

## DISCOURSE ON ZAKAT REGULATION IN THE MANAGEMENT OF ZAKAT IN INDONESIA

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### Abstract

This paper argues that the Indonesian government (President, Peoples' Representative Council/DPR, Ministry of Religious Affairs (MORA), and local government) has an important role in distributing social welfare to Muslim public (Muslim society) by stipulating official regulations, which authorize the National Board of Zakat Managers (Badan Amil Zakat Nasional) to manage zakat in Indonesia. We call these regulations "*qada'i*" (ketetapan negara), while we dub the normative set of laws from the Qur'an and Hadith (utterances ascribed to the Prophet Muhammad) "*diyani/obedience*".

**Keywords:** Rule, authority, management of zakat

### Abstrak

Tulisan ini berpendapat bahwa pemerintah Indonesia (Presiden, Dewan Perwakilan Rakyat/DPR, Kementerian Agama (Depag), dan pemerintah daerah) memiliki peran penting dalam mendistribusikan kesejahteraan sosial kepada masyarakat Muslim (masyarakat Muslim) dengan menetapkan peraturan resmi, yang memberikan kewenangan kepada Badan Amil Zakat Nasional untuk pengelola zakat di Indonesia. Kami menyebut peraturan ini sebagai "*qada'i*" (ketetapan negara), sementara kami menjuluki perangkat hukum normatif dari Al-Qur'an dan Hadits (pernyataan yang dianggap berasal dari Nabi Muhammad) sebagai "*diyani/ketaatan*".

**Kata kunci:** Aturan, kewenangan, manajemen zakat.

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## INTRODUCTION

The parameter of the development of zakat is the presence of zakat regulation.<sup>3</sup> At present zakat regulation is in the form of Law Number 23 of 2011 concerning Management of Zakat, Government Regulation Number 14 of 2014, Presidential Instruction Number 3 of 2014 and various regional regulations on zakat. The regulation of zakat aims at strengthening zakat management. The diyani theory and "qada'i " are the analysis knives. Its function can measure the type of religious norms that can become national law.<sup>4</sup>

The business of understanding legal products must study the manufacturing process. in the process of making legal products, among others, contains information and the atmosphere of making text. This is to understand the intent of the regulation and the flow that is the basis of regulation. As a factual matter, there are four rationale that inspire the birth of the formulation of articles and paragraphs in Law No. 23 of 2011 concerning Zakat Management, namely:<sup>5</sup>

First, to realize a unified system in the management of zakat. Zakat collection activities, distribution and utilization of zakat in Indonesia must be integrated with the National Zakat Agency (BAZNAS). The government made BAZNAS as an executive agency in the management of zakat.

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<sup>3</sup> Noor Aflah, *Arsitektur Zakat Indonesia Dilengkapi Kode Etik Amil Zakat Indonesia* (Jakarta: UI-Press, 2009), 26.

<sup>4</sup> N. Oneng Nurul Bariyah, *Kontektualisasi Total Quality Management dalam Lembaga Pengelola Zakat untuk Pemberdayaan Ekonomi Masyarakat* (Jakarta: PPs. UIN Syarif Hidayatullah, 2010), 170.

<sup>5</sup> M. Fuad Nasar, *Zakat di Ranah Agama dan Negara* (Jakarta: Rafikatama, 2017), 39.

Integral religious and state relations as a perspective in the management of zakat. Allah commands collecting zakat for amil zakat or a legitimate government according to QS. Al-Taubah (9) verse 103 by appointing and sending amil zakat. The theological and historical background is to formulate the dictum of articles in the Law. The understanding is that every person acting as amil zakat is obliged to obtain the permission of an authorized official. On the contrary, the criminal threat for everyone intentionally acts as amil zakat without the permission of the authorized official.

Second, hierarchy in the management of zakat. The purpose of the zakat management hierarchy is a tiered system. Central BAZNAS and regional BAZNAS and Amil Zakat Institutions (LAZ) are one organizational unit that has a hierarchical relationship. Fundamental changes in the birth of Law Number 23 of 2011 concerning Zakat Management concerning the relationship between BAZNAS and LAZ at all levels that are hierarchical. The form of hierarchy in the management of zakat is in the flow of reporting and accountability of zakat managers to BAZNAS and from BAZNAS to the President and to the DPR.

Third, compliance with the provisions of the Shari'a. The principle of Islamic law is the first principle in the management of zakat. That principle is the basis for the existence of a clause in the articles of the law. For example, that in order to obtain a license as LAZ, it must fulfill the requirements of being registered as an Indonesian community organization in the form of a legal entity. The consideration is that zakat management cannot be carried out

by legal entities outside the Muslim community. This means that, that the Law regulates the basic norms in the realm of religion. Therefore, the rules of zakat managers must be in accordance with Islamic law.

Fourth, the accountability of zakat management. The management of zakat is essentially a mandate in managing zakat. The management of zakat requires reliable accountability in the management institution. Therefore, the principle of accountability is the key to trust. In this case, Muzaki has given his zakat trust to the zakat manager.

Thus this paper aims to understand the importance of zakat regulation in the management of zakat in Indonesia, both from the philosophical, juridical, and sociological aspects.

Zakat regulation is an interesting discussion. This is considering the management of zakat as a religious institution which is part of the pillars of Islam. As a pillar of Islam, it is always the concern of scholars and intellectuals. The book of fiqh (absorption of the word fiqh in Arabic), interpretations and Hadith always discuss the regulation of zakat. One of the books of fiqh of zakat which is considered complete, with a comprehensive study and in accordance with the needs of modern times today is the work of Yusuf Al-Qarad}awi, *Fiqh al-Zakah*.<sup>6</sup>

Furthermore Arskal Salim examined the development of zakat law since the Dutch era until now. Arskal Salim Research in

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<sup>6</sup> Yusuf al-Qarad}awi, *Fiqh al-Zakah* (Bayrut: al Risalah al 'Alamiyah, 2009), Juz I, 660-620, Juz II, 660-680.

“Influential Legacy of Dutch Islamic Policy on Indonesian Formation of Zakat (Alms) Law in Modern is historical”.<sup>7</sup> The article argues that the influence of Dutch Islamic policy has gradually diminished as the Islamization process takes place in Indonesia. In the early 19th century, C. Snouck Hurgronje played an important role in the policy of Dutch zakat, which aimed to prevent the law of compulsory zakat payment.

While Asep Saepudin Jahar in “Marketing Islam Through Zakat Institutions in Indonesia”<sup>8</sup> This paper proves the fact that Zakat Institutions (Dompot Dhu'afa) are not a feature of Islamization. It was seen from the practice aspect that took place at Dhompot Dhuafa. The conclusion is that the approach model is more directed to the "Islamic marketing" model.

Likewise, the research by Palmawati Taher entitled Zakat dan Negara Studi Tentang Proses Zakat dalam Meningkatkan Kesejahteraan Masyarakat dengan Berlakunya UU No. 38 tahun 1999 tentang Pengelolaan Zakat.<sup>9</sup> This research includes philosophical research. The study did not discuss the mechanism for collecting zakat funds when there was a relationship between the two.

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<sup>7</sup> Arskal Salim, “The Influential Legacy Of Dutch Islamic Policy On The Formation Of Zakat (Alms) Law In Modern Indonesia,” *Pacific Rim Law and Policy Journal* 15. No. 3, (2006), 9.

<sup>8</sup> Asep Saepudin Jahar, “Marketing Islam through Zakat Institutions in Indonesia,” *Studia Islamica Journal* 22, No. 3 (2015): 405.

<sup>9</sup> Palmawati Taher, *Zakat Dan Negara Studi Tentang Proses Zakat Dalam Meningkatkan Kesejahteraan Masyarakat Dengan Berlakunya UU No. 38 tahun 1999 tentang Pengelolaan Zakat*, Disertasi (Depok: FH. UI, 2004).

Farah Aida Ahmad Nadzri, Rashidah Abd Rahman, and Normah Omar wrote "Zakat and Poverty Alleviation: Roles of Zakat Institutions in Malaysia".<sup>10</sup> They explained that Amil Zakat was authorized to collect zakat. Next amil will distribute to the mustahik. The requirement to pay zakat is closely related to the idea of equality and justice in Islamic principles. The main purpose of zakat is to protect the poor who need to get up in a normal life. The handover of zakat to amil zakat makes the pattern of distributing zakat productive. There is a model for amil zakat to collaborate with social institutions so that zakat management is more efficient in handling human resource problems, lack of amil and lack of expertise.

Saidurrahman wrote a journal entitled entitled "The Politics of Zakat Management in Indonesia; The Tension Between BAZ and LAZ".<sup>11</sup> He explained that the dynamic debate of the institution of amil zakat was established by the government with those born by the community. Furthermore, the form of centralization in the management of zakat is the authority of BAZNAS to manage nationally. Though the performance of BAZNAS in managing zakat is still questionable. The proof is that the amount of zakat collected by LAZ is greater than that of BAZNAS in 2011. As for the

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<sup>10</sup> Farah *Aida* Ahmad Nadzri, Rashidah Abd. Rahman, and Normah Omar, "Zakat and Poverty Alleviation: Roles of Zakat Institutions in Malaysia", *International Journal of Arts and Commerce* Vol.1 No. 7, (2012), 71.

<sup>11</sup> Saidurrahman, "The Politics of Zakat Management in Indonesia; The Tension Between BAZ and LAZ", *Journal of Indonesian Islam*, Volume 07, Number 02, (2013).

recommendations, there needs to be regulation that provides more optimal space for amil zakat in order to manage zakat better.

In contrast, Robert D. McChesney actually stated that Islam does not have a pattern of zakat management. This is reflected in the diversity of zakat management that is adjusted to the situation and conditions. Further in the book *Charity and Philanthropy in Islam: Institutionalizing the Call to Do Good*.<sup>12</sup> Robert D. McChesney states that Islam does not have a pattern of regulating amil zakat. Therefore zakat can be managed by the community.

There are other writings that focus on the historical dimension of Islamic philanthropy in Indonesia. This was done by Azyumardi Azra in "Philanthropy in the History of Islam in Indonesia".<sup>13</sup> The dynamics of adultery in the colonial period were generally influenced by Dr. C. Snouck Hurgronze (1857-1936), in *Nasihah-Nasihah C. Snouck Hurgronze Kepegawaiannya Kepada Pemerintah Hindia Belanda*.<sup>14</sup> Snouck's advice has the most influence on the form of zakat management, the cost of marriage and endowments. According to him zakat in the archipelago has institutionalized in the community. But the emphasis on the obligation of zakat and objects issued by zakat is different from one

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<sup>12</sup> Robert D. McChesney, *Charity and Philanthropy in Islam: Institutionalizing the Call to Do Good* (Indianapolis: Indiana University enter on Philanthropy, 1993).

<sup>13</sup> Azyumardi Azra, "Filantropi dalam Sejarah Islam di Indonesia" dalam Zakat dan Peran Negara, ed. Kuntoro Noor Aflah, dan Mohd. Nasir Tanjung (Jakarta: Foorum Zakat, 2006), 15-30.

<sup>14</sup> E. Gobee & C. Andrianse, *Nasihah-Nasihah C. Snouck Hurgroce Kepegawaiannya Kepada Pemerintah Hindia Belanda 1889-1936* (Jakarta: INIS, 1992), 1357-1365.

place to another. According to him the nature of zakat is always voluntary and is never mandatory like tax.

Amelia Fauzia also studied the history of zakat management entitled, *Filantropi Islam Sejarah dan Kontestasi Masyarakat Sipil dan Negara di Indonesia*.<sup>15</sup> This book is the development of his dissertation on *Faith and The State: a History of Islamic Philanthropy in Indonesia*.<sup>16</sup> More than that, Muchtar Sadili wrote the zakat system entitled *Relevansi Zakat Terhadap Civil Society*.<sup>17</sup> He stated that based on the historical approach that Islam does not have a pattern of regulating amil zakat.

Said Abdullah Shahab examined amil authority with the title of *Negara Versus Masyarakat dalam Pengelolaan Zakat (Analisis al-Maslahah di Indonesia)*.<sup>18</sup> This research is qualitative using a descriptive analysis approach. Research data is obtained from library research research. While the theory used examines the concept of al-maslahah in obtaining a better formulation of zakat management in a country, especially Indonesia. Then analyze the political and social dynamics especially with regard to political policy and the role of civil society in Indonesia. The research also relates to the optimization of zakat management in Indonesia.

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<sup>15</sup> Amelia Fauzia, *Filantropi Islam Sejarah dan Kontestasi Masyarakat Sipil dan Negara di Indonesia* (Yogyakarta: Gading, 2016).

<sup>16</sup> Amelia Fauzia, *Faith and The State: a History of Islamic Philanthropy in Indonesia*, Disertasi (Melbourne: The Asia Institute, The University of Melbourne, 2008).

<sup>17</sup> [http://grops.yahoo.com/gropfilantropy\\_indonesiamessage/2632](http://grops.yahoo.com/gropfilantropy_indonesiamessage/2632). diakses 15 April 2016.

<sup>18</sup> Said Abdullah Syahab, *Negara Versus Masyarakat Dalam Pengelolaan Zakat (Analisis al-Maslahah di Indonesia)* (Jakarta: UIN Syarif Hidayatullah 2014).



By looking at the explanation above, the theme of the importance of zakat regulation in the management of zakat in Indonesia is different from previous studies. So the theme of the importance of zakat regulation is still open for more in-depth study. The results of the study can be continued into better zakat legislation.

### RESEARCH METODOLOGY

This study uses juridical-normative research methods. As a normative juridical research, this research is based on the analysis of legal norms, both the law in the sense of the law written in the books of the law or the religious books (law as it is written in the books) and the law as court decisions (the law was decided by judge through judicial process).<sup>19</sup>

The object of research from this study is the principles, objectives and legal norms,<sup>20</sup> related to amil zakat. The type of this research is library research. And this research is qualitative. Qualitative research is used to explore more deeply and how the authority of amil zakat in optimizing institutions through the regulation of zakat management.

Data collection in the study was carried out through documentation. Documentation techniques are carried out for secondary data collection, while interviews are conducted for primary data collection. Documentation techniques are carried out

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<sup>19</sup> Ronald Dworkin, *Legal Research* (Deadalus: Spring, 1973), 250., Sotandyo Wignjosoebroto, *Hukum Paradigma, Metode dan Dinamika Masalahnya* (Jakarta: ELSAM & HUMA, 2002),139-178.

<sup>20</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Perkasa, 2007), 15.

to extract data in the form of important documents relating to aspects of research both Islamic law arguments, legislation. Researchers also use several other written documents such as books, magazines, minutes of hearings, decisions, fatwas, reports and so on.

The importance of the role of the state in regulating amil authority is analyzed using integrative legal theory. The theory is a form of *diyani* (obedience) by carrying out religious teachings and also *qada'i* (state provisions). The data was then analyzed qualitatively using descriptive analytical methods.

## RESULT AND DISCUSSION

The concept of the role of the state in the management of zakat is a form of state and religious relations that integrates religion and the state. The symbiotic paradigm in state and religious relations gives the authority to collect zakat in the National Zakat Agency (BAZNAS). So that religion and the state even though two different entities, but both need each other. With the optimal management of zakat demands of religion in performing worship can be carried out well, especially in relation to safeguarding property (*hifz mal*) as part of the objectives of the shari'a (*maqasid al-shari'ah*). Then the role of the state in Islam is carried out as a form of sharia actualization.

The role of the state in the management of zakat philosophically is analyzed using the theory of *diyani -qada'i*. Based on the analysis of the theory of *diyani -qada'i*, the law of zakat as

part of Islamic law can be a source of national law. This is because the dimensions contained in zakat management include: 1) orders of worship that are required by muamalah rituals; 2) teachings whose implementation is not only personal but related to public and state relations; 3) amil authority concerning the rights and obligations of muzaki-mustahik; 4) the effectiveness of its implementation depends on amil zakat. Thus, zakat law becomes national law because the zakat entity contains the integration of religion and state.

Applicatively, the role of an integrated state against amil zakat with the stipulation of zakat regulations. The regulation of zakat as an essential part of amil's authority in managing zakat seeks to realize the purpose of the state in the 1945 Constitution of Indonesia which is to promote general welfare. Furthermore, the constitution seeks to actualize the purpose of the state by ensuring that the poor and neglected children are cared for by the state. Ensuring the poor and neglected children are part of the goals of the national economy and social welfare. Through Law No. 23 of 2011 concerning the Management of Zakat and other legislative derivatives shows the implementation of alignments and the role of the state in the effort to realize the goals of state in accordance with the constitution.

## **CONCLUSION**

Transforming religious law into national law can be effective if it contains binding substances. Indonesia as a legal state makes religious norms a source in national law. Religion and the state

integrate in the interests of public welfare. Religion provides solutions to the state through zakat, and the state intervenes in religion through the regulation of zakat. So the state plays an important role in the management of zakat in order to safeguard property and promote general welfare. The form is through zakat regulation by giving authority to zakat management nationally to BAZNAS.

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