

BAITUL MAL WA TAMWIL: LEGALITY AND ITS POTENTIAL IN DEVELOPING THE COMMUNITY'S ECONOMY

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Abstract: This study describes the legality and potential of Baitul Mal Wa Tamwil in developing the community's economy. This study is a literature review, which uses a sociological juridical approach. The data collection technique used in this study is the documentation technique. Meanwhile, the analytical technique used by researchers in this research is qualitative descriptive, where the author will first explain the data related to Baitul Maal Wa Tamwil (BMT) in detail and then carry out an inductive analysis to find out the legality and potential of baitul maal wa tamwil. (BMT) in developing the community's economy. After conducting in-depth research two conclusions were found: first, baitul Maal Wa Tamwil currently uses the cooperative law as its legal basis. Second, the potential for community economic development through Baitul maal wa tamwil is extraordinary because of the financing products (mudhorabah/profit sharing) carried out by baitul mal wa tamwil.

Keywords: *Baitul Mal Wa Tamwil (BMT), Community Economy*

Abstrak: Kajian ini mendeskripsikan legalitas dan potensi Baitul Mal Wa Tamwil dalam mengembangkan perekonomian masyarakat. Penelitian ini merupakan kajian pustaka, dengan menggunakan pendekatan yuridis sosiologis. Teknik pengumpulan data yang digunakan dalam penelitian ini adalah teknik dokumentasi. Sedangkan teknik analisis yang digunakan peneliti dalam penelitian ini adalah deskriptif kualitatif, dimana penulis terlebih dahulu akan memaparkan data terkait Baitul Maal Wa Tamwil (BMT) secara detail kemudian melakukan analisis induktif untuk mengetahui legalitas dan potensi baitul maal wa tamwil. (BMT) dalam mengembangkan perekonomian masyarakat. Setelah melakukan penelitian mendalam ditemukan dua kesimpulan: pertama, baitul Maal Wa Tamwil saat ini menggunakan undang-undang koperasi sebagai landasan hukumnya. Kedua, potensi pengembangan ekonomi masyarakat melalui Baitul maal wa tamwil sangat luar biasa karena produk pembiayaan (mudhorabah/bagi hasil) dilakukan oleh baitul mal wa tamwil.

Kata Kunci: *Baitul Mal Wa Tamwil (BMT), Ekonomi Kerakyatan.*

Introduction

Baitul Maal wat Tamwil is a financial institution with a sharia concept that was born as an option that combines the concepts of maal and tamwil in one institutional activity. The concept of maal was born and became part of the life of Muslim society in terms of collecting and channeling funds for zakat, infaq and shadaqah (ZIS) productively. While the tamwil concept was born for productive business activities that are purely for profit with the middle to lower (micro) community sector. The presence of BMT to absorb the aspirations of the Muslim community in the midst of anxiety economic activities with the principle of usury, as well as supporting funding to develop activities to empower small and medium enterprises. The presence of an Islamic microfinance institution called Baitul Maal wa Tamwil (BMT) is felt to have brought financial benefits to the community, especially the small community who are not bankable and reject usury, because it is oriented towards a people's economy.¹

Since 1992, sharia-based financial institutions have emerged which prohibit the practice of the concept of interest (riba) in their operations. An important factor behind the emergence of Islamic microfinance institutions is the strict prohibition of Riba in the Koran. Riba is additional taking, both in buying and selling transactions and lending and borrowing in vanity or contrary to the principles of muamalah in Islam. One of the

Islamic microfinance institutions in the form of a cooperative is Baitul Maal wat Tamwil (BMT). Baitul Maal wat Tamwil (BMT) is an Islamic financial institution that operates using a combination of the "Baitul tamwil and Baitul maal" concepts with an operational target focus on the Small and Medium Enterprises (UKM) sector.²

The government through the Ministry of Cooperatives and SMEs said, "The development of BMT performance nationally has developed very significantly. The BMT Cooperative business is a business that targets the lower classes in accordance with regulatory provisions. The number of company employees who have been laid off recently has made the Baitul Maal wat Tamwil (BMT) business grow increasing demand for its products and services.³

Based on the survey results, the establishment of BMTs in the three regions of Java showed almost the same pattern, where the establishment of BMTs significantly occurred during periods of the financial crisis, namely 1998, 2004 and 2009. This fact supports the belief that micro-small businesses are resilient. response to crises and mushrooming during times of crisis, encouraging microfinance institutions to grow and develop. Specifically for 1998, this fact is also supported by data where the government, through several related ministries, rolled out several programs for developing microfinance institutions in order to open the widest possible access to capital for the people in running micro-small

¹ Novita Dewi Masyithoh, "Normative Analysis Of Law No. 1 Year 2013 Concerning Micro Finance Institutions (Mfi) For Legal Entity Status And Supervision Of Baitul Maal Wat Tamwil (Bmt)," *Economica: Journal of Islamic Economics* 5, no. 2 (October 31, 2014): 2, <https://doi.org/10.21580/economica.2014.5.2.768>.

² Ficha Melina, "Murabahah Financing at Baitul Maal Wat Tamwil (Bmt)," *Journal of Tabarru': Islamic*

Banking and Finance 3, no. 2 (November 1, 2020): 270, [https://doi.org/10.25299/jtb.2020.vol3\(2\).5878](https://doi.org/10.25299/jtb.2020.vol3(2).5878).

³ Mashuri Mashuri, "The Role of Baitul Maal Wa Tamwil (BMT) in Community Economic Empowerment Efforts," *IQTISHADUNA: Scientific Journal of Our Economy* 5, no. 2 (December 30, 2016): 116.

businesses. This program aims to anticipate a decline in economic performance in the form of a decrease in economic growth and an increase in unemployment due to the crisis.⁴

However, this development of BMT was not followed by clear regulations and legal basis. BMT has unique characteristics when compared to other existing financial institutions, because apart from having a commercial mission (Baitut Tamwil) it also has a social mission (Baitul Maal), therefore BMT can be said to be a new type of microfinance institution than before. Some BMTs take the legal form of a cooperative, but this is still an option, not a requirement. BMTs can be established in the form of Community Self-Help Groups (KSM) or can also be in the form of cooperative legal entities.

Since its inception until now, the legality of Baitul Maal wat Tamwil (BMT) has not existed, it's just that many BMTs have chosen cooperative legal entities. Therefore BMT is subject to cooperative regulations, namely Law No. 25 of 1992 concerning Cooperatives which has been amended to Law No. 17 of 2012 concerning Cooperatives. However, since the enactment of Law No. 1 of 2013 concerning Microfinance Institutions (LKM), the institutional status of BMT legal entities has become a separate problem that burdens BMTs.⁵

However, the development of baitul tamwil was not followed by clear regulations and legal basis. In Law Number 1 of 2013

concerning Islamic Financial Institutions, what is meant by LKM is: " *Microfinance Institutions, hereinafter abbreviated as LKM, are financial institutions specifically established to provide business development services and community empowerment, either through loans or financing in micro-scale businesses to members and the community, managing deposits, as well as providing business development consulting services that are not solely for profit .*" From the statement of the Law it can be underlined that Microfinance Institutions are not solely looking for profit, while baitul tamwil is only engaged in business and prioritizes profit oriented, it can be seen that baitul tamwil is included in Law Number 1 of 2013 Article 39 paragraph (1) Concerning Islamic Financial Institutions it seems so forced so that there is no legal vacuum.⁶

Based on the problems above, researchers feel interested in conducting more in-depth studies related to legality and the potential possessed by baitul mal wa tamwil in developing the community's economy.

Research Methods

This study is a literature review, which uses a sociological juridical approach. The data collection technique used in this study is the documentation technique. Meanwhile, the analytical technique used by researchers in this research is qualitative descriptive, where the author will first explain the data related to Baitul Maal Wa Tamwil (BMT) in detail and then carry out an inductive analysis

⁴ Ali Sakti, "Mapping the Conditions and Potential of BMT: Partnerships in the Context of Expanding the Market & Service Range of Islamic Banks to Micro Enterprises," *AL-MUZARA'AH* 1, no. 1 (June 1, 2013): 7, <https://doi.org/10.29244/jam.1.1.1-18>.

⁵ Masyithoh, "Normative Analysis Of Law No. 1 Of 2013 Concerning Micro Finance Institutions (Mfi)

For Legal Entity Status And Supervision Of Baitul Maal Wat Tamwil (Bmt)," 19–20.

⁶ Ramadhani Alfin Habbibie Alfin Habbibie, "Juridical Analysis of Law Number 1 Year 2013 Concerning Microfinance Institutions Against Baitul Tamwil," *Az Zarqa': Journal of Islamic Business Law* 11, no. 2 (December 1, 2019): 6, <http://ejournal.uin-suka.ac.id/syariah/azzarqa/article/view/2073>.

to find out the legality and potential of baitul maal wa tamwil. (BMT) in developing the community's economy.

Results And Discussion

Definition of Baitul Maal Wa Tamwil

Baitul Mal Wa Tamwil (BMT) consists of two phrases Baitul Mal and Baitul Tamwil, literally/lughowi Baitul Maal means house of funds and Baitul Tamwil means house of business. The two meanings have different meanings and different impacts. In terms of terms, Baitul Mal is a house or place that manages assets collected from zakat, infaq and shodaqoh for social purposes according to sharia rules. While Baitul Tamwil is a house or place to manage funds in the form of community or community savings and channeled for commercial purposes. When combined, the definition of BMT is a microfinance institution whose operations are based on the principle of profit sharing with the aim of developing micro and small businesses and elevating the dignity of the needy and poor.⁷

BMT as an Islamic financial institution in activating increased development of community economic activities based on sharia laws in every activity and activity. Viewed from this understanding point of view, a comprehensive understanding can be drawn that BMT is a business organization that also plays a role as a social center. The social role

of the BMT institution can be seen in the definition of baitul maal, while the business role of BMT can be seen from the definition of baitul tamwil.⁸

Baitul Maal Wat Tamwil (BMT) has the function of collecting and distributing funds to the public like other banks or financial institutions. Baitul Maal Wat Tamwil (BMT) was established with the idea of flexibility in reaching the lower classes of society, namely small people's economic institutions because most of them are small traders who cannot take advantage of credit facilities from conventional banks to develop their businesses, this is due to the difficult procedures of conventional banks and weaknesses owned by small traders and small entrepreneurs in terms of management, marketing and guarantees which are important factors for bank assessment.⁹

Different characteristics from similar financial institutions. However, it specifically has the following characteristics;

1. Business oriented, seeking mutual profit, increasing the most economic benefits for members and society.
2. Not a social institution, but useful for streamlining the collection and distribution of zakat, infaq and alms funds for the welfare of many people.
3. It is grown from below based on the participation of the surrounding community.¹⁰

⁷ Muslim Tanjung and Arina Novizas, "Existence Of Baitul Mal Wa Tamwil (Bmt) In The Islamic Economy," *Journal of Master of Laws* 3, no. 1 (July 17, 2021): 28–29.

⁸ Soritua Ahmad Ramdani Harahap and Mohammad Ghozali, "The Role Of Baitul Mal Wa Tamwil (Bmt) In The Economic Development Of People," *Human Falah: Journal of Islamic Economics and Business Studies* 7, no. 1 (June 17, 2020): 21,

<http://jurnal.uinsu.ac.id/index.php/humanfalah/article/view/4058>.

⁹ Isma Ilmi Hayati Ginting and Ilyda Sudardjat, "Analysis Of Bmt Development Strategy (Baitul Maal Wat Tamwil) In Medan City," *Economics and Finance* 2, no. 11 (November 19, 2015): 671, <https://jurnal.usu.ac.id/index.php/edk/article/view/11722>.

¹⁰ Strong Ismanto, "Management Of Baitul Maal In Baitul Maal Wa Tamwil (Bmt) In Pekanbaru City."

History of Baitul Maal Wa Tamwil in Indonesia

The development of BMT in Indonesia began with the establishment of Bank Muamalat Indonesia (BMI) in 1992, which in practice BMI's operational activities were based on sharia values. After the establishment of BMI, the opportunity arose to establish sharia-compliant banks, but BMI's operations did not reach small and medium-sized businesses. Then efforts emerged to establish banks and microfinance institutions, such as Islamic People's Financing Banks (BPRS) and BMTs, which aimed to overcome operational barriers in the regions. This condition became the background for the emergence of BMT in order to be able to reach local communities to remote villages. The development of BMT itself is the result of an initiative from the Small and Medium Enterprises Business Incubation Center (PINBUK), which is a working body formed by the Small and Medium Enterprises Incubation Foundation (YINBUK). YINBUK itself was formed by the Chairperson of the Indonesian Ulema Council (MUI), the General Chairperson of the Association of Indonesian Muslim Scholars (ICMI) and the Main Director of Bank Muamalat Indonesia (BMI).¹¹

Operational Principles of Baitul Maal Wa Tamwil (BMT)

BMT is an Islamic financial institution with a profit-sharing system, in managing existing funds BMT uses several operational principles, including:

1. The principle of profit sharing for each type of business in which there is a principle of profit sharing, there will be profit sharing between the BMT and its customers.
2. The principle of buying and selling is a buying and selling procedure in which the BMT appoints the customer as an agent who is authorized to purchase goods on behalf of the BMT, and then acts as a seller by selling the goods he has purchased plus a markup. Profits obtained by BMT will be shared with the provision of funds based on the agreement.
3. The principle of non-profit This is a principle that is often referred to as benevolent financing or social and non-commercial financing. In this financing, the customer only needs to return the principal of the loan
4. The principle of a cooperative contract is a collaboration between two or more parties in which each party includes capital in various forms with an agreed profit or loss sharing agreement.
5. The principle of financing the provision of money and bills based on a loan agreement or agreement between BMT and other parties, which requires the borrower to pay off the debt along with profit sharing after a certain period of time.

In addition to the principles above, BMT also has other non-business principles in its operations, such as input products for worship funds, such as zakat, infaq, alms which are handed over directly to those entitled to receive them.¹²

Research Journal 12, no. 1 (May 3, 2015): 28, <https://doi.org/10.28918/jupe.v12i1.641>.

¹¹ "The History and Legal Entity of Baitul Maal wat Tanwil (BMT)," hestanto personal website, March 29, 2017,

<https://www.hestanto.web.id/History-dan-badan-Hukum-baitul-mal-wat-tanwil/>.

¹² Melina, "Murabahah Finance In Baitul Maal Wat Tamwil (Bmt)," 273–74.

Baitul Maal Wa Tamwil (BMT) As a Sharia Cooperative Legal Entity

Legally, BMT is under the umbrella of cooperatives, but its operational system is not much different from Syari'ah Bank, so the products developed in BMT are like those in Syari'ah Bank. Meanwhile, Islamic banks have a juridical basis in the form of laws concerning Islamic banking, namely Law no. 21 of 2008 concerning sharia banking, so strong legal legitimacy was born there as its auspices. Because it is a cooperative legal entity, BMT must comply with Law Number 25 of 1992 concerning Cooperatives and PP Number 9 of 1995 concerning the implementation of savings and loan businesses by Cooperatives. KEP.MEN also emphasized Number 91 of 2004 concerning Sharia Financial Service Cooperatives. This law serves as an umbrella for the establishment of the BMT (Shari'ah Microfinance Institution).¹³

In Indonesia, policies regarding cooperatives have existed for a long time along with the existence of cooperatives. In 1958 the policy regarding cooperatives was regulated in Law no. 79 of 1958. Law no. 79 of 1958 entitled cooperative association. then in 1965 the policy regarding cooperatives was renewed with the birth of Law No. 14 of 1965 with the title Law on Cooperatives. In 1992 again changes were made regarding the Cooperative Law, precisely Law no. 25 of 1992, then in 2012 another amendment was made to the Cooperative Law in line with the development of cooperative activities in Indonesia. Birth of Law No. 17 of 2012 concerning cooperatives raises many pros and cons, because many different things are

trying to be presented in order to strengthen Indonesian cooperatives. These differences include.¹⁴

Table 1. Differences in Laws Regarding Cooperatives

No	The Difference Side	
	Law No. 25 of 1992	Law No. 17 of 2012
1	Cooperatives as business entities and legal entities	Cooperatives as legal entities
2	word consistency in describing definitions	There is a word consistency that outlines the definition of a cooperative as a legal entity
3	Does not describe more clearly the composition of the capital owned by the cooperative in terms of the separation of the wealth of its members	describes more clearly the composition of the capital owned by the cooperative in terms of the separation of the wealth of its members
4	Describes the Scope of Cooperatives Only in the Economic Sector.	Describe a broader definition which states that cooperatives do not only cover economic needs but also economic, social and cultural fields.
5	Describe the cooperative principle as a guideline adopted by cooperatives.	Not only outlining cooperative principles as a guideline for carrying out operational activities but also guided by values
6	Outlining the principles	Describe the principle of

¹³ Tanjung and Novizas, "Existence Of Baitul Mal Wa Tamwil (Bmt) In The Islamic Economy," 29.

¹⁴ Elfa Murdiana, "Initiating the Legal Umbrella of Baitul Maal Wattanwil (Bmt) As A Sharia

Cooperation Within The Ius Constituendum Frame," *Research Journal* 10, no. 2 (December 29, 2016): 281–83, <https://doi.org/10.21043/jupe.v10i2.1816>.

No	The Difference Side	
	Law No. 25 of 1992	Law No. 17 of 2012
	of cooperatives not only emphasizes the nature of membership and management of cooperatives but also records the emphasis on remuneration from the remaining business results obtained.	cooperatives with more emphasis on excellent service as a cooperative principle and revise the emphasis on remuneration from the remaining business results obtained .
7	outlines the definition of cooperatives based on kinship principles.	does not describe the definition of cooperatives based on the principle of kinship

One of the rules regarding the legal entity status of BMT is the Decree of the Minister of Home Affairs of the Republic of Indonesia, Director General of Regional Development Number 538/PKKN/IV/1997 dated 14 April 1997 concerning Legal Entity Status for Islamic Financial Institutions. According to these provisions, alternative legal entity status for BMTs includes an Autonomous Business Unit from an existing KUD (Village Unit Cooperative), the KUD (Village Unit Cooperative) itself, if the BMT is financially and institutionally feasible, or as an autonomous business unit from a cooperative. existing ones such as pesantren cooperatives and so on, and sharia savings and loan cooperatives.

BMTs with cooperative legal entities can obtain business licenses from the Ministry of Cooperatives and SMEs and are included in the KJKS or JKS Cooperative Unit. This is based on the Decree of the Minister of Cooperatives and SMEs Number

91/Kep/M.KUKM/IX/2004 concerning Guidelines for Implementation of Sharia Financial Services Cooperative Business Activities (KJKS). BMTs with cooperative legal entities can operate in the fields of financing, investment and savings according to sharia principles. KJKS and UJKS Cooperative business activities include withdrawing/collecting funds and redistributing these funds in the form of financing/receivables. In addition, KJKS and UJKS Cooperatives can also carry out 'maal' activities or activities for collecting and distributing zakat, infaq and sodaqoh (ZIS) funds. In other words, KJKS and UJKS cooperatives have characteristics similar to BMT. As an Islamic financial institution, KJKS or BMT must maintain the credibility and trust of members in particular and the wider community in general.¹⁵

Baitul Maal Wa Tamwil Services and Products

Baitul Maal wat Tamwil (BMT) is expected to become an institution supporting economic activities for the lower classes, with a sharia-based BMT economic system, of course BMT is far different from conventional institutions which prioritize the interest system (usury), which is clearly legal. unlawful in Islamic economics because it can contain usury, namely profits that arise without any risk in acting, business results appear without any costs and only with the passage of time. The interest system is also very detrimental to the community, because interest payments are made as promised regardless of whether the project carried out by the customer makes a profit or a loss.¹⁶

¹⁵ Tita Novitasari, "The Role of the Financial Services Authority in Oversight of the Baitul Maal Wa Tamwil (BMT) Institution: A Case Study of BMT Global Insani," *Law: Journal of Law 2*, no. 1 (October

28, 2019): 126, <https://doi.org/10.22437/ujh.2.1.119-145>.

¹⁶ Krisna Sudjana and Rizkison Rizkison, "The Role of Baitul Maal Wat Tamwil (BMT) in Creating a Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi dan Keagamaan | 335

As a sharia financial institution operating in the micro sector, BMT has an important function and role to support the improvement of the people's economy. BMT principles can work well if the function is carried out with good governance and procedures. Muhammad Ridwan explained that there are five functions that must be carried out by the BMT; First; Identify, mobilize, organize, encourage and develop the economic potential and capabilities of members, groups of mu'amalat members and their working areas. Second; Improving the quality of human resources for members and their focus on becoming more professional and Islamic, so that they are more intact and resilient in facing global competition. Third; Raising and mobilizing community potential in order to improve the welfare of members. Fourth; Being a financial intermediary (financial intermediary) between people who have excess assets as shahibul maal, and people lacking assets as mudharib, especially for social funds such as zakat, donations, alms, endowments, grants and others. Fifth; Become a financial intermediary (financial intermediary) between owners of capital (shahibul maal), both as financiers and depositors with users of funds (mudharib) for productive business development.¹⁷

The process of financing or granting credit at BMT is carried out according to several shari'ah principles, even if these financial institutions are small and micro, but the application of shari'ah must be carried out. There are several principles in sharia

financing: Four general prohibitions to consider when structuring an Islamic financing on: (i) Interest in the form of money, for the use of money (usury), interpreted as any prohibition that has been predetermined, or calculated guaranteed other than with actual reference profits made, (ii) gambling, speculation and other activities the outcome of which is uncertain, this would include transactions in futures and options, (iii) using or dealing in certain prohibited commodities, for example, alcohol, and (iv) uncertainties in contracts (gharar).¹⁸

There are several products offered by BMT to its customers, including:

1. The first product is a fundraising product, namely in the form of wadiah deposits and mudharabah deposits. Wadiah deposits are deposits or deposits that the customer or member can withdraw at any time by issuing securities for transferring books/transfers and making other payments. Wadi'ah deposits are divided into 2 (two) namely wadhi'ah amanah (entrusted funds such as zakat, infaq, and shodaqoh) and wadhi'ah yadhomanah (entrusted which will receive a bonus from the bank if the bank experiences profits from utilizing customer funds circulation). Mudharabah deposits are deposits of fund owners whose deposits or withdrawals can be made in accordance with a pre-agreed contract or agreement. Types of savings products

Competitive Sharia Economy," *Scientific Journal of Islamic Economics* 6, no. 2 (2020): 188, <http://dx.doi.org/10.29040/jiei.v6i2.1086>.

¹⁷ Irfan Islami, "Juridical Review Of The Role And Position Of Baitul Maal Wat Tamwil (Bmt) As A Financial Institution In Indonesia," *ADIL: Journal of*

Law 6, no. 2 (2015): 204, <https://doi.org/10.33476/ajl.v6i2.822>.

¹⁸ Muljadi Muljadi, "Shari'ah Marketing Operationalization of Baitul Maal Wat Tamwil (Bmt) Products in Banten Province," *Journal of Behavior and Business Strategy* 2, no. 2 (August 28, 2014): 40, <https://doi.org/10.26486/jpsb.v2i2.341>.

that use mudharabah contracts include: Eid savings, Eid al-Qurban savings, Hajj savings, Education savings, Health savings, and others.¹⁹

2. The second product is a Fund Channel product in the form of financing or investment, with the principle of sale and purchase (murabahah), profit sharing principles (mudharabah and musyarakah), and qardhul hasan financing which is carried out based on sharia principles. In this context, the BMT functions as an institution for managing and empowering community funds, by establishing cooperative partners between the management of the BMT and the community, namely by collecting public funds and then redistributing them to the public (customers) who are engaged in the productive business sector and need financial assistance with a profit-making nature. Examples of this product are mudhorobah financing, musyarokah financing, murobahah financing and Bai' Bitsaman Ajil financing.²⁰ A murabahah contract is a sale and purchase of goods at the cost of the goods plus an agreed profit margin. According to Islamic law experts (fuqaha), the meaning of murabahah is "al-bai bira'sil maal waribhuna ma'lum" which means buying and selling with basic goods plus known profits. The fuqaha describe murabaha as a form of buying and selling on the

basis of trust (dhaman buyu' al-amanah). According to the National Syari'ah Council, murabahah is selling something by confirming the purchase price to the buyer, and the buyer pays it at a higher price as profit.²¹

Consumer and Customer Protection Baitul Maal Wa Tamwil

BMT is a financial service institution that has an important role as an alternative financing for MSMEs apart from banking. However, currently BMT still has many weaknesses to be able to develop its business activities. Capital problems are the main problems faced by BMT. Apart from that, the BMT supervisory system is weak, the lack of competent human resources in the field of sharia cooperatives is a problem that must be resolved immediately. Public understanding of the sharia financial system is still very low and its role as Baitul Maal or the role of depository of zakat, infaq and alms funds which is also still very low needs to work with related parties to solve it.²²

As shari'ah banking was rolled out in the mid-1990s, these sharia financial institutions did not always run as well as expected. There are several BMTs that have experienced failures in their operations which have resulted in neglected customers and BMTs unable to restore customer rights. At the end of the year there were many

¹⁹ Mohamad Safri_Ferdiansyah et al., "EFFECT OF BAITUL MAAL WA TAMWIL(BMT) SITI HALIMAH ON THE ECONOMIC PROGRESS OF ITS CUSTOMERS IN PRAMBANAN SUB-DISTRICT, KLATEN," *at-thullab Islamic Studies Student Journal* 3, no. 2 (December 13, 2021): 716–17, <https://journal.uui.ac.id/thullab/article/view/21824>.

²⁰ Habbibie, "Juridical Analysis of Law Number 1 of 2013 Concerning Microfinance Institutions Against Baitul Tamwil," 299–302.

²¹ Fatmi Nuryanti, Abdul Qahar, and Hamza Baharuddin, "Legal Protection of Parties in a

Murabaha Agreement: Aqad Istishna Study' No. 001/BMT-NH/PSY/2019," *Journal of Lex Generalis (JLG)* 1, no. 1 (June 21, 2020): 58, <https://doi.org/10.52103/jlg.v1i1.73>.

²² Sony Hendra Permana and Masyithah Aulia Adhiem, "DEVELOPMENT STRATEGY OF BAITUL MAL WATTAMWIL AS AN ALTERNATIVE SOURCE OF FINANCING FOR MICRO, SMALL AND MEDIUM ENTERPRISES," *Study* 24, no. 2 (October 16, 2020): 111, <https://doi.org/10.22212/kajian.v24i2.1862>.

bankrupt BMT cases, and the impact that would occur was a crisis of public trust, especially towards BMT. Discussing BMT bankruptcy, of course, is inseparable from its relation to customers, including how the rights of customers who channel their funds to BMT, whether the legal protection is sufficient as stated expected by the customer or still not.²³ For this reason, it is necessary to have legal protection for customers if bad things happen to BMT.

According to Article 1 Paragraph (15) and (16) of the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 11/Per/ M.KUKM/XII/2017 Concerning Implementation of Sharia Savings and Loans and Financing Business Activities, cooperative customers are referred to as members and and/or prospective members. Cooperative Members, hereinafter referred to as Members, are owners as well as users of Cooperative services and are recorded in the register of members. Prospective Members are individuals/cooperatives who have paid their principal savings to their cooperative, but have not formally completed the administrative requirements, that is, have not signed the register of members. Legal protection for cooperative customers is protection by using legal means aimed at protecting the interests of cooperative customers, namely members and prospective members who are harmed by cooperatives. The Civil Code can be used as a legal reference for BMT cooperative customers, namely:²⁴

Table 2. Legal protection for BMT customers

Legal protection		
legal protection due to unlawful acts	legal protection due to default.	use coercion.
Any unlawful act that causes harm to another person is obligated by the person who caused the loss to compensate for the loss. The elements of an unlawful act are: there is an unlawful act; There is a mistake; there is a causal relationship between the loss and the deed; there is a loss.	The debtor is required to pay compensation for losses suffered by the creditor. If the agreement is reciprocal, the creditor can demand termination or cancellation of the agreement through judge	Forcing the other party to comply with the agreement if it can still be done, or sue cancellation of consent, with reimbursement of costs, losses and interest.

Customers depositing funds both at banks and BMTs (which are generally small savers) when viewed from their position according to the Civil Code are as concurrent creditors, creditors who must share with other creditors in obtaining their rights after the wealth of the bank or BMT is reduced for preferred creditors and special creditors others, including obligations to the State. Customers depositing funds at BMT do not receive guarantees from the government

²³ Muhammad Isnan, "Protection of BMT Beringharjo Customers, Ponorogo Branch, Positive Legal and Legal Perspectives," *Muslim Heritage* 1, no. 1 (May 15, 2016): 116, <https://doi.org/10.21154/muslimheritage.v1i1.385>.

²⁴ Nurbaity Prastyanda Yuwono, "Legal Protection of Unhealthy Baitul Maal Wat Tamwil (BMT) Cooperative Customers in the City of Yogyakarta," *JURNAL HUKUM ISLAM*, June 5, 2020, 37–38, <https://doi.org/10.28918/jhi.v18i1.2845>.

(because there is no law that regulates it) for their funds if there is a crisis at BMT. Therefore, if a BMT goes bankrupt, we must refer to the provisions contained in the Civil Code. The Civil Code places depositors of funds at BMT in the position of concurrent creditors. As a concurrent creditor, the right to get a refund must be shared with other creditors after BMT assets are used to settle BMT obligations to preferred creditors.²⁵

Potential of Baitul Maal Wa Tamwil (BMT) as a Financial Empowerment Institution

BMT as a financial institution that operates on a micro scale has extraordinary potential in developing middle and lower class businesses. With the convenience provided, BMT is increasingly known and chosen as a financial institution that helps with capital needs through both productive and consumptive financing in the community. This shows that BMT is able to appear and play a role as a financial intermediary institution.

As a shari'ah financial institution, BMT always bases all activities on shari'ah principles. The most basic sharia principle that is often used is a fair profit sharing system, both in terms of raising and distributing funds. This profit-sharing system is known as profit and loss sharing, where this can be interpreted as the distribution of profits and losses from the income received for the business results that have been carried out. So far, most BMTs have tried to carry out the Islamic finance function in a professional manner and adhere to sharia

principles.²⁶

Baitul Maal Wat Tamwil is a sharia microfinance institution whose target is the people's economy trying to develop productive businesses and investments with a profit-sharing system. The main goal is to improve the economic quality of micro and small entrepreneurs, as part of efforts to eradicate poverty. BMT stands with the idea of flexibility in reaching the lower classes of society, namely the economic institutions of the common people. BMT is trusted by the people because BMT continues to serve the needs of the lower class.²⁷

In the financial sector, the provision of financing by BMT is interpreted as a temporary injection of funds that are not permanent, the community is empowered to be able to manage funds in order to improve their economy. With existing financing, micro-communities can create capital accumulation, increase surplus and prosperity for their members and society in general. Then to customers who are considered less able (very poor category) but have business ability, the BMT is given *qardul hasan* financing (meaning that the person only repays the loan). With the concept of empowering the people's economy, BMT has helped micro-communities to fulfill their daily needs, not dependent on government subsidies, able to create a capital surplus, so as to increase their productivity.

In the real sector, the role of BMT in encouraging the real sector is also

²⁵ Neni Sri Imaniyati, "Protection of BMT Customers If BMT Goes Bankrupt (Taflis)," *MIMBAR: Journal of Social and Development* 21, no. 4 (December 13, 2005): 517–18, <https://doi.org/10.29313/mimbar.v21i4.191>.

²⁶ Murdiana, "Initiating the LEGAL UMBRELLA OF BAITUL MAAL WATTANWIL (BMT) AS A SHARIA

COOPERATION WITHIN THE IUS CONSTITUENDUM FRAME," 283.

²⁷ Muljadi, "Shari'ah Marketing Operations on Baitul Maal Wat Tamwil (Bmt) Products in Banten Province," 37.

recognized by Bank Indonesia (BI). BMT is a solution for Micro, Small and Medium Enterprises (MSMEs). Because MSMEs usually have difficulty getting access to capital to banking because there are procedures that are difficult and cannot be fulfilled by the small community, such as having adequate collateral and so on. Specifically to overcome the problem of access to capital in the MSME sector, currently Islamic banks have collaborated in channeling financing to this sector. This collaboration is in the form of financing cooperation that uses the linkage concept, in which larger Islamic banks channel their MSME financing through smaller Islamic financial institutions, such as BPRS and BMT. This is done because the reach of large Islamic banks that have not reached remote areas of small business community centers or small Islamic financial institutions has more direct contact with MSME business actors.²⁸

Conclusion

After conducting in-depth research, two conclusions were found : first, baitul Maal Wa Tamwil currently uses the cooperative law as its legal basis. BMT is subject to cooperative regulations, namely Law No. 25 of 1992 concerning Cooperatives which has been amended to Law No. 17 of 2012 concerning Cooperatives. However, since the enactment of Law No. 1 of 2013 concerning Microfinance Institutions (LKM), the institutional status of BMT legal entities has become a separate problem that burdens BMTs. Most of the existing BMTs are cooperative legal entities with small and medium scale businesses and a wide range of businesses covering several cities/regencies, even across provinces.

However, by setting BMT as an LKM as stated in Law no. 1 of 2013, the breadth of the BMT business scope is limited. If you want to expand your business to other cities/regencies, BMT must transform into a bank.

Second, the potential for community economic development through Baitul maal wa tamwil is extraordinary because of the financing products (mudhorabah/profit sharing) carried out by baitul mal wa tamwil. The presence of BMT to absorb the aspirations of the Muslim community in the midst of anxiety over economic activities with the principle of usury, as well as supporting funding to develop activities to empower small and medium enterprises

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²⁸ Mashuri, "The Role of Baitul Maal Wa Tamwil (BMT) in Community Economic Empowerment Efforts," 122.

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