

**THE IMPLEMENTATION OF COOPERATIVE LEGAL ENTITY IN  
BAITUL MAL WATAMWIL (BMT) ALFA DINAR SURAKARTA BRANCH  
OFFICE**

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**ABSTRACT**

The present study aimed to find out and to analyze the implementation of cooperative legal entity in BMT (*Baitul maalwaTamwil*) Alfa Dinar Surakarta Branch Office. The present study was classified as empirical legal study grounded from primary data obtained during the study in BMT Alfa Dinar.

In carrying out its business, BMT faces a problem relating to legality. The problem arises due to the absence of specific regulations regarding BMT. To date, BMT is a financial management institution that is seeking for a form that fits the financial institution regulation system in Indonesia. In regulatory system, this BMT is backed by two economic institution, namely, Micro Financial Institution (LKM) and Saving and Loan Cooperative (KSP). In its practice, BMT use Cooperative as its legal entity; accordingly, it should adhere to Law on Cooperative. One of the regulations is related to membership. Thus, one of the ways to make membership regulation in Cooperative applicable for BMT is by implementing open principle for BMT, and implementing close principle for the cooperative. This can be done by registering BMT's prospective customer as a member. In this manner, BMT does not violate the membership principle of cooperative and it satisfies the requirement stated in the regulation of BMT.

Therefore, it is necessary to make a specific regulation on BMT to provide legitimacy and legal protection for BMT's business.

***Keywords: Legal entity, BMT, Cooperative***

## INTRODUCTION

BMT stands for *Baitul Mal waTamwil*, or *baitulmaalwabaitultamwil*. Literally, *baitulmaal* means house of fund, and *baitultamwil* means house of business. *Baitul Maal* is developed historically since the prophet period up to the middle of Islam development period. It functions to gather and todistribute social funds. Whereas *baitultamwil* refers to a profit-taking business institution.<sup>1</sup>

From the definition above, BMT can be defined as a business organization that possess social role. BMT's social role can be seen from the definition of *baitulmaal*, while BMT's role as a business organization can be seen from the definition of *baitultanwil*.

The origin of BMT is inseparable from the role of the Center for Micro Enterprise Incubation (PINBUK). PINBUK is an autonomous institution under the Indonesian Association of Muslim Intellectuals (ICMI). From organizational, managerial, and operational perspective, PINBUK provides guidelines and direction to make BMT a professional institution.<sup>2</sup>

In carrying out its business, BMT faces a problem relating to legality. The problem arises due to the absence of specific regulations regarding BMT. BMT's business of collecting and distributing funds contradicts article 16 of Act no. 10 of 1998 on Banking which states that each party who collect funds from the community in the form of deposit, is obliged to obtain business permit as General Bank or Rural Bank from the Head of Bank Indonesia beforehand, unless it is stipulated in other regulations.

In order to obtain legal certainty and legal protection, BMT tuns into Cooperative. By having a legal entity, BMT is allowed to perform legal acts (*rechtshandeling*) in legal relationship (*rechtsbetrekking*). It can perform a transaction and make an agreement, both in its internal and with external parties, i.e with its member, community, or the government.

When there is a legal event where BMT legalize its legal entity as a cooperative, a consequence emerges. Such a consequence is caused by dual institutional matter within one legal entity, i.e., BMT and Cooperative. Dual nature in one entity will change BMT that uses Cooperative legal entity. The domination of one of the institutional matters will affect the management and the operation of BMT that use cooperative legal entity. Besides, the fact that BMT aims to provide services through financing for the community, especially micro and medium business actors, contradicts the membership principle of the Cooperative legal entity. Cooperative aims only to fulfill its member's needs. Whereas, in fact, the regulation used by BMT in carrying out its activity is Cooperative Law.

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<sup>1</sup> Muhammad Ridwan, *Manajemen Baitul MaalWaTamwil*, Yogyakarta: UII Press, 2004, pp. 126.

<sup>2</sup> AndriSoemitra, *Bank dan Lembaga Keuangan Syariah*, Jakarta :Kencana, 2010, pp. 455.

When a BMT use cooperative as it legal entity, it must adhere to all regulations regarding cooperative. The fact shows that in practice, BMT that uses Cooperative legal entity does not necessarily adhere to the cooperative law. It was found that the reason was to prevent the loss of their identity as BMT.

Grounded from the explanation mentioned earlier, the present study aimed to study the implementation of Cooperative legal entity in BMT Alfadinar Surakarta Office Branch.

## PROBLEM STATEMENT

How is the implementation of the Cooperative legal entity in BMT Alfa Dinar Surakarta branch office in serving its customers?

## RESEARCH METHODOLOGY

The present study was an empirical legal study, which also called as socio-legal study, or field research. The present study is often called as a study on law in action among society.<sup>3</sup> The present study was conducted in BMT Alfa Dinar. The present study was analytical descriptive in nature, where the result of the study obtained from the field (in BMT Alfa Dinar) and the literature study are compiled into a descriptive report. Descriptive study is employed to describe various symptoms and facts emerge in social life deeply.<sup>4</sup> The data collection methods of the present study were: field study, it was done by collecting primary data<sup>5</sup>, data obtained from BMT Alfa Dinar. b. Literature study, it refers to a data collection method that is used along with other methods such as interviews, observations, and questionnaire<sup>6</sup>, where the present study employed the interviews as its method. The data analysis model of the present study adheres to the concept proposed by Miles and Huberman. Miles and Huberman state that activities in qualitative data analysis are carried out interactively and continuously on every stage of the study, covering data reduction, data display, and verification, or drawing of conclusion.<sup>7</sup>

## RESULT AND DISCUSSION

Sharia Saving-Loan and Financing Cooperative (KSPPS) (*KSPPS Baitul Mal Wattamwil* (BMT) Alfa Dinar is one of the micro-financial institutions with Cooperative legal entity. KSPPS BMT Alfa Dinar is expected to play a significant

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<sup>3</sup>Jonaedi Efendi dan Johny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris*. Jakarta: Kencana, 2016, pp. 149.

<sup>4</sup> Beni Ahmad Saebani, *Metode Penelitian Hukum*. Bandung: Pustaka Setia, 2008, pp. 57.

<sup>5</sup> Ronny Hanitjo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia Indonesia, 1990, pp. 98.

<sup>6</sup> Suratman & Philips terature Dillah, *Metode Penelitian Hukum*. Bandung: Alfabeta, 2013, pp. 123.

<sup>7</sup> M. Syamsudin, *Operasionalisasi Penelitian Hukum*. Jakarta: PT. Raja Grafindo Persada, 2007, pp. 246.

role for people with moderate and low economic life. Healthy development and growth of BMT is projected to implement the principle of Cooperative and economic business, as well as thorough Islamic sharia. In other words, BMT is a firm, democratic, autonomous, participatory, and social sharia economic organization.

On the other side, BMT is expected to carry out its function to minimize the social gap, become a mean to organize the economy for realizing an advanced, just, and prosperous community based on the principle of brotherhood and people democracy.

Based on the result of the study, it was found that the legal status of BMT Alfa Dinar Branch Office Surakarta was Cooperative. In carrying out its business, BMT Alfa Dinar Branch Office Surakarta employed a sharia profit-loss sharing system. By oriented to Act no. 25 of 1992 on Cooperative, Regulation of Minister of Cooperative and Small and Medium Enterprises (Permenkop& UKM) no. 16/PER/M.KUKM/IX/2015 regarding the implementation of Saving-Loan Business activity and Sharia Financing by Cooperative, Permenkop& UKM no. 11/PER/M.KUKM/IX/2017 regarding the implementation of Saving-Loan Business activity and Sharia Financing by Cooperative. These regulations do not regulate BMT as a sharia cooperative. Accordingly, the legal consequence of BMT with the cooperative legal entity is that BMT should adhere to the basis of the establishment of a cooperative based on Act no. 25 of 1992. Thus, BMT Alfa Dinar Branch Office Surakarta is a cooperative as it is regulated in Act no. 25 of 1992 with sharia loss-profit sharing system as regulated in Permenkop& UKM no. 16/PER/M.KUKM/IX/2015 and Permenkop& UKM No. 11/PER/M.KUKM/XII/2017 regarding the implementation of Saving-Loan Business activity and Sharia Financing by Cooperative.

BMT is looking for its status to obtain legal certainty. In Indonesia, the recognized legal entities are Incorporated company, Cooperative, and State-owned enterprise.<sup>8</sup> Each of these legal entities hold a legal umbrella in the form of regulatory legislation issued by the government. These legislations are Act no. 40 of 2007 on Limited Company, Act no. 17 of 2012 on Cooperative, Act no. 28 of 2004 on Foundation, and Act no. 19 of 2003 on State-owned Enterprise.

The legal entity of BMT can be seen from its status. Following the study conducted by Neni Sri Inayati in 2010, the legal form of BMT can be categorized into three forms as follows:<sup>9</sup>A) BMT with no legal entity, its form is Civil Society Organization (LSM).B) BMT with legal entity, it uses cooperative and foundation as legal entity.c) BMT with unknown legal entity.

The majority of BMT choose to use cooperative as its legal entity since it is close to the purpose of BMT, i.e., improving people's welfare. Whereas other legal entity aims merely to increase profit. Lately, there is a BMT using incorporated company as

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<sup>8</sup> Johannes Ibrahim, *Hukum Organisasi Perusahaan, Pola Kemitraan dan Badan Hukum*, PT. RefikaAditama, Bandung, 2006, pp. 43

<sup>9</sup>Neni Sri Imaniyati, *Aspek-Aspek Hukum BMT*, Citra AdhyaBakti, Bandung, 2010, pp. 101

its legal entity. This BMT is the only BMT using incorporated company as its legal entity. This BMT distributes capital to BMTs in Indonesia. To date, BMT that borrows money from the bank use its management's property as collateral. Accordingly, the legal subject cannot be considered complete, whereas cooperative is a legal entity.<sup>10</sup>

Although BMT and cooperative share same purpose, i.e., to improve people welfare, they have different philosophy and operation. Cooperative, philosophically, is people's economic movement based on principle of brotherhood. The philosophy of BMT is to seek *ridha* from Allah. The cooperative legal entity does not fit BMT. The operation of BMT forcefully adhere to cooperative's, accordingly an ideal business entity for BMT is needed.<sup>11</sup>

To date, BMT is a financial management institution that is still seeking for a form that fits the financial institution regulation system in Indonesia. In regulatory system, this BMT is backed by two economic institutions, namely, Micro Financial Institution (LKM) and Saving and Loan Cooperative (KSP). In Indonesia's regulatory legislation, the position of BMT is actually clear. BMT is recognized as Civil Society Organization as it is regulated in Act no. 1 of 2013 on Micro Financial Institution, and is under the obligation of Financial Services Authority (OJK). In practice, BMT can also be established, managed, and monitored following the authority possessed by Central Government, Provincial Government, and Regency/ Municipal Government based on Act no. 25 of 1992 on Cooperative and Governmental Regulation no. 9 of 1995 on The Implementation of Saving-Loan Activity by Cooperative. The authorized central government institution is the Ministry of Cooperative and Small Medium Enterprise, and Provincial/Regency/Municipal Working Unit for Cooperative.

In its practice, BMT implements Cooperative legal entity. Accordingly, it should adhere to Law on Cooperative. One of the regulations is related to membership. The purpose of cooperative is merely to serve and to improve its member's welfare. Taking broader purposes, BMT aims to serve and improve common people's life standard, especially those with middle to lower-income. Regarding the membership of BMT with Cooperative legal entity, it can be seen from the service provided to its member (customer). BMT Alfa Dinar provide its customer an excellent service. Excellent service refers to a high-quality standard, which always follows the development of customer's need consistently and accurately. The purpose of this service is to obtain customer satisfaction, loyalty, to increase its turnover and profit. The customer can also directly come to BMT Alfa Dinar Office to join BMT Alfa Dinar. BMT Alfa Dinar Branch Office Surakarta also implement proactive service,

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<sup>10</sup>Solikhah, Burhanudin, dan Luthfiah, "Bentuk Badan Usaha Ideal Untuk dapat Dipertanggungjawabkan secara Hukum dalam Pengelolaan Baitul Maal Wat Tamwil (BMT) Berdasarkan Undang-Undang Lembaga Keuangan Mikro di EksKaresidenan Surakarta", Yustisia, Vol.4 No.3 September-December 2015, pp. 633

<sup>11</sup> *Ibid.*

the BMT officer comes to the customer who wants to be a member of BMT or those who want to use BMT financing service.

BMT cannot serve customer who are not registered as a member. Accordingly, the customer who wants to save their money or to apply for financing from BMT Alfa Dinar should firstly register for membership.

People who can join as member of BMT Alfa Dinar Branch Office Surakarta are Indonesian citizens who have following identities: Identity Card, Driving License, Passport, or other identities considered valid in Indonesia. They are also obliged to pay the principals. Individuals without identity as Indonesian citizen as mentioned earlier cannot join as member of BMT Alfa Dinar.

In practice, BMT can select its legal entity whether they want to be Micro Financial Institution following Act on Micro financial Institution, or Saving-Loan Cooperative,/ Saving-Loan unit of Cooperative/ Saving-Loan and Sharia Financing Cooperative/ Saving-Loan and Sharia Financing Unit of Cooperative. According to Act no. 25 of 1992 on Cooperative (Since Act no. 17 of 2012 on Cooperative had been annulled through Judicial Review by Constitutional Court). If a BMT chooses its legal entity as Micro Financial Institution, article 4 of Act on Micro Financial Institution requires a legal entity, whether it is a cooperative or limited company. Out of legal entities recognized by law, cooperative is the legal entity that can be applied by BMT. Thus, one of the ways to make membership regulation in Cooperative applicable for BMT is by implementing an open principle for BMT and implementing close principle. This can be done by registering BMT's prospective customer as member. In this manner, BMT does not violate the membership principle of cooperative and it satisfies the requirement stated in the regulation of BMT.

When BMT use cooperative as its legal entity, BMT should adhere to Act no. 25 of 1992 on Cooperative. Due to vast numbers of BMT with a cooperative legal entity, legal acculturation and innovation are necessary to accommodate BMT's characteristic with sharia cooperative. BMT as sharia cooperative should be established with spirit of democracy and sharia. Spirit of democracy in Indonesia, and spirit of sharia as the characteristic of Islam that adheres to sharia principle in its activity.<sup>12</sup>

BMT is a cooperative legal entity that should possess a clear organ as it is implied in organ theory, as a business is considered a legal entity when it possesses organs with clear function so that BMT can be fictionalized as human who have legal right and obligation.<sup>13</sup>

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<sup>12</sup>ElfaMurdiana, *MenggagasPayungHukum Baitul MaalWattanwil (BMT) SebagaiKoperasiSyari'ahDalamBingkaiIusConstituendum*, JurnalPenelitian, Vol.10, No.2, Agustus 2016, pp. 291

<sup>13</sup> *Ibid*

## **Conclusion**

Based on the result of the study and discussion above, it could be concluded that BMT Alfa Dinar implement cooperative legal entity in BMT activities. Cooperative is a legal entity that is closest to the ideal of BMT due to the similarity of their principle and idealism. In its practice, BMT implements Cooperative legal entity, accordingly, it should adhere to Law on Cooperative. One of the regulations is related to membership. The purpose of cooperative is merely to serve and to improve its member's welfare. Taking wider purposes, BMT aims to serve and improve common people's life standard, especially those with middle to lower-income. Out of legal entities recognized by law, cooperative is the legal entity that can be applied by BMT. One of the ways to make membership regulation in Cooperative applicable for BMT is by implementing open principle for BMT, and implementing close principle. This can be done by making the customer to be funded by BMT as its BMT member. In this manner, BMT does not violate the membership principle of cooperative and it satisfies the requirement stated in the regulation of BMT. This has been implemented in BMT Alfa Dinar Branch Office Surakarta.

## **Recommendation**

For the government, it is suggested to issue a specific act that supports BMT and other Micro financial institutions in carrying out their economic activity in Indonesia. For the ministry of Cooperative and Small Medium Enterprise, it is expected to be assertive on all principles of cooperative throughout BMT's economic activities, and to be more active in providing guides and monitors to BMT. So, in the future, there is a specific regulation on BMT, providing legitimacy and legal certainty for the activities carried out by BMT.

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