

CHAPTER II

LITERATURE REVIEW

A. General Overview of BMT

Baitul Maal wat Tamwil is an institution that has two terms *Baitul Maal* and *Baitul Tamwil*. *Baitul Maal* is referring to the collective management and disbursement of the nonprofit, like charity, donation, and alms. The *Baitul Tamwil*, on the other hand, a collection of business and commercial distribution of funds. The effort is an integrated part of the BMT activities in supporting small economic activities based on Islamic sharia.¹

The purpose of this institution is to provide financial services to the parties who are not covered by financial services such as Islamic bank, Conventional bank, or *Bank Perkreditan Rakyat Sharia* (BPR). The operational principle which is done in BMT is similar to Islamic Bank, such as the principle of sharing, buying and selling, *ijara*, and deposit. However, BMT has its own market share; they are a small community that is not affordable banking services or small businesses (*Pelaku Usaha Kecil*).²

BMT is a mosque-based economic development as a medium for the prosperity of the mosque. The member and partner of BMT is society or people live

¹ Mardani, 2012, *Aspek Hukum Lembaga Keuangan Syariah di Indonesia*, Jakarta, kencana, p,316

² Nurul Huda and Mohammad Heykal, 2010, *Lembaga Keuangan Syariah Tinjauan Teoritis dan Praktis*. Ed.1 Jakarta, Kencana, p.362

around the mosque. Whether individuals or institutions, along the path of residency and identity.³ The form of BMT is corporation and should be based on the principles of Islamic sharia.⁴ BMT's vision is to become a healthy financial institution, independent, and strong which increases the quality of members worship in a way that is able to act as a servant of Allah, which can lighten the burden of life of members in particular and society in general.

The mission of BMT is to help the community or its members to be free from the shackles of debts, poverty and the economy that leads to *riba*, empowerment movement in improving the capitalists in real economic activities and institutions towards the economic order that is prosperous, advanced and justice movement to build civil society structures, progressive and prosperous, based on the sharia and the pleasure of Allah swt.⁵

With these vision and mission BMT has several roles in the community such as:⁶

1. Keep the community of practice of economic base on sharia principles. Socialization actively with the society introduces the importance of the economic Islam. This can be done by training in Islamic transaction, banning in weighing, promoting honesty with consumers, and so on.

³ Karnaen A. Perwataatmadja, 1994, *Membumikan Ekonomi Islam di Indonesia*, Depok, Usaha Kami, p. 17

⁴ Mardani, 2012, *Aspek Hukum Lembaga Keuangan Syariah di Indonesia*, Jakarta, Kencana, p. 316.

⁵ Andri Seomitra, 2010, *Bank dan Lembaga Keuangan*. Ed. 2, Jakarta, Kencana, p. 452-453

⁶ Heri Sudarsono, 2012, *Bank dan Lembaga Keuangan Syariah Deskripsi dan Ilustrasi*. Ed.2. Yogyakarta, Ekonisia. p.108-109

2. Conducting coaching and financing the small business. BMT should keep the function as microfinance institutions, such as coaching, counseling and supervision to the work of customers and the general public in economic sector.
3. Waive the society from dependence of creditor (Debt Collector). As we know until now the Indonesian society still depends on creditors. Because the creditors (Debt Collector) is able to fulfill the needs of the society immediately. So BMT should be able to serve the people, for example it always has the available funds, simple bureaucratic procedure and so forth.
4. Maintain the economic justice with equitable distribution. BMT directly faces the society that is why BMT must be in good performance, good attitude to serve the society, to carry out the evaluation to ensure equal distribution priorities that must be considered. And the issue of financing, BMT must consider the customer in groups and types of financing.

In order to realize its objectives, BMT should be consistent with the role by maintaining the values of sharia in operation; improve guidance and development of micro enterprises with Islamic principles; improve professionalism; and help difficulties in credit financing.⁷

⁷ Mardani, 2012, *Aspek Hukum Lembaga Keuangan Syariah di Indonesia*, Jakarta, Kencana, p. 317

The basic principle of the establishment of BMT, are as follows:⁸

1. Belief and devotion to Allah swt., by implementing the principles of Sharia and Islamic *Muamalah* in society.
2. Integration (*Kaffah*) is spiritual values serve to direct and drive the dynamic progressive moral ethics, fair and good being.
3. Kinship
4. Togetherness
5. Independence
6. Professionalism
7. *Istiqomah*, consistent, continuity/sustainable without stopping and without despair. After reaching a stage, progress to the next stage, and only would please of Allah swt.

1. Legal Status of BMT

BMT current legal status is still unclear; there are some BMT in the form of Cooperative, Foundations, and others do not have legal entity in general they are using KSM status. And some them still has not legal entity. So, the legal status BMT can be classified into:

⁸ M Nur Rianto al- arif. 2012, *Lembaga Keuangan Syariah Suatu Kajian Teoritis dan Praktis*. Ed.1. Bandung, Pustaka Setia. p. 321

- a. BMT with the legal status of the Cooperative. BMT with the form of cooperative in activities to collect funds from the public and also channeled funds to society. The activity refers to :
 - 1). Act No. 25 of 1992 on Cooperative and PP No. 9 of 1995 on the implementation of the activities of savings and loan cooperatives, these laws have been amended by law number 17 of 2012.
 - 2). Decision of the State Minister of Cooperatives and SMEs number 91/Kep/M.KUKM/IX/2004 on the implementation guidelines of Cooperative business activities and Islamic Financial Services.
- b. BMT with legal status of foundations. It is stipulated in Law No. 28 of 2004 on the foundation. Although the use of the legal status of the Foundation (*Yayasan*), however, is not in accordance with guidelines issued by the book PINBUK (Business Incubation Center Small Business).
- c. The BMT without a legal entity. In general, BMT will be established in the form of KSM (*Kelompok Swadaya Masyarakat*) or NGO (Non-Governmental Organization/LSM).
- d. As the Microfinance Institutions, according to Law No. 1 of 2013 a Microfinance Institution is a financial institution that is specifically established to provide business development services and community empowerment, through giving loan or financing of micro enterprises of members and the public. It has the function as small bank and finance

consultant of its member or it was established for non-profit purposes. Manager of savings, as well as the provision of consulting services business development that is not solely for profit.⁹ In the other words it can said that Microfinance is a financial sector activity raising funds and providing loans or financing micro scale with a simple procedure to the poor and/or low income.¹⁰

Microfinance institutions in Indonesia, where initially started from the establishment of the Credit Bureau of the village, which contains the village saving (*Lumbung Desa*), which was initiated in 1897 by the Group of Governmental and Village Bank (*Kelompok Swadaya Masyarakat dan Bank Desa*). Rural Credit Agency (*Bank Kredit Desa*) is a Microfinance Institution that was established by the villagers to provide credit for villagers who need capital for business.¹¹

In 1905 the Rural Banks extended their services beyond the agriculture. In 1929, the Dutch East Indies government published the *Staatblad* No. 1929 137 on the establishment of Rural Credit Agency (BKD/*Bank Kredit Desa*) to deal with rural credit in Java and Bali. After the independence of the Indonesia, government encouraged the establishment of a "Bank Market" as well as Micro-Institutions established by local governments, such as the Institute and the Rural Credit Fund

⁹ Article 1 Law number 1 of 2013 about Microfinance Institution

¹⁰ I Gde Kajeng Baskoro, *Lembaga Keuangan Mikro di Indonesia, Jurnal Buletin Studi Ekonomi*, Vol.18, No. 2, August 2013, www.eprints.walisongo.ac.id., 08.30. p. 155

¹¹ I Gde Kajeng Baskoro, *Lembaga Keuangan Mikro di Indonesia, Jurnal Buletin Studi Ekonomi*, Vol.18, No. 2, August 2013, www.eprints.walisongo.ac.id., 08.30. p. 155

(Lembaga Dana dan Kredit Pedesaan) in West Java, Credit Agency District in Central Java etc.¹²

Then there is also *Bank Rakyat Indonesia (BRI Unit Desa)* which is appointed to carry out the task of mentoring, coaching and supervising BKD, ranging from how to assess prospective borrowers, types of installment loans, the amount of member loans, the administration of savings loans, cash money management, provision of working capital, regulate how the interpreter payroll administration, etc., as the result BKD can boost the rural economy. At the time *BRI Unit Desa* roles was influenced by government support especially in BIMAS (Guiding Society Program).¹³

In its development, of the existence of BKD was very demanded by community in in villages. That is why some local governments were competing in establishing Microfinance Institution it. In Indonesia Central Bank (BI) has categorized Microfinance in to two type; Microfinance Institution Bank and Microfinance Institution Non-Bank. MFIs Bank consists of BRI Unit Desa, and Rural Credit Agency (BKD). While Non-bank MFIs consists of savings and credit Cooperatives (KSP), a Rural Credit Fund Institutions, *Baitul Maal wat Tamwil* (BMT), Non-governmental Organizations (NGOs), KSM (*Kelompok Swadaya Masyarakat*), etc.¹⁴ Therefore, people develop Islamic Microfinancial Institutions that

¹² I Gde Kajeng Baskoro, *op.cit.*

¹³ I Gde Kajeng Baskoro, *op.cit.*

¹⁴ Neni Sri Imaniyati, 2010, *Aspek-Aspek Hukum BMT*, Bandung : Citra Adhya Bakti. P.96

can interact with the people of the village with ease can finance small businesses namely *Baitul Maal wat Tamwil*.¹⁵

BMT is a business organization that also plays social role. As a business organization, BMT further expand its business in the financial sector which is a savings and loan. This business such as banking business, namely collecting funds of members and prospective members/customers and channeling them to the lawful (*Halal*) economic sector and profitable.¹⁶ BMT has special characteristics that are different from other Financial Institutions. This is caused by its operating system adapting the Islamic Banking System. This special characteristics make the legal position of BMT in the danger condition as there has no specific rules the special rules to regulate the BMT in Indonesia.¹⁷

As one of the Financial Institutions BMT needs to have clear legal entities that do not harm the customer, it also makes BMT choose the legal status of Cooperatives. BMT is Islamic Microfinance Institutions that can be in the form of Islamic Financial Services Cooperatives (KJKS). This is due to BMT business activities in the sector of finance, investment and saving, and the corresponding profit sharing system (*sharia*). In the decision of the Ministry of Cooperatives and SMEs No

¹⁵ Heri Sudarsono, 2004, *Bank dan Lembaga keuangan syariah; Deskripsi dan Ilustrasi*, Yogyakarta : Ekosinia, p. 97

¹⁶ Muhammad Ridwan, 2003, *Management Bank Syariah* Yogyakarta, UPP AMP YKPN, p.126

¹⁷ Novita Dewi Masyitho, *Kajian Rehtdomatiek Empiric Undang-undang No. 1 tahun 2013 Tentang lembaga keuangan Mikro (LKM) atas status Badan Hukum dan Pengawasan Baitul Maat Wat Tamwil (BMT)*, www.eprints.walisongo.ac.id/3846/1/Novita%20-Laporan_Penelitian.pdf 15 july 2016, 5:15 p.m.

91/Kep./M.KUKM/IX/2004 on the guidelines of KJKS activities, the Islamic rules for financial services needs to be further developed.¹⁸

According to Article 1 of the Decree of the State Minister of Cooperatives and Small and Medium-Sized Republic Indonesia No 91/Kep/M.KUKM/XI/2004 are regarding the user deploy of Cooperative Business Activities of Islamic Financial Services. Islamic Financial Services Cooperatives or KJKS is a Cooperative engaged in financing, investment, and savings sharing system (sharia) but there are some other Islamic Financial services.¹⁹

The missions of Cooperative development of Islamic Financial Services/Islamic Financial Services Unit are:²⁰

1. To increase the economic empowerment program, particularly among micro, small, medium, and Cooperative with the Islamic system;
2. To encourage economic life sharia activity in micro, small, and medium enterprises in Indonesia.
3. To increase the enthusiasm and participation of community members in the activities of Islamic Financial Services.

2.The Characteristics of BMT

¹⁸ I Gde Kajeng Baskoro, *op.cit.*

¹⁹ Article 2 The Decision of The Minister of Cooperatives and Small and Medium Enterprises republic of Indonesia Number: 91/M.KUKM/XI/2004 concerning The Implementation Guidelines of Cooperative Business Activities of Islamic Financial Services.

²⁰ *Ibid* section 2

Moreover it is important for us to know more the characteristics of BMT as it is different from other financial services. The characteristics are :²¹

- a. Business-oriented and profit purpose for improving the economic utilization of most of the members and the environment.
- b. Not a social institution but it can be exercised for effective use of charity, donation, and charity for the welfare of the people.
- c. Grew up from the ground by the support of local community participation.
- d. Self-dependent as it does not belong to another person, a person, or people from outside the community.

3. Function of BMT

BMT has several functions:²²

- a. Collecting and channeling funds. With saving fund in BMT the money can be enhanced utility, which raised the surplus units (those who have excess funds) or unit deficit (the party that lack of funds).
- b. Liquidity provider

BMT can create a legal tender that can provide the ability to meet the obligations of an institution or individual.
- c. Sources of income.

BMT can create jobs and provide income to their employees.
- d. Information source.

²¹ Andri Soemitra, *op.cit.*,p.454

²² Nurul Huda and Mohammad Heykal, (2010) *Lembaga Keuangan Syariah Tinjauan Teoritis Dan Praktis*. Jakarta, kencana, p. 363-364

BMT inform the public about the risks, benefits and opportunities that exist in these institutions.

e. Islamic Microfinance Institutions.

BMT as Islamic microfinance institutions to provide financing for small businesses, micro, medium and cooperative with the excess does not require a guarantee burdensome for small businesses, micro, medium and cooperative.

4. The Activity of BMT

Based on previous explanations that BMT performs two types of activities; *Baitul Tanwil* and *Baitulmal*. *Baitul Tamwil*, but these functions then develops into productive ventures and investment in improving the quality of the activities of small and medium enterprises by encouraging these businesses to save or borrow funds for capital for their business. *Baitulmal* itself covers the activities of deposits charity, donation, and alms as well as the consignment or charity which is in accordance with the mandate given. That is why BMT is very needed by the community, especially those of small and medium entrepreneurs as there is no other financial institutions that are able to help directly small and medium scale business.

According to Neni Sri Ismaniyati²³ there are many activities developed by BMT at the moment, among others:

²³ Neni Sri Ismaniyati, 2010, *Aspek-Aspek Hukum BMT (Baitu Maal war Tamwil)*, PT. Citra Aditya Bakti, Bandung, cet. I, p.84.

1. Gathering and collecting funds used to finance the efforts of its members. The first capital of BMT was obtained from a special primary savings of the founders. Then BMT developed its capital from savings, compulsory savings, and voluntary savings of members. To increase capital, BMT has coordination and cooperation with various parties such as state-owned enterprises, government projects, NGOs, and other organizations.
2. Providing finance support to its members in accordance with the provision of eligibility made by the management of BMT with its members. As compensation of these activities, the BMT will get the profit based on mutual agreement.
3. Playing the role as the manager of the saving and loan business in a professional manner so that the activities can generate profits for the BMT.
4. Develop businesses in real sector to make profits and support the member businesses, such as the distribution and marketing, supply of raw materials, management systems, and others.

B. The General Review of Financial Services Authority

1. Historical Background of Establishment of FSA

Financial Service Authority is a new institution which was established by government through Law No 21 of 2011. This institution was established for supervising the financial service industry in an integrated and unified financial

services industry including banking and non-banking.²⁴ Detail definition of the FSA is given in Article 1 of Law No 21 of 2011 about the FSA. It says that Financial Service Authority, hereinafter referred to as the FSA, is an independent institution and free from interference by other parties, whose functions, duties, and authority are regulating, supervising, and investigating referred to in this Act.²⁵ It is seen from the article 1 above that FSA's function and roles are very challenging. In fact, it takes a long time and careful planning to set up an independent financial regulatory body such as the Financial Services Authority.

Financial service authorities actually were established based on the law No.23 of 1999 of Bank Indonesia. The Law had demanded the state to establish new state institutions whose duties to regulate and supervise financial institutions both banks and non-banks.²⁶ It is mentioned in article 34 that the purpose of FSA is for serving all activities related to the financial sectors on a regular basis, fair, transparent, and accountable; it also has authority to promote a financial system that grows in a sustainable and stable way; it has capability to protect the interests of its consumers and society. Besides, its Financial Services Authority functions as the assistance of Indonesian Central Bank or Bank Indonesia in supervising the banking sector.

²⁴ Septian 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.16.

²⁵ Indonesia, the Law on Financial Service Authority, section 1 (1)

²⁶ Septian Widiyanto, *op.cit* p.17

The idea of the establishment of the FSA was actually the result of negotiation between Central Bank of Indonesia (BI) and the parliament. At the beginning of the President Habibie era, the government proposed draft to the Bank Indonesia to provide more independence banks and also to separate the supervision functions of Bank Indonesia. The idea came from Helmut Schlesinger, the former governor of the *Bundesbank* (German Central Bank) who at the time of the preparation of the draft (later became Law number 23 of 1998) acted as Indonesian Central Bank consultant. He took the pattern of the German Central Bank that does not supervise any banks.²⁷

2. Philosophical Background of FSA Establishment

The philosophical background of FSA establishment was to establish stable and sustainable condition of national economy by creating great employment opportunities and equality in all sectors of the economy, as well as providing equitable welfare to all people in Indonesia. In addition, the judicial background is Article No 34 of the Law of Bank Indonesia, which mandates the establishment of the supervisory board for independent financial service sector that covers the banking supervision, capital market, non-bank financial industry, as well as others agencies operating in the management of funds. In addition to the philosophical and judicial background, the establishment of the FSA is also triggered by Indonesian financial system and its development which are increasingly complex, dynamic, and

²⁷ Zulkarnain Sitompul, *Menyambut Kehadiran Otoritas jasa Keuangan*, 10 March 2015, www.ojk.go.id, at 12.27.p.1.

interconnected between one financial subsector and others, both in the terms of products as well as institutional, and complexity of transactions and interactions between financial institutions as the result of the scheme of ownership of financial institutions.²⁸

In 1999 the plan will be established an independent agency that would be a supervisory agency in financial services sector. And the government planned to establish such supervisory agency no later than December 2002, but until the end of 2002, it had not come true yet. In 2004 the government revised the law of Bank Indonesia, and finally became the basic of the Law No. 3 of 2004 regarding Bank Indonesia. As described in article 34 paragraphs 1 and 2, supervisory agency is decided as financial services authority.²⁹

Amendment in the formulation of an agreed transfer of power from Bank Indonesia's banking industry to the Financial Services Authority can still be extended no later than the end of 2010. In 2010 deadline formation of Financial Services Authorities again was neglected; until 2010 the establishment of the FSA had not been officially launched. The bill on the FSA which shall be provided at the plenary meeting of 17 December 2010 found it's deadlocked as the government and the

²⁸ Research Cooperation Team FEB UGM-(Fakultas Ekonomi dan Bisnis – Universitas Gajah Mada) and FE-UI (Fakultas Ekonomi – Universitas Indonesia), *Alternatif Struktur OJK (otoritas Jasa Keuangan) yang optimum : kajian Akademik*, 10 April 2016, www.perpustakaan.depkeu.go.id/ 12.01.p.m.

²⁹KR 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

House of Representatives (DPR) had not yet found an agreement on the structure and procedures for the formation of the Board of Commissioners.

In 2011 the leader of DPR, Priyo Budi Santoso finally approved the Draft of Law of Financial Services Authority in the DPR plenary session on Thursday 27 October 2011 and the meeting was decided to set up a committee to select Commissioner Council of Financial Services Authority, and such committees shall be formed in 2012.

Provisions of Article 8 of Law about FSA are:³⁰

“To implement the assignment of the task of regulation referred to in Article 6, the FSA has the authority to;

- a. Establish the Implementing regulation of this law;
- b. Establish the law and regulation legislation on the sector of financial service;
- c. Establish regulation and decree of FSA;
- d. Establishing regulation on the supervision in the sector of financial service;
- e. Establishing the policy on the assignment implementation of FSA;
- f. Establishing regulation on establishment procedures the written instruction for Financial Service Institution and certain party;
- g. Establishing regulation on establishment the statutory manager in the Financial Service Institution;
- h. Establishing organization structure and infrastructure, as well managing, maintaining, and administering on the wealth and liability; and
- i. Establishing regulation on the imposition procedures of sanction in the accordance with the provision of the law and regulation in the sector financial service.”

And also in further provisions set forth in article 9 of Law FSA are:³¹

³⁰ Indonesia, the Law Number 21 of 2011 on Financial Services Authority section 8

“To implement the assignment of supervision as set forth in Article 6 above,

FSA has authority on:

- a. Establishing the operational supervision policy toward the activity of financial service;
- b. Supervise the implementation of supervisory duties performed by the Chief Executive;
- c. Conducting Supervision, examination, investigation, consumer protection, and other measures towards Financial Service Institution, agent, and/or supporting financial service as set forth in the law and regulation in the sector of financial service;
- d. Providing the written instructions to Financial Service Institution and/or certain party;
- e. Making appointment statutory management;
- f. Establishing the utilization of statutory management;
- g. Establishing administrative sanction to the parties commit violation against law and regulation on the financial sector; and
- h. Granting, and/or revoke :
 1. Business license;
 2. Business license for individual;
 3. The effectiveness of registration statement;
 4. Registered certificate ;
 5. Approval to perform business activity;
 6. Legislation;
 7. Approval and the establishment of dissolution; and
 8. Other establishment, as set forth in law and regulation in the sector of financial service.”

The financial system plays an important role in the company because the financial system has function to allocate funds from the financial surplus to the financial deficit. If the financial system is suitable and does not function efficiently, the allocation will not run properly. As a result, it can hamper economic growth. Experience shows that suitable financial system especially if resulted in the

³¹ Indonesia, the Law number 21 of 2011 on Financial Services Authority section 9

crisis requires very high cost efforts to rescue.³² As we know, the financial system can be defined as a collection of institution, markets, provisions of legislation, regulations, and techniques in which the securities are traded, the interest rate is set and the financial services are produced and offered to all parts of the world. The banking system is a system that concerns about banks, covers institution, business activities, as well as the manner and process of carrying out business activities.³³

3. The Types of Financial Institution Under the Supervising of FSA

In Indonesia there are two types of Financial Institutions namely banks and non-bank. Banks in Indonesia includes Commercial Bank, Rural Bank (*Bank Perkreditan Rakyat*), commercial and Islamic Rural Bank. Non-Bank Financial Institutions include Insurance, Capital Markets, Mortgage Companies, Pension Funds, Cooperatives, and Underwriting Financial Institutions. Companies that can be categorized into financial institutions include the lessor, consumer finance companies, and Ventura capital firms. Many Financial Institutions which conduct their duties to supervise Bank or Non-Bank Institution only add more complex control system, and the FSA is seen as a proper state agency to supervise the entire Financial Institutions.

So, the whole system of supervising Bank and Non-Bank is simpler and more proper. The position of the FSA in the financial system in Indonesia is as the protector

³² Research Cooperation Team FEB UGM-(Fakultas Ekonomi dan Bisnis – Universitas Gajah Mada) and FE-UI (Fakultas Ekonomi – Universitas Indonesia), *Alternatife Struktur OJK (otoritas Jasa Keuangan) yang optimum : kajian Akademik*, 6 February 2016, www.perpustakaan.depkeu.go.id/ 12.01 P.M, p.1

³³ Hermansyah, 2005, *Hukum Perbankan Nasional Indonesia*, Jakarta, Kencana p. 179.

of financial service users in Indonesia, the protector of consumers, regulators and supervisors of financial institutions in Indonesia.³⁴ The establishment of monitoring system is one of the solutions of the problems mentioned earlier. The unification of the regulatory agency is considered to reduce the existing abuse of dualism supervision. Moreover, the flow becomes concentrated so the comprehensive monitoring information of financial institution can be achieved.³⁵

³⁴ Septian Widiyanto, *op.cit* p. 21.

³⁵ *Ibid*