

Muhammadiyah Microfinance Institutions After the Enactment of Law No.1 of 2013 Concerning Microfinance Institutions

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Abstract. Law Number 1 of 2013 concerning Microfinance Institutions (MFIs) In the transitional provisions of Article 39 Paragraphs (1) and (2) of Law No.1 of 2013 concerning MFIs. it is stated that Baitut Tamwil Muhammadiyah (BTM) is a Microfinance Institution and is required to become an MFI by registering with the OJK. While the Microfinance Institutions owned by Muhammadiyah are not all named Baitut Tamwil Muhammadiyah (BTM) and the legal entity used is a Cooperative and is in the form of KSPPS whose legal basis is Law Number 25 of 1992 concerning Cooperatives and Permenkop and UKM Number 02/2017 concerning Amendments to Permenkop Number 15/2015 concerning Savings and Loans Business and Sharia Financing by Cooperatives. This study aims (1) to find out how the position of the Muhammadiyah Microfinance Institution in the 2 (two) laws and regulations governing the form of cooperatives and (2) to determine the factors that influence the selection of the form of business entity. This research is a normative juridical research. So this research was conducted in libraries by examining primary and secondary materials, as well as interviews with resource persons, in order to support or become additional secondary materials. The results of this study indicate (1) that the position of BTM and LKM Muhammadiyah is legally valid as long as it is subject to the Cooperative Law. Because BTM and LKM Muhammadiyah chose the Cooperative Law and the KSPPS Cooperative Government as their legal basis. However, the obligation to register with the OJK as an LKMS under the MFI Law remains in effect until the rules are revoked or revised. (2) Factors influencing the selection of a Muhammadiyah MFI business entity, either LKMS or KSPPS.

Keywords: Baitut Tamwil Muhammadiyah, Microfinance Institutions, Savings and Loans Cooperatives and Sharia Financing.

1. Introduction

Microfinance institutions (MFIs) are financial institutions specifically established to provide business development services and community empowerment, either through loans or financing in micro-enterprises to members and the community, managing deposits, as well as providing business development consulting services that are not solely for profit. We often see the concept of microfinance institutions in the form of Cooperative Institutions, which manage member funds to be developed with the aim of member welfare, until a new institution emerged, namely Baitul mal wa tamwil (BMT) which conceptually is almost the same as cooperatives but uses sharia principles, including managing infaq, zakat, alms and waqf. The presence of financial institutions that are primarily sharia-based, occurs because of the anxiety of economic activities in Muslim communities, whose principles are far from Islamic principles, such as usury (interest), gharar, and maisir. However, the emergence of BMT does not necessarily have the same legality as Islamic Banks, even though the system and working mechanism are relatively the same, at the legal level. As a business institution, the legality of BMT as an institution engaged in collecting public funds is formed in a difficult legal status [1].

Baitut Tamwil Muhammadiyah (BTM) is a Microfinance Institution that operates based on sharia principles. BTM was built by taking the basic concept of Baitul Maal wat-Tamwil, which is a combination of Baitut Tamwil, a unit that runs commercial financing and Baitul Maal, a unit that runs non-commercial-social financing with funds sourced from deposits of zakat, infaq and shodaqoh. At BTM, the Maal concept was already up and running at the amil zakat institution belonging to Muhammadiyah (LAZIZMU). In maintaining the ideology and spirit of Muhammadiyah in BTM, the Management and Supervisors are required to come from members of the Persyarikatan Muhammadiyah

The enactment of Law Number 1 of 2013 concerning Microfinance Institutions (MFIs), was ratified to confirm the status and protection of institutions that provide access to capital in the micro sector, both conventional and Sharia.) Limited Liability Company and b) Cooperative. So that there are 2 (two) forms of cooperative activity in the type of Islamic Financial Services, the first is KJKS under the Cooperative Law and the second is LKMS Cooperatives under the MFI Law. Therefore, in 2015, the Government issued the Economic Policy Package I of 2015. n it regulates regulations regarding Cooperatives, there are at least 15 Regulations of the Minister of Cooperatives and SMEs that were made to strengthen and improve the governance of Cooperatives. One of them is the Regulation of the Minister of Cooperatives and SMEs regarding savings and loan business activities and sharia financing by cooperatives. The Ministerial Regulation replaces the Ministerial Regulation regarding KJKS activities and institutions which are not yet perfect and in view of the birth of the LKM Law which also regulates the form of Cooperatives, as well as the authority of the Financial Services Authority (OJK) in the Law.

In it regulates regulations regarding Cooperatives, there are at least 15 Regulations of the Minister of Cooperatives and SMEs that were made to strengthen and improve the governance of Cooperatives. One of them is the Regulation of the Minister of Cooperatives and SMEs regarding savings and loan business activities and sharia financing by cooperatives. The Ministerial Regulation replaces the Ministerial Regulation regarding KJKS activities and institutions which are not yet perfect and in view of the birth of the LKM Law which also regulates the form of Cooperatives, as well as the authority of the Financial Services Authority (OJK) in the Law.

In the MFI Law, all MFIs, both those based on conventional economics and Islamic economics, are required to register and apply for a business license as an MFI to the OJK. In the transitional provisions of Article 39 Paragraph (1) and (2) of Law No.1 of 2013 concerning MFIs. mentioned Baitut Tamwil Muhammadiyah (BTM) including Microfinance Institutions. Paragraph (1) states that: "When this Law comes into force, Village Banks, Village Barns, Market Banks, Employee Banks, Village Credit Agency (BKD), District Credit Agency (BKK), Small People's Business Credit (KURK), District Credit Institutions (LPK), Village Production Work Bank (BKPD), Rural Credit Business Entity (BUKP), Baitul Maal wa Tamwil (BMT), Baitul Tamwil Muhammadiyah (BTM), and/or other equivalent institutions can still operate until 1 (one) year as of the enactment of this Law". And in Paragraph (2) it is stated that: "Institutions as referred to in paragraph (1) are required to obtain a business license from the Financial Services Authority no later than 1 (one) year as of the enactment of this Law".

Baitut Tanwil Muhammadiyah (BTM)'s obligation to obtain a business license as an MFI is also stated in the Financial Services Authority Regulation (hereinafter referred to as POJK) Number 12 of 2014 Article 29 Paragraph (1) that: "Institutions as referred to in paragraph (1) are required to obtain a business license from the Financial Services Authority no later than 1 (one) year as of the enactment of this Law".

The obligation of Baitut Tanwil Muhammadiyah (BTM) to obtain a business license as an MFI is also stated in the Financial Services Authority Regulation (hereinafter referred to as POJK) Number 12 of 2014 Article 29 Paragraph (1) that: "Village Bank, Village Barn, Market Bank, Employee Bank, Village Credit Agency (BKD), District Credit Agency (BKK), Small People's Business Credit (KURK), District Credit Institution (LPK), Village Production Work Bank (BKPD), Rural Credit Business Entities (BUKP), Baitul Maal wa Tamwil (BMT), Baitul Tamwil Muhammadiyah (BTM), and/or other institutions that: "Village Bank, Village Barn, Market Bank, Employee Bank, Village Credit Agency (BKD), District Credit Agency (BKK), Small People's Business Credit (KURK), District Credit Institution (LPK), Village Production Work Bank (BKPD), Rural Credit Business Entities (BUKP), Baitul Maal wa Tamwil (BMT), Baitul Tamwil Muhammadiyah (BTM), and/or other equivalent institutions that have been established and have been operating before the enactment of Law Number 1 of 2013 concerning Microfinance Institutions, and have not yet obtained a business license based on the applicable laws and regulations, are

required to obtain a business license through confirmation as an MFI to OJK no later than January 8, 2016”.

Based on the description above, it is necessary to dig deeper into everything related to the MFI Law where BTM is obliged to turn into an MFI Cooperative, but many choose KSPPS as the operational basis for financial institutions. based on the background of the problem above, it can be formulated a problem to be studied as follows: (1) What is the position of Muhammadiyah LKM after the enactment of Law no. 1 of 2013 concerning Microfinance Institutions? (2) What are the factors that influence the choice of a Muhammadiyah MFI form of business entity?

2. Literature Review

Types of cooperatives Cooperatives can be grouped into several types, namely:

- a. Consumption cooperatives, namely cooperatives that specifically provide consumer goods to meet the needs of their members.
- b. Production cooperatives, namely cooperatives whose activities are engaged in the production of goods and/or services that are the needs of their members.
- c. Financial Services Cooperatives (savings and loans), namely cooperatives established to provide opportunities for their members to obtain financing, both based on commercial and social contracts for good. To provide services to its members, cooperative management needs to raise funds through member savings and/or from other businesses that generate profit sharing [2].

Savings and loan cooperatives and sharia financing are cooperatives whose business activities include savings, loans and sharia financing according to sharia principles, including managing zakat, infaq/alms, and waqf [3]. The Sharia Savings and Loans and Financing Cooperative (KSPPS) was previously the Sharia Financial Services Cooperative (KJKS) used by the Baitul Maal wat Tamwil (BMT) institution which requires a legal umbrella and the cooperative concept has similarities to the concept of the BMT institution. Baitul Maal wat Tamwil is an institution that has two terms, namely baitul mal and baitul tamwil. Baitul maal is more focused on collecting and distributing non-profit funds, such as zakat, infaq, and alms. The Baitul Tamwil is an effort to collect and distribute commercial funds [4].

Law is needed because it has meaning and function that is important for human life itself. It is difficult to imagine a society without laws. The importance of law for humans and society can be seen from at least two aspects. First, by looking at the potential of law as a means of dispute resolution. Second, look at the potential of law to unite all the diverse elements in society [5].

In the notion of normative law, law is a mirror of society. Laws are dynamic as well as static, or static and dynamic at the same time. This dynamic-static aspect implies a form of intersection between law as a normative area and society as an empirical area. Both are mutually reflected through what is called in legal language as the eternal correlation between *das sollen* and *das sein* [6].

3. Methods

Normative juridical research using a statutory approach (Statue Apporach). The statutory approach is used to examine laws and regulations related to the central theme being researched [7]. By putting the law as a building system of norms. The system of norms in question is about principles, norms, rules of statutory regulations, court decisions, agreements and doctrines (teachings) [8]. The sources of research data used are grouped into two types, namely primary and secondary data. With data collection techniques, literature studies and interviews, followed by data analysis. Data analysis was carried out in this study, analyzed qualitatively using prescriptive methods, through a statutory approach, analyzed qualitatively and guided by Law Number 1 of 2013 concerning Microfinance Institutions, Law Number 25 of 1992 concerning Cooperatives, and Regulation of the Minister of Cooperatives and SMEs of the Republic of Indonesia Number 11 of 2017 concerning the Implementation of Sharia Savings and Loans and Financing Business Activities.

4. Results and Discussion

4.1. Muhammadiyah Microfinance Institutions

Baitut Tamwil Muhammadiyah (BTM) appeared in the 47th Muhammadiyah Congress in Surabaya in 1987 and was always recommended at subsequent congresses, which mandated the importance of BTM at the PDM level as an institution that manages the people's economy. Apart from being a financial institution that provides financial services to the general public, BTM also manages the finances received by other Muhammadiyah Charities and as a center for the financial circulation of Muhammadiyah Charities in their respective regions. As a financial institution under the umbrella of Persyarikatan Muhammadiyah, there are mandatory consequences, namely 20% (twenty percent) of the remaining operating results (SHU) in the Articles of Association of Cooperatives contributed by BTM for Muhammadiyah,

In addition to the form of BTM, there are still many Muhammadiyah MFIs that are in the form of BMT, because socialization of the use of the name BTM is less crowded in the regions. so that there are still many Muhammadiyah MFIs that use the name BMT as the name of the MFI. Another factor that most BMT members still don't want to understand is that the form of BTM also has implications, namely that 50% of BTM ownership belongs to the Muhammadiyah Association represented by Muhammadiyah Charities such as Schools, Lazismu, and Branch or Regional Managers where the BTM is domiciled.

Baitut Tamwil Muhammadiyah (BTM) has an institutional structure from the regional to the central level, the first is the Primary BTM located at the PDM level which consists of individuals. The existence of Muhammadiyah in Primary BTM is represented through ex officio membership. Based on SE MEK PP Muhammadiyah No.004 of 2017, Primary BTM can open branches at PCMs in their environment. Primary BTM is a financial mediator/intermediary institution that functions as a financial management center for Muhammadiyah, a tool for da'wah bil hal, as well as a community empowerment institution.

Second, the BTM Center as a secondary cooperative established by the Primary BTMs. The BTM Center functions as a liquidity controller, namely controlling BTM Primary liquidity through the placement of funds, and through financing distribution. also as a supervisory agency, namely evaluating, coaching, assessing, and supervising Primary BTM so that their health is always maintained. and act as internal audit when needed. As an educational institution, it organizes periodic education and training for managers, administrators and supervisors of Primary BTM.

Third, is the Parent BTM which can be seen in various ways, including as a national level secondary cooperative that functions as a regulator in preparing various policies and regulations, as well as guidelines for establishing, managing and developing BTM. BTM also acts as a system and network controller controlling the implementation of systems and procedures, management and supervision systems, as well as the application and development of information technology systems. Apart from the above, the parent BTM as a center for HR development organizes education and training activities, as well as BTM literacy development, both independently and in collaboration with other competent institutions. BTM as a facilitator can also facilitate and carry out cooperation, partnerships between BTM and with other institutions, in the field of liquidity, human and institutional development, and others.

Baitut Tanwil Muhammadiyah (BTM) is one of the institutions that chose the form of KSPPS. In the scope of the Central Java region, namely, BTM Pekalongan City, BTM Pekalongan Regency, BTM AMMAN Magelang, BTM Purbalingga and BTM Central Java as secondary cooperatives for all BTMs in the Central Java region chose the form of KSPPS. Meanwhile, BTM Pemalang and BTM Tegal chose the form of the LKMS Cooperative.

4.2. Relationship between the MFI Law and the Cooperative Law and its derivative laws and regulations

The issuance of the LKM Law caused changes to the KUKM Ministerial Regulation no. 91/Kep/M.KUKM/IX/2004 concerning Guidelines for the Implementation of Sharia Financial Services Cooperative Business Activities (KJKS) which was removed and replaced by KSPPS, the change was due to the mention of financial services in KJKS, connoting the OJK Institution which was born in 2011, and the existence of microfinance institutions regulated by the OJK institutional and legal certainty. So that in 2015 many BTMs and other microfinance institutions that were previously in the form of KJKS turned into KSPPS.

The relationship between the Law on Microfinance Institutions and Law number 25 of 1992 concerning Cooperatives (hereinafter referred to as the Cooperative Law) is interrelated because in the MFI Law one of the MFI legal entities that must be selected is a Cooperative, as stated in Article 5 Paragraph (1):

However, this relationship is limited to the rules regarding legal entities regulated by the Cooperative Law, regulations regarding business licenses and others. MFIs must comply with the MFI Law. In the regulations regarding cooperatives, either at the LKM or KSPPS, it is not found as an option for the

form of cooperatives, but the regulations governing the form of cooperatives with financial services can only be found in the LKM Law and the Cooperative Law as well as derivative regulations in each law.

Both laws and regulations regulate the BTM institution in the form of a Cooperative. Therefore, before determining the position of the KSPPS Baitut Tanwil Muhammadiyah (BTM) after the enactment of the LKM Law, it must first be known the position of the LKM Law with the Cooperative Law, does the MFI Law override the Cooperative Law? or the MFI Law has the same position as the Cooperative Law?

There are 3 principles of legislation that we adhere to, namely:

1. The principle of high law overrides low law (*Lex superior derogat legi inferior*)
2. The principle of the new law overrides the old law (*Lex posterior derogat legi priori*)
3. The principle of special law overrides general law (*Lex specialis derogat legi generali*)

In the *Lex superior derogat legi inferior* principle, the position of the LKM Law and the Cooperative Law is equal, because their position is the same as a high law under the 1945 Constitution and the MPR Decree, not higher or lower. Then, on the *Lex posterior derogat legi priori* principle, it can be said that the MFI Law is a new law compared to the Cooperative Law which was first born in 1992, but the MFI Law is not a law that replaces the rules regulated in the Cooperative Law. Then, on the *Lex specialis derogat legi generali* principle, the special legal requirement to override general law is that the position must be equal, both the MFI Law and the Cooperative Law are of equal standing, but whether the MFI Law is a special law and must override the Cooperative Law as common law.

4.3. Factors Muhammadiyah MFI chooses KSPPS or LKMS

Legal certainty, acknowledgment of the existence and legal protection are very much needed for BTM, both in terms of institutions and the protection of the people who use these services, where most of the BTM service users are micro-enterprises and poor and/or low-income people. The purpose of the inclusion of BTM, including MFIs, is to encourage the creation of a sustainable MFI industry in its services to the needs of micro-enterprises and the poor.

The dualism of the laws and regulations applicable to cooperative MFIs also creates regulatory inconsistencies. According to cooperative laws and regulations, Cooperative LKM runs a business with the principle of independence. The definition of cooperative independence is that it can stand alone and does not depend on other parties, believes in its own abilities, is autonomous, self-reliant, manages itself, and dares to take responsibility for its own actions. Based on the cooperative principle, the government is tasked with strengthening and participating in maintaining the principle of self-reliance of cooperatives. This is clarified by the Cooperative Law that in order to carry out its role in establishing policies for the development of the Government, it is necessary to encourage the growth, development, and socialization of Cooperatives. In accordance with the principle of independence, the guidance is carried out without interfering with the internal affairs of the Cooperative organization [9].

This regulatory inconsistency has implications for the inconsistency and contradiction of norms between regulations in cooperatives and regulations in MFIs. The contradictions of those norms are found in; First, the existence of a prohibition on running a business for all MFIs, whether small or large, if without obtaining permission and fulfilling the requirements from the OJK, is a provision that is contrary to the entrepreneurial system and micro community business independence in cooperative activities. Because cooperative activities can be started from the form of a simple business group since before it was a legal entity (pre-cooperative). Second, regulations in MFIs that apply to all MFIs without distinction of small and large scale, which require minimum capital requirements are a form of coercion on small Syariah MFIs to must have a formal-professional pattern of work like a banking business. Such arrangements are contrary to regulations in cooperatives that strengthen the independence of Syariah MFIs and provide flexibility and convenience. Fourth, the provisions on the threat of administrative and criminal sanctions which are applied to all Syariah MFIs are in stark contrast to the norms regarding the development, empowerment, protection and protection of cooperatives, especially for small Syariah MFIs. Fifth, regulations in cooperatives that provide autonomy and independence for all Islamic MFIs, small and large scale, without limitations on independence and autonomy to a certain scale, will foster a Syariah MFI with a bank capacity but outside the regulation and supervision of the OJK. This is contrary to the purpose of MFI regulation[10].

In addition, the supervision and guidance provided by the financial services authority is considered not to contain legal certainty, because the financial services authority and the cooperative ministry do have their own paths. However, further guidance is handed over to the cooperative service and its apparatus. Added to this is opportunistic behavior, which allows these LKMS to gain greater benefits, both material and immaterial, when they do not implement Law No. 1 of 2013 concerning Microfinance Institutions [11].

Based on the results of an interview with a Sharia Economist, Mr. Ahmad Su'ud, who is also the Head of the Central Java KSPPS BTM Central Java on February 5, 2020 The issuance of the LKM Law in 2013 stated that Baitut Tanwil Muhammadiyah (BTM) was included as an LKM, while most BTMs were already in the form of KJKS, we (at that time) were waiting for the implementing regulations. In 2016 we held a national discussion with the theme of revitalizing BTM after the issuance of Law No. 1 of 2013, with the results issuing four recommendations, namely; 1) BTM will utilize 2 regulations, namely the LKM Law and the 1992 Cooperative Law in developing Baitut Tanwil Muhammadiyah (BTM) in the future. 2) the need for harmonization of regulations in the development of secondary cooperatives, the existence of restrictions on the Minister of Cooperatives No. 10 of 2015 and the prohibition on the MFI Law for secondary cooperatives (BTM Cooperative Center). 3) With the harmonization of regulations, Baitut Tanwil Muhammadiyah (BTM) hopes that OJK will accommodate the form of secondary cooperatives in primary cooperatives (BTM in regions).”

KSPSS BTM is legally domiciled as long as it follows the rules regarding the business activities of Sharia Savings and Loans and Financing Cooperatives, namely Law no. 25 of 1992 concerning Cooperatives and the Minister of Cooperatives and Small and Medium Enterprises Regulation no. 11/2017 concerning the Implementation of Savings and Loans Business Activities and Sharia Financing by Cooperatives.

However, because the legal umbrella regarding the form of BTM only exists in Law no. 1 of 2013 concerning Microfinance Institutions. So BTM should still have the obligation to register as a Sharia Microfinance Institution with the local Financial Services Authority. This is because legal certainty over BTM has been stated in the MFI Law and the mechanism or system of business activities has also accommodated financial service activities with sharia principles, as well as supervision and guidance from the Financial Services Authority. So judging by the Law on Microfinance Institutions, the position of KSPPS BTM is not a Sharia Microfinance Institution because it cannot fulfill the provisions required by the MFI Law.

It is also known that the MFI Law is a law that can be said to be based on the Lex Specialist Derogate Legi Generalis principle, which means that the MFI Law is a law that applies specifically in several respects but in it, the provisions still state that it is subject to the Cooperative Law, the application of the lex specialis principle. In the LKM Law, the position of LKMS is specifically determined from a number of laws and regulations concerning cooperative institutions that are generally applicable. This principle emphasizes the form of LKMS that has good legal certainty compared to other sharia cooperatives.

5. Conclusion

The enactment of Law number 1 of 2013 concerning Microfinance Institutions, However, in the Law, in Article 39 Paragraphs (1) and (2) and POJK No. 12/2014 Article 29, it is stated that BMT and BTM institutions are institutions that must obtain a business license from the Financial Services Authority. The obligation for a business license by the OJK was finally abolished with the issuance of POJK number 61/2015 concerning amendments to POJK number 12/2014 which included the abolition of Article 29 concerning the obligation for a business license and the inauguration of MFIs by the OJK. However, this obligation has not disappeared because it is still listed in Article 39 of the MFI Law. On the other hand, BTM chooses the form of KSPPS because the form of LKMS limits the space for BTM's business services. Sharia financing by Cooperatives

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