Zakat in Indonesian State Treasury Funds: Its Potential Obstacle and Abuse

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Abstract. Zakat (alms-giving) is a model of revenue distribution in Islamic Law. The historical concept of zakat is an Islamic state income. Islamic government collects zakat from wealthy moslem because they are obliged to take at least 2.5% from their wealth to be donated to the poor. The collected funds of zakat were pooled in baitul maal (state treasury funds). The State then allocates them for mustahiq zakat (the recipient of zakat). Recently, the way moslems pay zakat especially in Indonesia has turned into individual obligatory expense (separated from the state budget). They usually complete zakat payment through traditional amil (zakat collectors) or nationally-registered zakat collecting institutions. It means that zakat is not purely a part of state income. However, the release of Indonesian Law Number 23, 2011 on Zakat Management brings about the discourse of the position of zakat in Indonesian Treasury Funds. It regulates the tax regressive for zakat payment provided that there is a valid receipt from registered amil. Later, the registered amil has to send an annual financial report to Official Zakat Collecting Institution and Indonesian Department for Religious Affairs. This mechanism raises the potency of national income generated from zakat. However, the later obstacle is how to manage zakat based on the principle of accountability and to avoid zakat abuse.

Keyword: obligatory; zakat; treasury; funds; abuse

1. Introduction

Indonesia has great potency in collecting zakat (alms-giving) funds due to the structure of Indonesian demography. Indonesia is the state with Islamic confessor as the majority of demography. The demography condition impacts to community order. The law and the government policy mostly accommodate the Islamic confessor necessities such as religious pilgrimage of hajj, halal guarantee, Islamic financial institution, and zakat management. The accommodation of Islamic confessor necessities is a part of state guarantee toward the spiritual rights of the citizen. Article 29 verse (1) of The 1945 Constitution of The Republic of Indonesia states that “The state shall be based upon Belief in The One and Only God.” The article implies that Indonesia is not a state based on particular religion. However, the running of the state should be in accordance with the principle of Belief in The One and Only God. In other words, the order of the state should not contradict to the religious norm existed in Indonesia including the regulated norms in Islamic Law [1].

Therefore, Article 29 verse (2) of the 1945 Constitution of The Republic of Indonesia orders that “The state shall guarantee freedom to every resident to adhere to his/her religion and to worship in accordance with such religion and belief.” This article puts government obligation to guarantee all Indonesian resident for performing worship based on their religion, including the guarantee of Islamic confessor to implement the ruling of Islamic Law. For Moslems, freedom for worship means freedom for implementing praying, norm, and rule stated in Quran as Moslems’ Holy Book, and sunnah as the utterance, custom, and behavior of Prophet Muhammad Peace be upon Him (shortened as Muhammad Pbuh). The compulsory praying for Muslim refers to the five pillars of Islam. They consist of declaring shahadat (Confession Allah is the only God and Muhammad is as His Messanger), five times daily praying (salat), paying zakat, fasting in a Holy Ramadhan month, and going for hajj to Mecca.
Islamic Law has concepts of worship, hablum min Allah and hablum minan naas. Hablum min Allah binds the relation between human beings as creature with Allah (God) by vertical worships, such as shahadat, salat, fasting, and hajj. On the contrary, hablum minan naas means the binding relation between human and human toward horizontal worships in form of giving assistance each other, hibah (reward a gift), sharing distribution of income in form of zakat (aims-giving), infaq (benefaction spending), and sadaqah (charity). Most of horizontal worships are categorized as sunnah (recommended to be done), except zakat that is compulsory. When Moslems conduct both vertical and horizontal worships, they create balancing and harmony [3]. As the impact, civil society can be formed. Based on the history of Islamic government during the period of Prophet Muhammad Pbuh until the Caliph periods, zakat has a significant role in eradicating poverty. Wealthy moslems are commanded to pay zakat and non-moslems must pay jizyah (tax). State will distribute the income from zakat to mustahiq zakat, the parties who deserve to receive zakat [4]. One of the success performances of the Caliphs in managing zakat to create prosperity was shown in the periods of Caliph Umar bin Abdul Aziz. He succeeded to collect zakat abundantly until the amil (zakat collectors) expanded the distribution of zakat [5]. It happened because his people thought that they lived in welfare and did not deserve to be zakat recipients. Due to the history, the obligation of zakat indeed creates great potency for poverty alleviation. Therefore, the majority numbers of Moslem in Indonesia can also bring in numerous zakat funds to be distributed for the needy. However, the potency of the income of zakat absolutely depends on the obedience of Indonesian wealthy moslems toward the command of zakat in Quran. Therefore, zakat collection and distribution deserves to be managed well. Indonesian government has concern on the need of profesional zakat management. It is implied by the issue of Indonesian Law Number 23, 2011 on Zakat Management.

The potency of zakat in Indonesia was estimated as much as 217 billion rupiahs however only 1% of it can be absorbed. Therefore, National Body of Zakat Management of Indonesia targeted the improvement of zakat payment annually. It expects to reach 20 billion rupiahs from domestics and 100 billion rupiahs from industry [6]. The target is uneasily to be fulfilled because most of Indonesian Moslems distribute zakat conventionally man to man. In other words, the distribution of zakat is not organized systematically. Based on the description above, this paper tries to clarify about the pattern of zakat management in Indonesia. The pattern here means how Indonesian law regulates the management of zakat collection and distribution as well as its practice. The regulation and its practice will be analyzed based on the norms in Islamic Law. In addition, this paper wants to explore the potency of zakat fund to be integrated in Indonesian state treasury. They are analyzed based Indonesian Law Number 23, 2011 on Zakat Management and Indonesian Law Number 13, 2007 on State Budgeting.

2. Methodology

The issues on this paper are explored toward legal research. Legal research means a study on rules, legal principles, concepts or theories, doctrines of law, cases and/or verdict, legal body, and legal issue whether the study specifically settles on one aspect or combination among them [7]. This paper focuses on researching the legal issues on the synchronization of the regulation of zakat management and its practice with Islamic Law as well as the potency to include zakat in national income of Indonesia and its obstacles. The research also combines doctrinal and non-doctrinal research. The issues were analyzed by using the combination of legislation and fact approach. The combination approaches, such as the keyword or fact, case, and legislation approach create a good sense [8]. The strengthened keyword here is the zakat management, the fact is its practice in Indonesia, and the legislation is Indonesian Law Number 23, 2011 on Zakat Management, the principle and norms in Quran, sunnah, and fiqh (Islamic jurisprudence) on zakat. Therefore, it is categorized as descriptive study to find the fact in order to ascertain “state of affairs in respect of the legal issue.” It is useful to form logical and coherent framework [7].
3. Findings

3.1. The Legitimacy of Zakat in Islamic Law

Zakat in etymology derives from the word zaka, which has meaning purification or growing. Meanwhile, zakat terminologically defines as a sum of the particular wealth which is compulsory to be given to the person who deserve to receive zakat [9]. The literal meaning is strengthened Quran Surah At-Taubah verse 103, translated as “Of their goods, take alms, that so thou mightiest purify and sanctify them; and pray on their behalf ” [10]. The obligation of zakat has a very strong legitimacy in Quran. It is stated thirty times in Quran and the twenty seven from the thirty come along with salat or praying(4), such as the statement in Quran Surah Al-Baqarah verse 2, translated as “And be steadfast in prayer; practice zakat (regular charity)” [11] and Quran Surat At-Taubah verse 18, translated as “The mosques of Allah shall be visited and maintained by such as believe in Allah and the Last Day, establish regular prayers, and practise regular charity, and fear none (at all) except Allah...” [12]

The translation of Quran verse shows that the zakat is a compulsory charity which functions as purification. As a kind of charity (donating wealth to the needy), zakat becomes one of the implementation of the principles of ta’awun (mutual assistance). The principle of ta’awun is stated in Quran Surah Al-Maidah verse 3, translated as “Help ye one another in righteousness and piety, but help ye not one another in sin and rancor [13]”. The principle of ta’awun has to be paid into consideration in economic development [14]. Therefore, zakat is the main source to implement it in the context of poverty eradication. Zakat management may work together with the business association and microfinance institution [15].

3.2. History of Zakat Management in Islamic Caliph Periods

Prophet Muhammad Pbuh put zakat as the primary source of state income besides jizyah (tax for non-moslem), spoils of war, fine, and tribute. After being collected, zakat funds were distributed to the zakat recipients based on Quran Surah At-Taubah verse 60, namely fuqara (indigent/poor), masakin (needy), amil (zakat collector), muallaf (person who converts to Islam), riqab (slave who want to liberate himself), gharim (person who is burdened with a lot of debt), fisabilillah (a person who is entitled in the struggle of Islamic missionary endeavor), and ibnusabil (wayfarers) [16]. Meanwhile, the state income from another sources is used for public interest, public service and facility, and national defense [17]. Later, Abu Bakar, the first caliph after Prophet Muhammad Pbuh ran the economic policy as the Prophet did. He put into consideration the accuracy of zakat calculation and kept it in baitulmaal (state treasury funds). The funds kept in baitulmaal must be treated trustfully because they were public domain. In fact, no fund was kept in baitulmaal for longer time because officers distributed immediately. Thus, zakat has significant role to achieve prosperity [18]. Umar bin Khatab, The second Caliph, strengthened the centralization of zakat management. The obedience of zakat payment became the main focus. Muaz bin Jabal, his Governor, was pointed as the first head of amil (zakat collector institution). He succeeded to share 1/3 surplus of the income from zakat until ½ surplus of it to central government [5]. Ustman bin Affan, the third Caliph, announced the self-assessment method of paying zakat. Moslem should calculate their sum of zakat themselves and pay it to the zakat officer. It differed from the previous caliphs who collected directly to the muzakki, the party who are obliged to pay zakat [4].

The pattern of well management of zakat was contemplated in the period of Umar bin Abdul Aziz. The zakat officer, Governor Yazid bin Abdurrahman, reported the surplus of zakat. Caliph Umar bin Abdul Aziz ordered to distribute zakat to pay off the non-wasteful Moslems’ debt. Remaining surplus, The Caliph ordered to marry bachelor and pay his dowry. Finally, Yazid, the zakat officer, looked for persons who needed capital for running business. He granted capital from zakat fund without obligation to return it. However, the officer still reported the surplus of zakat [5]. The history of well-managed zakat proved the success to transform zakat recipient to become muzakki.
3.3. Zakat Regulation and Management in Indonesia

The previous discussion described the compulsory of zakat according to Islamic Law. Although the majority of Indonesian residents are Moslems and some of Indonesian Laws accommodate Islamic law as a part of positive law, unfortunately, Indonesian Law Number 23, 2011 on Zakat Management arranged zakat as voluntary not compulsory. It means that the payment of zakat is due to the Moslems’ awareness [19]. The flaw of the Law is also strengthened on the management of zakat institution. There is no penalty for Moslems who do not fulfill their obligation to pay zakat.

On the contrary, Tax is considered as state obligation. Indonesian Tax Law orders the compulsory of the tax for all Indonesian resident, both rich man and poor man. For instance, the poor man has a house. Although it is just a simple and uncomfortable wooden house, he must pay land and building tax. When the poor man has defaulted to pay tax, the state will consider it as a negligence to pay tax. State remains to insist him to pay off. If he does not fulfill it, the state punishes him with additional fine toward his tax. As the result, the poor man is burdened with its fine. When he remains not to pay it, he loses his citizen right in administrative public service. It essentially creates unfairness for the poor man. He is a needy but is still burdened to pay tax. For Moslems, tax obligation creates double burden payment, namely tax itself and zakat. Tax is categorized as state obligation but zakat is religious obligation. Therefore, state concentrates on the tax bill and puts zakat as voluntary in the context of Indonesian positive law.

In fact, zakat basically has fairer concept than tax does. The needy are not obliged to pay zakat, they precisely become the zakat recipients. Zakat is compulsory for Moslems whose wealth reaches nishab (particular limit in sum) and haul (particular limit time). For instance, a Moslem deposits 100 gram of gold. After a year, he must pay its zakat with the sum of 2.5% from its weight because it reaches the nishab of gold deposit namely 85 gram and its haul or time belonging (a year). Thus, he must pay 2.5% x 100 gram of gold, it equals to 2.5 gram of gold. If the Moslem wants to pay with money, he must multiply 2.5 gram of gold with the current price of a gram of gold. In other words, Moslem, who has gold less than 85 gram, is not muzakki.

Not all Moslems are categorized as muzakki but all citizens must report their tax annually. Indonesia Law number 23, 2011 accommodates a regressive tax if Moslem has paid zakat. However, the research found that the regulation cannot be simply implemented. Moslem who wants to have a regressive tax should pay zakat in registered zakat institutions. Then, he should keep the receipts. When he reports the annual tax paying, he should put the sum to the religious alms. The tax official will confirm to the receipt of zakat. Afterward, the zakat payer should receive a tax regressive. However, the process of withdrawing the excision sum of tax is difficult as the tax that has been paid was tracked as state income. Although the process is successful, the return is not in the form of cash money but the regressive tax for the next year. However, the implementation does not run well. Not all Moslems receive the returned fund or the regressive tax in the next year. When the regressive tax policy in Indonesia does not effectively run, Indonesian Moslems remain in the double burden payment of tax and zakat. This condition is supported by the custom of Indonesians paying their zakat in traditional amil or unregistered amil. Traditional amil here usually exists in sub-urban mosque, village, and traditional Islamic boarding institution. Most traditional amil do not read the transaction of zakat in detail because most zakat payers do not write his name clearly. They usually use anonym or initial name, with the reason of whole-hearted worship. Whereas, to get the regressive tax, they must show the official receipt of zakat with certain name of the muzakki. Some muzakki choose to distribute their zakat themselves. The problems arise here when the muzakki cannot receive their right to get regressive tax and the management distribution of zakat is not well-organized. When zakat is not managed as it deserves, the potential will be lost.
When zakat is distributed personally or traditionally, it will not create significant impact because the distribution is oriented on domestic or consumptive purpose. The previous research was conducted through Baitulmaal of Aceh. Aceh is the province in Indonesia which has special autonomy to conduct its government due to Islamic Law. The Research found that the distribution of zakat of Baitul Maal of Aceh has been oriented in productive field by giving rice field, farming, and carpentry tools for business. It impacted significantly to the recipients’ income until 19 percent [20]. The orientation of productive distribution also is also implemented by Zakat Institution in Yogyakarta which is successful to reduce poverty [21]. The fact proves that zakat management on poverty alleviation should be organized and oriented to productive purposes. Besides, the capacity building of amil should also be improved. Malaysia has organized zakat institutions. However, they still need the expanded program of zakat institution, administered of zakat payers, and capacity building program to succeed the eradication of poverty [22]. Therefore, Indonesian government should have a projection of the expanded program to organize zakat. Zakat can be projected as one of the state income, stated in Indonesian Law Number 17, 2003, as non-tax income. However, including zakat as state income can lead to zakat abuse. State financial system in Indonesia lacks transparency and there is a high risk for corruption both from the system and from the apparatus. Therefore, the discourse of including zakat as state income can raise rejection because of the worry of its abuse. However, the zakat distribution will not reach its optimal target if it does not run together with the state program. The solution offered is to integrate the government program with the zakat institution program. First, Moslem should be encouraged to pay their zakat to registered body. Second, government should support traditional amil to be a registered professional body. Third, national and local government should coordinate the target of poverty alleviation program with the national zakat institution. National Zakat institution then coordinates the program together with other registered zakat institutions.

4. Conclusion

Based on the above discussion, the conclusions are formulated as follows:

- Indonesian Law does not arrange the compulsory of zakat. The payment of is voluntary. It creates double burden of zakat and tax for Moslem. Although Indonesian Law on Zakat Management rules on regressive tax due to zakat payment, it does not run effectively. As the result, Moslems remain in double burden.

- Zakat management has not yet well-organized. Moslems tend to pay zakat in traditional amil or distribute themselves. It impacts to the distribution orientation of zakat is still consumptive and not productive.

- Zakat actually can be included as state income due to Indonesia Law Number 17, 2003. However, it creates potential abuse and lack of transparency, corruption, and less-accountability.

Based on the conclusions, suggestions are given, as the following:

- Government should encourage Moslem to pay zakat in registered institution and make the regulation of regressive tax easily implemented.

- Zakat should be managed with productive orientation.

- The income from zakat can be synergized with the government program through registered body, although it is not considered as state income.
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6. References

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