

The Democratic Zakat Implementation Model: A Shared Role Between State and Civil Society of Indonesia

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Abstract: This study discusses the role of State and society in the implementation of zakat in Indonesia which aimed to show the dynamics of zakat management and its implementation so that now formed the pattern of role shared between the State through BAZNAS and its civil society in the form of LAZ and traditional zakat management. The implementation of zakat in the history of Indonesia showed a continuous change, from the beginning as a personal worship that must be fulfilled by every Muslim until now as one of the assignment of the State as well-regulated in law. The sharing roles in zakat management did not occur intentionally and also unplanned, there was a long process involving many factors such as historical, social, religious, and even political aspects. This research is a qualitative research based on library research about zakat and its regulations with juridical-normative approach. Finally, this study proved that the role sharing in the implementation of zakat between State and society is democratic evidence which makes it different from other countries.

1 INTRODUCTION

One of the democratic countries' character is civil's involvement which is a necessity. The state as expressed by (Budiarjo 2003) is an organization that can force people to achieve a common goal, in the Indonesian context, the goals and purposes of this country have been formulated in the Constitution which in its opening included 4 things, those are protecting the entire people of Indonesia, to advance and educate the life of the nation, and carry out world order. Indonesia is a democratic country and the most populous Muslim country in the world.

The history of democracy and Islam in Indonesia has experienced a disunity and disintegration potential of a nation caused by seven words in the Jakarta charter (Khamami 2001). Nationalist and religious prominent of Muslim fighters who want to oblige Islamic law for the Indonesian Muslim population was not in line with non-Muslims' will who threatened to separate themselves from Indonesia if that was really implemented. Keeping the unity and integrity of the nation at its independence beginning was considered to be more urgent and vital than forcing the the shari'a implementation desire which would be included in the first principle of Pancasila.

As a majority of Muslims country -both of the government elites and civil society- there will be an efforts and interests to propose Muslim's aspirations

and make them synergized with national programs either regional or central levels. The attempting of Islamic law formalization in Indonesia from the past until now has never been completed, there were many legislations are adopted from the Islamic law, even so Indonesia consistently on track as a Pancasila state, not an Islamic state, which does not use Islamic Law as a legal constitution. In other words we can say that Islamic Laws in Indonesia only those are have been ratified through legislation process, such as the Marriage Law No.1 year 1974 and the Compilation of Islamic Law (KHI) become a positive law that has a power and binding rule. Thus the activities of other Islamic law that are carried out by the Indonesian Muslim population and have not been legislated into laws and regulations are still personal-voluntary thing, not affirmed as an obligation in national law along with other consequences, one of those Islamic Law is zakat.

Unlike the Islamic marriage law which has been accommodated in the Law or the provisions of the Islamic Criminal Law (*hudud wa jinayat*) which are not used in Indonesia, zakat is still in a dilemmatic middle position, indeed there is a positive law Special laws governing the management of zakat, namely Law No. 23 of 2011 (zakat law 23/2011), but there is no firm word in that law which mention zakat is an obligatory matter that must be carried out by every Muslim who has fulfilled the requirements, so that it is still voluntary, not mandatory substance.

In this position, in fact zakat funds that can be collected in Indonesia increased over times, however that fund is not appropriate if we compare with the potential of zakat in Indonesia.

On the other hand, what needs to be considered related to zakat in Indonesia is the role of zakat managers or in Fiqh's terms known as *al-'Amilin 'ala al-Zakah*. The history of zakat management in Indonesia is inseparable from the active role of Muslim communities who have already started to collect and distribute zakat funds earlier than state (bottom-up). The presence of the state in zakat management has only been seen since the first zakat law was promulgated in 1999, and then formed the National Zakat Agency (BAZNAS) in 2001, while a similar agency formed by the community has been operating since 1987.

The state has a dual role in the management of zakat, as a regulator and operator which is affirmed in UUPZ 23/2011, this is considered to weaken the position of civil zakat agency because there is an effort to centralize zakat management by the state. With a spirit of democracy and the freedom to express opinions and aspirations guaranteed by the Law, the zakat managers from the civil society sued and conducted a judicial review of UUPZ 23/2011 to the Constitutional Court because several articles were considered to violate the Constitution. This is a real democratic process, in which the civil society is facilitated with a legal system that allows for a review of the regulations which is made of the government, and the all processes have been regulated in the Indonesian state constitution so it guarantees the involvement of the civil society as one of the nation's important democratic elements.

2. LITERATURE REVIEW

Zakat has become the main theme of research conducted by many researchers. Many aspects can be examined from zakat, because of its multidimensional nature, starting from the legal aspect of zakat, its management aspects which consist of collection and distribution, even the economic aspects of zakat and its accounting can also be examined.

In Fuadah Johari, Muhammad Ridwan Ab. Aziz, and Ahmad Fahme Mohd Ali's research (Johari 2014) during the 2003-2013 periods, they found 108 studies on zakat such as in the form of seminar papers, journals, and articles that can be tracked on Google Scholar.

A number of researches on zakat that they found were divided into four categories as the main focus

of research, namely zakat management, zakat collection, zakat distribution, and poverty (Johari 2014).

The results of their research showed that the study of zakat from its empirical aspects was mostly done with mixed research methods and Malaysia became the most frequently researched area.

This paper focuses on the discourse of zakat management and its implementation by the state and civil society. Several studies on this subject have also been conducted, such as Saidurrahman's (Saidurrahman 2013) study which revealed the tension between BAZ and LAZ which originated from political aspects in the management of zakat in Indonesia.

The same thing has been done by Heru Susetyo who examined aspects of zakat management and its relation to the state and society. He concluded that there was competition in the management of zakat in Indonesia which occurred between government actors and non-government actors (2015).

Another study was conducted by Aden Rosadi and Mohammad Anton Athoillah which highlighted the role of the state and society in the distribution of zakat funds, between centralization and decentralization which concluded that in the Indonesian context, zakat funds are more appropriate for decentralization, which allows each region to distribute zakat to its *mustahiq* in the area (2015).

Decentralization of zakat management is also supported by Yuni Sudarwati and Nidya Waras Sayekti's research (Sayekti 2011). They analyze the impact and consequences if zakat management in Indonesia is centralized.

According to Russell Powell (Powell 2010) the management of zakat in some countries that have a majority Muslim population is divided into three models, namely, *first*, the state does not interfere at all and takes care of zakat even though its citizens are mostly Muslim, as can be found in Turkey. *Second*, the State facilitates management of zakat clearly regulated in its laws, but the roles and positions of each country are different from each other, it happens in Egypt, Jordan, Iran, Kuwait, Bangladesh, Bahrain, Lebanon, Qatar, UAE, Oman, and Indonesia. While the *third*, the State equates zakat with tax so that obliges and forces all residents to pay zakat to the State, this kind of thing happens to Saudi Arabia, Pakistan, Libya, Sudan, Yemen and Malaysia.

Previous studies on zakat have not explicitly discussed the model of management and implementation of democratic zakat. The democratic nature and its proof of the zakat implementation in Indonesia is the distinction of this research and different from other studies.

3. ZAKAT MANAGEMENT PERSPECTIVE

In its early history, zakat has transformed from the state service (Islamic government) into personal obligation. Zakat fund can be used for many programs such as providing help in the form of finance and insurance to the deserving people, promoting entrepreneurship, establishing orphanages, promoting educational facilities, and providing aid and relief for emergencies such as riots, violence, and natural disasters (Ahmad and Mahmood 2009).

Basically, zakat is a state affair that involves the needs of many people (*asnaf al-mustahiqin*) and its management is carried out by the State starting from collection to distribution (Qaradawi 1973). Things like this were practiced during the period of Islamic rule under the leadership of Rasulullah saw. and Abu Bakar al-Sidiq and Umar bin Khattab.

In the era of Usman bin Affan, Zakat Mal began to be divided into 2 types, namely *al-amwal al-batinah* (non-visible treasures that people have like gold, silver, merchandise) whose zakat is a personal matter of each muzakki and *al-amwal al-zahirah* (visible treasures like animals, fruits and plants) whose zakat must be fulfilled through the Amil zakat of Islamic government.

The classification of this type of zakat continued in the next Islamic government, starting with the Umayyad, Abbasid and Islamic dynasties afterwards. This became the forerunner that underlies change of zakat payment manner to be voluntary and directly given to *mustahiq*. Another factor that made the change of zakat detachment was the mistrust of Muslims to the Islamic government at that time so they felt more trust and confident to fulfill it directly to *mustahiq* (Shaban 1976; Khaldun 2004).

The history of a shift in a ways of zakat payment in Islam has explained in detail by Amelia (Fauzia 2008). In addition to the distortion of the corrupt Islamic government at that time, many Fiqh experts - legitimized that zakat was a personal obligation between muzakki and Allah- played a role in preserving the allegiance of zakat personally not through amil.

The Similar conditions also occurred in the history of zakat management in Indonesia. The absence of the state in the management of zakat has fostered the assumption of the Muslim community that zakat is a personal obligation that is indeed fulfilled directly to *mustahiq*, or at least to local religious leaders.

State awareness in taking on the role of zakat management is inseparable from the support and

insistence of the Muslim community who had earlier concentrated on zakat, one of its was the establishment of Forum Zakat or FOZ (Salim 2008).

FOZ, through its congresses, finally succeeded in initiating the zakat bill to be legalized as Zakat Law No. 38 of 1999 which is the first zakat law in Indonesia. The enactment of this law marked change in the pattern of zakat management structures in Indonesia.

State that previously did not actively manage zakat, with the enactment of the law the role of the State was increasingly visible, one of that role was by mandate of the establishment of BAZNAS whose management placed in the center of country until the sub-districts.

That was a change in the pattern of management and the involvement of the Indonesian State towards zakat. Both the people and the state have taken an important role in the management of zakat in Indonesia so that there is no domination which then controls the management of zakat in Indonesia, even if it is the State.

4. THE DEMOCRACY IN ZAKAT ASPECT

Zakat is one of the unique pillars of Islam, because it relates with many things. It is worship which simultaneously combines the transcendental aspect between servant and God and the horizontal relationship between individual people. Zakat is also closely related to the economy because it is religiously motivated economic instrument which has a characteristic of wealth distribution that avoids its rotating among the rich people (Malik 2016). In state policy, zakat also has a relationship with political aspects.

As a Muslim worship, zakat has constitutionally regulated, moreover, the freedom of its implementation is mentioned in the 1945 Constitution, precisely Article 28E paragraph 1 which states that choosing religion and carrying out its worship process is the right of every citizen. In this case the state gives equal rights to adherents of any religion in Indonesia to carry out their worship while keeping public order, not breaking the rights of others, and not colliding with the existing rules.

Zakat procedure, whether it is collecting or distributing, is actually closer to economic activities (Abubakar 2011). In economics, democracy means promoting joint efforts for the welfare and prosperity of the people as stated in Article 33 of the 1945 Constitution. Democracy in the economy does not require the existence of wealth which is

monopolized by one party that cause a gap in society, but the welfare of the people is the main goal. In certain contexts, the state has the authority to control vital wealth of production and natural resources in order to realize the greatest prosperity of the people.

Life prosperity can be obtained through a good economic quality. Prosperity as the definition that refers to Midgley, Tracy and Livermore (Midgley et al 2000) is a condition that is prosperous (well-being) which leads to the conditions of meeting material and non-material needs or often referred to as social welfare. Prosperity occurs when individual lives are safe and happy because their basic needs for nutrition, health, education, shelter, and income can be fulfilled properly (Suharto 2006).

According to Suharto in his research (Suharto 2005), a prosperous country is a country that produces high GDP along with high social development. That means rich countries are not always prosperous when state expenditures -in terms of social development- are not balanced with their GDP, because the State's welfare in this term is the welfare of all its citizens, through effective and sustainable social programs, not only for those who are poor (in the form of compensation or benefits) but provide social protection to all levels of society so that welfare can be felt in all corners of the Country.

The pillar of economic harmony that this nation aspired as mentioned above can be found in the role of zakat as one of the instruments that improve the welfare of the large poor society. Zakat as an economic activity clearly implements the principle of participatory democracy from all capable and over-privileged individuals and corporations to set aside part of their assets to help people who deserve (*mustahiq al-zakah*).

In the political aspect, zakat as we know it has been passed by the House of Representatives of the Republic of Indonesia (DPR-RI) and signed by the President. In a democratic state, there will be always one principle of democracy where everyone has the same rights and opportunities to participate in government or to influence government actions (Sidharta 2004). That right and opportunity of people are represented by political actors in parliament, political parties as a political vehicle can be a bridge for every aspiration of the people to express their interests, and even so, zakat has gone through the same process.

Democracy in politics provides the widest possible right of giving opinion for every representative in the parliament as long as agree with the corridor that is not illegal and can be liable for that opinion. This condition confirms that in this democratic state it is impossible for legislation to

emerge which does not go through the legislative process in the DPR, so that all legislations that have been issued are political products in democracy.

Democracy in the aspect of zakat which will be discussed more in this paper is democracy at the level of zakat management actors which are now divided into two major parts, first, zakat management actor from the government in this case is BAZNAS and its networks both at the central level, province, to the city. Secondly, zakat management actors from the civil society either have had operational permits in the form of Amil Zakat Institutions (LAZ), or those who are still conducting cultural-traditional zakat management activities in mosques, prayer rooms and local religious leaders.

4.1 History of Zakat Regulation in Indonesia

Talking about zakat in Indonesia apart from the interference of the colonials, we will always intersect with the history of Islam sustainability in this country. Although there is no strong evidence to confirm that zakat was once officially managed by the Islamic kingdom in Indonesia before independence, basically the Indonesian Muslim population has practiced zakat worship voluntarily without coercion (Salim 2008).

The implementation of zakat by Indonesian Muslims securely continues from year to year without any regulation from the government. Finally the government through various suggestions based on the Minister of Religion Regulation No. 4 and 5 of 1968 formed a special agency that handles zakat issues, starting from the Province of DKI Jakarta with the Agency for Zakat Infaq and Shadaqah (BAZIS) which was then followed by the formation of a similar agency in several other areas (Effendi 1984).

While BAZIS performance has not been maximized, this situation encouraged the public to participate in the management of zakat, which was spearheaded by the Dana Sosial Al Falah (1987), Dompot Dhuafa Republika (1993), Rumah Zakat Indonesia (1998), and the Pos Keadilan Peduli Umat (1999). After this good momentum, various efforts continue to be promoted to establish regulations on zakat in Indonesia, including the issuance of a joint decision between the Minister of Home Affairs and Minister of Religion No. 29 and 47 in 1991 concerning Guidance on the Zakat, Infaq, and Sadaqah Agency.

The idea of preparing the zakat bill came after the first National Working Meeting of the Zakat Management Institution and the Zakat Forum was

held in early January 1999. The results from that meeting were followed up with a letter from the Minister of Religion No. MA/18/111/1999 regarding the application for approval of the drafting initiative The Draft Law on the management of zakat, then then the application was approved through a letter of the Minister of State Secretary No. B. 283/4/1999. (Amin 2000)

The discussion of the Draft Law on the management of zakat began with an explanation of the government which was started by the Minister of Religion on 26 July 1999. After that, from 26 August to 14 September 1999 a substance discussion forum was held to focus on zakat law draft. House of Representatives approved that draft with the decision DPR-RI Number 10 / DPR-RI / 1999 followed by a letter of the Chairman of the DPR-RI Number RU.01 / 03529 / DPR-RI / 1999 dated September 14, 1999 which was submitted to the president to be signed and passed into law on September 23, 1999 by the President of the Republic of Indonesia at that time Bacharuddin Jusuf Habibie thus on the same day the Act was promulgated as the law No. 38 year 1999 about the Management of Zakat which was the first law that legitimize and become a juridical basis for the practice of zakat management in Indonesia.

Twelve years after the first zakat law was promulgated, the government determined to improve and evaluate the regulation of zakat management because it was considered need improvement rules so that a new zakat management law was worked through in 2011. This was preceded by a working meeting between the House Commission VIII RI with the government on March 28, 2011 which agreed and ratified the establishment of a working committee on the management of zakat, infaq, and shadaqah law draft.

The working committee of the House of Representatives Commission VIII held 7 meetings and 2 consignments with the government along March to October 2011. The process of replacing the zakat law was quite tough because it caused disagreement among the factions in the commission VIII. One of the points of the debate is about the form of LAZ in order to obtain an operational permit. In the Zakat Bill, LAZ must be registered as an Islamic community organization that manages the fields of education, da'wah and social, as well as legal entities.

Finally after going through a long debate, the bill on the management of zakat was passed by the House of Representatives and the Government became Law No. 23 of 2011 in Jakarta on November 25, 2011 and entered into the State Gazette of the Republic of Indonesia in 2011 number 115 (Risalah Resmi DPR, 2011).

4.2. Judicial Review on Zakat Management Law

Since promulgation of zakat law 23/2011 Zakat has become one of the activities which it's management is regulated officially by laws and government regulations. The amendment to the zakat law in 1999 contains many fundamental changes to the rights and authority of zakat management in Indonesia. One of the changes is about the portion of the role of the state as the actor of zakat management.

The first zakat law was 1999 there has indeed been a distinction between the terms of mention for zakat managers, namely BAZ agency that formed by the government and LAZ institutions formed by the civil society. Differences in the position of these two agencies are also found in the implementation according to the 1999 and 2011 zakat law. The positions of BAZ and LAZ in the zakat law 38/1999 are equally strong, parallel, and there is no specific article that confirms the excessive authority between them, each BAZ and LAZ are responsible to the government as stated in articles 8 and 9. The position has changed since the promulgation of zakat law 23/2011.

If we look at the clauses of the articles in zakat law 23/2011 there are several articles that substantially support and want the maximum active role of the state in the management of zakat. For example article 5 of zakat law 23/2011 which explicitly states that the government established BAZNAS in order to carry out zakat management functions in Indonesia, then affirmed in article 6 that BAZNAS has the authority to carry out zakat management nationally.

Responding to this fundamental change, zakat practitioners did not only accept fatefully, but they applied for Judicial Review to the Constitutional Court in 2013 of several articles deemed contrary to the 1945 Constitution. There were eight (8) articles submitted to the Constitutional Court for tested, exactly there were Article 5, Article 6, Article 7, Article 17, Article 18, Article 19, Article 38, and Article 41 of the Law on Zakat Management and the application for testing was partly accepted and other were rejected.

Article 5, 6, and 7 of zakat law 23/2011 are used by the applicants as a argumentation that there was an effort to centralize the management of zakat by the government, causing a number of consequences that are contrary to the 1945 Constitution, but the testing of the following articles was declared unlawful according to the Constitutional Court, that meant that the articles were not given any correction, they will remain as stated in zakat law 23/2011. The same thing also happened in the examination of

articles 17 and 19 - which the applicant deemed to have changed LAZ's position against BAZ, being subordinated - rejected by the Constitutional Court and declared not to have received the constitutional examination of the two articles and not legally grounded.

The articles that were received by the constitutional examination were articles 18, 38 and 41 zakat law 23/2011. Article 18 explains the LAZ requirements for obtaining operational permits, among the principal and substance of this article which is explained by the Constitutional Court is that the LAZ requirement must be in the form of an Islamic community organization, and a legal entity is not a cumulative requirement, but an alternative choice, only must still fulfilling the main requirements as a general obligation of zakat managers, i) exist in the field of Islamic religion; ii) non-profit; iii) has a zakat utilization plan / program; and iv) has the ability to carry out its work plan / program. Likewise with the necessity of LAZ sharia supervisors who according to the Constitutional Court do not violate the law as long as it is interpreted as internal or external sharia supervisors.

The examination of articles 38 and 41 which are related to the criminalization of *amil zakat* that does not obtain permission was also accepted by the Constitutional Court. As stated in articles 38 and 41 that every person who deliberately acts as *amil zakat* without permission from the authorized official will be sentenced to prison for a maximum of 1 (one) year or a maximum fine of Rp. 50,000,000 (fifty million rupiah).

The Constitutional Court in its explanation related to the article confirms that the *muzakki* interests must be protected with certainty that the zakat is distributed correctly and appropriately, but it must be admitted that there are still many areas which are not covered by BAZ or LAZ so that the Muslim community can only distribute zakat through mosques or religious leaders over there. If it forced to follow these rules, the right of Indonesian muslim citizens to fulfil their worship (zakat) will be disrupted because of the potential for a vacuum of zakat services in the society. This barrier for citizens to fulfil their obligations or religious demands which according to the Constitutional Court breaks the 1945 Constitution, especially article 28E paragraph (2) and article 29 paragraph (2) of the 1945 Constitution.

4.3. Society Participation in Zakat Management

Admittedly Indonesia is one of the countries that has improved zakat management from time to time, both improving the performance of BAZ (BAZNAS, 2015) and LAZ (Dompot Dhuafa, 2015) the improvement of regulations and the commitment of zakat managers to become more professional made zakat management in Indonesia more transparent, accountable, modern, and of course beneficial for the society.

The unique condition of zakat management in Indonesia is how the government and society build synergies in activities related to zakat infaq and shadaqah and waqf in constructive forms. It is different from the management of zakat in Malaysia, for example, which is centralized by one institution so that the activities of collecting and distributing are only carried out by the relevant institutions without much involvement of the community, or the management of zakat which is not regulated at all as in Turkey (Lewis 1961). Indonesia, which has grown up with a history of Islamic practices carried out voluntarily, has inspired how zakat should be managed.

On one side, the government took strategic steps in legitimizing zakat management regulations, but in another perspective this also aims to encourage zakat practitioners to be more professional and accountable in how they are fulfilling their tasks to the zakat payers, public and other stakeholders and absolutely to Allah (Saad et al 2014).

The management of zakat that is desired The law is basically a form of synergy between the government and the civil society. It was proven by the obligatory existence of society elements in BAZNAS membership then continued the involvement of the community by forming LAZ as stated in zakat law 23/2011. Public awareness in striving for mutual care through zakat is something that must be maintained so that the balance of welfare can be increased and the inequality of wealth can be reduced.

The existence of two zakat management groups (government and society) makes two major parts of the zakat collection field in Indonesia. The government with its institutions is used as the main focus of zakat collection of BAZNAS while the general public and private corporations are more targeted by LAZNAS. This shared-target is proven by the massive movement of BAZNAS to form Zakat Collector Unit (UPZ) in state institutions, both

at the central and regional levels and the existence of a positive image exemplified by state officials to pay their zakat to BAZNAS especially in the month of Ramadan every year (BAZNAS, 2015).

Unlike the case with some LAZNAS, which is better known by the public in general, they actively go to the field to collect zakat in the society, have many volunteers who are usually college students or social activists. LAZNAS collection access is more to individuals who have trusted their performance so they become muzakki at the institution.

5. CONCLUSIONS

After the discussion above, it can be concluded that the implementation of zakat in Indonesia has proven to be so democratic which then led to the division of management roles between the state and society through their respective institutions. The nature of the management of democratic zakat can be found in the process of enacting zakat laws, both in discussions in the DPR, and after the law was passed which then led to reactions from zakat practitioners to conduct material testing related to the zakat law to the Constitutional Court until now we see that both state and civil society are working together in synergy to carry out zakat management.

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