

CONTESTATION BETWEEN STATE AND NON-STATE ACTORS IN *ZAKĀH* MANAGEMENT IN INDONESIA¹

Socio Political Dynamic of Islamic Law in Semi Secular Country

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ABSTRACT

This paper is aimed to study the contestation between state and civil society in zakāh management in Indonesia as a part of socio political dynamic of secularization of zakāh as an Islamic economy instrument in Indonesian situation. More specifically, about how the state of Indonesia manages to secularize the zakāh as a divine instrument into a country which adopt semi-secular system. The research scrutinizes the contestation between state and civil society in zakāh management through the cases and trial observation at Indonesian Constitutional Court (on judicial review

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the Law No. 23/2011 on Zakat Management) and Supreme Court (judicial review Government Regulation No. 14/2014 on Zakat Management). Some resistances to local ordinances on zakāh management in various places in Indonesia are also being studied. The research has shown that the practice of zakāh in Indonesia is specific and different from the practices in other Muslim countries. In a predominantly Muslim country, zakāh practices in Indonesia are actually a product of Indonesian Muslims' social, cultural, and political dynamics. The research employs Joel S. Migdal theory on contestation. In these Migdalian's "junctures" between state forces and social forces, these non-state zakāh agencies naturally launch contestation in both forms of struggle and accommodation. These non-state agencies accommodate their survival through modernization of their daily operation to reach more sources of funds and targets as well as launch a legal struggle to annul some disadvantageous parts within the newly arrived secularization of zakāh management through the politicization of zakāh. In the meeting grounds for state and social forces, the results vacillate - depending on the place and context of the contestation - between what Migdal (1994) calls the state's appropriation of social forces or symbols and the dominant social forces' adaptation to the presence of a state's components. In this set of mutual accommodation strategies, all become possible: co-optation, creation of multiple networks of clients, and corruption.

Keywords: *zakāh management, contestation, state, civil society*

INTRODUCTION

PROBLEMS IN ZAKĀH MANAGEMENT

Zakāh is part of religious (Islamic) instrument intended to uphold social justice. However, *zakāh* also have social, cultural and political dimension. Especially, when *zakāh* as a religious instrument is conducted in semi secular country like Indonesia.³ Indonesia is not an Islamic country but also not a secular country. Indonesia has a biggest Muslim population in the world, but the practices of *zakāh* in Indonesia differ with those practiced in Middle Eastern or North

³ Muslim scholar categorized Indonesia as semi secular country. Imtiyaz Yusuf (Assistant Professor of Islamic Studies, College of Religious Studies Mahidol University, Thailand), in interview with the author on 29 April 2013.

African countries. Some socio-political dynamics found in *zakāh* management in Indonesia are as follows: (1) *Zakāh* disbursement; (2) People Resistance; and (3) Controversy of *zakāh* laws and ordinances.

The first problem is *zakāh* disbursement. There are many cases related to mismanagement in *zakāh* disbursement and *zakāh* policies in Indonesia, among them are in Pasuruan East Java in 2008, in Jakarta, 2009 in Makassar (South Sulawesi) 2012 and 2013, also the massive protest related to Regent Decree on Zakat Payment of Civil Servants in Lombok Timur Regency (2005), in Malang City, East Java Province (2011) and in Pekanbaru Riau Province (2013).⁴ All the cases mentioned above shown that *zakāh* management and *zakāh* policies in Indonesia are not properly managed and regulated. Hence, they are subject to be comprehensively criticized by some parties.

For instance, at the first case of mismanagement in *zakāh* disbursement, a wealthy and pious man in Pasuruan Regency, East Java, disbursed his *zakāh* money directly to poor people around his residence. This action lead to 40 (forty) human casualties since people fought, pushed, and hit each other in order to get the *zakāh* money at first chance.

The second case occurred right after the Islamic Holy Day (Idul Fitri) in September 2009. Jakarta Provincial Governor, Fauzi Bowo, disbursed *zakāh* money directly to the people who massively gathered and stormed in front of Jakarta Government Provincial Office at Jalan Medan Merdeka Selatan. People pushed, kicked and stampeded due to irresponsible rumors that the amount of *zakāh* money was insufficient. Nobody was killed, but many people were taken to hospital due to severe injuries. Another case took place during Ramadan month (August 2012 and July 2013) in Makassar, South Sulawesi, when a rich man directly distribute his *zakāh* to the poor people for the amount of IDR 10.000/each person, which also caused stampede and many people were found heavily injured. Last case related to *zakāh* disbursement took place in Lombok Timur Regency, West Nusa Tenggara Province. The teachers, who were also civil servant within the region, conducted a mass protest against the enforcement of Lombok Timur Regent Decree No. 17/2003 as an implementing regulation to Lombok Timur Local Ordinances No. 9/2002 on Zakat. The Regent Decree obliged all Muslim civil servants (including teachers) to pay the *zakāh* money to designated state-based *zakāh* agency. The payment of

⁴ INFOZ magazine (20th Edition December 2013), a magazine owned by Forum Zakat revealed that in Pekanbaru, Riau Province and Malang City, East Java province, people strongly protested the regulations that oblige civil servants to deduct 2.5% of their monthly salary as *zakāh* money and disburse them to state-based *zakāh* agencies.

zakāh carried out designated government's treasurer automatically deducts the amount of 2.5% of their monthly salaries. The decree soon triggered a massive protest. The civil servant teachers conducted a strike for several days and pushed the Regent to revoke the decree. The cause of this resistance was due to the facts that not of all them are *muzakki* or *zakāh* payers. Half of the teachers, instead, who earned low salary and had a lot of debt, therefore, they are not qualified to be *zakāh* payers.⁵

Second problem is people's resistance to administration of *zakāh* by the state. Resistances against *zakāh* policies shown by some parties in various areas, among others were by government officials in East Lombok Regency, West Nusa Tenggara Province and by civil society in Malang City (2011) and Pekanbaru City (2011). In East Lombok (2005) around 4000 teachers at that regency performed demonstration and teaching strike. The protest was made since the teachers strongly disagree with the policy embodied at Local Ordinance on Zakat Administration. The ordinance said that every government official's salary (Muslim only) will be automatically deducted 2.5% as *zakāh* profession. The teachers hold that they did not reject the obligation to pay *zakāh* as Muslim but they could not accept the local government mechanism in administering the *zakāh* and the capability of local government in administering *zakāh* affairs. There were no clear consideration and guidance about whom and at which level the government officials must surrender their salary to be deducted 2.5% as *zakāh*.⁶

Another resistance to secularization of *zakāh*⁷ was shown by state and quasi-state agency, namely BAZIS DKI and State-Owned Enterprise Zakat

⁵ Arskal Salim, 'Perda Berbasis Agama dan Perlindungan Konstitusional Penegakan HAM,' *Journal Perempuan*, 60 (September 2008).

⁶ Hilman Latief, 'Developing Cross-Sector Coherence: Islamic Philanthropy, Agenda of Third Sector Organization and Civil Society in Indonesia (bilingual),' *Journal of Zakat and Empowering*, 1 (August 2008): 48-61.

⁷ Lechner has claimed that secularization refers to a historical process in which religions lose their social and cultural significance. As a result of secularization, the role of religion in modern societies had become restricted. In secularized societies, faith lacks cultural authority, religious organizations have little social power, and public life proceeds without reference to the supernatural. See Lechner, F.J., 'Secularization Revisited,' in *Social Forces* 71/1 (Oxford: Oxford University Press, 1992), 225-228. Other terminologies interchangeably used for secularization is 'bureaucratization'. See Mohamad. M., 'The Ascendance of Bureaucratic Islam and the Secularization of the Sharia in Malaysia,' in *Pacific Affairs*, 83/3 (2010): 505-524, and 'Islamization'. See Horowitz, D.L., 'The Qur'an and the Common Law: Islamic Law and the Theory of Legal Change,' *American Journal of Comparative Law*, 42/2 (1994). They refer to the same phenomenon

Agencies. The BAZIS DKI was founded in 1968 by Jakarta Governor Decree under the name of BAZ (Badan Amil Zakat). It was then transformed to BAZIS DKI (Badan Amil Zakat Infaq Shadaqah) in 1973. Therefore, BAZIS DKI is also much older than National Zakat Agency (Badan Amil Zakat Nasional or BAZNAS) which was founded in 2001. It was also founded long before the enactment of two National Zakat Laws (No. 38/1999 and No. 23/2001). In term of *zakāh* collection and distribution, BAZIS DKI is among the most successful local government-based *zakāh* agency. The enactments of Zakat Law 2011, which manage to centralize *zakāh* administration under the umbrella of BAZNAS, really perturbed BAZIS DKI since it has been steadfast under previous mechanism with tremendous *zakāh* collection.⁸

The same condition applied to state-owned enterprise *zakāh* agencies. Some state enterprises, namely Bank Mandiri, Bank BNI, Bank BRI, PT Pupuk Kujang, PT Garuda Indonesia, etc. Had established *zakāh* agencies within their companies. They have also successfully collected and distributed *zakāh* money. However, the enactment of Zakat Law 2011 which centralizes *zakāh* affairs under BAZNAS really harassed them. The BAZNAS managed to render them only as *zakāh* collector under umbrella of BAZNAS (or as Unit Pengumpul Zakat - Zakat Collector Agencies) since they have the status as state-owned enterprise.⁹

The third problem is controversy over Zakat Law (Undang-Undang Zakat). The law on Zakat Management No. 38/ 1999 had been subsequently amended by Law No. 23 year 2011 on Zakat Management. This new law was enacted on 27 October 2011 and suddenly became as hot issue and raised public criticism

of Weberian “routinized charisma” that happens when traditional authority of religion through *ulama* or religious teachers is elevated into a modern officialdom. To avoid the well-known contradictory interpretations of this key concept, this research would apply Carroll’s definition of secularization as “any diminution of the scope of human life that is governed by religious laws, religious values, or religious authority.” See Terrenc G. Carrol, ‘Secularization and the States of Modernity,’ *World Politics*, 36/3 (1994): 364. For example, if a change in religious laws had the effect of transforming a formerly religious matter into a question governed by secular authorities or individual judgment, it would be considered to be an instance of secularization, no matter how strong the theological justifiability for the change. *Zakāh*, for example, is a religious matter governed by individual judgment based on religious edicts.

⁸ Information given by representative of BAZIS DKI at the FGD on *Corporate Zakat Situation in the Aftermath of Zakat Law 2011*, Jakarta 28 August 2014.

⁹ Information given by representatives from various state-owned enterprise *zakāh* agencies at the FGD on *Corporate Zakat Situation in the Aftermath of Zakat Law 2011*, Jakarta 28 August 2014.

as well. Many people, particularly private or non-state *zakāh* agencies, held back to the law since it has introduced the new relation and new situation between state and the people in *zakāh* management where the provisions were more in favor of the state (state-heavy). The State tried to centralize the *zakāh* management in Indonesia through independent agency created by state namely BAZNAS, while the private *zakāh* agencies treated only as supporting agents (clearly stated at the articles 6 and 17 of the said law).¹⁰ The new law also compounded the prerequisites to establish non-state *zakāh* agencies (or LAZ – Lembaga Amil Zakat) which do not apply to state-based *zakāh* agencies (BAZNAS) as stated at article 18.¹¹ Moreover, the collection and disbursement of *zakāh* money without state's written approval are considered as a crime (article 38 to 41 of the said law).

This new law on *zakāh* management was subsequently challenged by Non State Zakat Agencies to Indonesian Constitutional Court on 16 August 2012.¹² The applicants request to Constitutional Court to annul some articles at this law namely article 5, 6, 7, 17, 18, 19 and 38, 41. Article 6 of the said law mentions that the BAZNAS is the main operator of *zakāh* management nationwide. Article 7 explicitly mentions that BAZNAS is both regulator and operator of *zakāh* management in Indonesia. Article 17 explicitly mentions that people (non state actors) may form private *zakāh* agencies to assist BAZNAS. Article 18 contains some prerequisites for non state actors to form private *zakāh* agencies; among others are: they must have recommendation from BAZNAS, must have specific legal body, etc. Article 38 and 41 contain the provision of criminalization for non authorized individuals and institutions who administer the *zakāh*.

¹⁰ Article 6 : BAZNAS is an agency authorized to administer *zakāh* affairs nationwide. Article 17: To assist BAZNAS in collecting, distributing and empowering *zakāh*, people may establish *zakāh* agencies.

¹¹ Article 18: To establish (non state) *zakāh* agencies, the applicants are required to get approval from Minister of Religious affairs after meeting these prerequisites as follows: a. registered as Islamic Mass-Organization which work in education, social and Islamic propagation/ dakwah; b. having legal body (as regulated in Indonesian law); c. obtaining recommendation from BAZNAS; d. Having sharia-compliant board; e. having technical, administrative and financial skills to run the agency; f. non profit; g. conducting program to empower *zakāh* for people's prosperity; h. be ready to be audited financially and by sharia.

¹² The Judicial Review of Zakat Management Law No. 23 year 2011 was petitioned by KOMAZ (Koalisi Masyarakat Zakat – Coalition of Zakat Society) which is an informal body consist of coalition of numerous Lembaga Amil Zakat (Non State Zakat Agency).

The legal grounds to annul these articles were the violation of constitutional rights of the applicants. The applicants regarded that the *zakāh* law of 2011 potentially damaging their rights embodied at Article 28 1945 Constitution by criminalizing, marginalizing, subordinating and discriminating their rights as *zakāh* administrator. On October 31st 2013, Indonesian Constitutional Court finally pronounced their decision upon the judicial review of Law No. 23 year 2011 on *Zakat* Management. The court ruled that the petitions of petitioner were partly granted. The article 18 (2) a, b, d and article 38 and 41 of Law No. 23/ 2011 were in violation to Indonesian Constitution and therefore, have no legal power. The court rejected other petitions to annul article 5, 6, 7, 17 and 19 of the said law. The legal impact of Constitutional Court' decisions are as follows:

1. Indonesian government, through National Amil Zakat Agency (BAZNAS) is still the primary administrator of *zakāh* nationwide; the agency is both regulator and operator of *zakāh* administrator. The non state *zakāh* agencies are still treated as supporting agents (vide article 17 Law No. 23 year 2011). This awkward position is enormously criticized by non-state *zakāh* agency since it can lead to unfair competition among *zakāh* agencies.
2. The Non-state agency are free to operate as private *zakāh* agency as long as they get permission from Ministry of Religious Affairs (MORA). The ministry will consider the application after having recommendation from BAZNAS. However, The Court annulled the prerequisites that private *zakāh* agency must meet the form of 'organisasi kemasyarakatan' (special body designated for people organization in Indonesian law). It also annulled that the private agency must have the form of legal body (according to Indonesian law on legal body) and must not have internal sharia-compliant board (external sharia-compliant board is acceptable).
3. The Court annulled and lifted up the provision of criminalization and penal sanction to non-state *zakāh* agencies as well as traditional *zakāh* collectors in remote areas, such as villages, islamic traditional schools, masjids, and islamic traditional organizations which do not have permission or authorization from the state (in this case is ministry of religious affairs through BAZNAS). This decision actually defended the articles at Zakat Law 2011 that private and traditional *zakāh* collectors can not freely operate unless they previously got approval from MORA. But it excluded the private and traditional *zakāh* collectors who live in remote areas. They may operate without MORA's approval but they need to inform local MORA's officials.

Another disaster for non state *zakāh* agencies is not only the enactment of Law No. 23/2011 on Zakat Management but also the enactment of Government Regulation No. 14/2014 (Peraturan Pemerintah) on the implementing regulation for Law No. 23/2011 on Zakat Management, which was enacted on 14 February 2014. Such government regulation contains some provisions which are potentially damaging the existence of non-state *zakāh* agencies. Those provisions tend to marginalize and discriminate non-state *zakāh* agencies, as follows:

Article 57 & 58 of Government Regulation No. 14/ 2014 stipulated that to found a *zakāh* agency, the applicant must meet some requirements i.e. Registered as a legal body before Indonesian Law and have the form of *Islamic Mass Organization* (registered at Ministry of Internal Affairs). These requirements are too excessive and exaggerated for most non state *zakāh* agencies. Not all of *zakāh* agencies possess legal body and fulfill the requirement as *Islamic Mass Organization* (Organisasi Massa Islam).

The next discriminative provisions are article 62 and 63 of Government Regulation No. 14/2014. Article 62 of the said regulation restricts the establishment of provincial chapter of national *zakāh* agency as only one chapter for each province. Also, for provincial-based *zakāh* agency, the article 63 restricts the establishment of cities/ regencies chapter of provincial *zakāh* agency as only one chapter for each city/ regency.

The non state *zakāh* agencies perceived that these provisions really damaged Indonesian civil society and restricted the role and involvement of the people in administering *zakāh*. Addressing this situation, the Zakat Forum petitioned this Government Regulation to be judicially reviewed by Indonesian Supreme Court on 17 July 2014.

RESEARCH PROBLEMS

Based on the aforementioned background, the research focuses on contestation between state and non-state actors in administering *zakāh* in Indonesia by examining the existing socio-political and legal dynamic of *zakāh* practices in Indonesia and also in Islamic history.

THEORY OF CONTESTATION

Contestation is the process of disputing or arguing something¹³ or a struggle for superiority or victory between rivals.¹⁴ To put it in real context, Wiener¹⁵ mentioned that normative power of contestation in case of international relation, are three stages include, first, constituting norms by establishing formal validity by a political community (international society, community), second, referring to norms as an appropriate indicator of behavior or a source of social obligation held by a group (regime, organization or another type of social environment), and, third, implementing norms ‘on the ground’ (by individual norm-users including policymakers, public servants, firms, corporations, parties or organizations).

Paxson¹⁶ defined that contestation is a controversy, contention, debate, challenge, dispute, to vie with or strive against and is derived from the Latin word *contestari* or “to call to witness.” These are all words that describe difference or disagreement. Paxson¹⁷ who studied theory of contestation in the public space employed a strategy that is to look carefully at the definition of contestation and to consider that in light of public space, public life, and public behavior. Another strategy is to attempt to establish a framework or taxonomy of contestation. To create such framework or taxonomy, it is necessary to establish the critical aspects, which would help refine or unwrap and elucidate the concept of contestations.

Hazis¹⁸ who studied domination and contestation of Muslim Bumiputera Politics in Sarawak State Malaysia, employ Joel Migdal’s theory of the ‘state-in-society’. The state, according to Joel Migdal¹⁹ represents the image of coherent, controlling organization in a territory, which is a representation of the people bounded by that territory, and the actual practices of its multiple parts. There are two components in Migdal’s definition of the state, namely

¹³ *Oxford Dictionaries*, www.oxforddictionary.com, accessed on 23 October 2014.

¹⁴ Farlex, *The Free Dictionary*, www.freedictionary.com, accessed on 23 October 2014.

¹⁵ Antje Wiener, *A Theory of Contestation* (Berlin, Springer: Verlag Berlin Heidelberg, 2014), 19.

¹⁶ Lynn Paxson, ‘Toward a Theory of Contestation in Public Space,’ (PhD Dissertation, City University of New York, 2007).

¹⁷ Lynn Paxson, ‘Toward a Theory of Contestation in Public Space.’

¹⁸ Faisal S. Hazis, *Domination and Contestation: Muslim Bumiputera Politics in Sarawak* (Singapore: Institute of East Asian Studies: 2012), 16.

¹⁹ As quoted by Hazis, *Domination and Contestation: Muslim Bumiputera Politics in Sarawak*, 16.

the state's image and its practices. The state's image represents the people's perception of its power. The state's practices could either strengthen its pre-conceived image or deconstruct. The fundamental of Migdal's theory is (1) The state is a social organization that is embedded in society, (2) Social forces have the capacity to resist state's power, and (3) The juncture between the state and social forces would inevitably lead to order and change not only in society but also the state.

For Migdal²⁰ contestation means struggles and accommodation in the junctures between components of the state and other social forces that produce a range of outcomes. These outcomes range from a total transformation (state's penetration leading to destruction, co-optation, or subjugation of social forces), state incorporation of social forces (state injection of new social organization, resources, symbols, and force into an arena enabling a new pattern of domination), social forces' incorporation of the state (social forces adapting into state's components without radical changes in domination), and the state's failure (state attempts to penetrate social forces facing disengagement from social forces). Only rarely have real cases in arenas approached the two extreme ideal-types, total transformation, and total disengagement; most have offered some variant of the middle two types. In case of "dispersed domination"²¹ Neither the state nor any other social forces can establish an overarching hegemony; domination by any one social forces takes place within an arena or ever across a limited number of arenas but does not encompass the society as a whole. In cases of integrated domination, the state, whether as an authoritative legal system or a coercive mechanism of the ruling class, is at the center of the process of creating and maintaining social control.²²

DISCUSSIONS

1. *Zakāh* Management: Between the State and Civil Society

Regarding *zakāh* management and the relation between state and the people, Salim²³) mentions that the Quran does not elaborate provisions on *zakāh*

²⁰ Joel S. Migdal, 'The State in Society: An Approach to Struggles for Domination,' in *State Power and Social Forces: Domination and Transformation in the Third World*, ed. Joel S. Migdal, Atul Kohli, Vivienne Shue (Cambridge University Press, 1994), 23-25.

²¹ Migdal, 'The State in Society: An Approach to Struggles for Domination,' 27.

²² Migdal, 'The State in Society: An Approach to Struggles for Domination,' 27.

²³ Arskal Salim, 'Perda Berbasis Agama dan Perlindungan Konstitusional Penegakan HAM' in *Journal Perempuan*, 60 (September 2008): 12.

management and enforcement. In fact, there is no clear directive as to whether to centralize or decentralize, institutionalize or personalize the application of *zakāh*. Although the Quran mentions eight recipients of *zakāh*, which includes *zakāh* agencies or *zakāh* collectors (*al-‘amilīn ‘alayhā*), there is no further instruction and elaboration on *zakāh* collection, obligation to pay their *zakāh* to certain agency, or possibility to give their *zakāh* directly to the poor and needy. There is no standard application of *zakāh* in the modern times. It varies from one Muslim country to another. Practices range from complete incorporation of *zakāh* as a regular tax of the Islamic states (as being practiced in Pakistan, Sudan, Saudi Arabia) to the establishment of intermediary financial institutions that receive voluntary payments of *zakāh* (like Jordan, Egypt, Bahrain, Kuwait and Indonesia), to the disbursement of *zakāh* according to an individual’s conscience (like Morocco and Oman). Every political ruler in Muslim-dominated countries must solve the perennial dilemmas of *zakāh*²⁴ whether *zakāh* can be collected as a national tax and who can be trusted to decide the deserving receivers of *zakāh* funds.

Thus, it is clear that even in a predominant Muslim country like Indonesia, the implementation of an Islamic economic instrument, like *zakāh*, is not that easy. Hooker²⁵ mentioned that when it comes to *zakāh* and taxation, it is revealed that the characteristics of *zakāh* present problems for the contemporary nation-state. The individual Muslim is no longer just a Muslim; he or she is also a citizen, and therefore subject to the secular laws of the state. *Zakāh* is a tax, and taxes are a state matter governed by their own laws.²⁶

In Indonesian situation, Salim²⁷ observed that many Muslims are greatly concerned over the double fiscal burden of tax and *zakāh*. Responding to the problem, the Indonesian Council of Ulama (MUI) held a seminar on *zakāh* in 1988 and affirmed that *zakāh* and tax are two different duties, and that Indonesian Muslims are obliged to pay both. The reason underlying this view is that *zakāh* is a religious obligation mandated by Allah through the Quran and Sunnah to all Muslims, while tax is a duty required by the nation-state but religiously justified based on the principle of public interest (*al-maṣlahah al-‘ammah*).

²⁴ Samantha May, ‘Political Piety: The Politicization of Zakat,’ *Middle East Critique*, 22/2 (2013): 151.

²⁵ M.B. Hooker, M.B., *Indonesian Syariah. Defining a National School of Islamic Law* (Singapore: ISEAS, 2008).

²⁶ Hooker, *Indonesian Syariah. Defining a National School of Islamic Law*, 32.

²⁷ Arskal Salim, ‘Perda Berbasis Agama dan Perlindungan Konstitusional Penegakan HAM,’ *Journal Perempuan*, 60 (September 2008): 35.

Unfortunately, the new law on Zakat Management No. 23 year 2011²⁸ has immensely reduced public participation in *zakāh* management. The BAZNAS is set as the primary *zakāh* administrator in Indonesia. It may have branches in provinces and cities/regencies. This unequal position has left private *zakāh* agencies as only the supporting agents of this *zakāh* management system. Moreover, they may collect *zakāh* only if they were officially acknowledged by BAZNAS. The previous law of 1999 did not establish such unequal position. Instead the 1999 law acknowledged the more flexible room for public participation. Therefore, the coalition of non-state *zakāh* agencies which felt that they were discriminated by the law later challenged this new law by filing a judicial review to Indonesian Constitutional Court on 16 August 2012.

There is a contesting idea whether *zakāh* should be managed by the state or leave it to Muslim people to manage. The history of Islam began by the practice of Islam by Prophet Muhammad in 6 – 7 AD, followed by several Caliphs, shown different practices. During the Prophet Muhammad and the two first Caliphs, *zakāh* was controlled by the state absolutely. *Zakāh* was obligatory and the ruler will impose sanctions for those who refuse to disburse their zakat money. However, during the third Caliph, ‘Uthmān bin ‘Affan, the room for the people to manage *zakāh* was opened by letting non state actors to be as intermediary agent in collecting *zakāh* money (*‘amil*).

Regarding the role of the state in wealth management, in this case is the practices of *Bayt al-Māl* (house of wealth), are different from time to time. During Prophet Muhammad SAW period state expenditures were mostly for state defense, disbursement of *zakāh* and *ushr* for those who were eligible, payment of civil servants, payment of state’s debts, and allowances for traveler (*musāfir*), also for secondary needs such as supporting those who studied Islam in Medina, support for the guests and delegations, gifts for other governments, or to cover the debts of death men or women who were dead in poor condition and unable to pay their debts. To manage the incomes as well as the expenditures, Prophet Muhammad SAW assigned *Bayt al-Māl*.²⁹

Meanwhile, Gamal Al Banna³⁰ mentions that during the Medina period, source of state income was mainly from the *zakāh* which was taken from the

²⁸ The new law on Zakat Management No. 23 year 2011 is an amendment to the old zakat law No. 38 year 1999. It was passed by Indonesian Parliament on 27 October 2011.

²⁹ Hidayat, M., *Pengantar Ekonomi Islam (Introduction to Islamic Economy)* (Jakarta: Pusat Komunikasi Ekonomi Syariah, 2009), 116.

³⁰ Gamal Al Banna, *Relasi Agama dan Negara (Relation between Religion and the State)* (Jakarta: Mata Air Publishing, 2006), 18.

rich people and disbursed to poor people. However, *zakāh* funds were not utilized for running the government. Also, the government did not collect the tax in Medina (Medina). *Zakāh* was not collected through force, but more on one's sincerity.

‘Umar Ibn Khaṭṭāb, the second caliph, in his period, had expanded and founded numerous *Bayt al-Māl* in the capital city, as well as in the provinces. He perceived *Bayt al-Māl* treasure as Muslim treasure, while the Caliphs and amils (*zakāh* organizer) play the role only as the duty holder. Therefore, state was responsible to provide foods for the widows, orphans, unaccompanied children, financing the funeral of the poor people, supporting the bankrupt men or women, paying the *diyāt* (blood money in Islamic criminal justice system), and also to lend certain amount of no interest loan for those in need to run their businesses. These mechanisms are actually resembled with the present social security mechanisms practiced in many modern countries. As mentioned in previous chapter, social security mechanism usually work to secure the health problem, accident, retirement, bereavement as well as to support the family who lost their loved ones.³¹

Syed Matiullah Wahidi³² convinces that government of an Islamic State can collect *zakāh* even by force for well being of society. This assumption is based on the historical holy war (*jihād*) announced by the first caliph Abū Bakr al-Ṣiddiq against the first aroused *munaḥiq* (hypocrite) Musaylamah al-Kazzāb after very short time from the departure of Holy Prophet PBUH towards eternity. When this hypocrite heard about the sad departure he told that only the prophet was authorized to collect *zakāh*, as he is not present anymore in this world so we are not abide to pay *zakāh* and the caliph announce ‘*jihād*’ against him as he refused to pay for *zakāh*.

However, in this contemporary world where some Muslims are not living in Muslim countries and some Muslim countries are not enacting Islamic Constitution, we will find it difficult to see the practice of Caliph Abū Bakr al-Ṣiddiq to collect *zakāh* money by force shown by present Muslim rulers in Muslim countries. In some jurisdictions, collecting *zakāh* by force even can be considered as violation to human rights and a threat to democracy.

³¹ Gamal Al Banna, *Relasi Agama dan Negara (Relation between Religion and the State)*, 18.

³² Wahidi, S.M., *An Analysis on Possibility of Using Zakat Through a Systematic Imbursement and Disbursement Mechanism in Public Sector for Improving Quality of Health Care Services and Protecting Poor Against Health Impoverishment in Afghanistan* (Indonesia: MPH University of Indonesia, 2012).

Yūsuf al-Qaradāwī³³ indicates that the collection of the poor-due and its distribution cannot be left to the sweet will of the wealthy. It is, no doubt, obligatory for the faithful. But it is not individual generosity. It must be administered collectively which is possible only for the state to accomplish. The state should make arrangement for its collection from the rich and distribute it to those who deserve it. If the right of the poor and needy are left to the sweet will of such type of people there is no guarantee that the poor will get their right definitely. Also, a person who receives his share of poor-due direct from the state instead of taking it from the wealthy keeps up his prestige and self-respect which may be injured otherwise. His sentiments are not injured by following this procedure. If the distribution of satchet is left to the individuals, it may mismanage the distribution system to the disadvantage of the poor. The rich people may give it to the persons whom they like and ignore the genuine one. It is possible that the poor who is not paid is more genuine than those who have been paid to the sweet will of the giver.

The Qaradāwī's position, that *zakāh* must be administered by the authority of a state, actually is the position hold by Indonesian government when they drafted the bill of Zakat Law which finally had been enacted on 27 October 2011. The state, through Ministry of Religious Affairs, hold that in Islamic history the state has been playing a very significant role in *zakāh* administration. Moreover, under Caliph Abū Bakr al-Ṣiddiq, the *zakāh* payment was mandatory. He will wage a war to those who refuse to pay the *zakāh*. During his administration, *zakāh* was treated as a tax, therefore everyone must pay *zakāh* both as citizen and muslim obligatory. Caliph 'Umar Ibn Khaṭṭāb, the substitute of Caliph Abū Bakr, treated *zakāh* affairs the same way. He will wage a war to those who refuse to pay their *zakāh* to to government.³⁴ The state, further claims that *zakāh* is a *farīdah al-sultāniyah*, means an obligation which strongly related to power. Therefore, only the state which meet the condition, since it has the power and authority to administer *zakāh* affairs from central power (Capital City) to villages in remote areas. At this point, the state claim that the *zakāh* collector must be a state or an agency created by the state.³⁵

Nevertheless, next Caliphs/Ruler after 'Umar Ibn Khaṭṭāb, treated *zakāh* affairs differently. During the third Caliph, 'Uthman Ibn 'Affān, the *zakāh*

³³ Yusuf Qardhawi, *Economic Security in Islam* (New Delhi: Islamic Book Service, 2006).

³⁴ Indonesian House of Representatives, *Records and Documents of Legislating Process of the Law of Zakat Management 2011*.

³⁵ Indonesian House of Representatives, *Records and Documents of Legislating Process of the Law of Zakat Management 2011*.

payers had their own rights to distribute their *zakāh* money by themselves. The Caliph ‘Alī Ibn Abī Ṭālib, treated *zakāh* affairs the same way as ‘Uthmān’s. Furthermore, during Caliph ‘Umar Ibn ‘Abd al-‘Azīz, the *zakāh* affairs were administered by the government again, with a more modern management. However, under the Caliph Mu‘awiyah Ibn Abī Sufyan, the government let the people to administer the *zakāh* affairs.³⁶

There are several considerations that may limit the degree of state involvement in the collection and distribution of *zakāh*. It seems that since the time of the third successor of the Prophet Muhammad SAW (Peace be Upon Him), Caliph ‘Uthmān bin ‘Affān, there were good reasons for leaving part of the obligatory *zakāh* for individual payers to distribute at their own discretion to deserving relatives and neighbors. Today, in consideration to this, there are the considerations of economy and managerial cost; leaving certain margin for casual deserving causes; economic incentives, choice of degree of government interference in the private affairs of individual, availability of other resources for supporting the poor, local, political, social and religious considerations, etc.³⁷

Nik Mustapha Hj. Nik Hassan³⁸ firmly states that *zakāh* is not just an individual responsibility. The state has the responsibility of collecting and disbursing *zakāh* in a well-organized system as prescribed by Islam. Failure to carry out this responsibility is a grievous sin, as the basic thrust of mutual sharing of community’s income between the affluent and the have not as prescribed by Islam will not be realized. The Islamic fiscal policy based on *zakāh* would provide the state with a reasonable amount of resources intended for social welfare.

Current pictures of *zakāh* management presented by Ashraf and Hassan³⁹ mentioned that in most Muslim countries, the contribution of *zakāh* from *zakāh* donors to such managed *zakāh* funds has been less significant for a variety of reasons: (a) Individual *zakāh* donors prefer to choose to whom they should pay *zakāh*, which in some cases may be their close relatives and neighbors; (b) The low level of trust in the management of *zakāh* because of government involvement; and (c) More important, lack of trust in the National

³⁶ Kuntarno, Aflah and Tajang, in Uswatun Hasanah, *Zakat dan Keadilan Sosial di Indonesia* (Depok: Gramata Publishing, 2011), 160.

³⁷ Monzer Kahf in Abulhasan M. Sadeq, *Economic Development in Islam* (Kuala Lumpur: Pelanduk, 1991), 188.

³⁸ Abulhasan M. Sadeq, *Economic Development in Islam*, 213.

³⁹ Ahmed, K.A., ‘Islamic Wealth Management: Goals and Instruments,’ *The Q Report Issue*, 7 (2013): 230.

zakāh management fund, which has little knowledge regarding the eligibility of the recipients.

Abdul Wahab Khallaf and Abdul-Rahman Hasan⁴⁰ hold that the disbursement of *zakāh* could not be centralized by the state. They hold that *zakāh* disbursement should leave certain amount of *zakāh* (one third or a quarter) to be disbursed by the owner of *zakāh* money. They have their own rights to disburse the *zakāh* money by themselves. In relation with Islamic governance, a government who stipulate Islam as the basic foundation of the state and applying Islamic sharia in all sectors of the state should have the right to collect and disburse *zakāh*. Meanwhile, the government who does not stipulate Islam as state foundation does not employ Allah's law in state activities and simply adhere state ideology to the West and the East, this government does not entitle to collect *zakāh* money.

In line with Abdul Wahab Khallaf, Ahmad Mohamed Ibrahim⁴¹ mentions that where there is no Muslim government to arrange for the collection of *zakāh* and *zakāh al-fitr* then the views of the Hanbali school can be followed, which state that is preferable for the person to distribute the *zakāh* himself. However this view may not be productive as many people do not fulfill their obligation to pay the *zakāh* and if they pay it at all it will only be left to themselves to determine. Moreover, the distribution of the *zakāh* itself will not be properly organized and the objectives of the payment of *zakāh* to remove poverty and want in the community will not be achieved.

Subsequently, Ibrahim⁴² confirm that clearly there need to be an organization for the collection and distribution of *zakāh*. This organization need not necessarily be the government or a government agency. It will be possible for the Muslim organizations or associations to set up a *Bayt al-Māl* and to appoint amils to collect and distribute *zakāh*. Whatever organization is set up it will be necessary to ensure that the management of the *zakāh* is carried out efficiently, smoothly, and with full dedication and trust (*amānah*). The amils may have to be trained in management of finance and poverty, so that the *zakāh* can be collected, administered and distributed so as to achieve the aim of removing poverty and hardship.

⁴⁰ Yusuf Qardhawi, *Hukum Zakat* (Jakarta: Litera Antar Nusa, 1993), 761-762.

⁴¹ Ahmad Mohamed Ibrahim, *The Management of Islamic Law in Malaysia* (Kuala Lumpur: Institute of Islamic Understanding, 2000), 372.

⁴² Ahmad Mohamed Ibrahim, *The Management of Islamic Law in Malaysia*, 372.

2. Historical Perspective

Prior to the country's independence on August 17, 1945, the efforts to collect *zakāh* were conducted by various Islamic organizations that were already established. However, there were no government regulations about this since the Netherlands, which occupied Indonesia at that time, paid no attention to the issue of *zakāh*. No government involvement was made during this period. After the independence, the encouragement to enhance *zakāh* management increased noticeably. In the 1950s, some attempts related to the issuance of legal rules of *zakāh* were made, although they were not successful.⁴³

Historically, the involvement of the state in *zakāh* matters began with the New Order government, although the growing interest began in 1950, the Old Order (Orde Lama) period. The Minister of Finance Yusuf Wibisono stated his thoughts in an article that *zakāh* should be included in the state finance system. Wibisono and state interest in *zakāh* was motivated by the growing discourse about *zakāh* by Muslim scholars.⁴⁴

In a circular issued in 1951, the ministry stated that it would not interfere with *zakāh* and *fitriah* matters, but encouraged Muslims to fulfill them. Although in 1954 the Old Order government began to show an interest in dealing with religious practices, namely recording *zakāh* and *fitriah*, these remained under its previous non-interventionist policy inherited from the Dutch. Thus the government somehow followed the legacy of the Dutch administration in having a religiously neutral state which theoretically only facilitated the religious life of the population without intending to be involved in or manage religious practices. The regime's involvement in *zakāh* started from 1968 with the establishment of the state-based *zakāh* agency (Badan Amil Zakat or BAZ). Among significant initiatives was the proposal and endorsement of eleven leading '*ulama*' on 24 September 1968 to the President Soeharto to actively promote *zakāh* and endorse the establishment of *zakāh* bodies under the provincial government.⁴⁵ The Ministry of Religious Affairs worked to gradually institutionalize state *zakāh* management through the ministerial

⁴³ Mintarti and Beik in Arifin Purwakananta and Noor Aflah, *Zakat for Poverty Alleviation* (Jakarta, Forum Zakat & World Zakat Forum: 2011), 159-160.

⁴⁴ Amelia Fauzia, *Faith and the State: A History of Islamic Philanthropy in Indonesia* (Melbourne: The Asia Institute, 2008), 169.

⁴⁵ Amelia Fauzia, *Faith and the State: A History of Islamic Philanthropy in Indonesia*, 170.

regulations for the establishment of *zakāh* agencies and a proposal of *zakāh* law, both of which failed to be passed into law.⁴⁶

In continuation with the President's order, Minister of Religious Affairs issued the Minister Regulation about establishment of the government board of *zakāh* from central government as low as to the level of sub district and village. The President strengthened this regulation by issuing Letter No. B. 133/1968 to all related government officials. Governor of provinces were then responded to this letter by issuing decree in their respective provinces.⁴⁷ However, in the subsequent decades, especially in the 1970s and 1980s, *zakāh* development was stagnant. No significant improvement was made. Collection of *zakāh* was conducted only during the month of Ramadan in the masjid throughout the country. On the other hand, utilization of *zakāh* failed to reduce poverty in the country. *Zakāh* management of some already established *zakāh* institutions was very traditional, marginal and unprofessional.⁴⁸

In 1999, during President B.J. Habibie administration, the *zakāh* management has held clearer and firmer legal status through the Law of Zakat Management No. 38 year 1999. Further, this law has been endorsed and implemented by the Minister of Religious Affairs' Decree No. 581/ 1999 and followed by the adjustment of national taxation regime. This law brought the governmental *zakāh* agencies as Badan Amil Zakat (National Zakat Agency) and non-governmental *zakāh* agencies namely Lembaga Amil Zakat (LAZ). Anyhow it was a good achievement but still *zakāh* was not declared as obligatory.

As the above regulations concentrate mainly on the semi-governmental *zakāh* collector bodies (BAZNAS), however, the non governmental *zakāh* collectors continue to face hurdle in performing their functions. While for the first time during President Soeharto first administration in 1968 BAZIS Jakarta was established. The BAZIS was working as independent *zakāh* management unit under supervision of provincial governor.⁴⁹

The first established BAZIS was that of Jakarta inaugurated by Governor Ali Sadikin in December 1968. Later on, this BAZIS was supervised as

⁴⁶ Regulation of Minister of Religious Affairs (PMA) No 4/July/1968 on the establishment of BAZIS and Regulation of Minister of Religious Affairs (PMA) No. 5/October/68 on *Bayt al-Māl* were annulled in 1969. The proposal of *zakāh* law was also rejected by the other ministries.

⁴⁷ Mintarti and Beik, *Zakat for Poverty Alleviation*, 159-160.

⁴⁸ Mintarti and Beik, *Zakat for Poverty Alleviation*, 159-160.

⁴⁹ Amelia Fauzia, *Faith and the State: A History of Islamic Philanthropy in Indonesia*, 170-171.

independent organization under *Surat Keputusan Bersama* (Joint Ministerial Decree). This shows the reluctant or ambivalent approach of government towards practicing Islam so, on one hand they want to get benefit of *zakāh*, on the other hand they want to avoid involving governmental structure and employees, so that they could maintain their secular status.⁵⁰

3. Why *Zakāh* Draws Attention from the State in Indonesia

The state claimed that the significant role of the state in administering *zakāh* is derived from article 34 Indonesian Constitution 1945 (Undang-Undang Dasar 45) which says:

“Poor people and abandoned children are handled by the state and the state develops social security system for all the people and empowering weak and poor people to enhance their human dignities. The state claims that zakat is part of empowerment program and state’s social security system.”

Other reasons why *zakāh* management should be properly administered are public accountability and the certainty that *zakāh* funds are really well received and benefitted specific *zakāh* recipient groups. And this is the real problem for *zakāh* management in Indonesia. Many *zakāh* agencies are not accountable enough in their financial report. Some agencies committed embezzlement and fraud. Also, whether the *zakāh* funds they got really benefit the *zakāh* recipients are still in big question mark.⁵¹

These kind of problems subsequently led to the idea that the state must centralize the *zakāh* management and narrowing down the room of participation of non-state actors. At least, these are the underlying assumptions when the government and lawmaker amended the Law on Zakat Management No. 38 year 1999 to the new law No. 23 year 2011.

The Law No. 38 year 1999 does not explicitly distinguish the different role of national *zakāh* agency and the private ones. Their positions seemed to be equal. Meanwhile the new law of 2011 clearly mention that national *zakāh* agency along with its branches all the primary *zakāh* administrator, while the private/ non state agencies are only the supporting agents. The non-state

⁵⁰ Amelia Fauzia, *Faith and the State: A History of Islamic Philanthropy in Indonesia*, 171.

⁵¹ Didin Hafidhuddin (Professor, Former Chairman of BAZNAS), in interview with the author, 29 August 2012.

agencies can operate only after obtaining written approval from national *zakāh* agency (BAZNAS).

There are some notions why the state of Indonesia interested to administer *zakāh*. *Zakāh* is a divine instrument. Instructed by the God (Allah) and becoming part of Islamic faith. Paying *zakāh* (for those who meet the requirements) is mandatory. Yet, involvement of the state is actually not mandatory. The history of Islam has shown that there is no strict requirement that *zakāh* must be controlled by the state. Even more in Indonesia, a semi secular country. The interest of the state to administer *zakāh* is really something to be questioned.

One possible reason why *zakāh* draws attention from the state is a political action taken by the state as part of state responsibility to promote social welfare for the people, particularly Muslim people. Judging from Constitutional Court Verdict on 31 October 2013 upon judicial review of Indonesian Law No. 23/2011 on Zakat Management, the Justices hold that Indonesia is *a religious welfare state*. Therefore, to take part in *zakāh* affairs is part of state *opened legal policy* in promoting social welfare.

Second reason related to *zakāh* potentiality, according to BAZNAS (Badan Amil Zakat Nasional - National Zakat Agency), *zakāh* potentiality in Indonesia is around IDR 217 Trillion (or around USD 20 billion) a year.⁵² However, both state and non state *zakāh* agencies can collect only IDR 2.7 Trillion a year (or only one percent). Therefore, there is very large room for *zakāh* collectors to collect *zakāh* from *zakāh* payers. The state-based *zakāh* agencies, fortunately, have more chances to collect more *zakāh* money than the Non State since they may employ state apparatus through state bureaucracy all over Indonesia. In 2014, Indonesian National Revenue is predicted at IDR 1667 Trillion⁵³ Compared by total national revenue in 2014, *zakāh* potentially is amounted 13% of total revenue. Really a huge amount of money.

Third reason is religious reason. The state, through BAZNAS, believed that the state is principal authority in *zakāh* administration. Non state *zakāh* agencies are just supporting agents. State hold this viewpoint based on its interpretation to some verses in holy Quran that *zakāh* must be collected by power and also

⁵² Nina Dwiantika, 'Potensi Zakat di Indonesia Mencapai Rp 217 Triliun,' available at *Tribun News*, <http://www.tribunnews.com/bisnis/2014/10/29/potensi-zakat-di-indonesia-mencapai-rp-217-triliun>, accessed on 7 August 2015.

⁵³ Ruslan Tambak, 'Anggaran Belanja Negara 2014 Rp 1.842,4 Triliun', *Rakyat Merdeka Online*, <http://www.rmol.co/read/2013/10/27/130905/SBY-Apresiasi-Pemerintah-DPR-Golkan-RUU-APBN-2014->, accessed on 7 August 2015.

at the beginning of Islamic governance during Prophet Muhammad and the Caliphs, the authority to collect *zakāh* were belonged to the state.⁵⁴

4. Between State and Non State Actors

Regarding *zakāh* management and the relation between state and the people, Arskal Salim⁵⁵ mentions that the Quran does not elaborate the provisions on *zakāh* management and enforcement. In fact, there is no clear directive as to whether to centralize or decentralize, institutionalize or personalize the application of *zakāh*. Although the Quran mentions eight recipients of *zakāh* including *zakāh* agency or *zakāh* collectors (*al-‘amilīn ‘alayhā*), however, there is no further instruction and elaboration about how *zakāh* should be collected or whether Muslims are obliged to pay their *zakāh* to this agency, or whether they can voluntarily give their *zakāh* directly to the poor and needy. The application of *zakāh* in the modern period has never been the same from one Muslim country to another. Practices range from complete incorporation of *zakāh* as a regular tax of the Islamic states (such as in Pakistan, Sudan, Saudi Arabia) to the establishment of intermediary financial institutions that receive voluntary payments of *zakāh* (like Jordan, Egypt, Bahrain, Kuwait and Indonesia), to the marginalization of *zakāh* according to the individual’s private conscience (like Morocco and Oman).

There are many kind of *zakāh* management in Muslim countries. There is obligatory system applied in Saudi Arabia, Libya, Sudan, Pakistan, and Malaysia, and voluntary system applied in Egypt, Jordan, Turkey, Singapore, including Indonesia.

By choosing voluntary system, the state has actually surrendered its authority to centralize the *zakāh* management. Therefore, the room for public or civil society participation is widely open.

This notion might be naïve. Since there are various reasons for the states not to directly involve in *zakāh* management. In a country where Muslim is a minority, it is understandable that state does not involve in this matter. Also, in secular countries, where religious affairs are apprehended as private matters and not a state matter, the reasons also clear. However if a country like

⁵⁴ See the Verdict of Judicial Review of Indonesian Constitutional Court of the Law No. 23/2011 on Zakat, available at http://www.mahkamahkonstitusi.go.id/putusan/putusan_sidang_1537_86%20PUU%202012-telah%20ucap%2031%20Okt%202013.pdf.

⁵⁵ Arskal Salim, ‘Perda Berbasis Agama dan Perlindungan Konstitusional Penegakan HAM,’ *Journal Perempuan*, 60 (September 2008): 12.

Indonesia, a house to the most populated Muslim nations in the world, does not involve in *zakāh* management, then it will be quite interesting.

Indonesia is not an Islamic country but also not a real secular country. It is secular in term of not choosing any religion/belief as state basic foundation. However, it is not really secular since Indonesia recognizes all religions and beliefs equally and relatively give no objection should the religious affairs interfere to state affairs. This 'Indonesian secularism' is actually derived from the Pancasila (five pillars) as state basic foundation. The first pillar states: "*believe in one supreme God*". Therefore religion and belief are still important and take into account by the state.

The position of the state of Indonesia toward *zakāh* management has been varied. There is a period when the state really stay away to manage the *zakāh*. However, started at the end of 1960s, the state began to show its interest to manage the *zakāh*.

History told that the year of 1999 was the first year Republic of Indonesia first formalized *zakāh* affairs into national law (Law No. 38/ 1999). This law was actually warm-welcomed by Indonesian civil society, particularly those who also work in *zakāh* management. The law showed the intention of the state to manage the *zakāh*, but it still opens the room for participation of civil society equally.

Different with the first national law on *zakāh*, the Zakat Law of 2011, an amendment to the previous law, possesses the different spirit and intention. It is clearly stated that the state, through BAZNAS is eager to centralize *zakāh* management in Indonesia. The article mentions that the *zakāh* management in Indonesia is managed and controlled by BAZNAS as independent agency founded by the state, while the non-state agency can participate in *zakāh* management only as supporting agents.

This unequal position showed by new law on *zakāh* of 2011 meant that room for public participation in *zakāh* management has been narrowed by the law. In other words, non-state *zakāh* agencies have been subject to be marginalized, discriminated, subordinated, restricted and criminalized as well.

This drastic change in *zakāh* policy hold by state raises suspicion that at the past the state did not seriously involve in *zakāh* management since they did not really know the *zakāh* potentiality, economically. Yet, after they know that non state *zakāh* agencies can collect *zakāh* money much higher than state-based *zakāh* agencies, then a strategic policy must be initiated.

Zakāh is a private worship as well as social worship. Individual Muslims may directly disburse their own *zakāh* money by themselves to the determined

beneficiaries, without involvement of any parties or institutions. However, disbursing *zakāh* money through official channels or institutions is preferable according to Irfan Syauqi Beik.⁵⁶ He mentioned that disbursement of *zakāh* through '*amil* (or official channel) is preferable, so that the *zakāh* money could be delivered to targeted recipients effectively. *Zakāh* payers should not deliver the *zakāh* money directly to the beneficiaries, as what they do in *infaq* or *ṣadaqah*. But for *zakāh*, it is preferable to disburse it through official channel which was also exemplified from the history of Islam.

Mohamad Suharsono⁵⁷ mentions the eminency of disbursing *zakāh* through any *zakāh* institutions as follows: (1) Fulfilling the God's will at the holy Quran; (2) Practiced by Prophet Muhammad and his companions; (3) Getting the prayer from *zakāh* collector ('*amil*); (4) *Zakāh* money can be optimally utilized; (5) The distribution will be more proportional and equal; and (6) The *muzakki* or *zakāh* payers will be more sincere since he or she does not directly meet the beneficiaries. Meanwhile, Hatta Syamsudin added that among of the benefits to disburse *zakāh* money through official channel are the *zakāh* funds can be utilized for economic empowerment and the *zakāh* payers (*muzakki*) will be more committed and discipline.⁵⁸

5. Accommodation and Struggle

The fact that the non-state *zakāh* agencies were losing much of their authorities that had been handed over to the state-appointed *zakāh* agency turns them to apply both of Migdalian's contestation⁵⁹ through accommodation and struggle.

The accountability of *zakāh* practice applies to both state and non-state actors. The practice of *zakāh* in Indonesia shown that the level of accountability is varied. In some state-based *zakāh* agencies are very much accountable while in others are not that accountable. People do not know the financial statement of *zakāh* agencies. Interestingly, in South Sulawesi even the board of advisor of *zakāh* agencies did not know about the amount of *zakāh* money administered by his agency.⁶⁰

⁵⁶ Irfan Syauqi Beik, 'Memuliakan Mustahik,' *Republika Daily Newspaper*, 24 July 2014.

⁵⁷ Muhammad Suharsono, 'Pos Keadilan Peduli Umat,' *Giving Insight Magazine* (December 2013-January 2014): 19.

⁵⁸ Hatta Syamsudin, 'Forum Zakat,' *INFOZ Magazine*, 20th ed., December 2013, 32.

⁵⁹ Joel S. Migdal, *The State in Society: An Approach to Struggles for Domination*.

⁶⁰ Data obtained from field research conducted in South Sulawesi Province, Indonesia in February 2013.

Other problem related to accountability is the disbursement of *zakāh* itself. In Bulukumba⁶¹ *zakāh* agency the utilization of *zakāh* money is not really designated for eight groups of beneficiaries. The celebration of Islamic Holy Days by local government also utilizes this *zakāh* money. The accountability of state-based *zakāh* agencies in administering *zakāh* money is among the consideration of some of *zakāh* payers not to surrender their money to the agencies. Statistics has shown that non-state *zakāh* agencies were able to collect *zakāh* money much higher than those collected by state-based agencies. *Zakāh* payers prefer to pay *zakāh* money not to the state for various reasons: (1) Physical distance (it is easier to pay *zakāh* money to their surrounding mosques, foundations or institutions, (2) Tradition (long before the state-based *zakāh* agencies appear by government's edicts, people usually pay their *zakāh* money to their neighborhood or ones they trust), (3) Accountability of non-state *zakāh* agencies (*zakāh* payers pay to more trusted non-state *zakāh* agencies since they are relatively more accountable and professional), and (4) Distrust to the state's agencies (*zakāh* is a matter of trust). *Zakāh* payers will pay their *zakāh* to the agencies they trust the most. To some extent, people distrust the state's agency since many corruption cases have been committed within the state institutions including in Ministry of Religious Affairs which administers the *zakāh* affairs in Indonesia.

One of the more serious questions in *zakāh* management is how to transform a *zakāh* recipient (*mustahiq*) into a *zakāh* payer (*muzakki*). This is among the main objectives claimed by almost all *zakāh* agencies. They openly expect that their *zakāh* recipients will someday transform themselves into *zakāh* payers. Therefore, many *zakāh* agencies introduce so-called sustainable *zakāh* distribution programs or introducing programs to empower their *zakāh* recipients. Based on the observation and interviews,⁶² all *zakāh* agencies both state-based or non-state based, i.e. BAZNAS, *Dompot Dhuafa*, *Rumah Zakat*, PKPU and *Harapan Dhuafa* have focused their program on people empowerment through various ways. *Dompot Dhuafa* and *Rumah Zakat* focus on economic empowerment by developing self-sufficient societies through supporting livestock and agricultural initiatives. PKPU has devoted itself as an agency which provides humanitarian relief while acting as non-state *zakāh* agency. *Harapan Dhuafa* has devoted itself to empower fishermen, peasants,

⁶¹ Data obtained from field research conducted in Bulukumba Regency, South Sulawesi Province, Indonesia in February 2013.

⁶² The Author conducted series of observations and interviews to BAZNAS in Jakarta in August 2012, *Dompot Dhuafa* (several times in 2012-2013), *Rumah Zakat* in Bandung in July 2013, PKPU (several times in 2012-2103) and *Harapan Dhuafa* in Serang (July 2013).

and poor women by providing rolling fund to start business and conducting life-skill training to be tailors.

The *zakāh*-related ideal purpose to transform recipients into *zakāh* payers is not coming from civil society as such. In fact, in the academic draft of Law No. 23 year 2011 on *Zakat Administration*, both the government and legislators proposed that among the goals of *zakāh* is to transform the poor people (or *zakāh* recipients) to be *zakāh* payers, or from *mustahiq* into *muzakki*.⁶³

Regarding empowerment program, *Rumah Zakat*, a private *zakāh* agency has introduced three empowerment programs since 2003 which have reached around 2.25 million *zakāh* recipients, namely *Senyum Juara* (The Winners' Smile), *Senyum Sehat* (The Healthy Smile) and *Senyum Mandiri* (the Self-sufficient Smile). The three programs cover the areas of education, health, social, and economic services.⁶⁴

The LAZIS MU, a private *zakāh* agency owned by Indonesian second largest Muslim organization *Muhammadiyah*, can collect around IDR 28 billion *zakāh* money in 2012. This agency further transferred the *zakāh* money to around 250,000 *zakāh* recipients in the form of micro-finance for small and medium-size enterprise, women empowerment, and funds for 14 groups of young entrepreneurs.

⁶³ Dewan Perwakilan Rakyat Republik Indonesia, *Risalah Rapat Rancangan Undang-Undang tentang Zakat Infāq and Shodaqoh* (Indonesian House of Representatives, without year, Minutes of Meeting of Proposed Bill on *Zakāh Infāq* and *Ṣadaqah*).

⁶⁴ Research conducted at Rumah Zakat Headquarter in Bandung, Indonesia, July 2013.

List of Non-State *Zakāh* Agencies and Incomes in 2012.

NO.	ZAKĀH AGENCIES (State-Owned and Private Ones)	AMOUNT (In IDR Million)
1.	BAZNAS	40,404
2.	BAZNAS Provinces	111,536
3.	BAZNAS Regencies/Cities	171,442
4.	<i>Dompot Dhuafa</i> Republika	75,055
5.	<i>Amanah Takaful</i>	3,500
6.	<i>Pos Keadilan Peduli Ummat</i>	77,353
7.	<i>Baitul Maal Muamalat</i>	28,654
8.	<i>Yayasan Dana Sosial Al Falah</i>	29,997
9.	<i>Pusat Zakat Ummat</i>	5,663
10.	<i>Baitul Maal Ummat Islam BNI</i>	22,144
11.	<i>Bina Sejahtera Mitra Ummat</i>	7,743
12.	LAZ Dewan Dakwah Islam Indonesia	7,798
13.	<i>Yayasan Baitul Maal</i> Bank BRI	47,402
14.	<i>Rumah Zakat Indonesia</i>	144,029
15.	<i>Baituzzakah Pertamina</i>	13,384
16.	<i>Dompot Peduli Ummat - Daarut Tauhid</i>	13,920

Source: BAZNAS 2012.

Other notion of *zakāh* adopted by Non-State Zakat Administrator (in this case *Dompot Dhuafa*) is empowerment. *Zakāh* fund is not merely utilized for the sake of philanthropy but also for empowering the beneficiaries. “Not only relief but also release” is the empowerment jargon of *Dompot Dhuafa* where all of their programs are intended not just to provide assistance to the beneficiaries but also to release them from poverty and empower them. So someday, the *zakāh* beneficiaries will be becoming *zakāh* payers.

CONCLUSION

The main challenge related to *zakāh* is when it is put under modern state arrangement, particularly in semi-secular country like Indonesia. Nobody is argued that *zakāh* is compulsory as stipulated by the God and the Prophet Muhammad PBUH. However, when it comes to relation between *zakāh*, Muslim people and modern state, the practices may vary. Out of forty

predominantly Muslim countries, only six countries applied mandatory system. The rest of Muslim countries applied voluntary system or not involve at all in *zakāh* affairs, let the people govern by themselves.

In this regard, the *zakāh* in Indonesia is actually ‘Indonesian Zakat’ (or Indonesian version to *zakāh*) since the practices are different with other Muslim countries. Perhaps, only in Indonesia the civil society challenges the *zakāh* laws to Constitutional Court and Supreme Court simply because such laws tend to discriminate and narrowing down the room of civil society in *zakāh* management. Also, in some areas, people protested the local bylaws and strongly show their resistance to *zakāh* management since the law did not meet their wants.

These situations take place because the Islam in Indonesia is also ‘Indonesian Islam’⁶⁵ (or Indonesian version of Islamic teaching) where disagreement could be expressed publicly facilitated by the democratic political atmosphere.

Therefore, one should not equalize the practice or Islam and the practice of *zakāh* as similar to all Muslim countries. There are always the differences which partly caused by Indonesian pluralism.

Instead of the resistance shown by legal action to National Court, other socio-political dynamic of Indonesian civil society toward *zakāh* secularization have been shown by strong protest and disagreement to *zakāh* policies and ordinances in several areas.

The forcible decision to centralize the authorities to manage *zakāh* funds into the hand of a state-appointed *zakāh* agency called BAZNAS (National Zakat Agency) in 2011 with such an over-blanketing authorities including rights to give license to non-state *zakāh* agencies that have been enjoying rights for so long, has disturbed two kinds of agency: the ones who lose their authorities and the one who suffer unwanted obligations. The traditional religious leaders who lose their traditional authorities to manage *zakāh* funds mobilize *zakāh* payers to keep their usual methods of *zakāh* payment to the traditional religious leaders and to avoid payment to the state-appointed agencies or actors. Some religious leaders even establish their own organizations to manage *zakāh* among other things. The old state-based institutions that have been collecting and managing *zakāh* funds-as public institutions or state companies-much earlier than the new Zakat Law in 2011 also suffer from deprivation of authorities.

⁶⁵ Right in 2015, Indonesian Muslim Scholars (particularly scholars from Nahdlatul Ulama, Indonesian Biggest Muslim Mass Organization) coined the new terminology namely ‘Islam Nusantara.’

Government officials like low-level teachers, for example, suddenly realize that their salaries are becoming subject of unavoidable *zakāh* payments against their will. These teachers typically launch demonstration and strikes to resist such imposition of new obligations.

Through struggle and accommodation, the actors and agencies in *zakāh* management protect their interest vis-à-vis the new wave of politicization of *zakāh* administration. Whenever the struggle is not possible, these agencies launch discursive practices to protect their legitimacy. Adopting attractive themes like “empowerment” or “accountability”, these threatened *zakāh* agencies open a public discourse on how they work very hard to empower the *zakāh* beneficiaries to become *zakāh* payers after some intensive attempts or on how they achieve their “enhanced” accountability in the eyes of the state or *zakāh*-paying public. Some programs of empowerment have also been reported as “successful” and “efficient” by some of these non-state *zakāh* agencies as proven by some statistical supports.

As the contestation either in struggle and accommodation happens in many levels of realms, playing fields, and actors, the analysis for the net results of such contestation have become problematic. Migdal’s “junctures” between state and social-based forces only offers four kinds of net results: total transformation (by state), state incorporation of existing social forces, existing social forces’ incorporation of the state, and the state failure to penetrate (social forces). The Indonesian experimentation in secularization of *zakāh* administration points to an interesting fact that although the state has taken all the authorities to manage *zakāh* and to delegate the authorities to non-state *zakāh* agencies, the processes of *zakāh* administration (collection and distribution) are not really depended on authorities. As *zakāh* payers and the traditional *zakāh* administrators (non-state) have built a patron-client relationship for a long time, trust is still very important in efficient *zakāh* administration.

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Interview

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- Imtiyaz Yusuf (Assistant Professor of Islamic Studies, College of Religious Studies Mahidol University, Thailand), in interview with the author on 29 April 2013.