



Development of Sharia Economic Law in Indonesia (Positivation of Zakat Law)

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Abstract

In this study, we describe the development of sharia economic law in Indonesia with a focus on positivizing the Zakat Law. The method used in the literature review research is descriptive analysis approach with data collection techniques in the form of literature. The data analysis is using a normative qualitative method. Zakat regulation in Indonesia is still relatively new when compared to the time when Islam entered Indonesia itself. The history of zakat regulation in Indonesia can be classified into 3 (three) periods, namely (1) Pre-Independence, Zakat is only interpreted as an obligation that is managed individually. (2) During the Old Order and New Order, zakat management in the early days of independence was not much different from the period before independence. At this time, the management of zakat was still held by individuals, mosques, educational institutions that do not have the main activity in managing zakat. The government still chooses not to interfere with religious matters, including zakat. (3) During the Reformation Era, the Government began to accommodate zakat management with the issuance of a law, namely Law no. 38 of 1999 which was replaced by Law Number 23 of 2011.

Keywords: Positivism; Zakat; Indonesian Law.

A. Introduction

For Muslims, Shari'ah is a legal guideline that must be enforced as determined by Allah through His Messenger. Whether it's the Shari'a that deals directly with God and with fellow human beings. The basics of this law have been explained in detail in the Qur'an and then clarified again through the hadith of the Prophet Muhammad (Fadhly, 2017). As a consequence of the faith that is in his soul, every Muslim is ordered to uphold the joints of the law in every space of his life. So that the motivation to enforce the Shari'a will always appear as long as faith in the instructions of the Qur'an is still embedded in one's soul. In Indonesia itself, awareness of implementing Shari'a kaffah has started since the first time Islam entered the archipelago. Then after Indonesia's independence this spirit was manifested in the positivization of Islamic law in the formation of national law.(Mutakin, 2017). Because, as a country where the majority of the population is Muslim, it is very appropriate for Indonesia to use Islamic law as a source of national law formation because Islamic law is considered capable of underpinning and directing the dynamics of Indonesian society in achieving its goals (Amrin Khairusoalihin dan Muthoifin, 2022).

Based on the Preamble, Article 29 paragraph (1) of the 1945 Constitution and its amendments, as well as the interpretation of Hazairin Based on Article 29 paragraph (1) of the 1945 Constitution, Islamic law is the source of the formation of national law in Indonesia. Furthermore, according to his interpretation, in the Republic of Indonesia it is not permissible to enforce laws and regulations that are contrary to Islamic law for Muslims, as well as for people of other religions, statutory

regulations may not conflict with the laws of other religions. applies in Indonesia for the people of each religion concerned (Mardani, 2013, p. 5).

Since then, Islamic law has become one of the supporting elements for the development of Indonesian national law. This can be seen from the many laws and regulations that contain Islamic values. Until now, Indonesia's national legal system has various laws and regulations that accommodate Islamic values. Among these are the laws concerning: the organization of the pilgrimage, management of zakat, endowments, sharia banking, state sharia securities, marriage, inheritance, Religious Courts, and Special Autonomy for the Province of the Special Region of Aceh. While the field of Islamic criminal law is still aspired (*ius constituendum*). The struggle needs to be carried out continuously with various efforts so that Islamic criminal law becomes positive law (*ius constitutum*) in Indonesia, both in the form of codification, Unification (Rosyadi, 2006, p. 167).

So that efforts to establish positive law based on broader Islamic law and in line with the demands of the times require continuous persistent struggle, good planning and organization, and high commitment from all competent parties. Because, along the way, efforts to positivize Islamic law in Indonesia always raise pros and cons because of its position at the midpoint between the religious paradigm and the state paradigm. In addition, Islamic law is at the center of tension between religions themselves (Masruhan, 2011, p. 114).

In the course of time, the entry of Islamic law into a normative framework is a necessity for the Indonesian people and no longer because of the majority and the minority. Symptoms of such a transformation were born from the high sense of awareness of the Indonesian people. The law that arises from public awareness means that the law lives and is embraced by the local people in everyday life. Based on historical records, there are various ways and efforts to implement Islamic law in Indonesia (Hakim, 2016). From the sociological juridical aspect, these efforts continue to proceed through the struggle for the formalization of Islamic law into national law and/or incorporating Islamic ideas into national law. This effort is very prospective because there are still many colonial heritage laws that have not been replaced by national laws with Islamic nuances.

Therefore, as academics, it is necessary to re-understand how the background of the struggle to incorporate Islamic ideas into the process of forming national law. One of them is the process of positivizing Islamic law which is considered quite successful, namely the positivization of the zakat law as Indonesian law. This study seeks to trace back the positivization process of zakat law in national law.

B. Method

The method used in this research is library research with a descriptive analysis approach (Lexy J. Moloeng, 2011, p. 156). The data collection technique is library research which aims to examine, research, primary data, namely binding legal materials; Secondary data that provides an explanation of the primary data; and tertiary legal materials, namely materials that provide instructions and explanations for primary and secondary data materials. The data analysis is using a normative qualitative method (Sugiyono, 2018, p. 89).

C. Result and Discussion

1. Definision Of Zakat

Zakat is one of the third pillars of Islam after reading the creed and prayer and before fasting and hajj. Because as a pillar, this zakat worship must be carried out by every Muslim. The obligation to pay zakat has been clearly stated in the Qur'an at-Taubah verse 103 which means, "Take zakat from some of their property, with zakat you clean and purify them, and pray for them. Verily, your prayer (becomes) peace of soul for them. And Allah is All-Hearing, All-Knowing." (Surah at-Taubah: 103)

Zakat is a social institution that is believed to be able to alleviate poverty and prosper the community, which is an obligation for Muslims to carry out. In language, zakat comes from the syllable zaka which contains several adjacent meanings. Among them are al-barakatu which means blessing, it can also come from the word ath-thahharatu which means chastity, it can also come from the word al-namaa which means growth and development, and it can come from the word ash-shalahu which means improvement (Didin Hafhiduddin, 2002, p. 7).

According to the term, the word zakat has various definitions mentioned by scholars. But all of them have the same meaning, which is to set aside some of the wealth to be paid to the poor. According to the Maliki school of thought, zakat is to issue a portion of special assets that have reached the nishab (the minimum quantity limit that requires zakat) to those who are entitled to receive it. The Hanafi school defines zakat by making part of a special property from a special property as the property of a special person, which is determined by the Shari'a for Allah. According to the Shafi'i school, zakat is an expression of the release of property or body in a special way. Meanwhile, according to the Hanbali school, zakat is a right that must be issued from a special property for a special group (Nuruddin Mhd. Ali, 2006, pp. 6-7).

According to Law number 38 of 1999 concerning the Management of Zakat, what is called zakat is property that must be set aside by a Muslim or an entity owned by a Muslim in accordance with religious provisions to be given to those who are entitled to receive it. Some of the definitions above can be concluded that what is meant by zakat is removing part of the property that is his property and given to people who are entitled to receive it. So the main purpose of zakat is to purify the soul and to clean property from things that are haram. So that the treasure becomes a blessing and grows (Junaidi Abdullah, 2018, p. 173).

2. History Zakat Regulations in Indonesia

Zakat regulation in Indonesia is still relatively new when compared to the time when Islam entered Indonesia itself. In general, the history of zakat regulation in Indonesia can be classified into 3 (three) periods, namely pre-independence, the Old and New Orders, and the Reformation.

a) Pre Independence

The management of zakat in Indonesia cannot be separated from the process of Islamization that occurred in the seventh century AD. At that time Islam began to become a religion embraced by the people of Indonesia. However, public awareness of zakat is not the same as awareness of prayer and fasting. Zakat is only interpreted as zakat fitrah in the month of Ramadan and is managed

individually. So there is no historical evidence that shows the rulers oblige their people to pay tithe. This is especially the case in some areas where there is a separation between political power and religious power, such as in Java. However, in some other areas where the pattern of Islamization is more integrative, such as in Aceh, the authorities can simultaneously manage the zakat that must be paid by the Community (Puskas Baznas, 2017, p. 2).

During the Dutch colonial period, this condition was maintained. Through the influence of C. Snouck Hurgronje in "Islamic Politics", the Dutch limited the development of Islam because they were considered to be a danger to the Dutch government. Indonesian people are introduced to the understanding that Islam is a ritual worship that is separate from life. The government should not interfere in religious matters (Arianto, 2022).

No exception with zakat, the Netherlands also made a policy to weaken the implementation of zakat. Learning from the experience of the Acehnese people, the Dutch considered zakat to be one of the factors that caused difficulties in occupying Aceh. The people of Aceh used part of the zakat funds to finance the war with the Dutch (Ahmad Faisal, 2021).

The Dutch government through its policies Bijblad No. 1892 in 1866 and Bijblad 6200 in 1905 prohibited religious officials, government employees, including indigenous priyayi from participating in zakat collection. This policy was issued out of concern with the development of Islam and efforts to separate religion from the affairs of life (Herawati, 2017). The rulers only manage taxes that are obligatory for the community, while zakat is managed by religious leaders and is more voluntary, especially because the tax obligations are already quite burdensome to the community. This continued until the time of independence. The government is not involved in the management of zakat in Indonesia and there is no state law that regulates it (Mohammad Daud Ali dan Habibah Daud, 1995, p. 250).

This phenomenon continued until the nineteenth century. Responding to this traditional practice of zakat practice, Muhammadiyah has pioneered changes in zakat management by establishing a separate amil zakat institution. The institution specifically deals with zakat, infaq, alms and waqf and distributes them to entitled parties, especially the poor. In the next period, zakat management began to move the economy by forming cooperatives, education, health and other productive businesses.

During the Japanese occupation, the government began to take part in the management of zakat. This was marked by the establishment of MIAI (Majlis 'Islam Ala Indonesia). In 1943, MIAI formed Baitul Maal to organize the coordinated management of zakat. This body is headed by the Chairman of MIAI himself, Windoamiseno with 5 committee members, namely Mr. Kasman Singodimedjo, SM Kartosuwirjo, Moh. Safei, K. Taufiqurrachman, and Anwar Tjokroa-minoto. Massive movement was carried out. These efforts did not seem in vain, because in a short period of time, only a few months, Baitul Mal had been successfully established in 35 districts of the 67 districts in Java at that time. But these advances caused Japan to fear the emergence of an anti-Japanese movement. So, on October 24, 1943, Japan dissolved MIAI (Hendra Irawan, 2021).

b) The Old Order and the New Order

The management of zakat in the early days of independence was not much different from the period before independence. This period was in two periods of government, otherwise known as the old order and the new order. At this time, the management of zakat is still held by individuals, mosques, educational institutions that do not have the main activity in managing zakat. The government still chooses not to intervene (intervention) with religious issues, including zakat. This phase lasted from 1968-1991. The influence of the Dutch government is still being felt. Apathy towards the practice of Islam is still a suspicion of the government (Hakim, 2016, p. 157).

In fact, the first regulation of zakat in Indonesia was in the form of a circular letter from the Ministry of Religion No.A/VII/17367 of 1951, a continuation of the Dutch ordinance in which the state did not interfere in the collection and distribution of zakat, but only supervised it. In 1964 the Ministry of Religion drafted a bill on the implementation of zakat and a Perpu on the collection and distribution of zakat and the establishment of baitul mal. However, the Bill and Perpu have not yet been submitted to the DPR and the President. In 1967, the Minister of Religion sent a bill on zakat to the DPR-GR with Letter Number MA/095/1967 dated July 5, 1967, which emphasized that paying zakat is a necessity for the Muslim community, so the state has an obligation to regulate it. (N. Oneng Nurul Bariyah, 2016, p. 199) The Minister of Religion also sent letters to the Minister of Finance and the Minister of Social Affairs to obtain suggestions and responses, regarding the Ministry of Finance with experience in collecting public funds and the Ministry of Social Affairs with experience in distributing social funds to the public (Mutakin, 2017, p. 50).

The Ministry of Finance at that time suggested that zakat should be regulated in the Regulation of the Minister of Religion (PMA). (Mohammad Daud Ali dan Habibah Daud, 1995, pp. 254–255) The Minister of Religion then issued the Minister of Religion Regulation No. 4 of 1968 concerning the Establishment of the Amil Zakat Agency. Minister of Religion Regulation No. 5 of 1968 regulates the establishment of Baitul Mal which functions as a zakat collector to be then deposited to BAZ. (Puskas Baznas, 2017, pp. 5–7) But for no apparent reason, this PMA was revoked before it could be implemented. After 1991, to attract public sympathy for election for the sixth time, the government at that time was finally willing to issue laws and regulations even though it was only at the level of Joint Decree No. 29 and No. 47 of 1991 concerning the Guidance of BAZIS which was issued by the Minister of Religion and the Minister of Home Affairs after going through the IV MUI National Deliberation in 1990. However, it seems that this partisanship is still half-hearted. This can be seen from the position of BAZIS as a non-governmental organization and not as a government or semi-government organization. The formalism phase lasted from 1991–1998 (Masruhan, 2011, p. 155).

c) Reformation Era

The process of zakat management in Indonesia has developed from time to time. In general, these developments lead from being directly individual to

collective through institutions. Along with the increasingly organized management, zakat can be managed to provide wider benefits and increase the awareness of more and more people to pay zakat (Fadhly, 2017, p. 390).

The reform era seems to be able to bring fresh air to zakat activities in Indonesia. The government began to accommodate the management of zakat. The government under BJ Habibie and the DPR issued a law-level regulation, namely Law no. 38 of 1999. With the enactment of the law, zakat is no longer seen as an internal problem for Muslims, but has become a government activity in the economic and social fields. Based on this law, zakat can be managed either by amil zakat institutions formed by the government, namely the Amil Zakat Agency (BAZ) or by amil institutions formed by the community, namely the Amil Zakat Institute (LAZ). This law regulates the existence of sanctions for zakat management organizations (OPZ) that are not trustworthy (Saputra et al., 2021).

After approximately 12 years of the existence of Law Number 38 of 1999 concerning Zakat Management, it was found that it was not sufficient to accommodate the development of Zakat potential in Indonesia, and was not in accordance with the development of the legal needs of the community, so it needed to be replaced. Therefore, Commission VIII of the House of Representatives re-formulated a new Law on the management of zakat, namely Law Number 23 of 2011 concerning Zakat Management, which was passed on October 20, 2011. As is the case with Law Number 38 of 1999 concerning Management of Zakat.

After the enactment of Law Number 23 of 2011 it has not been able to answer public expectations. Until now, the issue of zakat has not been completed, but the awareness of paying zakat among the aghniyas is still there. who should be muzaki is still not balanced with his mustahiq. This law is still the same as the previous law, namely the Law on Zakat Management. That is, this law regulates the management of zakat only, but has not regulated the realm of disobedience to zakat, and if there are people who RI re-formulates the law regarding reluctance to pay zakat, there will be no sanctions whatsoever. (Didin Hafhiduddin, 2002, p. 35) In another sense it can be said, the law stipulates that the payment of zakat is voluntary, without any legal provisions requiring it (Hendra Irawan, 2021, p. 354).

The inclusion of zakat in this law is certainly a progress. But once again, this law does not emphasize zakat as an obligation, with no sanctions for people who do not fulfill their zakat obligations. Although the 1999 Zakat Management Act has been amended by Law No. 23 of 2011 and reissued by Government Regulation No. 14 of 2014. The government under President Susilo Bambang Yudhoyono issued Presidential Instruction No. 3 of 2014 concerning Optimization of Zakat Collection in Ministries/Institutions, Regional Governments, BUMN and BUMD through BAZNAS (Puskas Baznas, 2017, p. 5).

3. The Future of Zakat Regulation

The tug of war for the management of zakat has now ended in the hands of the government, however this has drawn a lot of criticism. Weak regulations and seem

half-hearted in their management is one of the criticisms of zakat observers. On the other hand, if zakat management is given to civil society, it is also difficult to develop because it is unable to make binding and authoritative regulations. This zakat management discourse continues in the hands of Muslim scholars in Indonesia (Hendra Irawan, 2021, p. 355).

From the history of Indonesia's zakat regulation above, we can understand that in the era of zakat regulation no. 23 of 2011 zakat management still has a lot of homework, one of which is a regulation that binds muzakki with sanctions, because the sanctions stipulated in the 2009 Zakat Law only impose sanctions for LPZs that are negligent in their duties. Supposedly when the management of zakat is left to the government, this authoritative and binding regulation is easier to implement (Adam, 2018).

If people who are reluctant to pay taxes are sanctioned by severing the right to use public facilities provided by the government, what if muzakki who are reluctant to pay zakat are given sanctions prohibiting them from doing marriage or hajj, seeing that the priority of zakat law lies in the third position in the pillars of Islam and matters of marriage and hajj involving the government as a regulator. Unfortunately, the raw questions and suggestions did not get a satisfactory answer (Addiarrahman & Yanti, 2020).

The debate on zakat regulation, especially in the theme of sanctions, is still a long debate and must be fought for because of its great benefits in alleviating poverty and increasing the standard of living of mustahik. On the other hand, the government also needs to make zakat collectors more serious. Because, in the perspective of fiqh itself, zakat worship is qada'i, namely worship that requires the handling of officers. Because if it is not implemented, then there are other people's rights that are directly taken, namely the rights of the mustahiq. This is different from praying and fasting which are often called dayyani, that is, if it is not carried out, it only has implications for rights with Allah swt., but no other people's rights are taken away (Atik Abidah, 2011, p. 34).

In the history of zakat management in the early days of Islam, Rasulullah saw. once employed a young man from 'Asad, named Ibn Luthaibah to take care of the affairs of the Bani Sulaim zakat. He once also sent Ali bin Abi Talib to Yemen to become a charity worker. (Fitriyani, 2013) In addition, Mu'az bin Jabal was also sent by the Messenger of Allah. to Yemen, in addition to serving as a preacher, also has a special duty to become a zakat collector. (Fakhruddin, 2008, p. 299) This shows that managing zakat is a job that must be done seriously by capable people, at the same time this is also a proof that zakat is an authoritative practice (ijbari) not charitable (generosity) (Engel, 2014).

Next, one of the problems of unresolved zakat law regulation is the existence of a double burden for muzakki, namely in addition to having to pay zakat, zakat payers (muzakki) are also required to pay taxes. Even though the government through Law No. 38/1999 has introduced zakat as a fiscal incentive for zakat payers (muzakki) by making zakat as a tax deduction for taxable income (PKP) or tax deduction. The spirit of this provision is also accommodated by Law No.23/2011, with the intention that Muslim taxpayers are not subject to a double burden, namely the obligation to pay

zakat and taxes (articles 22 and 23). Awareness of paying zakat is also expected to spur awareness of paying taxes. But in practice (Baehaqi, 2017).

An interesting experiment took place in the Province of Nanggroe Aceh Darussalam. Through Law No. 11 of 2006 concerning the Government of Aceh, zakat gets different treatment and position in Aceh Province, namely (i) zakat is a source of Regional Original Income (PAD) for the provincial government and district/city governments (article 180) and managed separately by Baitul Mal Aceh and Baitul Mal Regency/City (article 191); and (ii) the zakat paid is a deduction factor for the amount of income tax payable from the taxpayer (article 192) (Syaugi, 2017). In other words, zakat has become a tax credit in Aceh. (Yusuf Wibisono, 2015, pp. 109–111) However, until now this provision has not been properly accommodated by the Director General of Taxes. In addition to the administration, which is considered to be quite complicated, socialization to the community is still quite minimal. So the discourse that must be put forward is reorganizing the coordination relationship between the national tax-zakat authorities with a short-term goal to fundamentally improve the implementation of zakat as a tax deduction. At the same time, the world of national zakat should concentrate on improving good governance in the internal world of national zakat by strengthening a credible zakat authority.

D. Conclusion

Zakat regulation in Indonesia is still relatively new when compared to the time when Islam entered Indonesia itself. In general, the history of zakat regulation in Indonesia can be classified into 3 (three) periods, namely pre-independence, Old and New Order, and Reformation. (1) Pre-Independence, Zakat is only defined as an obligation that is managed individually. So that there is no historical evidence that shows the authorities oblige the people to pay tithe. During the Dutch colonial period, this condition was maintained. Through the influence of C. Snouck Hurgronje in "Islamic Politics", the Dutch limited the development of Islam because they were considered to be a danger to the Dutch government. Indonesian people are introduced to the understanding that Islam is a ritual worship that is separate from life.

This phenomenon continued until the nineteenth century. Responding to this traditional practice of zakat practice, Muhammadiyah has pioneered changes in zakat management by establishing a separate amil zakat institution. The institution specifically deals with zakat, infaq, alms and waqf and distributes them to entitled parties, especially the poor. In the next period, zakat management began to move the economy by forming cooperatives, education, health and other productive businesses. (2) During the Old Order and New Order, zakat management in the early days of independence was not much different from the period before independence. This period was in two periods of government, otherwise known as the old order and the new order. At this time, the management of zakat is still held by individuals, mosques, educational institutions that do not have the main activity in managing zakat. The government still chooses not to interfere with religious matters, including zakat. This phase lasted from 1968-1991. The influence of the Dutch government is still being felt. Apathy towards the practice of Islam is still a suspicion of the government. (3) During the Reformation Era, the Government began to accommodate the

management of zakat. The government under BJ Habibie and the DPR issued a law-level regulation, namely Law no. 38 of 1999 was later replaced by Law no. 23 of 2011. With the enactment of the law, zakat is no longer seen as an internal problem for Muslims, but has become a government activity in the economic and social fields. The positivization process of zakat law cannot be separated from the struggle of Muslims who continue to fight for the upholding of the principles of Islamic law in national law. The struggle continues to this day. In this case, there are several problems of zakat regulation that have not been able to maximize the zakat potential of Muslims in Indonesia. One of the obstacles is that, apart from practical administrative improvements, zakat institutions are still difficult to maximize the potential of zakat due to the absence of laws that can impose sanctions on muzakki who are reluctant to pay taxes.

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