

THE CUSTOMER PROTECTION OF BAITUL MAAL WA TAMWIL (BMT) ON ECONOMIC LAW PERSPECTIVE

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Abstract. This study aims to comprehensively determine the customer protection of Baitul Maal Wa Tamwil (BMT) from an economic law perspective. This study is a literature review, which uses a normative juridical approach. The data collection technique used in this research is the documentation technique. At the same time, the analytical technique used in this study is descriptive qualitative, where the author will describe the data related to Baitul Maal Wa Tamwil (BMT) in detail and then do an inductive analysis using the perspective of economic law. After conducting in-depth research, it was concluded that customers who deposit funds at Baitul Maal Wa Tamwil (BMT) do not receive guarantees from the government (because no law regulates it) if there is a crisis in BMT. Therefore, if a Baitul Maal Wa Tamwil (BMT) goes bankrupt, then based on the Civil Code (KUH Perdata), customers who deposit funds in Baitul Maal Wa Tamwil (BMT) are in the same position as concurrent creditors. As a concurrent creditor, the right to get a refund must be shared with other creditors after the Baitul Maal Wa Tamwil (BMT) assets are used to settle the obligations of the Baitul Maal Wa Tamwil (BMT) to the preferred creditor.

Keywords: Baitul Mal Wa Tamwil (BMT); customer protection; economic law.

INTRODUCTION

Developing banking using sharia principles, better known as Islamic banks or Islamic microfinance institutions (LKMS) in Indonesia, is not a new thing. However, since 1992, sharia-based financial institutions have emerged that prohibit the concept of interest (riba) in their operations. An important factor behind the birth of Islamic banks and Islamic microfinance institutions is the strict prohibition of Riba in the Al-Qur'an. Riba is an additional taking, both in buying and selling transactions and lending and borrowing in vanity or contrary to the principle of muamalah in Islam. One of the Islamic microfinance institutions in a cooperative is Baitul Maal wat Tamwil (BMT). Baitul Maal wat Tamwil (BMT) is a sharia financial institution that operates using a combination of the concept of "*Baitul tamwil and Baitul maal*" with its operational target focusing on the Small and Medium Enterprises (SME) sector.

Through the Ministry of Cooperatives and SMEs, the government said the development of BMT performance nationally developed very significantly. The BMT Cooperative Business is a business targeted at the lower class according to the provisions of the regulations. The number of company employees who have been fired recently has made the Baitul Maal wat Tamwil (BMT) business even more challenging to increase demand for products and services.

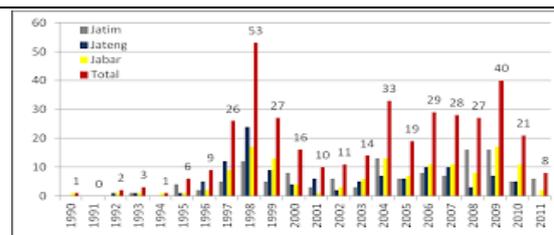


Figure 1. Number of BMT Established Every Year

Based on the survey, the establishment of BMT in these three areas of Java shows almost the same pattern, where the establishment of BMT significantly occurred during periods of the financial crisis, namely 1998, 2004, and 2009. This fact supports the belief that micro-small businesses with the resilience to crises proliferate at times of crisis, encouraging microfinance institutions to grow and develop. Especially for 1998, this fact is also supported by data where the government, through several related departments, rolled out several microfinance institution development programs to open up the broadest possible access to capital for the people in running micro-small businesses. This program aims to anticipate a decline in economic performance from a decline in economic growth and an increase in unemployment due to the crisis ([Sakti, 2013](#)); ([Mau & Ulyukaev, 2015](#)); ([Razmi, Rapetti, & Skott, 2012](#)); ([Shahbaz, Van Hoang, Mahalik, & Roubaud, 2017](#)); ([Rafindadi & Ozturk, 2016](#)).

However, the development of this BMT was not followed by Precise regulation and the legal basis. BMT has distinctive characteristics when compared to other existing financial institutions, because in addition to having a commercial mission (Baitut Tamwil) it also has a social mission

(Baitul Maal), therefore BMT can be said to be a new type of microfinance institution.

From the previous ones. Some BMT take the legal form of Cooperatives, but this is still an option, not a requirement. BMT can be established in the form of a Non-Governmental Organization (KSM), or it can also be a combined legal entity.

Since its inception, the legality of Baitul Maal wat Tamwil (BMT) has not existed; it is just that many BMT choose cooperative legal entities. Therefore, BMT is subject to cooperative rules, namely Law No.25 of 1992 concerning Cooperatives which has been changed to Law No. 17 of 2012. However, since the existence of Law No. 1 of 2013 concerning Microfinance Institutions (MFIs), the institutional status of BMT legal entities has become a particular problem that burdens BMT. Most of the existing BMT are cooperative legal entities with small and medium scale businesses, and the business scope covers several cities/districts, even across provinces. However, with the regulation of BMT as an MFI as stated in Law no. 1 of 2013, the breadth of BMT business coverage is limited. BMT must transform into a bank to expand its business to other cities/regencies.

The impact of this new regulation has made it difficult for many BMT to develop, and even some BMT have gone bankrupt and have to return money from their customers. For example, the BMT Fi Sabilillah in Wonogiri, BMT Perdana Surya Utama in Malang, BMT Global Insani in Cirebon, BMT Amanah Ray in Medan, BMT Insan Bina Mandiri in Banyumas, BMT Dana Mulya Syariah in Lampung, BMT Lestari Muamalat in Tegal and other cases. These

cases are generally about depositors who have difficulty taking their deposits, BMT administrators who run away because of cases of embezzlement of funds or fraud, the number of which is not tiny, up to tens of billions. Bankruptcy in BMT caused many legal problems if it was not resolved correctly and adequately. Based on this fact, the writer is interested in conducting a study related to the protection of Baitul Maal wat Tamwil (BMT) customers from the perspective of economic law.

METHODS

This study is a literature review, which uses a normative juridical approach. The data collection technique used in this research is the documentation technique. At the same time, the analytical technique used in this study is descriptive qualitative, where the author will describe the data related to Baitul Maal Wa Tamwil first in detail and then do an inductive analysis using the perspective of economic law.

RESULTS AND DISCUSSION

A. The Understanding Of Baitul Maal Wa Tamwil

In language, baitul mal means a house of funds, and baitul tamwil means a business house. Baitul mal was developed based on a history of its development, namely from the prophet's time to the middle ages of Islamic development. From the description of BMT above, it is explained that BMT is an elementary institution as an Islamic financial institution in activating the increase in

the development of community economic activities based on sharia laws in every activity and activity. a comprehensive understanding can be drawn that BMT is a business organization that also acts as a social center. The social role of the BMT institution can be seen in the definition of baitul maal, while the business role of BMT can be seen from the definition of baitul tamwil.

Baitul Maal Wat Tamwil (BMT) functions to collect and distribute funds to the public like banks or other financial institutions. BMT was founded with the idea of flexibility in reaching the lower classes of society, namely small people's economic institutions because most of them are small traders who cannot take advantage of credit facilities from conventional banks to develop their businesses, is due to the complex procedures of conventional banks and weaknesses possessed by small traders and small entrepreneurs in terms of management, marketing, and guarantees which are essential factors for bank assessment.

Sharia microfinance institution has different characteristics From similar financial institutions. However, it specifically has the following characteristics:

1. Business-oriented, seeking mutual profit, increasing The maximum economical utilization for members and society.
2. Not a social institution, but valuable for the effective collection and administration of zakat, infaq, and alms funds for the welfare of the

people.

3. Grown from the bottom based on the participation of the Surrounding community.

B. History and Legal Basis of Baitul Maal Wa Tamwil

The development of BMT in Indonesia began with establishing Bank Muamalat Indonesia (BMI) in 1992, which in practice BMI in its operational activities are based on sharia values. After establishing BMI, the opportunity arose to establish banks with sharia principles, but the operationalization of BMI did not reach small and medium-sized businesses. Thus, efforts emerged to establish banks and microfinance institutions, such as Sharia People's Financing Banks (BPRS) and BMT, which aimed to overcome operational barriers in the regions. This condition is the background for the emergence of BMT to reach local communities to remote rural areas. The development of BMT itself results from an initiative from the Small and Medium Business Incubation Center (PINBUK), which is a working body formed by the Small and Medium Business Incubation Foundation (YINBUK). YINBUK itself was formed by the General Chairperson of the Indonesian Ulema Council (MUI), the General Chairperson of the Association of Indonesian Muslim Intellectuals (ICMI), and the President Director of Bank Muamalat Indonesia (BMI) ([Mursiad, 2018](#)).

Legally, BMT is under the umbrella of cooperatives, but the operating system is not much different from

Sharia Banks, so the products developed in BMT are like those of Sharia Banks. Meanwhile, Islamic banks have a juridical basis in law on Islamic banking, namely Law no. 21 of 2008 concerning Islamic banking, so that a strong legal legitimacy was born there as a shelter. Because it is a cooperative legal entity, BMT must comply with Law Number 25 of 1992 concerning Cooperatives and Government Regulation Number 9 of 1995 concerning the implementation of savings and loan businesses by cooperatives. It is also emphasized by KEP.MEN Number 91 of 2004 concerning Sharia Financial Services Cooperatives. This law serves as an umbrella for the establishment of BMT (Shari'ah Microfinance Institution) ([Muslim Tanjung & Novizas, 2021](#)).

In Indonesia, policies regarding

cooperatives have existed for a long time, along with the existence of cooperatives. In 1958 the policy on cooperatives was regulated in Law no. 79 of 1958. Law no. 79 of 1958 entitled cooperative association. Then in 1965, the policy on cooperatives was renewed with the issuance of Law No. 14 of 1965 with the title Law on Cooperatives. In 1992, changes were made to the Cooperative Law, specifically Law no. 25 of 1992, then in 2012, the Cooperative Law was again amended in line with the development of cooperative activities in Indonesia. The birth of Law no. 17 of 2012 Regarding cooperatives, there are many pros and cons because many different things are tried to be displayed to strengthen Indonesian cooperatives. Among these differences.

Table 1. Differences in the Law on Cooperatives

No	POINT OF DIFFERENCE	
	Law No. 25 of 1992	Law No. 17 of 2012
1	Cooperatives as business entities and legal entities	Cooperative as a legal entity
2	There is no consistency of words in describing the definition of cooperatives, namely, on the other hand, cooperatives are described as business entities, but on the other hand, cooperatives are described as legal entities.	There is a word consistency that describes the definition of a cooperative as a legal entity
3	It does not explain more the composition of capital owned by cooperatives in terms of separating the wealth of its members	describe more clearly the composition of the capital owned by cooperatives in terms of the separation of the wealth of its members
4	Outline the Scope Of Cooperatives Only Limited to the	Elaborating a broader definition which States that cooperatives cover not only

	Economic Sectors.	economic needs but also economic, social, and cultural fields.
5	Describe the principles of Cooperatives as guidelines adopted by cooperatives.	It not only outlines the cooperative principle as a guide for carrying out operational activities but is also guided by the values of
6	Elaborating the principles of Cooperatives emphasize the nature of the membership and management of cooperatives and the remuneration of the remaining business results obtained.	Elaborating the cooperative principle Places more emphasis on excellent service as a cooperative principle and revises remuneration from the remaining business results obtained because this is not considered a cooperative principle that emphasizes the meaning of service.
7	outlines the definition Of cooperatives based on the principle of kinship.	does not describe the definition of cooperatives based on the family principle

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

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

the Minister of Cooperatives and SMEs Number 91/Kep/M.KUKM/IX/2004 concerning Guidelines for implementing Sharia Financial Services Cooperative Business Activities (KJKS). BMT incorporated as cooperatives can engage in financing, investment, and savings following sharia principles. The business activities of KJKS and UJKS Cooperatives include withdrawing/collecting funds and redistributing these funds in the form of financing/receivables. In addition, KJKS and UJKS Cooperatives can also carry out 'maal' activities or activities to collect and distribute zakat, infaq, and sadaqah funds (ZIS). In other words, KJKS and UJKS Cooperatives have similar characteristics to BMT. As a sharia financial institution, KJKS or BMT must maintain the credibility and trust of members and the broader community in general.

C. Products and Services at Baitul Maal Wa Tamwil

Baitul Maal wa Tamwil (BMT) is expected to become an institution that supports economic activities for the lower class, with a sharia-based BMT economic system; of course, BMT is much different from conventional institutions prioritize the interest system (usury), which has clear laws. Haram in Islamic economics can contain usury, namely, profits that arise without any risk in acting, business results appear without any costs and only with time. The interest system is also very detrimental to the community because the interest payments made remain as promised without considering whether the project carried out by the customer is profitable or not ([Sudjana & Rizkison, 2020](#)).

As a sharia financial institution that operates in the micro sector, BMT

It has a significant function and role in improving the people's economy. The principles of BMT can work well if these functions are carried out with good governance and procedures. Muhammad Ridwan explained that BMT must carry out five functions: Identity, mobilize, organize, encourage, and develop the potential and economic potential of members, groups of mu'amalat members, and their working areas. Second; Improving the quality of member human resources and focusing on becoming more professional and Islamic so that they are more complete and resilient in the face of global competition. Third; To mobilize and mobilize the potential of

the community in order to improve the welfare of members. Fourth; Become a financial intermediary between people who have excess assets as shahibul maal and people who lack property as mudharib, especially for social funds such as zakat, infaq, alms, endowments, grants, and others. Fifth; Become a financial intermediary (financial intermediary) between owners of capital (shahibul maal), both as investors and depositors and users of funds (mudharib) for productive business development ([Mursiad, 2018](#)).

The process of financing or providing credit at BMT is carried out with several sharia principles; even if this financial institution is small and micro, the application of sharia must be carried out. There are several principles in Islamic financing: Four general prohibitions to consider when structuring Islamic financing on: (i) Interest in the form of money, for the use of money (riba), interpreted as Any pre-determined prohibition or calculated as guaranteed other than concerning actual profits. Generated, (ii) gambling, speculation, and other activities the outcome of which is uncertain, this would include transactions in futures and options, (iii) using or dealing with certain prohibited commodities, for example, alcohol, and (iv) uncertainty in contracts (gharar) ([Muljadi, 2014](#)).

There are several products that BMT offers to its customers, including:

1. The first product is a fund-raising product, namely in wadiah savings and mudhorobah deposits. Wadiah

deposits are deposits or deposits that customers or members can withdraw at any time by issuing securities for book transfers/transfers and other payments. Wadi'ah deposits are divided into 2 (two), namely wadhi'ah Amanah (deposited funds such as zakat, infaq, and shodaqoh) and wadhi'ah yadhomanah (deposits that will receive a bonus from the bank if the bank benefits from the use of customer funds). Mudharabah deposits are fund owners whose deposits or withdrawals can be made following a pre-agreed contract or agreement. The types of savings products that use mudharabah contracts include Eid al-Fitr savings, Eid al-Qurban savings, Hajj savings, Education savings, Health Savings, and others .

2. The second product is a Funds Channel product in the form of financing or investment, with the principle of buying and selling (murabahah), profit-sharing (mudharabah and musharaka), and qardhul Hasan financing, which is we carried out based on sharia principles. In this context, BMT functions as an institution for managing and empowering community funds by establishing cooperation partners between the BMT managers and the community, namely by Collecting public funds and then redistributing them to the community (customers) engaged in the productive business sector and

need financial assistance with the nature of profit. Examples of this product are mudhorobah financing, musyarokah financing, murabahah financing and Bai' Bitsaman Ajil financing ([Habbibie, 2019](#)); ([Adetia Azmi Tanjung & Affiah, 2022](#)). Murabahah contract is the sale and purchase of goods at the cost of goods plus the agreed profit margin. According to Islamic law experts (fuqaha), the meaning of murabahah is "*al-bai bira'sil maal waribhun ma'lum*" which means buying and selling essential goods plus a known profit. The fuqaha characterize murabahah as a form of buying and selling based on trust (dhaman buyu" al-Amanah). According to the National Shari'ah Council, murabahah is selling an item by confirming the purchase price to the buyer, and the buyer pays it at a higher price as profit.

D. Legal Protection for Baitul Maal Wa Tamwil Customers

BMT is a financial service institution with an important role as alternative financing for MSMEs apart from banking. However, currently BMT still has many weaknesses to be able to develop its business activities. Capital problems are the main problems faced by BMT. In addition, the weakness of the BMT supervision system, the lack of competent human resources in the field of

Sharia cooperatives are problems that must be resolved immediately. Public Understanding of the Islamic

financial system is still shallow, and the role as Baitul Maal or the role of depositing zakat, infaq, and alms funds which are also very low, needs to work with related parties to solve it ([Permana & Adhiem, 2020](#)); ([Sударsono & Shiddiqi, 2021](#)).

With the introduction of Islamic banking in the mid-1990s, these Islamic financial institutions did not always run as well as expected. There are several BMT that have experienced failures in their operations which have resulted in neglected customers and BMT are unable to restore customer rights. At the end of the year there were many cases of BMT going bankrupt, and the impact that would occur was a crisis of public trust, especially towards BMT. Discussing about the bankruptcy of BMT, of course, cannot be separated from its relationship with customers, including how the rights of customers who channel their funds to BMT, whether the legal protection is sufficient as expected by the customer or not ([Isnan, 2016](#)). For this reason, it is necessary to have legal protection for customers if bad things happen to BMT.

According to Article 1 Paragraph

(15) and (16) of the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number:11/Per/M.KUKM/XII /2017 concerning the Implementation of Sharia Financing and Savings and Loans Business Activities, cooperative customers are referred to as members or prospective members. Cooperative members, in the future referred to as members, are owners and users of cooperative services and are recorded in the member register book. Prospective Members are individuals/cooperatives that have paid off their principal savings payments to their cooperatives but have not formally completed the administrative requirements, i.e., have not signed the member register book. Legal protection for cooperative customers is protection by using legal means aimed at protecting the interests of cooperative customers, namely members and prospective members who are harmed by cooperatives. The Civil Code can be used as a legal reference for BMT cooperative customers, namely ([Nurhadi, 2018](#)):

Table 2. Legal protection of BMT customers

No	Legal protection		
	legal protection due to unlawful acts	Legal protection due to default.	Use coercive measures.
1	Article 1365 of the Civil Code. The article reads: "every action against the law that causes harm to	The legal consequences for debtors who have defaulted are: legal penalties or sanctions, namely: a) the debtor is required to pay compensation which has	origin 1267 The Civil Code states that parties against which the engagement is not fulfilled, may choose;

<p>another person, obliges the person who because it's wrong to issue a loss to compensate for the loss "That is, the elements PMH, namely:</p> <ol style="list-style-type: none"> 1) there is an unlawful act; 2) there is an error; 3) there is a relationship cause and effect between loss and action; 4) there is a loss. 	<p>been suffered by the creditor (Article 1243 of the Civil Code);</p> <p>b) when the engagement reciprocally, the creditor can demand termination or cancellation of the engagement through :</p> <p>judge (Article 1266 of the Civil Code); c) when the engagement is to give something, then the risk shifts to the debtor since there is a default (Article 1237 paragraph (2) Civil Code); d) the debtor is required to fulfill the engagement if it can be done, or cancellation accompanied by payment of compensation (Article 1267 of the Civil Code);</p> <p>e) the debtor is obliged to pay court fees if permitted by the Court, and the debtor found guilty</p>	<p>forcing the other to comply with the agreement, if it can still be done, or demand approval cancellation,with reimbursement of costs, losses, and interest.</p>
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Customers who deposit funds both at banks and BMT (which are generally small savers) when viewed according to their position according to The Civil Code are concurrent creditors, creditors who must share with other creditors in obtaining their rights after the assets of the bank or BMT is deducted for preferred creditors and particular creditors Others, including obligations to the State. Customers who deposit funds at BMT do not receive guarantees from the government (because no law regulates them) for their funds if there is a crisis in BMT. Therefore, if a BMT goes bankrupt, we must refer to The provisions are contained in the Civil Code. The Civil Code places customers are

depositing funds at BMT in the position of Concurrent creditors. As a concurrent creditor, the right to get a refund must be shared with other creditors after BMT assets are used to settle BMT obligations to preferred creditors .

CONCLUSIONS

After conducting in-depth research, it was concluded that customers who deposit funds at Baitul Maal Wa Tamwil (BMT) do not receive guarantees from the government (because no law regulates it) if there is a crisis in BMT. Therefore, if a Baitul Maal Wa Tamwil (BMT) goes bankrupt, then based on the Civil Code (KUH Perdata), customers who deposit funds in Baitul Maal

Wa Tamwil (BMT) are in the same position as concurrent creditors. As a concurrent creditor, the right to get a refund must be shared with other creditors after the Baitul Maal Wa Tamwil (BMT) assets are used to settle the obligations of the Baitul Maal Wa Tamwil (BMT) to the preferred creditor.

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