


Bankruptcy Settlement of Baitul Maal Wa Tamwil in Yogyakarta: An Islamic Law Perspective

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Abstract

This research analyzes the bankruptcy settlement of baitul maal wa tamwil using two perspectives: positive law applied in Indonesia and Islamic law. The research method used in discussing the problem was by conducting normative-juridical research with the maqashid of the sharia approach. The results showed that the leading cause of the bankruptcy of baitul maal wa tamwil in the Special Region of Yogyakarta was the existence of several general problems internally, which included limitations in material law, human resources, legal culture, and supporting infrastructure. Another factor that also affects bankruptcy is the weakness of the internal control system by the Sharia Supervisory Board and externally by the Agency of Cooperative. The ideal settlement of the bankruptcy of baitul maal wa tamwil is the arrangement of a new bankruptcy regulation to accommodate the various rules still spread in several existing laws and regulations.

Keywords: *baitul maal wa tamwil; bankruptcy settlement; Islamic civil law; positive law.*

Penyelesaian Kepailitan Baitul Maal Wa Tamwil di Yogyakarta: Perspektif Hukum Islam

Abstrak

Penelitian ini menganalisis penyelesaian kepailitan baitul maal wa tamwil dengan menggunakan dua perspektif, yaitu hukum positif yang berlaku di Indonesia dan hukum Islam. Metode penelitian yang digunakan dalam membahas masalah tersebut adalah dengan melakukan penelitian yuridis normatif dengan pendekatan maqashid syariah. Hasil penelitian menunjukkan bahwa penyebab utama kebangkrutan baitul maal wa tamwil di Daerah Istimewa Yogyakarta adalah adanya beberapa masalah umum internal, yang meliputi keterbatasan hukum materiil, sumber daya manusia, budaya hukum, dan infrastruktur pendukung. Faktor lain yang juga mempengaruhi kepailitan adalah lemahnya sistem pengendalian intern oleh Dewan Pengawas Syariah dan secara eksternal oleh Badan Koperasi. Penyelesaian kepailitan baitul maal wa tamwil yang ideal adalah dengan disusunnya peraturan kepailitan baru untuk mengakomodir berbagai aturan yang masih tersebar di beberapa peraturan perundang-undangan yang ada.

Kata kunci: *baitul maal wa tamwil; kepailitan; hukum perdata Islam; hukum positif.*

INTRODUCTION

The idea that Islam is a way of life that is unique and different from all other isms and ideologies permeates the economic life of the Ummah.¹ A determination to form an economy based on a distinctive Islamic path has become an essential dimension of Islamic revival that can be seen throughout the Islamic world. The money, banking, and investment sectors are considered necessary for the Islamization process of the economy.

The Islamic emphasis on cooperation, as a critical concept in economic life, has given rise to the belief in profit sharing and participation as a primary alternative to banking and investment within an Islamic framework. The Muslim community has never legitimized interest for thirteen centuries of its history. Before the arrival of imperialist domination, the Muslim community managed its economy and carried out its domestic and international trade without interest intermediaries. Profit sharing and various participatory systems are viable for savings and investment. A considerable amount of capital is raised for the benefit of maritime trade.

The modern economic theories that are now studied worldwide are thefts from the theories written by Muslim economists in the heyday of Islam.² This cannot be known because the Western economists who plagiarized did not mention that the references came from the classical books of Islamic scholarship. When later Muslim countries were colonized for hundreds of years by Western invaders so that their economic situation was far behind, Islamic thinkers who received Western education began to be amazed at the progress of the

¹ Muhammad Nejatullah Siddiqi, *Bank Islam [Islamic Bank]* (Bandung, Indonesia: Penerbit Pustaka, 1983), 12.

² Zainul Arifin, *Memahami Bank Syariah: Lingkup, Peluang, Tantangan Dan Prospek [Understanding Islamic Banks: Scope, Opportunities, Challenges and Prospects]* (Jakarta, Indonesia: Alfabeta, 1993), 3.

Western economy. As a result, they use the West as a reference for economic theories that they consider reliable. They do not have access to Islamic classics, which are a source of concern for Western economists whom they admire, even though these Western economists never want to admit the theft process.

Schumpeter has also said there has been a great gap in the history of economic thought for 500 years, known as the Dark Ages.³ The dark period of the West was the glorious period of Islam which was covered up by the West because Islamic economic ideas at this time were later stolen by many Western economists. Muslim economists themselves admit that they read a lot and were influenced by the writings of Aristotle, a philosopher who wrote a lot of economic problems but still made al-Qur'an and hadith their primary reference in writing Islamic economic theories, including in the context of banking. Islam.

The value of credibility for the operation of Islamic banking as a whole is a response to the dangerous conditions of the monetary and financial systems around the world. High inflation in addition to high unemployment, high-interest rates, and a heavy international payment system due to overcrowding of loans, make this situation increasingly untenable. The system has lost credibility, leading to a shared awareness of the need for fundamental changes.

The fundamental change that Islamic economists rely on is replacing interest with profit sharing. The meaning of the fundamental change here is a change from a system that is based on loans to a system that is based on actual investment and participation. These changes affect the supply of money, linking it directly to people's needs for buying and selling, as well as the allocation of

³ Joseph A. Schumpeter, *History of Economic Analysis* (Oxford, United Kingdom: Oxford University Press, 1954).

financial resources as a direct reaction to production possibilities. Both resulted in the eradication of inflation to its roots.

The presence of Baitul Maal wa Tamwil as a newcomer in the world of community empowerment through the sharia lending system is intended to be a more innovative alternative in financial services.⁴ "Baitul Maal" means a social institution similar to the Amil Zakat Infaq and Shadaqah (BAZIS) agency, while "Baitul Tamwil" means a business institution. Therefore, by name BMT has attached two social and business characteristics. Rural Banks (Bank Perkreditan Rakyat abbreviated BPR in Bahasa Indonesia) are more professional than project credit agencies. Still, because they are banks, the procedures are often stuck with rigid and complicated banking procedures. So that many small and micro-entrepreneurs are unable to reach it.

The progressive development of BMT in Indonesia cannot be separated from the large portion of the middle and lower-class people in Indonesia. Of a total of about 265 million people, 40% are middle class, and 20% are classified as lower class, plus approximately 25.67 million people are categorized as poor, or 9.66% of the total population.⁵ Based on these figures, it is necessary to develop the people's economy suitable for the majority of the community, namely through small and medium enterprises and the optimization of Islamic social funds. This makes the existence of BMT relevant and highly accepted by the people of Indonesia.

⁴ Muhammad Ridwan, *Manajemen Baitul Maal Wa Tamwil (BMT) [Baitul Maal Wa Tamwil (BMT) Management]* (Yogyakarta, Indonesia: UII Press, 2004), 31.

⁵ Komite Nasional Ekonomi dan Keuangan Syariah, "Sharing Platform Keuangan Mikro Syariah Berbasis Baitul Maal Wat Tamwil (BMT) [Sharing the Baitul Maal Wat Tamwil (BMT)-Based Sharia Microfinance Platform]," Komite Nasional Ekonomi dan Keuangan Syariah, April 1, 2019, <https://knks.go.id/isuutama/8/sharing-platform-keuangan-mikro-syariah-berbasis-baitul-maal-wat-tamwil-bmt>.

Talking about bankruptcy, in essence, a bankruptcy case (*taflis* in Arabic) is one of the things that is not desired by the BMT parties or from parties related to the BMT itself, for example, members.⁶ With reference to Act No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations,⁷ the issue of bankruptcy of a BMT is under the competence of the commercial court (within general courts), and not under the competence of the religious court. In examining and resolving the bankruptcy case of BMT in the commercial court, the panel of judges will apply the material and formal law as regulated in Act No. 37 of 2004 above, even though the bankrupt entity is a business entity in the form of a cooperative. BMT is formally a financial services cooperative, and its operation is based on Islamic economic law. This will undoubtedly cause some crucial academic problems. This research aims to analyze the bankruptcy settlement in Yogyakarta along with factors affecting the bankruptcy by Islamic law.

LITERATURE REVIEW

An Overview of Legal Construction

Construction means to construct again, to rebuild, either in fact or idea, or to remodel, to form again or anew as in the imagination, or to restore as an entity the thing which was lost or destroyed.⁸ Thus, construction is an act of rearranging or rebuilding a damaged system,

⁶ Bernard Nainggolan, *Perlindungan Hukum Seimbang Debitur, Kreditor Dan Pihak-Pihak Berkepentingan Dalam Kepailitan [Balanced Legal Protection of Debtors, Creditors and Interested Parties in Bankruptcy]* (Bandung, Indonesia: Alumni, 2011), 43.

⁷ Pemerintah Pusat Republik Indonesia, “Undang-Undang (UU) No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang [Law No. 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations],” October 18, 2004, <https://peraturan.bpk.go.id/Home/Details/40784>.

⁸ Bryan A. Garner and Henry Campbell Black, eds., *Black’s Law Dictionary*, Eleventh edition (St. Paul, United States: Thomson Reuters, 2019).

whether factual or in the form of an idea, so that it becomes good again according to the expected state. The legal construction referred to in this study is the rebuilding of the substance of the legal system from the existing state to a state that is expected to be better following specific values, views, approaches, or paradigms.

There are five kinds of legal concepts that differ from one another. The first concept states that law is universal moral or justice principles and is inherently part of natural law or even as part of supernatural rules. The second concept emphasizes that law is a positive norm or rule. The rule applies at a particular time and area, which is the basis for the legitimacy of political power. This kind of law is better known as the legal system of a country. The third concept dictates that law is the judiciary's decision to settle cases. The judge's decision will likely set a precedent for resolving the following issue. The fourth concept defines law as a social institution that functions as a mechanism for maintaining order and resolving disputes, as well as directing and forming patterns of good behavior. The fifth concept dictates that law is a symbolic meaning that is expressed in the actions and interactions of citizens.⁹

Law can be categorized into four groups of understanding based on law-making and formation: state law, people's law, professor's law, and professional's law.¹⁰ Because of the breadth of the meaning of the law, the definition of law here is a positive norm or rule that applies at a particular time and area, which is the basis for the legitimacy of political power.

⁹ Soetandyo Wignjosoebroto, *Dari Hukum Kolonial Ke Hukum Nasional [From Colonial Law to National Law]* (Jakarta, Indonesia: Rajawali Pers, 1994), 21.

¹⁰ Jimly Asshiddiqie, *Hukum Tata Negara Dan Pilar-Pilar Demokrasi [Constitutional Law and the Pillars of Democracy]* (Jakarta, Indonesia: Konstitusi Press, 2005), 57.

Financial Institutions in Islam

Financial institutions have not been identified in Islamic history. However, the principles of exchange and borrowing already existed and happened a lot in the time of the Prophet PBUH and even before. It is undeniable that the progress of economic development and trade has influenced the birth of institutions that play a role in financial traffic. It is no longer possible for traders and entrepreneurs to manage their finances on their own.¹¹

As a business institution, this financial institution cannot be separated from the profit motive. The operations of this institution always strive to achieve the maximum efficiency level so that the growth of the organization and its capital can reach a better level. This is absolutely necessary because financial institutions must pay attention to the interests of shareholders and members in addition to the interests of customers and the public.¹²

Because of this profit maximization goal, many financial institutions implement interest policies. Setting interest rates will create high certainty. The owners of financial institutions do not want to take risks with uncertain income. They tend to think pragmatically

¹¹ M. Zainuddin Alanshori, “Perkembangan, Tantangan, Dan Peluang Bank Syariah [Developments, Challenges, and Opportunities of Islamic Banks],” *JES (Jurnal Ekonomi Syariah)* 1, no. 1 (2016): 127–39, <https://doi.org/10.30736/jesa.v1i1.10>; Nur Kholis, “Potret Perkembangan Dan Praktik Keuangan Islam Di Dunia [Portrait of the Development and Practice of Islamic Finance in the World],” *Millah: Jurnal Studi Agama* 17, no. 1 (2017): 1–30, <https://doi.org/10.20885/millah.vol17.iss1.art1>; Titi Martini, “Baitul Maal: Kajian Historis Dan Aflikatif Di Masa Modern,” *Islamic Circle* 1, no. 2 (2020): 66–79, <https://jurnal.stain-madina.ac.id/index.php/islamiccircle/article/view/302>.

¹² Lawrence J. White, “Price Regulation and Quality Rivalry In a Profit-Maximizing Model: The Case of Bank Branching,” *Journal of Money, Credit and Banking* 8, no. 1 (1976): 97–106, <https://doi.org/10.2307/1991922>; C. W. Sealey Jr. and James T. Lindley, “Inputs, Outputs, and a Theory of Production and Cost at Depository Financial Institutions,” *The Journal of Finance* 32, no. 4 (1977): 1251–66, <https://doi.org/10.1111/j.1540-6261.1977.tb03324.x>; G. Thiyagarajan and A. Arulraj, “Mediating Effects of Funding Strategies and Profit Maximization: Indian Non-Banking Finance Sector,” ed. Lee J. Yao, *Journal of Asia Business Studies* 6, no. 1 (2012): 43–59, <https://doi.org/10.1108/15587891211191029>.

to secure their business. On this basis, there will likely be exploitation of financial resources. Equitable financial distribution is very difficult to achieve; what happens is the concentration of the economy on a small number of people through the financial exploitation of most people.¹³ Financial institutions, both banks and non-banks, have played a significant role in economic development.¹⁴ Because it is impossible for entrepreneurs to expand production with large capital requirements. However, Islam gives its own emphasis on this financial mechanism, namely through a profit-sharing system.¹⁵

Bankruptcy in Islamic Law

The origin of the word bankruptcy in Arabic is *falasa* (verb), *aflas* (superlative degree), and *fuluus* (infinitive form). A person is said to be bankrupt if he previously had a lot of money (dirham) then the money ran out. If the pronunciation of *falasa* is replaced with *alfanasa* (*laam* is replaced with *nun*), then this means very poor. In al-Muhiith dictionary, the plural form of *al-falasa* is *aflasa* and *fuluusan*, meaning

¹³ Sotiris K. Staikouras, "The Interest Rate Risk Exposure of Financial Intermediaries: A Review of the Theory and Empirical Evidence," *Financial Markets, Institutions & Instruments* 12, no. 4 (2003): 257–89, <https://doi.org/10.1111/1468-0416.t01-1-00002>; Boris Hofmann and Paul Mizen, "Interest Rate Pass-Through and Monetary Transmission: Evidence from Individual Financial Institutions' Retail Rates," *Economica* 71, no. 281 (2004): 99–123, <https://doi.org/10.1111/j.0013-0427.2004.00359.x>.

¹⁴ Javier Márquez, "Financial Institutions and Economic Development," in *Economic Development for Latin America: Proceedings of a Conference Held by the International Economic Association*, ed. Howard S. Ellis, International Economic Association Series (London, United Kingdom: Palgrave Macmillan UK, 1961), 168–200, https://doi.org/10.1007/978-1-349-08449-4_7.

¹⁵ Masudul Alam Choudhury and Uzir Abdul Malik, "'Mudarabah', the Profit-Sharing System in Islam," in *The Foundations of Islamic Political Economy* (London, United Kingdom: Palgrave Macmillan London, 1992), 147–200, https://link.springer.com/chapter/10.1007/978-1-349-21973-5_5; Meryem Mehri, Kaouther Jouaber- Snoussi, and M. Kabir Hassan, "Profit-Sharing Ratio as a Screening Device in Venture Capital," in *Handbook of Empirical Research on Islam and Economic Life*, ed. M. Kabir Hassan (Cheltenham, United Kingdom: Edward Elgar Publishing, 2017), 579–601, <https://www.elgaronline.com/view/edcoll/9781784710729/9781784710729.00035.xml>.

that a person is said to be bankrupt if he does not have property anymore. In essence, it is the change of a person from an easy life to a difficult life because he does not have property, and the judge applies him as a bankrupt person.¹⁶

There are several definitions of bankruptcy according to Islamic jurists. First, the expression about the condition of a debtor who cannot pay his debts usually. Second, it is said to be bankrupt because the amount of debt far exceeds the number of his assets, or in other words, a person whose entire property is not sufficient to pay his debts." Third, bankruptcy is "a prohibition issued by a judge against a bankrupt debtor not to manage his assets, as in *rahn* (a person's property which is a guarantee for his engagement).¹⁷

In the above context, Islam has introduced two concepts regarding debt-receivable contracts, namely *al-i'sar* and *al-iflas*. The meaning of the word *al-i'sar* linguistically is the transfer from a straightforward or easy situation to a difficult situation. *Al-I'sar* also means narrow and lacking. According to Islamic jurists, the term *al-i'sar* is a condition in which a person cannot finance (provide *nafaqah*) or pay debts. In economic terms, *al-i'sar* is the inability of a person to pay his debts at a predetermined time or the condition of an entrepreneur (company) where his assets are insufficient to cover his debts and obligations. However, when the condition occurs due to insufficient assets owned by the debtor, it cannot be a reason to determine the status of *i'sar*. Moreover, if the entrepreneur has sufficient capital and assets to pay all his obligations.¹⁸

¹⁶ Syihabuddin al-Qalyubi and Syihabuddin al-Burullusi, *Hasyiata Qalyubi Wa 'Umairah 'ala Syarh al-Mahalli 'ala Minhaj al-Thalibin* (Cairo, Egypt: Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī, 1955), IV:285.

¹⁷ al-Qalyubi and al-Burullusi, 285.

¹⁸ Ali bin Muhammad al-Jumuah, *Mu'jam al-Musthalahat al-Iqtishadiyah Wa al-Islamiyah* (Riyad, Saudi Arabia: Maktabah al-'Abikan, 2000), 263.

Protection of the Interests of Creditors and Debtors in Bankruptcy Law in Indonesia

When viewed from the aspect of substance, between *Faillissementsverordening* and Law Number 4 of 1998 is to have a partiality to the interests of creditors. This can be seen from the provisions relating to the requirements for the application for a declaration of bankruptcy, suspension of debt payment obligations, and provisions regarding other actions for the benefit of creditors.¹⁹ In this case, the creditor can easily apply for a declaration of bankruptcy against the debtor because the condition is that there are two or more creditors and not paying off at least one debt that has matured and can be collected. Postponement of debt repayment obligations also tends to protect the interests of creditors because the period is relatively short, the reconciliation process is determined by the creditor, and there is an opportunity to cancel the settlement decision with permanent legal force. Other measures to protect the interests of creditors are increasingly clearly regulated, for example, provisions on general confiscation, *actio pauliana*, and *gijzeling*.²⁰

Bankruptcy institutions are more widely used by creditors. More applications for bankruptcy statements submitted by creditors do not end in bankruptcy statements against debtors. Based on the number

¹⁹ Pemerintah Pusat Republik Indonesia, “Undang-Undang (UU) No. 4 Tahun 1998 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 1998 Tentang Perubahan Atas Undang-Undang Tentang Kepailitan Menjadi Undang-Undang [Law No. 4 of 1998 Concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 1998 Concerning Amendment to the Law on Bankruptcy into Law],” September 9, 1998, <https://peraturan.bpk.go.id/Home/Details/45434/uu-no-4-tahun-1998>.

²⁰ Siti Anisah, “Studi Komparasi Terhadap Perlindungan Kepentingan Kreditor Dan Debitor Dalam Hukum Kepailitan,” *Jurnal Hukum IUS QUIA IUSTUM* 16, no. Edisi Khusus (2009): 30–50, <https://journal.uui.ac.id/IUSTUM/article/view/3881>; Madeleine Celandine, “Hak Regres Penanggung Pada Jaminan Perorangan Dalam Kepailitan [Insurer’s Regress Right on Individual Guarantees in Bankruptcy],” *Jurist-Diction* 4, no. 5 (2021): 1815–34, <https://doi.org/10.20473/jd.v4i5.29820>.

of petitions for bankruptcy declarations, from 1998 to 2007, there were 572 petitions for bankruptcy statements. Of that number, only 29 petitions for bankruptcy declarations were submitted by debtors. More applications for bankruptcy filings were addressed to corporate debtors (513 applications) than to individual debtors (59 applications). Delays in the payment of debt obligations have not been widely used by debtors. Of the 572 total applications for bankruptcy statements, there are only 103 postponements of debt payment obligations. The number of rejected applications for bankruptcy was 167 applications, while 96 applications were revoked. The data shows that there are 206 debtors declared bankrupt for about 10 years, or if on average, every year, there are only about 20 decisions on bankruptcy statements against debtors. This shows that bankruptcy institutions are less prevalent in Indonesia.²¹

The Supreme Court believes that the Tax Service Office c.g. The Directorate General of Taxes is not a creditor, and the Commercial Court does not recognize the Tax Service Office c.g. The Directorate General of Taxes is another creditor in the petition for declaration of bankruptcy.²² There are three positions of the Court regarding the protection of the rights of workers or workers if the company where they work is declared bankrupt. First, the Supreme Court places the position of the wage worker or laborer as not a particular creditor because, according to the law on workers' rights, his position is as a preferred creditor. Second, the Commercial Court rejects wages and

²¹ Siti Fatimah, "Perlindungan Hukum Terhadap Kreditur Perseroan Terbatas Yang Dinyatakan Pailit [Legal Protection Against Limited Liability Company Creditors Declared Bankrupt]," *Research Lembaran Publikasi Ilmiah* 4, no. 2 (2021): 19–36, <https://doi.org/10.35439/research.v4i2.41>.

²² Sheila Miranda Hasibuan et al., "Kedudukan Hak Mendahulu Tagihan Pajak Pada Proses Kepailitan (Studi Putusan-Putusan Pengadilan Niaga) [Position of Prior Rights to Tax Collections in the Bankruptcy Process (Study of Commercial Court Decisions)]," *USU Law Journal* 7, no. 1 (2019): 119–28, <https://jurnal.usu.ac.id/index.php/law/article/view/23107>.

severance pay for workers or laborers as bankrupt debts. Third, the Commercial Court protects the interests of workers or laborers by granting the petition for a declaration of bankruptcy.²³

The similarities between Islamic bankruptcy law and Western bankruptcy law are contained in at least seven things: the basic understanding of bankruptcy, the parties entitled to file for bankruptcy, the requirements for bankruptcy, the declaration of bankruptcy decided by the Court, incompetence of the debtor After the bankruptcy decision, reconciliation, and release the debt.²⁴ Islamic bankruptcy law and Western bankruptcy law regulate the same thing, namely that a request for a declaration of bankruptcy can be filed by a debtor or a creditor. However, at the beginning of the development of bankruptcy law in several countries with Western bankruptcy law systems, bankruptcy petitions were only an initiative of creditors; debtors could only file for bankruptcy for themselves starting around the 19th century. Some things are different between Islamic and Western bankruptcy law; for example, in Islamic bankruptcy law, the death of a debtor can accelerate the maturity of his debts because the death of a debtor results in the fall of the agreement regarding the maturity of the debt.²⁵

²³ Catur Irianto, "Penerapan Asas Kelangsungan Usaha Dalam Penyelesaian Perkara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU) [Implementation of the Principle of Continuous Business in the Settlement of Bankruptcy Cases and Depends of Debt Payment Obligations]," *Jurnal Hukum Dan Peradilan* 4, no. 3 (2015): 399–418, <https://doi.org/10.25216/jhp.4.3.2015.399-418>; Revillia Wulandari, "Analisis Yuridis Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013 Tentang Pengujian Pasal 95 Ayat (4) Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan [Juridical Analysis of the Decision of the Constitutional Court Number 67/PUU-XI/2013 concerning the Review of Article 95 Paragraph (4) of Law Number 13 of 2003 concerning Manpower]," *Novum: Jurnal Hukum* 2, no. 4 (2015): 145–53, <https://doi.org/10.2674/novum.v2i4.17206>.

²⁴ al-Jum'ah, *Mu'jam al-Musthalahat al-Iqtishadiyah Wa al-Islamiyah*, 507.

²⁵ Maria Puspita Sari, "Sistem Pelunasan Hutang Pada Bank Apabila Debitur Wanprestasi Dan Kemudian Meninggal Dunia [Debt Repayment System at the Bank If the Debtor Defaults and Then Dies]," *Journal of Law (Jurnal Ilmu Hukum)* 3, no. 2 (2014): 320–25, <http://ejournal.untag-smd.ac.id/index.php/DD/article/view/1201>; Amanda Atika Yuliani Puteri,

RESEARCH METHOD

This research can be categorized as descriptive qualitative research. Descriptive research is intended to describe existing phenomena, which are currently or in the past.²⁶ Descriptive research does not require data testing since it aims to describe object or subject data without engineering techniques.²⁷ With its nature as qualitative, this research starts with observation and data collection carried out in a natural setting or as it is so that the data will help to uncover hidden meanings of the subjects.²⁸ In this type of research, priority is given to key informants whose number is not determined with certainty but runs like a snowball. The research instrument is the researcher himself.²⁹

This study can also be categorized as normative juridical research with the maqashid of sharia approach. Normative juridical research is legal research conducted by examining library materials or secondary data.³⁰ The type of data used in this study is secondary from documents: court decisions, laws, jurisprudence, the Qur'an, Hadith, *fiqh* books, opinions of scholars, fatwas of the Dewan Syariah

“Tanggung Jawab Ahli Waris Terhadap Debitur Yang Meninggal Dan Dinyatakan Pailit Ditinjau Dari Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang [Responsibilities of the Heirs to Debtors Who Die and Are Declared Bankrupt In View of Law Number 37 of 2004 Concerning Bankruptcy and Postponement of Obligation to Pay Debts],” *Journal of Law (Jurnal Ilmu Hukum)* 6, no. 1 (2019): 357–70, <http://ejurnal.untagsmd.ac.id/index.php/DD/article/view/5479>.

²⁶ Arief Furchan, *Pengantar Penelitian Dalam Pendidikan [Research Introduction in Education]* (Yogyakarta, Indonesia: Pustaka Pelajar Offset, 2004), 54.

²⁷ F.L. Whitney, *The Elements of Research* (Hoboken, New Jersey, United States: Prentice Hall, 1948), 190; Richard H. McCuen, *The Elements of Academic Research* (New York, United States: ASCE Press, 1996).

²⁸ Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D* (Bandung: Alfabeta, 2013).

²⁹ Robert K. Yin, *Qualitative Research from Start to Finish*, Second edition (New York: Guilford Press, 2016), 11.

³⁰ Furchan, *Pengantar Penelitian Dalam Pendidikan [Research Introduction in Education]*, 54.

Nasional, results of previous research, mass media publications, and other literature related to this research.

The data collection methods used in this study are library research and documentation techniques. Library research aims to obtain concepts and theoretical foundations by studying various kinds of literature, books, references, and documents related to the object of discussion as analytical material sought in this research. Documentation techniques aim to obtain direct data at the research site through books, regulations, and relevant reports on the object of study. The data obtained are usually in the form of secondary data. In addition to secondary data, the authors will complement the existing secondary data with primary data or the results of in-depth interviews with several key informants. This data analysis was carried out using a classification model that operates in three cycles of activities: data reduction, data presentation, and conclusion drawing or verification.³¹

RESULTS AND DISCUSSION

Factors Causing Bankruptcy of *Baitul Maal wa Tamwil*

Many factors contribute to the bankruptcy of *baitul maal wa tamwil* in the the Special Region of Yogyakarta. One of the factors is related to material legal aspects. There are limitations of the fatwa from the National Sharia Council regulating specifically and separately technical implementation of products, operations, and supervision system of *baitul maal wa tamwil*. From positive law perspective, the legal entity of many *baitul maal wa tamwil* in the Special Region of Yogyakarta can be categorized as cooperative (or

³¹ Matthew B. Miles, A. Michael Huberman, and Johnny Saldaña, *Qualitative Data Analysis: A Methods Sourcebook*, Third Edition (California: SAGE Publications, Inc., 2014).

koperasi in Bahasa Indonesia). These *baitul maal wa tamwil* operate to facilitate savings and loans to its members, as the standard of cooperative dictates. Based on this, the operational system of *baitul maal wa tamwil* is subject to Law No. 25 of 1992 concerning Cooperative.³²

Business and operational licenses for savings and loans of *baitul maal wa tamwil* were issued by the Agency of Cooperative according to some levels. Licenses for *baitul maal wa tamwil* operating with members living in a regency are sufficient to be issued by the Agency of Cooperative in the Regency. Licenses for *baitul maal wa tamwil* operating with members living in more than a regency in a province are sufficient to be issued by the Agency of Cooperative in the Province. Licenses for *baitul maal wa tamwil* operating with members living in more than one province are issued by the Ministry of Cooperative of the Republic of Indonesia.³³ In addition, *baitul maal wa tamwil* is not subject to Law No. 21 of 2008 concerning Sharia Banking.³⁴ Thus, its legal entity is undoubtedly different from the Islamic bank or Islamic rural bank. Legal entity for Islamic banks and Islamic rural banks in Indonesia is a limited company, so their business is monitored by many agencies, including Financial Services Authority (*Otoritas Jasa Keuangan* abbreviated OJK in Bahasa

³² Pemerintah Pusat Republik Indonesia, “Undang-Undang (UU) No. 25 Tahun 1992 Tentang Perkoperasian [Law No. 25 of 1992 Concerning Cooperative],” October 21, 1992, <https://peraturan.bpk.go.id/Home/Details/46650/uu-no-25-tahun-1992>.

³³ Ali Sakti, “Pemetaan Kondisi Dan Potensi BMT: Kemitraan Dalam Rangka Memperluas Pasar & Jangkauan Pelayanan Bank Syariah Kepada Usaha Mikro [Mapping of BMT Conditions and Potentials: Partnership in Order to Expand Market & Range of Islamic Bank Services to Micro Enterprises],” *AL-MUZARA’AH* 1, no. 1 (2013): 1–18, <https://doi.org/10.29244/jam.1.1.1-18>; Fadillah Mursid, “Kebijakan Regulasi Baitul Maal Wat Tamwil (BMT) Di Indonesia [Baitul Maal Wat Tamwil Regulatory Policy in Indonesia],” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 18, no. 2 (2018): 9–30, <https://doi.org/10.19109/nurani.v18i2.2486>.

³⁴ Pemerintah Pusat Republik Indonesia, “Undang-Undang (UU) No. 21 Tahun 2008 Tentang Perbankan Syariah [Law (UU) No. 21 of 2008 Concerning Islamic Banking],” July 16, 2008, <https://peraturan.bpk.go.id/Home/Details/39655/uu-no-21-tahun-2008>.

Indonesia). Furthermore, Islamic banks and Islamic rural banks should comply with more regulations in Indonesia.

The following are government regulations related to several technical product implementations, operationalization, and supervision systems in savings and loan cooperatives: a) Regulation of the Minister of Cooperatives and SMEs RI No. 15/Per/M.KUKM/IX/2015 concerning Savings and Loans Business by cooperatives; b) Regulation of the State Minister for Cooperatives and Small and Medium Enterprises 35.2/Per/M.KUKM/X/2007 concerning Guidelines for Standard Operational Management of Sharia Financial Services Cooperatives, later refined by Regulation of the State Minister for Cooperatives and Small and Medium Enterprises Number 16/ Per/M.KUKM/IX/2015 concerning the Implementation of Savings and Loans Business Activities and Sharia Financing by Cooperatives; c) Regulation of the Minister of State for Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number 17/Per/M.KUKM/IX/2015 concerning Supervision of Cooperatives; d) Decree of the State Minister for Cooperatives and Small and Medium Enterprises Number 91/Kep/M. KUKM/IX/2004 Guidelines for Implementing Sharia Financial Services Cooperative Business Activities.

Another factor that contributed to the bankruptcy of *baitul mal tamwil* was institutional structure. In many cases, internal and external monitoring systems of *baitul mal tamwil* have not been implemented effectively. Regarding the operational basis of *baitul mal tamwil*, which is only subject to the Cooperative Law, then automatically, the *baitul mal tamwil* guidance and supervision system is under the Agency of Cooperative and not under Bank Indonesia and the Financial Services Authority.

The following are some important regulations from the Ministry of Cooperatives and SMEs related to their duties and authorities in

carrying out the development and supervision of savings and loan cooperatives in Indonesia today: a) Data Collection and Cooperative Arrangement, namely the issuance of Regulation of the Minister of Cooperatives and SMEs of the Republic of Indonesia Number 10/Per/M.KUKM/VI/2016 concerning Cooperative Data Collection, Small and Medium Enterprises; b) In Article 16 of this Ministerial Regulation, it has been explained that the Cooperative Identification Number (NIK) is given in the form of a Cooperative Identification Number Certificate, which is equipped with a QR Code, group type and business scale and cooperative ranking. Furthermore, in Article 17 it has been stated the purpose and objective of granting a certificate of Cooperative Identification Number (NIK; c) Cooperative Supervision, namely the issuance of Regulation of the State Minister for Cooperatives and Small and Medium Enterprises 39/Per/M.KUKM/XII/2007 concerning Guidelines for Supervision Sharia Financial Services Cooperatives and Sharia Financial Services Unit Cooperatives and the Regulation of the Minister of Cooperatives and SMEs RI Number 17/Per/M.KUKM/IX/2015 concerning Supervision of Cooperatives; d) Health Assessment of Savings and Loans Cooperatives, namely the issuance of the Regulation of the Minister of Cooperatives and SMEs RI Number: 35.3/Per/M.KUKM/X/2007 concerning Guidelines for Assessment of the Health of Sharia Financial Services Cooperatives and Cooperative Sharia Financial Services Units, which has subsequently been revoked and refined with the issuance of the Regulation of the State Minister of Cooperatives and Small and Medium Enterprises Number 16 /Per/M.KUKM/IX/2015 concerning the Implementation of Savings and Loans and Sharia Financing Business Activities by Cooperatives. The background for the issuance of this ministerial regulation is to realize the KJKS and UJKS Cooperatives that are in accordance with the principles of prudence and health, it is necessary

to have certainty about standards and procedures that can be used as instruments that can be used to conduct health assessments of KJKS and UJKS Cooperatives.

In practice, the guidance and supervision system carried out by the Ministry of Cooperatives and SMEs looks different from the guidance and supervision system carried out by the Bank of Indonesia and the Financial Services Authority. The most striking difference is the supervisory system of the Ministry of Cooperatives and SMEs, which looks looser and less complete than the one implemented by the Bank of Indonesia and the Financial Services Authority. This is undoubtedly influenced by the background of the *baitul maal wa tamwil*, which is devoted explicitly to the microeconomic community in Indonesian society, which is very complex and varies from one community to another. In operational practice, the existence of Memorandum & Article of Association (*Anggaran Dasar/Anggaran Rumah Tangga* abbreviated AD/ART in Bahasa Indonesia) and Standard Operational Procedures only seemed to be a mere formality and had not been understood and were used as the main guidelines in the operationalization of *baitul maal wa tamwil*. In general, drafting the existing Memorandum & Article of Association and Standard Operational Procedures seems to be just copied and pasted from other *baitul maal wa tamwil* that have previously been formed. Many legal loopholes in the Memorandum & Article of Association can be used by certain irresponsible people to commit acts of abuse.

Baitul mal wa tamwil apparatus could also be a factor in bankruptcy. It can be viewed from the limited quality and quantity of human resources in *baitul maal wa tamwil*. The quality of some human resources in *baitul maal wa tamwil* was not yet adequate, and some of them have no relevant competence in their respective fields. This was related to the level of recitation ability possessed by *baitul maal wa tamwil*, which is still relatively small when compared to the ability of

a financial institution similar to an Islamic bank or Islamic rural bank. Furthermore, many Sharia Supervisory Board members only master the theoretical aspects of Islamic banking but do not really understand and know the actual field conditions. In carrying out their supervisory function, most Sharia Supervisory Board members are still not working optimally, both in terms of supervision of the products issued, financial reporting systems, and the application of sharia principles in all activities and operationalization of *baitul maal wa tamwil*. In worst practice, there are still many human resources in *baitul maal wa tamwil* who intentionally do not carry out the existing Memorandum & Article of Association and Standard Operational Procedures and violate or neglect Islamic banking principles in carrying out their duties and authorities.

Ideal Construction of Bankruptcy Settlement in *Baitul Maal wa Tamwil*

In Islamic teachings, debt is part *muamalah* that is allowed but should be applied carefully. Debt can provide many benefits to both parties involved and is an act of mutual help between human beings, which is highly recommended in Islam. Debt can also reduce the difficulties of desperate people with financial issues and strengthen the brotherhood of both parties involved.³⁵ Many verses in Holy Quran discuss debt such as in Sūra 2: Baqara, or the Heifer verse 280: “If the debtor is in a difficulty grant him time till it is easy for him to repay. but it ye remit if by way of charity that is best for you if ye only knew”, and verse 283: “If ye are on a journey and cannot find a scribe a pledge with possession (may serve the purpose). And if one of you deposits a thing on

³⁵ Dede Andriyana, “Konsep Utang Dalam Syariat Islam [The Concept of Debt in Islamic Law],” *Jurnal Al-Fatih Global Mulia* 2, no. 2 (2020): 49–64, <https://jurnalglobalmulia.or.id/index.php/alfatih/article/view/22>.

trust with another let the trustee (faithfully) discharge his trust and let him fear his Lord. Conceal not evidence; for whoever conceals it his heart is tainted with sin. And God knoweth all that ye do."

The material laws governing the product, operationalization, and supervision system of *baitul maal wa tamwil* can be viewed from the perspective of the positive law currently in force in Indonesia. Regarding the products to members, at this time *baitul maal wa tamwil* can refer to several fatwas of the National Sharia Council. *Baitul maal wa tamwil* also can innovate by combining products with several conventional banking products and other financial institutions (leasing, venture, insurance, etc.). This practice cannot be separated from the role of the Sharia Supervisory Board in evaluating and controlling the products that will be offered to members and prospective members. There are not many fatwas of the National Sharia Council which specifically regulate the product, operationalization, and supervision system of *baitul maal wa tamwil*. Although there have been several fatwas on Islamic economics, there are still many that should be applied only to Islamic banks, which in fact, are subject to the Sharia Banking Law, Bank of Indonesia Law and Financial Service Authority Law.

The in-depth study should be carried out to avoid a legal vacuum, as indicated by limited available regulations for *baitul maal wa tamwil*. It also aims to increase the effectiveness and efficiency of the law enforcement system and the power of its enforcement. This in-depth study should be carried out in preparing legal materials that regulate several *baitul maal wa tamwil* products and their operationalization system, which will then be published as a compilation of sharia economics. Related to bankruptcy legal issues, in the context of preventive efforts and a more effective and efficient resolution of bankruptcy, *baitul maal wa tamwil* is expected to be able to conduct an in-depth study of the existing Memorandum & Article

of Association and Standard Operational Procedures. For example, if *baitul maal wa tamwil* goes bankrupt, to what extent can the management and Sharia Supervisory Board members be held civilly liable, limited to paid-in capital or their assets? It should always be noticed that the existing Memorandum & Article of Association and Standard Operational Procedures of *baitul maal wa tamwil* are one of the sources of law that will be the primary basis for the parties for the court to examine and decide on legal disputes that arise.

The concept of debt, according to the Qur'an, has relevance with regulations regarding the technical application of products, operationalization, and internal control systems of *baitul maal wa tamwil*. Sūra Baqara verse 283 dictates that to secure the deposit funds of members and/or prospective members, whether in the form of *wadiah* demand deposits, *mudharabah* savings, *mudharabah* deposits, members or debtors may request collateral (*borg*). Therefore, it is necessary to examine in more depth the existence of the guarantee system (*borg*) applied by *baitul maal wa tamwil*. All the parties who completed the bankruptcy settlement of *baitul maal wa tamwil* should have tried to explore the existence of the form of the guarantee system and how to provide anticipatorily and the best solution for solving problems if in the future bankruptcy occurs.

The bankruptcy settlement in many *baitul maal wa tamwil* in Special Region of Yogyakarta implies the need for legal culture and awareness among the public. All stakeholders should increase public legal awareness about the importance of Islamic banking in developing a healthy, competitive economic system that does not conflict with Islamic teachings. It is also essential to ensure the existence of planned, periodic and continuous education and outreach activities, which can encourage the involvement and active role of several vital instruments about sharia banking to the public. The active participants of these activities include formal and informal

educational institutions, community leaders and religious leaders, and government agencies as policy-making institutions. A center for *baitul maal wa tamwil*, say it called BMT Center, should also be proposed as a center for providing education, research, training, and publications on Islamic economics and banking related to Islamic microfinance. This center can improve the quality and quantity of Islamic banking human resources and encourage innovative and creative ideas for renewing the development of *baitul maal wa tamwil* in the future.

CONCLUSION

The factors that became the leading cause of the bankruptcy of *baitul maal wa tamwil* in the Special Region of Yogyakarta were the existence of several general problems internally, which included limitations in material law, human resources, legal culture, and supporting infrastructure. Another factor that also affects bankruptcy is the weakness of the internal control system by the Sharia Supervisory Board and externally by the Agency of Cooperative. The ideal settlement of the bankruptcy of *baitul maal wa tamwil* is the arrangement of a new bankruptcy regulation to accommodate the various rules that are still spread in several existing laws and regulations. To develop bankruptcy law in the future, it is necessary to have improvements and synchronization between Law no. 37 of 2004 concerning Bankruptcy and PKPU with "Islamic Bankruptcy Law. Concerning the material law regarding bankruptcy, it is hoped that the National Sharia Council can issue several fatwas which can later be used as the main guidelines for *baitul maal wa tamwil* in carrying out product technical, operationalization, and supervision.

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