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Philosophy to Strengthen *Baitul Maal wat Tamwil* Law in Indonesia

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Article	Abstract
<p>Keywords: <i>Baitul Maal wat Tamwil</i>; Indonesia; Legal Certainty; Philosophy; Sharia.</p> <p>Artikel History Received: Oct 12, 2019; Reviewed: Jul 24, 2020; Accepted: Jul 28, 2020; Published: Jul 31, 2020.</p> <p>DOI: 10.28946/slrev.Vol4.Iss2.418.pp270-284</p>	<p><i>Baitul Maal wat Tamwil</i> (BMT) is a non-bank financial institution operating based on sharia principles. BMT was established and developed with a gradual legality process. BMT status is determined by the number of assets owned so that BMT has a different legal status based on the number of assets. Moreover, BMT is subject to various and partial laws. BMT is an alternative financial institution, and it can sustain the acceleration of national economic growth. This study aimed is to explain the philosophical basis for the need for legal entities and the formulation of BMT legal norms as a strengthening of the law of famous economic institutions in Indonesia. The type of this research is normative legal research on the principles of law and systematics of law. Based on the discussion, it is concluded that the philosophical basis for strengthening BMT law is to find out the legal certainty which can provide recognition, protection, and facilities for the development and benefits of BMT existence for micro and small entrepreneurs.</p>

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INTRODUCTION

Baitul Maal wat Tamwil (BMT), also called Independent Integrated Enterprises, is a non-bank financial institution which is a Microfinance Institution (*LKM*) that operates based on sharia principles. BMT is one of the models of the populist economic system. Some models of the populist economic system that can be developed include rural industries, rural industrialization, village barns, plasma nuclei, industrial centres, mixed farming, community forests, organic farming, incubators, integrated patterns/models in Karangayar, industrial estates of plantation communities, and *Baitul Maal wat Tamwil* (BMT).¹ A distinctive feature of the populist

¹ Soeharto Prawirokusumo, *Ekonomi Rakyat (Konsep, Kebijakan dan Strategi)*, 1st edn (Yogyakarta: BPFE, 2009).

economy, according to Mohammad Hatta as quoted by Bernhard Limbong²; consists of the following points:

1. The vital role of the country. As stated in Article 33 of the 1945 Constitution, the state plays a vital role in the populist economic system. The role is not only limited to regulate the economy; through the establishment of State-Owned Enterprises (*BUMN*), the state can also be directly involved in the implementation of various economic activities. The aim is to ensure the prosperity of people which takes precedence over the prosperity of the individual. So, the production does not fall into anyone, which allows the oppression of the masses by a handful of those in power.
2. Economic efficiency is based on justice, participation and sustainability. It is not correct to say that populist economic systems tend to ignore efficiency and are anti-market. Efficiency in a populist economic system is not only understood in a short-term and financial dimension perspective. Nevertheless, it is comprehensively understood in the sense of paying attention to both qualitative and quantitative, financial and non-financial aspects, as well as aspects of environmental sustainability. The politics of populist economy is not based on equity, growth, and stability, but on justice, participation, and sustainability.
3. The allocation mechanism is organized through government planning, market mechanisms, and cooperation (cooperatives). Allocation mechanisms in a populist economic system, except for production branches that are important to the state and which control the livelihoods of many people, are still based on market mechanisms. However, the market mechanism is not the only one. In addition to thorough market mechanisms, allocations are also encouraged to be organized through a joint business mechanism (cooperative). Market and cooperative mechanisms can be likened to two sides of the same coin in the mechanism of allocation of the populist economic system.
4. Equitable mastery of production factors. In that framework, in line with the mandate of Article 33 of the 1945 Constitution, the implementation of markets and cooperatives in a populist economic system must be carried out by continuously making institutional arrangements, namely by levelling the mastery of capital or production factors to all members of the community. The systematic process for democratizing the mastery of factors of production or increasing the economic sovereignty of the people is the substance of the populist economic system.
5. Cooperatives as economic pillars. Viewed from the point of Article 33 of the 1945 Constitution, the participation of community members in owning the factors of production is among other things which cause the expression of cooperatives as companies that are under the populist economic system. It is known that the difference in cooperatives with corporate companies lies in the application of the principle of openness to all parties who have interests in the field of business run by cooperatives to participate in becoming members of cooperatives.
6. The pattern of partnership production relations is not labour-employers. In cooperatives, there are indeed fundamental differences that distinguish them diametrically from other forms of the company. Among them is the elimination of worker-employer segregation,

² Bernhard Limbong, *Ekonomi Kerakyatan dan Nasionalisme Ekonomi* (Jakarta: Margaretha Pustaka, 2013).

namely the inclusion of workers as company owners or members of cooperatives. The main character of the populist economy is the elimination of individualistic and capitalistic character from the face of the Indonesian economy.

7. Share ownership by workers. With the adoption of popularism or democracy as the basic principle of the Indonesian economic system, that principle by itself does not only have an essential position in determining the style of the economy that must be held by the state at the macro level. It also has a crucial position in determining the style of the company that must be developed at the micro-level. The company should be developed as a business that is owned and managed collectively (cooperatively) through the application of patterns of share ownership by workers. Enforcement of people's economic sovereignty and prioritizing the prosperity of the people above the prosperity of one person can only be done by applying these principles.

In the national context, if we look at the existing empirical developments, the strong impression that arises is that the people's economic sector becomes a safety valve for the Indonesian economy. In a stable economy, the people's economy develops naturally, without getting too much assistance and protection from the government, and continues to grow and contributes to national economic growth. However, proportionally its growth is slower than the large and modern economic sectors. As for the crisis, the people's economy is a saviour of a considerable decline in the national economy, despite receiving an overflow of economic bankruptcy caused by a large and modern economic sector which is only supported by debt.³

In a BMT institution, there are two financial managements within it, namely *baitul maal* and *baitut tamwil*. In term of language, *baitul maal* is a treasure house, while *baitut tamwil* is property development. *Baitul maal* financial management includes the collection and distribution of Zakat, Infaq, and Alms (ZIS) funds from the community whose funds can be sourced from its members or the wider community who entrust the management of their ZIS funds to the BMT. At the same time, *Baitul tamwil* is an institution that conducts productive business development activities and investment in improving the welfare of micro-entrepreneurs through financing and saving activities.⁴

BMT financial institutions are very needed to reach out and support micro and small entrepreneurs in all corners of Indonesia that are not yet served by the existing banks. As an illustration, small micro-enterprises (BMT) which are informal sectors, according to data from the National Development Planning Agency (*Bappenas*) reach a wealth of more than Rp 40,000,000. The opportunity to develop BMT in Indonesia is tremendous, considering that micro-enterprises with a scale of loans below IDR 5,000,000.00 are market segments that this institution can effectively serve. On the other hand, the existence of banks capable of serving this segment is minimal.⁵ Besides, the lives of well-versed people, there are fears that erosion of faith will arise. The eradication of faith is not only influenced by the aspects of Islamic symbols but the weak economy of the community. Hadith of the Prophet that, "the weakness approached

³ Asykuri Ibn Chamim, *Civic Education Pendidikan Kewarganegaraan* (Yogyakarta: Majelis Diktilitbang Pimpinan Pusat Muhammadiyah and LP3 Universitas Muhammadiyah Yogyakarta dan The Asia Foundation, 2003).

⁴ Andri Soemitra, *Bank Dan Lembaga Keuangan Syariah* (Jakarta: Prenadamedia Group, 2015).

⁵ Nurul Huda, *Baitul Mal Wa Tamwil: Sebuah Tjauan Teoritis* (Jakarta: Amzah).

kufur", then the existence of BMT was expected to be able to overcome this problem by fulfilling the economic needs of the community. The existence of moneylenders amid the community can result in the community getting plunged into uncertain economic problems. The magnitude of the influence of moneylenders on the economy of the community is because there are no elements that are sufficiently accommodating in solving problems that the community faces. Therefore, BMTs are expected to be able to play a more active role in improving this condition.⁶

The Minister of Cooperatives and Small and Medium Enterprises (*Menkop and UKM*), Anak Agung Gede Ngurah Puspayoga, said that BMT growth was quite significant. Based on data from the BMT Association (*PBMT*), there are 4,500 BMTs spread across Indonesia in 2015, which served 3.7 million people with assets of around Rp 16 trillion managed by around 20 thousand people. Data by the Ministry of Cooperatives and *UKM* shows the number of cooperative business units in Indonesia reached 150,223 business units. 1.5 per cent of cooperatives are incorporated as Sharia Financial Services Cooperatives (*KJKS*), which are now converted into Sharia Credit and Financing Cooperatives (*KSPPS*).⁷

As an alternative financial institution, BMT can support the acceleration of national economic growth. However, BMT is established and developed with a gradual legality process. BMT status is determined by the number of assets owned, hence BMT has a different legal status according to the stage of the number of assets, and BMT is subject to various and partial laws. The legal status of BMT is divided into two stages:

1. BMTs that do not yet have a legal entity

BMTs that do not yet have a legal entity, because it still part of the mosque's prosperity council and based on Law Number 1 of 2013 concerning Microfinance Institutions.

2. BMTs that have legal entities

BMTs have diverse legal entities, namely:

- a. foundation, based on Law Number 28 of 2004
- b. cooperatives, based on Law Number 25 of 1992
- c. Limited Liability Company (PT.), Based on Law Number 40 of 2007

The need to change BMT, which is one of the microfinance institutions to be incorporated as a cooperative or PT, will have a juridical consequence. Namely that all regulations in the BMT, the procedures for establishment, management and supervision must refer to legislation suitable with the legal entity. Just as the transformation of BMT into cooperatives creates a juridical consequence, namely that all regulations in the BMT, the procedures for establishment, management and supervision must refer to laws and regulations governing cooperatives. It aims to create legal certainty, even though there are differences based on the operation of the institution between cooperatives and BMT.

The absence of a legal umbrella for BMTs has encouraged the government and the House of Representatives (*DPR*) to enact the Law on Microfinance Institutions. The Banking Law which allows banks to serve micro-businesses, in reality is still unable to provide services as desired by micro-businesses and the poor. According to Urata in Adiningsih as quoted by Muhammad

⁶ Heri Sudarsono, *Bank Dan Lembaga Keuangan Syariah, Deskripsi Dan Ilustrasi* (Yogyakarta: Ekonisia, 2008).

⁷ 'Menkop Puspayoga: Langkah Perhimpunan BMT Indonesia Selaras Dengan Reformasi Total Koperasi. Kementerian Koperasi dan UKM', 2017, <http://www.dekop.go.id/content/read/menkop-puspayoga>.

Sholahuddin⁸, this happens because microbusinesses often cannot be separated from two main problems, namely financial and non-financial. The chief financial problem is the mismatch between available and accessible funds. Also, there is no systematic approach to funding, high transaction costs, credit procedures that finally consume much time even though the amount of credit disbursed is small, lack of access to formal sources of funds, credit interest for investment and working capital are quite high, and many micro-businesses that have not been bankable. While, those included in the problem of management organizations (non-financial) according to Adiningsih as quoted by Muhammad Sholahuddin, are the lack of knowledge of production technology and quality control caused by the lack of opportunities to follow technological developments, lack of education and training, and lack of knowledge of marketing strategy. Similarly, in the Law on Microfinance Institutions, BMT is given the choice of legal status to be a cooperative or limited liability company⁹ such as the case of the status of the legal entity of BMT Perdana Surya Utama (PSU). In the deed of establishment, it is stated that BMT PSU is a cooperative, but in its implementation, it implements a banking system. If BMT PSU has officially bound itself as a cooperative, then BMT PSU should fully comply with regulations related to cooperatives. In practice, BMT PSU does not fully implement the identity of cooperatives. Many deviations were made in the activities carried out by BMT PSU, which resulted in the closure of the financial institution. It has caused unrest among the people who have tied themselves into the BMT PSU.¹⁰

Based on the description of the previous BMT, for the legal certainty of the existence of BMT as a legal subject in carrying out legal actions, it is deemed necessary to strengthen BMT law by examining what the philosophical basis of the need for legal entities and formulation of the legal norms of BMT in Indonesia is.

RESEARCH METHODS

This type of research is normative legal research on legal principles and legal systematics. Normative legal research on legal principles is legal research that is carried out to find a valid principle or doctrine¹¹, namely to find and analyze the philosophical basis of the need for legal entities and the formulation of the legal norms of *Baitul Maal wat Tamwil* (BMT) in Indonesia.

The types and sources of the research materials used in this research are primary legal materials, namely binding legal materials, include the 1945 Constitution of the Republic of Indonesia, Law Number 25 of 1992 concerning Cooperatives, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Law Number 1 of 2013 concerning Microfinance Institutions, Law Number 21 of 2008 concerning Sharia Banking, Minister of Cooperatives and Small and Medium Enterprises Republic of Indonesia Regulation

⁸ Muhammad Sholahuddin, 'Peran Perbankan Syariah Dalam Penguatan Kapasitas UMKM Menuju Kemandirian Ekonomi Nasional, Tantangan Perbankan Syariah Dalam Peranannya Mengembangkan UMKM', in *Proceeding Seminar Nasional And Call For Papers Sancall* (Surakarta, 2013).

⁹ Solikhah; Burhanudin Harahap; Luthfiah Trini Hastuti, 'Bentuk Badan Usaha Ideal Untuk Dapat Dipertanggungjawabkan Secara Hukum Dalam Pengelolaan Baitul Maal Wat Tamwil (BMT) Berdasarkan Undang-Undang Lembaga Keuangan Mikro Di Eks Karesidenan Surakarta', *Yustisia*, 93 (2015), 74–85.

¹⁰ Maulia Dina, 'Upaya Hukum Yang Dapat Dilakukan Oleh Anggota Dan Non Anggota Terhadap BMT (Baitul Maal Wat Tamwil) Perdana Surya Utama Yang Melakukan Wanprestasi (Studi Kasus BMT Perdana Surya Utama Kota Malang)', *Jurnal Universitas Brawijaya*, 2016, 1.

¹¹ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2011).

Number: 11 / Per / M.KUKM / XII / 2017 Concerning the Implementation of Savings and Loans and Sharia Financing Activities by Cooperatives, Republic of Indonesia Minister of Law and Human Rights Regulation Number 6 of 2014 concerning Ratification of Association Legal Entities. Secondary legal materials, which are legal materials that provide explanations of the position of primary legal materials, include literature books, research results, seminars, socialization, or scientific discoveries. These other provisions have direct and relevant relevance to the object of research studies. Tertiary legal materials, namely supporting legal materials that provide guidance and explanation of primary and secondary legal materials, including newspapers, magazines, scientific journals, Internet, legal dictionaries and other relevant references.¹²

Analysis of legal materials that have been collected and processed toward laws and regulations that have relevance to the concept of BMT legal entities is carried out through analysis and interpretation of the law, including interpreting laws according to a system within the law or commonly referred to as systematic interpretation. The legislation of a country is a unity, meaning that none of these regulations can be interpreted as if they were standing alone. The interpretation of legislation must always be remembered with other laws and regulations. The systematic interpretation can cause the words in the law are given a broader understanding or that are narrower than the understanding of the usual language rules. The first thing is called expanded interpretation, and the second is called narrowing interpretation.¹³ Teleological interpretation is an interpretation by means of the purpose or purpose of law regulation.¹⁴

Analysis of legal materials against legislation that has relevance to the regulation of BMT legal entities can also be done with legal construction by analogy, namely the expansion of the validity of the rule of law, by applying a provision in another law to an event in a particular law whose provisions are not in the relevant law. Concerning this event, that provision of the other laws was applied with the event that the provisions did not exist in the relevant law.

Furthermore, efforts are made to find law (*rechtsvinding*) and legal formation (*rechtsvorming*) that are functionally functional, by constructive teleological decomposition, so that legal concepts are found that should be formulated with the concept of BMT legal entities and the basis for future BMT legal arrangements.

ANALYSIS AND DISCUSSION

The Philosophical Basis of Strengthening the *Baitul Maal wat Tamwil* Law

The philosophical basis for the legal strengthening of the financial institutions *Baitul Maal Wat Tamwil* in Indonesia is for the sake of legal certainty which can provide recognition, protection, and facilities for the development and benefits of the existence of BMT for micro and small entrepreneurs. It is due to the absence of a legal umbrella for the BMT. BMT is established and developed with a gradual legal process. BMT status is determined by the number of assets owned, so BMT has a different legal status according to the stage of the number of assets, and is subject to various and partial laws. It has caused legal uncertainty in the form of juridical

¹² Soerjono Soekanto; Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: PT. RajaGrafindo Persada, 2001).

¹³ Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)* (Yogyakarta: Cahaya Atma Pustaka, 2010).

¹⁴ Ishaq, *Dasar-Dasar Ilmu Hukum* (Jakarta: Sinar Grafika, 2009).

consequences, namely that all the rules in BMT, better procedures for establishing, managing, and monitoring should refer to the appropriate legislation such as legal entity. For more details, the author will first outline the legal status of BMT, starting from the mosque-based BMT to BMT, which has diverse legal entities that cause legal uncertainty toward BMT as follows:

BMTs that have not been incorporated

BMTs that have not been incorporated due to the initial establishment of activities in the mosque. Phenomena in a number of cities in Indonesia show that some mosques have functioned as a place of worship (prayer), as well as a place for the development of education, community economic empowerment, and other social activities. Thus, the existence of mosques benefits the congregation and its community.¹⁵

Mosque-based BMTs are BMTs established and developed by *takmir* of the mosques. BMT customers are prioritized to mosque worshipers to develop the economy of the mosque congregation. BMT customers are effortless to identify because the area is very close together and is incorporated into one recitation and congregational prayer. One of the mosque-based BMTs is BMT Al-Azka in Pagerharjo village, Samigaluh district, Kulon Progo regency, Daerah Istimewa Yogyakarta. The purpose of establishing this mosque-based BMT is for the community to have financial institutions independently, namely to fill the vacancies in the role of banks. BMT Al-Azka is a microfinance institution that operates at the village level and serves the rural customer community. This institution is in response to banking behaviour in general that collects or absorbs savings in rural communities, a small portion of which is disbursed in the village. At the same time, most of the funds are brought to the city, or the absorption of regional savings is brought to the centre. This behaviour is a weakness of current banking operations.¹⁶

At the beginning of the establishment of the BMT, the assets held were Rp 5,000,000 - Rp 20,000,000, usually smaller than Rp 100,000,000. In general, it uses Non-Governmental Organizations (*LSM*) or Non-Governmental Organizations (*KSM*) by obtaining an Operational Certificate from the Small Business Incubation Center (*PINBUK*).¹⁷ *PINBUK* is a worker institution formed by the Small Business Incubation Foundation (*YINBUK*). *YINBUK* itself was formed by the General Chair of the Indonesian *Ulema* Council (*MUI*), Chair of the Indonesian Moslem Scholars (*ICMI*), and Managing Director of Bank Muamalat Indonesia (*BMI*) with the notary deed Leila Yudoparipurno, S.H. Number 5 March 13, 1995.¹⁸

BMTs that have Legal Entities.

BMTs have diverse legal entities, namely foundation, cooperative, and Limited Liability Company. First is the Foundation. BMT which has a legal foundation, for example, BMT Syuhada which is under the auspices of the Syuhada Mosque Foundation in Yogyakarta. Based on Article 1 number 1 of Law No. 28 of 2004 concerning Amendments to Law No. 16 of 2001 concerning Foundations, the definition of a foundation is a legal entity consisting of assets that

¹⁵ Huda.

¹⁶ M. Hajar Dewantoro, 'Pengembangan BMT Berbasis Masjid Studi Kasus BMT Al-Azka Pagerharjo Samigaluh Kulonprogo', *Jurnal Al-Mawarid*, XIII (2005), 142–43.

¹⁷ Heri Sudarsono.

¹⁸ Musa Hubeis, *Prospek Usaha Kecil Dalam Wadah Inkubator Bisnis* (Ciawi Bogor: Ghalia Indonesia, 2009).

are separated and intended to achieve specific goals in the social, religious and humanitarian fields that do not have members. It is following *Baitul Maal* financial management which includes the collection and distribution of ZIS funds (*Zakat, Infaq, and Alms*) from communities whose funds can be sourced from their members or the wider community who entrust the management of ZIS funds to the BMT, but implementing management *baitut tamwil* who seeks profit by conducting productive business development activities and investments in improving the welfare of micro-entrepreneurs, not included in the management of legal entity foundations that may not share the results of business activities with supervisors, administrators, and supervisors.

Second is Cooperative. If the BMT has had assets of IDR 100,000,000.00 or more, BMT is required to process the legal entity submission to the local notary, among others, in the form of a Sharia Cooperative, the Islamic Financial Services Cooperative (*KJKS*) which is now a Savings and Loan Cooperative (*KSPPS*), Sharia Autonomy Borrowing Business Units from Savings and Loans Cooperatives (*KSP*), Sharia Multipurpose Cooperatives (*KSUS*), Village Unit Cooperatives (*KUD*), or Cooperative Pondok Pesantren (*Kopotren*).¹⁹ Third, is Limited Liability Company (PT). If the assets have reached billions of rupiah, then the BMT legal entity is PT. like PT. Capital of BMT Ventura, PT. Ventura Syariah, PT. Conventional Venture, PT. Halal Square, and Bank.

Non-bank financial institutions are subject to their respective laws. BMT as a sharia microfinance institution complies with Law No. 1 of 2013 concerning Microfinance Institutions (LKM Law). In Article 4 of the LKM Law, it is regulated that the establishment of an *LKM* must at least fulfil the following requirements (a) have a legal entity; (b) capital; and (c) obtain a business permit that procedure is regulated in the LKM Law. The form of that legal entity is regulated in Article 5 of the LKM Law, namely a cooperative or a Limited Liability Company (PT). *LKMs* are also required to transform into banks according to Article 27 of the LKM Law. It is regulated that *LKMs* must transform into banks if *LKMs* carry out business activities in more than one regency/city area where the *LKM* is located, or *LKMs* meet the requirements set forth in the Financial Services Authority Regulation.

The necessity to change the form of BMT becomes a cooperative or PT. There will be a juridical consequence, namely that all regulations in the BMT, the procedures for establishment, management and supervision must refer to laws and regulations under the legal entity. In achieving its objectives, the management of BMT cannot be handed over to an existing legal entity. A new legal entity is needed for this purpose. The purpose of the foundation is social, the purpose of PT. is looking for profit, while BMT in addition to seeking profits, also has a goal to improve the welfare of the community, especially members of the BMT.²⁰ To achieve this goal, BMT implements two managements at once, namely social institutions in *baitul maal* activities and also business in *baitut tamwil* activities.

The Efforts to Strengthen *Baitul Maal wat Tamwil* Law in the Future

¹⁹ Ahmad Ifham Sholihin, *Buku Pintar Ekonomi Syariah* (Jakarta: PT. Gramedia Pustaka Utama, 2010).

²⁰ Neni Sri Imayati, *Aspek-Aspek Hukum BMT (Baitul Maal Wat Tamwil)* (Bandung: PT. Citra Aditya Bakti, 2010).

Efforts to strengthen the law of *BMT* is to examine *BMTs* into legal entities, in other words, to classify *BMTs* into a legal entity of associations/organizations, and forming its legal instruments. The establishment of the *BMT* association legal entity along with its legal instruments is a form of the realization of freedom of opinion, association and gathering to strengthen the *BMT* law. The election of the legal entity of the association (*vereniging*) as the basis for legal reinforcement against *BMT* is due to the association, according to E. Utrecht / Moh. Saleh Djidang is a deliberately formed and voluntary association by people intent on strengthening their economic position, maintaining culture, taking care of social matters and so forth. Therefore, *BMTs* can be legally incorporated by people intent on strengthening their economic position (*baitut tamwil*), maintaining culture (democratic economy), and taking care of social matters (*baitul maal*), suitable with *BMT* which has characteristics of the democratic economy based on sharia principles. By classifying *BMTs* as a legal entity, the *BMT* can perform two financial management namely *baitul maal* and *baitut tamwil* in accordance with the vision, mission, and purpose of *BMT*.²¹

The legal basis for an association, entity or business entity that can be said to have a legal entity status is Article 1653, Article 1338, and Article 1660 of the Civil Code (Civil Code). Article 1653 The Civil Code stipulates that in addition to the genuine civil alliance, the law also recognizes associations from persons as legal entities, whether held or recognized by the government, or such associations are accepted as permitted or have been established for a purpose certain things that are not against the law or good morals. Ratification of the articles of association is required by reviewing the objectives, principles, and other rules of the association as a formal requirement that must be fulfilled by the association which is incorporated. A specific purpose that has been determined by an association that is not contrary to the law or good morals intended in Article 1653 of the Civil Code is regulated in Article 1338 paragraph (3) of the Civil Code, namely that the agreement must be carried out in good faith. Furthermore, the agreement must be rational and should be implemented in good faith as provided in the Article 1338 paragraph (3) the Indonesian Civil Code.²²

The established legal entity requires legislation as its legal arrangement. It refers to article 1660 of the Civil Code determines the rights and obligations of members of the association, which are regulated based on the rules of the authorities/government. If the rule to be imposed by the government does not exist, then what is used is what is specified in Chapter IX Book III of the Civil Code of the Association.²³

Juridical considerations for the need of legislation as the legal norm of financial institutions *BMT* are as follows:

1. Legal Legality for Every Economic Activity under Sharia Principles

The development of sharia financial institutions in Indonesia, especially *BMT*, is not followed by legal regulations that are under the distinctive characteristics of the *BMT*. The development of *BMT* as a sharia financial institution is the application of economic activities that cannot be

²¹ Erisa Ardika Prasada, 'Existence of Baitul Maal Wat Tamwil (BMT) As a Legal Entity', *Saburai International Journal of Social Sciences and Development*, 2.1 (2018), 88 <<https://doi.org/10.24967/saburairijssd.v2i1.341>>.

²² Annalisa Yahanan, Febrian Febrian, and Rohani Abdul Rahim, 'The Protection of Consumer Rights For Aviation Safety And Security In Indonesia and Malaysia', *Sriwijaya Law Review*, 1.1 (2017), 27–43 <<https://doi.org/10.28946/slrev.vol1.iss1.7.pp027-043>>.

²³ Chidir Ali, *Badan Hukum* (Bandung: PT. Alumni, 2014).

separated from Islamic values and principles. As a result of the *Rechtstaats* principle, all activities carried out must be based on a law that is valid and valid in the State of Indonesia. Therefore, the legislation for BMT must be immediately established, considering that the growth and development of BMT in Indonesia have now increased. Later all activities carried out have legal certainty as well as shari'ah banking which has its own legal rules that are different from the legal rules for conventional banking.²⁴

In the theory of Acceptance of Legal Authority introduced by a Christian orientalist, H.A.R. Gibb, in his book *The Modern Trends of Islam*, as stated by Ichtijanto, as quoted by Neni Sri Imaniyati that the theory of acceptance of legal authority is a theory that has been adopted by all imams of Islamic law which states that anyone who has declared himself a Muslim by saying two *kalimah syahadat*, he is bound to obey and obey the laws and teachings of Islam.²⁵ The Islamic economic system was not born in an evolution from a community but originated from divine revelations which were revealed to all humanity. This system aims to give birth and mental benefit to all humans and the universe, where the function of *rahmatan lil alamin* must manifest itself in life.²⁶ The core purpose of syarî'at (law) or *Maqâshid al-Syarî'ah* is the benefit of humankind. In connection with this al-Syâthibi stated that syâri' (sharî'at maker) in prescribing the law aims to realize the benefit of His servants both in the world and the hereafter simultaneously. The core emphasis of the *Maqâshid al-Syarî'ah* carried out by al-Syâthibi outlines the starting point of the contents of the verses of the Qur'an, which show that the laws of Allah contain benefit.²⁷

2. The variety and partial legal norms of BMT that do not comply with BMT management

The established legal entity requires legislation as its legal norm. The creation of specific and comprehensive legislation on BMT management is needed because the legislation governing BMT is diverse and partial. Partially because each of these laws is related to the operational management of the BMT, but there is no harmonization between the laws. Legislation related to BMT includes:

- a. BMT in Law Number 23 of 2011 concerning Management of *Zakat*, the operation of BMT runs two financial managements at once, namely *baitul maal* (covering the collection and distribution of zakat, infaq, and charity) and *baitut tamwil* (conducting productive business development activities and investments in improving the welfare of micro-entrepreneurs through financing and saving activities). Based on Law Number 23 of 2011 concerning Management of *Zakat*, the institution authorized to carry out the task of managing *zakat* is the National *Zakat* Agency (*BAZNAS*), Provincial *BAZNAS*, Regency / City *BAZNAS*, and *Amil Zakat* Institution (*LAZ*), but not BMT. In this case, BMT included itself as a *Zakat* Collector Unit (*UPZ*), which is an organizational unit formed by *BAZNAS* to help collect *zakat*, so that it has a legal basis for managing zakat.

²⁴ Elfa Murdiana, 'Menggagas Payung Hukum Baitul Maal Wat Tamwil (BMT) Sebagai Koperasi Syariah Dalam Bingkai Ius Constituentum', *Jurnal Penelitian*, 10.2 (2016), 275.

²⁵ Neni Sri Imaniyati.

²⁶ Arfin Hamid, *Hukum Ekonomi Islam (Ekonomi Syariah) Di Indonesia Aplikasi Dan Prospektifnya* (Jakarta: Ghalia Indonesia, 2007).

²⁷ Ali Mutakin, 'Teori Maqâshid Al Syarî'ah dan Hubungannya Dengan Metode Istinbath Hukum', *Kanun Jurnal Ilmu Hukum*, 19.3 (2017), 549.

Management of zakat by the government can affect the decline in *baitul maal* management activities at BMT.

b. BMT in Law Number 1 of 2013 concerning Microfinance Institutions (LKM Law)

BMT, as a sharia microfinance institution, complies with Law No. 1 of 2013 concerning Microfinance Institutions (LKM Law). In Article 4 of the LKM Law, it is regulated that the establishment of an LKM must at least fulfil the following requirements (a) have a legal entity; (b) capital; and (c) obtain a business permit that procedure is regulated in the LKM Law. The form of the legal entity referred to is regulated in Article 5 of the LKM Law, namely cooperatives or Limited Liability Companies (PT), even in Article 27 of the LKM Law, it is regulated that LKMs must be transformed into banks if the LKM does more than one district/city in the LKM, the LKM has fulfilled the requirements set out in the Financial Services Authority Regulation. The LKM Law was passed on January 8, 2013. In Article 42 of the LKM Law, it is stipulated that this law comes into force after two years from the date of promulgation, namely January 8, 2015, so if the LKM does not have a legal entity in early 2015, the LKM is illegal. The LKM is also required to obtain a business license from the Financial Services Authority (OJK) for a maximum of one year from the date the law comes into effect, namely 2016. If until 2016 it has not been registered and reported to the OJK, then the distribution of credit funds to customers is illegal as a dark bank. It is regulated in Article 39 of the LKM Law paragraph (1) regulating that at the time this law comes into force, Village Banks, Village Bank, Bank Markets, Employee Banks, Village Credit Bodies (BKD), District Credit Bodies (BKK), Credit Small People's Business (KURK), District Credit Institution (LPK), Village Production Bank (BKPD), Rural Credit Business Entity (BUKP), *Baitul Maal wat Tamwil* (BMT), *Baitul Tamwil Muhammadiyah* (BTM), and/or institutions other institutions equivalent to that can continue to operate for up to one year from the date this law comes into force, namely January 8, 2016. Furthermore, stipulated in paragraph (2) that the institutions referred to in paragraph (1) must obtain a business license from the Authority Financial services must take a maximum of one year from the date this law comes into force.

c. BMT in Law Number 21 of 2011 concerning the Financial Services Authority.

In point (2) above, it is explained that LKMs, including BMTs, must obtain permission from the Financial Services Authority (OJK). In this case, OJK acts as a regulator of BMT LKMs. It is essential to know by BMT regarding the authority and scope of OJK supervision as a whole in the OJK Law. BMTs that have been transformed into cooperatives or PT, BMT is subject to each of the laws governing the legal entity. Regarding the BMT legal entity based on the LKM Law described above, the legal entity forms in Article 5 of the LKM Law, namely cooperatives or Limited Liability Companies (PT), even in Article 27 of the LKM Law stipulates that MFIs must transform into banks if the LKM does business more than one regency / city area where the LKM is located, or the LKM has fulfilled the requirements stipulated in the Financial Services Authority Regulation. Then the law relating to legal entities BMT is Law Number 25 of 1992 concerning Cooperatives, Law Number 40 of 2007 concerning Limited Liability Companies, and Law Number 21 of 2008 concerning Islamic Banking. In terms of institutional Law Number 25 of 1992 concerning Cooperatives as the legal umbrella of BMT in Indonesia because the legal object is clear, as for the mention of

BMT in Law Number 1 of 2013 concerning Microfinance Institutions it cannot fulfil the legal standing object of the law due to BMT in the interpretation of the law is just a term.²⁸

- d. BMT in the Minister of Cooperatives and Small and Medium Enterprises Regulation of the Republic of Indonesia Number: 11/Per/M.KUKM/XII/2017 concerning the Implementation of Savings and Loan Business Activities and Sharia Financing by Cooperatives. The BMT arrangement in the Minister of Cooperatives and Small and Medium Enterprises Regulations is intended for BMTs that are incorporated as cooperatives. Sharia Financing Savings and Loan Cooperative (KSPPS) was born from BMT, which is a unique and specific Indonesian sharia microfinance entity, so it is often equated between BMT and KSPPS. KSPPS's role in carrying out its functions and roles carries out a dual role, namely as a business institution (*tamwil*) and on the other hand performs a social function, namely collecting, managing and distributing funds for Alms, Infaq, Alms and Endowments (ZISWAF). BMTs with cooperative legal entities through KSPPS have opportunities and prospects in collecting and channelling business and social funds. In utilizing socio-religious funds by KSPPS, the potential of zakat nationally as released by the National Zakat Agency (Baznas) in 2015 amounted to Rp 217 Trillion, while the potential of waqf money as released by the Indonesian Waqf Agency (BWI) was Rp 30 Trillion. This money waqf fund is a potential for KSPPS to strengthen business capital (*tamwil*) which is obtained at a low cost so that it can channel to prospective members/members with light profit sharing. From the business aspect, the KSPPS still has a broad niche to finance small micro-enterprises because the latest data shows that in the range of 19% to 21% of MSMEs that obtain financing from banks, this is what concerns the Deputy for Financing how the alternative financing for *UMKMs* continues to be explored. The 2015 Islamic Development Bank (IDB) data on the condition of the Indonesian Islamic Financial Institutions (LKSI), especially non-banks, is approximately 4500 - 5000 BMTs is an extraordinary potential to be developed. In this case, KSPPS adapts to the operational management of BMT, which is a unique and specific Islamic microfinance entity typical of Indonesia.²⁹

Diverse and partial legislation governing BMT, causes various provisions regarding the status of BMT legal entities, namely LKMs, foundations, cooperatives, or PT. It also distinguishes which institutions are authorized to supervise the operation of the BMT, under the auspices of the Minister of Cooperatives and *UKM*, there are also under the supervision of the *OJK* under the BMT legal entity. Therefore legal norms that can accommodate typical BMT management are needed as previously described.

Muhammad Amin Aziz as the pioneer of the founding of BMT stated that it was time for BMT to have special identity and ideals just like any other economic institution or institution; to have typical rules since the establishment, goals and ways of working, up to the system of business control and reporting. In this case, Muhammad Amin Aziz and PINBUK published the book "Basic Regulations and Examples of BMT AD / ART" which are expected to be able to

²⁸ Yusar Sagara, 'Penguatan Ekonomi Kerakyatan Melalui Baitul Mal Tanwil (BMT) Sebagai Balai Usaha Mandiri Rakyat Terpadu (BUMRT)', *Sosio Didaktika: Social Science Education Journal*, 3.1 (2016), 82.

²⁹ Braman Setyo, *Press Realase Deputi Pembiayaan Pada Acara Workshoop Outlook Usaha Simpan Pinjam Dan Pembiayaan Syariah*, 2016.

uniform perceptions about what, why, and how the BMT is as well as guiding the establishment and limits of work in the field for BMTs.³⁰

The following is the scope in BMT legal norms originating from the BMT Basic Rules compiled by Muhammad Amin Aziz and PINBUK with some additions from the author, including (1) General Provisions, (2) Principles and Platforms, (3) Vision, Mission, and Objectives, (4) Nature, Functions, and Principles, (5) Establishment of BMT, (6) Position and Area of Work, (7) Legal Status and Legality, (8) BMT Articles of Association, (9) Implementation Regulations, (10) Inter-BMT Cooperation, (11) Merger, (12) Membership, (13) Muamalat Business Group (Pokusma), (14) BMT Activities and Businesses, (15) Organizational Devices, (16) Member Meetings, (17) Members Founder, (18) Management (19) Manager, (20) Capital, (21) Save, (22) Financing, (23) Remaining Business Results, (24) Guidance and Supervision, (25) YINBUK and PINBUK, (26) Village BMT and Secondary BMT, (27) Dissolution of BMT, (28) Transitional Provisions, (29) Closing Provisions.

CONCLUSION

The philosophical basis for the need for changes in legal entities and the legal norms of *Baitul Maal Wat Tamwil* (BMT) is as a form of legal strengthening of populist economic institutions for legal certainty. It can provide protection and development for micro-entrepreneurs who do not receive financial assistance from banks. BMT requires a legal umbrella to ensure legal certainty in carrying out its business. BMTs are categorized as microfinance institutions that have legal entities if they have fulfilled certain conditions, namely Islamic cooperatives or limited liability companies. BMTs and sharia cooperatives have different management, but BMTs must comply with the laws and regulations governing cooperatives. If BMTs that are incorporated as cooperatives have fulfilled certain conditions, they can change their legal status to Sharia Rural Financing Banks (*BPRS*). It automatically makes them as subject to Law Number 21 of 2008 concerning Sharia Banking. In this case, BMT changes itself from non-bank financial institutions to bank financial institutions. At the stage of developing BMT to become a *BPRS*, this is not expected to occur because micro-entrepreneurs will have difficulty obtaining financing capital because they have to deal with bank procedures that are not affordable by small and medium businesses. In this case, the author recommends that a BMT association legal entity is formed along with its legal instruments. The selection of a legal entity (*vereniging*) as a basis of the strengthening BMT law is due to associations formed intentionally and voluntarily by people who intend to strengthen their economic position (*baitut tamwil*), maintain culture (popular economy), and take care of social problems (*baitul maal*). It is following the objectives of BMT which have democratic economic characteristics based on sharia principles.

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³⁰ Muhammad Amin Aziz, *Peraturan Dasar Dan Contoh AD-ART BMT (Baitul Maal Wat-Tamwil, Balai-Usaha Mandiri Terpadu)* (Jakarta: PINBUK).

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