Restriction of Islamic Civil Society Participation: Genealogy of Zakat Legal Politics and Its Centralized Management in Indonesia

Pembatasan Partisipasi Masyarakat Sipil Islam: Genealogi Politik Hukum Zakat dan Sentralisasi Pengelolaannya di Indonesia

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Abstract: This article analyzes the management of zakat (almsgiving) in Indonesia, focusing on the genealogy of legal politics and its relationship with state policies in centralizing zakat management. Given the variations in zakat management systems among Muslim countries, Indonesia’s direct participation in zakat management has provoked resistance within Islamic civil society. They do not desire any state intervention in zakat management, as it contradicts their longstanding practice before Indonesia’s independence. This article employs a historical approach and analyzes data using Fred W. Riggs’ prismatic legal theory. The authors find that the state’s argument for centralizing zakat management in Indonesia aims to optimize the efficient utilization of zakat funds. However, this policy hurts the participation of Islamic civil society in managing zakat according to their genealogical traditions. Therefore, the article argues that the state’s centralization of zakat management is inappropriate, as it overlooks the integral zakat practices rooted in Islamic civil society’s history and culture in Indonesia.

Keywords: Zakat Management, Zakat Legal Politics, Genealogy, Islamic Civil Society, Indonesia.

Kata Kunci: Pengelolaan Zakat, Politik Hukum Zakat; Genealogi, Masyarakat Sipil Islam, Indonesia.

A. Introduction

Muslim countries around the world do not share a uniform system for managing zakat (almmsgiving).1 The variations in these systems arise from differences among Muslims concerning the nature of zakat, whether it is perceived as a doctrine or a religious tradition.2 Furthermore, Islamic teachings maintain a dynamic interplay with societal changes, conditions, customs, and cultures, all within the context of Islam’s existence.3 In countries such as Malaysia and Pakistan, zakat’s fundraising, management, and distribution fall under state control.4 Conversely, in Indonesia, zakat management is entrusted to Islamic civil society,

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1 There are two zakat management systems in Muslim countries: the obligatory system and the voluntary system. See: Yusuf Wibisono, Yusuf Wibisono, Mengelola Zakat Indonesia: Diskursus Pengelolaan Zakat Nasional dari Rezim Undang-Undang No. 38 Tahun 1999 ke Rezim Undang-Undang No. 23 Tahun 2011, 1st ed. (Jakarta: Kencana, 2015), 150–1.

2 Arskal Salim, Challenging the Secular State: The Islamization of Law in Modern Indonesia (Honolulu: University of Hawai’i Press, 2008), 116.


4 The terminology "Islamic civil society" was first introduced by Robert Hefner. See: Robert Hefner, Civil Islam: Muslim and Democratization in Indonesia (Princeton: Princeton University Press, 2000).
albeit with state involvement in administration. However, in certain Muslim nations where religion does not serve as a guiding state ideology, state interference in zakat management practices clashes with the interests of Islamic civil society.

As a nation employing a voluntary zakat management system, Indonesia endeavors to play a direct role in zakat management, a stance that meets resistance from Islamic civil society. In 2011, the government granted legitimacy to the National Zakat Agency (Badan Amil Zakat Nasional, BAZNAS), a non-structural government institution, to centralize zakat management through Article 6 of the Zakat Management Law No. 23 of 2011, designating BAZNAS as the authorized institution for national zakat management. Article 6 of the Zakat Management Law No. 23 of 2011 designates the BAZNAS as the authorized institution for national zakat management. This centralized pattern of zakat management elicited a response from Islamic civil society, represented by the Zakat Forum (Forum Zakat, FOZ) through the Indonesian Zakat Community Coalition (Koalisi Masyarakat Zakat Indonesia, KOMAZ). They strongly opposed the regulation. In response to this resistance, the House of Representatives (Dewan Perwakilan Rakyat, DPR) for the 2019-2024 period incorporated amendments to the Zakat Management Law No. 23 of 2011 into the National Legislation Program (Program Legislasi Nasional, PROLEGNAS).

The interaction between Islamic civil society and the state in the management of zakat remains a subject that has received limited scholarly scrutiny. Some scholars have focused on concepts such as zakat ownership in

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Islam, the relationship between zakat and taxes, and its practice in Islamic banking. The legal aspects of zakat in Indonesia have prompted discussions on the dynamics of law, bureaucracy, regulatory strengthening, and professional zakat. Furthermore, certain scholars have analyzed the history of zakat in Indonesia, exploring facets such as its political recognition, the political configuration of legal mechanisms, and its influence on Islamic social welfare. Drawing from the findings of earlier scholars, it becomes evident that a complex relationship and conflict of interest exist between the state and Islamic civil society in zakat management. This article contributes to previous research by delving into the political genealogy of zakat law and its connection to state policy in centralizing zakat management in Indonesia. Consequently, the authors argue that

the state's rationale for centralizing zakat management is misguided, as it curtails the participation of Islamic civil society. In reality, the practice of zakat management in Indonesia is deeply embedded in the genealogical traditions of Islamic civil society.

This study endeavors to address the question of why the state chose to centralize zakat management, thereby limiting the participation of Islamic civil society, which has practiced zakat since long before Indonesia’s independence. The article adopts a library research approach with a historical perspective. Primary data utilized in this study encompasses several zakat-related laws and regulations in Indonesia, minutes from government meetings, and court decisions. Additionally, secondary data including relevant books, scholarly articles, bulletins, research findings, and official websites support the analysis. The collected data is subjected to analysis through the legal theory of Fred W. Riggs. This theoretical framework is employed to explore the relationship between legal constructs and the political genealogy of zakat law in Indonesia. Within this theoretical context, it is crucial for legal sources that inform the formation of zakat law to reflect the diversity of zakat management practices within society. Consequently, the formalization of zakat law should acknowledge the genealogical significance of Islamic civil society’s zakat management practices as fundamental legal principles.

B. Genealogy of Zakat Management in Indonesia: From Individual Agencies to State Agencies

Zakat, as stipulated by Islamic law, obligates Muslims or zakat payers (muzakkī) to allocate a portion of their wealth to rightful zakat recipients (mustaḥiq). Genealogically, in the Archipelago, zakat practices were initially individual, with muzakkī providing for mustaḥiq. Over time, zakat management evolved through entities such as mosques, pesantrens (Islamic boarding schools), and ‘āmil zakat (zakat collector or zakat officers) institutions representing Islamic

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23 The genealogy referred to by the authors here is the genealogy of zakat management. See: M. Foucault, Archaeology of Knowledge (London & New York: Routledge Classics, 2002).
civil society. These included the Amil Zakat Agency (Badan Amil Zakat, BAZ) and the Amil Zakat Institution (Lembaga Amil Zakat, LAZ). The BAZ later transformed into the BAZNAS, and the LAZ became the National Zakat Collection Institution (Lembaga Amil Zakat Nasional, LAZNAS), signifying an evolution in zakat management in harmony with Indonesia’s political dynamics. The genealogy of zakat management in Indonesia unfolds as follows:

1. Individual Zakat Management

Rooted in religious teachings, muzakkī are motivated to give zakat to mustaḥiq. This practice of zakat payment by individual Muslims is a religious duty, deeply ingrained in the habits of Indonesian Islamic civil society since Islam’s introduction to the Archipelago. This process coincided with the gradual Islamization of Indonesian society, commencing from the early 7th century. Initially, the Muslim community existed as small units that later expanded, eventually forming empires. However, individual zakat management persisted.

Archipelago’s Islamic texts, in manuscript form, reflect individual zakat management. The work Tāj al-Salāṭīn by Bukhārī al-Jawhari, for instance, exemplifies how Islamic philanthropic values, including zakat, catalyzed significant changes in the Archipelago’s civil society. The text states: “Hendaklah yang raja itu lebih hormat akan segala fakir dan miskin dan dimuliakan mereka itu terlebih dari pada segala orang kaya dan harus senantiasa duduk dengan mereka itu.” The text rebukes miserly Muslims (bahkīl) and

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commends generosity. Even though directed at kings, the generous ethos mirrored in Islamic teachings, including zakat, extends to Islamic civil society.

Similar principles are evident in *Adat Raja-Raja Melayu* by Panuti H. M. Sudjiman. This manuscript highlights kings giving zakat or alms to the poor through religious ceremonies integrated into royal events such as births, hair-cutting rituals, and vow payments. Zakat or alms, in various forms like gold, silver, or clothing, are bestowed during these ceremonies. Azra notes that the actions of kings were aimed at legitimizing their authority in the eyes of civil society.

Likewise, the work *Wejangan Syekh Bārī* by Sheikh Yusuf al-Makassari emphasizes that zakat’s practice involves discreet and secret almsgiving, known only to Allah.

2. Zakat Management through Mosques and Pesantrens

The management of zakat through mosques and pesantrens emerged as Islamic civil society developed its community units. Mosques, serving as places of worship, also facilitate zakat-related activities, preaching, and education. During the Islamic Sultanates in Aceh, Sumatra, and Java, mosque construction often saw collaboration between monarchs and religious leaders. This is evident in Java, where major mosques were strategically located near squares, constructed with the backing of the kingdom. Examples include the Masjid Gedhe Keraton Yogyakarta, Masjid Alun-Alun Demak, and Masjid Keraton Banten. State-built mosques were overseen by penghulus, while community-built ones were led by *kyais* (religious leaders).

*Pesantrens* played a pivotal role in disseminating Islam through education. Ulama collaborated with rulers to build mosques, deliver religious teachings, and foster community spirituality. Islamic philanthropic funds were gathered through mosque and pesantren committees to sustain operations. K.H. Zarkasi, Head of the Pesantren Mafatihul Ulum (1870), independently raised funds from

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32 Fauzia, *Filantropi Islam*, 94.
Tarekat students to construct a mosque, highlighting the role of pesantrens in fund collection.

Under Dutch colonial rule, penghulus held multifaceted roles as judges (qādī), court counsels (muftī), marriage officials, ‘āmil zakat, and mosque managers (marbot). Although appointed as religious officials in 1832, they received payments from zakat funds instead of a salary. Kyais, ajengans (religious leaders), and Quran teachers also received zakat as members of the fi sabīllāh (on the path of God). The collected zakat funds constituted regular income, with only a fraction directed toward supporting the poor, converts, and travelers. The village head, in their capacity as the local ruler, received a share due to their ‘āmil zakat role.

In 1882, penghulus became Dutch colonial officials, relinquishing their zakat rights. However, zakat collection through mosques escalated, coordinated by princes who collaborated with local government officials to enforce zakat collection. To address this, Staatblad 1866 No. 1892 was enacted, prohibiting forced zakat collection by princes and officials. This prohibition strained the princes economically. Zakat was predominantly directed toward Islamic teachers (ustadz), kyais, santris (pupils), and so on. In this context, the mosque emerged as a key zakat fund collection site.

3. Management of Zakat through Islamic Religious Organizations

The collective consciousness of Islamic civil society in the archipelago has given rise to a dichotomy between religious nationalist and secular nationalist perspectives. Religious nationalist viewpoints have been embodied by organizations like Serikat Dagang Islam (1905), Jami’atul Khairat (1905), Muhammadiyah (1912), Nahdlatul Ulama (1926), Al-Ir.syad (1914), and similar

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33 Fauzia, 129–34.
36 Fauzia, Filantropi Islam, 115.
entities. Mukti Ali characterizes these religious organizations as heralding an Islamic resurgence in Indonesia. On the other hand, the secular nationalist ideology found expression through the establishment of Budi Utomo in May 1908. Islamic mass organizations-initiated endeavors in education, healthcare, and social services as strategic means to achieve Indonesian independence. These organizations, intrinsic to Islamic civil society, have been pivotal in driving socio-religious movements. Over time, their activities have expanded, enabling humanitarian efforts beyond the immediate capacity of the state.

In this discussion, the authors only focus on two enduring mainstream entities—Muhammadiyah and Nahdlatul Ulama. The principal distinction between them lies in their management of Islamic philanthropic funds. Muhammadiyah has maintained an institutionalized structure since its inception and actively raises funds for poverty-related issues. In contrast, Nahdlatul Ulama, born during the colonial era, contends with challenges in education and the economy.

The first organization under consideration is Muhammadiyah. Founded on November 18, 1912, by Ahmad Dahlan based on counsel from his students and some Budi Utomo members, Muhammadiyah represents the first modern, non-political organization prioritizing the welfare of the underprivileged across education, healthcare, and social well-being. Dahlan’s upbringing in a priyayi (noblemen) class milieu at the Yogyakarta palace nurtured his socially conscientious character. Hence, it’s unsurprising that Dahlan consistently

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39 M. C. Ricklefs, Sejarah Indonesia Modern 1200-2008 (Jakarta: Serambi Ilmu Semesta, 2008), 355.
42 Deliar Noer, Gerakan Modern Islam di Indonesia 1900-1942 (Jakarta: LP3ES, 1982), 84.
emphasized Islam’s functional utility across theological contexts, as seen in Sūrat al-Mā‘ūn.\textsuperscript{44}

During its inception, Muhammadiyah’s reformative role in the religious realm was relatively subdued, with a stronger focus on Islamic philanthropy, particularly in the collection of zakat and \textit{sadaqah}.\textsuperscript{45} Over time, Muhammadiyah emerged as a vanguard of charitable endeavors and modern education both within Indonesia and globally. Bruinessen likened Muhammadiyah to the Muslim Brotherhood, an Islamic organization headquartered in Egypt.\textsuperscript{46}

Dahlan’s forward-looking zakat perspectives are evident through his critical stance toward the misuse of zakat funds by traditional princes, \textit{modins} (village religious officials), and \textit{kyais} for personal gain. This perspective deviates from the conventional understanding of zakat distribution in classical Islamic doctrine.\textsuperscript{47} Dahlan advocated prioritizing zakat funds to aid the destitute and impoverished. By using his wealth to propagate and extend compassion, Dahlan set a precedent akin to the outreach undertaken by Christian social and religious institutions.\textsuperscript{48} Noer underscores how this missionary spirit paved the way for Muslim leaders to attend to the needy and indigent.\textsuperscript{49}

Muhammadiyah operationalizes zakat funds as a vital source of organizational finances. The Financial Statements (\textit{Verantwoording}) of the Muhammadiyah Central Board in 1934 delineated guilders as a funding source (\textit{Oeang Masoek}).\textsuperscript{50} The Statutes of Muhammadiyah, published through the Soeara Muhammadijah in 1944, reinforced this, listing zakat and donations

\begin{footnotes}
\item[47] Fauzia, \textit{Filantropi Islam}, 150.
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among various funding sources. Article 8 states: "Wang Persjarikatan diperoleh dari: a. ioeran dan sokongan; b. zakat dan derma; c. harta poesaka dan washijat; d. hasil jang diperoleh dari pada hak milik persjarikatan; dan e. lain-lain jang halal." These funds underwrite an extensive array of social, charitable, da’wah, and educational initiatives.

After Indonesia’s independence, Muhammadiyah modified its zakat management by renaming the Zakat Affairs Management Agency (Badan Pengelola Urusan Zakat, BPUZ) to the Lembaga Amil Zakat, Infāq dan Ṣadaqah Muhammadiyah (LAZISMU) in 2002. This transformation was formalized with the Indonesian Minister of Religion Decree No. 457 of 2002, cementing LAZISMU as the embodiment of Muhammadiyah’s zakat efforts. The institution retained its prominence even after the implementation of the Zakat Management Law No. 23 of 2011, as confirmed by the Indonesian Ministry of Religion Decree No. 730 of 2016.

The second organization of focus is Nahdlatul Ulama. Founded by K.H. Hasyim Asy’ari in 1926, this Islamic religious organization’s approach to zakat philanthropy operates at the individual level, as it refrains from institutionalized zakat management. Nahdlatul Ulama is renowned for safeguarding archipelago traditions, culture, and customs. Within Nahdlatul Ulama, zakat distribution often occurs directly from muzakkī to mustahiq, involving kyais who serve as Quran teachers at prayer spaces and mosques, kyais at pesantren, and the underprivileged—integral components of a civil society managing zakat affairs.

Differing from Muhammadiyah, which allows zakat funds to benefit recipients beyond the eight groups of zakat recipients (aṣnāf) stipulated in the Quran, Nahdlatul Ulama’s fiqh (Islamic jurisprudence) restricts such latitude.

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53 Arskal Salim, Challenging the Secular State: The Islamization of Law in Modern Indonesia (Honolulu: University of Hawai’i Press, 2008), 683–701.
A significant moment occurred during the Nahdlatul Ulama Congress in Situbondo in 1984 when it was resolved that Nahdlatul Ulama’s branches should establish zakat institutions. However, the response was tepid.\(^{55}\) Eventually, two decades later, Nahdlatul Ulama established NU CARE in 2004, following the 31st Nahdlatul Ulama Congress’s endorsement at the Asrama Haji Donohudan, Boyolali. Registered as a non-profit entity under Minister of Religion Decree No. 65 of 2005, NU CARE was mandated to serve the populace by leveraging Zakat, *Infāq*, Ṣadaqah, and *Waqf* (ZISWAF). In 2015, NU CARE assumed the name NU CARE-LAZISNU. Presently, NU CARE-LAZISNU operates across 12 countries, 34 provinces, and 376 districts or cities in Indonesia.\(^{56}\)

4. Management of Zakat through BAZNAS and LAZNAS

The inception of BAZNAS and LAZNAS can be seen as prototypes for pre-independence zakat management. BAZNAS is guided by ulama linked to the government through penghulus in government mosques. Conversely, LAZNAS is overseen by ulema connected with civil society through kyais within *pesantrens*, village *kyais* (*kyai kampung*), and mosque *kyais* (*kyai masjid*). The emergence of zakat management bodies, BAZ and LAZ, was marked during the onset of the New Order government under President Soeharto. Although Suharto did not issue direct directives to establish BAZs, Governors initiated BAZs at the provincial level. Ali Sadikin, the DKI Jakarta Governor, pioneered this effort in 1968, paving the way for counterparts in other provinces.\(^{57}\)

The establishment of provincial BAZs facilitated the creation of zakat institutions within various companies—both state-owned and private. In 1994, Bank Negara Indonesia launched BAMUIS (*Yayasan Baitulmal Ummat Islam Bank Negara Indonesia*), while PT Bontang LNG initiated LAZ Yaumil and Baitul Maal Pupuk Kujang. Simultaneously, Islamic civil society established zakat management foundations, including *Yayasan Dana Sosial Al Falah* in 1987.

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Dompet Dhuafa Republika in 1994, Rumah Zakat Indonesia in 1998, Pos Keadilan Peduli Umat (PKPU) in 1999, and Dompet Peduli Ummat Darut Tauhid in 1999. The latter are known as LAZNAS entities representing Islamic civil society. The Zakat Management Law No. 38 of 1999 accorded BAZ and LAZ equal status. However, in Law No. 23 of 2011 concerning Zakat Management, BAZ and LAZ do not require permission from the Minister of Religion. Based on data from BAZNAS in 2022, there are 35 verified national-level Zakat Management Organizations (Organisasi Pengelola Zakat, OPZ), 62 OPZ at the provincial level, and 507 OPZ at the district or city level.

C. Legal Politics of Zakat Management: State vis-à-vis Islamic Civil Society

The inception of Zakat Management Law No. 38 of 1999 in the post-reformation era is celebrated as a triumph of the Muslim community in establishing a legal framework (umbrella lex) for zakat management. Its existence signifies a political recognition by the state of Islamic civil society's pivotal role in zakat management. This achievement owes much to the efforts of the FOZ, representing Islamic civil society, which played a crucial role in advocating for the regulation. Within this framework, BAZ and LAZ hold equal positions, as envisaged by FOZ. The FOZ steadfastly opposes the imposition of obligatory norms in zakat regulation and strives to prevent state intervention in zakat management. As a result, both BAZ and LAZ possess the authority to strategize, collect, allocate, utilize, and report zakat funds.

On January 17, 2001, the government formalized the establishment of BAZNAS through Presidential Decree (Keppres) No. 8 of 2001, designating BAZNAS as the national institution for zakat management. This move can be interpreted as indicative of the state's inclination toward centralizing zakat management. The

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signal of consolidation became more apparent when H. Tulus, an official from the Ministry of Religion, proposed amendments to Zakat Management Law No. 38 of 1999 at the 3rd FOZ National Conference in Balikpapan, held from April 25 to 28, 2003. Tulus emphasized the importance of integrating zakat management and streamlining related institutions to ensure targeted distribution and optimal utilization of benefits.\textsuperscript{62} In 2006, the government revisited Zakat Management Law No. 38 of 1999, with Ministry of Religious Affairs official M. Nasrun suggesting BAZNAS become the sole zakat management entity, potentially leading to the dissolution or transformation of LAZ into the Zakat Collection Unit (Unit Pengumpul Zakat, UPZ).\textsuperscript{63}

Currently, two distinct groups are endeavoring to amend Zakat Management Law No. 38 of 1999—state actors led by the Ministry of Religion and Islamic civil society, represented by FOZ. These groups hold contrasting intentions. The Ministry of Religion aims to centralize zakat management, a stance highlighted in the Problem Inventory List (Daftar Inventarisasi Masalah, DIM) within the Draft Law on Zakat Management (RUUPZ). The bill designates BAZNAS as a non-structural governmental body authorized to oversee national zakat management.\textsuperscript{64} In a DIM working committee meeting, Bahrul Hayat, Secretary General of the Ministry of Religion, emphasized that BAZNAS’s effectiveness has been hindered by its lack of authority to audit zakat management institutions, especially LAZ. Thus, integrating zakat management is deemed crucial for enhancing efficiency.\textsuperscript{65} Conversely, FOZ asserts that zakat management should remain under the purview of Islamic civil society as operators, with the state serving solely as a regulator through the Zakat, \textit{If\textsuperscript{a}q}, and \textit{\textit{S}adaqah} Management Agency (Badan Pengelola


\textsuperscript{63} Nasrun Harun, “Kami Tidak Berniat Membubarkan LAZ,” \textit{INFOZ}, 2010, 8.

\textsuperscript{64} Director-General of Islamic Community Guidance and Directorate of Zakat Empowerment, Ministry of Religious Affairs, “List of Problem Inventory for the Draft Law on Amendments to Law No. 39 of 1999 concerning Zakat Management Proposed by the Government” (Jakarta: Kementerian Agama, 2010).

Zakat Infak dan Sedekah, BPZIS), BAZNAS, and LAZ. FOZ also suggests merging BAZNAS into LAZNAS.\textsuperscript{66}

Ultimately, on October 27, 2011, RUUPZ was ratified as Zakat Management Law No. 23 of 2011 in a plenary session presided over by Radityo Gambiro at Gedung Nusantara II, in collaboration with the Government.\textsuperscript{67} However, this ratification adversely affected Islamic civil society’s engagement. The regulation prohibits zakat committees in mosques, prayer rooms, pesantren, and other locales from managing zakat without authorization from designated officials, under the threat of legal penalties.\textsuperscript{68} The state argues that centralizing zakat management is the only means to optimize the management and utilization of zakat funds. Discontent with this policy prompted Islamic civil society to initiate a judicial review at the Indonesian Supreme Court. While the Constitutional Court approved the judicial review of several articles within the law, exceptions were granted only to ‘āmil zakat that BAZ or LAZ struggled to reach.\textsuperscript{69} In practice, many ‘āmil zakats from Islamic civil society continue to engage in unauthorized zakat management.\textsuperscript{70}

D. Centralization of Zakat Management through BAZNAS: Restricting the Participation of Islamic Civil Society

The legal and political landscape of zakat underwent significant shifts after the enactment of Zakat Management Law No. 23 of 2011, leading to changes in the orientation of zakat management in Indonesia. This law vested greater central authority in BAZNAS as a non-structural government institution responsible for overseeing national zakat management. Unfortunately, this transition had adverse implications for LAZNAS, relegating their role to supporters of BAZNAS in zakat


\textsuperscript{67} “DPR Setujui RUU Zakat, Infaq, dan Shodaqoh (ZIS) Menjadi Undang-Undang,” Buletin Parlementaria, 2011, 8.

\textsuperscript{68} “Zakat Management Law No. 23 of 2011," Articles 38 and 41.


\textsuperscript{70} Dewi Susilowati and Christina Tri Setyorini, "Efektivitas Tata Kelola Dana Zakat," Jurnal Akuntansi Multiparadigma 9, no. 2 (August 31, 2018): 346–64.
collection. From the perspective of Islamic civil society, the amendments to Zakat Management Law No. 38 of 1999 seem to reflect a government attempt to diminish the significance of LAZNAS as zakat management institution in Indonesia. Notably, Zakat Management Law No. 23 of 2011 criminalizes the practice of individual or group zakat management in mosques, pesantrens, and Islamic religious organizations without permission from the Ministry of Religion.71

The amendments to Zakat Management Law No. 38 of 1999 should have taken into account the genealogy of zakat management practices deeply entrenched within Islamic civil society. Genealogically, these practices can be categorized into four typologies: individual, mosque and pesantren-based, Islamic religious organizations, BAZNAS, and LAZNAS. The relationships among these typologies are not mutually exclusive; they rather complement each other. However, Zakat Management Law No. 23 of 2011 fails to acknowledge the legal reality that zakat management practices are rooted in Islamic civil society in Indonesia. Gillssen and Gorle assert that sociologically living law is primary law.72 Therefore, ongoing efforts led by the DPR involving FOZ to amend Zakat Management Law No. 23 of 2011 must acknowledge this historical reality. Law, serving both as a tool and a reflection of societal culture, should not be disregarded in future legal development processes.73

In the context of prismatic law, these legal practices constitute a vital source of law that demands recognition in the formulation of future national laws through legal positivization. Law is intricately woven into social constructs and forms an integral part of societal life.74 It should mirror the ingrained values of society75 and uphold the prevailing sense of justice,76 especially within the domain of zakat law that rests on Pancasila’s principles, which vehemently reject all forms of

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71 “Zakat Management Law No. 23 of 2011,” Articles 38 and 41.
74 Ratno Lukito, Tradisi Hukum Indonesia (Yogyakarta: Teras, 2008), 8.
discrimination. Consequently, a harmonization of legal structures within Indonesia’s diverse legal system becomes imperative. The zakat law that emerged during the Reform Era should signify a pivotal departure from the era when zakat policies were codified, necessitating a deep connection with the surrounding social history. However, the centralization of zakat management has resulted in sidelining existing zakat management practices within society, including those occurring in numerous mosques, langgars (small mosques), and pesantren. These practices constitute living law within society, reflecting Islamic civil society’s commitment to internalizing their religious teachings. This categorization underscores that zakat management in Indonesia is intrinsically tied to Islamic civil society, positioning them as the bedrock of zakat management across the nation. In the face of changing societal dynamics, amendments to Zakat Management Law No. 23 of 2011 are indispensable to cater to the evolving legal requirements of the populace. Nevertheless, it’s crucial to acknowledge the existence of numerous undefined areas concerning roles, responsibilities, and functions that currently lack regulation within the framework of Zakat Management Law No. 23 of 2011.

Hence, the alterations to the legal and political frameworks governing zakat, after the enactment of Zakat Management Law No. 23 of 2011, have reshaped the trajectory of zakat management. This shift has seen the transition from a democratic approach to a more centralized one, leading to adverse consequences for the role of LAZNAS. In reforming these legal provisions, it becomes imperative to recognize the intrinsic nature of zakat management practices deeply entrenched within Indonesia’s Islamic civil society. In the creation of positive law, it remains paramount to consider the vibrant legal practices that thrive within society while upholding the bedrock values of justice. Achieving harmonization within the

78 Ahmad Syafii Maarif, Islam dalam Bingkai Keidonesiaan dan Kemanusiaan: Sebuah Refleksi Sejarah (Bandung: Mizan, 2009), 27.
80 Fauzia, Filantropi Islam, 270–278.
national legal system is a pressing need, aiming to encompass the existing legal pluralism that prevails. The acknowledgment and support of zakat management facilitated by civil society must be upheld to ensure optimal and impartial distribution of zakat funds. However, it’s noteworthy that conflicts often emerge between the influence of Islamic civil society and state authorities as they contend for their respective interests.81

E. Conclusion

The legal dynamics surrounding zakat in Indonesia have placed BAZNAS in the role of a non-structural government entity responsible for centralizing the management of national zakat, as outlined in Article 6 of the Zakat Management Law No. 23 of 2011. While this centralization aims to enhance the efficiency and utilization of zakat funds, it has encountered resistance from Islamic civil society. From their perspective, this policy restricts their participation in zakat management, which has deep roots in their cultural and religious traditions. Furthermore, the Zakat Management Law deems unauthorized zakat management through committees in places of worship, Islamic organizations, and BAZ and LAZ institutions as illegal without official state approval. This stance contradicts the pluralistic zakat management practices that have been ingrained in Indonesian Islamic civil society for generations.

The history of zakat legal practices in Indonesia reflects a rich diversity within Islamic civil society. Initially, zakat was managed individually, but over time, it evolved into more organized systems through mosques, langgars, pesantrens, and Islamic religious organizations. Before Indonesia’s independence, BAZ and LAZ emerged as models for zakat management, with BAZ being influenced by scholars connected to the government and LAZ being controlled by scholars associated with Islamic civil society. Following the reform era, the Zakat Management Law No. 38 of 1999 established a legal framework that recognized both BAZ and LAZ as equal institutions for zakat management. However, the government’s efforts to centralize zakat management by introducing BAZNAS led

81 Fauzia, Faith and the State, 6.
to friction with Islamic civil society, which aimed to preserve its autonomy in zakat management. In light of this historical context, any proposed amendments to the Zakat Management Law No. 23 of 2011 must accommodate the diverse traditions of zakat management and respect the genealogical heritage of Islamic civil society in Indonesia. Recognizing and valuing the pluralistic fabric of zakat management practices is crucial, as it reflects the intricate tapestry of Indonesia’s socio-religious landscape.

**BIBLIOGRAPHY**


