



Al-Amwal: Jurnal Ekonomi dan Perbankan Syariah

ISSN: 2303-1573 e-ISSN: 2527-3876

Homepage: <https://www.syekhnurjati.ac.id/jurnal/index.php/amwal>

email: jurnalalamwal@syekhnurjati.ac.id

AL-AMWAL

Regulation and Supervision: Measuring The Effectiveness Of Supervision For *Baitul Māl Waa Tamwil*

Rifa Berliana Arifin,^{1*} JM. Muslimin,² Nurhasanah³

Program Study Master of Sharia Economic Law, UIN Syarif Hidayatullah Jakarta¹²³

e-mail: arifinberliana@gmail.com,¹ jm.muslimin@uinjkt.ac.id,² nurhasanah@uinjkt.ac.id³

Abstract

Law Number 25 of 1992 concerning Cooperatives places supervision by the Ministry of Cooperatives and SMEs, Law Number 1 of 2013 concerning Microfinance Institutions stipulates supervision by the OJK. This regulation gives rise to dualism oversight of BMT operations. Type of normative research with analytical descriptive method and analysis of laws and interviews, data in the form of regulations and data in BMT West Java. The results of the study show the dualism of supervision that has an impact on the operationalization of BMTs in West Java. Factors causing disharmony are supervisory dualism, legal substance is not appropriate, regulation implementation is not optimal and there is no BMT legal legality. These factors have a negative impact on the mechanism of establishment, operation, accountability, and reporting by BMT to each supervisory agency.

Keywords: Dualism, BMT, Supervision, Cooperatives and MFIs.

Abstrak

Undang-Undang Nomor 25 Tahun 1992 tentang Perkoperasian menempatkan pengawasan BMT oleh Kementerian Koperasi dan UKM, Undang-Undang Nomor 1 Tahun 2013 tentang Lembaga Keuangan Mikro menetapkan pengawasan BMT oleh OJK. Regulasi ini menimbulkan dualisme pengawasan operasionalisasi BMT. Jenis penelitian normatif dengan metode deskriptif analitis dan analisis undang-undang dan wawancara, dengan data berupa peraturan serta data dari BMT Jawa Barat. Hasil penelitian menunjukkan dualisme pengawasan yang berdampak pada operasionalisasi BMT di Jawa Barat. Faktor penyebab disharmonisasi ialah dualisme pengawasan, substansi hukum tidak sesuai, implementasi regulasi tidak optimal dan belum adanya legalitas hukum BMT. Faktor tersebut berdampak negatif pada mekanisme pendirian, operasional, pertanggung jawaban, hingga pelaporan oleh BMT kepada masing-masing lembaga pengawas.

Kata Kunci: *Dualisme, BMT, Pengawasan, Koperasi dan LKM.*

INTRODUCTION

Baitul Mal Waa Tamwil (BMT) is a microfinance institution that has legal entity status as a Cooperative, Limited Liability Company (PT) and Foundation. The legal entity status refers to Law Number 25 of 1992 concerning Cooperatives, Law Number 1 of 2013 concerning Microfinance Institutions and Law Number 28 of 2004 concerning Foundations. The distribution of BMT in Indonesia is very wide, the following diagram shows the distribution of BMT in Indonesia and West Java:

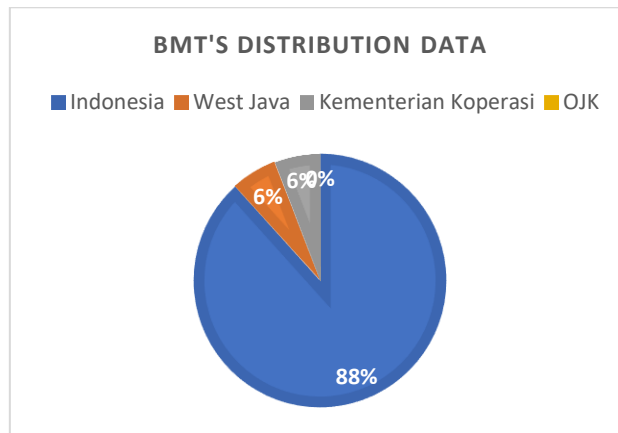


Diagram 1.1. Data on the Distribution of BMT in Indonesia and West Java

Based on the data diagram above, it is known that the distribution of BMT in Indonesia has reached 4,500 units of BMT. In West Java, the number of BMT distributions registered with the Ministry of Cooperatives and SMEs to date is 297 BMT units. Furthermore, BMTs registered with the Financial Services Authority are divided into two legal entity statuses, namely BMTs with 1 unit cooperative legal entity status. BMT with a legal entity status of a Limited Liability Company (PT) and a Foundation of 0 units. The total assets owned by BMT to date are still relatively low and far below Islamic banking which has a total asset of Rp. 545,39 trillion in 2020. With this distribution data, BMT also certainly faces several obstacles which are divided into 7 (seven) main points aspects, namely 29% capital aspects, 37% Human Resources (HR) aspects, 5% technology aspects, 5% SOP aspects, 7% aspects of potential SMEs, 7% aspects of management assistance and 10% aspects of policy (Amalia, 2021).

In West Java, BMTs registered with the Ministry of Cooperatives and SMEs are BMT Amanah Syariah and BMT Ibaadurrahman. Then, the BMT in West Java that is registered with the Financial Services Authority is BMT Talaga. The three BMTs carry out different BMT operational mechanisms in terms of supervision. Thus, with the differences in regulations and operational mechanisms for BMTs in the West Java region, it can be seen that BMTs have not been fully able to properly implement Law Number 25 of 1992 concerning Cooperatives and Law Number 1 of 2013 concerning Microfinance Institutions. The presence of this law actually creates the impact of dualism regarding supervision in its application to the supervisory mechanism at BMT (Amalia, 2021).

Based on the data and phenomena related to the BMT, there are three considerations regarding the importance of supervision in the BMT, namely from a sociological, juridical and economic perspective. First, from a sociological perspective, the lack of supervision on BMT will disrupt the community's economic ecosystem. Second, from a juridical perspective, there are no definite regulations governing BMT, Law Number 1 of 2013 concerning Microfinance Institutions is completely inconsistent with the characteristics of Cooperatives or Microfinance Institutions. Third, from an economic perspective, until now the growth of BMT has reached 4,500 BMT units. So, this study will analyze the dualism of supervision in the operationalization of *Baitul Māl Wa Tamwil* (BMT) in West Java, case studies on 3 (three) BMTs in West Jawa.

LITERATURE REVIEW

Fajrianty and Nurhasanah conducted a thesis research entitled "*Baitul Māl Wa Tamwil: From a Legal Aspect*" at Syarif Hidayatullah State Islamic University, Jakarta. This research describes a comparison of the application of the regulations of Law Number 25 of 1992 concerning Cooperatives and Law Number 1 of 2013 concerning Microfinance Institutions in 3 (three) BMTs in South Tangerang. The results of this study indicate that the two regulations governing BMTs do not provide legal certainty for BMTs. This research is different from the point of view in the research that will be submitted, because the authors compare two regulations from the aspect of the supervisory system on BMTs in West Java which are registered with the Ministry of Cooperatives and SMEs and the Financial Services Authority.

Masyithoh conducted a research journal entitled "Normative Analysis of Law Number 1 of 2013 concerning Microfinance Institutions (LKM) on the Status of Legal Entities and Supervision of *Baitul Māl Wa Tamwil* (BMT)". This study describes the application of Law Number 1 of 2013 concerning Microfinance Institutions (LKM) in BMTs that have cooperative legal entity status. The results of his research explain that after the enactment of Law Number 1 of 2013 concerning Microfinance Institutions, the legal entity status of BMT must be in the form of a Limited Liability Company (PT) legal entity with supervision carried out by the Financial Services Authority.

Oktriningsih conducted research entitled "Legal Analysis of the Authority of the Financial Services Authority and the Ministry of Cooperatives and Small and Medium Enterprises in Supervision of Microfinance Institutions in the Form of Cooperatives". This study describes a review of the analysis of legislation on supervisory activities in MFIs in the form of cooperatives based on Law Number 1 of 2013 concerning Microfinance Institutions and Law Number 25 of 1992 concerning Cooperatives. The results of this study explain that the supervisory authority exercised by OJK on Cooperatives does not conflict with Law Number 25 of 1992 concerning Cooperatives because it is attribution. This research is different from the research that will be proposed by the author.

METHOD

This research is qualitative research. Using this type of normative legal research raises the focus of research on legislation and the harmonization of laws and regulations. This research is directed to identifying natural laws that are fully applicable in the laws and regulations which aim to find out the legal disharmony related to the supervision regulations and the legal consequences of the legal disharmony.

So that this type of normative legal research is used in researching the existing bibliography and is based on field study data obtained by making observations in the form of data in the field and data from interviews conducted. The results of direct observations made by the author are then analyzed through laws and other supporting regulations with the aim of knowing whether or not the legislation on supervision is effective if carried out by the Ministry of Cooperatives and SMEs and the Financial Services Authority to BMT. The object of this research is Law Number 25 of 1992 concerning Cooperatives and Law Number 1 of 2013 concerning Microfinance Institutions which are the legal umbrella for BMT.

RESULTS AND DISCUSSION

A. Analysis of the implementation of supervisory regulations related to BMT operations in West Java

1. Sharia Trustee BMT

BMT Amanah Syariah carries out BMT operations based on existing laws and regulations. In Law Number 25 of 1992 concerning Cooperatives, supervisors are selected based on the RAT by meeting the qualifications as Supervisory

Members as stipulated in the AD/ART. In practice, BMT Amanah Syariah has carried out the process of selecting internal supervisors based on the provisions set out in the AD/ART. However, the qualifications of the external supervisors determined by the cooperative supervisory officers do not meet the supervisory standards that have been determined in the Regulation of the Minister of Cooperatives Number 17/Per/M.KUKM/IX/2015 concerning Cooperative Supervision.

Furthermore, the scope of supervision carried out by external supervisors at BMT Amanah Syariah did not run fully. Supervision is carried out only passively by relying on the results of the analysis of reports reported by internal control. This has an impact on aspects of compliance implementation, and the application of sanctions on the operationalization of BMT Amanah Syariah. The report provided by the internal supervisor is only able to provide data on BMT supervision from the institutional aspects of cooperatives, savings and loan businesses, and health assessments of savings and loan businesses.

The ideal supervisory mechanism carried out by the external supervisor is supervision that must be carried out as many as 6 (six) stages of supervision based on the 5 (five) aspects of the scope of supervision that have been determined. This aims to prevent errors in monitoring the operationalization of BMT. Furthermore, there is a discrepancy in the implementation of the Regulation of the Minister of Cooperatives and SMEs Number 17/Per/M.KUKM/IX/2015 concerning Supervision of Cooperatives at BMT Amanah Syariah. The discrepancy is seen from the efforts of the Cooperative Office in carrying out monitoring and evaluation of branch offices, sub-branches, and cash offices domiciled in their respective areas.

Where the results of the monitoring and evaluation are reported to the supervisor based on the scope of the cooperative. However, the facts in the field are that BMT Amanah Syariah already has two BMT branches in the Cibubur and Tanah Abang areas. So far, it has not received direct monitoring from the local Cooperatives Service, so this has an impact on the operationalization of BMT Amanah Syariah in terms of supervision.

In addition, the problem of internal supervision can be seen from the products produced by BMT Amanah Syariah which do not receive supervision in it. These products are made only based on the results of the BMT internal assessment which is continued to the stage of launching the product independently. This can cause problems with the products produced by BMT Amanah Syariah, because they do not receive internal supervision from the sharia compliance aspect of the product.

2. BMT Ibaadurrahman

BMT Ibaadurrahman has a legal entity form of Cooperative with the type of business license of Sharia Savings and Loans and Financing Cooperative (KSPPS) so that the supervisory authority over BMT Ibaadurrahman is given to the Ministry of Cooperatives and SMEs. Referring to Law Number 25 of 1992 concerning Cooperatives, internal supervisors are selected based on the RAT. In the field, the internal supervisory board of BMT Ibaadurrahman only consists of the Supervisory Board and the Sharia Supervisory Board.

External supervisors at BMT Ibaadurrahman are run by the Cooperative Service based on the Regulation of the Minister of Cooperatives Number 17/Per/M.KUKM/IX/2015 concerning Cooperative Supervision. The

Cooperative Service that carries out supervision of BMT Ibaadurrahman does not meet the supervisory qualification standards that have been determined in the Regulation of the Minister of Cooperatives Number 17/Per/M.KUKM/IX/2015 concerning Cooperative Supervision.

Thus, the incompatibility of the qualifications of the external supervisor has an impact on the results of the analysis of the written report provided by the internal supervisor to the external supervisor, namely the Cooperative Service.

Based on the two supervisory mechanisms at BMT Ibaadurrahman, it can be seen that the supervision carried out so far has not been carried out in accordance with the regulations related to supervision issued by the Ministry of Cooperatives and SMEs. This discrepancy can be seen from the implementation of cooperative supervision, the stages of cooperative supervision to reporting on cooperative supervision at BMT Ibaadurrahman by referring to the Regulation of the Minister of Cooperatives and SMEs Number 9 of 2020 concerning Cooperative Supervision.

In terms of implementation of supervision, problems arise as a result of the lack of socialization and guidance from the local Cooperatives Service. Furthermore, the procurement of Human Resources (HR) is not in accordance with the standards that have been set by having the quality and capabilities in accordance with the field of supervision.

In terms of reporting, BMT Ibaadurrahman has been given guidance by the local Cooperative Service to provide reporting either directly or through the website of the Ministry of Cooperatives and SMEs. However, reporting through the website of the Ministry of Cooperatives and SMEs has not yet had a significant impact on the operationalization of BMTs, especially in terms of supervision.

3. BMT Talaga

BMT Talaga is a BMT with a legal entity form of Cooperative and type of MFI business license, the institution that is given the authority to supervise is the Financial Services Authority (OJK). However, the BMT Talaga field is currently under the supervision of two institutions, namely the Ministry of Cooperatives and SMEs and the Financial Services Authority. The following is a description of the supervisory mechanism carried out by each institution.

a. **Ministry of Cooperatives and SMEs (before registered with OJK)**

The supervisory mechanism at BMT Talaga is carried out by the Majalengka Regency Cooperative Service with the scope of supervision in the form of internal control standards, internal control systems, to the health level in the form of finance and BMT institutions as stated in the Regulation of the Minister of Cooperatives and SMEs Number 17/Per/M.KUKM/IX/2015 concerning Supervision of Cooperatives.

With the legal entity status of BMT Talaga in the form of a cooperative legal entity, in the implementation of the RAT, the BMT Talaga still invites the Cooperative Office. The supervisory system by the Cooperative Service as an external supervisor for the operation of BMT Talaga, is not carried out continuously and does not have a routine schedule. The Cooperative Service only asked for the results of the RAT made by the internal supervisors of BMT Talaga, namely the Supervisory Board and the Sharia Supervisory Board.

The supervisory system carried out by the Cooperative Service is also still considered lacking, this is seen from the quality of Human Resources (HR) who run the supervisory mechanism at BMT Talaga which is not in accordance with the qualifications as a supervisor. As has been regulated in the Deputy for Cooperative Technical Implementation Guidelines Number 33 of 2021 concerning Guidelines for Fit and Proper Test for Cooperative Managers and Supervisors and Regulation of the Minister of Cooperatives Number 17/Per/M.KUKM/IX/2015 concerning Cooperative Supervision.

Another problem is that internal control at BMT Talaga is only carried out by 1 (one) person who also concurrently works in other divisions at BMT Talaga. This shows that the supervisory mechanism implemented by BMT Talaga is not ideal in terms of Human Resources (HR). Based on some of the problems above, it can be concluded that the points of problems that exist in the supervisory mechanism by the Ministry of Cooperatives and SMEs at BMT Talaga, include:

- 1) The monitoring system is less efficient and not continuous.
- 2) There are limited Human Resources (HR) in terms of quantity to supervise hundreds of cooperatives in Majalengka district.
- 3) The quality of Human Resources (HR) at the Cooperative Service which carries out a supervisory system is very minimal regarding understanding related to supervision.

b. Financial Services Authority

The supervisory system carried out by OJK to BMT Talaga is carried out routinely, by supervising BMT Talaga through the delegation of Regional Offices (KR) in the Majalengka area to carry out supervision. The Human Resources (HR) delegated for supervision is divided into several sections, namely supervision from the financial, legal, and operational mechanisms and has received previous guidance. Supervision is carried out by the local Regional Office (KR) for 4 (four) days in 1 (one) year.

The OJK has handed over the monitoring mechanism of BMT Talaga to the district or city government by assigning the Cooperatives Service to carry out supervision in accordance with the provisions of Law Number 1 of 2013 concerning Microfinance Institutions. The supervisory mechanism between the Regional Office (KR) and the Cooperative Service did not work well. So that the OJK decided to carry out the evaluation stage and provide guidance to the Regional Office supervisory party (KR) before carrying out supervision of BMT Talaga as an MFI carried out by the Guidance and Supervision section. Furthermore, the internal supervisor of BMT Talaga provides regular reports in the form of financial reports which are carried out every 4 (four) months. Thus, for 1 (one) year, the supervisory report is carried out 3 (three) times internally which is then forwarded to the relevant external supervisory party. The reports provided are in the form of institutional reports, licensing reports, regulatory reports, sharia compliance reports, policy reports and health standard reports which are checked whether they are in accordance with AD /ART, SOP, SOM on BMT Talaga and on Law Number 1 of 2013 concerning MFIs and POJK.

The OJK then carried out intense communication with the internal supervisor who supervised BMT Talaga. The legal basis used by BMT in carrying out the supervision system is based on the Articles of Association

and Bylaws (AD/ART) of the LKM Service Cooperative Talaga BMT and Law Number 1 of 2013 concerning Microfinance Institutions, Ministerial Regulation of 2015 concerning Supervision of Cooperatives. In carrying out the supervision system at BMT Talaga, the problems that arise are internal problems, including:

- 1) Still constrained in terms of human resources regarding the quality of the ability and understanding of supervisors at BMT Talaga, especially in terms of understanding technology.
- 2) The existence of multiple positions in the operational system of BMT Talaga.
- 3) There is no readiness in terms of human resources at BMT Talaga regarding OJK regulations which will continue to experience changes and developments.

B. Analysis of supervisory dualism related to BMT operations in West Java

1. Supervision of Baitul Māl Wa Tamwil by the Ministry of Cooperatives and SMEs and the Financial Services Authority

Supervision on BMT is carried out by two government institutions, namely the Ministry of Cooperatives and SMEs and the Financial Services Authority (OJK). This difference in supervision arises as a result of the issuance of Law Number 1 of 2013 concerning Microfinance Institutions which regulates the supervisory mechanism. Based on Law Number 25 of 1992 concerning Cooperatives, BMT which is included in the scope of supervision of the Ministry of Cooperatives and SMEs is BMT with a legal entity status of Cooperatives and with a type of savings and loan business license. The following is a description of the regulatory analysis regarding the operationalization of supervision at BMT in terms of the institution that carries out the supervision.

a. Ministry of cooperatives and SMEs

The synchronization carried out by the Ministry of Cooperatives and SMEs together with the local cooperative service is carried out by providing facilities to the related BMT. The provision of this facility is carried out by referring to Presidential Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises.

Referring to the attachment to Law Number 25 of 2014 concerning Regional Government, it is explained that the regional government (Pemda) divides the supervision and inspection of cooperatives into 3 (three) parts, namely:

- 1) The Ministry of Cooperatives and SMEs conducts supervision and inspection on cooperatives with cross-provincial membership;
- 2) Provincial Cooperatives Office conducts supervision and inspection if cross-membership cooperatives are in the same province; and
- 3) The Regency or City Cooperative Service carries out supervision and inspection if the cross-membership of the cooperative is in one local district or city.

Based on the above provisions, if the cooperative has a business license in the form of savings and loans, the overall cooperative will be supervised and fostered by the Ministry of Cooperatives and SMEs both from an

institutional and business perspective. However, if the cooperative has a business license in the form of an MFI, the supervision carried out on the cooperative is included in the authority of the OJK.

After Law Number 1 of 2013 concerning Microfinance Institutions, cooperatives in the form of MFI business licenses must be supervised by the Financial Services Authority (OJK). Based on this regulation, OJK delegates Regional Offices (KR) in each region to oversee cooperatives from the business sector in the form of MFIs and not institutional supervision.

However, from an institutional perspective, it is still under the auspices of the Ministry of Cooperatives and SMEs to provide guidance. Thus, there are two supervisory rooms owned by cooperatives, namely supervision in terms of institutions and supervision in terms of business permits. With the existence of two supervisory rooms in cooperatives, this gives rise to dualism in supervision of BMTs with the institutional status of cooperatives. This shows that there is legal disharmony related to BMT supervision regulations. With the dualism of supervision in the cooperative, there are legal consequences for the operationalization of BMT in carrying out the implementation of supervision, stages of supervision and reporting of supervision on BMT.

In Law Number 25 of 1992 concerning Cooperatives, it does not explain the supervision of cooperatives. Instead, the supervisory mechanism for cooperatives is explained in the Regulation of the Minister of Cooperatives and SMEs Number 9 of 2020 concerning Cooperative Supervision. The regulation mandates supervision from an administrative perspective. Thus, the Ministry of Cooperatives and SMEs supervises BMTs with the institutional status of cooperatives being limited to administrative supervision.

Therefore, the Ministry of Cooperatives and SMEs does not have the authority and does not have a structure regarding the rules for imposing sanctions on problematic BMTs. Thus, in BMTs that have cooperative institutional status with the type of savings and loan business license, there are no criminal sanctions for violations of supervision, but only administrative sanctions. This is because, the basis used in the Regulation of the Minister of Cooperatives and SMEs Number 9 of 2020 concerning Cooperative Supervision is Law Number 25 of 1992 concerning Cooperatives. Where supervision of cooperatives is only nuanced in fostering by providing flexibility for the community to run cooperatives. Furthermore, regarding the scope supervised by the Ministry of Cooperatives and SMEs, it is regulated in the Regulation of the Minister of Cooperatives and SMEs Number 9 of 2020 concerning Supervision of Cooperatives. Explain that the scope of supervision of cooperatives is divided into 4 (four) parts, namely preparation of direct inspections, implementation of inspections, reporting of audit results, and application of administrative sanctions. Based on these provisions, the flow of supervision remains compliant with Law Number 25 of 2014 concerning Regional Government which divides the supervision of cooperatives into 3 (three) supervisions. So far, the Ministry of Cooperatives and SMEs are still coordinating with the Cooperatives Office in the Province and Regency or City if there are problems that occur within the Province and Regency or City scope.

Based on the implementation of the regulations related to the supervision of cooperatives above, there are seven problems that have been identified as the main problems for the Ministry of Cooperatives and SMEs, namely:

- 1) Limited human resources for supervisors;
- 2) Limited Coordination and Availability of Cooperative Data;
- 3) Limited Information-Computer & Technology (ITC) facilities;
- 4) Legal Protection for Weak Supervisory Officials; and
- 5) The Internal Synergy of the Deputy for Supervision is not yet optimal.

b. Financial Services Authority

The Financial Services Authority runs a supervisory system on BMTs into two parts, namely BMTs with a legal entity status of Cooperatives and PT (Limited Companies (PT)). BMTs that receive permission from the OJK are grouped into Sharia LKMs with legal entities as Cooperatives. The legal basis used by the Financial Services Authority regarding supervision of BMTs is Law Number 1 of 2013 concerning Microfinance Institutions, Financial Services Authority Regulation Number 14 concerning Guidance and Supervision of Microfinance Institutions and a Memorandum of Understanding between OJK, the Ministry of Cooperatives and SMEs and Ministry of Internal Affairs.

In an internal manual regarding the operational mechanism of supervision carried out by the OJK, there is a guidance system and a supervisory system that cannot be separated from one another. The supervision system is divided into two, namely turnover control and offset supervision with various provisions on different aspects of supervision including:

Based on Law Number 1 of 2013 concerning Microfinance Institutions and related OJK Regulations, the parties that carry out supervision are the Ministry of Home Affairs, the Ministry of Cooperatives and SMEs and the Financial Services Authority (OJK). The OJK provides guidance and supervision of MFIs by coordinating with the Ministry of Home Affairs and the Ministry of Cooperatives and SMEs and SMEs.

The reason for this coordination is because these two ministries have many work programs that support the growth of MFIs and are initiated by these ministries. Supervision of the MFI is then delegated to the local district or city government and/or addressed to related parties appointed by the OJK. However, if considering that the district or city government and related parties appointed by the OJK are not ready, then the guidance and supervision is still carried out by the OJK.

At the beginning of the formation of Law Number 1 of 2013 concerning Microfinance Institutions, all BMTs and other financial institutions were directed to become BPRs. However, over time, not many institutions entered into banking. On the one hand, the OJK as a representative of the government must secure public funds in the institution, so that Law Number 1 of 2013 concerning Microfinance Institutions appears. In terms of regulations, MFIs are looser than banks and the conditions in society are also disparate in each MFI and the OJK also does not impose provisions that exist on BPRs to be applied to MFIs.

In POJK No. 14/POJK.05/2014 regarding the guidance and supervision of MFIs, in Article 7 it is explained that further provisions regarding the procedures for implementing the guidance and supervision of MFIs are regulated in a Circular Letter of the OJK Board of Commissioners. All supervision requirements are left to the BMT, whether the BMT wants to do

business on a large scale, the BMT must register with the OJK. However, if on a small scale the BMT must register at the Ministry of Cooperatives and SMEs.

In Law Number 1 of 2013 concerning Microfinance Institutions, article 28 explains that the OJK coordinates with the Ministry of Cooperatives and SMEs and the Ministry of Home Affairs. The follow-up to article 28 is a memorandum of understanding between OJK, the Ministry of Cooperatives and SMEs and the Ministry of Home Affairs on 11 July 2014. Based on Law No. 1 of 2013 concerning Microfinance Institutions, supervision is carried out through several channels *first*, directly from the OJK to the industry and *second*, related to guidance and supervision, it is delegated to district/city governments, and for guidance it is still coordinating with the Ministry of Cooperatives and SMEs and the Ministry of Home Affairs.

For the guidance and supervision itself, in Law Number 25 of 1992 concerning Cooperatives, it has been regulated that it is carried out by the Ministry of Cooperatives and SMEs, not by the OJK. However, the OJK has coordinated with the Ministry of Cooperatives and SMEs as well as the Ministry of Home Affairs and there are still some obstacles related to the implementation of supervision on the Regional Government.

The obstacle is in the form of technical provisions that so far regulate regional functions to carry out LKM development, there is no such thing. Local governments when the OJK is asked to carry out supervision, as long as there are no related regulations, they will not be able to run. Therefore, we have coordinated with the Ministry of Home Affairs as the coordinator for each local government.

However, several other problems arise in terms of changes in organizational structure. So that every agreement made by the OJK with the local government, whether it is for conducting coaching, stops and does not go well. Coordination is carried out from the central level, namely from the Ministry of Home Affairs to ensure that Law No. 1 of 2013 concerning Microfinance Institutions can be carried out by other related parties at lower levels. However, if there are no regulations at the level of Government Regulations and other regulations, the local government cannot coordinate the supervision of the BMT.

Based on a description of the supervisory mechanism carried out by the Ministry of Cooperatives and SMEs, the Financial Services Authority. So it can be seen that the application of the above supervisory mechanism when applied to BMTs will lead to disharmony along with the following 5 (five) factors which are used to analyze the emergence of legal disharmony in the operationalization of supervision at BMTs, namely:

- 1) Legislation made in large numbers.
- 2) Differences in interests and legal interpretations.
- 3) The gap between legal understanding and legal technicality in the scope of governance.
- 4) The emergence of legal obstacles in the application of laws and regulations in terms of mechanisms, administration, anticipation of change and law enforcement officers.
- 5) Legal barriers in the effort to apply laws and regulations in terms of overlapping authorities and conflicts of legal interest.

Based on the 5 (five) factors above, it can be seen that there is a disharmony of regulations related to supervision carried out at BMT. The

disharmony of the supervisory regulations was caused by the ineffectiveness of the establishment of the legal harmonization function as described by Wcipto Setiadi, namely:

- 1) There is no harmony and certainty regarding the existing supervisory regulations in the BMT, causing legal disharmony.
- 2) In the absence of clear legality regarding the existence of BMT. Thus, the establishment of a legal harmonization function as a preventive measure in preventing the submission of a judicial review application regarding the legislation.
- 3) There is no guarantee in the process of forming laws and regulations with the absence of elements of compliance with legal principles, legal interests and legal certainty in the operation of BMT. So that the legal basis used by BMT as a legal basis in the end leads to legal disharmony, as a result of the absence of legal legality against BMT.

This has an impact on other supervisory principles in the form of results of supervision carried out by the two institutions that do not provide feedback on improvements and refinements in the implementation, planning and policies on the operationalization of BMT in the field. Furthermore, in carrying out supervision, there are several conditions related to supervision that are not fulfilled by the two institutions in carrying out supervision, namely:

- 1) The supervision carried out has not fully supported the nature and needs of government activities.
- 2) Supervision has not reported in its entirety any deviations that occur. This is due to the nonoptimal monitoring system carried out by the two institutions on BMT.
- 3) The supervision carried out on BMT has not been objective, thorough and in accordance with the standards used. This can be seen from the standards of supervisors who carry out supervision in the field that are not in accordance with regulations related to standardization of supervision.
- 4) The supervision carried out is difficult to understand, this is due to the lack of socialization carried out by the two institutions that carry out supervision of BMT.
- 5) Supervision is not followed by any improvements or corrections from each institution. This can be seen from the absence of direct action or changes in the supervision system for the operationalization of BMT.

Based on a description of the factors of legal harmonization, the establishment of a supervisory function, the principle of supervision to the supervision requirements which are analyzed based on the supervisory mechanism carried out by the Ministry of Cooperatives and SMEs and the Financial Services Authority. So it can be concluded that the emergence of disharmony of supervisory regulations carried out by the two supervisory institutions. Thus, the disharmony of these regulations has a legal impact on the operationalization of BMT. So if you refer to Mc.Farland's theory regarding 4 (four) supervision guidelines, the supervision carried out by the Ministry of Cooperatives and SMEs and the OJK on the operation of BMTs does not meet the provisions related to supervision guidelines.

In addition, there are no orders from the two institutions that regulate the supervision of BMT. This then has an impact on the objectives of implementing supervision on BMT. Therefore, in the absence of compliance with supervisory

guidelines by the two institutions, this has legal consequences in the form of dualism of supervision in the operation of BMTs which has an impact on the ineffectiveness of the operational mechanisms of BMTs, as a result of the absence of definite legality in the operationalization of supervision of BMTs.

2. Analysis of regulatory conformity on supervision with BMT characteristics

Until now, BMT has run an operational mechanism by referring to various related regulations by referring to the form of legal entity and the type of BMT business license. This was done based on the Decree of the Minister of Home Affairs of the Republic of Indonesia cq the Directorate General of Regional Development Number 538/PKKN/IV/1997 dated April 14, 1997 concerning the Status of Legal Entities for Sharia Financial Institutions. Based on the decree, the BMT can choose the status of the legal entity that it wants to use in carrying out the operational mechanism at the BMT. In addition to legal entity status, BMT can also choose the type of business license to be used in the operational mechanism, including business licenses in the form of Sharia Savings and Loans Cooperatives (KSPPS) and Micro Finance Institutions (LKM). However, the two forms of business licenses and legal entities have different characteristics from BMT.

This shows that the characteristics of BMT are not in accordance with the characteristics of Cooperatives and MFIs. These differences in characteristics have a negative impact on the application of regulations related to supervision of BMTs in terms of the mechanism of establishment, operation, accountability, and reporting by BMTs. Another contributing factor is the absence of regulations governing the status of institutional legal entities and types of BMT business permits. This can be seen from the number of BMTs that do not have business permits and do not have institutional legal entity status in accordance with the characteristics of BMTs.

The lack of clarity regarding the supervisory regulations that exist in BMT is one of the factors that greatly affects the sustainability of BMT as a Sharia Microfinance Institution. The operational mechanism carried out by the BMT must have supervisory regulations with the aim of avoiding problems in terms of overlapping authorities and legal protection problems for the management and customers. BMT in carrying out supervision on operational mechanisms so far refers to regulations related to supervision issued or addressed to the institutions of the Ministry of Cooperatives and SMEs and the Financial Services Authority (OJK).

Based on the regulations related to supervision issued by the two institutions, it can be seen that there is no regulation that specifically regulates BMT, including supervisory regulations on BMT. Therefore, it is necessary to take action to re-examine the regulations that are used as references by the BMT in carrying out the operational mechanism and supervision of the BMT. The study was conducted by examining the suitability of regulations with the characteristics of BMT which has two main functions, namely a social function in the form of ZISWAF and a business function in collecting and distributing public funds. This is intended to avoid legal disharmony related to supervisory regulations applied to BMTs.

The expected harmonization of law is the harmonization of laws and regulations through the process of legal interpretation, legal construction, legal reasoning and providing rational arguments by taking into account the legal system and applicable legal principles to prevent and overcome legal disharmony. In achieving legal harmonization, the laws and regulations made refer to Pancasila as

the basis for legal purposes. Pancasila as a protector for the community, namely protecting the community passively (negatively) by preventing arbitrary actions and actively creating conditions for a just society at large. Therefore, it is very necessary to harmonize the law in regulations related to supervision of BMTs to generate benefits from legal awareness in the community, and related to certainty and justice in the community.

As explained in Chapter II related to legal theory, Soejono Soekanto's perspective explains that there are several factors that affect the effectiveness of the law in the supervisory mechanism at BMT, namely:

a. The legal factor itself

In regulations related to the supervision system at BMT, there is no justice, certainty and benefit in these regulations. This can be seen from the absence of special regulations related to BMT and there are more than one government agency that supervises BMT. Thus, this has led to the emergence of dualism in the operationalization of supervision at BMT.

b. Law enforcement factors

With the existence of a law enforcement supervisory system on more than one BMT institution. So, this raises problems in terms of applying the elements of justice, certainty to benefits in the operational supervision of BMT.

c. Factors of facilities or facilities that support law enforcement

Meansor facilities in supporting the implementation of supervisory regulations on BMTs, also have problems. Where the human resources who carry out supervision in the field do not have clear and definite qualifications as BMT operational supervisors. In addition, there is also a lack of socialization from related institutions regarding the supervisory system that will be carried out at BMT.

d. Community factor

Publicin responding to regulations related to supervision of BMT operations, they also experienced confusion. This is due to legal factors, law enforcement and facilities or facilities in implementing regulations related to supervision that do not yet have definite clarity.

e. Cultural factors

Community culture in responding to regulations related to supervision, also has limitations in it. This has an impact on efforts to evaluate regulations related to supervision of BMTs in Indonesia.

Furthermore, it can be concluded that the emergence of legal disharmony related to supervision in the operation of BMT in West Java which can be seen based on the laws and regulations regarding the supervision system. From a legal point of view, BMT does not have definite regulations regarding BMT operations including supervision. This causes BMTs to be forced to make regulations related to cooperatives and MFIs as a reference in carrying out operations and supervision of BMTs.

Based on regulations regarding supervision carried out by the Ministry of Cooperatives and SMEs and OJK on BMT operations. These regulations can lead to legal disharmony caused by the following factors:

- a. Human Resources (HR) who run are not capable of carrying out supervision;
- b. Lack of socialization of regulations by supervisory agencies caused by the lack of socialization budget;
- c. Supervision regulations that are not in accordance with the characteristics of the BMT; and

d. Lack of awareness of each stakeholder regarding supervision of BMT.

The above factors have an impact on the dualism of supervision on BMT operations carried out by the Ministry of Cooperatives and SMEs as well as the OJK. This is caused by the existing supervisory regulations that are not in accordance with the characteristics of the BMT and other supporting factors. However, BMT still insists on using the existing supervisory regulations. Thus, the supervision regulation on the operation of BMT will not run effectively.

CONCLUSION

The dualism of supervision in BMTs has legal consequences, namely the emergence of disharmony regarding supervisory regulations in the operationalization of *Baitul Māl Wa Tamwil* (BMT) in West Java, which is caused by several factors that lead to legal consequences for the operationalization of BMT supervision in West Java. The following is a description of the causal factors and legal consequences of the dualism of supervision in the operation of BMT.

Causative factors are there are two legal basis references related to supervision in the operation of BMT, namely, Law Number 25 of 1992 concerning Cooperatives and Law Number 1 of 2013 concerning Microfinance Institutions, legal substance regarding the form of legal entities and business licenses in the supervisory regulations that are not in accordance with the characteristics of the BMT, the implementation of supervision regulations carried out on BMTs is coercive, Human Resources (HR) who carry out supervision are not capable, the lack of socialization of supervision regulations, and the lack of awareness of each stakeholder regarding supervision of BMTs and there is no regulation that regulates the legality of the operationalization of BMT.

These factors have legal consequences, namely the disharmony of the supervision law on the operationalization of BMTs which have the form of a Cooperative legal entity with supervision carried out by the Ministry of Cooperatives and SMEs and the Financial Services Authority.

This legal disharmony has a negative impact on the implementation of supervisory regulations on BMTs in terms of the mechanism of establishment, operation, accountability, and reporting by BMTs to each supervisory agency. So that the implementation of supervisory regulations that have been carried out on BMTs has been coercive and ineffective and not in accordance with the characteristics possessed by BMTs.

REFERENCES

- Adisasmita, R. (2011). *Manajemen Pemerintah Daerah*. Yogyakarta: Graha Ilmu.
- Amalia, E. (2014) "Implementasi Good Corporate Governance pada BMT". Hasil penelitian Kerjasama OJK dan UIN Jakarta.
- Diah, A.O. (2018). *Analisis Hukum Terhadap Kewenangan Otoritas Jasa Keuangan dan Kementerian Koperasi dan Usaha Kecil dan Menengah dalam Pengawasan Lembaga Keuangan Mikro Berbentuk Koperasi*. Tesis. Sumatera Utara: Universitas Sumatera Utara.
- Fadillah, M and Abdul, M. (2017). *Kebijakan Regulasi Battul Māl Waa Tamwil (BMT) di Indonesia*. Tesis. UIN Sunan Kalijaga Yogyakarta.
- Fajrianty, H. (2019). *Kepastian Hukum Baitul Māl Wa Tamwil Tinjauan Undang-Undang Perkoperasian dan Lembaga Keuangan Mikro*. Tesis. UIN Syarif Hidayatullah

- Jakarta. Johnny, I. (2013). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.
- Kementerian Koperasi dan UKM. (2021). Data Koperasi di Jawa Barat terdaftar di Kementerian Koperasi dan UKM. Retrieved from <http://nik.depkop.go.id/>
- Komite Nasional dan Keuangan Ekonomi Syariah. (2021). Sharing Platform. Retrieved from <https://knks.go.id/isuutama/8/sharing-platform-keuangan-mikro-syariah-berbasis-baitul-maalwat-tamwil-bmt>.
- Mochtar, K. (1986). *Pembinaan Hukum Dalam Rangka Pembangunan Nasional*. Bandung: Binacipta,
- Munir, F. (2007) *Sosiologi Hukum Kontemporer, Interaksi Hukum, Kekuasaan dan Masyarakat*. Bandung: PT. Citra Aditya Bakti.
- Otoritas Jasa Keuangan, (2021). Data Koperasi Terdaftar di OJK, Retrieved from <https://www.ojk.go.id/id/kanal/iknb/Pages/LKM-Terdaftar-OJK.aspx>.
- Pusat Bahasa Departemen Pendidikan Nasional. (2008). *Kamus Bahasa Indonesia*. Jakarta: Pusat Bahasa.
- Pusat Inkubasi Bisnis Usaha Kecil. (2021). Data persebaran Kementerian Koperasi Jawa Barat. Retrieved from, <https://berita.pinbuk.id/?s=Persebaran+BMT>.
- Soerjono, S and Sri, M. (2007). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada,
- Usman, S. (2009). *Dasar-Dasar Sosiologi*. Yogyakarta: Pustaka Belajar.