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## RECONSTRUCTION OF ZAKAT IN THE INDONESIAN LEGAL SYSTEM

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**Abstract:** *This study aims to explore the anatomy of the implementation of zakat and to reconstruct and to find an appropriate model law of zakat in Indonesia. Zakat can be optimized in improving and creating public welfare. The detailed analysis focused on the potentials of zakat that can be developed and manifested. The development of zakat was based on the existing of the Indonesian positive law and Islamic Law. Therefore, this study first identified and interpreted the divine values (Ilahiah values) that sourced from Qur'an and hadith. It elaborated on the legal resources from ijihad, the fatwa from various theologians (Islamic Scholars). This study also applied normative legal research for addressing the issues related to the reconstruction of zakat norms. Meanwhile, empirical research was used to address and ascertain the societies' respond to the zakat changes. In normative legal research, this work used statutory, conceptual and case approaches. Thus, this work offers a good model of zakat management, such as zakat for a profession, zakat from fisheries products and other yields of the sea. This also reformed the model of collecting and distributing zakat.*

**Keywords:** *Zakat; Reconstruction; Islamic Law; Divine Vales; Public Welfare*



## INTRODUCTION

This paper aims to reconstruct matters relating to *zakat* regulations to accelerate public welfare and the legal reconstruction model of *zakat* in the national legal system. Reconstruction Objectives provides a sense of justice between *muzakki* (*zakat* providers) and *mustahik* (*zakat* recipients), revising and perfecting several articles in Law Number 23 from 2011 concerning the management of *zakat*, filling vacancies that have not been regulated such as professional *zakat*, fishery *zakat*, and sanctions for *muzakki*.

*Zakat* is worship related to property. Someone who fulfills the requirements is required to pay *zakat*. *Zakat* is the provision of God's law concerning property because Allah SWT makes the property as a means of life for the benefit of humanity. *Zakat* is the assignment as a *caliph* on the earth. Allah the Almighty is the owner of the entire universe and all its contents including property owners. Someone lucky to get it, in essence, only accepts deposits as a mandate to be channeled and spent according to the wishes of the owner.

One of the tasks that have not been completed to date is to establish a national legal system that reflects the ideals, souls, spirit and social values that live in Indonesia. Several efforts which include (1) renewal of laws and regulations, (2) empowerment of existing legal institutions, (3) improvement of moral integrity of law enforcers and other legal officers; (4) Improvement of adequate legal facilities and infrastructure Renewal of legislation is continuously carry out both by replacing colonial legislation that is not in accordance with the social values and needs of the Indonesian people.

## ANALYSIS AND DISCUSSION

### *Position of Zakat on the Islamic Political and Economic Discourse*

Islam as a religion with the largest adherents in Indonesia provides a solution to the problems of life faced by humans, including poverty. One solution offered for poverty alleviation is through *zakat*. *Zakat* has a very important, strategic and decisive position, both in terms of Islamic doctrine and the economic development of the people including terms of eradicating poverty. In Islam, peoples whose *zakat* is increasingly overlapping is explained in Quran Surah Al Baqarah 261: "*Zakat* is similar to a seed that grows seven grains, in each one hundred seed grains" (Q.S Al-Baqarah, 261). Paying *zakat* is the obligation of Muslims who can comply with Islamic law and its collection is a potential source of funds as an effort to reduce poverty, and help to improve people's welfare. Some problems and obstacles in the development of *zakat* in Indonesia included: First, the lack of quality human resources and concentration on National *Zakat* Collecting Foundation (hereinafter called as BAZNAS),

Understanding of *amil fiqh* that is not yet adequate because it is still focused on acceptance, not at the stage of taking and collecting *muzakki*, is still low public awareness of paying *zakat maal*, *zakat income* and professional *zakat*, technology that is used in collecting and distributing does not yet have online applications.

From some of these obstacles, several strategies in managing *zakat* includes: cultivating the habit of paying *zakat*, especially for *zakat maal*, professional *zakat* and corporate *zakat*, administrators to keep socializing the BAZNAS program through various media and *da'wah*, reducing traditional *zakat* collection especially *zakat maal* but also online collection through the application of the BAZNAS program.

The types of *zakat* are based on the provisions in the Law include; a. Gold, silver, precious metals, b. Money and securities, c. Commerce, d. Agriculture, plantation and forestry, e. Livestock and fisheries, f. Mining and industry, g. Revenues and services, h. *Rikaz* (findings). Based on Article 4 paragraph 2 Law Number 23 from 2011 concerning Zakat Mal, *zakat* important professions to be included such as Doctors, Notary, Lawyer, Consultant, Artists, politicians, and *zakat* from marine products.

The subject of *zakat* is that a person or institution based on the provisions of Islamic law is obliged to issue *zakat* on his property. In the legal reconstruction of several parties involved, among others: the government starts from the top until the bottom. *Muzakki* is people who are in the obligatory *zakat* category such as *zakat* from the agricultural, plantation, livestock including traditional farmers and modern farmers, fishermen, industry/services and professional *zakat*.

Source of assets of *zakat* includes assets that are compulsory *zakat* from those who have fulfilled *nishab*, full property, proper haul (a year), not debt yield, exceeding basic needs. The *zakat* funds that have been collected are then distributed to the *mustahik*, namely those who are entitled to receive according to the provisions of Islamic law, among others: *Fakir*, *Poor*, *Amil*, *Muallaf*, *Riqab*, *Gharim*, *Sabilillah*, and *IbnSabil*.

*Zakat*, as stated in Law Number 23, 2011, is the only *zakat* of wealth and *zakat fitrah*, while professional *zakat* and other income are not listed, for example, if the *zakat* is applied, the income exceeds the *zakat* from agricultural produce and *zakat* professional, so *zakat* from marine products needs to be included in reconstructing regulations. Likewise about sanctions for *muzakki* who do not pay *zakat* is very important to increase awareness of *muzakki* which has an impact on the receipt of *zakat* funds.

## MODELS OF RECONSTRUCTION OF ZAKAT NORMS

Reconstruction of zakat regulations that have been implemented, i.e: reconstruction of the volume of *zakat fitrah*, professional *zakat*, and *zakat* from marine products, in detail can be described as follows:

### *Reconstructing Zakat Related to Volume of Zakat*

In the case of *zakat fitrah* according to Yusuf Qardawi that *zakat fitrah* is issued by one *sha* (1/6 liter) or 1 1/3 container Egypt or equal to 2.167 Gram (based on scales and sizes with wheat) (Yusuf Qardawi 2011, 949). If in one area the food is heavier than wheat such as rice, then it is obligatory to add to that size as a counterweight to the differences, based on that opinion some scholars cling to the measure, not to the scales, because the seeds are heavy and some are light. Regarding *zakat fitrah* from 2.5 Kg to 3.5 Kg with the First calculation, So far the *zakat fitrah* issued by Muslims is 2.5 Kg, but paying attention to the basic expenditure of 2.5 kg of staple food. Alms of *fitrah* are issued as much as one *sha* "or equivalent to four muds, one mud is equal to one time the second palm from the hand of the middle person" (Hadist History by Imam Ahmad. Expenditures of *zakat fitrah* from 2.5 Kg to 3.5 Kg are the first that was issued at that time was wheat because it was the staple food of the Egyptians.

The population of Indonesian Muslims in 2016 reached 85%, meaning  $255,461,700 \times 85\% = 217,142,445$  people. Then  $217,142,445$  were reduced by a poverty rate of  $28,100,000 = 189,042,445$  people. From the number  $189,042,445$  if the expenditure of *zakat fitrah* is flat, 2.5 kg (rice), if 2.5 kg of rice is cashed in the amount of 25,000. So that the Muslim population number  $189,042,445 \times 2.5 \text{ kg or } 25,000 = 4,726,061,125,000$  (four point seven trillion).

Observing several articles in the *Zakat* Law including regional regulations, the authors found several weaknesses in the *zakat* law in Indonesia, as follows:

- a. Unclear government regulations whether as regulators, operators, coordinators, and supervisors in *zakat* institutional arrangements in Indonesia;
- b. BAZNAS authority for the management of *zakat*, in practice it competes with institutions/communities that also take care of *zakat*. So that such discrimination occurs among fellow *zakat* operators where the law gives extraordinary privileges to BAZNAS;
- c. There is no verse from the law or government regulation regarding sanctions for *muzakki* who do not pay *zakat*;
- d. There are no regulations from the law or government regulations regarding *zakat* as tax deductions, there is only *zakat* as a deduction from taxable income.

### ***Reconstructing Zakat Related to the Types of Zakat***

The foundation of the state ideology of Pancasila which is related to *zakat* is found in the Pancasila. In the administration and management of *zakat* there is a constitutional foundation contained in chapter XIV Article 33, as follows:

- (1) The economy is structured as a joint venture based on the principle of kinship;
- (2) Production branches that is important to the state and which affect the livelihood of many people;
- (3) Earth, water and the natural resources contained in it are controlled by the state and utilized as much as possible for the people's prosperity;
- (4) The national economy is based on democracy with the principle of togetherness, efficiency, sustainability, environmentalism, independence, and maintaining a balance of progress and national economic unity.

Furthermore, Article 34 of the Constitution of the Republic of Indonesia stated that:

- (1) The poor and homeless children are maintained by the state;
- (2) The state develops a social security system for all people and empowers people who are weak and incapable by human dignity;
- (3) The state is responsible for providing facilities for decent health services and public service facilities.

Taking into account the usefulness of collecting and distributing *zakat* from state civil servants, someone in his life must do the utmost and be useful, this was revealed by John Rawls; expressing his rational consideration that one's benefits are determined by life plans chosen by rational considerations from various groups (John Rawls 2011,539).

Based on the *Quran* and *Hadith*, the legal aspects in the *muammalah* are developed by the *ulama*, including Imam As-Syatibi who has tried to develop the practices or principles contained in the two Islamic teachings relating to *maqashidShari'ah*. The study carried out with the Islamic *Maqashid* approach was more focused on the benefit. Furthermore, the benefit is the goal of *Shari'ah* in the world and the hereafter (Abu Ishaq Ibrahim ibn Musa al-Gharnatiasy-Syatibi 1995, 225). In Holy Qur'an, it is said that the Prophet himself was a good example,( Quran Surah Al Ahzab, 21) in this case before the Prophet invited his people in kindness to first do good. The implementation of the Civil Servant *Zakat* deduction should be initiated from the highest official; in this case, the vice president is continued with the ministers. Furthermore, in the fiqh rules "*al-muhafazatul al qodimishholeh wal ah zubil jadidilashlah*" is said. Good old regulations must be maintained while waiting for better new regulations.

### *Examples of Calculation of Professional Zakat*

If someone has a monthly income of 20,000,000, then deducted home installments, vehicle deposits, debts in other banks, the entire monthly deduction is 12,000,000; the total net income is 8,000,000. If monthly revenue is calculated, there is not enough one *nishab*, then it is collected for one year, so  $8,000,000 \times 12 \text{ months} = 96,000,000$  (one-year net income). Paying attention to the standard of issuing of income *zakat* using the gold standard of 85 gr  $\times$  550,000 (gold price in 2019) = 46,750,000 then the income exceeds the gold standard must be issued *zakat*. The amount of one year net income is  $96,000,000 \times 2.5\% = \text{Rp } 2,400,000$  (income paid for one year).

### *Zakat from Yields of the Sea*

Taking *zakat* from marine products is very important by taking into account the number of fishermen of 1.6 millions, but in the last 10 years small scale fisherman decreased to 800 thousand as of 3 February 2017 (Susi Pujiastuti, 2017) the value of fisheries production in 2016 reached 125 trillion or 6.83 million tons is the highest production value for 5 years.

Marine resources can exceed the income of farmers, as revealed by Sharif CicipSutardjo, former Minister of Marine Affairs and Fisheries that fishermen's income reaches 52 million per year, this figure is higher than farmers income reaching 20 million per year, fishermen's income is 26 million per year, fisheries sector grew by around 6%, while in the agricultural sector grew 3.5% (Sharif Cicip Stutardjo, 2014).

All types of *zakat mal* that have never been mentioned are *zakat* from marine resources. Noting the vast number of areas of the Republic of Indonesia consisting of land area 1,910,931.32 km<sup>2</sup> while the area of the Ocean = 3,544,743.9 km<sup>2</sup> two-thirds is the marine resources.

The imposition of *zakat* from fishermen is a part of legal finding as carried out by an academic, which is used as a reference in decision-making to be stipulated in regulations on the obligations of *zakat* from fishermen. This work found several articles that have not been included in the Law of the Republic of Indonesia Number 23 from the Year 2011 concerning the Management of *Zakat*: In Article 4 paragraph (2) it has not been stated about the *zakat* from Fishermen and professional *zakat*. There has been no task of data collection by *Amil* regarding *Muzakki* and *Mustahik*, there is a clash of norms between article 17 and article 38 which automatically abolishes article 41.

Concerning strengthening the legal structure of *zakat*, this work found several articles that need to be reconstructed. This change is intended to coherence or maintains consistency of regulations, avoid clashes, obscurity, and legal emptiness. Harmonization in law includes adjustments to laws and regulations, government decisions, judges' decisions,

legal systems, and legal principles to increase legal unity, legal certainty, justice and equality, usability and legal equality without obscuring and sacrificing legal pluralism. As an example of the clash of zakat regulations with the culture of the community, is contained in the Article Number 38: every person is forbidden to intentionally act as *amil zakat* to collect, distribute or utilize *zakat* without the permission of an authorized official.

While the culture of the community in *Ramadhan* distributes *zakat Fitrah*, not through the appointed of *amil* but the officers are accustomed to collecting and distributing it to people who deserve it. According to its nature, it was collected in the mosque, and more of the results of the collection of *zakat fitrah* were intended for the construction of the mosque.

From all the verses that explain *zakat*, it has a moral message that Muslims must be able to give, share, help and be able to make other people happy. This is following the word of God in the verse of An-Nisa verse 9 which means "do not leave the generation in a weak state". This verse is the basis for Muslims to work hard to meet family needs in all aspects such as education, health, expertise, economy, and welfare.

Paying attention to the receipt of *zakat* since 2017-2018 especially in the city of Mataram has not been increased yet. One factor in the amount of static *zakat* acceptance is that it has not included professional *zakat* such as from teachers/lecturers, doctors, advocates/lawyers, notaries, consultants, artists, and other professions.

### Positive Law of Reconstruction Model

The efforts of legal reconstruction are focused on the coherence of various legal norms that live and develop in plural societies, such as Western Law, Islamic Law, and customary law so it can become more integrated or functional in people's lives. The birth of Law Number 23, 2011 was a meaningful breakthrough in the management of zakat in Indonesia. This law expected to manage and empower *zakat* to be more professional. Thus, it will contribute to improving the people's economy. Some articles in Law Number 23, 2011 which need to be reconstructed are:

- a. Article 1 paragraph (1) stated: Management of *zakat* is an implementation planning activity, and coordination in the collection, distribution, and utilization of zakat. In the article, it is necessary to add data collection activity as the basis to zakat's distribution;
- b. Article 4 paragraph (1) stated: "*zakat* includes *zakat maal* and *zakat fitra*". In this article is necessary to be included the professional *zakat*;
- c. Article 38 stated, "every person is forbidden to intentionally act as *amil zakat* to collect, distribute or utilize *zakat* without the permission of an authorize officials". If this article is used, it will have the potential for the community.

## Reconstruction of *Zakat Fitrah*

There is an opinion of an irregular profession such as the speaker. Paying attention to this matter, professional *zakat* is used in two ways: first, the application of the Profession of Profit *Zakat*, (a) applying the *Nisabin* each amount of income or income received. Therefore, income that achieves as salary and honorarium that must be subject to *zakat* (Yusuf Qardawi, 483) (b). Collecting salary or income received many times in a certain time. Calculations of one *sha* 'Nishabof *zakat fitrah* (1/6 liter), or 1 1/3 Egyptian container, or equal to 2.167 Gram (based on the scale and size of wheat) (Yusuf Qardawi, 491). Furthermore, regarding *zakat fitrah* from 2.5 Kg to 3.5 Kg with the First calculation, So far the *zakat fitrah* issued by Muslims is 2.5 Kg, but paying attention to the basic expenditure of 2.5 kg of staple food. Alms of *fitrah* are issued as much as one *sha* or equivalent to four *muds*, one *mud* is the same as one midnight's second hand. Then the consideration of *zakat al-Fitr* from 2.5 Kg to 3.5 Kg is: The first one that was issued at that time was wheat because it was the staple food of the Egyptians at that time. Unlike the case in the territory of Indonesia, the main food is rice (rice), because rice is heavier than rice, then the size of one *mud* of wheat with one *mud* of rice is heavier, based on that, the *zakat fitrah* is issued at least 3.5 kg. Indonesia is a rule of law country, guarantees the survival of all Indonesian people and the rights of citizens to create a just and prosperous society.

## CONCLUSION

The efforts of the state to advance the public welfare of the people were contained in the state constitution Article Number 33 paragraph (3) and (4), Article 34 paragraph (1) and (2). These efforts include: Collecting data on the number of *mustahik muzakki*, both individuals and institutions so that the distribution of *zakat* becomes more maximal and right on target, reconstructing several articles in Law Number 23, 2011 such as the absence of professional *zakat* and the application of sanctions for *muzakki* that do not issue *zakat*. Entering the *zakat* that produced by fishermen, the intended results are not only those that can be captured by traditional means (fishing) but catches using boats. Sea income was far exceeded than the agricultural yields such as fish, squid, lobsters, coral reefs and seaweed. *Zakat* has a very important role in people's lives, not only to assist the poor, neglected children or other aspects, but it can also be an economic instrument in eradicating poverty and increasing public welfare. Another important thing is as an instrument of economic democracy, *zakat* requires people who can allocate a portion of their assets to people who are unable to encourage the mobilization of economic potential and change the status of *mustahik* to *muzakki*.

In order to accelerate the realization of the above ideas, it is important to conduct several things: (i) to coherent while strengthening the norms or legal institutions relating to zakat; (ii) harmonization of laws or *zakat* regulations with the culture of the community; (iii) expansion of the scope of income objects that must be *zakat* alike such as professional *zakat*, marine zakat, (iv) raise the volume of *zakat fitrah* from 2.5 kg to 3.5 kg. 

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