

# Legal Entities for Baitul Maal Wat Tamwil Based on Sharia Principles in Indonesia

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**ABSTRACT**--*The existence of BMT microfinance institutions is legally recognized by Regulation No. 1 of 2013 concerning microfinance institutions, as middle to lower financial institutions that can alleviate poverty. The problem arises when Article 5 paragraph [1] of Regulation number 1 of 2013 stipulates that microfinance institutions must be in the form of a limited liability company or cooperative. BMT operations that have been forced to join cooperatives have been problems that need to be resolved so that BMT can be optimally managed. Limitations of BMT movement patterns that use cooperative legal entity clothing will become BMT growth barriers in the land. So it takes an ideal business entity form that is specific to BMT itself. The result is the ideal form of BMT, Cooperative. Financial services born from the cooperative legal entity are expected to continue to meet the characteristics of financial institutions that adhere to the principles of sharia, in contrast to conventional financial institutions. These different characteristics are the basis for the need for a new legal entity capable of accommodating cooperative financial service activities. Sharia principles that are attached to the legal entity of Shirkah must be understood as the realization of adherence to Islam as a life guideline that regulates all aspects of life.*

**Keywords:** legal entity, BMT, Sharia principles

## I. INTRODUCTION

The development of the Islamic finance industry in the decade has experienced very rapid progress, such as Islamic banking, Islamic insurance, sharia pawnshops, sharia capital markets, Islamic bonds, Islamic mutual funds and also Baitul Maal Wat Tamwil [BMT].

Data from the Ministry of Cooperatives, micro, small and medium enterprises 2018 in Indonesia, there are 5000 Islamic financial institutions, including 34 Islamic banks, 58 Takaful or Sharia Insurance operators, 7 Islamic venture capital companies, 163 Islamic Rural Banks, 4500 BMT and 1 institution Islamic venture. But on the other hand, the share of Islamic financial market in Indonesia is still relatively small, namely 5.7% of the total national banking industry. Compare with Malaysia which has reached 23.8% [1].

BMT as one of the Islamic financial institutions has an important role in the effort to alleviate poverty. Historically, BMT started from the forerunner of the struggle at the Salman Mosque of Bandung Institute of Technology which established a teknosa expertise service cooperative in 1980 and later developed into BMT in 1984 [2].

The existence of BMT microfinance institutions is legally recognized by Regulation No. 1 of 2013 concerning microfinance institutions, as middle to lower financial institutions that can alleviate poverty. The problem arises when Article 5 paragraph [1] of Regulation number 1 of 2013 stipulates that microfinance institutions must be in the form of a limited liability company or cooperative. The majority of BMTs choose cooperative legal entities because cooperatives are closer to BMT's goal, namely to improve the welfare of small communities. While other legal entities aim to increase profits only [3]. The fact shows that so far there has only been one BMT that is incorporated as a Limited Liability Company, namely BMT Ventura in Jakarta. In addition to philosophical issues, there are also psychological problems. Limited company is a legal entity as a representation of secularistic, liberalistic and individualistic business philosophy. Whereas BMT is more religious, communal and familial. Likewise, there are psychological burdens related to limited liability companies which are connected as upper class legal entities as they occur in the Bank's financial institutions.

Philosophically BMT prioritizes religious aspects and togetherness, while limited liability companies are only oriented towards secular, liberal and individualistic businesses. So that a legal entity that approaches a goal similar to BMT is a form of cooperative. Although the form of cooperatives in fact is also not able to accommodate the work pattern of BMT as a whole because it is philosophically different. Cooperative philosophy is a people's economic movement based on the principle of family. While the philosophy of BMT is to seek the pleasure of Allah to obtain virtue in the world and in the hereafter [4].

BMT operations that have been forced to join cooperatives have been problems that need to be resolved so that BMT can be optimally managed. Limitations of BMT movement patterns that use cooperative legal entity clothing will become BMT growth barriers in the land. So it takes an ideal business entity form that is specific to BMT itself.

## II. RESEARCH METHOD

This study of research uses empirical law which consists of research on legal identification and research on the effectiveness of law. The data use primary and secondary data. Data collection methods by interview, focus group discussion and literature study. Data analysis

technique in this research is using model Interactive analysis.

### III. FINDINGS AND DISCUSSION

#### 1. *The Concept of Baitul Maal Wat Tamwil*

The research theory used is rationalism and traditionalism of Islamic law. At first Islamic law was born naturally under the guidance of revelation carried out directly by the Prophet Muhammad. Likewise in the era of friends and tabi'in, Islamic law grows and develops naturally through their instincts and instincts in absorbing the divine blessings and the words of the Prophet. Practically, in this period of time, the birth of Islamic law was not backed by heated debates among Islamic jurists both from friends and tabi'in.

Only in the era of al-tabi'in, precisely in the 2nd century Hijri, Islamic law experienced rapid development along with the expansion of the Islamic region and the realm of the application of law as the embodiment of God's revelation. If in the previous two periods Islamic law was born naturally through revelation guidance. Then, in this period the birth of Islamic law cannot be separated from academic anxiety which then led to the Rationalist legal paradigm [ahlul ra'yi] on the one hand and the Traditionalist legal paradigm [ahlul hadith] on the other. This reality is actually backed by the increasingly long distance between the revelation period and the growing reality of society.

The source of revelation in the form of religious texts, both the Qur'an and the hadith, has stopped descending after the death of the Messenger of Allah. Meanwhile, realities of the community continue to move dynamically along with the rotation of the times. Which at that time was often simplified into qiyas [analogy]. Following this approach the pattern is commonly referred to as the ahlul ra'yi. On the other hand, not a few of them maintain a tradition that has institutionalized into a formal reference in legal excavation activities. This approach is commonly referred to as the Ahlul Hadith [5].

The members of the ahlul hadith are often attributed to the character of Imam Malik bin Anas [w.179 H] based in Hijaz, while among the ahlul ra'yi represented by Imam Abu Hanifah [w.150 H] in Baghdad. Imam Malik is bound by fatwa and traditions of the people of Medina in Istimbath's legal activities, then the Imam Abu Hanifah who lived in a metropolitan city was very rational and very selective in selecting and sorting the hadiths that can be used as a legal basis. Therefore, in His Istimbath activity, he often used the analogy [Qiyas] rather than the hadith texts which still debated his authenticity [6].

The birth of Islamic legal methodology is inseparable from academic anxiety which then led to polarization of the two thought paradigms above, namely the paradigm of rationalism and traditionalism. Imam Shafi'i [w.204 H] who then looked closely at the background of the two parties' thought debates. The party, al-Shafi'i studied the figures of traditionalism in Makkah before migrating to Medina to study fiqh to Imam Malik.

On the other hand, his scientific wanderings continued to Iraq to study rational figures such as Imam Abu Hanifah and Muhammad bin al-Hasan [d.189 H]. With this kind of ilmiah rihlah capital, al-Shafi'i then could combine the use of the source of the holy teachings in the form of text with the ratio ability simultaneously. In one party, he greatly respected the use of the Sunnah as source of legal inspiration. On the other hand, he also cannot deny the importance of using analogies in the determination of syar'i laws [7].

Comprehensive observation of the two schools above then encouraged al-Shafi'i to lay the foundations of the legal istimbath method as reflected in the piece master, al-Risalah. With the establishment of this methodology of Islamic law, a heated debate between the two schools of thought became decreases, or even disappears altogether, because each other then understand the nature of difference and can refer to all aspects of the difference in the basics of Istimbath that Al-Shafi'i has built and recorded. The role of al-Shafi'i mediates rationalists and This traditionalist is enough to contribute to the development of Islamic legal thought to date. No less than figures such as Mohammad Arkoun, an Algerian-born Islamic thinker, once stressed that after the birth of the formulation of the methodology of Islamic law by al-Shafi'i, the area was originally thinkable. [unthinkable] to be unthinkable.

The embryo's approach to the ahlul ra'yi-ghoul hadiths began to grow since the era of companions, although with different levels of incentives than in the era of 'al-tabi'in marked by the emergence of great mahzabs in science fiqh. Umar bin Khatab RA, for example more prioritizing the observation of social reality rather than formalist textual teachings. The bookkeeping book of the Qur'an does not give a portion of the muqafah zakat, refuses to hand cuts, and similar examples can be captured as a reflection of Umar's mind that embraces the pattern of rationalism. within certain limits can present such patterns of thought. On the other hand, the pattern of traditionalism is also a trade mark for other companions such as Abu Bakr ash-Shiddiq RA, Abdullah Ibn Mas'ud RA, and others. In the next phase tabi'in, the fortress of rationalism was represented by 'Alqamah al-Nakha in Iraq, while the traditionalist fort was presented by Saad ibn al-Musayyib in Medina.

In fact, not all adherents of the rationalism mindset immediately ignore the formalities of the text, as it does not mean that adherents of the traditionalism thinking mind just ignore the aspect of reason in observing reality. Something that really distinguishes the two thought patterns above is the dominant segmentation between appreciating the text imagine teaching on the one hand and how to transform it towards the reality faced by the other. If the pattern of rationalism is more wrestling with the aspect of reality contextually, then the traditionalism mindset is more textual-formalistic in addressing the existence of the text. can integrate both in a complementary context, each other can complement each other in a proportional manner.

In the esoteric-divine teachings segment, the appreciation of the teachings is literally and traditionally because of the face of the authority of the Lord of the universe. All texts of God's divinity do not necessarily require a metaphorical interpretation of metaphorical instruments. In contrast, the divine domain simply requires deep appreciation in the there is faith and surrender. The space of reason in the divine text is not as big and loose in the text that is humanized [insaniyyah]. If in the divinity segment the reasoning moves around ontological and philosophical levels, then in the exotic-humanity segment the reasoning style moves more escalatively towards the reality tang keeps moving dynamically. In this context, legal research has a very central role to connect esoteric revelation texts and switches with the context of exoteric and profane human life.

The basic philosophy of cooperatives that does not correspond to the philosophy of BMT [Baitul Maal Wa Tamwil] requires the establishment of a new legal entity that philosophically supports the growth of BMT growth as a financial institution that applies sharia principles. Because in reality the cooperative legal entity used by BMT is a compulsion that must be ended [8].

#### *2.Implementation of BMT as Cooperative Legal Entities*

Barriers experienced by BMT in implementing cooperative legal entities include:

- a. BMT with Regulation No.25 of 1992 concerning cooperatives must choose one of the cooperative activities, namely savings and loan cooperation. However, BMT is different from Islamic savings and loan cooperatives so that the implementation of BMT, however, must be adjusted with the sharia savings and loan cooperative [9].
- b. The original purpose of BMT is to prosper the community through cooperatives that have not become members, they must become members first.
- c. BMT as cooperative legal entities have not been considered as full legal entities because they involve management as collateral.
- d. Legal regulation of BMT is still weak because it refers to the cooperative law, there are no laws specifically regulating BMT.
- e. Lack of supervision from the cooperative service caused some of the BMT collapse to be taken away by the Manager.

Cooperative legal entity that the writer tries to formulate is a combination of a group of people and a collection of capital. The form of a legal entity which is a group of people in Indonesia is recognized by a cooperative legal entity. Whereas a legal entity consisting of a collection of capital is recognized in a legal entity of a Limited Liability Company [10].

A legal entity is a supporter of rights and obligations, as a supporter of rights and obligations he can establish business relations with other parties. For this reason, a legal entity must have wealth separate from the wealth of the founder or its management. In the event of a condition where the obligation is not fulfilled, it cannot be

taken from the wealth of the founder or the administrator to close the bankruptcy. So that if there is an obligation of a legal entity that is borned by the founder or management, then in fact it is not legally valid. Because in principle personal property is separate from the property of legal entities [11].

Cooperative legal body formulated by the author aims to provide financial services for the weak economic community. The problem that has been the focus of research studies is how weak economic communities can access financial services that are expected to improve the living standards of people in this class so as to be able to overcome poverty problems. However, financial services born from the cooperative legal entity are expected to continue to meet the characteristics of financial institutions that adhere to the principles of sharia, in contrast to conventional financial institutions. These different characteristics are the basis for the need for a new legal entity capable of accommodating syirkah financial service activities. Sharia principles that are attached to the legal entity of cooperative must be understood as the realization of adherence to Islam as a life guideline that regulates all aspects of life.

#### IV. CONCLUSION

Based on the explanation described above, it can be concluded as follows:

- a. The ideal legal entity for BMT is the cooperative legal entity which is the embodiment of Baitut Tamwil which can be used by BMT.
- b. The amount of responsibility that must be borne internally by cooperative members is the amount of capital and assets deposited.

BMT with Regulation Number .25 of 1992 concerning cooperatives must choose one of the cooperative activities, namely savings and loan cooperation. The purpose of BMT is to prosper the community through cooperatives that have not become members, they must become members first based on sharia principles.

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