



Legal Sanctions For Amilin Perpetrators Of Zakat Fraud In Islamic Law And Its Development And Application In Laws And Regulations In Indonesia

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Abstract

The purpose of this study is to analyze the legal sanctions for amilin perpetrators of zakat fraud in Islamic law and its development and application in laws and regulations in Indonesia. This research uses three approaches, namely the Law approach, Second, historical and interpretive approach, Third, comparative approach. As for the research method, it is juridical-normative. The results of the research show that: 1) The management of zakat is handed over to the government. The scholars also agreed on the provision of sanctions for amils who misappropriated zakat funds 2) considerations that pose a criminal threat to amilin/zakat managers who are negligent or do not pay zakat in Indonesia. Based on three main foundations, namely: philosophical, sociological, and juridical 3) Regulation of the authority of amyl in collecting zakat and sanctioning amil zakat who commit misappropriation of zakat funds in the legislation in Indonesia in 1999. Since then zakat has officially entered the realm of positive law in Indonesia with the issuance of Law No. 38 of 1999 concerning zakat management. 4) The prospect of implementing criminal development and sanctions in the UUPZ has several aspects or interests that must be considered and must be protected by law, namely first paying attention to the perpetrator aspect, second paying attention to the victim aspect, and third is the community aspect, that the interests of the community are not fulfilled due to violations in zakat management. The declaration of zakat law is to realize the benefit of the people and at the same time uphold justice. On that basis, the provision of criminal sanctions to zakat managers as stated in Article 39 of Law Number 23 of 2011 concerning Zakat Management is not contrary to Islamic law.

Keywords: legal sanctions ; perpetrators of zakat fraud; laws and regulations.

INTRODUCTION

Zakat as one of the fundamental principles (pillars) in Islam is a pillar placed by Allah SWT with a purpose that is not simple. It is an Islamic teaching that has two dimensions: divine and

social. The divine dimension (Divine) is described as zakat to reflect one's faith in the teachings of Islam that are believed. While the social dimension is more directed at efforts to empower underprivileged communities, both economically and socially so that they can improve their quality of life through zakat.

Zakat for Muslims is a social worship, one of the obligatory worship that is included in the five pillars of Islam. Seeing the development of zakat management in Indonesia which is always increasing shows that zakat management organizations are increasingly serious and professional in carrying out this noble mandate. The five-year average growth in zakat collection at 25.7% also indicates that Indonesians, who are known for their hospitality and generosity, are increasingly familiar and aware of the obligation of zakat, to share with the needy. Alhamdulillah, the national zakat collection in 2019 was calculated to reach 10.2 T with a ratio of distribution to collection of 84.57%, or Effective value, referring to the categorization of Zakat Core Principles (Lenap et al., 2020).

Zakat does not only focus on the existence of Islam alone. This is because zakat in addition to the pillars of Islam, it turns out that if analyzed more deeply it is a study that has Islamic socio-economic nuances and is always related to Islamic legal and economic strategies (Mukri, 2014).

This turns out to be so that zakat can be utilized in terms of nation and state development, especially in terms of reducing mission, eliminating social inequalities and of course to increase the economic empowerment of the people. For this reason, it is necessary to utilize zakat funds professionally and responsibly carried out by official institutions, such as amil zakat institutions. This is because the existence of the amil zakat institution becomes very strategic and very decisive when viewed from the side of Islamic teachings and from the side of developing the welfare of the ummah (Mukri, 2014).

In Indonesia, zakat processing during the colonial period and independence period has not been well organized, because there is an imbalance between the Muslim community and zakat expenditure. As a result, Indonesia's economy is not getting better but getting worse. During the New Order period, concerns about Islam were ideological, forcing the government not to get involved in zakat affairs. Even the government does not provide formal legalization of zakat firmly, so zakat is collected through conventional methods and seasonally only. The government's attention to the issue of zakat began in 1968, with the establishment of the Amil Zakat, Infaq and Shadaqah Agency (BAZIS). This body functions as a manager of zakat, regulating and processing it so that its functions can be maximized. This is the beginning of zakat entering the realm of government (Ministry of Religious Affairs of the Republic of Indonesia, 2012: 58)

Zakat has the meaning of growing, good and developing as an indication of the impact of zakat redemption which can have an impact on the organization and economic development of

the community where with zakat regulations, the wealth will not only circulate to the rich, but can also be felt by the bottom community.

With the new zakat law, zakat management is expected to run well, professionally and trustfully. BAZNAS will also be given the responsibility of structuring LAZ, Badan Amil Zakat Daerah (BAZDA) and UPZ in places of worship in villages. The existence of zakat management in mosques, prayer rooms and Islamic boarding schools that have been running is maintained. Furthermore, it will be built and laid out with a strong system so that it does not run independently as it has happened so far (Kurniawan, 2013).

Here again, the Zakat Law No. 23 of 2011, has not regulated the area for collecting zakat funds. BAZNAS is central to an area that has not been determined where the gathering area is. Likewise, LAZ has not yet been determined in which areas he must work on the potential of muzaki. These conditions will obviously overlap in gathering. It could be that an area with great zakat potential, such as big cities, will be carried out jointly by BAZNAS and LAZ (Kurniawan, 2013). The scope of authority of zakat managers in collecting zakat is further regulated. Therefore, through Government Regulation No. 14 of 2014 concerning Zakat Management has regulated the scope of authority of central and regional BAZNAS.

As a country with a majority of Muslims, Indonesia actually not only takes the formulation of strategic steps from the conception of the welfare state, but can also refer to the conception and paradigm of the welfare of the ummah in Islamic teachings. The side of the state's responsibility to prosper citizens is one of the rationales of the law on zakat management

Therefore, if there are obstacles in the management of zakat, then the government can impose criminal sanctions and the like against those who disobey. Similarly, with Law Number 23 of 2011, there are criminal sanctions for parties who commit violations of zakat management. Regarding criminal provisions regulated in Chapter IX including: Article 39 to Article 42.

As in Article 39, sanctions will be imposed on every zakat manager if the distribution is not in accordance with applicable regulations, namely distributed to those who really need it, it will be threatened with a maximum imprisonment of 5 (five) years and / or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah (Ministry of Religious Affairs of the Republic of Indonesia, 2013: 18).

Based on the sound of the article above, it can be concluded that the provisions of the article contain prohibitions or orders if not fulfilled then threatened with criminal sanctions, but when connected with Government Regulation Number 14 of 2014 (PP No. 14 of 2014) as the implementing regulation of Law Number 23 of 2011, there is no provision regarding criminal sanctions as regulated in related laws, But the sanctions imposed are administrative sanctions in the form of fines. As stated in Article 77 and Article 78 of PP No. 14 of 2014 which contains:

Not only stopping at Article 39 in Article 41 it is stated, "any person who intentionally and unlawfully violates the provisions as referred to in Article 38 will be sentenced to imprisonment for a maximum of 1 (one) year and/or a maximum fine of Rp. 50,000,000 (fifty million rupiah)".

The provisions referred to in Article 38 are that if there are people/institutions that do not obtain permission from officials authorized to collect and distribute, sanctions will be imposed.

Based on the problems mentioned above, the author is very interested in researching further about the abuse of zakat management and sanctions. with the title "Legal Sanctions for Amilin Perpetrators of Zakat Fraud in Islamic Law and Its Development and Application in Indonesian Laws and Regulations".

METHODS

This research uses three approaches, namely: First, the statute approach Second, the historical and interpretive approach, namely conducting historical analysis and interpreting religious texts, (Earl Babbie, 1998: 281). Third, the comparison approach. As for the research method, it is juridical-normative. As a normative juridical research, this research is based on the analysis of legal norms, both law in the sense of law in the sense of law written in law books or religious books (law as it is written in the books) and law as it is decided by judge through judicial process. Soekanto & Mamudji, (2014) concerning Zakat Management, Presidential Instruction of the Republic of Indonesia Number 3 of 2014 concerning Optimization of Zakat Collection and concerning Entities/Institutions Established or Authorized by the Government Designated as Recipients of Zakat or Compulsory Religious Donations Deductible from Gross Income. Furthermore, laws and regulations are analyzed by examining considerations through principles in the perspective of Islamic law. In detail in examining the role of the state in regulating the authority of amyl in collecting zakat and the form of authority of amyl using integrative legal theory that internalizes the dimension of diyani (obedience) by carrying out religious teachings and also the dimension of qada'i (state decrees) through regulations.

RESULTS AND DISCUSSION

Based on the results of research that has been presented in the previous chapters, then regarding Legal Sanctions for Amilin Perpetrators of Zakat Fraud in Islamic Law and its development and application in laws and regulations in Indonesia. Therefore, the following conclusions can be drawn:

The ideas of scholars (classical and contemporary) about sanctioning amil perpetrators of zakat fraud

Zakat managed consists of zakat fitrah and zakat harta. According to jumhur ulama, the property that must be zakati is any type of property that can bring income or profit (al-mal al-nami). The authority to administer zakat is given to amil zakat according to Islamic law. The management of zakat includes planning, implementing, coordinating activities in collecting, distributing, and utilizing zakat.

The development of zakat management in the modern century not only has an impact on the types of compulsory zakat assets that extend to the types of assets not found in the time of the Prophet (peace be upon him), but also on the issue of determining mustahik and the criteria for amyl zakat. Therefore, a contemporary Islamic legal perspective is needed in analyzing the problems of zakat management in modern times without ruling out the treasures of zakat management jurisprudence in classical Islamic times.

Basically, the management of zakat is handed over to the government. The scholars agreed that the authority to take zakat by force can only be exercised by the government. Laws and regulations should be good and lawful, effective and acceptable to the community and valid for a long time, must be based on the basis of laws and regulations. The scholars also agreed on sanctioning the perpetrators of misappropriation of zakat funds.

The fuqaha generally agreed that the ruler was obliged to appoint and send officers to collect zakat. Because in society there are people who have property, but do not know the obligation of zakat or already know the obligation of zakat, but have miserly eel, it is mandatory to have zakat collectors. The mention of those in charge of zakat affairs with the term 'amilin 'alayha in the Qur'an surah at-Tawbah verse 60, shows that zakat must be managed properly. Jumhur ulama agree that the command "khudz min amwalihin" (take zakat from their property) described in surah at-Tawbah verse 103, is addressed to the Prophet Muhammad and to every leader or person who takes care of the affairs of Muslims afterwards (Yusuf Wibisono, 2015: 142-243).

In this UUPZ, article 25 paragraph (1), states:

Zakat must be distributed to mustahik in accordance with Islamic law

Meanwhile, sanctions for violating the distribution as stated in the article above are regulated in Article 39 paragraph (1), which states

"Any person who deliberately violates the law does not distribute zakat in accordance with the provisions of Article 25 shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp500,000,000.00 (five hundred million rupiah)."

Law No. 23 of 2011 challenges the management of zakat is intended to ensure regularity and accountability in planning the collection, distribution, and utilization of zakat; the collection, distribution, and utilization of zakat; and reporting and accountability for the implementation of zakat management. However, the crisis of public confidence in the government's performance is one of the reasons why many controversy regarding zakat management is directly handled by the government, because it is feared that opportunities will arise for corruption and uneven distribution of zakat.

Philosophical, juridical and sociological foundations with regard to the regulation of sanctions against perpetrators of zakat fraud

The state of Indonesia is a state of law. This reads Article 1 Paragraph 3 of the 1945 Constitution. What is meant by the rule of law is a state in which there are various aspects of regulations that are coercive and have strict sanctions if violated. The meaning of Indonesia as a state of law is that all aspects of life in the territory of the Unitary State of the Republic of Indonesia must be based on law and all statutory products and derivatives applicable in the territory of the Republic of Indonesia. The rule of law itself stands on the law that guarantees justice for all citizens. For Indonesia, the rule of law is based on the values of Pancasila which is the nation's view of life and the source of all sources of law.

Law in Indonesia must be based on the spirit of upholding the values of divinity, humanity, unity, peoplehood and justice as contained in Pancasila. The existence of law is determined by the behavior, nature, and attitudes that reside in the human soul as the nature of life and society. The regulation of legal rules regarding human order is not only guided by the standard rules regulated in the provisions of laws and regulations, but also guided by all norms and moral values inherent to every citizen in a country.

The 1945 Constitution shows that Indonesia is not a country based on any particular religion. However, the state plays a role in regulating the affairs of Muslims and making its teachings an important component in laws and regulations. One of them is the deal on zakat, specifically in Indonesia, the source of zakat law is regulated in laws and regulations, namely

- 1) Law Number 23 of 2011 concerning Zakat Management
- 2) Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 581 of 1999 concerning the Implementation of Law Number 38 of 1999 concerning Zakat Management (Safriani, 2016).

Law Number 38 of 1999 concerning Zakat Management is considered no longer in accordance with legal developments in the community, because it has been in effect for 12 years. An update to this Law is needed in order to create professional zakat management. The Government and the House of Representatives approved this, on October 27, 2011 through the Plenary Meeting of the House of Representatives, Law Number 38 of 1999 concerning Zakat Management was repealed and replaced by Law Number 23 of 2011 concerning Zakat Management (Asmawi & Faizin, 2017).

In this case, it means that zakat in Indonesia has a place in Indonesian Constitutional Law (Januardi, 2018). The big conclusion that the management of zakat is fully by the state as adopted by Law Number 23 of 2011, is not generally applicable, but full of qualifications. Furthermore, the success of zakat management by the state is largely determined by the level of public trust in the government rather than by state coercion.

Some considerations or bases that become criminal threats for amilin/zakat managers who are negligent or do not pay zakat in Indonesia. Based on three main foundations, namely:

philosophical, sociological, and juridical. The philosophical basis of the law seeks to describe the principles of divinity and social justice contained in Pancasila. Through zakat, the principle of divinity can be seen considering that zakat is one of the teachings of religion (Islam). The sociological foundation is based on the urgent need for laws and regulations that can create good governance in the management of zakat, infaq, and sadaqah. While the juridical basis refers to the constitutional provisions which state that the poor and abandoned children are cared for by the state, as contained in the 1945 Constitution Article 34 paragraph (1).

Forms of Amil Regulation in Collecting Zakat and Sanctions for Amil Who Commit Misappropriation

Regulations are a benchmark to limit individual behavior within a certain scope / organization, if violated it will be penalized. Just like the rules on zakat which are the foundation in the management of zakat (Nopiardo, 2019).

With the existence of zakat regulations in Indonesia, Indonesian Muslims can obtain information about the implementation of zakat. In this case, the role of the state as a provider of worship facilities and infrastructure for citizens in order to realize equitable welfare in society.

The birth of the law on zakat is also used by the government to alleviate poverty. In addition, funds collected through zakat are also a means of social security in the form of social assistance to people in need (Januardi, 2018).

Islam believes that poverty is harmful to individuals and society, beliefs and morals, ideas and cultures, as well as families and states (Jb & Darmawan, 2016). As a state organizer, in addition to drafting regulations on zakat issues where the definition of regulation is a regulation designed, formulated, compiled or made in such a way as to help control a community group, institution, organization, and company with a specific purpose. Generally, the main purpose of issuing a regulation or rule is to control a group of humans or society with certain restrictions

With the enactment of the Law on Zakat Management Number 23 of 2011 which complements part of the previous law (Jihad, 2016). Article 57 states, the requirements for the establishment of LAZ must meet the requirements of being registered as an Islamic community organization that manages the fields of education, da'wah and social, or an incorporated institution, and so on. However, Article 58 and Article 59, which regulate licensing mechanisms, only mention "Islamic community organizations", without the addition of the phrase "or incorporated institutions."

In the future, great efforts are needed to review Law Number 23 of 2011. In an effort to review this zakat management law, there are several main issues that should be pushed into the public debate and discussion in parliament in the future, namely decentralization of zakat management with strong and credible regulators, consolidation and specialization of OPZ (Zakat Management Organization) towards an effective and efficient national zakat world, and government and OPZ partnerships to accelerate poverty reduction. Under the regime of Law

Number 23 of 2011, the regulatory framework and national zakat institutions are focused on a centralized system where the authority to manage national zakat is fully controlled by the government through BAZNAS.

Regulation of the authority of amil in collecting zakat and sanctioning amil zakat who commit misappropriation of zakat funds in the legislation in Indonesia in 1999. Since then zakat has officially entered the realm of positive law in Indonesia with the issuance of Law No. 38 of 1999 concerning zakat management. This Law also regulates sanctions for amil institutions that are not trustful, but this Law does not regulate sanctions for zakat obligators who are negligent in fulfilling their zakat. However, this law has pioneered efforts to provide incentives for zakat compulsory by making zakat a tax deduction. Since 2004 efforts to amend Law No. 38 of 1999 have been made. In 2011, Law No. 23 of 2011 was born as a replacement for Law No. 38 of 1999. Law No. 23 of 2011 concerning Zakat Management and criminal sanctions for Amil who misappropriates zakat funds.

Prospek Development and Application of Legal Sanctions for Zakat Fraud in Indonesian Legislation

An important characteristic in Islamic law is its entity that is accommodating to the provisions, norms, values, and customs prevailing in a society. The accommodating nature in question is not a priori towards the traditions that prevail in society, but accommodates these habits while remaining oriented to faith in Allah Almighty.

The principles of legislation or the establishment of Islamic law are covered in the main purpose of the establishment of Islamic law (maqâshid al-syarî'ah). In general, the establishment of Islamic law is for the benefit of the public. These principles are embodied in Q.S al-Baqarah (2) verses 201-202 which reads :

وَمِنْهُمْ مَّنْ يَقُولُ رَبَّنَا آتِنَا فِي الدُّنْيَا حَسَنَةً وَفِي الْآخِرَةِ حَسَنَةً وَقِنَا عَذَابَ النَّارِ. أُولَٰئِكَ لَهُمْ نَصِيبٌ مِّمَّا كَسَبُوا
وَاللَّهُ سَرِيعُ الْحِسَابِ

And among them there was one who prayed: "O Our Lord, grant Us good in the world and good in the Hereafter, and preserve Us from the torments of hell." They are the ones who get a share of what they earn; and God is very quick in His calculations

From this verse it can be understood that the purpose of establishing Islamic law is for the happiness and well-being of mankind both in this world and in the Hereafter. Thus, the principle of legislation in Islamic law must reflect the values of benefit.

The prospect of implementing criminal development and sanctions in the UUPZ has several aspects or interests that must be considered and must be protected by law, namely first paying attention to the perpetrator aspect, second paying attention to the victim aspect, and third is the

community aspect, that the interests of the community are not fulfilled due to violations in zakat management. The declaration of zakat law is to realize the benefit of the people and at the same time uphold justice. On that basis, the provision of criminal sanctions to zakat managers as stated in Article 39 of Law Number 23 of 2011 concerning Zakat Management is not contrary to Islamic law.

Abdulkadir Muhammad argued that "law enforcement can be formulated as an effort to carry out the law as it should, supervise its implementation so that no violations occur, and if there is a violation restore the violated law to be re-enforced". (Jurdi, 2022).

Jimly Asshidiqie divided two definitions of law enforcement, namely in a narrow sense it is "an activity to crack down on any violation or deviation from laws and regulations through the criminal justice process involving the role of police officers, prosecutors, advocates or lawyers and judicial bodies. While in a broad sense it is an activity to implement and apply the law and take legal action against any violation of law committed by legal subjects either through judicial procedures or through arbitration procedures and other dispute resolution mechanisms (alternative disputes or conflict resolution)" (Nurhayati, 2020).

CONCLUSION

Based on the results of the study, the simulation is: 1) The management of zakat is handed over to the government. The scholars also agreed on the provision of sanctions for amils who misappropriated zakat funds 2) considerations that pose a criminal threat to amilin/zakat managers who are negligent or do not pay zakat in Indonesia. Based on three main foundations, namely: philosophical, sociological, and juridical 3) Regulation of the authority of amyl in collecting zakat and sanctioning amil zakat who commit misappropriation of zakat funds in the legislation in Indonesia in 1999. Since then zakat has officially entered the realm of positive law in Indonesia with the issuance of Law No. 38 of 1999 concerning zakat management. 4) The prospect of implementing criminal development and sanctions in the UUPZ has several aspects or interests that must be considered and must be protected by law, namely first paying attention to the perpetrator aspect, second paying attention to the victim aspect, and third is the community aspect, that the interests of the community are not fulfilled due to violations in zakat management. The declaration of zakat law is to realize the benefit of the people and at the same time uphold justice. On that basis, the provision of criminal sanctions to zakat managers as stated in Article 39 of Law Number 23 of 2011 concerning Zakat Management is not contrary to Islamic law.

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