



STATE AND ISLAMIC LAW: A STUDY OF LEGAL POLITICS ON ZAKAT AS A TAX DEDUCTION IN ACEH

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Abstrak: Penelitian ini bertujuan untuk mengkaji zakat sebagai faktor pengurang pajak di Aceh. Berdasarkan aturan hukum yang ada bahwa zakat yang dibayarkan oleh muzaki kepada BAZNAS atau LAZ dikurangkan dari penghasilan kena pajak. Namun sampai saat ini aturan ini belum terapkan karena belum ada Peraturan Pemerintah. Kajian ini merupakan studi hukum empiris dengan menggunakan pendekatan perundang-undangan, dianalisis dari sudut teori politik hukum. Penelitian ini menyimpulkan bahwa hubungan antara agama, negara, dan hukum Islam di Aceh memiliki kaitan yang erat dengan konteks politik hukum Indonesia secara umum. Aturan pemerintah yang terkait dengan hukum Islam atau umat Islam sejak masa orde lama bahkan sampai reformasi dipengaruhi oleh konfigurasi politik, jika konfigurasinya demokratis maka karakter hukumnya juga demokratis begitu juga sebaliknya. Karena itu, aturan hukum tentang zakat tersebut sampai saat ini masih belum dapat diberlakukan karena kuatnya konfigurasi politik. Mengacu pada argumen dan logika politik hukum, pemerintah bersikap demokratis terhadap aspirasi di Aceh dengan membuat Rancangan Peraturan Pemerintah (RPP) tentang Zakat sebagai Pengurangan Pajak yang akan menguatkan aturan hukum sebelumnya, yaitu zakat sebagai faktor pengurang pajak. Penyatuan zakat dan pajak dalam satu instrumen hukum oleh pemerintah yang memiliki kewenangan politik dan struktural akan dapat mewujudkan keadilan dan kesejahteraan ekonomi dan sosial masyarakat sebagai tujuan utama zakat.

Kata kunci: politik hukum; hukum Islam; zakat; pajak

Abstract: This study examines zakat (obligatory charity) as a tax deduction in Aceh. Currently, the existing legal rule stipulates that zakat paid by *muzakkī* (zakat payers) to the National Zakat Board (BAZNAS) and Zakat Official Institution (LAZ) is deducted from taxable income. However, this rule has not been applied since there is no Government Regulation. This empirical legal study used a statutory approach, analyzing the point of view of legal politics theory. This study concludes that the State and Islamic Law in Aceh are closely related to the political context of Indonesian law. The government regulations from the Old Order to the Reform Era related to Islamic Law or Muslims have been greatly influenced by political configurations. When the configuration is democratic, the legal character embraces democratic values and vice versa. As a result, the legal regulations regarding zakat have not yet been enforced due to the strong political configuration. However, referring to the arguments and logic of legal politics that the government is democratic towards the aspirations in Aceh, the Governmental Regulation Draft/*Rancangan Peraturan Pemerintah* (RPP) for Zakat as Tax Deduction will strengthen the previous legal rule, stipulating zakat as a tax deduction factor. The unification of zakat and taxes in one legal instrument by the government, which has political and structural authority, will be able to realize justice and economic and social welfare of the community as the primary goal of zakat.

Keywords: legal politics; Islamic law; zakat; tax

Introduction

The study of the state and Islamic law has been a debate since the early days of independence, namely at the session of the Investigative Agency for Preparatory Work for Indonesian Independence (*Badan Penyelidik Usaha-usaha Persiapan Kemerdekaan Indonesia*/BPUPKI) on June 22, 1945. This debate then culminated with the agreement that the basis of the state is Pancasila, the first principle: Belief in the One and Only God/ *Ketuhanan Yang Maha Esa*. It is not the Jakarta Charter that mentions the implementation of Islamic law for its adherents. There are two camps in this debate, namely Islamic groups and nationalists. Islamic groups aspire to Indonesia as a national state that applies Islamic law formally, while nationalists want Indonesia as a nation-state without formal implementation of Islamic Law (Anshari, 1997; Anwar, 1995; Maarif, 1984: 108; Zada, 2003: 42-70).

The strengthening of the desire to apply Islamic law formally in Indonesia again occurred after the fall of the New Order government in 1998. Islam as a single principle obligatory enforced by President Soeharto was abolished by the reform era, finally the emergence of Islamic parties, for example, the United Development Party (*Partai Persatuan Pembangunan*/PPP), the Reform Star Party (*Partai Bintang Reformasi*/PBR), the Justice Party (*Partai Keadilan*/PK). In addition, there are community organizations that fight for Islamic law formally, for example; Indonesian Mujahidin Council (*Majelis Mujahidin Indonesia*/MMI), Hizbut Tahrir Indonesia (*Hizbut Tahrir Indoensia*/HTI), Islamic Defenders Front (*Front Pembela Islam*/FPI), Lasykar Jihad Ahlussunnah Waljamaah. Then in several regions there was a desire to implement sharia regulations such as in Bulukumba, Gowa, Cianjur, Garut, Tasikmalaya and Aceh (Abdillah, 2013; Salim, 2017; Zada, 2015). However, these groups do not have many followers, in contrast to Muhammadiyah and Nahdlatul Ulama as organizations with a majority of followers and have nationalist and moderate views without the desire to enforce Islamic Law formally.

However, in legal politics, the state has accommodated Islamic law as the rule of law in the New Order government, especially in the late period there was the accommodation of Islamic groups both politically, structurally and bureaucratically. This can be seen from the enactment of the Law on Religious Courts (*Undang-Undang Peradilan Agamal*

UUPA) in 1989 and the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*) 1991, Law Number 17 of 1999 on Hajj, Law Number 38 of 1999 on Zakat, Law Number 23 of 2011 on Zakat Management, Presidential Instruction Number 3 of 2014 on the Optimization of Zakat Collection. The UUPA and KHI have been used as the basis for judges under the auspices of religious courts throughout Indonesia (Effendi, 1998; Hooker & Lindsey, 2003; Jahar, 2019).

The legal politics implemented in the democratic reform era also influenced the implementation of Islamic law in Aceh as part of the solution to the protracted conflict between the Free Aceh Movement (*Gerakan Aceh Merdeka/GAM*) and the central government. The conflict ended peacefully in Helsinki in 2005, after the tsunami disaster on December 26, 2004. The Aceh peace agreement then gave birth to Law No. 11/2006, previously Law No. 44/1999 on the Administration of the Privileges of Aceh and Law No. 11/2001 concerning the Special Autonomy of NAD. The most recent developments are the enactment of Aceh Qanun No. 7/2013 on Jinayat Procedural Law and Aceh's Qanun 6/2014 on Jinayat Law (Abubakar, 2005; Din & Abubakar, 2021; Suma et al., 2020). Specifically, regarding Law No. 11/2006 on Aceh Government (*Undang-undang Pemerintahan Aceh*), Article 192 regulates the issue of zakat, which can reduce income tax, although it has not been formally implemented in Aceh.

In the national context, the rules regarding zakat issued Law No. 23/2011 on Zakat Management (herein after called Zakat Management Law) raises several problems. Article 22 of Zakat Law states that zakat is paid by *muzakkī* (zakat payers) to the National Zakat Board (*Badan Amil Zakat Nasional/BAZNAS*) or Zakat Official Institution (*Lembaga Amil Zakat/LAZ*). Then it is deducted from income subject to tax. Yet, this legal rule has never been applied to date, and people who pay zakat still have to pay tax. In other words, this legal rule only exists on paper. It is unable to implement as it is constrained by another legal rule, Governmental Regulation Draft (RPP) for zakat as a tax deduction, which the Ministry of Home Affairs has not yet ratified.

In contrast, tax-deductible zakat has been applied in some Muslim countries such as Jordan, Pakistan, and Malaysia. Jordan promulgated a special law on the collection of zakat in 1944, being the first Islamic State to produce such a law. This regulation established a zakat collection

institution called *şundūq* of zakat in 1988. This institution has the authority to manage the budget independently. Hence, it has the right to issue various rules, technical guidelines, and operational guidelines to make zakat collection activities more effective. The zakat payment system in Jordan allows for deducting the amount paid for zakat from income subject to tax (Nadhari, 2013; Amiruddin, 2014: 849).

In Pakistan, the management of zakat and tax refers to the 1979 Law, known as the *Zakat and Ushr* (Organization) Ordinance. The rule, however, was considered imperfect, and thus in 1980, the Zakat Management Law began to be perfected. The management of zakat in Pakistan is centralized under the Central Zakat Fund (CZF). It is led collectively by sixteen members, one of whom is the Supreme Court Justice of Pakistan, eight of whom are unofficial, with three being from the Islamic scholars. The remaining seven are official, one being the head of the zakat fund, four Federal State Finance Ministers, and the Ministry of Religious Affairs elements. CZF has the authority to determine various policies and to supervise matters relating to zakat (Nadhari, 2013: 66; Amiruddin, 2014: 848).

In Malaysia, zakat can be used as tax-deductible as much as 100 per cent. All administrative matters and management of various types of zakat in Malaysia are under the control of the state government. The zakat management organization in Malaysia was established in May 1989. The management of zakat in Malaysia is under the direct supervision of the Islamic Religious Council in each state, consisting of 14 units. The Zakat Collection Center (*Pusat Pungutan Zakat/PPZ*) in Malaysia is under the Islamic Religious Council of the Kuala Lumpur Federal Territory (*Majlis Agama Islam Wilayah Persekutuan Kuala Lumpur/MAIWP*), which is responsible for zakat and *waqf* (endowment). The PPZ first operated on January 1, 1991 (Noor *et al.*, 2005; Suprayitno *et al.*, 2013: 1-5).

In Indonesia, during the New Order, the government did not provide space for zakat management as Islamic institutions and groups in general also did not develop freely. This condition then changed gradually when the Reform period began in 1998. The Reform Era had allowed the establishment of zakat and *waqf* with the enactment of Law No. 41/2004 on *Waqf* and Law No. 38/1999 on the Management of Zakat. However, it should be noted that there is a new awareness for Muslims, especially NGO activists, to empower Islamic philanthropy as part of helping the

poor after the 1997 monetary crisis, which continued to increase and later triggered a new, more democratic era. Such social and political changes have allowed zakat institutions' development (Jahar, 2019: 354).

Zakat used as a tax-deductible will further increase tax revenue for the government. It provides stimulation and incentives to the Muslim community to be more honest and correct in filling their tax expense. In addition, it can help reduce the double expense of paying both zakat and tax among the people. The existing data and the analysis results showed that zakat would positively and significantly impact the government's tax revenue. This indicates that the higher the zakat collected, the higher the government's tax revenue. Thus, the concern that zakat will reduce tax revenue is unfounded (Suprayitno et al., 2013: 26).

Tax is an obligation for every citizen of Indonesia who has fulfilled the requirements as a taxpayer. For Muslim citizens, however, in addition to paying tax, there is another obligation related to withholding assets, known as zakat. Nevertheless, these two obligations are never contradicted by Muslims since, within the Islamic economic system, these obligations are recognized as sources of funds to realize the welfare of the people. However, zakat and tax have a different legal basis. Zakat is collected based on the provisions of Islamic Law in the collection and its allocation. In contrast, tax is collected based on laws and regulations predetermined or regulated by the central and local governments.

The government has long extensively promoted the issues of tax collection and allocation, whereas Islamic scholars disseminate the issue of zakat itself. In 1999, zakat became a state affair, which the government issued Law Number 38 of 1999 and later amended by Zakat Management Law. In addition, the government issued Government Regulation No.14/2014 on the Implementation of Law No. 23/2011. Further, the President issued Instruction No. 3/2014 on Optimizing Zakat Collection in Ministries/Institutions, Secretariat General of State Institutions, Secretariat General of State Commissions, local governments, State-Owned Enterprises (*Badan Usaha Milik Negara*/BUMN), and Regional-Owned Enterprises (*Badan Usaha Milik Daerah*/BUMD) through BAZNAS. These provisions indicate the strength of the state's role in regulating zakat funds in the context of the welfare of the people.

The purpose of this rule is not to burden the people. Instead, it is the government's effort to synchronize tax and zakat obligations, so the

Muslims who are obliged to pay zakat and tax can gain tax relief. This policy is reflected in Law No. 7/1983 on Income Tax which has been amended several times, most recently in Law No. 36/2008 and further regulated by Government Regulation No. 60/2010, which states that zakat or religious donations are mandatory to be deducted from gross income.

Such a provision provides some benefits for the Muslims because the zakat they pay can be a factor in deducting taxable income, thereby reducing the tax obligations that must be paid. The condition is that zakat payments must be made through BAZNAS, Provincial BAZNAS, District/City BAZNAS, and the integrated Zakat Institution (LAZ). Zakat Payments on employee salaries through the Zakat Collecting Unit (*Unit Pengumpul Zakat/UPZ*) of the Ministries/Institutions and BUMN are also included in the incentive.

The provision of zakat, a deduction from taxable income, is not only for Muslim taxpayers. This also applies to income zakat paid by domestic corporate taxpayers owned by Muslims to zakat agencies or institutions established or legalized by the government. To do that, the companies that pay zakat through BAZNAS can also take advantage of this incentive to reduce the taxes taxpayers must pay, both individuals and entities whose owners are Muslims.

Yet, in practice, these rules have not been applied; therefore, it is necessary to conduct the study on zakat being deductible for the amount of income tax payable from taxpayers. Also, the study attempts to show that zakat provides economic benefits for Muslims in Indonesia in general and in Aceh in particular. At this stage, zakat is mentioned explicitly in law No. 03/2006 on Religious Court (*Undang-Undang Peradilan Agama/UUPA*). Apart from being tax-deductible, zakat is also included as local revenue.

This empirical legal study was based on the social realities in society and used a statutory approach (Fuady, 2018: 121; Marzuki, 2011: 136-158). This study employed the theory of legal politics, especially the legal configuration. According to Mahfud MD, it refers to the law whose rules and regulations are influenced by the background of the political situation (Mahfud, 1999). The study used primary and secondary data. The primary data were collected from the informants, namely the Baitul Mal staff tax office at both the provincial and district level. In contrast, the secondary data was taken from relevant literature and legislation.

The Political Configuration of Islamic Law in Indonesia

Indonesia is a state of law and democracy; however, the legal rules are a political product. To study law as a political product, it is necessary to examine politics as a theory. Legal politics is an official legal policy regarding law that will be enforced either by making new laws or replacing old ones to achieve state goals (Mahfud, 2012: 4; Syauckani & Thohari, 2007). Legal politics is the basic policy that determines the law's direction, form, and content to be formed (Wahono, 1986). In addition, legal politics also includes the way politics influences the law by examining the configuration of power behind the making and enforcing of the law. As the typology of the government primarily determines the characteristics of the law, when the government holds a democratic view, the conceived laws will be responsive. Yet, if the government embraces an authoritarian style, the laws will also be conservative (Halim, 2005: 108; Mahfud, 1999: 4).

From the above arguments, it can be understood that law is positioned as a tool to achieve state goals. Some scholars argue that law is a tool. Thus, practically, legal politics is also a tool or means and steps that the government can use to achieve a national legal system so that the ideals of the nation and the goals of the state can be manifested (Hartono, 1991: 1; Wahid & Rumadi, 2011). Mahfud (2012) describes that the political configuration will affect the character of the law, suggesting that a democratic political configuration will yield a responsive and democratic law. In contrast, an authoritarian political configuration will produce a conservative and authoritarian legal character.

At this stage, Indonesia has enacted Law No. 7/1989 on Religious Courts to put the Religious Courts on equal footing to the District Courts. The Religious Courts are autonomous and independent when carrying out their duties since all legal products from these courts are legally binding. Furthermore, with the enactment of Law No. 3/2006 on the amendments to Law No. 7/1989, the authority of the religious courts now includes examination, settlement, and settlement of cases at the first level; judiciary for Muslims in the fields of marriage, inheritance, wills, *hibah* (grants), *waqf*, zakat, *infāq* (voluntary disbursement), and *sadaqah* (voluntary charity); and sharia economics (Gurnaryo, 2006: 279-313; Idri, 2009).

In this context, the political configuration behind the process of making and enforcing laws carried out by the judiciary has turned weaker

as the concentration of the political energy is stronger than the law itself (Mahfud MD, 2012: 20). In terms of the "stronger energy" of politics in dealing with the law, Dahrendorft (1986: 238-246) explains the law is a mirror of the will of the holder of power or synonymous with power, noting six characteristics of dominant groups or groups holding political power. First, the number of the dominant group is always smaller than the number of controlled groups. Second, they have special advantages to maintain their domination in the form of material, intellectual, and moral honor. Third, the opposition is always better organized than the subjugated group. Fourth, the ruling class only consists of members who hold dominant positions in the political field, and so there is only the ruling elite in the political field. Fifth, the ruling class always tries to monopolize and bequeath its political power to its class/group. Last, there is a reduction in social change to changes in the composition of the ruling class.

Considering the main argument that the law is a political product, politics will, therefore, greatly determine the making and application of the law. The argument can be put forward is that the political configuration will produce a particular character of legal products in that country. A country with a democratic political configuration will have a responsive and populist character in legal products. In contrast, a country with an authoritarian political configuration will result in an orthodox, conservative and elitist character of law. Hence, the changes in the political configuration from authoritarian to democratic, or vice versa, will have implications for the shift of the character of the legal products (Mahfud, 2012: 22)

The success of Muslims in the Islamic political struggle has been caused, among others, by a change in strategy that is no longer exclusive in the sense of grouping themselves with clear demarcation boundaries. Their political goal is substantive rather than symbolic Islam. They have, for example, accepted the view that the Religious Courts are not religious institutions per se but are legal institutions. Another strategy is focusing on the Islamic parties and the bureaucracy (Azizy, 2002: 188; Gurnaryo, 2006; Kamsi, 2012: 288).

The political configurations at the end of the New Order and at the beginning of the Reform Era, which were increasingly democratic, have led the climate and character of the law to become more democratic. In the case of religion, the government has provided a vast space for

developing Islamic Law and policies that favor Islam. Other religions have received their recognition in some aspects, such as Confucian as a religion and the Lunar New Year as a national holiday.

Legal Policy on Zakat and Tax in Indonesia

Since the Old and New Orders, Indonesia's laws on zakat and tax have been separated. The zakat regulation during New Order was made under the policy of the Ministry of Religious Affairs. The Regulation of the Minister of Religious Affairs No. 4/1968 on the Establishment of the Zakat Agency and the Regulation of the Minister of Religious Affairs No. 5/1968 on Baitul Maal during the term of Minister of Religious Affairs KH. Moh. Dahlan. Baitul Maal functions to collect zakat funds for Muslims and then deposit them to the Zakat Agency. In light of these regulations, political dynamics began to emerge, and the Ministry of Finance then rejected the existence of the previous zakat regulations. Later, President Soeharto took a policy that was seen as a solution to the settlement of zakat regulations in Indonesia, releasing the President's statement confirming that zakat management shall be regulated systematically so that zakat distribution can encourage the national development agenda (Hasibuan, 2020: 64-66).

The Reform period was more dynamic when the political and economic conditions under crisis helped form Law No. 38/1999 on Zakat Management. Then it was followed by the Minister of Religious Affairs Decree No. 581/1999. During this period, zakat management experienced rapid development, as evidenced by the broad and open authority given to zakat collection institutions. The ratified institutions included foundations or religious organizations such as Nahdlatul Ulama (NU), Muhammadiyah, and Persatuan Islam (Persis). New types of zakat collection institutions also began to emerge, which were established by state-owned enterprises such as BAMUIS BNI (1968), LAZ YAUMIL PT Bontang LNG (1986), and Baitul Mal Pupuk Kujang (1994). In line with the development of BAZIS, a law was issued in 1999, namely Law No. 38/1999 on the Management of Zakat (Sudewo, 2004: 273).

Zakat and tax policies run separately. Zakat is the obligation of Muslims to Allah. At the same time, tax refers to the obligation of the Indonesian people to the government. Both hold the same principle, which aims to improve the community's welfare.

There is a reduction in zakat from taxable residual income intended to prevent taxpayers from getting a double expense, having to pay both tax and zakat. In the case of taxation, there are clear administrative sanctions if people are negligent or deliberately do not pay taxes. On the other hand, the distribution of zakat for *mustahiq* (entitled people) in Indonesia is in accordance with religious provisions, namely the eight predetermined *asnaf* (beneficiaries), based on the priority scale and needs of *mustahiq* and can be used for productive businesses (Indonesia Zakat and Development Report, 2010: 142).

The government needs to synergize between tax and zakat not to burden the Muslims. There are several provisions issued concerning zakat, such as Presidential Decree Number 8 of 2001 on the Establishment of BAZNAS, Law No. 23/2011 on Zakat Management, Government Regulation Number 14 of 2014 on the Implementation of Zakat Management Law No. 23/2011 on Zakat Management, and the Presidential Instruction Number 3 of 2014 on the Optimization of Zakat Collection in MinZakat Management Lawistries/Institutions, Secretariat General of State Institutions, Secretariat General of State Commissions, Local Governments, BUMN, and BUMD through BAZNAS.

The promulgation of the Law No. 38/1999 on Zakat Management consisted of 10 chapters and 25 articles. However, zakat management is considered irrelevant because of the many weaknesses and obstacles faced by zakat managers when implementing the law. Hence, the government deemed it necessary to form a new law to complement the previous law. Therefore, Zakat Management Law was issued.

In regulation No. 36/2008 on the Fourth Amendment to Law No. 7/1983 on Income Tax, the legislators have included an article that regulates the guarantee of reduction of taxable income for every Muslim who pays zakat to the official zakat agencies or institutions. Further, it is calculated in the period of the tax payment concerned (Law of Income Tax, 1983; Law the Fourth Amendment Income Tax, 2008). Article 4 paragraph (3) states that what is not included as an object of the tax is donations, including zakat received by the zakat agencies or institutions formed or legalized by the government (Hasibuan, 2020: 59).

The issuance of the Zakat Management Law is expected to increase the effectiveness and efficiency of services in zakat management, as well as to increase the benefits of zakat to realize the community welfare

and reduce poverty. Likewise, it is expected to synergize with the Law No.36/2008 on taxation in collecting tax and zakat revenues so that they can be carried out in an integrated manner, and the community no longer feels burdened with two obligations that are both regulated in the Law (Hasibuan, 2020: 59).

There are five forms of zakat management in contemporary Muslim society. The first one is the obligatory collection of zakat by the state. The second is the mandatory collection through the community or the private sector. The third is the voluntary collection of zakat by the state. The fourth is the collection of zakat voluntarily by the private sector. And the fifth is the voluntary collection of zakat by individuals. Nevertheless, Indonesia has a unique situation wherein the management is officially related to state authorities but is still at the voluntary level and includes broad community groups (Indonesia Zakat and Development Report, 2010: 136).

Efforts to integrate the management of zakat and tax following the will of the majority of the Indonesian population started when the enactment of Law No. 38/1999 on Zakat Management. This can be seen in Article 14, Paragraph (3), which explains that the zakat that has been paid to the zakat agencies or institutions is deducted from the profit or taxable residual income of the taxpayer concerned in accordance with the applicable legislation. In a somewhat similar fashion to Article 22 of Zakat Management Law, it is stated that the zakat paid by *muzakki* to BAZNAS or LAZ is deducted from taxable income. However, unfortunately, this legal regulation has not yet been applied because the government is yet to ratify the RPP on Zakat as Tax Deduction.

Legal Political Configuration in Aceh

The legal political configuration highly affects the relationship between religion, State, and Islamic Law in Aceh. When Teungku Muhammad Daud Beureueh (1899-1978), the Military Governor of the Aceh, Langkat and Tanah Karo regions in 1948, requested President Soekarno (1901-1970 AD) to sign the agreement that was presented to him, to which the latter refused to, Daud Beureueh was very disappointed. This prompted him to fight against the government by establishing Darul Islam/*Islamic* Armed Forces of Indonesia (*Darul Islam/Tentara Islam Indonesia (DI/TII)*) on September 21, 1953. The incident resolved deliberation and ended with granting privileges based on the Decree of

the Prime Minister of the Republic of Indonesia Number 1/Missi/1959 in 1959. This law permitted the Aceh Region to hold privileges in three areas, religion, culture, and education (Sjamsuddin, 1990; Suyanta, 2008: 92). However, such privileges still did not significantly change Aceh from the previous conditions.

In 1963, Regional Regulation No. 1/1963 concerning implementing Islamic religious symbols in Aceh was issued. However, based on the recommendation of the Office of Religious Affairs, this regional regulation was not approved by the central government. The Governor of Aceh, Hasby Wahidy had indeed tried to interpret the concessions regarding implementing elements of Islamic Law in Aceh. He, for example, established the Bureau of Islamic Sharia elements at the Governor's Office and formed the Aceh Province Ulama Consultative Council (*Majelis Permusyawaratan Ulama/MPU*). Regional Regulation No. 6/1968 concerning the main provisions for implementing the elements of Islamic Law in Aceh was enacted after the Aceh DPRD-GR convened in a marathon from 5 to November 11 1968, to discuss them. Yet, the Central Government rejected this regional regulation in 1969 (Abubakar, 2005; Suyanta, 2008: 92-93).

When the New Order took control, the situation did not change much, and instead, Aceh was turned into a Military Operation Area (*Daerah Operasi Militer/DOM*). Under the Suharto government, almost all aspects of the nation's life were regulated according to its political will. This condition continued until the term of Megawati Soekarno Putri. Then, when the reform period began, Indonesia's political atmosphere changed. B.J. Habibie then revoked DOM in 1998 and gave Aceh the autonomy.

During the Reform Era, the central government also responded to Aceh's demands by enacting Law No. 44/1999 on the Implementation of the Privileges of the Special Region of Aceh, which culminated after the enactment of Law No. 18/2001 (Muhammad, 2003: 3). These two laws became a strong foundation for implementing Islamic Sharia in Aceh. Later, on March 15, 2002, coinciding with 1 Muharram 1422 H, Governor Abdullah Puteh officially enacted the Islamic Sharia (Isa, 2013: 500; Nurdin et al., 2021: 763). The implementation of Islamic Law in Aceh has been getting stronger with a juridical basis from the law mentioned above, coupled with more applicable regulations in the form of the Regional Regulation No. 5/2000 on the Implementation

of Islamic Sharia and the Law No. 11/2006 on the Governing of Aceh (Law of Governing Aceh, 2006).

Further, the political configuration in Aceh can also be seen in the relationship between Islamic Law and customary law. These two legal systems have unequal coexistence and asymmetrical contestation. Several attempts have been made to reinvigorate adat (custom) in Aceh and implement Islamic law in the last two decades. These efforts include 1) the institutionalization of the customary bureaucracy, 2) the restoration of customary cultural sovereignty, 3) the re-acquisition of customary rights related to natural resources, and 4) the strengthening of customary mechanisms in dispute resolution. Nevertheless, *adat* appears to be subordinated and secondary to Islamic Law through these efforts (Salim, 2021: 529-551).

In addition, the more visible political configuration is the relationship between the State and Islamic Law. The state provides a vast space for applying Islamic law. The Islamic sharia qanuns (regional bylaws) in Aceh, particularly the Jinayat Qanun, have a different position from the regional regulations implementing laws in other provinces in Indonesia. The difference lies in the special right of the Government of Aceh, a region with asymmetric decentralization. To make its regulations at a certain level is permitted to be inconsistent with the laws above. However, the regulations shall still align with the basic norms as the primary reference, comprising the 1945 Constitution, the Unitary State of the Republic of Indonesia, and the Pancasila philosophy (Din & Abubakar, 2021: 690).

Under President Susilo Bambang Yudoyono, the legal character conceived from a democratic political configuration was quite evident in the peace made by the Government of the Republic of Indonesia with the Free Aceh Movement (*Gerakan Aceh Merdeka/GAM*) in 2004 in Helsinki. GAM's various demands were accommodated by a democratic government, including having local parties, amnesty, an Aceh flag, and economic assistance for conflict victims never provided by the previous governments (Awaluddin, 2008; Bhakti, 2008).

In this context, the political configuration that affects the character of the law is quite prominent in Aceh since the conflict in Aceh for over 30 years failed to be resolved between Old Order and the New Order. Since the political configurations of the Old and New Orders highly

embraced authoritarian and centralized politics, the legal character that emerged was practically the same. In contrast, the Reform Era with a democratic and participatory political configuration has yielded a democratic legal character.

Zakat as Tax Deduction in Aceh

Tax is an obligation for every citizen who meets the criteria of a taxpayer. It is stipulated in the laws and regulations concerning taxation. For Muslims, however, there is another obligation apart from tax, called zakat. Muslims have never contradicted these two obligations because the Islamic economic system recognizes two sources of funds to carry out development activities and people's welfare: zakat and tax. Zakat and tax, although both are obligations, have different legal bases. Zakat is based on the provisions of the sharia both in its collection and uses. Meanwhile, tax is based on the laws and regulations determined by the government regarding its collection and use.

Here, the problem arises whether the zakat paid by someone in Aceh can reduce the income tax payable (tax-credit) in accordance with the Undang-undang Pemerintahan Aceh 2006 and qanun above or shall be subject to the Law No. 7/1983 on Income Tax, which states that *zakat* can only reduce the amount of taxable income (tax-deductible). In this case, the conflicting laws and regulations need to be resolved immediately, among others, by combining and integrating existing rules, so they do not contradict each other. To this end, the Aceh Government's contribution to zakat management can be felt in the economy of the Acehnese people and even the people in Indonesia (Musa, 2017: 347).

The 2006 Undang-undang Pemerintahan Aceh, especially Article 192, mentions that zakat paid is deductible for the amount of income tax payable from taxpayers. This is in line with the Government Regulation No. 60/2010 Article 1 Paragraph (1) covering: a) zakat on income paid by individual Muslim taxpayers and/or by domestic corporate taxpayers owned by Muslims to zakat agencies or institutions established or legalized by the government; or b) religious donations which are mandatory for individual taxpayers of adherents of religions other than Islam and/or by domestic corporate taxpayers owned by adherents of religions other than Islam, which are recognized in Indonesia which are paid to religious institutions established or legalized by government.

However, this differs from the provisions of Government Regulation No. 60/2010, which states that mandatory zakat or religious donations can be deducted from gross income (Article 1 Paragraph (1)). Zakat is considered a deduction from gross income because zakat receipts are not included in the State Revenue and Expenditure Budget (*Anggaran Pendapatan Belanja Negara/APBN*). On the other hand, in Aceh, zakat is a source of local revenue; thus, zakat can become a deduction for the income tax.

Zakat is determined as a source of local revenue in Aceh. Therefore, all income from zakat must be deposited into the Regional Treasury and included in the Aceh Revenue and Expenditure Budget (*Anggaran Pendapatan Belanja Aceh/APBA*). Unlike the state, income from zakat is not deposited into the State Treasury or included in the APBN. Since zakat is a source of local revenue, it is also expressly stated that the zakat paid is deductible for the amount of income tax payable from the taxpayer (UU Pemerintahan Aceh, 2006 Article 180 and 192).

This arrangement is very encouraging and beneficial for the Muslims in Aceh because the zakat they pay can be tax-deductible; hence, it is not burdensome to fulfill the tax payment obligations that must be paid. The provisions on zakat as tax-deductible apply not only to individual taxpayers who are Muslims but also to zakat paid by domestic corporate taxpayers owned by Muslims to zakat institutions established or legalized by the government.

The mechanism for a taxpayer to get their zakat payments deducted from their taxes can be done by attaching a photocopy of proof of payment to the Annual Income Tax Return (*Surat Pemberitahuan Tahunan/SPT*) for the Tax Year. The proof of payment is needed for direct payment or bank account transfer or payment through an Automatic Teller Machine (ATM). It contains the full name and Tax Identification Number (*Nomor Pokok Wajib Pajak/NPWP*). It needs to include the amount of payment, payment date, the name of the zakat agency, and zakat institution if it is a direct payment. The signature of the officer of the zakat agency/institution and validation of the bank officer on proof of payment is needed when the payment is made via bank account transfer (Rahmah, 2021: 173).

However, suppose zakat is not paid to the zakat agency or institution, known as Baitul Mal in Aceh, which was formed or legalized by the government. In that case, the zakat payment cannot be used as tax-

deductible (Government Regulation No.60/2010). According to Hadzil, an Aceh Small Tax Office officer, when the taxpayer pays zakat, not to a zakat agency or institution established or legalized by the government, the zakat paid cannot be deducted from taxable income. For example, someone pays IDR 5,000,000.00 (five million rupiahs), and the zakat is not distributed through the Provincial or the City/District Baitul Mal in Aceh. Instead, they distribute it to individuals, families, or Islamic boarding schools entitled to receive. Based on the above provisions, the *zakat* paid by the individual cannot be deducted from taxable income. This provision has been implemented by the Regional Tax Office in Aceh (Hadzil, 2018).

Between the State and Religious Obligations

As an area that implements Islamic law, Aceh should have strong and comprehensive regulations in managing zakat, as zakat is one of the reliable Islamic economic instruments. The existing provisions can be considered to have global and general arrangements that require other regulations in accordance with the demands of today's situation and conditions. In particular, if it is associated with some of the specifics given to Aceh in applying the *lex specialis* principle to the community's legal needs within the framework of Islamic law.

Yet, there is still an issue regarding the provisions of zakat as local revenue and tax-deductible regulated in UU Pemerintahan Aceh and Aceh Qanun No. 10/2007 on Baitul Mal (herein after called Qanun of Baitul Mal). This issue is triggered by the perception and understanding of the parties concerned whether zakat is treated as pure local revenue managed according to the Law No.17/2003 concerning State Finance and the Government Regulation No. 58/2005 on Regional Financial Management or managed as special local revenue (Musa, 2017: 347).

The understanding of zakat as tax-deductible as regulated in Article 92 of the Undang-Undang Pemerintahan Aceh is very different from that of Government Regulation No. 60/2010. The Undang-undang Pemerintahan Aceh has expressly stated that zakat paid is deductible from the amount of income tax payable, while the Government Regulation states that zakat is deducted from gross income.

To easily understand zakat as a deduction for the amount of income tax payable as referred to in the Undang-Undang Pemerintahan Aceh, it can be illustrated in the following example: A taxpayer has a Taxable

Income (*Penghasilan Kena Pajak/ PKP*) of IDR 50,000,000. Here, the income tax payable is 5% of IDR 50,000,000, IDR 2.500.000. In addition, the taxpayer must pay zakat of 2.5% of IDR 50,000,000, IDR 1.250.000. Thus, the taxpayer has an income tax payable of IDR 2,500,000 minus the zakat obligation of IDR 1.250.000, which is IDR 1.250.000. This means that the taxpayer shall pay an income tax of IDR 1.250.000.

On the contrary, it is different when zakat is deducted from gross income as referred to in the Government Regulation. For example, taxpayers have a Taxable Income (PKP) of IDR 50,000,000. Here, the zakat paid is deducted from the PKP, namely IDR 50,000,000 minus IDR 1.250.000, which makes it IDR 48.750.000. Therefore, the taxpayer is obliged to pay an income tax of IDR 2,437,500, and the taxpayer shall pay an income tax of IDR 2,437,500.

Concerning this problem, according to Iskandar, a staff of Baitul Mal Bireuen, the Aceh Province Baitul Mal during the Armiadi Musa period had consulted with the Regional Office of the Aceh Tax Director-General and the Director-General of Taxes in Jakarta. Still, no clear solution has been found regarding this matter (Iskandar, 2018). Aceh Senator Ghazali Abbas serving in the Committee IV of the Regional Representatives Council of the Republic of Indonesia (DPD RI), in charge of finance, has made an effort to materialize the provisions of the UUPA. DPD RI has approved zakat as tax-deductible in Aceh. The DPD's approval has been stated in the Income Tax Draft Law, passed in the DPD Plenary Session in October 2017. The draft law was then submitted to the Legislation Body (Baleg) of the DPR RI to be discussed with the government and passed into law. If this draft law is passed, the people of Aceh will no longer have to pay double expenses, namely tax and zakat. Furthermore, it is hoped that the representatives of the Acehnese people in the DPR will monitor and guard the process; so that the provisions will not be eliminated from the draft law proposed by the Senate (Dewan Perwakilan Daerah/ DPD). It is a significant issue for the people of Aceh (*Serambi Indonesia*, November 2, 2017).

On a different note, Teungku Syarifuddin, Treasurer of Baitul Mal of Pidie Jaya, described that the Aceh Government has never held a meeting with Regents and Mayors in Aceh to discuss this matter. There

was no serious effort from the Aceh Government to meet with the Central Government to discuss this issue, making the idea of zakat as tax-deductible a mere discourse (Syarifuddin, 2018).

Further, the Head of the Regional Office of the Directorate General of Taxes (DJP) of Aceh, Imanul Hakim mentioned the latest development on this issue. He stated that the RPP on Zakat as Tax Deduction had reached the Ministry of Home Affairs. However, the regulations in Aceh differ significantly from the national regulations. Nationally, zakat is a deduction from income, while Aceh's Law is more specific about zakat as a deduction from income tax. As this is different from the General Taxation Act, the Aceh Government's active role is needed to encourage this RPP to be ratified immediately. Once this RPP is authorized, Aceh will be the only province that applies this rule. This will certainly have an economic impact because it only applies to Aceh NPWP registered in the Aceh Tax Office and will not go into the state treasury, all of which go directly to the regional treasury.

In practice, the payment of zakat and the proof will be transferred to the Baitul Mal of each district/city where the owner of the NPWP is registered. In the long term, this act will help to eradicate poverty, and the opportunities for corruption are also minimized. It can even encourage Acehnese or businessmen outside Aceh to move to Aceh because they also pay zakat. Thus, with the ratification of this RPP, the zakat paid can be used as a tax deduction (Serambinews.com, accessed, May 20, 2022).

Minister of Finance Agus Martowardojo emphasized his objection to the proposed zakat as one of the elements to reduce the calculation of taxable income. Mochammad Tjiptarjo, Director General of Taxes, also expressed his opinion that he disagreed with the idea of zakat as a tax deduction. There are two reasons for their refusal. First, the Tax Law has accommodated the obligation to pay zakat among Muslims. In this law, zakat is used as a factor to reduce the gross income of taxpayers.

Value of tax liability, calculated from net income reduced by deduction factors, already includes zakat. Second, zakat is considered a religious obligation or an individual affair with God, not a state obligation (Yani, 2010). The Aceh government has made efforts to implement the legal rules as stated in the 2006 Undang-Undang Pemerintahan Aceh. However, it was rejected by the Ministry of Finance/ Directorate General of Taxes because income tax is regulated

separately in Law No. 7/1983, last amended by Law No. 17/2000, which applies nationally and binds anyone without exception. However, the Undang-undang Pemerintahan Aceh is a law that adheres to the *lex specialis* principle, which only applies to Aceh (Anisah et al., 2017: 91).

In a more assertive context, Mas'udi, an NU intellectual long before the polemic between zakat and taxes, had provided a solution that it should be united into one legal instrument administered by the State (Mas'udi, 1993: 124). Because the primary purpose of zakat is not worship of Allah alone but as a medium to realize social justice in an economic context, this is an essential part of the spirit of zakat. As a political institution with authority, the state must be present structurally as *āmil* to uphold justice and the welfare of the poor. Therefore, without the presence of the state as an authoritative '*āmil*' institution, the realization of zakat cannot be called a tax but only as alms.

Furthermore, Mas'udi explains the merging of zakat and taxes against the background of a paradigm that zakat and taxes are like spirit and body or soul and body that cannot be separated (Mas'udi, 1993: 117). Therefore, the rule of law should have no dichotomy and dualism. In this context, the two poles between the state paradigm in terms of taxes and zakat as part of Islamic law should be eliminated.

In response to this issue, another DPD RI member HM Fadhil Rahmi believed that the Central Government needs to immediately process the RPP on Zakat as Tax Deduction into the government regulation as an implementing regulation of Articles 191 and 192 of the Law No. 11/2006 on Undang-Undang Pemerintahan Aceh. The Aceh government must push for the RPP to be ratified immediately. If necessary, a special team shall be formed so that zakat as tax-deductible can be implemented in Aceh as soon as possible. As Muslims should pay zakat, they have fulfilled the legal requirements and the conditions of zakat as the fourth pillar of Islam but perform it (Redaksi, 2021).

In this case, if legal politics is combined with legal pluralism in Aceh after the tsunami disaster, at least three categories are observed: 1) pluralism of legal institutions, 2) pluralism of legal rules, and 3) pluralism of legal process. The pluralism of legal institutions has undergone numerous transformations throughout history, from the post-independence period until today. Three legal institutions in Aceh still exist currently: state institutions, Islamic Law, and customary law (Salim, 2016: 7-8).

Tax is a legal rule set by the state to taxpayers, whereas zakat has been a Muslim's obligation to religion. However, the tax regulation has been accommodated and stipulated as a state regulation within the law.

In the context of zakat as a tax deduction, the political configuration is quite prominent between the State and Islamic Law. On the other hand, following the logic of legal politics, the political configuration will affect the character of the law. The RPP on Zakat as Tax Deduction, which is still in the Ministry of Home Affairs, will strengthen the previous rule that zakat can be used as a tax deduction.

Conclusion

This study concludes that the political configuration affected legal rules regarding *zakat* are tax-deductible as stipulated by the government through the law on zakat and the 2006 UU Pemerintahan Aceh. The democratic political configuration in the reform era has created peace in Aceh and has provided post-conflict autonomy. This democratic political configuration has produced a law with democratic and participatory values toward the aspirations of the Acehnese. Therefore, taking the argument that law is a political product, the democratic political configuration between the state and the Acehnese is implementing Islamic law. The legal rule called the RPP on zakat as tax reduction, which is still being studied at the Ministry of Home Affairs, will show similar concepts or strengthen the previous legal rules. The last legal rules stated that the zakat paid by *muzakkī* to BAZNAS or LAZ was deducted from taxable income. The legal certainty will soon be realized if the government has set these rules. Further, the view that zakat is a religious obligation while taxes are a state obligation will no longer be an issue. Moreover, the presence of a state with political and structural authority in the form of *'āmil* institutions is an essential gate to realizing the main goal of zakat for the welfare and social and economic justice of the community.

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