

## **Legal Consequences of Dualism Regulations on Micro Waqf Bank as a Sharia Microfinancial Institution in Indonesia**

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### **ABSTRACT**

**Keywords:**  
*Regulatory  
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*The presence of types of financial institutions in Indonesia makes it easy for people to choose which financial services they need. Micro Waqf Bank is one of the Microfinance Institutions that applies sharia principles that are currently growing and developing. However, there are legal issues related to arrangements for organizing a Micro Waqf Bank with a cooperative legal entity, namely, there are two overlapping regulations, namely the Microfinance Institution legislation, and Cooperative regulations. The purpose of this study is necessary to find out whether the legal consequences arising in the process of establishment, implementation, or if there are problems encountered by Micro Waqf Banks as a Sharia Microfinance Institution incorporated as a cooperative. This study uses a normative legal research method with a statutory approach and conceptual approach. This study shows that the dualism of Micro Waqf Bank arrangements gives rise to contradictions in the arrangements for the establishment, guidance, and supervision. The existence of this dualism of regulation also gives rise to legal consequences in the establishment of a Micro Waqf Bank incorporated as a cooperative. The legal consequences are related to the broader aspects of business activities based on MFI regulations compared to cooperative regulations. Legal consequences related to capital aspects that require Micro Waqf Banks have a certain amount of capital by MFI regulations. Then from the aspect of coaching and supervision in which there are an examination and evaluation, there is also a dualism which in the regulation of the function of the cooperative is carried out by the Ministry of Cooperatives but the existence of the MFI regulation of the fostering and supervision function is under the authority of the Financial Services Authority.*

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### **1. INTRODUCTION**

In Indonesia, the development of technology and information has implications for the growth and development of financial institutions. There are two types of financial institutions in Indonesia, namely bank financial institutions and non-bank financial

institutions that also grow and develop.<sup>1</sup> An example is the mushrooming of Micro Waqf Banks which are part of non-bank financial institutions or better known as Microfinance Institutions.<sup>2</sup> Article 1 of Law Number 1 of 2013 concerning Microfinance Institutions (MFI Law) states that Microfinance Institutions hereinafter referred to as MFIs, 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 community, savings management, as well as providing business development consulting services that are not solely for profit. On October 2, 2019, the Financial Services Authority, or better known as the OJK, had recorded that there were 53 Micro Waqf Banks in 16 Provinces in Indonesia that had channelled IDR. 27.7 billion to 21,557 customers.<sup>3</sup>

The implementation of the Micro Waqf Bank is currently facing problems regarding the benefits, fairness, and legal certainty in the field of Microfinance Institutions (MFI)<sup>4</sup>. Legal issues related to MFIs have been going on for a long time but until now have not been adequately resolved.<sup>5</sup> Legal issues for MFIs in Indonesia are also a common problem regarding MFIs (MFIs or Microfinance Institutions) encountered in other countries.<sup>6</sup> The legal problems faced in organizing MFIs generally start with the legality of collecting funds from the community. This problem is due to the formulation of Article 16 paragraph (1) of Law Number 10 of 1998 concerning Banking (Banking Law) which states that each party that collects funds from the public in the form of deposits must first obtain a business license as a Commercial Bank or Credit Bank. The people from the leadership of Bank Indonesia, except if the activities of collecting funds from the public referred to are governed by a separate law<sup>7</sup>. This means that before the existence of a special law governing MFI's business, MFIs were prohibited from

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<sup>1</sup> Zeehan Fuad Attamimi, Hari Sutra Disemadi, and Budi Santoso, "Prinsip Syariah Dalam Penyelenggaraan Bank Wakaf Mikro Sebagai Perlindungan Hak Spiritual Nasabah," *Jurnal Jurisprudence* 9, no. 2 (2019): 17–32, <https://doi.org/10.23917/jjr.v9i2.8897>.

<sup>2</sup> Wizna Gania Balqis and Tulus Sartono, "Bank Wakaf Mikro Sebagai Sarana Pemberdayaan Pada Usaha Mikro, Kecil Dan Menengah," *JURISDICTIONE* 10, no. 2 (2019): 215–31, <https://doi.org/10.18860/j.v10i2.7380>.

<sup>3</sup> Otoritas Jasa Keuangan, "Siaran Pers Pengembangan Nasabah Klaster Batik Bank Wakaf Mikro Pada Hari Batik Nasional 2019," 2019.

<sup>4</sup> Jehan Maya Zayanie, Ahsana Fitria, and Rosidatul Kamariah, "Bank Wakaf Mikro and Creative Economics in Pesantren Buntet," *Shirkah: Journal of Economics and Business* 4, no. 2 (2019): 53–85, <https://doi.org/10.22515/shirkah.v4i2.269>.

<sup>5</sup> Muhammad Muhtarom, "Harmonisasi Dan Singkronisasi Peraturan Hukum Perkoperasian Dan Lembaga Keuangan Mikro," *Jurnal Yustisia* 3, no. 2 (2014): 56–67, <https://doi.org/10.20961/yustisia.v3i2.11094>.

<sup>6</sup> Muhtarom.

<sup>7</sup> Siti Nurhayati, "Model Pemberdayaan Ekonomi Masyarakat Miskin Melalui Akses Pembiayaan Bank Wakaf Mikro Berbasis Pesantren," *Jurnal Ekonomi Syariah* 1, no. 1 (2019): 45–56, <https://journal.ikopin.ac.id/index.php/ecoiqtishodi/article/view/37>.

collecting savings funds, because MFIs were not bank financial institutions but non-bank financial institutions.<sup>8</sup>

It was mentioned earlier that the Micro Waqf Bank is part of the MFI, but the Micro Waqf Bank in its operation has characteristics that are different from MFIs in general<sup>9</sup>. Micro Waqf Bank is an MFI that has a legal entity as a cooperative and applies sharia principles in its operation. Article 5 paragraph (1) of the MFI Law, which states that in the establishment of a Micro Waqf Bank or MFI in general it is obligatory to legalize a Cooperative or Limited Enterprise. Then the definition of cooperatives themselves can be found in Article 1 of Law Number 17 of 2012 concerning Cooperatives (Cooperatives Law) which states that cooperatives are legal entities established by individuals or cooperatives, with the separation of the members' assets as capital to run a business, which fulfills common aspirations and needs in the economic, social, and cultural fields by the values and principles of the Cooperative. Whereas the implementation of Micro Waqf Bank based on sharia principles is contained in. The legal basis for organizing a Micro Waqf Bank based on sharia principles has been regulated in Article 12 of the MFI Law. Another characteristic of Micro Waqf Bank is that it provides financing and assistance to customers, non-deposit taking, low yields that is equivalent to 3%, group-based, and non-collateral.<sup>10</sup>

The presence of the Micro Waqf Bank is intended to foster the standard of living and empowerment of the middle to lower income community. Empowerment is an effort aimed at building community power by motivating, encouraging, and raising awareness of the potential possessed<sup>11</sup>. The potential for growth and development of the Micro Waqf Bank as an Islamic MFI is expected to have great benefits for an Islamic-based economic system<sup>12</sup>. The policy for the presence of the Micro Waqf Bank is to make the Micro Waqf Bank become one of the pillars of the strength of the sharia-based Non-Bank Financial Industry (IKNB).<sup>13</sup>

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<sup>8</sup> Attamimi, Disemadi, and Santoso, "Prinsip Syariah Dalam Penyelenggaraan Bank Wakaf Mikro Sebagai Perlindungan Hak Spiritual Nasabah."

<sup>9</sup> Wahyu Nugroho and Faridl Noor Hilal, "Micro Waqf Bank in Indonesia: Analysis of The Constitution Concept According to The Maqashid Sharia," *Al-Iktisab: Journal of Islamic Economic Law* 3, no. 1 (2019): 28–39, <https://doi.org/10.21111/al-iktisab.v3i1.3905>.

<sup>10</sup> Hari Sutra Disemadi and Kholis Roisah, "Kebijakan Model Bisnis Bank Wakaf Mikor Sebagai Solusi Pemberdayaan Ekonomi Masyarakat," *LAW REFORM* 15, no. 2 (2019): 77–94, <https://doi.org/10.14710/lr.v15i2.26176>.

<sup>11</sup> Novita Dewi Masyithoh, "Analisis Normatif Undang-Undang No. 1 Tahun 2013 Tentang Lembaga Keuangan Mikro (LKM) Atas Status Badan Hukum Dan Pengawasan Baitul Maal Wat Tamwil (BMT)," *Economica: Jurnal Ekonomi Islam* 5, no. 2 (2014): 17–36, <http://dx.doi.org/10.21580/economica.2014.5.2.768>.

<sup>12</sup> Ani Faujiah, "Bank Wakaf Mikro Dan Pengaruhnya Terhadap Inklusi Keuangan Pelaku Usaha Kecil Dan Mikro (Ukm)," *Proceedings of Annual Conference for Muslim Scholars* 1, no. April (2018): 373–82, <http://proceedings.kopertais4.or.id/index.php/ancoms/article/view/141>.

<sup>13</sup> Disemadi and Roisah, "Kebijakan Model Bisnis Bank Wakaf Mikor Sebagai Solusi Pemberdayaan Ekonomi Masyarakat."

Today, the presence of the MFI Law as the legal basis for organizing a Micro Waqf Bank has implicated a double regulation for Micro Waqf Banks that are incorporated as cooperatives. This is because financial institutions incorporated as cooperatives are under the provisions of the Law Number 25 of 1992 concerning Cooperatives, which is currently replaced by Law Number 17 of 2012 concerning Cooperatives (Cooperative Law). The presence of the new Cooperative Law is because the old Cooperative Law is no longer by the legal needs and development of cooperatives in Indonesia<sup>14</sup>. The existence of dualism in cooperative arrangements, especially Micro Waqf Banks as Sharia MFIs incorporated as cooperatives, results in inconsistencies in regulations that cause legal uncertainty in the operation of Micro Waqf Banks.

Previous studies that have been related to this study are 1). Zakiah Noer in 2018 which focused on the legal consequences of cooperatives establishing MFIs (called MFI Cooperatives)<sup>15</sup>; 2). Muhammad Muhtarom in 2014 which focused on the harmonization and synchronization of laws and regulations relating to cooperative legal entities<sup>16</sup>; and 3). Hari Sutra Disemadi and Kholis Roisah in 2019 which focuses on the business scope of the Micro Waqf Bank.<sup>17</sup> Based on previous research, there is a difference in focus in this study, this research focuses on the dualism of setting up the Micro Waqf Bank as a Sharia MFI. Based on the explanation above, the formulation of the problem in this research is: what is the legal consequence of the dualism of regulations concerning Micro Waqf Bank in the process of establishing, implementing or resolving problems in the operation of Micro Waqf Bank as a Sharia Microfinance Institution in Indonesia.

## 2. RESEARCH METHODS

The research using doctrinal with normative legal research methods. The approach of this research using statutory approach and conceptual approach in which secondary data is the main data. Secondary data in this study are divided into primary legal materials and secondary legal materials. Primary legal material is legal material that has permanent legal force such as Law Number 1 of 2013 concerning Microfinance Institutions, Law Number 17 of 2012 Concerning Cooperatives, and other related laws. Whereas secondary legal material is legal material which in nature explains primary legal materials such as books, legal research journals, and other sources. The legal materials

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<sup>14</sup> Muhammad Muhtarom, "Reformulasi Peraturan Hukum Lembaga Keuangan Mikro Syariah Di Indonesia," *Profetika Jurnal Studi Islam* 17, no. 1 (2016): 90-102, <https://doi.org/10.23917/profetika.v17i01.2103>.

<sup>15</sup> Zakiah Noer, "Akibat Hukum Pendirian Lembaga Keuangan Mikro Oleh Badan Hukum Koperasi," *Jurnal Media Hukum Dan Peradilan* 1, no. 1 (2018): 35-50, <https://doi.org/10.29062/jmhp.v4i1.3>.

<sup>16</sup> Muhtarom, "Harmonisasi Dan Singkronisasi Peraturan Hukum Perkoperasian Dan Lembaga Keuangan Mikro."

<sup>17</sup> Disemadi and Roisah, "Kebijakan Model Bisnis Bank Wakaf Mikor Sebagai Solusi Pemberdayaan Ekonomi Masyarakat."

mentioned above were collected by library research techniques in which the legal materials were collected and grouped for processing and analysis. The analysis technique used in this study is a qualitative analysis technique, this qualitative analysis technique is intended to assist the writer in making the correct conclusions.

### 3. RESULTS AND DISCUSSION

#### 3.1. *The Dualism of Micro Waqf Bank Arrangements in Indonesia*

Based on Article 5 of the MFI Law, every MFI, especially Micro Waqf Banks, to be able to run its business must have a legal entity that must be elected. This article states that there are two legal entity choices to choose from, namely Cooperatives and Limited Liability Companies. The implementation of Micro Waqf Bank as mentioned earlier has a cooperative legal entity<sup>18</sup>. Based on the provisions of Article 5 of the MFI Law, legally the Micro Waqf Bank which has a legal entity as a cooperative will automatically be under the provisions of the Cooperative Law and the MFI Law. The juridical provisions of Article 5 cause dualism of arrangement or dual arrangement of Micro Waqf Bank. This dualism of regulation will have implications for inconsistency, legal uncertainty in the establishment, licensing, authority of institutions that have the functions of regulating, guiding and overseeing Micro Waqf Banks.

The dualism of regulating the establishment of a Micro Waqf Bank in Indonesia can be seen in the Cooperative Law and the MFI Law. Micro Waqf Bank as an MFI incorporated as a Cooperative before carrying out its business activities must fulfill the requirements for formation which are regulated by the Cooperative Law in which the Micro Waqf Bank is formed by at least 20 people carried out with the existence of a Cooperative Deed which contains the Articles of Association made by the Notary in Language Indonesia, and information relating to the establishment of cooperatives, then the Waqf Micro Bank must have a position in the territory of Indonesia. The information referred to in Article 10 paragraph (2) of the Cooperative Law contains at least: a). Full name, place, and date of birth, place of residence, and occupation of the individual founder or name, place of domicile, and full address, and number and date of ratification of the founding Cooperative's legal entity for the Secondary Cooperative; and b). The composition, full name, place, and date of birth, place of residence, and the work of the Supervisor and Management are first appointed.

The Cooperative Law further stipulates that if a cooperative already has a Cooperative Establishment Deed authorized by the Government, in this case, the Ministry of Cooperatives, then the cooperative itself can be carried out without applying for any party's business license. While the MFI Law requires Micro Waqf Banks to obtain a

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<sup>18</sup> Isnaini Harahap, Mailin, and Salisa Amini, "Peran Bank Wakaf Mikro Syariah Di Pesantren Mawaridussalam Dalam Pemberdayaan Ekonomi Masyarakat," *TANSIQ: Jurnal Manajemen Dan Bisnis Islam* 2, no. 2 (2019): 54–64, <http://jurnal.uinsu.ac.id/index.php/tansiq/article/view/5883>.

permit from the Financial Services Authority (OJK) with the condition that there is at least an organizational structure and management, capital, ownership, and feasibility of work plans. Furthermore, the MFI Law states that the Micro Waqf Bank licensing is regulated in its implementation regulations, namely OJK Regulation or POJK Number 61/POJK.05/2015 concerning Amendments to POJK Number 12/POJK.05/2014 concerning Micro Finance Business Licensing and Institutions.

In addition to the arrangements regarding the establishment and licensing of overlapping Micro Banks or other MFIs<sup>19</sup>, there is also dualism regarding the principles of organizing Micro Waqf Banks that are regulated in the MFI Law and the Cooperative Act. Regulations in the Cooperative Law are obliged to instill the principles of independence, provide autonomy, and allow for Micro Waqf Banks as Sharia MFIs incorporated as cooperatives that are regulated in Article 5 of the Cooperative Law. Whereas the MFI Law applies the principle of prudence (prudential principle) which this law contains and strictly regulates various forms of sanctions<sup>20</sup>. In addition, Article 28 of the MFI Law regulates the regulation, guidance, and supervision of MFIs including Micro Waqf Banks conducted by OJK and further regulated in its implementing regulations namely POJK Number 14/POJK.05/2014 concerning Development and Supervision of Microfinance Institutions. While the Elucidation of the Cooperative Law states that the development of the Micro Waqf Bank is carried out by the government, namely the Ministry of Cooperatives. On the basis of this, there is an apparent overlap in the arrangements, guidance, and supervision of the Micro Waqf Bank, which creates legal uncertainty in the conduct of its business activities.

The method of regulation, guidance, and supervision regulated in the MFI Law, Micro Waqf Bank, and other MFIs are treated the same, without distinguishing between small, medium, or large businesses. Micro Waqf Banks and other MFIs are regulated and supervised by the OJK prudently like a banking financial institution<sup>21</sup>, so this method can limit the growth space for MFIs in general, especially Micro Waqf Banks which are usually established on a small scale<sup>22</sup>. Such a method regulated in the MFI Law is not in harmony with or contradictory to the existing regulations in the Cooperative Law. Regulations in the Cooperative Law are more empowering, educating, and providing leeway.

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<sup>19</sup> Siska Lis Sulistiani, Muhammad Yunus, and Eva Misfah Bayuni, "Aspek Hukum Bank Wakaf Mikro Dalam Pengentasan Kemiskinan Berbasis Pesantren Di Indonesia," *Jurnal Bimas Islam* 12, no. 1 (2019): 1–26, <https://doi.org/10.37302/jbi.v12i1.86>.

<sup>20</sup> Muhtarom, "Reformulasi Peraturan Hukum Lembaga Keuangan Mikro Syariah Di Indonesia."

<sup>21</sup> Hesty D Lestari, "Otoritas Jasa Keuangan: Sistem Baru Dalam Pengaturan Dan Pengawasan Sektor Jasa Keuangan," *Jurnal Dinamika Hukum* 12, no. 3 (2012): 57–67, <http://dx.doi.org/10.20884/1.jdh.2012.12.3.127>.

<sup>22</sup> Muhtarom, "Reformulasi Peraturan Hukum Lembaga Keuangan Mikro Syariah Di Indonesia."

The dualism of arrangements for Micro Waqf Bank in particular and MFIs, in general, will complicate the conduct of their business activities, where Micro Waqf Banks or other MFIs will find it difficult to determine which legal rules must be obeyed.<sup>23</sup> Cooperatives, including arrangements regarding, requirements for the establishment, business licenses, capital, scope of business activities, reporting obligations, guidance and supervision.

If the MFI Law is intended to regulate comprehensively, provide legal certainty, and meet the needs of financial services<sup>24</sup>, the content of legal substance is not in line with the norms governed by the previous law, the Cooperative Law. The legal substance content of the MFI Law, both normatively and practically, is not yet harmonious with the real needs of people on the lower middle income. The regulation on the use of prudential principles in the operation of Micro Waqf Banks and other MFIs is not an effective and efficient way of empowering MFIs, especially Micro Waqf Banks that have legal entities as cooperatives and are not in accordance with the characteristics of cooperatives themselves that are independent and autonomous. The situation of MFIs and Micro Waqf Banks, in particular, is more in line with regulations that are fostering, educating and protecting. Regulatory models that foster, educate and protect are present in the Cooperative Law. From here lies the legal issues governing the Micro Waqf Bank. Errors in approaches and arrangements can lead to inconsistencies between laws and regulations and can potentially not be effective because they are not obeyed by the community.<sup>25</sup>

Factors that cause misalignment of legal arrangements related to Islamic MFIs that are incorporated as cooperatives such as Micro Waqf Bank. These factors include<sup>26</sup>:

1. There is a difference of interest between the legal arrangements of the Micro Waqf Bank in the MFI Law and the Cooperative Law. The interests in the Cooperative Law regulate the growth and protection of cooperative entrepreneurship, while the MFI Law places more emphasis on the strict regulation and supervision of Micro Waqf Banks as part of financial institutions;
2. There are differences in the application of principles or principles in carrying out the activities of the Micro Waqf Bank. Regulations related to cooperatives emphasize the principle of independence or autonomy, while the regulations in the MFI Law

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<sup>23</sup> Muhammad Alan Nur, Rais Sani Muharrami, and Mohamad Rahmawan Arifin, "Peranan Bank Wakaf Mikro Dalam Pemberdayaan Usaha Kecil Pada Lingkungan Pesantren," *Journal of Finance and Islamic Banking* 2, no. 1 (2019): 25–49, <https://doi.org/10.22515/jfib.v2i1.1806>.

<sup>24</sup> Abdul Mujib, "Dewan Pengawas Syariah (DPS) Pada Lembaga Keuangan Mikro Syariah Di Wilayah Jawa Tengah," *Az Zaqqa': Jurnal Hukum Bisnis Islam* 9, no. 1 (2017): 25–45, <http://ejournal.uin-suka.ac.id/syariah/azzarqa/article/view/1433>.

<sup>25</sup> Anto Kustanto, "Disharmoni Akibat Dualisme Sistem Hukum Di Indonesia (Suatu Kajian Dalam Perspektif Bidang Ekonomi)," *QISTIE Jurnal Ilmu Hukum* 7, no. 1 (2012): 1-10, <http://dx.doi.org/10.31942/jqi.v7i1.1041>.

<sup>26</sup> Muhtarom, "Harmonisasi Dan Singkronisasi Peraturan Hukum Perkoperasian Dan Lembaga Keuangan Mikro."

prioritize the application of prudential principles that are more regulating and coercive;

3. There is a plurality of MFIs that vary so as to make the institutional-based arrangement incompatible. This problem lies in the unequal ability of various MFIs, both conventional MFIs and Islamic MFIs such as the Micro Waqf Bank; and
4. There are difficulties in finding intersections, agreements, and coordination between agencies so that attitudes and policies between the two are always inconsistent and contradictory.

### ***3.2. Legal Consequences of the Establishment of a Micro Waqf Bank Having a Cooperative Legal Entity***

The establishment of a Micro Waqf Bank which is a cooperative legal entity has its own legal consequences. This legal effect arises because of the dualism of regulation regarding Micro Waqf Bank as part of the MFI. Juridically, the Micro Waqf Bank is obliged to submit to it under two different arrangements namely the MFI Law and the Cooperative Act. This dualism of regulation resulted in separate changes to several aspects of the Micro Waqf Bank, such as aspects of establishment, capital, and guidance and supervision.

Aspects of the establishment of the Micro Waqf Bank, as mentioned earlier, there is a dualism of regulation that is subject to the Cooperative Law along with the implementing regulations and the MFI Law along with the implementation rules. Micro Waqf Bank before carrying out its business activities must fulfill the requirements required by the Cooperative Law. Article 7 of the Cooperative Law requires Micro Waqf Banks to be required to have a deed of establishment containing the Articles of Association. The Articles of Association are regulations that directly regulate the lives of Micro Waqf Banks as MFIs with legal status as cooperatives. This Articles of Association also contains the relationship between the Micro Waqf Bank and the annular implementation of a cooperative order. The preparation of this Articles of Association is carried out by members of the Micro Waqf Bank based on mutual agreement<sup>27</sup> and contains several things as regulated in Article 16 paragraph (1) of the Cooperative Law, namely the Articles of Association of Cooperatives containing at least: a. name and place of domicile; b. membership area; c. the purpose, business activities and types of cooperatives; d. the duration of the establishment of the Cooperative; e. provisions regarding Cooperative capital; f. procedures for appointment, dismissal, and replacement of Supervisors and Management; g. the rights and obligations of Members, Supervisors, and Management; h. provisions regarding membership requirements; i. provisions regarding Member Meetings; j. provisions regarding the use of Difference in Operating

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<sup>27</sup> Sulistiani, Yunus, and Bayuni, "Aspek Hukum Bank Wakaf Mikro Dalam Pengentasan Kemiskinan Berbasis Pesantren Di Indonesia."



Results; k. provisions regarding amendments to the Articles of Association; l. provisions concerning dissolution; m. provisions regarding sanctions; and n. provisions regarding the Member's dependents.

Based on these provisions, the establishment of Micro Waqf Bank requires applying for approval of the Cooperative Establishment Deed that contains the Articles of Association to the Ministry of Cooperatives, based on the provisions of Article 10 of the Cooperative Law. Further provisions regarding the procedures and requirements for application for ratification of cooperatives as legal entities are further regulated in the Ministerial Regulation.

Based on the Cooperative Law, if the Cooperative Establishment Deed has been ratified, then the Micro Waqf Bank which has a legal entity as a cooperative can directly carry out its business activities. However, due to the dualism of regulations concerning Micro Waqf Banks or MFIs in general, Micro Waqf Banks are obliged to comply with existing regulations in the MFI Law. Article 9 paragraph (1) of the MFI Law stipulates that a Micro Waqaf Bank as a Sharia MFI before running its business activities must have a license from the OJK by article 9 paragraph (1) of the MFI Law. Article 9 paragraph (1) of the MFI Law has stipulated that to obtain a business license for a Waqf Micro Bank, it must meet the minimum requirements regarding:

1. Organizational structure and management;
2. Capital;
3. Ownership; and
4. Feasibility work plan.

Further provisions regarding licensing of Micro Waqf Banks are stipulated in POJK Number 61/POJK.05/2015 concerning Amendments to POJK Number 12/POJK.O5/2014 concerning Business Licensing and Institutions of Microfinance Institutions. Based on the provisions of Article 5 POJK Number 61/POJK.05/2015, the Micro Waqf Bank is required to apply for a business license to the OJK along with the conditions stipulated in this Article. The OJK before giving permission will carry out technical guidance related to the procedures and completeness of the application documents which will be attached.

If the application for a Micro Waqaf Bank business license is by the applicable terms and conditions, that the OJK is required to provide a rejection or approval of a business license within a maximum period of 40 days after the permit application is received. Before giving a rejection or approval of a Micro Waqaf Bank business license, based on POJK Number 61/POJK.05/2015, OJK is required to conduct research and document completeness, feasibility analysis of work plans, and analysis of compliance with statutory provisions in the MFI field. If the permit application submitted is incomplete and/or incorrect, the OJK must submit a notification letter, no later than 20 working days after the application is received. The notification letter contains conditions

that have not yet been met in the case of applying for an MFI's business license. If in the case of rejection of an application for an MFI's business license, the OJK is required to accompany the notification letter on the grounds of rejection to the Micro Waqf Bank.

Then, due to the legal aspects of the business activities of the Micro Waqf Bank. The regulation of business activities in the Cooperative Law must be related to the interests of Micro Waqf Bank members to improve the business and welfare of the members. Article 82 of the Cooperative Law regulates cooperative business activities in general including savings and loans, services and goods, and consumer and producer services from and for members of the cooperative itself, in this case members of the Micro Waqf Bank.

The submission of the Micro Waqf Bank to the Cooperative Law and also the MFI Law thus incurs legal consequences in the form of business activities. The Micro Waqf Bank can not only carry out business activities with its members, but has expanded to the general public. Based on Article 11 paragraph (1) of the MFI Law, Micro Waqf Bank may also conduct business activities in the form of business development consulting services to the community. The service users of the Micro Waqf Bank are called customers because they not only consist of members but also the general public.

Furthermore, the legal consequences in the aspect of capital. The Cooperative Law does not regulate how much initial capital must be owned to establish a cooperative. However, Micro Waqf Banks with cooperative legal entities must also be subject to capital arrangements stipulated in the MFI Law and its implementing regulations, namely POJK Number 61/POJK.05/2015. Article 9 This POJK regulates the amount of provisions on paid up capital / principal savings, mandatory savings, and grants in establishing a Micro Waqf Bank, namely:

1. IDR. 50,000,000.00 (fifty million rupiahs), for the coverage of rural / urban business areas;
2. IDR. 100,000,000.00 (one hundred million rupiah), for the coverage of the district's business areas; or
3. IDR. 500,000,000.00 (five hundred million rupiah), for the scope of regency / city business area.

In connection with the dualism of Micro Waqf Bank arrangements, there are also legal consequences related to the aspects of developing, supervising and examining Micro Waqf Banks or other MFIs. Article 96 of the Cooperative Law states that supervision of Micro Waqf Banks and cooperatives is generally carried out by the Ministry of Cooperatives through reporting, monitoring and evaluation of Micro Waqf Banks. Article 97 paragraph (2) of the Cooperative Law regulates that supervision through reporting activities is carried out by examining annual accountability reports, documents, and resolutions of Member Meetings; request to attend a Member Meeting; and/or call the Management to be asked for information regarding the development of the Micro Waqf

Bank as an MFI having a legal entity as a cooperative<sup>28</sup>. Then the supervision through monitoring and evaluation can be done by observing and checking the Micro Waqf Bank report. If the results of monitoring and evaluation are proven to be irregularities, the Ministry of Cooperatives is required to settle according to the provisions in the Cooperative Law.

The examination of the Micro Waqf Bank based on the Cooperative Law is regulated in Article 98 paragraph (1) of the Cooperative Law, namely:

1. The Cooperative restricts membership or rejects applications to become Members of individuals who have fulfilled membership requirements as stipulated in the Articles of Association;
2. The Cooperative does not hold an Annual Member Meeting for 2 (two) consecutive years;
3. The continuity of the Cooperative business can no longer be expected; and/or
4. There is a strong suspicion that the Cooperative concerned is not managing financial administration properly.

Based on the dualism of regulations concerning Micro Waqf Banks as Sharia MFIs incorporated as cooperatives, the regulation on guidance and supervision including inspection and evaluation activities is also regulated in the MFI Law. Under Article 28 of the MFI Law, the functions of fostering and overseeing Micro Waqf Banks are carried out by the OJK, can also be delegated to the Regency/City Regional Government or other designated parties. Further provisions regarding the development and supervision of Micro Waqf Banks have been regulated in POJK Number 14/POJK.05/2014 concerning Development and Supervision of Microfinance Institutions. Article 2 Paragraph (1) This POJK regulates that the guidance and supervision of the Micro Waqf Bank is carried out by the OJK by coordinating with the Ministry of Home Affairs and coordinating with the ministry that organizes cooperative affairs.

Inspection is a process carried out by the OJK on Micro Waqf Bank as a Sharia MFI in the context of carrying out its supervisory and supervisory functions. Understanding the inspection in general is a process of comparison between criteria and conditions. Criteria are benchmarks, that is, something that should have happened or something that is supposed to be attached to the object being examined.<sup>29</sup> A condition is a reality that exists or the actual conditions attached to the object to be examined. The examination is carried out to control the business activities carried out by the Micro Waqf Bank. Inspection is a component of supervision while supervision is one form of control.

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<sup>28</sup> Balqis and Sartono, "Bank Wakaf Mikro Sebagai Sarana Pemberdayaan Pada Usaha Mikro, Kecil Dan Menengah."

<sup>29</sup> Siti Nurhayati Nurjamil, Ahmad Agung, and Ine Risnaningsih, "Model Penyelesaian Sengketa Pembiayaan Bermasalah Pada Bank Wakaf Mikro Berbasis Pesantren," *Res Nullius Law Journal* 1, no. 2 (2019): 85–97, <https://doi.org/10.34010/rnlj.v1i2.2618>.

It can be said that the OJK in controlling the running of the business activities of the Micro Waqf Bank is carried out with inspection.

It was also stated, that based on Article 8 POJK Number 14/POJK.05/2014 the aim of OJK to conduct a direct inspection of the Micro Waqf Bank is intended to:

1. To gain confidence regarding the condition of Micro Waqf Bank as a true Islamic MFI;
2. To examine the condition of the Micro Waqf Bank as a Sharia MFI with the laws and regulations and the practice of conducting a sound MFI business; and
3. To ensure that the Micro Waqf Bank as a Sharia MFI has made efforts to be able to meet obligations to customers.

Next up is the evaluation activity which is the final component of the fostering and supervision function by the OJK on the Micro Waqf Bank. As the implementing regulations of the MFI Law, POJK Number 14/POJK.05/2014 concerning Development and Supervision of Microfinance Institutions states that evaluation is an assessment of a positive and negative research process or also a combination of the two. Evaluation is a process to provide information on the extent to which the implementation of the OJK guidance and supervision function has been achieved. Based on this, it can be said that the provision of information means processes that require data to be analyzed with relevant benchmarks to produce information that is by needs. Whereas the extent to which the implementation of the guidance and supervision functions has been achieved is intended to compare an activity / implementation that has been completed with what should have been completed. The results to be achieved is whether the implementation of the guidance and supervision functions are appropriate, below the standard, or above the specified standard.

Based on the evaluation that has been done, based on POJK Number 14/POJK.05/2014, OJK has the authority or right to impose sanctions on Islamic MFIs including Micro Waqf Banks later if, as follows:

1. Administrative Sanctions (written warnings) given at most 3 times in a row with the validity period of each written warning is 40 working days, if the Micro Waqf Bank does not meet the following provisions:
  - a. Do not accept the inspection service carried out by the examiner, in this case by the OJK;
  - b. Failure to fulfill OJK's request to provide or lend books, records, and documents needed for smooth inspection;
  - c. Does not provide information required by OJK in writing and / or oral; and
  - d. Not giving access to OJK as an examiner to enter a room or place deemed necessary;
2. The validity period of the written warning above will end if the Micro Waqf has fulfilled it;

3. If the 3rd written warning is over and the Micro Waqf Bank does not meet the aforementioned provisions, OJK will request a meeting of Micro Waqf Bank members to replace the management of the Micro Waqf Bank no later than 6 months after the OJK notification; and
4. If the management of the Micro Waqf Bank is not replaced as referred to above, the OJK has the right to dismiss it and subsequently appoint and appoint a temporary replacement until the meeting of the member appoints a permanent replacement with OJK's approval.

Micro Waqf Bank based on the MFI Law is categorized into Islamic microfinance institutions whose legal entity form is a cooperative so that it is also subject to the Cooperative Law. This is related to the funding ceiling that will be provided and the target that will receive financing. Various disputes related to Islamic economics are also based on Article 49 letter i Law Number 50 of 2009 concerning Second Amendment to Law Number 7 of 1989 Concerning Religious Justice.

#### **4. CONCLUSION**

In Indonesia, there is a dualism of arrangements regarding Micro Waqf Bank as a Sharia Micro Financial Institution with a cooperative legal entity, which is regulated in Law Number 17 of 2012 concerning Cooperatives and Law Number 1 of 2013 concerning Microfinance Institutions. This dualism of Micro Waqf Bank arrangements results in disharmony or overlapping arrangements regarding the establishment and licensing, guidance, supervision, examination and evaluation. These contradictory factors governing the Micro Waqf Bank are seen in terms of cooperative arrangements which emphasize the granting of autonomy and independence while the MFI regulation establishes prudent arrangements and provides close supervision by the Financial Services Authority. Also, the plurality factor of MFIs in Indonesia has made it difficult to coordinate between related agencies. The dualism of Micro Waqf Bank arrangements also resulted in legal consequences in the establishment of Micro Waqf Bank as a Sharia MFI which incorporated legal entities as cooperatives. The legal consequences are related to the broader aspects of business activities based on MFI regulations compared to cooperative regulations. Legal consequences related to capital aspects that require Micro Waqf Banks have a certain amount of capital according to MFI regulations. Then from the aspect of coaching and supervision in which there is an examination and evaluation there is also a dualism which in the regulation of the function of cooperatives is carried out by the Ministry of Cooperatives but with the existence of MFI regulations the guidance and supervision function is under the authority of the Financial Services Authority. Based on the dualism of arrangements related to Micro Waqf as Sharia MFIs with cooperative legal status, it is necessary to have steps and government policies that use the functional approach of Micro Waqf Banks and MFIs as a whole so that Micro

Waqf Banks as Sharia MFIs with cooperative legal entities can carry out their functions by achieving market scale which is determined. Based on this, there is a need to reconceptualize the legal framework of a Sharia MFI with a cooperative legal entity.

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