

CUSTOMERS MAL WA TAMWIL IN THE EVENT OF DISSOLUTION OF THE BODY LAW

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ABSTRACT

This study aims to identify and analyze the application of legal protection for depositors when a legal entity is disbanded with obstacles that hinder the fulfillment of the rights and obligations of the parties. The analysis utilizes a statutory and conceptual approach. The legal basis for protection for BMT customers is Law no. 1 of 2013 concerning Microfinance Institutions (LKM), specifically articles 24 and 25, which regulates the prevention of disputes or revocation of permits. Article 26 states that the Financial Services Authority (OJK) provides depository complaint services if it causes them to suffer losses. However, if the BMT is a cooperative legal entity, then it uses the basis of Law No. 25 of 1992, specifically article 54 concerning settlement. This difference in rules is one of the factors in the slow resolution of the problems of liquidated BMT customers. The government should provide clear rules regarding the institutional status of BMTs, so that the settlement of the legal protection of its customers becomes clear. However, if the BMT is a cooperative legal entity, then it uses the basis of Law No. 25 of 1992, specifically article 54 concerning settlement. This difference in rules is one of the factors in the slow resolution of the problems of liquidated BMT customers. The government should provide clear rules regarding the institutional status of BMTs, so that the settlement of the legal protection of its customers becomes clear. However, if the BMT is a cooperative legal entity, then it uses the basis of Law No. 25 of 1992, specifically article 54 concerning settlement. This difference in rules is one of the factors in the slow resolution of the problems of liquidated BMT customers. The government should provide clear rules regarding the institutional status of BMTs, so that the settlement of the legal protection of its customers becomes clear.

Keywords: Baitul Mal Wa Tamwil. dissolution of the legal entity.

1. Introduction

BMT is an economic actor who was born and operates using a contract that refers to the principles of shari'ah. The thing that interesting to observe is the fact that economic material law and sharia finance have not been regulated in laws and regulations, except regarding Sharia Banking through Law no. 21 of 2008, and has set forth in the form of fatwas of the Majelis National Syari'ah Council Indonesian Ulama (DSN-MUI). In a relatively short time the

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DSN-MUI has issued 54 related fatwas in the 1999-2006 period with various problems in Islamic finance.

Although the growth of BMT in terms of quantity is quite rapid however very slow in terms of quality. Not a few BMTs have gone out of business because of this running out of capital. BMT lost up to one billion rupiah. customers who Most of the victims are small communities. this condition resulted in the freezing of the Microfinance Institution.

It can be known if there is an Institution in Sharia Banking Deposit Insurance Corporation (LPS), where LPS plays an important role, if anything shari'ah bank liquidated bank operating license revoked. So Institution Deposit Guarantee that guarantees the money of customers who have entered or revolves around the banking system. Another problem is regarding the deposit insurance management.

If in a banking institution the customer's funds are guaranteed by the Guarantee Agency Deposits (LPS), so that when a bank is liquidated the customer's funds are safe. However, in the case of BMT it is not known whether they have a guarantor savings as in sharia banking. This paper analyzes how is the legal protection of the money of BMT customers who have liquidated, whether the customer's money can be returned and how the procedure. Which legal basis or statutory regulations specifically regulates BMT. As is known BMT is not become one roof with Bank Syari'ah. What about the legal umbrella for BMT, especially for customers if they want to claim their rights right. These issues will be discussed

2. Reseach Method

In this case the writer uses the type of Library research focused on reading and understanding the literatures that can be used as a basic reference or supporting resources in accordance with the discussion referred to in this study. The research is descriptive analytic. The research method used is a qualitative research method namely by making observations in one of the BMT, as well as conducting a literature study of several reference books

related to case problems and conducted interviews with several parties concerned about the research.

3. Results and Discussion

3.1. Legal Protection of Customers in Law Number 1 of 2013 concerning

Microfinance Institutions. Microfinance Institutions (MFIs) are a forum for entrepreneurs small people who want to expand their business. BMT is one of a kind from the MFI. The establishment of Microfinance Institutions has several requirements as stated in Law no. 1 of 2013 Article 4 ie 2:

1. Form of Legal Entity.
2. Capital.
3. Get a business license.

In article 5 paragraph 1 it is explained that the form of a legal entity that can be used by Microfinance Institutions are Cooperatives or Companies Limited. BMTs classified as MFIs must be in the form of a legal entity according to the options. The majority of BMTs choose cooperative legal entities because it doesn't have to require a lot of capital and it's easy to enter operating on a family principle.

BMT is a microfinance institution that was born and operates using the principles of shari'ah so that it must be guided by the provisions MFI operations with shari'ah principles. In article 13 it is stated that to carry out business activities based on sharia principles as referred to in Article 12 paragraph (2), MFIs are required to form a supervisory board syari'ah whose duty is to provide advice and suggestions to the directors or administrators and oversee the activities of the MFI so that it is in accordance with the principles syari'ah.³ In accordance with the wording of article 13, BMT should be included Sharia MFIs are required to form a Sharia Supervisory Board (DPS), which is useful for overseeing MFI

² Article 4, Law No. 1 of 2013 concerning Microfinance Institutions.

³ Article 13 Law No. 1 of 2013 concerning Microfinance Institutions.

activities and monitoring its shari'ah principles used in its operations so as not to harm its customers. If in the application of these BMT products do not meet the principles of shari'ah then The DPS can reprimand or impose sanctions on the Shari'ah MFI.

This is done as DPS efforts to provide protection for the BMT customer. DPS has a supervisory role for any problems that arise arising from MFI Syari'ah, especially on the fulfillment of rights for customers. Most BMT customers do not fully feel their rights. Those who come from low-income communities do not understand regarding operational systems that are in accordance with shari'ah. Even they are not rare put aside the interests of the BMT, because of limitations their knowledge. If the DPS carries out its duties and functions effectively maximum, then it can reduce the problem that will be caused by BMT to its customers. In law Microfinance Institution No. 1 of 2013 explained if the Institution Microfinance is experiencing difficulties, so you can see the provisions of article 23. This article explains that an MFI, if it experiences dissolution, will jeopardize the continuity of its business, the Financial Services Authority can take action to ⁴:

- 3.1. Shareholders or cooperative members increase capital,
- 3.2. Shareholders replace shareholders replace board of commissioners or supervisors and/or directors or LKM administrators.
- 3.3. MFI writes off Loans or Financing that is default and calculate the MFI's losses by the capital;
- 3.4. The MFI merges or merges with the MFI other;
- 3.5. ownership of the MFI is transferred to another willing party take over all obligations;
- 3.6. The MFI surrenders all or part of the management MFI activities to other parties; or

⁴ Article 23, Law No. 1 of 2013 concerning Microfinance Institutions.

3.7. The MFI sells part or all of its assets and/or liabilities LKM to LKM or other parties.⁵

Problems faced by BMT not the only problem application of the principles of shari'ah only, but sometimes also in problems lack of understanding of system management, including legislation about the MFI. It's not strange that sometimes BMTs experience difficulties did not report to the OJK or consult the BMT has developed, so that when experiencing difficulties the management fled without providing any information to his customers. No a few BMT went out of business because of lack of understanding about performance patterns and operations in the development of BMT. The administrators don't know there are regulations that regulate so that in running a business it is not comply with the provisions of the legislation. Every BMT, at In principle, it must provide legal protection for customers who save their funds so that they feel safe and earn legal certainty. The reality that happened lately a lot of news about the state of BMT which experienced freezing due to inability BMT in meeting the needs of customers and BMT operations. From Many of these cases are many customers who demand refunds they. Factors that cause a BMT to revoke its permit or frozen according to Law No. 1 of 2013 concerning MFIs, specifically article 23 paragraphs 1 and 2 as mentioned above. In principle, freezing or BMT dissolution can only be carried out by the OJK after going through the following stages:

Stages in the law. In Law No. 1 of 2013 regarding Microfinance Institutions provides an explanation regarding Protection for MFI Service Users as described in article 24, namely:

- 3.1. For the benefit of the service user, the MFI must provide the information open to the public at least regarding:
- 3.2. Authority and responsibility of MFI management

⁵ Article 23, Law no. 1 of 2013 concerning Microfinance Institutions.

3.3. Terms and conditions that need to be known by Depositors and Borrowers.

3.4. The possibility of the risk of loss in connection with MFI transactions with other parties.⁶

From the description of article 24, the law has provided regulations concrete information about the rights and obligations of MFI service users administrators and depositors. But sometimes that becomes a factor the cause of the problem arising is the actor in the collaboration who do not carry out according to the provisions of the law they lack good communication to talk about the risks that arise and How to fix it. In article 26 OJK provides complaint services depositor if harmed by the MFI. What is also regulated is complaint mechanism, as well as facilitating complaint resolution.

Rules regarding deposit guarantees are regulated in Chapter V article 19

Law No. 1 of 2013 namely:

1. To guarantee public savings at the MFI, Local Government and/or MFI can form an institution MFI deposit insurance.
2. If necessary, the Government together with the Regional Government and MFIs can set up deposit insurance institutions MFI.
3. Further provisions regarding the institution as follows referred to in paragraphs (1) and (2) are regulated by Regulations Government.⁷
4. Article 19 provides rules for forming institutions

Deposit insurance for MFIs, especially BMTs. The meaning of the article is deep Establishing a Deposit Insurance Corporation can be done in several ways parties such as local government, Micro Finance Institutions (LKM) them selves can form a Deposit Insurance Corporation (LPS). Together BMT can synergize with the central government, local government for establish the LKM Deposit Insurance

⁶ Article 24, Law no. 1 of 2013 concerning Microfinance Institutions.

Corporation. Terms of duty, LPS authority and what is the procedure for registering BMT to become a member LPS can be done after LPS is formed

3.2. Legal Protection for Baitul Maal Wa Tamwil Customers Frozen.

This legal protection is also provided by related law rights and obligations possessed by humans as legal subjects. Consumers are individuals or groups of people who consume a good or service provided by the manufacturer. Consumers as Users of these goods or services require legal protection clear in obtaining satisfaction and feasibility in consuming the goods or services. Consumer protection according to law No. 8 of 1999 Article 1 point 1 provides an understanding that includes "all efforts to guarantee legal certainty to provide protection to consumers". In this case, in all uses of the product or services by consumers, consumers are entitled to a legal certainty. In article 2 of Law No. 8 of 1999 concerning consumer protection discussing the principle of consumer protection mentions that consumer protection based on benefits, fairness, balance, security, and safety. In this case all aspects are very important, important for optimal performance.

Legal protection for BMT customers based on the principle of benefit in accordance with Law no. 8 1999 is very important to guarantee for BMT customers get their rights. The principle of this benefit is to place both parties producers and consumers have the same position so it is not there are losses from each party, both customers and BMT, and each party can obtain its rights. The principle of balance too required in the legal protection of BMT customers, namely their existence balance between business actors, customers, and the government so that it can a good and stable system of microfinance institutions is realized. Important principle Another is the principle of legal certainty, namely the principle that makes the perpetrators businesses and consumers can comply with applicable regulations so that will not violate the law that has been set.

With certainty this law customers can use the services and products of BMT with taste safe and can be a guarantee if something goes wrong desired in the use of these products and services. If the BMT frozen, the customer can still feel safe if it is available legal certainty.

This is where legal protection for customers becomes urgent because in real terms the position between the BMT parties and their customers often unbalanced. In the midst of a number of related cases with the current BMT freezing causing concern for customers for their money deposited and revolving on BMT, especially when the institution is frozen. This legal protection is necessary for customers to provide a sense of security to customers who want and have join MFIs, especially those in the form of BMTs. Not a bit of those from low economics join to develop micro business. As BMT customers, they must receive protection law against the behavior of irresponsible persons. Therefore there needs to be good communication as well as legal materials, legal structures, and legal awareness for perpetrators of microfinance institutions such as BMT. In the end, a Microfinance Institute can run well and balanced without having to harm either party.

Protection this law is very important to provide legal certainty to BMT customers so that these customers have clear legal certainty and not be swayed by related problems with the BMT operational system. Law enforcers must follow up problems that occur between customers and management through different procedures has been regulated in the law. If everyone has legal awareness to comply with all procedures that have been regulated in law, then the public will have high trust towards BMT microfinance institutions for obtaining certainty legal protection. Clear legal protection for BMT customers can be used as a basis for the direction in which this dispute can be resolved.

Considering that BMTs or other Microfinance Institutions do not yet have one rules regarding the Deposit Insurance Corporation specifically for MFIs. Legal protection for these customers is supposed to

be an absolute thing for financial institutions. Basically between BMT MFIs and BMT customers who deposit their funds are mutual related to each other. On the one hand, the customer wants the deposited funds can develop and be safe when deposited, while on the other hand BMT hope that many people deposit their money and save their funds to BMT to be channeled through BMT products. Protection This law is also required for customers to provide guarantees against customer money that has been deposited at BMT, both guarantees in terms of benefits, management, and shari'ah aspects.

4. Conclusion

Forms of legal protection for BMT customers frozen in Indonesia can use Law No. 1 of 2013 concerning Legal protection for users of MFI services, especially articles 24, 25 and 26 Articles 24 and 25 are used as a prevention of disputes or license revocation, whereas in article 26 it is used as a service depositor complaints if the customer experiences a loss or not fulfill their rights. If the BMT is a cooperative legal entity then legal protection for its customers using Law No. 25 1992, specifically article 54 regarding settlement. Legal protection for frozen BMT customers this is very important to get legal certainty for customers because of the position between the BMT parties customer funds are often unbalanced. In the midst of the rampant cases BMT freezing at this time raises concerns for customers against their money that he keeps and revolves on BMT. Protection law for customers is needed to provide a sense of security and guarantee the money they have saved.

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