Syarī'ah Audit Practices at Zakāt Institutions in Indonesia: In the Legal Perspectives

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Abstract. The practice of Syarī'ah audits at Zakāt institutions in Indonesia has been effective since 2020 through the Decree of the Minister of Religion Number 606 of 2020. In practice, Syarī'ah audits play a role as guarantee and quality control for the implementation of ZIS and DSKL fund management. This study aims to analyze the practice of Shari'ah auditing at Zakāt institutions in Indonesia from the perspective of positive law and Shari'ah. This study uses a descriptive qualitative approach through analysis of the contents of regulations, data, and documents. The results of the study show that from a legal perspective, the process of managing funds and governance of ZIS and DSKL has not been regulated in positive law and in Shari'ah law. The solution that has been carried out by Shari'ah auditors so far is through the process of priority legal and fiqh istinbāth (ijtihad al-ahkamil-ahkam).

Keywords: Audit, Zakāt, Zakāt Institutions, Istinbāth, Priority Fiqh

Abstrak. Praktik audit Syari'ah pada lembaga Zakāt di Indonesia telah efektif sejak tahun 2020 melalui Keputusan Menteri Agama Nomor 606 Tahun 2020. Dalam penerapannya, audit Syari'ah berperan sebagai penjaminan dan pengendalian mutu pelaksanaan pengelolaan dana ZIS dan DSKL. Penelitian ini bertujuan untuk menganalisis praktik audit Syari'ah pada lembaga Zakāt di Indonesia dari perspektif hukum positif dan Syari'ah. Penelitian ini menggunakan metode deskriptif dengan pendekatan kualitatif deskriptif melalui analisis isi peraturan, data, dan dokumen. Hasil penelitian menunjukkan bahwa dari segi hukum, proses pengelolaan dana dan tata kelola ZIS dan DSKL belum diatur dalam hukum positif yang berjalan dan dalam hukum Syari'ah. Solusi yang dilakukan auditor Syari'ah selama ini adalah melalui proses istinbāth hukum dan fiqh prioritas (ijtihad al-ahkamil-ahkam).

Kata kunci: Audit, Zakāt, Lembaga Zakāt, Istinbath, Fiqh Prioritas

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Introduction

The 2011 law No. 23 on Zakāt management imposes the implementation of Syarī'ah audits by the Ministry of Religion in Zakāt institutions. Syarī'ah audits are a sequential mechanism to obtain the actual truth to process people's opinions, processes, performance, and financial and non-financial people by Syarī'ah principles and provisions. So far, Syarī'ah audits have usually been carried out in Islamic financial institutions (LKS), but the actual implementation of Zakāt institutions only began in 2020.

In 2020, the Minister of Religion issued a decree on the guidelines for reporting on the management of the Zakāt, the Infaq, the charity, and other social and religious funds in the National Agency of Amil Zakāt and the Institutions of Amil Zakāt. Decree No. 606 of the Minister of Religious Affairs (KMA) replaces KMA No. 733 of 2018 and is a reference for Sharia auditors to assess reports on the management of Zakāt, Infaq, Alms (ZIS), and other religious-social funds (DSKL). The rule applies to Amil Zakāt authorities of the national, provincial, regional, and Amil Zakāt institutions (Keputusan Menteri Agama, 2020).

Syarī'ah audits in Syarī'ah financial institutions and Syarī'ah financial institutions are of the same source as Islamic law. Syarī'ah financial institutions must comply with Syarī'ah principles, so the implementation of audits must provide the reporting user with guarantees that financial statements and fund management can comply with Syarī'ah principles (Kudhori & Pandowo 2022; Megawati, 2018; Rochmantika & Pravitasari 2021). These studies include expert opinions and recommendations on the problem of the audit system in the Zakāt Institution, the study of the Syarī'ah audit regulations, and the implementation of external and internal audits in the Zakāt Institution.

Implementing the audit process assists parties outside the institution produce more transparent information. The aim of transparency is that donors and the public trust the funds donated to the Zakāt Institute (Rochmantika & Pravitasari, 2021). Suppose the results of Islamic audits in Islamic financial institutions are Islamic opinions on financial reports and institutional products (Nugraheni Peni, 2012). In that case, Islamic audits of Zakāt institutions generate performance assessments of Zakāt management organizations explaining the performance of Zakāt management, recommendations for finding irregularities, fraud, and violations of Syarī'ah principles, weaknesses in internal control, and suggestions for improvement. Syarī'ah audits of Zakāt institutions combine operational and compliance audits because the audit function of the financial statements is performed by a public accounting company (KAP). However, in practice, Syarī'ah audits are faced with their challenges. Ibrahim said, "There is a gap between the expectations and the so far conducted Syarī'ah audit. Several factors, including scope and framework, become obstacles when conducting audits under Islamic law—qualifications and issues related to the level of independence. (Kasim, M., & Sulaiman, 2012) A broad scope of Syarī'ah audit means that Syarī'ah auditors are obliged to assess the fairness of Islamic financial institutions' (LKS)' financial statements and assess LKS's compliance with Syarī'ah principles. (Dewi & Tjiptohadi, 2019). In addition, another problem is the lack of legislation, regulations, and fiqh literature on the management of ZIS and DSKL funds.

Therefore, the research aims to understand how Syarī'ah audits can be applied to the administrations of Amil-Zakāt (BAZ) and Amil-Zakāt (LAZ) in the management of ZIS and DSKL funds that are not regulated by positive law or Syarī'ah law.

Literature Review

The fundamental difference between syarī'ah audits in Zakāt and financial institutions lies in several aspects. As an auditee of Zakāt institutions, Zakāt institutions are non-profit organizations. Their audit scope includes management of Zakāt funds, Infaqs, Alms, and Other religious and social funds (DKSL) by syarī'ah law and principles (Taqi, 2022), while in Islamic financial institutions, financial statements are adjusted to financial accounting standards. Syarī'ah auditors in Zakāt institutions must come from the Ministry of Religion. In addition, Syarī'ah audits of Zakāt institutions do not generate views, as did Islamic financial institutions (Ministry of Religion, 2020).

Suppose the Syarī'ah audit results in the Sharia financial institutions are in the form of Syarī'ah opinions on financial statements and institutional products (Nugraheni, 2012). In that case, the Syarī'ah audit in the Zakāt institutions provides for an assessment of the performance of the Zakāt management organizations, which explains the performance of the Zakāt management organizations and recommendations on irregularities, fraud and violations of Syarī'ah principles, weaknesses in internal control and suggestions for improvement. Syarī'ah audits in Zakāt institutions can be described as a combination of operational and compliance audits because the audit functions of financial statements are performed by the Public Accounting Company (PAK). Therefore, implementing audits on the management of Zakāt, Infaq, Alms, and Other religious and social funds (DKSL) will be more comprehensive and complementary between Syarī'ah and financial audits. Positive legislation is an obligation that must be fulfilled in the implementation of Syarī'ah audits in Zakāt institutions (Januardi, 2018), particularly under certain conditions for the management of funds regulated by Zakāt, Infaq, Alms, and Other religious and social funds (DKSL) under the legislation. Positive laws must also be used as the spirit and spirit to explore unrecognized laws, although they must still consider Sharia's maqashid and Islamic law principles. *Maqāshid Syarī'ah* means the intention of Islamic law. *Maqāshid asy-Syarī'ah* science is a science that meets the scientific standards of a philosophical examination and has an explicit ontology, responsible epistemology, and measurable axiology (Busyro, 2019).

As regards several problems relating to the management of ZIS and DSKL funds, there is no provision in the laws and literature of the Fiqh regarding the legal, internal cleansing process that Syarī'ah auditors can carry out, including the use of legal sources and Syarī'ah legal arguments, without abandoning the spirit and rules of the application of the positive laws in force in the State of Indonesia. Furthermore, the Fiqh priority and its rules must also be used as a reference for establishing Islamic law (*Ijtihād al-ahkām*). This is because this concept is based on the values contained in the Qur'an and the Sunnah to achieve a certain priority in Islamic Syarī'ah practice (al-Karbuli, 2014). Fina's priority is also based on the concept of *Tadarruj al-Ahkām* (gradation of determination of Islamic law) in the prophetic period, which determines some legal choices based on space and time to achieve the objectives of Islamic Syarī'ah itself. In epistemology, Fiqh's priority will consider and measure the level of certain benefits and damage caused by a law based on text and social reality, depending on its level.

Methods

The study used descriptive and evaluation methods in a qualitative approach through content analysis of regulatory, data, and document content. According to Narbuko (2015), descriptive research aims to explain the solution to current data-based problems by presenting, analyzing, and interpreting it. Evaluation research aims to evaluate program activities and determine the effectiveness and success of programs using integrated learning to measure their success (Sukamadato, 2010).

The descriptive research aims to explain and analyze the implementation of Syarī'ah audits in the Zakāt Institutions of Indonesia. Furthermore, through

qualitative evaluation methods, this research also examines how positive laws and Syarī'ah laws can be used in Syarī'ah audits at Zakāt institutions.

Results and Discussion Syarī'ah Audit at Zakāt Institutions in Indonesia

Four years after the enactment of Act No. 23 of 2011 regulating the management of the Zakāt, a regulation was enacted regulating its implementation by Government Act No. 14. During this period, the management of Zakāt, Infaq, Alms, and Other religious and social funds (DKSL) can not be evaluated and measured, in particular the level of compliance with Syarī'ah. The success of the Zakāt Agency depends only on the levels of funds collected by the Zakāt National Agency (BAZNAS) and the Zakāt Agency (LAZ) ZIS and DSKL.

The Ministry of Religion of the Republic of Indonesia, through the Directorate-General of Islamic Community Guidance, began preparing guidelines and regulations for the Syari'ah audit in 2014. This began with the preparation of rules and legal standards for the implementation of Syari'ah audits, one of which was the sampling test of Syari'ah audits carried out in the Western Java Region of BAZNAS RI, BAZNAS Province, BAZNAS Banten Province and LAZ (Inspector General of the Ministry of Religion, 2014). The Syarī'ah Audit Probe Test has not yet produced Syari'ah opinions, as the results of the Syari'ah Audit Probe Test are given priority to improving and developing Syarī'ah Audit Formats and Methods in the following year and exploring several weaknesses. The sampling test results of the Syari'ah Audit are then submitted to the Director General of the Islamic Community Guidance, which is used as an assessment and material for preparing guidelines for the implementation of the Syarī'ah Audit at BAZNAS and LAZ. In 2018, the Ministry of Religion of the Republic of Indonesia issued Decree No. 733 of 2018 on the Syarī'ah Audit Guidelines for the Report on the Implementation of Management of the Zakāt, Infaq, Alms, and Other Religious Social Funds at the National Agency of Amil Zakāt and the Institutions of Amil Zakāt.

In 2016, a review of the BAZNAS RI was carried out, but the nature of the review was special and was ordered directly by the Minister of Religion. Therefore, the audit report is not presented to the Director-General of the Islamic Community to be used as documentation for evaluating the audit conducted in the Zakāt Management Organization. After a relatively long process, a Syarī'ah audit for BAZNAS RI and several LAZs was finally carried out in 2020, with operating licenses expiring in 2020. Implementing this Sharia audit was also carried out after the publication of Decree No. 606 of the Minister of Religion of 2020 concerning Syari'ah Audit Guidelines on Implementation Reports. The management of the National Agency of Amil Zakāt and the Institution of Amil Zakāt, Infaq, Alms, and Other religious and social funds (DKSL) of the National Agency of Amil Zakāt, has canceled the KMA number 733 of 2018.

No	Component	Assesment aspect
1	Management and Governance	Syarī'ah policy
		Syarī'ah supervisor
		Amil
		Transparency
	ZIS and DSKL fundraising	ZIS and DSKL fundraising socialization
2		Zakāt object
		ZIS anf DSKL aggregation
	Distribution of ZIS and DSKL funds	Category of asnaf
		Duration of distributing ZIS
3		ZIS distributing priority
		Mechanism distribution of ZIS
		Amil rights
4	Zakāt Regulations	OPZ legality

Table 1. Syarī'ah Compliance Index

Source: (Puskas Baznas, 2020)

Syarī'ah audits of Zakāt institutions will be carried out by the General Inspectorate of the Ministry of Religious Affairs as many as 29 times from 2020 to 2022. The audit scope includes four aspects: a collection of ZIS and DSKL funds, distribution of ZIS and DSKL funds, management of Zakāt management organizations, and Syarī'ah compliance. The results of the Syarī'ah audit are in the form of a score for Syarī'ah compliance and transparency and an assessment of the implementation of ZIS and DSKL management as follows.

No	Component	Assesment aspect
1	Financial Transparency	Publication financial statements
1		Financial statement
	Management Transparency	Govarnance
2.		Organizational structure
Z		Information and documentation
		Community complaints
	Program Transparency	Real time accumulation
3		Muzaki and Mustahiq database
		Accumulation and distribution programs database

Table 2. Transparency Index

Source: (Puskas BAZNAS, 2019)

Table 3. Assessment of the implementation of ZIS and DSKL management

No	Checked components		
Planning, Implementation, and Reporting ZIS & DSKL Fund Management			
1	Institutional Management		
2	Planning and Implementation of ZIS and DSKL Collection		
3	Planning and Implementation of the Distribution of ZIS and DSKL		
4	Sharia Management of Zakāt Institutions		
ZIS and DSKL fund management ratio			
1	Gross Allocation to Collection Ratio (ACR) ZIS & DSKL		
2	Gross Allocation to Collection Ratio (ACR) Non-Amil		
3	ZIS & DSKL Fund Turnover Ratio in 2021		
4	The deposit ratio of ZIS & DSKL funds		

Source: (KMA, 2020)

As explained earlier, the scope of Syarī'ah audit in Zakāt institutions is broader than the scope of external audit of financial statements, where this Syarī'ah audit covers the entire management of ZIS and DSKL funds, starting from planning, implementation, coordination, and reporting. The regulation states that Syarī'ah audits must be conducted in a comprehensive, accurate, transparent, and accountable manner, requiring them to conduct a comprehensive Syarī'ah audit of the management of ZIS and DSKL funds. This Syarī'ah audit activity must also be accounted for as it involves the management of ZIS and DSKL funds, which are public funds and do not belong to institutions or individuals. Some of the weaknesses that commonly occur and become Syarī'ah audit findings can be analyzed as follows:

- 1. Management aspect. The organizational structure is not in line with the regulations, and there are no standard operating procedures (SOPs) and regulations for the procurement of goods and services, no standard for salary of the Amil, and no supporting documents are provided. Provincial BAZNAS still has many management weaknesses, such as no strategic plans, annual plans, SOPs, or reports on Zakāt management.
- 2. Collection aspect. Proof of payment and the Muzakki report was not given directly to the Muzakki who paid their Zakāt through the Zakāt Collection Unit (UPZ). The individual Muzakki who pays directly has been given proof of payment of Zakāt. The subsequent common finding is that Zakāt funds are deposited in conventional banks, and there is no separation between Zakāt, Infaq, Alms, and Other religious and social funds (DKSL).
- 3. Distribution aspect. The distribution of Zakāt funds was not based on priority assessment and Mustahiq criteria. Distribution documentation is limited to photographic documentation; no document shows that Mustahiq has received Zakāt funds. SOPs and valid utilization documents did not support the distribution of Zakāt funds for utilization.

Priority Jurisprudence and Legal Istinbāth in Syarī'ah Audit

The potential of Zakāt in Indonesia is not maximized due to weak legal, sociological, and institutional aspects. This is due to several indications, namely the public's distrust that Zakāt does not reach the right Mustahiq, which shows a relationship with the weak application of organizational management principles in Zakāt (Sari et al., 2013). Therefore, the pattern of Zakāt distribution requires serious attention because the implementation of Zakāt does not only focus on collection but is perfected by distributing it to the right Mustahiq (*ashnaf*). The Qur'an has narrated that people qualify to be Zakāt recipients based on the word of Allah in QS. Al-Taubah verse 60:

"The alms are meant only for the poor and the needy and those who are in charge thereof, those whose hearts are to be reconciled, and to free those in bondage, and to help those burdened with debt, and for expenditure in the Way of Allah and for the wayfarer. This is an obligation from Allah.."

The verse states that Mustahiq is classified into eight groups *(ashnaf)*, with the details mentioned in the verse. These eight groups are provisions that Allah requires to be given Zakāt.

The regulation explains that the distribution of Zakāt is based on a scale of priorities, considering the principles of equity, justice, and territoriality. Based on the classification of the eight *ashnaf* groups that receive Zakāt, the share of each group, according to the principle of equity, is 12.5%. However, considering the number of poor people in Indonesia in 2021, which is 26.5 million people or 10.14% of the total population in Indonesia (Central Bureau of Statistics, 2022), the main priority is to allocate ZIS and DSKL funds to the poor and needy. In addition, the primary purpose of Zakāt is to be given to people experiencing poverty.

Priority Fiqh (*Fiqh al-awlāwiyyah*) is the right method in determining the order of priority because priority fiqh focuses on the study of Fiqh on the order of charity that should take precedence or priority. So that something unimportant does not take precedence over something important. Something important doesn't take precedence over something more substantial. The eight *ashnaf* have different needs levels, so prioritizing the distribution of Zakāt requires precise and accurate measurements. This is done by dividing the level of need, whether it is *dharūriyyah* (primary), *hājiyyah* (secondary), or *tahsīniyyah* (tertiary).

There are two methods of determining the order of priority in Figh al-Awlāwiyyah, namely priority using the textual method (at-tanshish al-awlāwī) and priority using the ijtihad method (al-ijtihād al-aulāwi). In at-tanshish al-awlāwi, the Qur'an and Sunnah often establish gradations for specific actions, making one practice more critical. Some of the priorities mentioned in the texts, al-Qur'an and Sunnah, can be known by their *illat* and others without knowing their *illat*. The reason can know priorities mentioned by the texts of the Qur'an or Sunnah about something and can be searched for wisdom. If, in the textual method, the priority is limited and determined by Syara', then in the ijtihad method, the priority is limited by the mujtahid himself through his reasoning. One of the ijtihad methods that can be used is to arrange the order of the proposed maqashid values as a reference for determining the priority scale. Al-Qardhāwī in Jauhari (2016) mentions three categories of maqashid levels, namely: *dharūriyyāt* (primary), *hājiyyāt* (secondary), and tahhsiniyyāt (secondary). Al-Qardhāwī further explains that what is meant by *dharūriyyāt* is something that we cannot live without, and *hājiyyāt* is life without it. Still, life is full of difficulties and hardships, while tahsiniyyat is something that is used to decorate and beautify life, or what we often call *kamāliyyāt* (complimentary).

Istinbāth law is a well-known term often encountered when studying ushul Fiqh as a scientific discipline. Istinbāth means "to find; to create." In terms of terminology, it can now be interpreted as establishing the law by the mujtahid through ijtihad (Munawwir, 2002). The etymological meaning of the word law is "decision." Law is defined as a rule; regulation; or provision (Nugraha, 2013), while in legal terms, it refers to the rules and regulations of life based on Islamic law.

Thus, what is meant by legal istinbath is a process of legal discovery (Fiqh) carried out by a mujtahid through ijtihad. Technically, in this study, what is meant by legal istinbath is the effort made by Sharia auditors to uncover the law of an event or product from the management of the ZIS and DSKL funds that is not regulated in the statutory provisions or the Islamic fiqh literature. Some of the problems often encountered by Syarī'ah auditors in uncovering a condition that has not been regulated in statutory provisions or a Syarī'ah fatwa and fiqh literacy include:

- 1. ZIS and DSKL fund management products are adopted from Islamic financial institutions.
- 2. The operational application of ZIS and DSKL fund management develops following the dynamics of the times.
- 3. Management of Zakāt management organizations that adopt modern management systems.

The three main problems, legal debates, and discussions often arise over something that is not regulated by law. For example, there are often differences in understanding and perspective between Syarī'ah auditors and Zakāt management organizations. This naturally becomes a problem if an agreement or solution is not found immediately for the problems that arise. For this reason, the implementation of Syarī'ah audits cannot be carried out by just anyone because the competence and qualifications of Shariah auditors must at least be able to master Islamic law. The competence and qualifications of the Syarī'ah auditors are necessary for the Syarī'ah audit to provide suggestions for improvement and solutions to the weaknesses found in the Zakāt management organizations.

Suppose the excavation of fiqh law relies on sources of Islamic law and extracting general legal certainty using positive law applicable in the State of Indonesia. In that case, the excavation of law in Syarī'ah auditing uses Islamic and positive law sources. In exploring the law related to the management of ZIS and DSKL funds, the legal istinbāth that Syarī'ah auditors can do is to rely on legal sources commonly used by scholars and *salaf ash-shālih*.

Legal exploration (legal *istinbāth*) is meant conditions where the practice or application of ZIS and DSKL fund management in Zakāt management

organizations has not been regulated in statutory provisions. So that the legal istinbāth methodology uses the methodology used by the scholars, which is then submitted to interested parties so that it becomes a legal product that is binding and applies to all parties.

Disclosure of Syarī'ah Audit Findings

Although the Syarī'ah audit on the management of ZIS and DSKL funds is a form of operational and compliance audit, it has its own characteristics that distinguish it from other audits. For this reason, the audit process and the disclosure of audit findings are not the same as the implementation of other audits. For example, in the Syarī'ah audit of the management of ZIS and DSKL funds, the principles put forward are trustworthiness and *syar'i* compliance (Islamic law). So, suppose there are findings of financial violations of ZIS and DSKL funds. In that case, one of the recommendations is to return these funds to the community by distributing them to Zakāt Mustahiq.

Disclosure of findings in Syarī'ah audits must pay attention to benefits, *madhārat* and *Maqāshid asy-Syarī'ah* that can be felt directly by the people. This means that the implementation of this Syarī'ah audit aims to improve the Zakāt management organization and can significantly impact or benefit Muslims. This ultimately differentiates the Syarī'ah audit on managing ZIS and DSKL funds from other supervisory practices.

The knowledge and ability of Syarī'ah auditors to dig up information and issue a solution in a syar'i (Islamic law) way to legal problems that statutory provisions have not regulated is a challenge that must be done. For this reason, the findings obtained in implementing Syarī'ah audits must be strengthened with relevant, competent, and sufficient audit evidence to be used as legal evidence and as a reference in establishing a legal product.

Syarī'ah auditors must also properly understand the level of audit evidence that will be used for evidence, namely: *primary evidence, secondary evidence, direct evidence, circumstantial evidence*, and comparative *evidence*) and *statistical evidence* so that the collected evidence can be used as the basis for preparing an accurate Syarī'ah audit report and can be utilized by several interested parties.

Conclusion

The Syarī'ah audit of Zakāt institutions carried out by the Ministry of Religion of the Republic of Indonesia is essential because it is far from a conflict

of interest. This is because the funding for this Syarī'ah audit comes from the state,

not from ZIS and DSKL funds as external audits in financial statements. This position further strengthens the ability of Syarī'ah auditors to be more independent, objective, honest, and professional. In addition to the benefits of the Syarī'ah audit as a check on the implementation of the management and administration of ZIS and DSKL funds, the conduct of this Syarī'ah audit can also play a role in quality assurance and quality control. Thus, Zakāt institutions that have undergone a Syarī'ah audit can be reasonably assured that the Zakāt management of ZIS and DSKL funds is by the Law's and Syarī'ah's provisions. This will undoubtedly increase public confidence in Zakāt institutions and DSKL funds management. The use of positive law is an obligation that must be carried out in implementing Syarī'ah audits. The problem with managing funds is that there are no provisions in positive legal regulations and fiqh literature. The process of priority legal and Fiqh *instinbāth* with a set of rules is appropriate to function as a reference in the determination of Islamic law *(ijtihād al-ahkām)* by Syarī'ah auditors.

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