

EXISTENCE OF *BAITUL MAAL WAT TAMWIL (BMT)* AS A LEGAL ENTITY

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Abstract

Baitul Maal wat Tamwil (BMT) as a model of democratic economic system, which was able to strengthen structure of the national economy during an economic crisis in Indonesia in 1997, was a micro finance institution, which operated based on Islamic principles. It consisted of two management namely *baitul maal* (including collection and distribution of zakat, infaq, charity funds) and *baitut tamwil* (conducting development activities of productive business and investment). Based on the data of *BMT* association, 4500 *BMTs* were spread accross Indonesia in 2015 that served 3.7 million people with assets of around 16 trillion rupiahs managed by about 20 thousand people. *BMTs* could support the acceleration of national economic growth, but *BMT* was established with a gradual process of legal legality. The necessity of transforming itself from a microfinance institution to be incorporated cooperative or limited liability company (*PT*) would give rise to a juridical consequence that all existing legislation in *BMT* such as procedures for establishing, managing, and monitoring should be based on legislation of law which was appropriate with the legal entity, besides that not all management of *BMT* were fulfilled in cooperative or *PT*. The purpose of this writing was to explain the legal status of *BMTs* in financial institutions in Indonesia and analyze the concept of legal reinforcement of *BMT* in Indonesia. This type of legal research was normative legal research on the principles of law and legal systematics. Based on the discussion, it could be concluded that the legal status of *BMT* was divided into three stages, namely *BMT* which its legal entity was not known yet, *BMT* that had not had a legal entity, and *BMT* that had a legal entitiy. For the sake of legal certainty of the existence of *BMT* as a legal subject, it was deemed necessary to strengthen the *BMT* law by examining *BMT* as a legal entity, namely classifying *BMTs* into legal entity associations/organizations, as well as forming its legal instruments.

Keywords: *BMT, legal entity, association.*

A. Introduction

Baitul Maal wat Tamwil (BMT) also known as Integrated Independent Business Center, is a non-bank financial institution, which is a micro finance institution operating on the basis of sharia principles. The principles of sharia as the basis for the operation of the *BMT* are in accordance with the principles of Islam in economic activity, namely:¹

1. The principle of *tauhidi*, which is oriented towards devotion to God (dimension '*ubudiyyah*) ,

2. The principle of equality in economic activity with respect to rights and duties,
3. The principle of not harming and exploiting people in various forms of business,
4. The principle of willingness of both parties or the principle of likes the likes (*'an taradhin minkum*) without the element of coercion in business transactions,
5. The principle of brotherhood in building global partnerships and solidarity and the principle of universal justice,
6. Principles of business materia object, in the form of goods or service products that are proven to be *halal*,
7. Principle of giving benefit or benefit principle (not containing redundancy),

¹ Elfrinaldi, *Syariat Islam dan Dinamika Masyarakat, Solusi Terhadap Kontemporer*, page 31-40, Ricardo, Jakarta.

8. The principle of helping each other and helping to build partnerships in business,
9. The principle of equilibrium between individual and community interests with equitable distribution of income and wealth ,
10. The principle of being not contradictory to the Islamic Sharia or the principle which is not against the law and sharia (no element of usury, *gharar*, *maysir*).

Kinds of usury are *nasi'ah* and *fadh*l usuries. *Nasi'ah* usury is the conditional increase received by the lender as compensation for the deferment of debt repayment. *Fadh*l usury is an advantage that occurs in the sale of currency with currency, food with food.² Transactions on *fadh*l usury also contains a prohibited element named *gharar* or vagueness for both parties and an impact on injustice. Islam also prohibits *maysir* or gambling that has become a culture in developed countries. With the allocation of resources in gambling, the added value of the economy will be halted and potentially on the collection or transfer of economic resources from productive parties to unproductive.³

In a *BMT* institution, there are two financial management within it, namely *baitul maal* and *baitut tamwil*. Based on its terminology, *Baitul Maal* is a treasure house, while *baitut tamwil* is property development. *Baitul Maal* financial management involves the collection and the distribution of *zakat*, *infaq*, and charity funds (*ZIS*) from the community whose funds can be sourced from its own members or the general public who entrust the management of its *ZIS* funds to *BMT*, while *baitut tamwil* is an institution that undertakes the development activities of productive enterprises and investments in improving the welfare of micro entrepreneurs through financing and saving activities. *BMT* is a business institution in *baitut tamwil* activities and also as a social institution on *baitul maal* activities. The purpose of the establishment of *BMT* is to improve the quality of economic enterprises for the welfare of members in particular and society in general. The vision of the *BMT* is to become an independent, healthy, and strong financial institution whose members' quality of worship increases in such a way that it can play a role as a representative of God's servant to prosper the life of members in particular and mankind in general through *BMT* mission, which is to release the liberation movement of members and the society from the shackles of moneylenders, poverty trap, and *ribawi* economy, empowerment movements to increase capacity in real

economic activities and their institutions to a prosperous and developed economic structure and a civic movement to build a just, prosperous and sustainable civil society structure based on sharia and *Allah SWT*.⁴

BMT as one model of the democratic economic systems was able to strengthen the national economic structure during the economic crisis in Indonesia in 1997. The Indonesian economic system is Pancasila Economic System. The Pancasila Economic System is an economic system excavated and established from the values held in Indonesian society. According to Emil Salim as quoted in Siamanungkalit Rai, Pancasila economy is a concept of economic policy, after experiencing movements as pendulum clock from left to right, it will reach the point of balance. Movement to the right means it is free to follow the rules of the market, while the movement to the left means it experiences state intervention in the form of centralized planning. In short, the Pancasila economy can be said as a market economic system under the government control or a controlled market economy. Another term approaching the concept of Pancasila Economy is a mixed economic system⁵, a mixture of capitalist system⁶, and the socialist system⁷. The mixed economic system applied by many countries is not always the same. There are higher capitalism levels such as the United States, Hong Kong, and Singapore. There is also a higher level of socialism like India.

To find out whether a country is leaning toward a liberal economic system or vice versa, there is a measure called an index of economic freedom developed by Milton Friedman who joined the *Economic Freedom Network*. This index was built on 17 components, including the aspects of government interference and economic structure. The index scale moves from 0 to 10.

⁴ Andri Soemitra, 2015, *Bank dan Lembaga Keuangan Syariah*, page 452-453, Prenadamedia Group, Jakarta.

⁵ Siamanungkalit Rai, *Sistem Ekonomi Pancasila Untuk Sejahteraan Rakyat*, available (online) on http://www.kompasiana.com/simanungkalitrai/sistem-ekonomi-pancasila-untuk-sejahteraan-rakyat_55546c026523bd90144aef57, accessed on January 17th, 2017.

⁶ Capitalist economic system or also known as liberal economic system is an economic system in which the economic condition of its community is really influenced or dominated by the capitalists.

⁷ Socialist economic system or managed economic system is an economic system in which the large amounts of the capital products/production factors are owned by the state which are aimed at fulfilling the needs of people as a whole.

² Sayyid Sabiq, 2010, *Fiqh Sunah Jilid 3*, translated by Asep Sobari, et. al; page 333-334, Al-I'tishom, Jakarta.

³ Heri Sudarsono, 2008, *Bank dan Lembaga Keuangan Syariah, Deskripsi dan Ilustrasi*, page 1-2, Ekonisia, Yogyakarta.

Country with higher index indicates strong consistency in liberal economic systems. By using the index of economic freedom from Milton Friedman, it was found that the most liberal economic system in the world was Hong Kong (9.3), followed by Singapore (8.2), New Zealand (8.0) and the United States (7.6). Meanwhile, at the ASEAN level; Thailand (7.2), Philippines (7.0), Malaysia (7.0), and Indonesia (6.3) were reported. The Indonesian economy over the year of 1975-1995 seemed to be more liberal with the movement of the index of economic freedom from 5.2 in 1975 to 6.3 in 1995.⁸

As the index of economic freedom of Indonesia increased (seemed more liberal), the community economic system strengthened the structure of the national economy during the economic crisis in Indonesia in 1997. Previously, economic growth could not be separated from the role of large business or conglomerate. Since the beginning of the New Order government over the last 32 years, Indonesia managed to pursue economic growth up to 8% per year. This high rate of growth was due to the influence of the conglomeration economic system which controlled the business from upstream to downstream of which not less than three hundred businesses. This large business had also contributed to the formation of Gross Domestic Product (GDP) of not less than 61% according to the Central Bureau of Statistics (BPS) in 1996. However, the success achieved was not better than the failure or negative impacts left behind such as the occurrence of conglomeration economic system, many unfair business practices such as monopoly, oligopoly, monopsoni, and oligopsoni. Besides, the conglomerate economic system was also not rooted in the people and it increasingly widened the gap between the rich and the poor between regions or intersector. This was further felt after the monetary crisis that began in the middle of 1997 and developed into an economic crisis and a crisis of trust to the government. The worst impact was the high rate of inflation estimated at 80% in 1998, high number of unemployment (until June of 1998, it was estimated at not less than 17 million people), negative economic growth of 13.2%, and poverty levels having *set-backs* such as 1970s which reached 79.4 million people or nearly 40% of the population.⁹

Indonesia's economy is predicted to have more strong economic fundamentals, in fact the rupiah also depreciated. Besides not supported by strong economic fundamentals, it is also influenced

by the monetary economic system used. Joseph A. Schumpeter, as quoted by A. Riawan Amin stated that any progress achieved by the capitalist economic system was meaningless. Like a balloon that continues to be pumped, it will continue to bubble and is considered as an economic growth that becomes indicator of prosperity. There is a limit for the ability of the real sector to grow, while the monetary sector that can double the money is far leaving the real sector. This imbalance can erupt at any time. The inflated bubble of the economic balloon is not strong enough to withstand the burden of a big burst and that is the economic crisis.¹⁰

Starting from the picture of the economic crisis proves that the conglomeration economic system is no longer relevant to be maintained. For this reason, in the reform era, the development paradigm needs to be changed. Development should be aimed at the interests of the people, not for the benefit of the groups of people. Development should be developed based on the domestic economy in the districts, high levels of independence, self-reliance and equity, widespread opportunities for business and income, participatory, healthy competition, openness / democracy, equitable distribution, and supported by natural resource-based industries, all of which are features of the popular economic system.

Some models of popular economic system that can be developed include rural industry, rural industrialization, village barn, plasma core, industrial center, *mixed farming*, forest for the people, *organic farming*, incubator, integrated model / model in Karangayar, industrial estate community, and *Baitul Maal wat Tamwil* (BMT). Models of this democratic economic system can be pursued and cultivated through the empowerment of people's economy through empowerment of cooperatives and Micro Small Medium Enterprises (MSMEs). The contribution of small businesses in economic development can absorb more than 88% of the workforce and to contribute 38, 9% for the GDP.¹¹

The big potential of MSMEs does not then get it away from various problems. The current problem SMEs today is very heavy due to intense of competition, especially with the entry of products abroad, business climate, difficulty of capital access, business management is still traditional, quality of human resources that is not adequate, and the scale and production techniques which are still low. Therefore, to develop and empower SMEs, it was necessary to have financial institutions that fit the needs and conditions of democratic economy actors

⁸ Rowland Pasaribu, *Sistem Perekonomian Indonesia*, http://rowland_pasaribu.staff.gunadarma.ac.id, accessed on January 17th, 2017.

⁹ Soeharto Prawirokusumo, 2009, *Ekonomi Rakyat (Konsep, Kebijakan, dan Strategi) Edisi Pertama*, page 3-4, BPFE, Yogyakarta.

¹⁰ A. Riawan Amin, 2008, *Satanic Finance, True Conspiracies*, page 8-10, Celestial Publishing, Jakarta.

¹¹ Soeharto Prawirokusumo, *op. cit.*, p. 4.

themselves.¹² The basis of democratic economy as the backbone of the principle of economic democracy has not been successfully, strongly, and sustainably built. The change of the world political map with the wave of democratization and global economic change with the support of its market economic system, demands the Indonesian government to make inevitable adjustments in the pattern of its economic policy. Therefore, efficiency trends through policies of deregulation, debureaucratization, and even privatization also penetrate into the politics of the national economy.¹³

Based on data of *The Human Freedom Index 2016*, Indonesia's rank in the climate of economic freedom was ranked 72 out of 159 countries¹⁴, while the contribution of Small and Medium Enterprises (SMEs) according to data from the Central Bureau of Statistics (BPS) in 2015 could absorb 96.71% of the workforce, and contribute to the Gross Domestic Product (GDP) amounted to 61.41%.¹⁵

Financial institutions such as BMT are needed to reach and support micro and small entrepreneurs all over Indonesia who have not been served by the existing banking at this time. As an illustration, according to data from the National Development Planning Agency (Bappenas), a small micro enterprise (BMT), which consists of formal and informal sectors, achieves wealth over 40 million rupiahs. The opportunity for BMT development in Indonesia is huge, since micro enterprises with loan scales below 5 million rupiahs are market segments that can be effectively served by this institution. On the other hand, the existence of banks that are able to serve this segment is very limited in number.¹⁶

¹² Ramdhan Syah, 2013, *Pengembangan Model Pendanaan UMKM Berdasarkan Persepsi UMKM*, page 30, Jurnal Keuangan dan Bisnis, Vol. 5, Num. 1 March 2013.

¹³ Jimly Asshiddiqie, 1994, *Gagasan Kedaulatan Rakyat Dalam Konstitusi Dan Pelaksanaannya di Indonesia*, 275-276, PT. Ichtiar Baru Van Hoeve, Jakarta.

¹⁴ Cato Institute, Fraser Institute, Friedrich Naumann Foundation for Freedom, *The Human Freedom Index 2016*; Fraser Institute, *Economic Freedom of the World: 2016 Annual Report*, <https://www.fraserinstitute.org/studies/economic-freedom>, accessed on June 14th, 2017.

¹⁵ Presentation of Minister Secretary of KUKM http://www.depkop.go.id/pdf-viewer/?p=uploads/tx_rtgfiles/01_Paparan_Sekretaris_Kementerian_KUKM.pdf accessed on June 14th, 2017.

¹⁶ Nurul Huda, et.al, 2016, *Baitul Mal Wa Tamwil: Sebuah Tinjauan Teoretis*, page 36, Amzah, Jakarta.

Minister of Cooperatives and Small and Medium Enterprises, Anak Agung Gede Ngurah Puspayoga, stated that BMT growth was quite significant. Based on the data of BMT Association (PBMT), there were 4,500 BMT spread in Indonesia in 2015 which served 3.7 million people with assets around 16 trillion rupiahs managed by about 20 thousand people. Data at Minister of Cooperatives and Small and Medium Enterprises showed that the number of cooperative business units in Indonesia reached 150,223 business units, of which there were 1.5 percent of cooperatives incorporated as Sharia Savings and Loans Cooperative (KSPPS) which previously was Sharia Financial Services Cooperative (KJKS).¹⁷

From the above description of BMT's role, as an alternative financial institution, BMT can support the acceleration of national economic growth, but BMT is established and developed with a gradual process of legal legality. BMT status is determined by the amount of assets owned so that BMT has different legal status according to the stage of the amount of the asset, and it obeys the various and partial laws according to the stage of legal status. BMT legal status is divided into 3 stages, namely BMT with unknown legal entity, BMT that has not yet had legal entity, and BMT that has legal entity.

The necessity to change from a BMT which is a microfinance institution to become a legal entity such as a cooperative or a Limited Liability Company, will create a legal consequence that all regulations in the BMT, whether the procedures of establishment, management and supervision should refer to the law according to the legal entity. In addition, not all BMT management is fulfilled in Sharia Savings and Loans Cooperative (KSPPS) or Limited Liability Company (PT). The operation of the BMT runs two financial management simultaneously, namely *baitul maal* (including collection and distribution of zakat, infaq, and alms donations) and *baitut tamwil* (conducting activities of productive and investment activities in improving the welfare of micro entrepreneurs through financing and saving activities).

For the sake of legal certainty of the existence of BMT as a legal subject in performing legal acts, it is deemed necessary to strengthen the law against BMT. Based on the background as described above, it can be formulated as follows:

1. What is the legal status of *Baitul Maal Wat Tamwil (BMT)* in a financial institution in Indonesia?

¹⁷ <http://www.depkop.go.id/content/read/menkop-puspayoga-langkah-perhimpunan-bmt-indonesia-selaras-dengan-reformasi-total-koperasi/>, accessed on January 22nd, 2017.

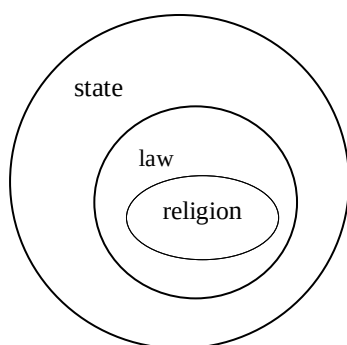
2. What is the concept of strengthening the law of democratic economic institutions *Baitul Maal Wat Tamwil (BMT)* in Indonesia?

B. Literature Review

1. The Theory of Concentric Circles

Concentric circle theory was introduced by Muhammad Tahir Azhary. The theory of concentric circles is the unification of the components of religion, law, and the state that form concentric circles that are one and closely related to each other. In Islam there is unknown dichotomy, either between religion and state, or between religion and law. Religion as the first component is in the deepest circle position, because it is the core of the circle. Then it is followed by the law that occupies the next circle. In this case, the influence of religion is enormous on the law and so too is religion the main source of law besides the ratio as a complementary source. Being seen from the Islamic point of view, the rules of *al-din al-Islami* consisting of three major components namely *aqidah* with *tauhid* (Belief in the One Supreme) as a central point, *sharia*, and morals, all three must be reflected in the structure and substance of law, so the concept of law in that environment contains, not merely law in the normative, but also law and morality. The state as the third component is in the last circle. The position shows that in this concentric circle, the state includes both the former components of religion and law. Since religion is at the core of this concentric circle, the influence and role of religion is immense to law and state. With this description, it also shows how closely the relationship between religion, law, and state, because the components are in an inseparable unity. It should be emphasized that the position of the state is placed in the last circle, then that does not mean that the state "supports" religious law.¹⁸

Here is a picture of the unification of the religious, legal, and state components that form the concentric circle.



¹⁸ Muhammad Tahir Azhary, 2015, *Negara Hukum: Suatu Studi Tentang Prinsip-Prinsipnya Dilihat Dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah dan Masa Kini*, page 67-68, Kencana Prenada Media Grup, Jakarta.

The principles of sharia as the basis of BMT's operations are in accordance with Islamic principles in economic activity. The legal principles of BMT as a syariah financial institution are a principle of *tauhidi* (oneness of God), principle of *khilafah* (representative), and principle of *'adalah* (justice). The concept of legal strengthening of BMT financial institutions as a populist economy is a form of application of religious law as the main component. This shows that the influence of religion is very large on the state, especially in terms of sharia regulations as legal products of Indonesia, especially in Islamic financial institutions.

2. Theory of Developmental Law

Developmental law theory proposed by Mochtar Kusumaatmadja which influenced the way of thinking Herold D. Laswell and Myres S. McDougal (*policy approach*), as well as legal theory of Roscoe Pound, is then adjusted to the conditions of Indonesia. Mochtar Kusumaatmadja explains that law is a means of renewal of society based on the assumption that order in the development or renewal effort is something desirable or even perceived (absolutely) necessary. Another assumption contained in the conception of law as a means of development is that law in the sense of rule or regulation of law can indeed function as a means of controlling or a means of development in the sense of channeling the direction of human activity in the direction desired by development or renewal.¹⁹ Supporting the concept of legal function in development, Sunaryati Hartono as quoted by Candra Irawan, put forward four functions of law in development:

1. Law as maintainer of order and security,
2. Law as a means of development,
3. Law as the enforcers of justice,
4. Law as a means of community education.²⁰

In the implementation of such legal functions, the law is expected to play a role in:

1. Creating new legal institutions that launch and promote development,

¹⁹ Mochtar Kusumaatmadja, 2006, *Konsep-Konsep Hukum Dalam Pembangunan (Kumpulan Karya Tulis)*, page 88, Alumni, Bandung, in Candra Irawan, 2011, *Politik Hukum Hak Kekayaan Intelektual Indonesia: Kritik Terhadap WTO/TRIPs Agreement dan Upaya Membangun Hukum Kekayaan Intelektual Demi Kepentingan Nasional*, page 86-88, CV. Mandar Maju, Bandung.

²⁰ Sunaryati Hartono, 1999, *Hukum Ekonomi Pembangunan Indonesia*, Badan Pembinaan Hukum Nasional, Third edition, p. 10-34, in Candra Irawan, *op. cit.*, p. 87.

2. Securing the results of the development process being carried out,
3. Ensuring that the interests of society as the most important part of development,
4. Giving legitimacy to changes, with the aim of helping people make choices that will have an effect that encourages constructive change,
5. The use of law as means of reforms, the law has a role in the social reform. The old institutions that hindered the law are collapsed,
6. Taking part in resolving disputes, and
7. Regulating government power.

The legal conception as a means of renewal of society in Indonesia has wider space and scope compared to legal conception which is as social engineering or law as a tool of social engineering by Roscoe Pound in the United States.²¹

The use of legal theory of development in the concept of legal reinforcement of BMT institutions is to enable the formation of new legal entities by classifying BMTs into legal entities associations/entities with legal entities, in addition to limited liability companies, cooperatives, and associations to bear each other, there is also BMT as a legal entity. With the legal entity of the BMT Society, it can provide legitimacy, and eliminate any changes or transformation of BMT legal entity status resulting in a legal consequence that all existing regulations in the BMT, whether the procedures of establishment, management and supervision should refer to the legislation in accordance with the legal entity selected based on the assets owned, namely the legislation of cooperatives or the laws of a limited liability company.

3. Legal Legislation Theory

Legislation according to Anis Ibrahim is the process of making law in order to give birth to positive law (in the sense of statutory law/legislation). This legislation starts from the planning stage of law making, drafting, formulating, discussing, validating, and promulgating to the socialization of legal products.²² Legal reforms are also included in the legislation process. Legal reform can be interpreted as a selection of old legal products

to take values that are in accordance with the idealism and reality of the Indonesian state or because of its universal character.²³

Jean Jacques Rousseau put forward a method of law-making that reflects the will of the public. There are three methods used to make the law, first, is that the general will may be appointed by a legislator. The need for the appointment of legislators is that although the general will can not be wrong, the people who decide what is really the general will can make mistakes. Second, that the general will is born when individuals agree to unite themselves in a political institution, named state. The legitimacy of the will of the public is the unanimous conclusion of the agreement, which means that each individual is involved in giving his consent. Third, that as a general will can be generated through deliberation or voting, conducted in the people's court.²⁴

Theory of legislation is used to discuss the strengthening of law against non-bank sharia financial institutions that have been incorporated by BMT associations/organizations. The established legal entity requires legislation as its regulation. Establishment of specific and comprehensive legislation on the management of BMT that operates on the basis of sharia principles, which prioritizes the democratic economy based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia. Islamic law and national law have similarities on their normative level, because they are both intended to bring about goodness. Legislation of Islamic law means making Islamic law as a state law. This means that Islamic law is promoted and strengthened into state law. Not all provisions of Islamic law need to be legislated. The provisions of Islamic law that need to be legislated are the provisions of law that have the following categories, first its enforcement requires the assistance of state power, and correlates with public order.²⁵

C. Methods

This type of legal research is normative legal research on legal principles and legal system. Normative legal research on legal principles is a legal research done with the aim of finding the applicable

²¹Satjipto Rahardjo, *Hukum dan Masyarakat*, Bandung: Angkasa, 1979, p. 136-137 in Candra Irawan, *op. cit.*, p. 88.

²² Anis Ibrahim, *Legislasi dalam Perspektif Demokrasi: Analisis Interaksi Politik dan Hukum dalam Proses pembentukan Peraturan Daerah di Jawa Timur*, Doctorate Program of Law Science Undip, Semarang, 2014, p. 114 in Salim H.S. and Erlies Septiana Nurbani, 2016, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, page 33, PT. RajaGrafindo Persada, Jakarta.

²³ Mohammad Mahfud M.D., 2010, *Politik Hukum di Indonesia*, page 18, PT. RajaGrafindo Persada, Jakarta.

²⁴Reza Antonius, 2007, *Melampaui Negara Hukum Klasik*, page 59-60, Kanisius, Yogyakarta, in Salim H .S. and Erlies Septiana Nurbani, 2016, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, page 54-55, PT. RajaGrafindo Persada, Jakarta.

²⁵ Jazuni, *Legislasi Hukum Islam di Indonesia*, Bandung: PT. Citra Aditya Bakti, 2005, hlm. 490.

principles or doctrines,²⁶ such as to find and analyze the concept of legal reinforcement against *BMT* institutions as a democratic economy. Normative legal research on legal systematics is a legal research that aims to identify the basic concepts in law, namely legal society, legal subjects, rights and obligations, legal events, legal relations, and legal objects,²⁷ that is :

1. To identify and explain the legal status of the *Baitul Maal Wat Tamwil (BMT)* in financial institutions in Indonesia.
2. To find and analyze the concept of legal reinforcement of democratic economic institutions *Baitul Maal Wat Tamwil (BMT)* in Indonesia.

D. Results and Discussion

1. Legal Status of *Baitul Maal Wat Tamwil (BMT)* in Financial Institutions in Indonesia

BMT was established and developed with a gradual process of legal legality. *BMT* status is determined by the amount of assets owned, the *BMT* has different legal status according to the stage of the amount of the asset, and it obeys the various and partial laws according to the stage of legal status. *BMT* legal status is divided into 3 stages, as follow:

a. The first stage is a *BMT* in which its legal entity is not yet known

BMT in which its legal entity is not known because its initial establishment started from activity in mosque and not yet registered to notary. The phenomena in several cities in Indonesia show that some mosques have functioned as a place of worship (praying), as well as a place of educational development, economic empowerment of the ummah, and other social activities. Thus, the existence of the mosque provides benefits for the congregation and community of the environment.²⁸ Economic empowerment activities of the community based on mosques can be realized such as the formation of mosque or *BMT* cooperative which includes the service of zakat, health services for unpaid pilgrims, and empowering the assets of mosques as productive waqf that needs to be well managed. Yogyakarta Jogokariyan Mosque was designated as Pilot Mosque of *idarah* at the national level by Ministry of Religious Republic of Indonesia.²⁹ The designation of the Jogokariyan Mosque as a pilot for the national *idarah* was

intended to develop and manage cooperation with other parties, so that the mosque's activities could be felt more beneficial for the surrounding community. *Idarah* management includes organizing, administering, financing, and supervising.

The Jogokariyan Mosque has economic independence. Initially, Ustadz Jazir, one of the administrators of the Jogokariyan Mosque estimated that the fixed expenditure of the mosque in each month was then divided into four times of Friday Prayers and calculated by the total number of worshipers. Apparently, the needs of the mosque would be covered if every pilgrim gave 1,500 rupiahs only on Fridays. The money generated by the Friday charity is not channeled for the construction of the mosque, but it is managed for business. The business is then continued to provide income for the prosperity of the mosque, even for the community around the mosque. Through the business, community programs were prepared for the people around

Jogokariyan. *Baitul Maal* of Jogokariyan Mosque is an institution formed and supervised by the treasurer and economy of Jogokariyan Mosque as a place for accommodating the funding source of *LAZIS* (Institute of *Amil*, zakat, infaq, and charity) collected from donors. Management focused on social needs is done in this institution. This institution will later become the mosque's strategy in creating community economic empowerment program. *Baitul Maal* is serving as an *amil* zakah institution in which its activity is to collect and distribute zakat, infaq, and charity. Its distribution has been determined based on data obtained through census conducted every once in a year in Jogokariyan village.³⁰

b. The second legal status of *BMT* is *BMT* which has not yet had legal entity.

Generally, non-governmental organization (*LSM*) or self-help group (*KSM*) were applied by obtaining Operational Certificate from Small Business Incubation Center (*PINBUK*). At the beginning of the establishment of the *BMT*, the owned assets are 5 million up to 20 million rupiahs, which was usually less than 100 million rupiahs.

c. The third legal status of *BMT* is *BMT* that has legal entity

BMT has various legal entities as follow:

1. Foundation,
Based on Article 1 number 1 of Law no. 28 of 2004 on Amendment to Act no. 16 Year 2001 Concerning to the Foundation, the definition of a foundation is a legal entity composed of wealth separated and destined to achieve certain

²⁶ Zainuddin Ali, 2011, *Metode Penelitian Hukum*, page 25, Sinar Grafika, Jakarta.

²⁷ *Ibid*.

²⁸ Nurul Huda, et.al, *op.cit.*, p. 17.

²⁹ <http://khazanah.republika.co.id/berita/dunia-islam/islam-nusantara/17/01/15/ojtr3x313-masjid-jogokaryan-yogyakarta-percontohan-nasional> accessed on January 29th, 2017

³⁰ <http://www.gomuslim.co.id/read/khazanah/2016/11/04/2070/masjid-jogokariyan-wujud-perkembangan-ekonomi-kampung-islam-di-sudut-kota-yogyakarta.html> accessed on January 29th 2017.

objectives in the social, religious and humanitarian fields which have no members. This is in accordance with the financial management of *baitul maal* which includes the collection and distribution of *ZIS* funds (zakah, infaq, and charity) from the community whose funds can be sourced from their own members or the public who entrust their *ZIS* fund management to the *BMT*, but to implement *baitut tamwil* management who seek profit by conducting development activities of productive enterprises and investments in improving the welfare of micro-entrepreneurs, are not included in the management of foundation legal entities that should not share

the results of business activities to builders, administrators, and supervisors. Like *BMT* Syuhada under the auspices of Foundation of Syuhada Mosque in Yogyakarta.

2. Cooperative,

Cooperative legal entities are such as Sharia Multipurpose Cooperatives (*KSUS*) and Sharia Financial Services Cooperatives (*KJKS*) which currently become Savings and Loans Cooperative and Sharia Financing (*KSPPS*), if *BMT* has assets of 100 million rupiahs or more.

3. Limited Liability Company (*PT*.)

When assets have reached billions of rupiah, then the legal entity *BMT* is limited liability company (*PT*). such as *PT. Capital of BMT Ventura*, *PT. Ventura Syariah*, *PT. Conventional Ventura*, *PT. Halal Squire*, and Bank.

In accordance to Act Number 1 Year 2013 About Micro Finance Institution (MFI Law), *BMT* legal entity is a cooperative or Limited Liability Company. Referring to the data reported by the Ministry of Cooperatives and SMEs, until 2014 *BMT* registered that has been incorporated cooperative law 2.104 Sharia Financial Services Unit (*UJKS*), and 1.032 Sharia Financial Services Cooperative (*KJKS*) which now turns into Savings and Loans Cooperative and Sharia (*KSPPS*) with assets valued at Rp 4.02 trillion or about 5.04% of total assets of cooperatives in Indonesia. This figure does not include the number of *BMTs* that have not been incorporated or having other legal entities such as Limited Liability Company (*PT*) or Micro Finance Institution (*LKM*).

In addition to the MFI Law, in the Joint Decree of the Minister of Finance, the Minister of Home Affairs, the State Minister of Cooperatives and Small and Medium Enterprises, the Governor of Bank Indonesia Number: 351.1/KMK.010/2009 Number: 900-639A Year 2009 Number 01/SKB/M.KUKM/IX/2009, no. 11/43A/KEP.GBI/2009 on the Development Strategy of Microfinance Institutions, stipulates that the Microfinance Institutions regulated by this decree is the Micro

Finance Institutions (MFIs) that have not been incorporated, governmental organizations such as Village Credit Agency (*BKD*), Rural Credit Enterprise (*BUKP*), Lumbung Pitih Nagari (*LPN*), Village Credit Institutions, District Credit Board (*BKK*), Joint Business Group (*KUBE*), Farmers and Fishermen Income Improvement Program (*P4K*), Community Self-Reliance (*BKM*), Urban *PNPM Mandiri*, Coastal Community Economic Development (*PEMP*), Management Unit Activities (*UPK*), Rural *PNPM Mandiri*, Group of Prosperous Family Service Programs (*UPPKS*), Village Finance Management Units (*UPKD*), Farmers Group of Rural Agribusiness Empowerment (*PUAP*), Community-Based Savings and Loans Institute (*LSPBM*), *Baitul Maal wat Tamwil (BMT)* and/or other equivalent institutions may become a Rural Credit Bank, or Sharia Rural Bank, or a Cooperative or Village Owned Enterprise, or other financial institution in accordance with prevailing laws and regulations.

Bank Indonesia provides consultation to the MFI that will become a Rural Credit Bank or Sharia Rural Bank (SRB) in accordance with the provisions applicable in the establishment and licensing of RB or SRB. The Ministry of Home Affairs, together with the Regional Government, conducts guidance on the MFI that will become a Village Owned Enterprise. The State Ministry of Cooperatives and Small and Medium Enterprises together with local governments facilitate, empower and build MFIs that will become Cooperatives, and the Ministry of Finance provides consultation to MFIs whose business activities under the guidance and supervision of the Ministry of Finance into appropriate financial institutions with applicable terms.

The necessity to transform themselves from *BMT* which is one of microfinance institutions into a legal entity such as Rural Bank, or Bank Financing Sharia, or limited liability companies, or cooperatives, or village-owned enterprises, will give rise to a juridical consequences that exist in *BMT*, whether the procedure of establishment, management, and supervision should refer to the legislation according to the legal entity.

The transformation of *BMT* becoming *KJKS* poses a juridical consequence that all legislation in the *BMT* such as the establishment, management, and supervision should refer to the legislation governing cooperatives. It aims to create a legal certainty, but there are differences based on the operation of the institution between *KJKS* and *BMT*. The operation of the *BMT* runs two financial management simultaneously, namely *baitul maal* (including collection and distribution of zakat funds, infaq, and alms) and *baitut tamwil* (conducting activities to develop productive enterprises and investments in improving the welfare of micro entrepreneurs through financing and saving activities). While the operation of *KJKS* only runs savings and loan

financial services that use the system of sharia but it does not manage the funds of zakat, infaq, and charity.

On the difference of operation between *BMT* and *KJKS*, on September 23, 2015, the government issued Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 16/Per/M.KUKM/ IX/2015 about the Implementation of Savings and Loans and Sharia Financing by Cooperatives. In Chapter XI Transitional Provisions of Article 36 paragraph (1) stipulated that the Cooperative of Financial Services Sharia and Unit of Sharia Financial Service Cooperative which have been running at the time of this Ministerial Regulation applicable continue to implement its business premises with the provisions that they must suit the basic fund with this regulation in the period of not more than one year after the enactment of this Regulation, October 8, 2016. This Ministerial Regulation changes the status of *KJKS* to *KSPPS* (Cooperative of Savings and Loans and Sharia Financing) by abolishing the Decree of the Republic of Indonesia Number 91/Kep/M.KUKM/IX/2004) about Guidance for Implementing Business Activities of Sharia Financial Services Cooperation (*KJKS*) and Regulation of the State Ministers of Cooperatives and SME of the Republic of Indonesia Number: 35.2/PER/M.KUKM/X/2007 on Guiding Standard of Operational Management of Sharia Financial Services Cooperation (*KJKS*) and Sharia Financial Services Unit (*UJKS*). Although it changes the previous regulation, the Regulation of Minister Number 16/Per/M.KUKM/IX/2015 keeps regulating the provisions on Standard Operational Management (SOM), which regulates the institutional SOM, business, finance and security of assets and receivables for sharia cooperatives.³¹ According to the Deputy of Finance Department of Cooperatives and SMEs, Braman Setyo Dawas, the basic changes from *KJKS* to *KSPPS* was born from *BMT* which was a unique and specific micro finance entity sharia of Indonesia.³² To change *KJKS* to *KSPKS* means to restore the juridical order from *KJKS* to be originally, that is *BMT*.

The use of non-governmental organizations and cooperatives for *BMTs* are because *BMT* not included in formal financial institutions in Law Number 10 Year 1998 on the Amendment of Act Number 7 of 1992 concerning Banking, which may be operated to raise funds and channel public funds. According to the prevailing rules, the party entitled to channel and collect funds from the public are

commercial banks and Rural Banks, whether operated in a conventional manner or with the principle of profit sharing.³³ However, if the *BMT* with a *KSM* legal entity or cooperative has developed and has fulfilled the requirements of the Rural Bank, then the management may propose Themselves to the government for the *BMT* to be a Sharia Rural Bank with a cooperative or Limited Liability Company.³⁴

Based on the description of the status and legal status of *BMT*, the *BMT* is a sharia business entity that does not have legal entity, only *BMTs* that meet certain requirements that can become a cooperative legal entity. If *BMT* with cooperative legal entity has developed and has fulfilled the requirements of Rural Bank, the management can propose the *BMT* itself to the government in order to make *BMT* as Sharia Rural Bank, in this case, the *BMT* transforms itself from a non-bank financial institution into a bank financial institution based on the Act Number 21 of 2008 concerning Sharia Banking. This is regulated in Article 27 of the MFI Law which stipulated that the MFI is obliged to transform into a bank if the MFI conducts business requirements in excess of one district / municipality in which the MFI is in place, or the MFI meets the requirements set forth in the Financial Services Authority Regulation.

Change in the legal status of the *BMT* to be the Sharia Rural Bank as micro bank is expected to be on the basis of regulations philosophy for MFIs, which is certainly to recognize, protect, facilitate and encourage MFIs to thrive, so that it can serve microentrepreneurs more, not causing difficulties for micro entrepreneurs to obtain financing capital because they have to deal with bank procedures that are not covered by small and medium-sized communities.

2. Concept of Legal Reinforcement of Community Economic Institution 'Baitul Maal Wat Tamwil' (BMT) in Indonesia

The concept of legal reinforcement of *BMT* is to examine *BMTs* into legal entities, in other words, to classify *BMTs* into legal entity of associations/organizations, and forming its legal instruments.

A. *BMT* as a Legal Entity

In a *BMT* institution there are two financial management within it, namely *baitul maal* and *baitut*

³¹<http://dpn-apsi.or.id/menyoal-regulasi-koperasi-syariah-dari-kjks-ke-kspps/> accessed on January 24th 2017.

³²<http://www.pembiaaansyariahkukm.info/Materi/rilis.pdf> accessed on February 3rd, 2017

³³ Rachmadi Usman, *Aspek-Aspek Hukum Perbankan Islam di Indonesia*, Bandung: PT. Citra Aditya Bakti, 2002, page. 53-57 in Andri Soemitra, *op.cit.*, page. 456-457.

³⁴ Andri Soemitra, *op.cit.*, page. 457.

tamwil. Based on its terminology, *Baitul Maal* is a treasure house, while *baitut tamwil* is property development. *BMT* is a business institution in *baitut tamwil* activities and also as a social institution on *baitul maal* activities. *Baitul maal* financial management involves the collection and distribution of *ZIS* funds (*zakah*, donation and charity) from the community whose funds are sourced from its own members or community, while *baitut tamwil* is an institution that undertakes the development activities of productive enterprises and investments in improving the welfare of micro entrepreneurs through financing and saving activities. Two *BMT* management are not accumulated in existing legal entities. The following are some of the legal entities used by *BMT* that describe things that are not in accordance with the characteristics of *BMT*.

BMT with foundation legal entity

The legal entity of the foundation is in accordance with the financial management of the *Baitul Maal* the which includes the collection and distribution of *ZIS* funds (*zakah*, donation and charity) from the community whose funds can be sourced from its own members or the public who entrust the management of its *ZIS* funds to the *BMT*, *baitut tamwil* management which seeks profits by conducting business activities and investing activities in improving the welfare of micro-entrepreneurs is not included in the management of foundations legal entity that is not allowed to share the result of business activities to builders, administrators, and supervisors.

BMT with cooperative legal entity

Cooperative is the closest legal body to the *BMT*, because of the similarity of principle and kinship idealism and touching people,³⁵ but not all *BMT* management is met in Sharia Savings and Loans Cooperatives and Financing (KSPPS). In practice, the existing contract in *BMT* is broader than the Savings and Loans Cooperative and Sharia Financing (KSPPS), such as the existence of *al-Qardh al-Hasan* (AQS) contract that is good loan. Contract of AQS which is based on QS Al-Baqarah verse 280 is not found in KSPPS. The concept of policy loans (*al-qard al-hasan*) is to lend for those who do not have enough collateral requirements taken from the fund *ZIS* or social funds. *BMT* does

not require collateral to the borrower. If the member objects in returning, he is given a suspension until he is able to pay, but he is still unable to return his debt, so it should be freed and considered as charity, as Allah stated in Quran Surah Al-Baqarah verse 280, "And if (the person in debt) is having difficulty, then give a grace period until he gets the spaciousness. And if you give charity, it is better for you, if you know."

With this loan model, *BMT* does not have the risk of loss from bad loans that may happen. *BMTs* have social security or protection through the management of *baitul maal* funds in the form of *ZIS* funds or in the form of social incentives, a sense of togetherness through the bonds of savings groups or socially oriented groups.

BMT with legal entity of Limited Liability Company (PT)

The goal of the company is to seek profit, while *BMT* is a business institution that manages the funds and generates profits, but also has a strong commitment in poverty reduction by giving an active contribution to efforts to empower and improve the welfare of the people. Principles in Limited Liability Company (PT.) is *one share one vote*, which has voting rights in general shareholders, while the *BMT* policy will be determined by the founding body or member deliberation. Regarding capital in Limited Liability Company (PT.) in the form of shares, while *BMT* sources of funds in addition to the capital derived from the principal savings and compulsory member savings, also collect and manage the funds *ZIS*, while PT. does not receive and manage funds from *ZIS*. The authorized capital of PT. is at least 50 million rupiahs, while the authorized capital of *BMT* is 5 million rupiahs up to 20 million rupiahs.

From the description above, it can be found that things that do not fit between foundations, cooperatives, and Limited Liability Company (PT.) are matters of principle, which are related to the purpose of the institution itself. The purpose of the foundation is social, the purpose of PT. is looking for profits, while *BMT* in addition to seeking profit, also has a goal to improve the welfare of the community, especially members of *BMT*.³⁶

For the sake of legal certainty of the existence of *BMT* as a legal entity, it is necessary to do the legal reinforcement of *BMT* by reviewing *BMT* as a legal entity that is classifying *BMTs* into legal entities association/organizations. The election of the legal entity of the association (*vereniging*) as the basis for legal reinforcement against *BMT* is due to the association according to

³⁵ Solikhah dkk, 2015, *Bentuk Badan Usaha Ideal Untuk Dapat Dipertanggungjawabkan Secara Hukum Dalam Pengelolaan Baitul Maal wat Tamwil (BMT) Berdasarkan Undang-Undang Lembaga Keuangan Mikro di Eks Karesidenan Surakarta*, page 84, Jurnal Yustisia Edisi 93 September-Desember 2015, Law Faculty of University of Sebelas Maret.

³⁶ Neni Sri Imayati, 2010, *Aspek-Aspek Hukum BMT (Baitul Maal wat Tamwil)*, page 111, PT. Citra Aditya Bakti, Bandung.

E. Utrecht / Moh. Saleh Djidang is a deliberately formed and voluntary association by people intent on strengthening their economic position, maintaining culture, taking care of social matters and so forth. Therefore, *BMTs* can be legally incorporated by people intent on strengthening their economic position (*baitut tamwi*), maintaining culture (democratic economy), and taking care of social matters (*baitul maal*), suitable with *BMT* which has characteristics of democratic economy based on sharia principles. By classifying *BMTs* as a legal entity, the *BMT* can perform two financial management namely *baitul maal* and *baitut tamwil* in accordance with the vision, mission, and purpose of *BMT*.

The legal basis of an association, entity or business entity can be said to have the status as a legal entity is Article 1653 and Article 1660 of the Civil Code (*KUH perdata*). Article 1653 of the Civil Code is stipulated that in addition to the true civil society, the Act also recognizes associations of persons as legal entities, or held by the government, or have been established for a purpose certain of which are not contrary to law or good morals. It is necessary to ratify the articles of association by reviewing the purposes, principles and other rules of the association as a formal requirement to be fulfilled by legally incorporated associations.

Article 1660 of the Civil Code determines the rights and obligations of members of the association, which are regulated based on the rules of the authorities/government. If the rule to be imposed by the government does not exist, then what is used is what is specified in Chapter IX Book III of the Civil Code of the Association.³⁷ Based on the previous description of the role of *BMT* that can strengthen the national economy, then the existence of the *BMT* in the association of law can be considered as a legal entity.

B. The Forming of Special Acts of *BMT* Management

The established legal entity requires legislation as its regulation. The forming of special and entire act of *BMT* management concerned about democratic economy based on *Pancasila* and Constitution of Republic of Indonesia (*UUD 1945*), is needed because the legislation governing *BMT* is diverse and partial. It is partial because each law is related to *BMT* operational management, but there is no harmonization among the legislations. Legislation related to *BMT* are as follow:

- 1 Act Number 25 Year 1992 Concerning Cooperatives;

- 2 Act Number 23 Year 2011 on the Management of Zakah;
- 3 Joint Decree of Minister of Finance, Minister of Home Affairs, State Minister of Cooperatives and Small Medium Enterprises, Governor of Bank Indonesia Number: 351.1 / KMK.010 / 2009 Number: 900-639A Year 2009 Number 01/SKB/M.KUKM/IX/2009, Number: 11 /43A /Kep.GBI/2009 About Development Strategy of Micro Finance Institution;
- 4 Act Number 1 Year 2013 on Microfinance Institutions;
- 5 Act Number 21 of 2011 concerning the Financial Services Authority (*OJK*);
- 6 Act Number 40 Year 2007 Concerning Limited Liability Company;
- 7 Act Number 21 Year 2008 About Islamic Banking;
- 8 Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 16 / PER / M.KUKM / IX / 2015 Concerning the Implementation of Savings and Loans and Sharia Financing Activities by Cooperatives.

Diverse and partial legislation that regulates *BMT* causes various provisions on *BMT* legal status, for example; MFIs (*LKM*), Village Owned Enterprise (*BUMD*), cooperatives, Limited Liability Company (*PT.*), or Sharia Rural Bank (*BPRS*). The *BMT*, under the auspices of the Minister of Cooperatives and SMEs, is under the supervision of Financial Services Authority (*OJK*) in accordance with *BMT's* choice of legal entity.

E. Conclusions

1. Legal Status of *Baitul Maal Wat Tamwil (BMT)* in Financial Institutions in Indonesia

BMT legal status is divided into 3 stages, namely:

a. The first stage is a *BMT* that is not yet known its legal entity

BMT whose legal entity is not known because its initial establishment is started from activity in mosque and not yet registered to notary. This institution will later become the mosque's strategy in creating community economic empowerment program. *Baitul Maal* is serving as an *amil zakah* institution in which its activity is to collect and distribute *zakah*, donation, and charity.

b. The second legal status of *BMT* is *BMT* that has not yet had its legal entity

Generally, it uses non-governmental organization (*LSM*) or self-help group (*KSM*) by obtaining operational certificate from small business incubation center (*PINBUK*). At the beginning of the establishment of the *BMT*, the assets held are 5 million up to 20 million rupiahs, usually less than 100 million rupiahs.

³⁷ Chidir Ali, 2014, *Badan Hukum*, page 81-83, PT. Alumnii, Bandung.

c. The third legal status of BMT is BMT which has legal entity

BMT has various legal entity such as:

1. foundations, such as *BMT* Syuhada under the auspices of Yayasan Masjid Syuhada in Yogyakarta.
2. cooperative, cooperative legal entities are such as Sharia Multi Purpose Business Cooperatives (*KSUS*) and Sharia Financial Services Cooperatives (*KJKS*) which currently become Savings and Loans Cooperatives and Sharia Financing (*KSPPS*), if *BMT* has assets of 100 million rupiahs or more;
3. Limited Liability Company (*PT.*)
When assets have reached billions of rupiah, then the legal entity *BMT* is Limited Liability Company (*PT.*) such as *PT. BMT Capital Ventura*, *PT. Syariah Ventura*, *PT. Conventional Ventura*, *PT. Halal Square*, and Bank.

2. Concept of Legal Reinforcement of Community Economic Institution 'Baitul Maal Wat Tamwil' (BMT) in Indonesia

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A. BMT as a Legal Entity

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For the sake of legal certainty of the existence of *BMT* as a legal entity, it is necessary to do the legal reinforcement of *BMT* by reviewing *BMT* as a legal entity that is classifying *BMTs* into legal entities association/organizations. The election of the legal entity of the association (*vereniging*) as the basis for legal reinforcement against *BMT* is due to the association according to E. Utrecht / Moh. Saleh Djidang is a deliberately formed and voluntary association by people intent on strengthening their economic position, maintaining culture, taking care of social matters and so forth. Therefore, *BMTs* can be legally incorporated by people intent on strengthening their economic position (*baitut tamwi*), maintaining culture (democratic economy), and taking care of social matters (*baitul maal*), suitable with *BMT* which has characteristics of democratic economy based on sharia principles. By classifying *BMTs* as a legal entity, the *BMT* can perform two financial management namely *baitul maal* and *baitut*

tamwil in accordance with the vision, mission, and purpose of *BMT*.

The legal basis of an association, entity or business entity can be said to have the status as a legal entity is Article 1653 and Article 1660 of the Civil Code (*KUH perdata*). Article 1653 of the Civil Code is stipulated that in addition to the true civil society, the Act also recognizes associations of persons as legal entities, or held by the government, or have been established for a purpose certain of which are not contrary to law or good morals. It is necessary to ratify the articles of association by reviewing the purposes, principles and other rules of the association as a formal requirement to be fulfilled by legally incorporated associations.

Article 1660 of the Civil Code determines the rights and obligations of members of the association, which are regulated based on the rules of the authorities/government. If the rule to be imposed by the government does not exist, then what is used is what is specified in Chapter IX Book III of the Civil Code of the Association. Based on the previous description of the role of *BMT* that can strengthen the national economy, then the existence of the *BMT* in the association of law can be considered as a legal entity.

B. The Forming of Special Acts of BMT Management

The established legal entity requires legislation as its regulation. The forming of special and entire act of *BMT* management concerned about democratic economy based on *Pancasila* and Constitution of Republic of Indonesia (*UUD 1945*), is needed because the legislation governing *BMT* is diverse and partial. It is partial because each law is related to *BMT* operational management, but there is no harmonization among the legislations. Legislation related to *BMT* are as follow:

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4. Act Number 1 Year 2013 on Microfinance Institutions;
5. Act Number 21 of 2011 concerning the Financial Services Authority (*OJK*);
6. Act Number 40 Year 2007 Concerning Limited Liability Company;
7. Act Number 21 Year 2008 About Islamic Banking;

8. Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 16 / PER / M.KUKM /IX / 2015 Concerning the Implementation of Savings and Loans and Sharia Financing Activities by Cooperatives

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