

THE SHARIA MICROFINANCE AND THE COUNTER-HEGEMONIC MOVEMENT: EXAMINING THE LEGAL NORMS REGULATING ASPECTS OF INSTITUTIONAL AND BUSINESS ACTIVITIES IN SURAKARTA

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Abstract

Purpose of study: Research aims at the study of legal norms that are formed and used to regulate the institutional aspects and business activities of the Islamic Micro Finance (LKMS) as well as the counter-hegemonic movement that lies behind them.

Methodology: This research employs qualitative approach, which based on secondary data in the form of written documents, collected through library studies and primary data from informants, collected through in-depth interviews and observations in four LKMS in Surakarta LKMS Al-Huda UNS, LKMS Al-Abidin, LKMS AmanahUmmahUMS, LKMS Al-Muayyad.

Results: The Legal norms established and used to regulate the institutional and business aspects of the four Sharia Microfinance Institutions in Surakarta show that there are certain aspects in common, and differences on the other. The norms used in regulating the institutional and business aspects of Sharia Microfinance Institutions in Surakarta show a mixture of norms in Islamic law and the MUIs Fatwa, the Norms (in positive law) governing banks, financing institutions, partnerships, and cooperatives, with elements of the more prominent Islamic law.

Applications: The existence of the equations of the norms used in the background by the existence of counter-hegemonic movement built by The Small Business Incubation Center (PINBUK), which has passed through the corporate phase but has not exceeded the hegemonic phase. While the differences of norms used, due to the different degrees of cultural penetration of each Sharia Microfinance Institutions against the hegemonic movement driven by PINBUK.

Keywords: *Shari'a Microfinance, Microfinance, Institutional, Business Activity, Counter-Hegemony*

INTRODUCTION

During the conjuncture of the New Order regime, The treatment and acknowledgment of some elements of Islamic and Islamization have not shown any significant change. The efforts of marginalization or even at certain levels of silencing (Ranjbaran, 2014; Sparringa, 1998) on some parts of the Islamic teachings and the Islamization are still felt.

Nevertheless, from an isolated space (Robert and Hefner, 1998), there can be unilateral movements aimed at providing alternatives (or as complementary factors) in the formation of the socio-economic order of Indonesia, which then through a movement initiated by PINBUK crystallize within an institution, which known as *Baitul Maal wat-Tamwil* (Sharia Microfinance/*Lembaga Keuangan Mikro Syariah* (LKMS)). Accordingly, Islamic law as an institution that accompanies its presence, began to get its place fairly in the Indonesian legal system, after a long time to experience a sort of almost complete petrification process (Lobo and Pereira, 2016; Wahid, 1994), running a role that is static and defensive and more participate in *amar ma'rufihannahi munkar*.

In this situation, how the norms are created and used to regulate the LKMS. Why in such an atmosphere is dominated by state power and ideological hegemony, the presence of *Baitul Maal wat-Tamwil*, along with the various configurations of its legal principles and legal institutions, actually can it be seen as a movement that diverges from the direction and mainstream of the development of various economic institutions that dominated Indonesia? These main questions are the focus of the study in this research. Based on the background above, the problem statements are: How are legal norms established and used to regulate the institutional and business aspects of Sharia Microfinance Institutions (LKMS) in Surakarta? And Are the legal norms established and used to regulate the institutional aspects and business activities of Sharia Microfinance Institution (LKMS), backed by the existence of a counter-hegemonic movement that occurred in Surakarta?

LITERATURE SURVEY

The legal norms established and used to regulate the institutional and business aspects of Sharia Microfinance Institution in Surakarta.

The Legal norms established and used to regulate the institutional aspects of Sharia Microfinance Institution in Surakarta (Chaniago, 1982).

Aspect of membership The four Sharia Microfinance Institution (LKMS) that working Surakarta, although each of them uses the different name, But basically they divide its members into two major groups, that is : (a) founding members (LKMS Al-Abidin and LKMS Al-Muayyad), regular members (LKMS Amanah Ummah UMS), stockholders (LKMS Al-Huda UNS), and (b) regular members (LKMS Al-Abidin dan LKMS Al-Muayyad), outstanding members (LKMS Amanah Ummah UMS), and customers (LKMS Al-Huda UNS).

Aspect of Business Capital LKMS The four Sharia Microfinance Institutions (LKMS)in Surakarta, have a capital structure which consists of (a) own capital may come from principal savings; Mandatory savings; reserved fund; grant; (b) loan capital from the allowed sources, and: (c) equity capital; (d) voluntary and stock saving (primary savings).

Deposit Aspects of LKMS Members Types of deposits in the four LKMS studied, namely: (a) the principal savings; (b) mandatory savings; (c) voluntary savings/savings; (d) special savings (principal savings, main savings/shares).

An aspect of Operating Results The four Sharia Microfinance Institution (LKMS) that work in Surakarta, have The regulation concerning remaining return (SHU) and the reserve fund.

The Legal norms formed and used to regulate the business activities aspects of LKMS in the city of Surakarta. (Antonio and Syafi'i, 2001)

Baitul Maal

The four LKMS in Surakarta receive the fund of *zakat, infaq, and sadaqah* (ZIS) And redistribute it to the rightful parties.

Baitut-Tamwil

Saving Receiving Activities

The saving receiving activities of each LKMS can be divided into three types of aqad, namely: *wadiah, mudhrabah* and *mudhrabah* future.

Financing Activities

All the LKMS that work in Surakarta do the *Mudharabah* and *Musyarakah* and *Al-balbitsaman ajil* financing, Three of them (LKMS Al-Abidin, LKMS AmanahUmmahUMS, and LKMS Al-Huda UNS), perform the activities of *Murabahah* and two of them (LKMS AmanahUmmahUMS dan LKMS Al-Huda UNS), perform the activities of *ijarah* and *qardhul hasan*.

METHODOLOGY

The study employed qualitative research used Purposive Random Sampling and in-depth interviews to reveal the institutional aspects and business activities of the Islamic Micro Finance (LKMS)as well as the counter-hegemonic movement that lies behind them. The sampling was four Islamic Micro Finance (LKMS) in Surakarta that has been observed LKMS Al-Huda UNS, LKMS Al-Abidin, LKMS AmanahUmmahUMS, LKMS Al-Muayyad.

RESULTS AND DISCUSSION

The legal norms established and used to regulate the institutional and business aspects of Sharia Microfinance Institution in Surakarta.

The Legal norms established and used to regulate the institutional aspects of Sharia Microfinance Institution in Surakarta

Aspect of membership

From the data above it can be seen, that although incorporated as a cooperative and run business activities as a cooperative, in defining its members, more to analogize the terms contained in specific Islamic about *syirkah*. (Sabiq, 2006; Zare and Zade, 2014) The definitions are not based on regulations governing cooperatives but refer to the rules governing Incorporated Companies, Banks or the Firm. And CV (*Commanditaire Venonootschap* (in Commercial Code), but not in accordance with the norms governing cooperatives, as contained in Constitution No. 25 of 1992. (Sudjono, 1990)

An aspect of Business Capital LKMS

The four Sharia Microfinance Institutions (LKMS) in Surakarta, have a capital structure in accordance with Constitution No. 25 of 1992, PP. 9 of 1995, which consists of (1) own capital may come from: principal savings; Mandatory savings; reserved fund; grant; (2) loan capital from the allowed sources, and: (3) equity capital. It's just that each of these LKMS still has other capital of venture capital, namely voluntary and stock saving (primary savings), which is not in accordance with Constitution No. 25 of 1992.

Deposit Aspects of LKMS Members

From all types of deposits in the four LKMS studied, there are two types of savings in accordance with article 41 (2) of Law no. 25 of 1992, namely the principal savings and mandatory savings, but there is one type of savings, namely voluntary savings/savings even in accordance with Article 44 (1) of Law no. 25 of 1992 in conjunction with Article 19 (1) letter a of PP. 9 of 1995, but both norms are more referring to the provisions of the Banking Act. In addition, there is also a type of deposit called special savings (principal savings, main savings/shares) that are not in accordance with the rules about cooperatives, because more referring to the provisions in Law no. 1 of 1995 on the PT and provisions in Islamic Law governing *musharaka*.

An aspect of Operating Results

The regulation concerning remaining return (SHU) and the reserve fund of the LKMS in Surakarta have been in accordance with what is stipulated in the laws and regulations governing the cooperative.

The Legal norms formed and used to regulate the business activities aspects of LKMS in the city of Surakarta.

Baitul Maal

The four LKMS in Surakarta receive the fund of *zakat*, *infaq*, and *Adalah* (ZIS) And redistribute it to the rightful parties. This is in accordance with Surat At-Taubah (9) verse 60, and the Sunnah of the Prophet (s) on *zakat*, and (though not in the form of an *amil zakat* institution) in accordance with Article 13 jo 15 of Law 38/1999 jo article 27 of Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 581 of 1999.

The ZIS funds through *baitul maal* are distributed to: (a) eight *asnaf* or; (B) the interests of others. For the distribution of *zakat* through the *aqad* of *zakat* in general, has been in accordance with Surat At-Taubah (9) verse 60, and the opinion of Shaykh Taqiyyuddin An Nabhani. However, for the distribution of *zakat* through *aqad qardhul hasan*, it is not in accordance with *zakat* nature that put *mustahiq* as the person entitled to receive the wealth of *zakat* from the *muzakki* who have met the requirements in accordance with *sharia*. In addition, the emergence of a *zakat* distribution scheme through *qardhul hasan* which is more pressing on the distribution of *zakat* for productive endeavors. For the distributing of *infaq* and in accordance with Islamic law and Article 17 of Constitution No. 38 of 1999 in conjunction with Article 30 Kep. No. 581 of 1999.

Baitut-Tamwi

Saving Receiving Activities The norms established and used to regulate: (a) *wa'diah* deposits; (b) *mudhrabah* deposits, are in conformity with Prevailing laws, regulations, and Fatwa of the National Shari'ah Council of the Indonesian Ulema Council.

However, the arrangement of withdrawal of savings and responsibility of the Depository as a result of misuse is generally not the same as *mudhrabah* or CV, but rather shows similarities with the withdrawal of deposits as specified in the regulation of Cooperatives.

Financing Activities **The norms used to regulate the subject of law** in the overall financing undertaken from the perspective of legislation regulating cooperatives are in accordance while judging from the perspective of legal agreement has been in accordance with Civil Code jo Constitution 25 of 1992. The arrangement of this subject has also fulfilled the terms and conditions contained in the National Shari'ah Council Fatwa for each type of Financing. The only clause that regulates the subject receiving financing in the *qardhulhasan aqad* in LKMS Al-Huda UNS, although it has been in accordance with the National Shari'ah Council of Indonesian Ulama Council DSN- MUI *and borgtoch* (Personal guarantee) regulated in Civil Code, but relative inconsistent with the power of attorney agreement as regulated in Civil Code.

The norms used to regulate the object of law in the overall financing have been in accordance with the DSN-MUI fatwa governing each type of financing, as well as the object of *qardhul hasan* financing by LKMS UMS and LKMS Al-Huda UNS In accordance with the activities (business field) of the Savings and Loans Unit as stipulated in Article 44 of Constitution Number 25 of 1992 in conjunction with Article 19 (1) of PP. 9 of 1995, Article 1755 Civil Code. However, the norms that regulate the object in financing of *mudharabah, musyarakah, murabahan, Bai Bitsaman Al-bai bitsamanajil and Ijarah* not in accordance with the characteristics of business activities of the Unit SimpanPinjam (Saving and Loan Units/ USP) in the form of borrowing money as regulated in Article 44 of Constitution Number 25 of 1992 in conjunction with Article 19 (1) of PP. 9 of 1995.

The norms used to regulate the rights and obligations of the financing recipients in the overall aqad existing in all LKMS have been in accordance with the DSN-MUI fatwa governing each type of financing, in addition to the obligations of the financing recipient in the *Ijarah aqad* also in accordance with Article 1560 KUH Civil Laws, as well as the obligation of the financing recipient in the *qardhul hasan aqad* in LKMS UMS in accordance with Article 1763 Civil Code.

The norms used to regulate the rights of the LKMS, in the *mudaraba* and *musharaka* aqad contained throughout the LKMS, are in accordance with the DSN-MUI fatwa governing each type of financing, only: (1) Inclusion of rights to LKMS Al-Abidin , Asserted that LKMS Al-Abidin actually more construct *musyarakah* as loan-use agreement than *musyakaht* hat has been defined; (2) Inclusion of the rights of the LKMS shall be entitled to cancel the agreement unilaterally if the recipient of a pledge of default does not comply with Article 1266 of the Civil Code, as well as clauses stipulating the right of LKMS to claim the rest of the remaining financing with penalty or fine, not in accordance with the article 606a Rv.

The norms used to regulate breach of appointment are in accordance with Article 1243 Civil Code, and the Quranic texts, and specifically for *mudarabah aqad* have been in accordance with the fatwa of the national sharia council which governs the type of financing

The norms used to regulate the legal remedies that can be performed by the LKMS if the recipient of the pledge injury, in general, has been in accordance with the prevailing norms.

The norms used to regulate the legal remedies and dispute settlements contained in the overall aqad are generally in accordance with the norms applicable and, however, are relatively inconsistent with the fatwa of the national Sharia council which governs each type of financing.

The movement of Counter-hegemony as the background of the establishment and use of legal norms to regulate the institutional aspects and business activities of LKMS in Surakarta From the four LKMS that operate in Surakarta, although each LKMS was established by people with backgrounds of "*understand / madhhab*", religious organizations, social environment, and different economic activities, At certain stages and levels, show the equations, both in the aspects of institutional and business activities.

The existence of these equations is due to the founders when choosing cooperatives (especially the Savings and Loans Unit) as a form of business entity is heavily influenced by ideas which are disseminated by PINBUK, to every group of Muslims who will establish LKMS, through various training And education and manufacturing of various modules.

By what managers of LKMS mentioned above, it can be seen how the success of PINBUK to open up a "*new awareness*" and provide the basis for the formation of new values and norms, which are expected not only to be accepted and internalized by The founders and managers of LKMS, which will be distributed to the public at large, but also agreed as common values and norms.

The new values and norms that PINBUK is trying to offer are part of an effort to face competition to winning ways of giving meaning to how an institution should be managed, and how forms of legal relationships are built.

The giving of the new meaning is seen in the draft of the Articles of Association offered by PINBUK, which interprets cooperative institutions as a form of partnership (*syirkah*), especially *syirkah inan (musyarakah)* — an association of capital — not associations of people, This is understood and believed by others.

Based on the model, the structure of capital, relationships and responsibilities that exist between cooperative organs, and the position of cooperative members, are different from those set out in Constitution Number 25 of 1992 concerning Cooperatives and more similar with Limited Liability Company, Fellowship of Persons and CV/*Persekutuan Komanditer* (as stipulated in the Civil Code), or other forms of legal relations involving capital injustice such as venture capital.

The same case has happened in the business activities undertaken by four LKMS in Surakarta, both when receiving deposits and providing financing. This is mainly due, because according to the founders/managers of each LKMS in determining the substance of the contract, they see what they are, as PINBUK has made and make adjustments to the DSN-MUI fatwa. None of the founders/managers of LKMS have conducted any careful review of the contents of the contract made by the PINBUK or the fatwas issued by DSN-MUI. (DSN MUI, 2007)

By the receipt of PINBUK's offer of the substance of the contract it has created, by each of the founders/managers of LKMS, it shows that how the success of PINBUK to open up a "new awareness" and provide the basis for the formation of new values and norms, which is expected to be accepted and internalized by the founders and managers of LKMS, which will be distributed to the public at large.

Based on the description above, it can be seen, how the results of counter-hegemonic movement built by PINBUK in doing "resistance" to positive law, in Surakarta.

Started with the agreement between ICMI, MUI and Bank Muamalat Indonesia, at the central level to establish the Small Business Incubation Center (PINBUK), (*Pinbuk merupakan badan pekerja yang dibentuk oleh Yayasan inkubasi Bisnis-Usaha Kecil (YINBUK). 1995*) the board of the Indonesian Muslim Intellectuals Association (especially at the level of Orsat), began actively initiating and facilitating the establishment of *Baitul Maal wat- Tamwil* on groups of Muslims. (Dalam hal ini ICMI berinisiatif untuk memberikan pinjaman jangka, 1995)

In the Gramscian perspective (hegemony theory brought by Antonio Gramsci) (Fakih, 1999), the establishment of the PINBUK can be seen as the creation of a historical block as a representation of reciprocal relationships between the political (ICMI), ethical and ideological (MUI) areas of economic territory (BMI). Within this historical block, each side begins to abandon its own narrow (material interests) interest to realize a set of hegemony ideas, to create a shared worldview for the welfare of society as a whole, that of managing the business through the LKMS.

It is at this stage that PINBUK through its organic intellectuals at the regional level universalizes the views and interests (hegemony ideas) of the hosted block (PINBUK), and then ensures that these views and interests not only can but be the views and interests of groups Subordinate (founders and managers of LKMS).

Through various training and education and the making of modules of organic intellectuals from PINBUK begin to universalize their views and interests to subordinate groups. (Gabrakhmanova et al., 2016; Lestiadi et al., 1998)

This movement began to look more expansive and massive, after PINBUK obtained "permission" from President Soeharto, who launched LKMS as the Small Business Development Movement, on 5 December 1999, the capital assistance from the Department of Cooperatives and Small and Medium Enterprises, at the time Adi Sasono Served as Minister of Cooperatives and Small and Medium Enterprises, during the administration of President BJ Habibie, as well as the emergence of fatwas from the national Sharia council relating to the institutional and business aspects of Islamic financial institutions including LKMS.

This process of universality then gives results by beginning to be hegemonic ideas by subordinate groups.

However, as expressed in the expanded hegemonic theory, even though the founders and managers of LKMS in Solo received the draft offered by PINBUK, but the draft was not immediately accepted by the founders of LKMS in Surakarta. In reality, each of them performs their own creations according to their level of cultural awareness and independence.

It proves that in the process of counter-hegemony occurs the process of cultural penetration, as a consequence of independence from the founders and managers LKMS in maintaining its own ideology, as well as the ability to interpret their own consciousness. The founders and managers of LKMS who are active in Surakarta are not the only parties confined within the boundaries of the world that want to be universalized by PINBUK.

Apart from the cultural penetration of the counter-hegemony movement. At this stage, it can be seen how the hegemonic movement built through PINBUK has succeeded beyond the first phase, its corporate-economic phase, as evidenced by the growing awareness of some communities, that the LKMS needs to stand in line with other cooperatives operating on the principle of interest.

As with the national hegemony counter movement, this is the final stage of the hegemonic movement that has been done by some of the Islamic community, which is done through PINBUK and LKMS. This movement has not been able to transcend the next phase, namely the hegemonic phase in the struggle for the full implementation of LKMS in Indonesia

CONCLUSIONS

Based on the result of research and discussion, it can be concluded as follows:

The legal norms established and used to regulate the institutional and business aspects of the four LKMS activities in Surakarta, indicating the existence of certain equations, and the differences on the other.

1. (a) From the institutional aspect, the four LKMS studied, in the form of a savings and loan business unit of the Cooperative, and institutionalize based on the syirkah system, so that the norms used in: (a) define, divide its membership and determine the rights and obligations of each Member of LKMS, (b) regulates business capital, (c) regulates the rest of the business proceeds, and (d) regulates members' deposits, showing a mixture of norms contained in Islamic law and MUI Fatwa, norms (in positive law) Which regulates the financial institutions of banks, financial institutions, partnerships and cooperatives, with elements of Islamic law more prominent, with variations in each LKMS.
- (b) In terms of business activities, the four LKMS in Surakarta run Baitul mal and baituttamwil activities. However, the forms of savings and financing offered relatively vary according to market share to be addressed. The legal norms established and used to regulate the aspects of business activities in the four LKMS show a mixture of norms in Islamic law and the MUI Fatwa, norms (in positive law) governing the activities undertaken by the financing and fellowship institution, specifically for the aqadqardhul hasan is also mixed with the norms in the borrowing and lending agreement.

REFERENCES

- Antonio and Syafi'i, M. (2001). *Bank Syariah : Dari Teori ke Praktik*. Jakarta. Gema Insani Press.
- Chaniago, A. (1982). *Perkoperasian Indonesia*. Bandung. Angkasa.
- Fakih, M. (1999). *Gramsci di Indonesia : Pengantar*. Kata pengantar untuk buku Roger Simon. Gramsci's Political Thought. Yogyakarta. Insist bekerjasama dengan Pustaka pelajar.
- Gabdrakhmanova, R. G., Kalimullina, G. I., and Ignatovich, V. G. (2016). Professional Pedagogical Education Quality Management. *International Electronic Journal of Mathematics Education*, 11(1):103–112.
- Lestiadi, S. et al. (1998). *Panduan Unit Usaha Simpan Pinjam Syariah*. Jakarta. Departemen Koperasi Pengusaha Kecil dan menengah dan Bank Muamalat Indonesia.
- Lobo, J. and Pereira, C. (2016). Looking for Psychological Barriers in nine European Stock Market Indices. Dutch. *Journal of Finance and Management*, 1:39.
- Ranjbaran, A. (2014). Investigation of Factors affecting in customer fundraising with emphasis on role of social marketing mass media in Saderat bank of Iran. *UCT Journal of Social Sciences and Humanities Research*, 2(2):31–37.
- Robert, W. and Hefner (1998). Islamisasi Kapitalisme : Tentang Pembentukan Bank Islam Pertama di Indonesia. In Mark, R. and Woodward, editors, *JalanBaru Islam : Memetakan Paradigma Mutakhir Islam Indonesia*, page 263, Mizan Jakarta. Mizan.
- Sabiq, S. (2006). *Fiqh Sunnah*. Jakarta. Pena PundiAksara.
- Sparringa, D. (1998). Mencari Model Ideal Penyusunan Undang-undang yang Demokratis : KajianPolitik, Disampaikan dalam seminar nasional. Semarang. Universitas Diponegoro.
- Sudjono (1990). *Pengantar Koperasi*. Surakarta. UNS Press.



Wahid, A. (1994). Menjadikan Hukum Islam Sebagai Penunjang Pembangunan. In dalam Tjun Surjaman, editor, *Hukum Islam di Indonesia : Pemikiran dan Praktek*, page 3, Bandung. Remaja Rosdakarya.

Zare, H. and Zade, A. R. S. (2014). The Application of Tichy's Model In Iranian Public Universities. *UCT Journal of Management and Accounting Studies*, 2(1):8–13.