

Collateral Functions in Baitulmal Wal Tamwil (Bmt) Positive Legal Perspective And Sharia Economic Law

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ARTICLE INFO

Article history

Received: May 04 2023

Revised: 25 June 2023

Accepted: 05 July 2023

Keywords

Baitulmal Wal Tamwil

Collateral

Economic Law

Sharia Law

ABSTRACT

Microfinance institutions in Indonesia are experiencing very rapid development with the existence of the Baitulmal Wal Tamwil (BMT) as a new breakthrough by offering financing products that are present in the midst of a lower-class economic society. The development of Baitulmal Wal Tamwil (BMT) today offers many products in financing. At Baitulmal Wal Tamwil (BMT) the financing offered includes: mudharabah financing (youth cheerful), mudharabah financing (equally cheerful), murobahah ceria, services (hiwalah Ceria), services (Ihrom Ceria), and policies (qord Ceria). This type of research belongs to the Normative Juridical type of research. This research aims to find out how the legal position of guarantees/collaterals in Baitulmal Wat Tamwil, Every financing in Baitulmal Wat Tamwil (BMT) requires collateral where the collateral is one of the legal conditions in the Baitulmal Wat Tamwil financing contract. This type of research belongs to the Normative Juridical type of research. This research aims to find out how the legal position of guarantees/collaterals in Baitulmal Wat Tamwil, Every financing in Baitulmal Wat Tamwil (BMT) requires collateral where the collateral is one of the legal conditions in the Baitulmal Wat Tamwil financing contract. So researchers want to examine the function of collateral in Baitulmal Wat Tamwil (BMT) in sharia economic law and positive law where collateral is often used as a problem and



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Available online at: <https://ejurnal.iainpare.ac.id/index.php/diktum/index/>



its legal requirements in financing transactions in the Baitulmal Wat Tamwil (BMT) microfinance institution

1. Introduction

Baitul mal wal tamwil (BMT) is a non-bank sharia microfinance institution that plays a role in supporting the development of lower-class economic communities, BMT also has a strategic role and function in community empowerment, micro-entrepreneurs and small entrepreneurs. The establishment of Baitulmal Wal Tamwil in Indonesia is a financial intermediary and agent of development. The function of the BMT financial intermediary is as an intermediary for channeling funds as well as raising funds. The function of the agent of development carried out by Baitulmal Wal Tamwil (BMT) is focused on maintaining the stability of the commodity. (Ma et al., 2014)

Microfinance institutions in Indonesia are experiencing very rapid development with the existence of the Baitulmal Wal Tamwil (BMT) as a new breakthrough by offering financing products that are present in the midst of a lower-class economic society. In institutions that support economic activity in small communities, BMT is based on Article 1 of 2013 as a microfinance institution, but if BMT is based on Article 25 of 1992 concerning cooperatives, then BMT is self-help. (Anggraeni et al., 2013)

Islam is the majority religion in the country of Indonesia, with the presence of Baitulmal Wal Tamwil (BMT) it really helps people who are Muslim and makes a new, safe and undoubted solution when lower-class economic people want to do financing at Baitulmal Wal Tamwil (BMT) without any sense of a bit of apprehension. The principle of profit sharing (mudharabah) and deposit (wadiah) is a concept that exists in Baitulmal Wal Tamwil (BMT). Anggraeni " Akses UMKM Terhadap Pembiayaan Mikro Syariah dan Dampaknya Terhadap Perkembangan Usaha : Kasus BMT Tadbiirul Ummah, Kabupaten Bogor", Jurnal al-Muzara'ah, Vol. 1, No. 1, 2013. As for the principle of leasing, the principle of buying and selling, profit sharing and the principle of fee, is a form of channeling funds to the community.

The partnership pattern is a way for BMT to establish relationships with customers, in carrying out financing, and BMT does not charge interest to the community/customers. Mudharabah (profit sharing) is one of the financing products in Baitulmal Wal Tamwil (BMT), in addition to being a financing product in BMT it is also an income (profit) for the BMT which is regulated in legal terms and smooth transactions. Risks and profits in profit sharing (mudharabah), which will be borne by the BMT and also the customer and vice versa when you get such a large profit, the distribution of profits is in accordance with the ratio, and otherwise if the business suffers a loss then the risk will be borne by both parties . BMT (Baitulmal wal tamwil) really adheres to the concept of being very fair and transparent, which is a distinct characteristic of BMT. Saving funds at BMT will get a ratio that has been determined in the previous contract agreement, for example 55% for customer rights and 45% for BMT. (Imamah, 2019) With the emergence of Baitulmal Wal Tamwil (BMT) through various financing products provided, it can certainly contribute to the lower class economic community in developing the global economy, especially for Muslims. Every product offered must be in accordance with Islamic economic principles, meaning that every Baitulmal Wal Tamwil transaction contract is valid if it does not go out of the corridor of Islamic economic principles. (Mas'ulah, 2021) In the practice of financing at Baitulmal Wat Tamwil, there are conditions that are used as valid financing, namely guarantees/collaterals where the collateral becomes an influence in the running of the financing agreement at Baitulmal Wat Tamwil. In practice, in the Baitulmal Wal Tamwil

(BMT) field, when financing members, there must be a grace such as house certificates, motor vehicle certificates, and other valuable certificates. However, guarantees/collaterals are also often a problem in the Baitulmal Wat Tamwil financing agreement. Therefore the author is interested in examining how the function of collateral in the Baitulmal Wal tamwil (BMT) in the view of sharia economic law and positive law.

2. Literature Review

a. Baitulmal Wal Tamwil (BMT)

The BMT Syariah Cooperative is an Islamic financial institution that has almost the same function in the collection and transfer of funds, the terms of use are no different. What matters is the difference between the two.¹

The institution, in sharia cooperatives, there is only one institution, namely cooperatives run by the sharia system. Whereas in BMT there are two institutions taken from its name, Baitul Maal means zakat institution and At-Tamwil means financial institution. This means that if the institution is run by two institutions then it is called BMT, whereas if it is only run as a savings and fund distribution institution, without zakat, infaq and shadaqah savings institutions, then it is called a sharia cooperative.

Distribution of funds, namely in the BMT allows the distribution of funds to outsiders who are not yet members of the BMT, while in the operational distribution of funds, sharia cooperatives are only allowed to provide financing to its members. In this case it is in accordance with the basic principles of cooperatives, from members, by members, and for members. The definition of a Financial Institution (LKM) is a financial institution specifically established to provide business development services and community empowerment, either through loans or financing in micro-scale businesses to members and the public, managing deposits, as well as providing business development consulting services that are not solely seeking profit.

With regard to Baitul Mal Wat Tamwil BMT in running microfinance institutions in the form of sharia is the same, namely in the form of a profit sharing pattern, meaning that in this case Baitul Mal Wat Tamwil has a financial institution which through its activities in the financial sector can attract or distribute money to the public. However, baitul mal wat tamwil as a Non-Bank Financial Institution (LKBB) is a business entity conducting activities in the financial sector that directly or indirectly collects funds from the public and distributes them back to the community. Baitul mal wat tamwil is a non-bank sharia economic institution engaged in two fields, namely the financial sector and the social sector which is intended for the people with the principle of the people by the people for the people in the financial sector as carried out by other financial institutions, while as a social institution baitul mal wat Tamwil is also engaged in collecting zakat as an amil zakat institution (LAZ) or zakat distributor. BMTs that are incorporated as cooperatives use the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number: 35.2/PER/M.KUKM/X/2007 concerning Standard Operational Guidelines for the Management of Sharia Financial Services Cooperatives and Islamic Financial Services Units. However, so far this BMT has not been followed by a clear regulation and legal basis. Ramadhani Alfin Habbibie "Analisis Yuridis Undang-Undang Nomor 1 tahun 2013 tentang Lembaga Keuangan Mikro terhadap Baitul Tamwil" Jurnal Az Zarqa ' Zarqa ', Vol.1 2019.

. Therefore, the legal position of Baitul Mal Wat Tamwil as a non-bank financial institution is still weak and has no legal force against the institution or the structure of the institution due to the absence of a legal umbrella specifically protecting the institution, because it still adheres to law no.1 of 2013 concerning Community Self-Help Groups (KSM). Sharia financial institutions that are informal in nature established by non-governmental groups and even the criteria that are attached to these institutions are not owned by the baitulmal so that they are called and are under the auspices of the institution's rules.

What are the advantages of Baitulmal Wat Tamwil compared to other non-bank financial institutions in the form of sharia. Regarding the advantages of Baitulmal Wat Tamwil as a non-bank financial institution, it can be seen from the form of economic administration of the institution itself, the concepts and principles that are carried out in the operation of the institution itself. Because Baitulmal wat Tamwil is an integrated business center whose core is activities to develop productive and investment businesses in reminding the quality of the economic activities of small and medium-sized entrepreneurs, including encouraging saving activities and supporting the financing of their economic activities. Tita Novitasari Fakultas "Peran Otoritas Jasa Keuangan dalam Pengawasan Lembaga Baitul Maal wal Tamwil (BMT): Studi Kasus BMT Global Insani". Jurnal Hukum, Vol. 2 No. 1 (2019)..

In addition to these methods, short-term credit can be extended directly through the money market. However, the specificity of the BMT baitul mall is more directed at financing micro, small businesses including Mudharabah, Musyarakah, Murabahah, Al bai' Bithaman Ajil, Al Qardhul Hasan.

The role of BMT only reaches out to the micro-economic circle. There are two BMT strategies in empowering the community at the micro level namely:(Ulfah et al., 2021)

Funding carried out by Baitulmal wal tamwil (BMT) in general has conditions, namely providing guarantees or collateral as collateral for loan repayment. In this case the function of the building is useful for minimizing the risk of Baitulmal Wal Tamwil (BMT) in serving financing to the community, namely as a form of anticipation if the borrower has problems or experiences an inability to pay loans to BMT, but collateral also functions as a reminder of the borrower's responsibility to repay the loan. . And if the borrower defaults, the BMT can execute the guarantee to pay off the customer's debt.(Melina, 2020)

According to the science of fiqh, collateral is generally divided into 2 parts, namely in the form of personal guarantees (people) and collateral in the form of objects. Guarantees in the form of people are often referred to as kafalah while material guarantees are called rahn. Meanwhile, in the context of positive law, collateral is material rights that are in nature as a debt repayment attached to the BMT which authorizes it to execute the object that is used as collateral.(Rahmawati & Rokhman, 2015) In addition, the existence of collateral will foster a sense of trust in the BMT with the borrower when making financing, guarantees or collateral here must have the same economic value as the money lent and the concept of collateral already exists in the contract or agreement. And especially in making agreements and contracts cannot be separated from the foundation of positive law and also Islamic law. In the positive law Baitulmal Wal Tamwil refers to two laws, the first is the type of BMT which refers to Law Number 1 of 2013 "UU Nomor 1 tahun 2013." concerning microfinance institutions which was promulgated on January 8 2013 then the second is the type of BMT which is based on Law number 25 of 1992 about co-op. UU nomor 25 tahun 1992. Even though BMT dominantly refers to positive law, BMT also has main guidelines, namely the Al-Qur'an and Hadith which are the basis for Baitulmal Wal Tamwil funding. Thus it will result in legal dualism that applies in preparing contracts in the practice of Baitulmal Wal Tamwil in Indonesia, where the two different sources will give birth to different forms of financing contracts, so that the legal relationship that is created between the customers/parties in the contract will have different concept.

In Islamic engagement law (muamalah), however, it seems that this order is not deeply rooted in the life of Indonesian Muslims. Historically, standards in the field of engagement (transactions) originating from Islamic law disappeared from existing legal instruments due to colonial policies that systematically undermined the existence of Islamic law. As a result, banks or other microfinance institutions are used to complying with positive legal regulations. Therefore, it is difficult to set up an Islamic business without clear guidelines. Likewise, what happened in the practice of Baitulmal wal tamwil activities, that the development of the application of Muamalah Law was apparently not followed by the applicable laws and regulations. However, muamalah legal practices that are running have not been followed by applicable laws and regulations but only depend on the DSN-MUI (National Syari'ah Council-Majlis Ulama Indonesia).

Baitul Maal Wa Tamwil (BMT) has the following main characteristics:

- a. Business oriented, seeking mutual profit, increasing the most economic benefits for the members and the environment.
- b. Not a social institution but can be used to make the use of Zakat, Infaq, Shodaqoh effective for the welfare of the people.
- c. Grown from the bottom based on the participation of the surrounding community
- d. It is jointly owned by the small and medium-sized community from the BMT environment itself, not owned by an individual or people from the community. Djazuli dan Januari 2002, 183”

In its operations, BMT can carry out various types of business activities, both financial and non-financial related. The types of BMT businesses related to finance can be in the form of:

- a. Association contract.

A partnership agreement is a collaboration between two or more parties and each party contributes capital (in various forms) with an agreed profit/loss sharing agreement:

- 1) *Al-Musyarakah*.
- 2) *Al-Mudharabah*.

After obtaining the initial capital in the form of special principal savings, principal savings, and mandatory savings as the basic capital of the BMT, BMT then mobilizes funds by developing them into various voluntary savings (a kind of general savings). (Sofiani, 1999)

Mudharabah Savings, funds deposited by the customer will be given to the customer based on the customer's agreement. The customer acts as Shahibul mal and the Islamic financial institution acts as Mudharib (DSN-MUI Fatwa No. 02/DSNMUI/IV/2000). (Fakultas Hukum UNIBA, 2017) With a Mudharabah contract from members in the form of: (Musobih & Mukarromah, 2019)

- a) Ordinary savings
- b) Education savings
- c) Pilgrimage savings
- d) Pilgrimage savings
- e) Sacrifice savings
- f) Eid savings
- g) Walimah Savings

- h) Akikah Savings
 - i) Housing Savings (construction and repair)
 - j) Savings tourist visits, and
 - k) Mudharabah term deposits (such as 1, 3, 6, 12 month time deposits).
- b. With a wadi'ah contract (deposit does not share results).

Wadiah Giro, is a savings product that can be withdrawn at any time. Customer funds are deposited at BMT and may be managed. At any time the customer has the right to collect it and is entitled to a bonus from the benefits of using current account funds by BMT. The amount of the bonus is not set in advance but is strictly at the discretion of BMT. Even so, the nominal is made in such a way as to always be competitive. (Hamidah, 2018)

1) Yad al-Amanah Savings, which are deposits of zakat, infaq, and alms funds to be conveyed to those who are entitled.

2) Yad ad-Dhamanah Savings Account, demand deposits which can be withdrawn by depositors at any time.

1. Financing products.

Provision of money and bills based on a loan agreement or agreement between BMT and other parties which requires the borrower to pay off the debt along with profit sharing after a certain period of time: (Haryoso, 2017)

- a) Al-Murabahah Financing (MBA).
- b) Al-Bai' Bitsaman Ajil (BBA) Financing.
- c) Al-Mudharabah Financing (MDA).
- d) Al-Musyarakah (MSA) financing.

To increase the role of BMT in people's economic life, BMT is open to creating new products. But the product must meet the following conditions:

- a) In accordance with the Shari'a and approved by the Sharia Council.
- b) Can be handled by the relevant BMT operating system

Bringing benefits to society. Micro and small business financing/credit activities, among others, can take the form of: (Saputra, 2017)

- a) Mudharabah financing, namely total financing using a profit sharing mechanism,
- b) Musyarakah financing, namely joint financing using a profit sharing mechanism.
- c) Murabahah Financing, Namely the ownership of a certain item that is paid at maturity.
- d) Bay'i Bi Saman Ajil financing, namely the ownership of certain goods with an installment payment mechanism.
- e) Qard al-Hasan financing, namely loans without additional repayment materials except for administrative costs.

In addition to the financial-related activities above, BMTs can also develop businesses in the real sector, such as telephone kiosks, postal goods kiosks, introduce advanced technology to increase the productivity of members, encourage the growth of home industries or product processing, prepare trade networks or marketing of inputs and production results, as well as other businesses that are feasible, profitable and do not interfere with short-term programs, provided that they are managed with a separate and professional management system.

The legal basis for Baitulmal Wal Tamwil is regulated in Law Number 1 of 2013 concerning Microfinance Institutions. Article 1 point 1 of Law Number 1 of 2013 concerning Microfinance Institutions stipulates as follows: Microfinance Institutions, hereinafter abbreviated as LKM, are financial institutions specifically established to provide business development services and community empowerment, either through loans or financing in micro-scale businesses. to members and the public, managing deposits, as well as providing business development consulting services that are not solely seeking profit from the definition of an MFI it can be seen that the essential characteristic of an MFI is that it is a financial institution. The purpose of establishing an MFI is to provide business development services and community empowerment by providing loans or financing in micro-scale businesses to members and the community. Law Concerning Microfinance Institutions Act 1 which contain:

1) Microfinance Institutions, hereinafter abbreviated as LKM, are financial institutions specifically established to provide business development services and community empowerment, either through loans or financing in micro-scale businesses to members and the public, managing deposits, as well as providing business development consulting services that are not merely -eyes looking for profit.

2) Deposits are funds entrusted by the public to the MFI in the form of savings and/or time deposits based on a fund deposit agreement.

3) Loans are the provision of funds by the MFI to the public which must be returned in accordance with the agreement.

4) Financing is the provision of funds by the MFI to the public which must be returned in accordance with what was agreed with sharia principles.

5) Depositors are parties that place their funds in the LKM based on an agreement.

As for in the Law article 25 of 1992:

The Central Government, hereinafter referred to as the Government, is the President of the Republic of Indonesia who holds the powers of government of the Republic of Indonesia as stipulated in the 1945 Constitution of the Republic of Indonesia.

Collateral is goods/items provided as collateral for the funds received. With the aim of guarantees to protect financing from the risk of intentional or unintentional losses on purpose. The existence of guarantees in BMT financing to customers will create a high sense of responsibility in loan payments to BMT (Baitulmal Wal Tamwil). The existence of a guarantee/collateral is proof that the borrower has good intentions to repay the loan. Collateral is a burden for the customer so that if the customer or borrower defaults on financing at Baitulmal Wal Tamwil, the collateral or guarantee will be executed by the financial institution. (Nihmatus Solikhah et al., 2022)

One of the requirements in applying for financing at a financial institution is the existence of a guarantee/collateral. However, if there are differences in concepts and principles between BMT and other financial institutions such as Islamic banking. Sharia banking only analyzes collateral as the only object in the guarantee. Meanwhile, BMT views collateral as only one object of the five assessments carried out. Collateral for BMTs is also only a last resort (second way out) if the borrower/customer cannot repay the debt within the agreed time.

The existence of collateral requirements that must be completed by the customer also depends on the amount of financing and the frequency with which the customer cooperates with the BMT or depends on the closeness of the BMT with the customer. The guarantees required vary widely, including gold jewelry, BPKB Motor and land certificates. (Sudarto, 2020)

The guarantee provided must have a greater value than the financing provided by the BMT. This is done only as a binder so that customers can fulfill their obligations to BMT. BMT as the holder of collateral for financing must be able to prove that these items are still related to the financing it provides. For this reason, BMT binds collateral items. The binding of collateral is different for one type of goods with other types of goods.

According to the regulations in force, the binding of land and ship collateral for certain tonnages must be carried out in the presence of an authorized official. For land guarantees, it must be in front of the Land Deed Making Officer. Therefore, it is known that several types of collateral binding include: APHT (Deed of Mortgage Binding). APHT is a deed that contains the certificate number, certificate issuance date, land area, land location and goods on the land and the amount of the debt burden that is accounted for on the land. APHT must be registered at the State Land Agency. However, BMT does not always bond with APHT. Regarding the provision of large amounts of financing, BMT applies these rules, namely binding the guarantee with APHT, or Fiduciary. However, for small and medium scale financing, the binding of collateral is only done under the hand. In practice, the customer only signs a number of documents declaring the transfer of ownership to the debtor, which is only stamped.

Submission of collateral to BMT which is carried out only under the hands causes the delivery of collateral to the customer after the end of the cooperation is also carried out under the hands. This results in the event of default, the BMT cannot immediately execute the collateral. Because the initial purpose of binding collateral is only to bind the customer's obligations, if a problem occurs in the future, the BMT tries to solve the problem in the following ways:

a) Rescheduling Emphasizes conditions for changing provisions that only concern payment schedules and/or time periods, based on the condition of the customer's ability to fulfill their facility obligations to BMT.

b) Restructuring Emphasizes the condition of changes in part or all of the financing provisions relating to the type and condition of the structure of the financing facility that has been provided to customers.

c) Reconditioning.

In the event of a default committed by a BMT customer, the priority is to resolve disputes by way of deliberation and kinship. According to them, as long as BMT has been running, there has been no dispute resolution in court. This means that BMT has never prosecuted customers in solving problems. Vice versa, the customer also never takes matters into court. One of the BMTs stated that if the customer is found to be truly unable to pay the financing as promised, after going through the process in the points above, the customer is released from obligations and the financing made is considered Al-Qardul Hasan

3. Research Method

In this study, the authors used normative legal research. The method used by the authors was normative juridical. The normative legal research method is a type of legal research whose research originates from the library. This research is directed towards written regulations so that researchers connect data - data in libraries, articles or journals that are secondary in nature and also through a conceptual approach (conceptual) and a statutory approach (statute approach). Where researchers look at the Law on Grace to the Baitulmal Wal Tamwil (BMT) in a review of sharia economic law. Namely in the law article 1 of 2013 concerning microfinance institutions

4. Results and Discussion (bold, 12 pt)

4.1. Guarantee Execution at Baitulmal Wat Tamwil

BMT provides leeway to customers in making payments if the customer is deemed incapacitated. The payment demanded in the end only asks for payment on the principal debt and no longer expects to share the results of the business that has been carried out by the customer. If the agreement requires collateral, then the collateral will be executed privately together with the customer who controls the collateral. The results of the execution will be paid according to the debt owned by the customer and the remaining results of the execution will be returned to the customer.

Execution of collateral is almost never carried out by all BMTs that require collateral. This is done as a final solution if various efforts have been made by both parties but have not been able to resolve the problem. Customers who are provided with financing are often cooperative, so that the implementation of amicable and amicable dispute resolution can be carried out properly.²

Payments through the execution of guarantees that are guaranteed privately are carried out in deliberation and amicability. In this case the collateral is gold jewelry. Guaranteed goods are goods that have a greater value than the debt, so that after the execution of the collateral, only the amount of the customer's debt is paid to BMT, while the rest is returned to the customer.

The binding of guarantees only involves both parties, while some BMTs also present witnesses from both parties. This applies to all BMTs in Pontianak. If there is a situation where the customer is unable to carry out all of his obligations, the BMT is still trying to resolve the problem in a family way.

b. Collateral Legal Basis

1) Al-Qur'an

Al-baqarah ayat 283

وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهَيْن مَقْنُوصَةً ۖ إِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ ۗ وَلَا تَكْتُمُوا الشَّهَادَةَ ۗ وَمَنْ يَكْتُمْهَا فَإِنَّهُ إِثْمٌ قَلْبُهُ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

Translated:

If you are on a journey (and be mu'amalah not in cash) and you do not get a writer, then there should be a dependent item held (by the creditor). However, if some of you trust others, then let the one who is trusted fulfill his mandate (debt) and let him fear God his Lord; and don't you (the witnesses) hide your testimony. And whoever hides it, then indeed he is a sinful person; and Allah knows best what you do.

The verse above mentions "subjects that are held (by the creditor)". In the financial world, collateral is commonly known as collateral. The collateral is held when one does not trust each other. So that the collateral submitted by the customer must be assessed and examined carefully in order to avoid financing risks that might occur.

2) Hadis

عن عائشة بنت أبي بكر رضي الله عنهما أن رسول الله - صلى الله عليه وسلم اشترى من يهودي طعاما، ورهنه دِرْعًا من حديصي - متفق عليه

Translated:

² (Fajar, 2018)."

From Sayyidah 'Aisyah Radhiyallahu 'Anha, that Rasulullah Shallallahu 'Alaihi Wasallam once bought groceries from a Jew on debt, and he gave his armor as collateral.

The hadith explains that once Rasulullah owed food to a Jew. As collateral for the payment of his debt, the Prophet gave his armor to the Jew. This shows that Islam allows collateral to be included in a debt transaction. In addition, in this hadith it is also not explained how much the value of the Prophet's armor is to be able to owe the Jew. So it can be understood that there are no standard binding rules regarding how much the nominal value of goods can be used as collateral to obtain financing. However, the goods that are used as collateral should be valuable and worthy of being used as collateral, so that the lender believes and can accept the goods to be used as collateral in the loan agreement.

Based on the two foundations above, it can be concluded that pledging collateral to obtain debt (financing) from a lender does not violate Islamic law. Muslims who run a business with limited capital can also guarantee valuables such as land certificates with the intention of acquiring them.

c. Guarantee benefits

1. Give rights and powers to the bank to obtain repayment of the collateral if the customer defaults, does not repay the debt at the time specified in the agreement.

2. Ensure that customers participate in business financing transactions so that the possibility of leaving their business or projecting to the detriment of themselves or their company can be prevented.

3. Encouraging the debtor to fulfill the credit agreement, especially regarding repayment according to the terms agreed so that he does not lose his ownership rights to the goods he guarantees to the bank. (Hamzah, 2021)

d. Types of Collateral

Based on its nature, collateral is divided into two, namely:

1) Material Collateral Transfer of rights by a customer or a third party to his/her property to a financial institution to be used as collateral for the financing facility obtained by the customer, where the financial institution has the right to collect repayment for its financing facility from the proceeds from the sale of said item if the customer defaults.

a) Material collateral is further classified into two types, namely:

(1) Immovable objects, including land, buildings, and other items which are categorized as immovable objects by law.

(2) Movable objects, namely all physical goods that can be transferred. Such as motor vehicles, office equipment, inventory, jewelry, machinery, bills, securities, and deposits

b) Non-Material Collateral

A debt coverage agreement in which a third party binds itself to fulfill the debtor's obligations if the debtor cannot fulfill his obligations to the financial institution.

c) Non-material collateral also has two types, namely:

(1) Personal Guarantee/Borgtocht, which is a third party guarantee that guarantees obligations/repayment to financial institutions if the debtor is unable to fulfill his debt obligations to financial institutions. This Personal Guarantee/Borgtocht is of a general nature, meaning that it results in the entire assets of the guarantor (guarantee) being collateral for the financing of the debtor concerned.

(2) Corporate Guarantee, namely collateral in which the company guarantees payment of debt to financial institutions if the debtor is unable fulfill their obligations. (Fakultas Hukum UNIBA, 2017)

e. Collateral valuation can be done in various ways including:

1) Using the market value recorded in the capital market at the end of the month for sharia securities that are actively traded on the stock exchange.

2) Based on fair value for land and house/dwelling.

3) Based on the fair value for buildings, aircraft, ships, vehicles, inventories, and machinery which are considered as one unit with the land and are bound by mortgage rights.

4) Based on the value determined by the authorized party or institution in accordance with the applicable laws and regulations. (Hukum et al., n.d.)

4.2. Collateral Analysis from the Perspective of Sharia Economic Law and Positive Law

Basically, the concept that is easy to finance Baitul Mal Wal Tamwil, namely the Fiqh Muamalah theory, the only practical and easy way to be implemented by BMT management to anticipate financing risks is through collateral. One of the financing carried out by Bitul Mal Wal Tamwil (BMT) is to use collateral/collateral in the form of motor BPKP guarantees, land certificates, car BPKBs, and so on and of course not out of the corridor of muamalah principles and every action is based on muamalah itself . Because the guarantee is a booster of trust or mandate. So sahibul mal takes care of the mandate in the form of collateral while the mudharib maintains the mandate in the form of capital to manage his business. Then the guarantee view according to the 4 schools of thought is as follows.

According to the author, the ones that are most suitable for the conditions of Baitulmal Wat Tamwil financing in Indonesia in general are the Syafi'i (syafi'iyyah) and Hambali (Hanabilah) schools, that is, when the party bearing the debt cannot pay it off, the debt is paid using assets/ the goods used as collateral or the price of the sale of the assets used as collateral. Benefits of collateral cannot be used as something pawned (al-Marhuun), because benefits are exhausted and damaged, therefore they cannot be used as collateral. Generally, the goods used as collateral are proof of ownership of the goods, for example, if the collateral is in the form of land or a house, the certificate held by the debtor as collateral for the debt is not land or a house controlled by the creditor to take advantage of the land or house. . When viewed from the perspective of Maqasid Shari'ah, the guarantee here does not contain elements that are harmful to the perpetrators of financing, and also does not harm both parties who are carrying out the financing. The existence of a guarantee also provides security in maintaining the benefit of the people for the lender (Baitulmal Wal Tamwil) in helping to develop a lower class economic society. Whereas collateral in Baitulmal Wat Tamwil has a positive legal perspective in article 1 of 2013, namely Collateral has a very important position and benefits in supporting economic development. Besides being able to foster trust between borrowers and collateral lenders, it can also minimize the risk of default between Baitulmal and Baitulmal members. Other benefits are the realization of security for financing transactions at Baitulmal Wat Tamwil and providing legal certainty for BMT and its members. With this collateral object, debtors can obtain credit facilities and not worry about developing their business. And in essence the two laws look at the same point of view, namely security, safety and convenience in carrying out contracts or financing agreements

5. Conclusion

BMT is one of the successes of sharia-based microfinance institutions that have just emerged and offers solutions to the lower middle class, and BMT was born in the midst of society with the aim of providing easy and fast financial solutions. Article 4 of Law No. 1 of 2013 concerning microfinance institutions states that the establishment of a microfinance institution must meet the requirements, including the form of a legal entity, capital, and obtaining a business license. In addition to fulfilling these requirements, in the financing of Baitulmal Wat Tamwil, there is a concept as well as provisions for collateral/guarantee in carrying out financing contracts in the BMT (Baitulmal Wat Tamwil). Collateral/collateral is divided into two, namely in the form of material collateral and non-material collateral. Material collateral/guarantees are in the form of immovable objects, including land, buildings, and other items which are categorized by law as immovable objects, movable objects, namely all physical items that can be transferred. Such as motor vehicles, office equipment, inventory, jewelry, machinery, bills, securities, and deposits. While non-material collateral is classified into two parts, the first is Personal Guarantee/Borgtocht, which is a third party guarantee that guarantees obligations/repayment to financial institutions if the debtor is unable to fulfill his debt obligations to financial institutions. This Personal Guarantee/Borgtocht is of a general nature, meaning that it results in the entire assets of the guarantor (guarantee) being collateral for the financing of the debtor concerned. Meanwhile, Corporate Guarantee, namely collateral in which the company guarantees payment of debt to financial institutions if the debtor is unable to fulfill his obligations.

When viewed from the perspective of Maqasid Shari'ah, the guarantee here does not contain elements that are harmful to the perpetrators of financing, and also does not harm both parties who are carrying out the financing. The existence of a guarantee also provides security in maintaining the benefit of the people for the lender (Baitulmal Wal Tamwil) in helping to develop a lower class economic society. Whereas collateral in Baitulmal Wat Tamwil has a positive legal perspective in article 1 of 2013, namely Collateral has a very important position and benefits in supporting economic development. Besides being able to foster trust between borrowers and lenders, collateral can also minimize the risk of default between Baitulmal and Baitulmal members. Other benefits are the realization of security for financing transactions at Baitulmal Wat Tamwil and providing legal certainty for BMT and its members. With this collateral object, debtors can obtain credit facilities and not worry about developing their business. And in essence the two laws look at the same point of view, namely security, safety and convenience in carrying out contracts or financing agreements.

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