

CHAPTER I

INTRODUCTION

A. Background of Research

Baitul Mal wat Tamwil is an institution that is found in the Islamic Government to facilitated financial solution of the State, or a Financial Institution of State which has duty to receive, store, and distribute financial State in accordance with the Islamic Sharia.¹ *Baitul Maal* means House of Funds (*Rumah Dana*) and *Baitul Tamwil* means House of Business (*Rumah Usaha*). The term of Baitul Maal is derived from Arabic language which means the House of Property (*Rumah Harta*) or the State Treasury (*Harta Negara*).

BMT is an integrated independent business entity or a Microfinance Institution which is operated under sharia principles. The purpose of the establishment of BMT is to improve the quality of economic activities for the welfare of members and society. BMT can give the capital for helping the member of Society who can use it to establish any kind of business activities. BMT is businesses that grows and develops independently and managed by professionals. BMT is initiated for the welfare of members by raising funds from zakat, donation, charity, endowments and others.²

¹ Mardani, 2012, *Aspek Hukum Lembaga Keuangan Syariah Di Indonesia*, Jakarta, Kencana, p, 315

² Abdul Manan, 2012, *Hukum Ekonomi Syariah dalam Perspektif Kewenangan Peradilan Agama*, Jakarta, Kencana Prenada Media Group, p.354

Since the establishment of Islamic banks in Indonesia in the 1980s, such as the *Bank Muamalat Indonesia* (BMI), day by day there are more people interested in using the services of Islamic banking. However the operation of Islamic banks such as BMI has not been fully recognized by small and medium enterprises. Therefore it appears that the effort to establish a Microfinance Institution that is more accessible to small communities such as BPR Sharia and BMT.

The establishment of BMT in Indonesia is to fulfill the needs of the Islamic Community in Indonesia. It is known that Indonesia is the most populated Muslim country in the world. So Muslims in Indonesia require Financial Institutions based on Islamic sharia, that's why Islamic financial is very necessary in Indonesia. The legal status or legal entity of BMT until now is still unclear, there are many forms of BMT as Cooperation, Foundation, and besides, there are BMT with no Legal Entity.

Some law experts explain that BMT is part of Microfinance Institutions which is regulated by Law number 1 of 2013. In some articles, it is mentioned that the existence of these rules is meant in the Microfinance Institutions must be a legal entity such as a Limited Liability Company or Cooperation and automatically under the regulation and supervision of the FSA. It is expected that with this legislation the Microfinance Institutions like BMT in Indonesia will have a clear legal entity and has obvious supervisory and clear rules. As we know BMT in Indonesia grows up without clear legal entity and has no particular rules to be followed.³

³, Lucky Fathul Hadibrata. *Mengenal OJK dan lembaga keuangan Mikro*. Accessed on January, 20, 2016, www.ojk.go.id, at 09:00 p.m.

FSA is the Financial Services Authority or state institutions established by Law number 21 of 2011 which serves conducting regulatory and supervisory system that is integrated to the overall activities in the financial services sector. According to Law No. 21 of 2011, Financial Services Authority is an independent institution and is free from interference of other parties, which has the functions, duties, and authority, inspections and investigations on which are referred to in this law.⁴

At first, the supervision of Financial Institutions such as banks conducted by the Bank Indonesia (BI) while the financial sector companies of non-banks are regulated and overseen by the regulatory Bodies of Capital Markets-financial institutions (Bapepam-LK) but over time the model of monitoring using Bapepam-LK and BI are less effective to regulate and supervise financial institutions in Indonesia.⁵ The government also mandated to establish the financial sector supervisory institutions like banks in Indonesia which are independent. It is based on law number 23 of 1999 jo. Article 34 of Law No. 3 of 2004 jo. Law No. 6 of 2009.⁶ In addition, the agency also has the authority to supervise the Banking Institutions, Insurance Pension Fund, Capital Ventura, Capital Markets, Corporate Finance, as well as other agencies that play a role in managing public funds.

The reason to establish the FSA is also due to increasingly complex and diverse financial products that led to the emergence of a sense of great competition among

⁴ Indonesia, Law number 21 of 2011 of Financial Service Institution

⁵ KR Sinaga, Otoritas Jasa Keuangan Sebagai Lembaga Yang Independen Accessed on January, [at 09:00 p.m.](http://www.repository.usu.ac.id/bitstream/123456789/.../3/Chapter%20II.pdf), www.repository.usu.ac.id/bitstream/123456789/.../3/Chapter%20II.pdf

⁶ Law Number 3 of 2004 jo. Law Number 6 of 2009 of Bank Indonesia.

Financial Services Company which later lead to many frauds against the laws and procedures. It is necessary to institute a more competent and independent institution to oversee it. Another reason for the government is that Bank Indonesia, as the central bank has failed in its function as a bank that regulate and supervise the financial sector, that is why then FSA replaces Bank Indonesia in the regulation and supervision of banks and non-bank institution, and also protects the Consumer of Financial Services Industry.

In article 4 of Law No. 21 of 2011 explain the objectives of the FSA (Financial Services Authority) are;⁷

FSA shall be established in order to the overall activities within the sector of financial services, is:

- (1) Well organized, fair, transparent, and accountable.
- (2) Capable to realize financial system of which grow sustainably and stable; and
- (3) Capable of protect the interests of Consumers and Community.

With these objectives, the FSA is expected to support interests of the financial service sectors and able to maintain the health of financial service institution in Indonesia. Thus it is able to maintain the interests of consumers and the community that may affect the financial stability of the state and national competitiveness.⁸

The establishment of a Supervisory Institution also aims to create flexibility and efficiency of the regulation and accountability. The presence of various supervisory institutions potentially creates sectorial arrogance and diversion of responsibility so

⁷ Indonesia, Law No. 21 of 2011 on Financial Service Authority

⁸Septian Widiyanto, 2015, "The Role of FSA in Supervising the Health of Commercial Bank", (unpublished Undergraduate Thesis, Faculty of Law Universitas Muhammadiyah Yogyakarta), Yogyakarta, UMY. p.21.

that the rule implementation is ineffective. Moreover duplication making process and data processing have caused inefficient rule implementation of the regulatory institution. Disbursement effect (division of authority/division error) can also occur if there are several financial supervisory institutions.⁹

The FSA is a new organization that is designed to perform strict supervision on Financial Institutions such as banks, Capital Markets, Mutual Funds, Financial Institutions, Retirement, and Insurance.

The main purposes of the establishment of the FSA are to;¹⁰

- a. Improve and maintain public confidence in field of financial services.
- b. Enforce laws and regulations in field of financial services.
- c. Increase public understanding of financial service sector.
- d. Protect the interests of consumers and financial service.

Another reason establishment of the FSA is due to financial crisis of 1996-1997 that had a major impact on the finances in Indonesia, especially in banking sector. There were 16 banks in Indonesia which were closed and it caused rush. This incident became one of the causes of the formation of the FSA. Thus the people expect that the establishment of FSA can prevent the crisis.¹¹

Meanwhile, according to Article 5-6 of Law No. 21 of 2011, the function of Authority for the financial services regulatory system is to organize and integrate supervision of the overall activities in the financial services sector.

⁹ *Ibid.* p. 22

¹⁰ Indonesia, draft of the Law on Financial Service Authority, p. 1-2

¹¹ *Ibid.* p. 22

Among regulation and supervision duties are given in term of :¹²

- a. Activity of financial services in the sector of banking.
- b. Activity in the financial services sector of the Capital Markets; and
- c. Activity of financial services report in the Sector of Insurance, Pension Funds, Financial Institution, and Other Financial Services.

From these explanations it be concluded that BMT is included in the Financial Institutions and other financial services that are also subject to and comply with the regulation and supervision performed by the FSA.

B. Research Problem :

1. What is the role of the Financial Service Authority (FSA) in supervising *Baitul Maal wat Tamwil* (BMT)?
2. What are the efforts of the Financial Service Authority (FSA) to protect the customer of *Baitul Maal wat Tamwil* (BMT)?

C. The Objectives of Research

1. To find out the role of Financial Service Authority (FSA) in supervising *Baitul Maal wat Tamwil* (BMT)
2. To understand the effort of Financial Service Authority (FSA) to protect the customer of *Baitul Maal wat Tamwil* (BMT)

D. The Benefits of Research

1. Theoretical Benefit

¹² Indonesia, Law No. 21 of 2011 of Financial Service Authority.

This research is expected to increase knowledge and information on the role of financial and related services authority in overseeing the financial services industry such as BMT, and also to contribute to the science of law, especially commercial law in understanding the rules of the FSA and the BMT as enactment Law number 21 of 2011 on the financial services authority and the Law No. 1 of 2013 on MFIs (Microfinance Institutions).

2. Practical Benefits

Hopefully this research can increase knowledge and help people in solving the problems related to the financial services authority and BMT. Moreover, it is hoped that this research clarifies the role of the Financial Services Authority (FSA) in supervising *Baitul Maal wat Tamwil* (BMT) and the effort of the Financial Services Authority (FSA) to protect the customers of *Baitul Maal wat Tamwil* (BMT).