roles. In Vietnam, the system of credit institutions that are cooperatives in Vietnam was established in 1993, after more than 20 (twenty) years with three stages of completion and development. *(From 1993 to 2000, the pilot period of establishment with the organizational model of the system of credit institutions was three-level cooperatives; From 2000 to 2013, the period of transforming the organizational model of the system of Credit Institutions as Cooperatives from three-level model to two-level model; From 2013 up to now, the stage of completing the organizational model of the system of credit institutions is two-level cooperatives).* The system of Credit Institutions as Cooperatives has developed very strongly *(As of December 2019, the whole country had 1182 PCFs established and operating in 57 (fifty-seven) provinces and cities)* and has great socio-economic contributions. However, beside the socio-economic contributions, the current status of the organization and operation of the system of credit institutions, the cooperative also has some limitations and shortcomings.

The research results on the current status and practice of law enforcement on Credit Institutions as Cooperatives with 05 (five) contents *(The law on the organizational model of the system of Credit Institutions as Cooperatives; the law on the establishment of Credit Institutions as Cooperatives; the law on the model of the organization and governance of Credit Institutions as Cooperatives; law on the operation of Credit Institutions as Cooperatives; law on reorganization, dissolution, bankruptcy of Credit Institutions as Cooperatives)* has proved the hypothesis: The law on Credit Institutions as Cooperatives in Vietnam still has many limitations and shortcomings. Limitations and shortcomings of the law are one of the reasons leading to the situation: (1) The issue of organization and operation of the system of Credit Institutions as Cooperatives is not really suitable; (2) There is a phenomenon of Credit Institutions as Cooperatives organized and operating not complying with the specific principles of the cooperative; (3) There exists a phenomenon of

enterprises hiding the shadow of PCFs to enjoy preferential policies of the law towards cooperatives.

On the basis of the research on the theory of Credit Institutions as Cooperatives, the law on Credit Institutions as Cooperatives; The current status and practice of implementing the law on Credit Institutions as Cooperatives with the spirit of thoroughly grasping the guidelines and views of the Party, the National Assembly and the Government in the building and development of the system of Credit Institutions as Cooperatives in Directive 57- CT-TW and Scheme No. 209, The thesis has researched and pointed out the guiding views for the improvement of the law on Credit Institutions as Cooperatives. Accordingly, the completion of the law on Credit Institutions as Cooperatives must ensure the following requirements: Credit institutions are cooperatives organized and operating in accordance with the principles and standards of the collective economic model; completing the law on Credit Institutions as Cooperatives associated with the orientation of controlling the development of PCFs, building a system of Credit Institutions as sustainable Cooperatives with high safety coefficient; PCFs and Cooperative Banks need to be built and organized in a separate systematic model that exists in the general system of Credit Institutions; Law on Credit Institutions as Cooperatives need to recognize and consider Credit Institutions as Cooperatives as a specific type of enterprise, cooperative and credit institution.

On the basis of the completed viewpoints, the thesis proposes 05 (five) groups of solutions to improve the law on Credit Institutions as Cooperatives including: (i) Solutions to perfecting the law on the organizational model of the system of Credit Institutions as Cooperatives; (ii) Solutions to perfecting the law on establishing Credit Institutions as Cooperatives; (iii) Solutions to perfecting the law on the organizational structure, governance and administration of Credit Institutions as Cooperatives; (iv) Solutions to perfecting the law on Credit Institutions as Cooperatives; (v) Solutions to perfecting the law on reorganization, dissolution and bankruptcy of Credit Institutions as Cooperatives.

**LIST OF RESEARCH WORKS PUBLISHED
RELATED TO THE THESIS**

No	Name of the research work	No. / Year	Journal name	Number of pages
01	Discussing some legal issues on establishing Vietnam Cooperative Bank	11/2013	Banking Training Science	
02	Shortcomings in the regulations on conditions for membership of People's Credit Funds	10/2014	Banking Training Science	
03	Legal status of the model system of Credit Institutions as Cooperatives	4 (372)/ 2019	State and law	
04	Legal regulations on members of People's Credit Funds - Issues that need to be further improved	5 (326)/ 2019	Democracy and Law	