

TRANSFORMATION OF FIQH IN THE FORMS OF HAJJ AND ZAKAT LEGISLATION

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Abstrak

Artikel ini bertujuan untuk memberikan pemahaman tentang perundang-undangan zakat dan haji di Indonesia. Pendekatan yang dipakai adalah analisis terhadap undang-undang itu sendiri. UU Haji dan Zakat merupakan bentuk transformasi fikih Islam di Indonesia. Peraturan haji dan zakat terbaru diatur dalam Undang-undang Republik Indonesia Nomor 8 Tahun 2019 tentang Penyelenggaraan Ibadah Haji dan Umrah dan Undang-undang Republik Indonesia Nomor 23 Tahun 2011 tentang Pengelolaan Zakat. Dengan UU tersebut, berarti pemerintah bertanggung jawab terhadap pelaksanaan penyelenggaraan ibadah haji bagi umat Islam di Indonesia. Tanggung jawab tersebut meliputi pendaftaran, penetapan kuota, penetapan setoran, bimbingan haji, dan lain sebagainya yang berkaitan dengan kebutuhan jemaah haji. Sejarah peraturan perundang-undangan Islam di Indonesia dalam pembentukan undang-undang zakat merupakan proses perjalanan panjang dan ironik. Zakat dalam fikih termasuk bagian dari ibadah sekalipun ada sisi muamalah terutama aspek publik. Kebijakan pemerintah dalam bidang ibadah memberikan kebebasan yang seluas-luasnya.

Kata Kunci: Perundang-undangan; UU Zakat; UU Haji; Zakat dan Haji.

Abstract

This article aims to provide an understanding of zakat and hajj legislation in Indonesia. The approach used is an analysis of the law itself. The Hajj and Zakat Law is a form of transformation of Islamic Jurisprudence in Indonesia. The latest hajj and zakat legislation are regulated in the Law of the Republic of Indonesia Number 8 of 2019 concerning the Organization of Hajj and Umrah and the Law of the Republic of Indonesia Number 23 of 2011 concerning Management of Zakat. It means that the government is responsible for the implementation of the pilgrimage for Muslims in Indonesia. These responsibilities include registration, determination of quotas, determination of deposits, guidance on hajj, etc. relating to the needs of pilgrims. The history of Islamic laws and regulations in Indonesia in the formation of zakat laws is a long and ironic journey. Zakat in fiqh is included not only as part of worship but also aspects of muamalah, especially the public aspect. Government policies in the field of worship provide the widest possible freedom.

Keyword: Legislation; Rules of Zakat; Rules of Hajj; Zakat and Hajj.

I. Introduction

Hajj is the fifth pillar of Islam which is the duty of every Muslim once in a lifetime for those who are able to fulfill it, both physically and materially. Hajj is not just verbal-rhythmic which has no meaning, but it contains philosophical symbols that have profound meanings.¹

Zakat as third pillar of Islam is the obligation of every Muslim who is eligible to spend part of his income or assets in accordance with the provisions of the Islamic religion to be given to various elements of society who are entitled to receive it. Therefore, zakat is an indicator of the faith which adheres to the teachings of Islam. Zakat can also be used as an indicator of Islamic quality which is a form of commitment to a Muslim's solidarity with other fellow Muslims.²

Zakat and hajj causes problems in the scope of public law. The state has the right to take over its management. Legislation is needed in regulating it. Zakat is the axis of the financial center of the Islamic State. Zakat covers the moral, social, and economic fields. In the moral field, zakat erodes the greed of the rich. Social aspects, zakat acts as a unique tool given by Islam to eradicate poverty in society by making people aware of the rich social responsibilities. In the economic field, Zakat prevents the horrendous buildup of wealth in the hands of a handful of people and allows wealth to be spread before it can become large and very dangerous in the hands of its owner. Zakat is a mandatory contribution of Muslims to the state treasury.³

¹Istianah, "Proses Haji dan Maknanya", *Esoterik: Jurnal Akhlak dan Tasawuf*, Vol. 2, No. 1, 2016, page 30.

²Ali Ridlo, "Zakat dalam Perspektif Ekonomi Islam", *al-'Adl*, Vol. 7, No. 1, Januari 2014, page 119.

³Abdul Mannan, *Teori dan Praktek Ekonomi Islam* (Yogyakarta : PT. Dana Bhakti Prima Yasa, 1997), page. 256.

Hajj and zakat are also the main indicators for Muslims as a form of submission to Islam. In this case, it is fitting that the existing regulations in Indonesia in the form of laws have been enacted, even though they have improved.

Before the enactment of these rules and regulations, Zakat management in Indonesia was only formally regulated at the level of legislation in the late 1990s, with the issuance of Law No. 38 of 1999 concerning Management of Zakat. Before this decade, the implementation of zakat and its management in the midst of the community were more local and individual in nature, so that it seemed not synergistic and not coordinative and did not meet the distribution of zakat distribution. In fact, during the Dutch colonial period in Indonesia, zakat was misused.

II. Discussion

A. Transformation of Fikih in the Form of Hajj Legislation

In language, Hajj means intentional or intent (al-qasd). In terms of pilgrimage, it is the intention of visiting the Ka'bah with its practices (*qasd al-bait al-haram li al-nusuk*).⁴Hajj is a worship that is prescribed in the Qur'anin Surah Ali 'Imran / 3: 97:

فِيهِ آيَاتٌ بَيِّنَاتٌ مَّقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ
مَنْ أَسْتَطَاعَ إِلَيْهِ سَبِيلًا وَمَنْ كَفَرَ فَإِنَّ اللَّهَ غَنِيٌّ عَنِ الْعَالَمِينَ

Terjemahnya:

To him there are tangible signs, (among them) maqam Ibrahim; Whoever enters it (the Baitullah) becomes safe for him; performing hajj is a human obligation to Allah, that is (for) those who are able to travel to the Temple. Whoever denies (the obligation of Hajj), then surely Allah is Rich (does not need anything) from the universe.⁵

⁴Abu> al-Syu>ja>, *Syarh Fath} al-Qari>b* (Semarang: Toha Putra, t.th), page. 27.

⁵Kementrian Agama RI, *Al-Qur'an dan Terjemahnya* (Bandung: J-ART, 2004), page 87.

The verse explains that the law carrying out the pilgrimage is mandatory for those who have stock and the ability to do so, both physical and material abilities.

The implementation of the hajj in Indonesia includes annual activities that can not be avoided. Hundreds of thousands of Indonesian pilgrims even millions have registered themselves long before. These conditions cannot be handled by certain institutions, but must involve government intervention absolutely.

Before the reform era, the method of organizing the hajj pilgrimage is still using traditional methods and not yet computerized. People are free to perform the Hajj more than once and spreading of the Hajj bureaus outside the government regulations. This implies a risk if not handled seriously by the government.

The effort to overcome these various problems is the stipulation of provisions or legislation in the reform era. The law regulates registration, fostering, health, immigration, accommodation of luggage, special hajj, hajj fees (ONH), endowment funds of the people, even to criminal acts (sanctions).

The Hajj Law is a refinement of the hajj management system that was previously in shambles. With this law, people are no longer free to go on the pilgrimage, especially as pilgrims, except the Hajj guide. Pilgrims who want to register in advance queue for one year even more than that. For people who will perform the pilgrimage is allowed to perform it again after five years from the first pilgrimage. The Hajj Law is an ideal rule for the Indonesian hajj pilgrims, even though the pilgrimage issue never stops, as is the case with the people's endowment fund which is still not transparent.

The firmness of the law is seen from the existence of sanctions, even categorized as a criminal offense. This was stated in the articles of Law Number 17 of 1999 concerning the Implementation of Hajj as follows:

Article 27:

1. Anyone who intentionally acts as a recipient of BPIH payments as referred to in Article 10 paragraph 1 and / or acts as a recipient of the registration of prospective pilgrims as referred to in article 12 paragraph 1, even though he is not entitled to it, is threatened with a maximum imprisonment of four year and / or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).
2. Whoever intentionally acts as the organizer of the Umrah pilgrimage by collecting and / or dispatching worshipers as referred to in article 25 paragraph 3, even though he is not entitled to it, is threatened with a maximum imprisonment of four years and / or a maximum fine of Rp 500,000. 000.00 (five hundred million rupiah).

Article 28:

1. Special Hajj organizers who do not carry out the provisions referred to in article 24 paragraph 1 are threatened with a maximum imprisonment of six years and / or a maximum fine of Rp 1,000,000.00 (one million rupiah).
2. Organizers of Umrah pilgrimages who do not carry out the provisions referred to in article 26 paragraph 1 are threatened with a maximum imprisonment of six years and / or a maximum fine of Rp 1,000,000,000.00 (one billion rupiah).

Enactment of the Hajj Law provides fresh air to the community because the provisions of the pilgrimage have been ascertained. Unlike before, people have to

queue without any certainty of departure. Although, in the reality of society, formality rules can still be cheated with mere formality. It must be recognized that the law provides certainty and provisions that have been demanded, both by the community and other religious institutions.

In fact, Law No. 8 of 2019 concerning the Organization of Hajj and Umrah was ratified on 26 April 2019. In the Law (UU) known as the PIHU Law, there are quite a lot of significant differences between the main substance in this law and the previous Hajj Implementation Law.⁶The Hajj Law regulates a number of policies such as the delegation of portions for the congregation who died, the haj quota, amir al-hajj, PPIH and so forth. The law increasingly shows that Islamic jurisprudence related to hajj is increasingly gaining attention by the state.

Law of the Republic of Indonesia Number 8 of 2019 concerning the Implementation of Hajj provides a very good explanation of the principle of implementing the Hajj. The principles of organizing the pilgrimage include; Shari'a, trustworthiness, justice, benefit, expediency, safety, professionalism, security, transparency, and accountability.⁷

B. Transformation of Fikih in the Form of Legislation on the Management of Zakat

Zakat is a worship related to the economy and society (al-maliyah al-ijtima'iyah) in fiqh discourse. Zakat is one of the five pillars of Islam that has a very

⁶See a copy of Law of the Republic of Indonesia Number 8 of 2019 concerning the Implementation of Hajj and Umrah which consists of 132 Articles.

⁷Republic of Indonesia Law Number 8 Year 2019 concerning Organizing Hajj, page 6.

important status and function in Islam. The Qur'an emphasizes the obligation of zakat together with the obligation of prayer in 82 verses.⁸

Zakat is placed in the second part of the Mahdah worship. Thus, zakat is known automatically and an absolute part of Islamic teachings. Zakat which is an absolute part has two aspects, namely the expenditure or payment of zakat and the receipt or distribution of zakat.

The order to issue zakat shows that in Islam there is a strong urge that Muslims try to become zakat payers. In other words, Muslims must be able to try and work, then have assets that exceed their basic needs. People trying to be zakat payers, not zakat recipients. That is the main point of Islamic teachings, but it does not get adequate portion in the appearance of Islamic teachings.⁹

Allah swt. stated in QS al-Taubah/9: 103:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ
وَاللَّهُ سَمِيعٌ عَلِيمٌ ﴿١٠٣﴾

Meaning:

Take alms from some of their assets, with that alms you cleanse and purify them and pray for them. Verily, your prayers (become) peace of mind for them. And Allah is All-Hearing, All-Knowing.

Order to pay zakat in the Qur'an is generally accompanied by the command to pray. Simply put, the position of zakat is the same as the position of prayer. This was revealed by analyzing considerations; First, in Jurisprudence there is a theory in *iqtiran*. With this approach, the command of zakat is coupled with the command of prayer and it shows that the law of zakat and prayer is the same, that is obligatory.

⁸Abba>s Kara>rah, *al-Di>n wa al-Zaka>h* (al-Qa>hirah: Syirkah al-T{iba>'ah, 1956), page 50; Sayyid Sa>biq, *Fiqh al-Sunnah*, Juz I (Bairu>t: Da>r al-Fikr, 1982), h. 276.

⁹Ali Yafie, *Menggagas Fiqh Sosial* (Bandung: Mizan, 1994), page 231.

Secondly, in the history of Imam al-Bukhari it is said that Islam was built with five things, namely the two sentences of shahada, enforcement of prayers, performing zakat, pilgrimage, and fasting of Ramadan. Rasulullah SAW. said

حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ مُوسَى قَالَ أَخْبَرَنَا حَنْظَلَةُ بْنُ أَبِي سُفْيَانَ عَنْ عِكْرِمَةَ بْنِ خَالِدٍ عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بُنِيَ الْإِسْلَامُ عَلَى خَمْسٍ شَهَادَةٌ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ وَإِقَامُ الصَّلَاةِ وَإِيتَاءُ الزَّكَاةِ وَالْحَجُّ وَصَوْمُ رَمَضَانَ¹⁰

Artinya:

‘Ubaidillah bin Musa told us that Hantalah bin Abu Sufyan told us from ‘Ikrimah bin Khalid from Ibn ‘Umar ra. said that the Messenger of Allah. said: Islam is built with five things, namely testifying that there is no god but Allah and Muhammad is the messenger of God, establishing prayers, performing zakat, pilgrimage, and fasting ramadan.

In line with social, economic, cultural, scientific, and modern technological developments, the livelihoods of people who in earlier times were limited to agriculture, animal husbandry and trade, are now differentiated into new sectors that can bring in more wealth than those generated from livelihood first. Ownership of shares and bonds in the modern business world, is far more valuable than storing gold and silver. Likewise, the emergence of various types of modern work based on professions and expertise, such as lecturers, doctors, judges, lawyers, prosecutors, consultants, architects, managers or directors of companies, producers, artists, police and so on is far more profitable than farmers' income or traditional trader.

Efforts to regulate zakat management need to be supported by government facilities in the form of laws and regulations. Zakat management can be arranged according to the capacity and ability of the community. Regulations or laws are the legal umbrella that forms the basis of law enforcement.

¹⁰Abu ‘Abdilla>h Muh{ammad bin Isma>‘i>l al-Bukha>ri>, *S}ah>ji>h} al-Bukha>ri>*, JuzI (Cet. III; Bairu>t: Da>r IbnKas\i>r,1987 M.), page11.

The history of Islamic laws and regulations in Indonesia in the formation of zakat laws is a long and ironic journey. Zakat in fiqh is included as part of worship although there are aspects of muamalah, especially the public aspect. Government policies in the field of worship provide the widest possible freedom. Snouck (Abdul Gaffar) suggests that the worship of Muslims is supported and facilitated, while what should not be supported is political Islam.

Almost no statements or provisions have been found, either in classical or contemporary fiqh about the position of zakat in the context of private (private) and public law. The division between private and public areas is quite important to consider because there are different implications.¹¹

The law on zakat management seeks to build a transformative paradigm. The paradigm can be seen in the consideration of the bill. The first consideration is the guarantee of the state for its people to worship according to their respective religions freely. The second and third considerations are about zakat and social welfare. The fourth consideration is about improving the quality of the zakat management system.

One progress that can be seen from the Zakat Act is that there is a firm statement (explicit and explicit) regarding the management of zakat in order to be effective and efficient in realizing the welfare of the community. Management of zakat is done professionally and transparently, zakat will be able to improve the living standards of the people of Indonesia. Increasing the standard of living of the Indonesian Islamic community, means that crime in the form of theft, pickpocketing,

¹¹Private law implies that the law is only private and voluntary without coercion. Whereas government public law can force and bind.

and mugging caused by poverty will be reduced. Thus, the beneficiaries are not only Muslims, but the entire community of this nation.

The firmness of Law No. 38 of 1999 concerning Management of Zakat is accompanied by sanctions for zakat managers who do not carry out as expected. Nevertheless, this sanction only applies to the management of zakat not personally. This is stated in article 21 as follows:

1. Every zakat manager who due to his negligence does not record or incorrectly record zakat, infaq, alms, grants, wills, inheritance, and expiation as referred to in Article 8, Article 12, and Article 13 in this law shall be threatened with a sentence of imprisonment for as long as - a maximum of three months / or a maximum fine of IDR 30,000,000.00 (thirty million rupiahs).
2. The criminal act referred to in paragraph 1 above is a violation.
3. Every officer of amil zakat body and amil zakat institution who commit a crime is subject to sanctions in accordance with applicable laws and regulations.

However, Law Number 38 of 1999 concerning Management of Zakat was replaced by Law of the Republic of Indonesia Number 23 of 2011 concerning Management of Zakat because it was not in accordance with the development of legal needs in society so it needed to be replaced.¹²In the law provides an explanation that zakat is a religious institution that aims to improve justice and welfare of the community and increase the effectiveness and effectiveness, zakat is managed in an institutionalized manner in accordance with Islamic fiqh.

¹²Law of the Republic of Indonesia Number 23 of 2011 concerning Management of Zakat, page 1.

Explanation regarding Law Number 23 of 2011 concerning Management of Zakat as follows:

The state guarantees the independence of each population to embrace their respective religions and to worship according to their religion and beliefs. The payment of zakat is an obligation for Muslims who are able to comply with Islamic law. Zakat is a religious institution that aims to improve justice, social welfare, and poverty reduction. In order to increase the effectiveness and effectiveness, zakat must be managed in an institutionalized manner in accordance with Islamic law, trust, expediency, justice, legal certainty, integrated, and accountability so as to increase the effectiveness and efficiency of services in the management of zakat. So far, the management of zakat based on Law Number 38 of 1999 concerning Management of Zakat is considered to be no longer in accordance with the development of legal needs in society so it needs to be replaced. The management of zakat which is regulated in this Law covers planning, collection, distribution and utilization activities. In an effort to achieve the objectives of zakat management, the National Zakat Board (BAZNAS) is located in the national capital, provincial BAZNAS, and district / city BAZNAS. BAZNAS is a non-structural government institution that is independent and is responsible to the President through the Minister. BAZNAS is an institution authorized to carry out the task of managing zakat nationally. To assist BAZNAS in carrying out the collection, distribution and utilization of zakat, the community can form the Amil Zakat Institution (LAZ). LAZ formation must obtain permission from the Minister or an official appointed by the Minister. LAZ is required to report periodically to BAZNAS the implementation of collection, distribution, and utilization of zakat that has been audited by the Shari'ah and finance.

Zakat must be distributed to mustahik in accordance with Islamic law. Distribution is carried out based on priority scale by paying attention to the principles of equality, fairness and territoriality. Zakat can be utilized for productive efforts in the context of handling the poor and improving the quality of the community if basic needs of mustahik have been fulfilled. In addition to receiving zakat, BAZNAS or LAZ can also receive donations, alms, and other religious social funds. Distribution and utilization of donations, alms, and other religious social funds are carried out in accordance with Islamic law and carried out in accordance with the designation pledged by the giver and must be recorded in a separate bookkeeping. To carry out its duties, BAZNAS is funded by the State Budget and Amil Rights. Whereas the provincial BAZNAS and the regency / city BAZNAS are funded by the Regional Revenue and Expenditure Budget and Amil Rights, and can also be funded by the State Revenue and Expenditure Budget.¹³

III. Closing

Conclusion

The Law of Hajj is a form of transformation of Islamic Jurisprudence in Indonesia. With this law, it means that the government is responsible for the implementation of the pilgrimage for Muslims in Indonesia. These responsibilities include registration, determination of quotas, determination of deposits, guidance on hajj, etc. relating to the needs of pilgrims. The history of Islamic laws and regulations in Indonesia in the formation of zakat laws is a long and ironic journey. Zakat in fiqh is included as part of worship although there are aspects of muamalah, especially the

¹³Law of the Republic of Indonesia Number 23 of 2011 concerning Management of Zakat, page 11.

public aspect. Government policies in the field of worship provide the widest possible freedom. The latest hajj and zakat regulations are regulated in the Law of the Republic of Indonesia Number 8 of 2019 concerning the Organization of Hajj and Umrah and the Law of the Republic of Indonesia Number 23 of 2011 concerning Management of Zakat.

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