

**STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL ZAKĀH
MANAGEMENT: HISTORICAL LESSONS, FIQH DISCOURSE, AND
INTERNATIONAL COMPARISON**

**STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL ZAKĀH
MANAGEMENT: HISTORICAL LESSONS, FIQH DISCOURSE,
AND INTERNATIONAL COMPARISON**

Yusuf Wibisono¹

¹Universitas Indonesia, Indonesia

Abstract

The aspect of zakāh management or administration is not regulated extensively in Islamic law. Since the dawn of Islam, zakāh management has become the field of ijtihād based on mashlahah. And today, the practice of zakāh management in contemporary Muslim countries has been incarnating a wider area of experiment. In contemporary Indonesia, the Law Number 23 Year 2011 concerning Zakāh Management has been passed. This law, which become effective since 2016, caused upheaval within national Islamic philanthropy sector since it regulates national zakāh management currently dominated by civil society, based on “classical fiqh opinion” that only the state has authority to manage zakāh. This paper lift up an important conclusion that zakāh management entirely by the state is not be in effect unconditionally, but with many of qualifications. Moreover, the effectiveness of zakāh management by state relies heavily on the level of public trust against government, not by enforcement of the state. Zakāh management by the state is merely an instrument, not the goal itself. The ultimate objective that must be pursued is the delivery of zakāh to those who deserve it with optimum benefits.

Keywords: *Indonesia, Islamic public finance, Islamic philanthropy, zakāh law, zakāh management*

1. INTRODUCTION

Regarding its central position in Islam as one of the most important formal rituals (*‘ibādah mahdhah*), *zakāh* comes with comprehensive operational conditions, ranging from types of wealth on which *zakāh* is imposed on (*māl al-zakāh*), the amount of *zakāh* (*miqdār al-zakāh*), the limit amount of wealth before its *zakāh* is paid (*nishāb*), the time limit of wealth ownership before its *zakāh* is paid (*haul*), until the allocation of *zakāh* (*mashârif al-zakāh*).

Nevertheless, the aspect of *zakāh* management or administration is not regulated extensively in Islamic law. The Prophet Muhammad is reported to have managed and regulated *zakāh* directly and treated it as part of public finance. But it happened in a time when the structure of the state was still trivial, the level of economy was low, and the territory was limited. In fact, Islamic history recorded that along with expanding of territory, growing of economy, and an ever-increasingly complex structure of government, policies related to *zakāh* management have also changed dynamically from time to time, which seems to follow the principle of *tasharruf al-imâm ‘ala ar-ra’iyyah manûth bi al-mashlahah* (government’s policy related to its people is bound to public interest).

*Corresponding author. Email address: wibisono16@gmail.com

Hence, since the beginning of Islam, *zakāh* management has become the arena of *ijtihad* based on *mashlahah*. The changing of government's political and religious commitment greatly affected the dynamics of *zakāh* management by state and created a sharp discourse among *fuqahā'* as recorded in classical *fiqh* studies. In this modern era where most of Muslim countries are secular, contemporary *fiqh* studies doesn't give enough attention to the issue. The practice of *zakāh* management by contemporary Muslim countries becomes a subject of experiment.

In contemporary Indonesia, the Law Number 23 Year 2011 concerning *Zakāh* Management has been passed by the Parliament. The Law, which regulates *zakāh* management in democratic and secular Indonesia, raises heated debates since it claims to be based on "classical *fiqh* opinion" that only the state has authority to manage *zakāh*.

The formal, and explicit, argumentation of Indonesian government regarding centralization of *zakāh* management entirely by the state, as adopted by Law Number 23/2011, is officially written in DIM (*Daftar Inventarisasi Masalah* – List of Problem Inventarization) of *Zakāh* Management Bill, based on *fiqh*, history and contemporary practice arguments. It argues that¹: (i) according to sharia law, *zakāh* management fell into state's authority. The concept is in line with *al-Qur'ān* 9: 103 which states: "*Khudz min amwālihim shadaqah ...*" That the word "*Khudz*" which means "taking" contains an order addressed to the authority or ruler; (ii) *zakāh* management conducted by government is also exemplified by the Prophet and his companions who established *Bayt al-Māl* which was a state institution; and (iii) Today, "Islamic" countries, especially in the Middle East such as *Saudi Arabia, Kuwait, Qatar, Yemen, Egypt, Libya, Sudan, Iran, Pakistan, and Malaysia* also apply *zakāh* management system run by a state institution.

The Law, which was issued on 27 October 2011, abolishes the decentralization system of national *zakāh* management previously maintained under the regime of Law Number 38/1999 which accommodated a synergy between government entity and civil society groups in national *zakāh* management. Long before the Law Number 23/2011 issued, civil society have widely and massively participated in *zakāh* management, even long before the independence of Indonesia. The practice which taking rooted hundreds of years, then was wisely formalized by the Law Number 38/1999².

The participation of civil society in the management of socio-religious fund in Indonesia has contributed positively in revitalizing religious institution for social welfare. Accommodating civil society groups in national *zakāh* management has increased transparency as well as accountability of socio-religious fund management. The participation of civil society has also decreased the level of potential abuse of socio-religious fund while increasing its effectiveness. The involvement of civil society in national *zakāh* management has also introduced a climate of competition within the bureaucracy, related to the management of socio-religious fund.

Under the regime of Law Number 23/2011, the regulatory and institutional framework of national *zakāh* is focused on the centralization system where the authority of national *zakāh* management is held entirely by the state through its official *zakāh* operator, BAZNAS (*Badan Amil Zakat Nasional*). In this new architecture, *zakāh* operators from civil society, namely LAZ (*Lembaga Amil Zakat*) and traditional-individual '*amil*, are basically prohibited from managing *zakāh*. As the consequence,

¹ See Commission VIII of Indonesian Parliament (DPR RI). (April 2011). "Daftar Inventaris Masalah (DIM) RUU tentang Pengelolaan Zakat, Infaq dan Shodaqoh", DIM No. 56.

² See Republik Indonesia. *Undang-Undang No. 38 Tahun 1999 tentang Pengelolaan Zakat* and Republik Indonesia. *Undang-Undang No. 23 Tahun 2011 tentang Pengelolaan Zakat*.

STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL *ZAKĀH* MANAGEMENT: HISTORICAL LESSONS, *FIQH* DISCOURSE, AND INTERNATIONAL COMPARISON

every civil society groups that want to participate in national *zakāh* management, only allowed to “assist” BAZNAS with limited authority.

With the main idea that *zakāh* management is the exclusive authority of government, the entire Law Number 23/2011 significantly strengthen and gives privileges to the government-owned *zakāh* operator (BAZNAS) as the sole holder of authority in national *zakāh* management. Under the Law Number 23/2011, Central BAZNAS acts as operator as well as regulator for other operators, while the Ministry of Religious Affairs runs the functions of supervision, coaching, and execution of sharia compliance for all operators, BAZNAS and LAZ alike. National *zakāh* governance is built through reporting and accountability to higher structure and regulator, namely Central BAZNAS, and administrative sanctions for non-compliance by the Ministry of Religious Affairs. At the same time, Law Number 23/2011 marginalizes and extremely limits civil society-based *zakāh* operators (LAZ) which currently are the main players in national *zakāh*, to the point that it’s potentially “lethal”.

It is an irony, considering that in the last three decades, Indonesia has been experiencing a resurgence of *zakāh* after managed by civil society. With a transparent and professional conduct based on modern management principles, LAZ has been utilizing *zakāh* as an economic power for social change in Indonesia. *Zakāh* of Indonesia, which was originally circulated only in the realm of individual charity, has now been transformed to reach the realm of public empowerment. Along with the raising of public trust and the growing Muslim middle class in Indonesia, the potential of *zakāh* funds are explored becomes even greater. Amid this resurgence, Law Number 23/2011 then appeared, seeming to want to seize the enormous potential of national *zakāh* from LAZ.

The national debate over Law Number 23/2011 was eventually brought to the Constitutional Court (*Mahkamah Konstitusi*). Judicial review over the Law made by civil society in the mid-2012 ending in disappointment: the main substance of the Law Number 23/2011 remained valid. In its decision on October 31, 2013, the Court rejected all major lawsuits against the Law Number 23/2011. Steep road now awaits Indonesia’s *zakāh* sector, which currently relies heavily on LAZ.

This study will challenge the main hypothesis of the Law Number 23/2011, that only the state has the authority in the management of national *zakāh*. The research adopts methodological pluralism, using historical, *fiqh*, and economic approaches. Besides being in line with the nature of the problem studied, the methodological pluralism will also guiding us closer to the meaning and purpose of Islamic law.

Section 2 reviews the history of *zakāh* management particularly in early periods of Islamic civilization. Section 3 discusses *fiqh* discourse among jurist, across schools and ages, about management of *zakāh* entirely by the state. Section 4 analyses recent practices of national *zakāh* management in contemporary Islamic world. Section 5 concludes.

2. *ZAKĀH* MANAGEMENT IN ISLAMIC HISTORY

The collection of *zakāh* has been started since the dawn of Islam by the Prophet Muḥammad, beginning in the 2nd year of *hijra* (624 AD) according to the majority’s opinion. *Zakāh* on the soul (*zakāt al-fithr*) is a voluntary act, closely associated with the feast of ‘*id al-fithr*, and done individually. This is diametrically opposed to *zakāh* on wealth (*zakāh al-mâl*), which has been obligatory since the prophetic age. The collection of *zakāt al-mâl* from the very beginning has been regulated and managed directly by the

Prophet Muḥammad³.

With the increasing population of Muslim community and territorial expansion of Islamic State, the Prophet then appointed "a large number" of *zakāh* officers, including the famous companions of the Prophet such as 'Umar and 'Alī, to collect *zakāh* from the Muslim community. It can be said that the Prophet has appointed *zakāh* officers for the entire Arabia in his time. It thus becomes the general basis for the opinion, that since the time of Prophet Muḥammad, *zakāh* has been an affair and duty of the government⁴. But what is clearer is, the appointment of "special officers" of *zakāh* by the Prophet marked a new era in which *zakāh* was no longer managed personally by the Prophet, but collectively managed by professionals who received a share of the collected *zakāh* revenue under the allocation of *‘amilīn*. The Prophet Muḥammad himself as *zakāh* organizer did not receive a share of *zakāh* revenue, neither did the Prophet's family and relatives during his lifetime. Thus, there has been a transformation of *zakāh* management which led to the formal, collective, organized and permanent structure since the time of the Prophet Muḥammad.

Some other characteristics of *zakāh* management in the time of the Prophet are the detailed regulations regarding the collection and distribution of *zakāh*, including the etiquette of *zakāh* officers and the ideal public attitude towards *zakāh* officers, separation of *zakāh* from other state revenues along with its separate distribution, the general principle of local collection and distribution where *zakāh* is distributed in areas in which it is collected without being deposited centrally, *zakāh* calculation which is generally done by *zakāh* payer (self-assessment), and compulsory *zakāh* collection by officer which is only applied to livestock and crops⁵.

When the Prophet Muḥammad demised, there were some who raised questions as to whether *zakāh* is paid to the Prophet personally or to the government. During the time of Caliph Abū Bakr, some Arab Bedouin tribes refused to pay *zakāh* on the assumption that *zakāh* is the Prophet's personal income, so that when the Prophet passed away, *zakāh* is no longer mandatory⁶. It is recorded in history that Abū Bakr declared war on those who refused to pay *zakāh*, an incident known as the *riddah* war.

The event is often misunderstood by some people, particularly the orientalist, as the evidence that the nature of *zakāh* was still unclear at the time of Prophet Muḥammad and, as the consequence, Abū Bakr was the person who responsible for the institutionalization of *zakāh* as a permanent obligation in Islam. Al-Qaradhāwī argues that the incident happened not because the concept of *zakāh* was unclear at that time, but rather because those tribes were recently converted to Islam and still highly affected by their previous Bedouin life⁷.

This historical event - the decision of Caliph Abū Bakr to fight those who refused to pay *zakāh* - is also widely used as a justification for the forced *zakāh* collection by the

³ Amelia Fauzia. (2013). *Faith and the State: A History of Islamic Philanthropy in Indonesia*. Leiden: Brill Academic Publishers, page 45.

⁴ Yūsuf al-Qaradhāwī. (1988). *Fiqh al-Zakāh (Indonesian Translation)*. Bogor: Pustaka Litera AntarNusa, page 738-739.

⁵ Monzer Kahf. (1993). "Zakah Management in Some Muslim Society", *IRTI-IDB Background Paper*, No. 11, page 15-18.

⁶ Negative attitude of the Bedouins towards *zakāh* has been noticeable since the time of the Prophet Muḥammad (p.b.u.h). They saw *zakāh* they paid as a loss or fine/penalty (*maghram*). See *al-Qur'ān* 9: 98. The nomadic life and its inherent difficulties made Bedouins harder to accept ethical obligations that were not directly related to their interests.

⁷ Al-Qaradhāwī. *Fiqh al-Zakāh*. page 92-93.

STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL *ZAKĀH* MANAGEMENT: HISTORICAL LESSONS, *FIQH* DISCOURSE, AND INTERNATIONAL COMPARISON

state⁸. However, Abū 'Ubayd (d. 224/838) informed that Abū Bakr only gave battle those who refused to pay *zakāh* on livestock (*shadaqah al-mawāsyī*), while those who refused to pay *zakāh* on gold and silver (money) were left and not fought by Abū Bakr⁹. This indicates that *zakāh* as part of public finance institution in Islam has a dual dimension, the ritual and political dimension.

When the Prophet Muḥammad passed away, the phenomenon of *riddah* (apostasy) erupted. There are two cases here, those who were apostates and claimed the status of prophethood, and those only who rejected the sharia law, including refusing to pay *zakāh* to the government. The act of "departing to obey the just ruler" as done by the revolters (*ahl al-baghy*) who refused to pay *zakāh* had different consequences from the apostates (*ahl al-riddah*) who left Islam. *Ahl al-riddah* were much more dangerous to Islamic State at that time, since they rejected not only the political authority but also religious authority. Hence, *ahl al-baghy* who refused to pay *zakāh* to the authorities hadn't been categorized as apostates. That's why 'Umar advised Abū Bakr not to fight them. If then Abū Bakr insisted to fight *ahl al-baghy* in the same way as he fought *ahl al-riddah*, it was his political decision as a ruler to keep the integration of the newly formed state, not an ideological one¹⁰.

The political dimension of *zakāh* is also visible in the decision of Abū Bakr to fight only those who refused to pay *zakāh* on livestock (*al-mawāsyī*) while leaving those who refused to pay *zakāh* on money (*shāmit*). Livestock, which at that time consisted of camels (*ibil*), cows (*baqar*), and sheeps (*ghanam*), is a form of wealth that is clearly visible and not easily hidden. Since the socio-political purpose of *zakāh* is to transfer wealth from the rich to the poor, the government as political authority was justified to use its power to achieve this goal. In this spirit to realize the distributive economic justice, Abū Bakr fought those who refused to pay *zakāh* on livestock¹¹.

The political authority of government to implement forced *zakāh* collection is limited to visible wealth (*amwāl al-zhâhirah*) only. Whereas for the form of wealth that is invisible and can easily be hidden by its owner (*amwāl al-bâthinah*), the government does not have the political right to force people and should leave the *zakāh* payment for this form of wealth as a personal matter, unless the person voluntarily submits it to the government. If *amwāl al-zhâhirah* is within the political dimension of *zakāh*, then *amwāl al-bâthinah* is within the ritual dimension. Abū 'Ubayd confirmed that this is the *sunnah* of the Prophet Muḥammad, where he sent *zakāh* officers to livestock owners to collect *zakāh* from them, either voluntarily (*ridhâ*) or forcibly (*kurh*). But there is no evidence that the Prophet has ever forced people to pay *zakāh* on currency¹².

This is the reason that made Abū Bakr only fought those who refused to pay *zakāh* on livestock and left those who did not pay *zakāh* on money. Abū Bakr did not want to go too far into the area where he as a ruler did not have authority. The concept that

⁸ Fauzia (2013) argued that the *riddah* war could not be used as justification for the implementation of forced *zakāh* collection by state for three reasons. *First*, the policy of Abū Bakr was not supported by other caliphs like 'Umar who, during his reign, freed the prisoners who refused to pay *zakāh* and restored some of their possessions that were previously confiscated. *Second*, the *riddah* war was more addressed to five tribes who claimed the new status of prophethood than to those who refused to pay *zakāh*. *Third*, *zakāh* at that time was seen as a form of political loyalty to Islamic State. In that sense, the refusal to pay *zakāh* implied the rejection of sovereignty of the Prophet's successor. See Fauzia. *Faith and the State*. page 46.

⁹ Abū 'Ubayd al-Qâsim. (2009). *Al-Amwâl (Indonesian Translation)*, Jakarta: Gema Insani Press, page 691-692.

¹⁰ Ugi Suharto. (2005). *Kitâb al-Amwâl: Abū 'Ubayd's Concept of Public Finance*, Kualalumpur: The International Institute of Islamic Thought and Civilization - International Islamic University Malaysia, page 174-176.

¹¹ Suharto. *Kitâb al-Amwâl*, page 177-178.

¹² Abū 'Ubayd. *Al-Amwâl*, page 547.

distinguishes *amwâl al-zhâhirah* and *amwâl al-bâthinah* which determines the political and ritual character of *zakāh*, and therefore determines the role and position of the government in implementing its political power, is generally accepted by Islamic jurists in the field of public law, such as al-Mâwardî. Al-Mâwardî clearly stated that the owner of *amwâl al-bâthinah* has more authority than the *zakāh* officers to pay its *zakāh* out¹³.

Thus, through *riddah* war, Abû Bakr has an important role in saving the original character of *zakāh*. Had Abû Bakr did not fight those who refused to pay *zakāh amwâl al-zhâhirah*, *zakāh* would have lost its political character and only become a personal ritual. And therefore, *zakāh* would be meaningless as part of Islamic public finance institution. And had Abû Bakr fought all who did not pay *zakāh* without discriminating between the owners of *amwâl al-zhâhirah* and *amwâl al-bâthinah*, then *zakāh* would have been equated with tax in general, in which the basis is entirely political¹⁴.

In the context of state's political power over the collection of *zakāh amwâl al-zhâhirah*, we can understand the policy of Caliph 'Umar to give a dispensation of *zakāh* payment for livestock during the economic crisis known as the year of *ramadah* in 18 H. A long drought sweeping the whole Hejaz made 'Umar decided to postpone the collection of *zakāh* on livestock in the year of *ramadah* by not sending *zakāh* officers. A year after, when the long drought has passed, *zakāh* officers came to the livestock owners and collected their *zakāh* of two years¹⁵.

'Umar is also recorded as the person who responsible for the institutionalization of *zakāh* collection by placing officers on roads, bridges, and ports to collect *zakāh* on commerce from Muslim merchants at the rate of 2.5% while also collecting taxes from non-Muslim merchants, both local (*dzimmî*) and foreign (*harbî*), with a rate of 10% (*'usyur*)¹⁶.

The implementation of state's political power over *zakāh* of *amwâl al-zhâhirah* faced great challenges after the reign of Caliph 'Utsmân. The dynamics of *zakāh* management in early days of Islam is narrated in detail by Abû 'Ubayd (d. 224/838). At first, *zakāh* was paid directly to the Prophet Muhammad or to someone who was trusted to manage it. In the time of Abû Bakr, *zakāh* was paid to Abû Bakr or to someone who was trusted to manage it. Similarly, during the time of 'Umar, *zakāh* was also handed to 'Umar or to someone who was appointed to manage it. The practice continued in the time of 'Utsmân, where *zakāh* was handed to 'Utsmân or to someone who was appointed to manage it. But after 'Utsmân was killed, starting from the reign of 'Alî, Muslim community began to divide in their opinion. Some still paid their *zakāh* to the ruler; others distributed their *zakāh* directly to *mustahik*¹⁷.

After the era of *khilâfah al-râsyidah* (guided Caliphate), political conditions and public trust to government did not improve. The situation got worse with the growing perception in the wider Muslim community that government after *khilâfah al-râsyidah* did not have religious commitment anymore. During Umayyad Dynasty, rulers were portrayed as untrustworthy, failing to deliver *zakāh* to those who deserve it (*mustahik*). They lived luxurious lifestyles with expensive clothes and perfumes, drank *khamr*

¹³ See al-Mâwardî. (2014). *al-Aḥkâm al-Sulḥâniyyah (Indonesian Translation)*, Jakarta: Qisthi Press, page 205.

¹⁴ Suharto. *Kitâb al-Amwâl*, page 180-181.

¹⁵ Jaribah Ibn Ahmad al-Haritsi. (2006). *Al-Fiqh Al-Iqtishâdi Li Amîr al-Mu'minîn 'Umar Ibn Al-Khaththâb, (Indonesian Translation)*. Jakarta: Khalifa, page 382-383.

¹⁶ A. Zysow. (2002), "Zakât", in P.J. Bearman, et. al. (Eds.), *The Encyclopaedia of Islam: New Edition, Vol. XI*, Leiden: Brill Academic Publishers., page 409.

¹⁷ Abû 'Ubayd. *Al-Amwâl*, page 685.

STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL ZAKĀH MANAGEMENT: HISTORICAL LESSONS, *FIQH* DISCOURSE, AND INTERNATIONAL COMPARISON

(alcoholic beverages), and appointed non-Muslims as zakāh collectors¹⁸. All these things only increased the Muslim community's reluctance to pay zakāh to the government. This reluctance to pay zakāh to the authority is reflected in the attitude of early Islamic jurists such as Ibn' Umar (d. 73/692).

In spite of those facts, zakāh management by the government, both ritually and politically continued to run and evolve, while trying to maintain common pattern practiced in the time of the Prophet and *khilāfah al-rāsyidah*. Caliph Mu'āwiya is recorded as the first person to collect zakāh by deducting it directly from the salaries of state employees. A special government office to receive the payment of zakāh, *dīwān al-shadaqah*, was established during the time of Caliph Hisyām (d. 125/743). However, Abū Yūsuf (d. 182/798) informed that zakāh management system at that time was corrupt and inefficient. Zakāh collection was conducted by *kharāj* officers who did not record zakāh revenue separately as specified by sharia, whereas zakāh on commercial goods were collected by *'usyr* officers (*'usysyār*) and managed separately from other types of zakāh. The joint management office of *zakāt* and *awqāf* (*dīwān al-birr wa al-shadaqah*), introduced in 315/927, showed a decrease of zakāh revenue¹⁹.

In the manner of a centralized management of public finance, all fiscal revenues (*huqūq*) in *Bayt al-Māl*, like *khums*, *kharāj*, *jizyah*, *'usyr* and *zakāt*, were spent without differentiating the type of expense. This raised a strong suspicion that the process of zakāh distribution did not comply with sharia law. Sharia provisions, which require zakāh to be distributed only to 8 groups (*ashnâf*) and be prioritized to be spent at the local level, seemed to be abandoned. The only source of public revenue to be managed in accordance with sharia was *waqf*, which was not part of the fiscal revenue but under the state's control, generally through *qādhi*²⁰.

By means of zakāh administration united generally in tax administration, then there are no case of zakāh being regarded as special management by state, which implies the existence of zakāh officers. Al-Ghazālī (1058-1111) confirmed that in most countries in his time, one couldn't find anymore two groups of zakāh receiver, namely *mu'allaf* and *'āmil*²¹.

Ibn Taymīyya (1263-1328) reported that in Egypt during the Mamlūk Dynasty, zakāh management by the state contained a lot of violations of the provisions. Zakāh was often collected from improper types of wealth, even from types of wealth excluded by sharia. Rate of zakāh was not limited to the maximum rate of 2.5% of the wealth value in general, or 10% for agricultural products. Zakāh was also often collected before a year passed²².

There's almost no adequate information regarding the details of zakāh management in Islamic history. But the practice of zakāh management in the Islamic world – in Arabia, Turkish Ottoman, and Indian Mughal – shows several unique common patterns²³: (i) zakāh collection by the state is only applied to “visible” wealth (*amwāl al-zhâhirah*) with or without being called as zakāh, while zakāh on “invisible” wealth (*amwāl al-bâthinah*) is paid voluntarily; (ii) zakāh collection by the state is not carried out by a special

¹⁸ Abū 'Ubayd. *Al-Amwāl*, page 686-689.

¹⁹ Zysow, “Zakāt”, page 409.

²⁰ Cl. Cahen. (1986). “Bayt al-Māl”, in H.A.R. Gibb, et. al. (Eds.), *The Encyclopaedia of Islam: New Edition, Vol. I*, Leiden: Brill Academic Publishers., page 1146.

²¹ Abū Hāmid al-Ghazālī. (1994). *Ihyā' 'Ulūm al-Dīn (Indonesian Translation)*, Vol. 2, Semarang: CV Asy-Syifa', page. 18.

²² Abdul Azim Islahi. (1988). *Economic Concepts of Ibn Taimīyah*, Leicester: The Islamic Foundation, page 203.

²³ Fauzia. *Faith and the State.*, page 75.

institution, but is included in the government administration in general; and (iii) zakāh on the soul (*zakāh al-fīthri*) is always voluntary.

It is seen clearly that the political character of zakāh – the payment of zakāh of *amwāl al-zhâhirah* to the authority – has its ups and downs. It is not always observed by the Muslim community. The implementation of political zakāh depends much on the level of Muslim public trust to the state. While the ritual character of zakāh – the payment of zakāh of *amwāl al-bâthinah* and its delivery to *mustahik* – is always observed by the Muslim community throughout history as personal matter, without any state intervention.

3. ZAKĀH MANAGEMENT ENTIRELY BY THE STATE: A FIQH DISCOURSE

The jurists in general agreed that the ruler has to appoint and send officers to collect zakāh. Since there are those who have wealth but do not know about the obligation of zakāh or those who know about the obligation but are too stingy to pay it, it is obligatory to have zakāh collectors²⁴. The mention of those who administer zakāh using the term ‘*âmilîn ‘alayhâ* in *al-Qur’ân* 9: 60 indicates that zakāh should be managed in the best possible way. The majority of ‘*ulamâ* agreed that the instruction “*khudz min amwâlihîm*” (“taking zakāh from their wealth”) in *al-Qur’ân* 9: 103, is addressed to the Prophet Muḥammad and to everyone who hold the affairs of Muslim community after him²⁵.

The case of *riddah* war corrected the misinterpretation of *al-Qur’ân* 9: 103 that zakāh collection is merely the Prophet’s personal authority. The instruction “*khudz min amwâlihîm*” (*al-Qur’ân* 9: 103) descended in the context (*asbâb al-nuzûl*) of acceptance of repentance of the Prophet’s companions who didn’t fight with him in the Battle of Tabuk. After Allāh accepted their repentance (*al-Qur’ân* 9: 102), they brought their wealth to the Prophet and asked him to donate it on behalf of them while asking forgiveness for them. But the Prophet refused to do it, causing the descent of *al-Qur’ân* 9: 103, which says: “Taking zakāh from their wealth by which you cleanse and purify them”²⁶. Then, when the Prophet demised, some of Bedouin tribes thought that zakāh no longer compulsory since there’s no Prophet’s prayer anymore to cleanse and purify them. The policy of Caliph Abû Bakr to fight against those who refuse to pay zakāh of livestock has saved the political character of zakāh, a type of zakāh which has to be paid to the government to be managed.

The majority of ‘*ulamâ* agree that the management of zakāh of *amwāl al-zhâhirah* is the sole authority of ruler, where the ruler has a right to collect it forcefully. While regarding the management of zakāh of *amwāl al-bâthinah*, there are differing opinions. Hanafi and Syafi’i school considered the management of zakāh of *amwāl al-bâthinah* to be the domain of the wealth owner. Mâlikî school said that one should hands over all of their zakāh, *zhâhir* as well as *bâthin* to the ruler even though they’re *zhâlim*, so long as they are trustworthy to manage zakāh. Meanwhile, Hanbalî school stated that handing over zakāh to the ruler is not obligatory, but is permissible, whether it’s just or *zhâlim* (unjust) ruler, and whether it’s zakāh of *zhâhir* or *bâthin* wealth²⁷.

²⁴ Al-Qaradhâwî. *Fiqh al-Zakâh*. page 545-546.

²⁵ Al-Qaradhâwî. *Fiqh al-Zakâh*. page 733-734.

²⁶ Jalaluddin as-Suyuthi. (2008). *Lubâb al-Nuqûl fî Asbâb al-Nuzûl (Indonesian Translation)*. Jakarta: Gema Insani Press, 2008, page 300-301.

²⁷ Al-Qaradhâwî. *Fiqh al-Zakâh*. page 745-749.

STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL *ZAKĀH* MANAGEMENT: HISTORICAL LESSONS, *FIQH* DISCOURSE, AND INTERNATIONAL COMPARISON

Al-Qaradhâwî chose and supported two opinions regarding zakāh management in Islamic *fiqh*²⁸. *First*, zakāh management is part of Muslim government authority, where the government is entitled to collect zakāh of all types of wealth, be it *zhâhir* or *bâthin*, especially when the ruler knows that their people abandon zakāh payment. *Second*, the government's failure to manage zakāh, by abandoning and not collecting zakāh from society, doesn't nullify the individual responsibility to pay zakāh, where muzakki still have to count the amount of zakāh they have to pay and distribute it themselves to mustahik.

When defining the government's authority, and even making it imperative, to manage zakāh according to the provisions of sharia, al-Qaradhâwî required qualification that the government should let the wealth owner to share one third or a quarter of their zakāh obligation by themselves, in accordance with the tradition of the Prophet. Moreover, al-Qaradhâwî also required that the authority to collect zakāh only applies for Islamic government where Islam is defined as the legal basis of government and statehood, including political, economic, social, and cultural aspects. The secular government which based itself on non-Islamic ideology has no right and is prohibited from collecting zakāh²⁹.

Nevertheless, the information from Abû 'Ubayd suggests that the discourse of zakāh management by ruler cannot be separated from disagreements and is full of dynamics, even in the early days of Islam. The *fiqh* discourse regarding the handing over of zakāh to ruler is coined for the first time after the assassination of Caliph 'Utmân. The discourse dynamics of handing over of zakāh to the state can be well observed in the attitude of Ibn 'Umar. At first, Ibn 'Umar clearly stated that zakāh must be handed over to the ruler, even though they no longer have religious commitment. So long as the ruler is Muslim (observing prayer), it is mandatory for people to submit their zakāh to them. However, after following the dynamics in society, Ibn 'Umar finally revised his opinion by no longer requiring people to hand over zakāh to the ruler, but rather distributing it directly to those who deserve it (*mustahik*)³⁰.

This clearly indicates that when the 'ulamâ assert the obligation to hand over zakāh of *amwâl al-zhâhirah* to the ruler, they assume that the government has Islamic characteristics. When the ruler's religious commitment degrades significantly, they no longer require people to observe the political dimension of zakāh, but rather the ritual dimension of it by distributing zakāh directly to *mustahik*. This *fiqh* dynamics confirms the character of zakāh as a special public finance institution, in the sense that zakāh should be distributed to public, whether through the government or not. The distributive aspect of zakāh is much more important than its collective aspect³¹.

Al-Qaradhâwî strongly asserted that the religious commitment of the ruler to Islamic teachings is the requirement for the handover of zakāh to them. But if the *zhâlim* ruler still collects zakāh according to the provisions of sharia, then it is considered as legitimate and the wealth owner may pay their zakāh to them. The wealth owner is also permitted to hand over their zakāh to ruler even if they're *zhâlim* so long as the ruler distributes zakāh to the right target group. Therefore, if the ruler is *zhâlim* and doesn't

²⁸ Al-Qaradhâwî, *Fiqh al-Zakâh*, page 752-753.

²⁹ Al-Qaradhâwî, *Fiqh al-Zakâh*, page 762.

³⁰ Abû 'Ubayd, *Al-Amwâl*, page 686-689.

³¹ Suharto, *Kitâb al-Amwâl*, page 183-184.

distribute zakāh to those who deserve it, then it is better for the wealth owner to distribute zakāh by themselves to *mustahik*, if it is not collected by the ruler³².

Abū ‘Ubayd required further qualification that the obligation to hand over zakāh to the ruler is limited only to zakāh *al-amwāl al-zhâhirah*, while the payment of zakāh of *amwâl al-bâthinah* is within the individual domain, unless they hand over it voluntarily to the ruler. Abū ‘Ubayd asserts that it’s the *sunnah* of the Prophet, where the Prophet Muḥammad sent zakāh collectors to the owners of *amwâl al-zhâhirah*, that is livestock, and collected zakāh from them, either voluntarily or forcefully. But there’s no record stating that the Prophet forced people to pay zakāh *al-amwâl al-bâthinah*, that is gold and silver coins³³.

Al-Qaradhâwî specifically refuted Abū ‘Ubayd who distinguished between *amwâl al-zhâhirah* and *amwâl al-bâthinah*, and stated that zakāh collection by the ruler is limited only to zakāh *al-amwâl al-zhâhirah* while zakāh *al-amwâl al-bâthinah* is paid voluntarily by individuals. Al-Qaradhâwî argued that the Prophet didn’t send officer to collect zakāh *al-amwâl al-bâthinah* because people have handed over their zakāh to the Prophet voluntarily and the abandonment of zakāh *al-amwâl al-bâthinah* was to raise the conscience of his companions.

Furthermore, al-Qaradhâwî took the case of ‘Umar as justification for zakāh collectors to collect *zhâhir* as well as *bâthin* of wealth and didn’t leave it as personal choice of the owner. Caliph ‘Umar is recorded to have collected a type of *amwâl al-bâthinah*, namely commercial wealth from Muslim merchants at the rate of 2.5% and also collect tax from non-Muslim merchants, both local (*dzimmî*) and foreign (*harbî*), each at the rate of 5% and 10% (*’ushr*). During the era of Caliph ‘Utmân, the state treasury in *Baytal-Mâl* became more abundant and there seemed to be difficulty in collecting zakāh *al-amwâl al-bâthinah*, so ‘Utmân decided to collect zakāh *al-amwâl al-zhâhirah* only while leaving zakāh *al-amwâl al-bâthinah* within the domain of its owner as a form of trust and also to ease them. Thus, the original law of this matter is for the ruler to collect all type of zakāh on wealth, be it *zhâhir* or *bâthin*³⁴.

However, al-Qaradhâwî’s criticism to Abū ‘Ubayd seems to contain several weaknesses. *First*, the distinction between *amwâl al-zhâhirah* and *amwâl al-bâthinah* in general is adopted by the jurists to define the implication over the government’s authority in collecting zakāh forcefully. The government is entitled to forcefully collect zakāh *al-amwâl al-zhâhirah* only. But this distinction doesn’t imply that the government is prohibited from managing zakāh *al-amwâl al-bâthinah*. The government is still allowed to manage zakāh *al-amwâl al-bâthinah*, but its collection should be based on voluntarism, not coercion. Society could manage it themselves or hand the zakāh *al-amwâl al-bâthinah* over to the government voluntarily.

Second, the use of the case of commercial zakāh collection by Caliph ‘Umar as justification, that the ruler is entitled to collect zakāh *al-amwâl al-zhâhirah* and *al-amwâl al-bâthinah* forcefully, is not appropriate. The jurists, especially those of *Ḥanafî* school, justified the collection of commercial zakāh, which is part of *amwâl al-bâthinah*, based on the protection (*ḥimâya*) provided by the government over that type of wealth. When the owner of commercial goods carries their wealth on public roads, they have brought their wealth into the area of government’s protection. For the same reason, similar

³² Al-Qaradhâwî. *Fiqh al-Zakâh*. page 777-779.

³³ Abū ‘Ubayd. *Al-Amwâl*, page 547.

³⁴ Lihat al-Qaradhâwî, *Fiqh al-Zakâh*, page 756-761.

STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL *ZAKĀH* MANAGEMENT: HISTORICAL LESSONS, *FIQH* DISCOURSE, AND INTERNATIONAL COMPARISON

treatment is also applied to commercial wealth owned by non-Muslim, in form of *'usyr*³⁵. By collecting zakāh on commercial goods on roads, bridges, or ports, 'Umar seemed to hold opinion that commercial wealth is no longer categorized as *amwāl al-bāthinah* when it's brought by its owner into public places. Furthermore, 'Umar's adoption of opinion that the ruler collects zakāh *al-amwāl al-zhāhirah* only is proven in the case of dispensation of zakāh payment to the state during the crisis of *ramadah* year which was applied only to zakāh on livestock, which is an *amwāl al-zhāhirah*³⁶. The case of crisis in *ramadah* year clearly shows that when 'Umar made zakāh as an instrument of fiscal policy, a tool to fight against crisis (*counter-cyclical policy*), he only used a type of zakāh which is under the domain of government, that is zakāh *al-amwāl al-zhāhirah* only, which in this case refers to zakāh on livestock.

Third, the policy of distinction between zakāh of *amwāl al-zhāhirah* and of *amwāl al-bāthinah* was not merely an *ijtihād* from Caliph 'Utmān, but rather the confirmation of what has been set by the Prophet and previous caliphs, Abū Bakr and 'Umar. The Prophet Muḥammad is recorded to have collected zakāh forcefully on livestock only, and didn't do the same on gold and silver. Abū Bakr waged war against those who refused to pay zakāh on livestock and spared those who refused to pay zakāh on currency. Meanwhile, 'Umar gave dispensation during the time of economic crisis by postponing the payment of zakāh on livestock only.

From the above *fiqh* discourse, it thus can be seen that zakāh is part of Islamic public finance institution, where the government has authority to manage it. But the authority to collect zakāh requires that the government should have Islamic characteristics and is not *zhālim*. Furthermore, the government's authority is limited only to zakāh *al-amwāl al-zhāhirah*. Therefore, the political character of zakāh, that is the handover of zakāh to ruler, depends on the level of the ruler's religious commitment and public trust to them. When most of Muslim nations in this contemporary era are secular, which don't use Islam as their national principle, and some are even under *zhālim* authoritarian regimes, it is easy to understand why zakāh management in modern Muslim society becomes an arena of experiment.

All of the above discussion shows that in exercising the authority of zakāh collection, Islamic government have to show their strong commitment to religious teachings, govern justly, collect and distribute zakāh according to the provisions of sharia, collect zakāh forcefully on *amwāl al-zhāhirah* only, and give a chance to zakāh payer to distribute one third or a quarter of their zakāh directly. If the above qualifications are not met, then the political dimension of zakāh is no longer compulsory, leaving only its ritual dimension: zakāh shall be distributed to public, whether through government or not.

In other words, zakāh management by the state is not the goal, but rather a means. The ultimate objective of zakāh management is the delivery of zakāh to the right zakāh receiver (*mustahik*) with optimal benefit. This conclusion is in line with contemporary *fiqh* principle, *al-'ibrah bi maqāshid al-syarī'ah* (historical lessons has to refer to higher objective of law) and the intent and purpose of sharia. This conclusion, that zakāh management by the state is merely an instrument and not the goal, will be better at protecting *mashlahah* by encouraging the formulation of sharia-oriented policy (*siyāsah shar'iyyah*), which is focused on benefit (*shalāh*) and avoids harm (*fasād*).

³⁵ Zysow, "Zakāt", page 411.

³⁶ al-Haritsi. *Al-Fiqh Al-Iqtishâdi Li Amîr al-Mu'minîn 'Umar Ibn Al-Khaththâb*, page 382-383.

4. NATIONAL ZAKĀH MANAGEMENT IN CONTEMPORARY ERA: INTERNATIONAL COMPARISON

Most of Muslim states today are national-secular states, which do not use Islam as their national principles, and some are even governed under *zhâlim* authoritarian regimes. In relation to zakāh management by secular state, the condition is not discussed much in classical *fiqh* studies. It is not surprising, then, that zakāh management in contemporary Muslim societies becomes a subject of various experiments. Based on its collection, contemporary zakāh management in general can be divided into two categories³⁷.

First, the obligatory system where zakāh payment to the state is implemented forcibly and there is penalty for non-compliance. Such system is recorded to be implemented in six Muslim nations, namely Saudi Arabia, Pakistan, Sudan, Libya, Yemen and Malaysia, where these countries made Islam as their national principle. *Second*, the voluntary system where collection and distribution of zakāh is done voluntarily. Zakāh management is run by both government and civil society and there is no legal penalty for not paying zakāh. This system is applied in the majority of Muslim nations which are secular in general, not using Islam as their national principles, such as Kuwait, Bangladesh, Jordan, Indonesia, Egypt, South Africa, and non-Muslim countries where Muslim is the minority.

The rise of Western Imperialism since 16th century and the fall of the last Islamic caliphate, the Turkish Ottoman, in 1924, made almost all Muslim nations entered the 20th century as colonies. Under the rule of non-Muslim colonialists, zakāh management in general disappeared from public sphere and entirely became a voluntary activity on individual level. After World War II, Muslim nations which gained their independence, started to pay attention again to zakāh management. Some Muslim nations, which generally made Islam as their national principle, chose obligatory system with collective management by the state such as Saudi Arabia (1951), Libya (1971), Yemen (1975), Pakistan (1980) and Sudan (1984). In three countries (Yemen, Sudan, and Pakistan), the implementation of zakāh is enshrined in the state constitution. Most of other Muslim nations, secular in general, chose voluntary system with several variations.

At least there are three variants of zakāh management in this voluntary system. *First*, zakāh management by non-governmental charitable organization, which exists in many Muslim countries and communities. This charitable organization is characterized by donor's high level of confidence, strong local character, and high operational efficiency. *Second*, zakāh management by semi-governmental institution which collects zakāh voluntarily and distributes it to those who deserve it. The only example for this is Nasser Social Bank (1971) in Egypt. *Third*, zakāh management by governmental institution established specifically by the state to receive and distribute zakāh. Several countries established zakāh management institutions which are legally and financially independent, such as Kuwaytî Zakāh House (*Bayt al-Zakât*) in 1982 and Zakāh Fund (*Shundûk al-Zakât*) in Jordan (1978), Bahrain (1979), Tunisia, and Bangladesh.

Some countries exhibited specific experiences which are interesting. In several countries, voluntary system with collective management by the state became the preparation stage towards obligatory system, as in the case of Sudan where the establishment of *Shundûk al-Zakât* (1980) preceded Zakāh Law (1984) which adopted obligatory system. Jordan is the only country which turned back from obligatory system

³⁷ See Monzer Kahf. (1990). "Applied Institutional Models for Zakah Collection and Distribution in Islamic Countries and Communities". Proceeding on Third Zakah Conference, 14-17 May 1990, Kualalumpur, Malaysia, page 197-228.

STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL *ZAKĀH* MANAGEMENT: HISTORICAL LESSONS, *FIQH* DISCOURSE, AND INTERNATIONAL COMPARISON

to voluntary system, where *Shundūk al-Zakāt* (1978) replaced Zakāh Law (1944) which was abolished in 1953 by Social Service Tax Law³⁸.

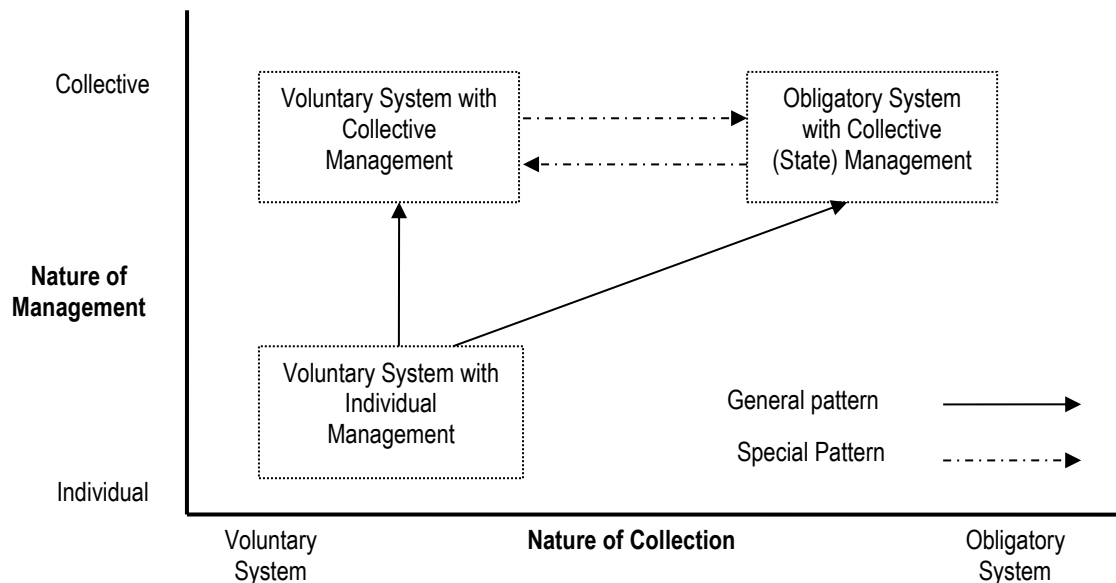


Figure 1. Pattern of Zakāh Management in Contemporary Muslim Society
Source: Author's assessment, adapted from Wibisono (2015)³⁹

From the experiences of Muslim countries which adopted obligatory system, it can be seen that the implementation of the system varied widely. The scope of wealth on which zakāh is imposed on in Yemen includes zakāh *al-fithr* and zakāh *al-mâl*. In Saudi Arabia, Libya, Pakistan, and Sudan, the obligation of zakāh includes zakāh *al-mâl* only. Meanwhile in Malaysia, the obligation of zakāh applies only on zakāh *al-fithr*. Regulations regarding types of wealth on which zakāh *al-mâl* is imposed on also vary. In Sudan and Yemen, zakāh *al-mâl* is imposed on types of wealth contained in classical *fiqh* rules; in Saudi Arabia, zakāh *al-mâl* is imposed on agricultural products, livestock, and tradable goods; in Pakistan, zakāh *al-mâl* is also imposed on financial and monetary assets, as well as agricultural products⁴⁰.

The distinction also exists in the aspect of zakāh collection and distribution. Regarding zakāh collection, Saudi Arabia and Sudan base the amount of zakāh paid on self-assessment by *muzakki*. If the amount seems to be unreliable, official zakāh collector may recount it. Meanwhile in Pakistan, zakāh on financial assets will be collected directly by institutions which manage the assets (deduction at sources). Regarding zakāh collection on agricultural products and livestock, Saudi Arabia appoints zakāh officer to make calculations on zakāh obligation of *muzakki*, and distribute it directly to *mustahik*, with the exception applied on wheat, where the zakāh payment is performed at the marketing stage. On the other hand, Pakistan requires that zakāh calculation on agricultural products be paid through local zakāh committee which calculate and collect

³⁸ Zysow, "Zakāt", page 420.

³⁹ Yusuf Wibisono. (2015). *Mengelola Zakāh Indonesia: Diskursus Pengelolaan Zakāh Nasional dari Rezim Undang-Undang Nomor 38 Tahun 1999 ke Rezim Undang-Undang Nomor 23 Tahun 2011*. Jakarta: Prenada Media, page 152.

⁴⁰ Abu Al-Hasan Sadeq. (1994). "A Survey of The Institution of Zakah: Issues, Theories and Administration", *IRTI-IDB Discussion Paper*, No. 11, page 45.

zakāh in form of cash. Meanwhile in Sudan, zakāh on agricultural products is collected by tax institution in form of goods or cash at its marketing stage⁴¹.

The obligatory system, where the state's role in zakāh management is dominant and significant, theoretically has many justifications. *First*, to implement zakāh effectively in social life, a power is needed to force and manage. The state has power to force and manage. *Second*, the state has a system and resource needed to manage zakāh effectively and efficiently. Government's system and resource also spread all over the country which ensures that zakāh is run in a fair way. *Third*, the state can also provide legal certainty and harmonize between zakāh and tax. This will eventually strengthen zakāh institution.

Comparison between the performance of compulsory system and voluntary system reveals ambiguous result. From the aspect fund collection, the performance of compulsory system is better than voluntary system, even though fund collection under compulsory system is still lower than the potential of zakāh that could be achieved. However, from the aspect of fund distribution, the performance of compulsory system is lower than voluntary system, which is caused by low capacity, weak initiative, and insufficient supervision. Regarding the work scope, the ability of compulsory system to reach muzakki and mustahik is indeed wider than that of voluntary system, since the system applies nationally and is supported by government's bureaucracy from the highest to the lowest level⁴².

Nevertheless, the execution of compulsory system in some countries triggers lots of problems and technical complexities which cannot be ignored. In Pakistan, the execution of obligatory zakāh system creates segregation in Pakistani society since Shia Muslims are excluded from zakāh obligation. The integration of zakāh in Pakistani taxation system also creates difficulties for most of Muslims who are illiterate and not educated, who cannot understand many regulations and administrations of zakāh which become complicated under obligatory system. Zakāh avoidance is also rampant, committed by not saving wealth in form of assets on which zakāh is imposed on, or moving zakāh out of the institution which will collect zakāh right before the collection is performed every 1st of Ramadhan. Obligatory zakāh system has also created a harsh political competition to control zakāh fund which is a significant economic resource for both the ruling and opposition parties⁴³.

In Kedah, Malaysia, there has been a peasant resistance against obligatory agricultural zakāh collection, especially zakāh of rice. The peasant resistance against obligatory agricultural zakāh collection is expressed by refusing to register their total cultivated land area to officer. They registered it but reduced their land area and amount of harvest. The actual rice zakāh paid is lower than the official report which also has been reduced, and rice zakāh paid is often defective or rotten, soggy, contains straw, mud, or gravel. The peasant resistance against "*royal zakāh*" under a centralized obligatory system, to distinguish it from "*personal zakāh*" which is based on voluntarism and decentralized on individual level, is rooted in the perception of unfairness in zakāh obligation regulation, indifference to local needs, and the perception of corruption in its collection⁴⁴.

⁴¹ Sadeq. "A Survey of The Institution of Zakah", page 46.

⁴² Kahf. "Zakah Management in Some Muslim Society", page 41-45.

⁴³ See Arskal Salim. (2008). *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Honolulu: University of Hawai'i Press, page 118-119.

⁴⁴ See James C. Scott. (1987). "Resistance Without Protest and Without Organization: Peasant Opposition to the Islamic Zakat and the Christian Tithe", *Comparative Studies in Society and History*, 29 (3), 417-452.

STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL ZAKĀH MANAGEMENT: HISTORICAL LESSONS, *FIQH* DISCOURSE, AND INTERNATIONAL COMPARISON

Furthermore, obligatory and voluntary system can be sorted by judging its collection organization. From this perspective, there are five forms of contemporary zakāh management. *First*, obligatory zakāh collection system performed by the state such as in Pakistan, Sudan, and Saudi Arabia. The variant of this type is an obligatory system with the collection performed by religious authority like what happened in several states in Malaysia. *Second*, obligatory zakāh collection, but is performed by private company such as in Malaysia (Selangor). *Third*, voluntary zakāh collection performed by the state such as in Kuwait and Jordan. A variant of this is voluntary zakāh collection by religious authority such as in Singapore. *Fourth*, voluntary zakāh collection performed by private institution such as in Egypt. *Fifth*, voluntary zakāh collection performed by civil society such as in South Africa, Indonesia, and Algeria⁴⁵.

Contemporary zakāh management becomes more complex if we sort it based on the zakāh distribution organization. In Pakistan, zakāh is collected and distributed by the state. In Malaysia, zakāh is managed on state level with different institutional arrangements. In Kuala Lumpur and Negeri Sembilan, zakāh collection is performed by company while the distribution is performed by government. In Selangor, company even manages all zakāh operational activities. Meanwhile in South Africa, zakāh management is performed entirely by civil society through non-profit organizations⁴⁶.

5. CONCLUSION

Zakāh management in Indonesia is unique. Before the enactment of Law Number 38/1999, zakāh in Indonesia was entirely voluntary on individual level. But since 1990s, it has been experiencing resurgence as socio-economic movement in the hand of civil society through various professional *‘āmil* organizations. After the passing of Law Number 38/1999, zakāh management in Indonesia is officially affiliated with the state authority, but still voluntarily and include the role of civil society groups widely. In this context, the Law Number 38/1999 was wise because the prevalent practice that has been running well for a long time was not disturbed and the state chose to strengthen the system.

From this perspective, the centralization of zakāh management entirely by state promoted by the Law Number 23/2011 has many qualifications. First, the institutional centralization of zakāh by government doesn't guarantee performance improvement, and even can be a boomerang. In many Muslim countries, zakāh collection done by governmental institution is small compared to its potential⁴⁷. Even when the centralization is followed by sanctions for negligent muzakki, it still cannot guarantee the improvement of zakāh revenue performance satisfactorily. In Pakistan, Sudan, and Saudi Arabia which implement compulsory system, zakāh collection is still relatively much smaller compared to its potential. But the performance of compulsory system is indeed better than that of voluntary system⁴⁸.

⁴⁵ See I.A. Imtiaz. *et. al.* (Eds). (1989). *Management of Zakah in Modern Muslim Society.*, Jeddah: IRTI-IDB. See also Proceeding on Third Zakah Conference, 14-17 May 1990, Kuala Lumpur, Malaysia.

⁴⁶ See Habib Ahmed. (2004). "Role of Zakah and Awqaf in Poverty Alleviation", *IRTI-IDB Occasional Paper*, No. 8, Jeddah: IRTI-IDB, page 77-107. See also Monzer Kahf. (1990). "Applied Institutional Models for Zakah Collection and Distribution in Islamic Countries and Communities", Proceeding on Third Zakah Conference, 14-17 May 1990, Kuala Lumpur, Malaysia, page 197-228.

⁴⁷ See Ahmed. "Role of Zakah and Awqaf in Poverty Alleviation", page 65-71.

⁴⁸ See Abdin Ahmad Salama. (1990). "Empirical Economic Effects of Obligatory and Non-Obligatory Payment of Zakah to State". Proceeding on Third Zakah Conference, 14-17 May 1990, Kuala Lumpur, Malaysia, page 151-161.

Second, management centralization to increase zakāh performance in Indonesia is invalid, ahistorical, and denies the role of civil society in a democratic nation. The performance of zakāh collection and utilization is determined more by the legitimacy and reputation of collection institution, not by institutional centralization by government. The transparent operational activities of company and non-profit organization are preferred and foster trust of muzakki. Trust is the keyword here. Amid the ugly reputation of bureaucracy and low level of public confidence, it is difficult for us to hope that zakāh performance would increase after the centralization⁴⁹. This centralization system is also a historical, considering the long track record of LAZ since three decades ago in Indonesia's zakāh management, and negates the participation of society which is an important component in national development.

This conclusion is in line with the latest study findings that the success of zakāh management is not determined by whether the operator is from government or private sector. It is determined by credibility and trust of *muzakki*, which are the functions of integrity, transparency, and good governance. The coexistence of governmental and private zakāh operators is desirable because it will increase fund collection, foster efficiency, and provide wider options for muzakki. When governmental operator acts as regulator, then it should limit itself as regulator only, leaving its role as operator to private operators⁵⁰.

The main argumentation which paved way for the passing of Law Number 23/2011 in Indonesia is the idea that zakāh management is the sole authority of government. This notion is claimed to be based on *al-Qur'ân* and *hadîth*, as well as historical practices in the Islamic World, from classical to contemporary era. A profound research found that, apart from its central position and completeness of operational provisions in Islam, the practice of zakāh management is something dynamic, open to many *fiqh* interpretations and empirically became a subject of experiment throughout Islamic history. Zakāh, along with other instruments of Islamic philanthropy, which are moral obligations of Muslim to do good materially in the name of God, is determined more by individual willingness and faith than by enforcement of state authority.

From historical perspective, zakāh management by the state depended much on the level of public trust to the government. According to *fiqh* judgement, zakāh management by the state is justified when its qualifications are met: a government which is committed to religious teaching, collects zakāh only from *amwâl al-zhâhirah*, and manages zakāh according to sharia provisions. In today's context, zakāh management in contemporary Muslim nations has become a subject of experiments, whether in obligatory system or in voluntary system.

The article concludes that zakāh management exclusively by state is not generally applied without exception, but is full of qualifications. Moreover, the success of zakāh management by state relies heavily on the level of public trust in government, not state coercion. In other words, zakāh management by state is merely an instrument, not the goal itself. The ultimate objective is the delivery of zakāh to those who deserve it (*mustahik*) with optimal benefit.

⁴⁹ Faiz showed that after the implementation of obligatory *zakāh* payment system in Pakistan, most of *zakāh* is received through *deduction at the sources*, and only a very little amount of payment is paid voluntarily to governmental *zakāh* institution. People keep paying voluntarily to credible charitable organization in a big amount. See Faiz Muhammad. (1990). "The Relationship Between Obligatory Official Zakah Collection and Voluntary Zakah Collection by Charitable Organizations". Proceeding on Third Zakah Conference, 14-17 May 1990, Kuala Lumpur, Malaysia, page 163-195.

⁵⁰ See IRTI and Thomson Reuters. (2015). *Islamic Social Finance Report 2014*, page 15.

**STATE AUTHORITY AND PUBLIC TRUST IN NATIONAL ZAKĀH
MANAGEMENT: HISTORICAL LESSONS, FIQH DISCOURSE, AND
INTERNATIONAL COMPARISON**

References

- Ahmed, H. (2004). Role of Zakah and Awqaf in Poverty Alleviation. *IRTI-IDB Occasional Paper*, No. 8. Jeddah: IRTI-IDB. ISBN: 9960-32-150-9.
- Al-Ghazâlî, A. H. (1994). *Ihyâ' 'Ulûm al-Dîn (Indonesian Translation)*, Vol. 2, Semarang: CV Asy-Syifa'.
- Al-Haritsi, J. I. A. (2006). *Al-Fiqh Al-Iqtishâdi Li Amîr al-Mu'minîn 'Umar Ibn Al-Khaththâb, (Indonesian Translation)*. Jakarta: Khalifa. ISBN: 978-979-1164-03-7.
- Al-Mâwardî. (2014). *al-Ahkâm al-Sulthâniyyah (Indonesian Translation)*, Jakarta: Qisthi Press. ISBN: 978-979-1303-72-9.
- Al-Qardhâwî, Y. (1988). *Fiqh al-Zakâh (Indonesian Translation)*. Bogor: Pustaka Litera AntarNusa. ISBN: 979-8100-34-4.
- Al-Qâsim, A. U. (2009). *al-Amwâl (Indonesian Translation)*, Jakarta: Gema Insani Press. ISBN: 978-979-077-129-1.
- As-Suyuthi, J. (2008). *Lubâb al-Nuqûl fî Asbâb al-Nuzûl (Indonesian Translation)*. Jakarta: Gema Insani Press. ISBN: 978-979-077-075-1.
- Bearman, P.J., et. al. (Eds.). (2002). *The Encyclopaedia of Islam: New Edition, Vol. XI*, Leiden: Brill Academic Publishers. ISBN: 90-04-12756-9.
- Dewan Perwakilan Rakyat Republik Indonesia. (2011). *Daftar Inventaris Masalah Rancangan Undang-Undang tentang Pengelolaan Zakâh, Infaq dan Shodaqoh*.
- Fauzia, A. (2013). *Faith and the State: a History of Islamic Philanthropy in Indonesia*. Leiden: Brill Academic Publishers. ISBN: 978-90-04-24920-2.
- Gibb, H.A.R., et. al. (Eds.). (1986). *The Encyclopaedia of Islam: New Edition, Vol. I*, Leiden: Brill Academic Publishers. ISBN: 90-04-08114-3.
- Imtiaz, I. A., et. al. (Eds.). (1989). *Management of Zakah in Modern Muslim Society*. Jeddah: IRTI-IDB. ISBN: 9960-32-096-0
- IRTI and Thomson Reuters. (2015). *Islamic Social Finance Report 2014*. Jeddah: IRTI.
- Islahi, A. A. (1988). *Economic Concepts of Ibn Taimîyah*. Leicester: The Islamic Foundation. ISBN: 0-86037-182-4.
- Kahf, M. (1990). Applied Institutional Models for Zakah Collection and Distribution in Islamic Countries and Communities. *Proceeding on Third Zakah Conference*, 14-17 May 1990, Kualalumpur, Malaysia, page 197-228.
- Kahf, M. (1993). Zakah Management in Some Muslim Society. *IRTI-IDB Background Paper*, No. 11. Jeddah: IRTI-IDB. ISBN: 9960-32-088-x.
- Muhammad, F. (1990). The Relationship Between Obligatory Official Zakah Collection and Voluntary Zakah Collection by Charitable Organizations. *Proceeding on Third Zakah Conference*, 14-17 May 1990, Kualalumpur, Malaysia, page 163-195.
- Republik Indonesia. *Undang-Undang No. 38 Tahun 1999 tentang Pengelolaan Zakat*.

- Republik Indonesia. *Undang-Undang No. 23 Tahun 2011 tentang Pengelolaan Zakat*.
- Sadeq, A. A. H. (1994). A Survey of The Institution of Zakah: Issues, Theories and Administration. *IRTI-IDB Discussion Paper*, No. 11. Jeddah: IRTI-IDB. ISBN: 9960-32-120-7.
- Salama, A. A. (1990). Empirical Economic Effects of Obligatory and Non-Obligatory Payment of Zakah to State. *Proceeding on Third Zakah Conference*, 14-17 May 1990, Kualalumpur, Malaysia, page 151-161.
- Salim, A. (2008). *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Honolulu: University of Hawai'i Press. ISBN: 978-0-8248-3237-7.
- Scott, J. C. (1987). Resistance Without Protest and Without Organization: Peasant Opposition to the Islamic Zakāh and the Christian Tithe. *Comparative Studies in Society and History*, 29 (3), 417-452.
- Suharto, U. (2005). *Kitāb al-Amwāl: Abū 'Ubayd's Concept of Public Finance*, Kualalumpur: The International Institute of Islamic Thought and Civilization - International Islamic University Malaysia. ISBN: 983-9379-38-0.
- Wibisono, Y. (2015). *Mengelola Zakāh Indonesia: Diskursus Pengelolaan Zakāh Nasional dari Rezim Undang-Undang Nomor 38 Tahun 1999 ke Rezim Undang-Undang Nomor 23 Tahun 2011*. Jakarta: Prenada Media. ISBN: 978-602-1186-49-7.