



## **The Implications of Regulating Zakat to Reduce Income Tax and Make it A Source of Local Revenue in Aceh**

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**Abstract:** This study aims to analyze the implications of regulating zakat as a source of local own-source revenue and as a factor in reducing income tax payable in Law Number 11 of 2006 concerning the Aceh Government. These two norms complement each other and are implemented simultaneously; thus, state revenue from taxes does not decrease. It means that zakat as a deduction from income tax is covered by zakat as a source of local own-source revenue. However, the regulation for zakat as a deduction from income tax cannot be enforced due to regulatory synchronization reasons. This study is normative legal research using a statutory and regulatory approach. The data described is normative data such as laws, qanuns and other legal regulations. This study concludes that the regulation of zakat as regional original income incorporates zakat into the state financial governance system managed by *Baitul Mal*. There are several consequences arising from the issue. Zakat deposited into the Regional Treasury is recorded by the Regional General Treasurer in a separate account whose designation is Sharia-related. Crimes related to Zakat cannot be classified as ordinary embezzlement crimes but as acts of corruption. These discrepancies in norms lead to legal ambiguity, which, in turn, infringes upon the hierarchy of laws and regulations, disrupting the legal order. To address this issue, a vertical harmonization process is necessary, involving the revision of the Aceh Qanun about *Baitul Mal*.

**Keywords:** Zakat, tax, implication, local own-source revenue, Aceh

**Abstrak:** Penelitian ini bertujuan untuk menganalisis implikasi pengaturan zakat sebagai sumber pendapatan asli daerah dan sebagai faktor pengurang pajak penghasilan terutang dalam Undang-Undang Nomor 11 Tahun 2006 tentang Pemerintahan Aceh. Kedua norma ini saling melengkapi dan diimplementasikan secara bersamaan, sehingga penerimaan negara dari pajak tidak berkurang. Artinya, zakat sebagai pengurang pajak penghasilan ditutupi oleh zakat sebagai sumber pendapatan asli daerah. Namun, peraturan zakat sebagai pengurang pajak penghasilan tidak dapat diberlakukan karena alasan sinkronisasi peraturan. Kajian ini merupakan penelitian hukum normative dengan menggunakan pendekatan perundang-undangan. Data yang dianalisis adalah data-data normative seperti undang-undang, qanun dan aturan hukum lainnya. Studi ini menyimpulkan bahwa pengaturan zakat sebagai pendapatan asli daerah memasukkan zakat ke dalam sistem tata kelola keuangan negara yang dikelola oleh Baitul Mal. Ada beberapa konsekuensi yang muncul dari isu tersebut. Zakat yang disetorkan ke Kas Daerah dicatat oleh Bendahara Umum Daerah dalam rekening terpisah yang peruntukannya sesuai dengan syariah. Kejahatan yang berkaitan dengan zakat tidak dapat diklasifikasikan sebagai tindak pidana penggelapan biasa, melainkan sebagai tindak pidana korupsi. Perbedaan norma ini menyebabkan ambiguitas hukum, yang pada gilirannya melanggar hirarki peraturan perundang-undangan dan mengganggu tatanan hukum. Untuk mengatasi masalah ini, diperlukan proses harmonisasi vertikal, yang melibatkan revisi Qanun Aceh tentang Baitul Mal.

**Kata Kunci:** Zakat, pajak, implikasi, pendapatan asli daerah, Aceh.

## Introduction

Aceh, where the majority of the population is Muslim, has been granted authority by the central government to implement Sharia, as articulated in Article 3, Paragraph (2) of Law Number 44 of 1999 concerning the Special Autonomy of Aceh Province and Article 125 of Law Number 11 of 2006 regarding the Aceh Government.<sup>1</sup> Despite receiving this authority, there are high expectations for implementing Islamic principles in various aspects of daily life, such as marriage, business, banking, philanthropy, and more. Consequently, Indonesia should consider the need for additional Islamic regulations, even though it is not formally defined as a religious state.<sup>2</sup>

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<sup>1</sup> Mahdi Syahbandir, et.al., "State Authority for Management of Zakat, Infaq, and Sadaqah as Locally-Generated Revenue: A Case Study at Baitul Mal in Aceh," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 2 (2022). Al Yasa' Abubakar, "Zakat Pengurang Pajak, Kapan Berlaku?," Majelis Permusyawaratan Ulama MPU, 2010.

<sup>2</sup> Asep Saifuddin Jahar, "Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law," *Studia Islamika*, 26, No. 2 (2019). Imam Yahya, "Zakat Management in Indonesia: a Legal Political Perspective," *Ahkam* 30, No. 2 (2020).

One of the authorities in implementing Sharia is related to zakat management. The presence of the Aceh Government Law has engendered a new paradigm regarding zakat, determined as a deduction from income tax payable (tax credit) and as a source of local own-source revenue included in the state financial management system managed by Baitul Mal. This arrangement is distinct and does not exist in other regions. According to Law Number 23 of 2011 concerning Zakat Management, zakat is regulated as a deduction in taxable income (tax-deductible) and not a source of local own-source revenue.<sup>3</sup>

Two intriguing aspects concerning "zakat," as regulated in the Aceh Government Law, are worth noting. First, in Article 180, Paragraph (1), letter d, it is stipulated that "Zakat serves as a source of self-generated revenue for Aceh, its regencies, and cities." Second, Article 192 states that "Paid zakat is a deductible item from the taxpayer's income tax payable (tax credit)." Both of these articles are interrelated. This implies that the provision regarding zakat as a local self-generated revenue complements the provision that allows zakat to reduce the income tax payable. When zakat is acknowledged as a tax deduction, it results in a reduction in state or regional revenue. This potential imbalance can be rectified by considering zakat as a form of state revenue, particularly as a local self-generated revenue. However, the provision of Article 192 of the Aceh Government Law has yet to be implemented.<sup>4</sup> Meanwhile, Article 180 Paragraph (1) letter d stating zakat as a source of own-source revenue for Aceh, regencies, and cities are already in effect. Article 180 Paragraph (1) letter d as a complementary article has been implemented. As a result, there is an imbalance because they should be implemented simultaneously to create balance or fairness. This condition contradicts the General Principles of Good Government.<sup>5</sup>

The regulation of zakat as part of local own-source revenue has been implemented based on Aceh Qanun Number 10 of 2018 concerning Baitul Mal. Baitul mal is a public fund or treasury established to manage and distribute resources for charitable and welfare purposes, including the collection and distribution of obligatory alms (Zakat) and other forms of charitable contributions.<sup>6</sup> However, the norms for zakat crimes in Article 157 Paragraph

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<sup>3</sup> Abdul Aziz, *Ensiklopedia Hukum Islam* (Jakarta: Ichtiar Baru van Houve, 2000). Abdul Qadim Zallum, *Al-Amwal Fi Daulah Al Khilafah* (Beirut: Darul 'Ilmi Lil Malayin, 1983).

<sup>4</sup> Mahdi Syahbandir, et.al., "State and Islamic Law: A Study of Legal Politics on Zakat as a Tax Deduction in Aceh," *Ahkam: Jurnal Ilmiah Syariah* 22, No. 1 (2022). Sayed Muhammad Husen, "Dilema Zakat Sebagai PAD Aceh," IMZ, 2023.

<sup>5</sup> Satya Anggara, *Hukum Administrasi Negara*, ed. Deddy Ismatullah, Cet. 1 (Bandung: Pustaka Setia, 2020).

<sup>6</sup> Muhammad Natsir, et. al., "Inconsistency of Legal Norms For The Criminal Action of Zakat As A Source of Regional Original Income in Aceh," *Russian Law Journal* XI, no. 3 (2023), p. 445–456.

(1) states that "Baitul Mal officers who commit, participate in committing or assist in embezzling zakat, infaq, waqf, or other religious assets managed by Baitul Mal, are punished for embezzlement with 'uqubat ta'zir in the form of public flogging at least 10 and a maximum of 30 times, or imprisonment for a minimum of ten months and a maximum of thirty months."

Zakat has been declared as a source of local own-source revenue, meaning that zakat managed by Baitul Mal is equivalent to state or regional finance.<sup>7</sup> However, zakat crime acts are considered as embezzlement and not corruption,<sup>8</sup> contradicting the definition of corruption. A criminal act of corruption is defined as any person who unlawfully commits an act of enriching himself or another person or a corporation, which can harm the state's finances or economy.<sup>9</sup> The act should be declared corruption and not just embezzlement. The criminal offences in Article 157 Paragraph (1) are unclear, meaning that the article does not contain the usual formulation of criminal offences, and there is no explanation about "embezzlement".

This article focuses on the discussion of legal issues arising from the regulation of zakat as a deduction from income tax payable and the regulation of zakat as a source of local own-source revenue in the Aceh Government Law and Baitul Mal Qanun in which its management differs from the national zakat management. Two problems are discussed in this article. First, what are the legal implications academically due to the rule that regulates zakat as a deduction from the taxpayer's income tax payable? Secondly, what are the academic legal implications of the existing regulation of zakat as a source of local own-source revenue in Aceh?

This study is normative legal research using a statutory approach.<sup>10</sup> The methods used are legal, theoretical and conceptual approaches. Normative-theoretical studies are used to formulate the legal construction of zakat management and understand the legal implications of regulating zakat as a source of original regional income and zakat as a deduction from income tax payable through the Qanun or implementing regulations of the Aceh Government Law. The data analyzed is normative data such as laws, qanuns, and other legal regulations.

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<sup>7</sup> Zaki 'Ulya, "Pengelolaan Zakat Sebagai Bentuk Penegakan HAM Dalam Meningkatkan Kesejahteraan Rakyat," *Al-'Adalah* 12, no. 3 (2015), p. 637–646.

<sup>8</sup> Article 2 paragraph (1) of Law Number 31 Year 1999 About the Eradication of Corruption.

<sup>9</sup> Alexander Hamilton Frey and Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern, University of Pennsylvania Law Review and American Law Register* (ST. Paul, MINN: West Publishing Co, 1968).

<sup>10</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020). Nitaria Angkasa et al., *Metode Penelitian Hukum*, ed. M. Akib, Maroni, and Hamzah, I (Lampung: Laduny Alifatama, 2019).

## The Implications of Zakat as A Deduction of The Taxpayer's Income Tax Payable

Zakat has been the responsibility of Muslims since the time of Prophet Muhammad PBUH, and managed by the state. It is in line with the command given in the Quran surah At-Taubah verse 103, which reads:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ

Meaning: "Take zakat from some of their wealth, with that zakat you cleanse and purify them, and pray for them." Indeed, your prayer will give them peace, and Allah is All-Hearing and All-Knowing."

From a linguistic perspective, zakat is a basic word (*masdar*), and zakat means blessing, clean growth, and good.<sup>11</sup> A zakat means grow and develop, and if someone is a zakat, it means the person is good. From the fiqh (Islamic jurisprudence) perspective, zakat means "a certain amount of wealth that Allah requires to be handed over to those who are entitled to it".<sup>12</sup> It also means "to spend a certain amount yourself." The amount spent from wealth is called zakat because what is spent "increases, becomes more meaningful, and protects the wealth from destruction." This is how Nawawi quoted Wahidi's opinion.<sup>13</sup> Hafidhuddin explained that zakat is certain assets that have reached certain conditions Allah requires.<sup>14</sup>

Zakat is one of the pillars of Islam, which is always mentioned as parallel and in harmony with salah (prayer).<sup>15</sup> This condition indicates how significant zakat is in Islamic teachings.<sup>16</sup> This religious service became obligatory for Muslims the second year after the hijrah.<sup>17</sup> The Islamic scholars agree that zakat was not mandatory for the prophets because zakat aims to purify

<sup>11</sup> Mohammad Jawad Noori and Ali Khalil Hamad, *Al-Mu'jam Al-Wasiit* (Beirut: Maktabah al Islamiyah, 1992).

<sup>12</sup> Ahmad Dakhoir, *Hukum Zakat: Pengaturan Dan Integrasi Kelembagaan Pengelolaan Zakat Dengan Fungsi Lembaga Perbankan Syariah*, ed. Ermanto Fahamsyah (Jawa Timur: Aswaja Pressindo, 2015).

<sup>13</sup> Irfan Syaqui Beik and Laily Dwi Arsyianti, "Measuring Zakat Impact on Poverty and Welfare Using Cibest Model," *Journal of Islamic Monetary Economics and Finance* 1, no. 2 (2016), p.141–160.

<sup>14</sup> Mahmud bin Umar Al-Zamakhsyari, *Al-Fa'iq Fi Gharib Al-Hadist*, Jilid I (Beirut: Dar Fikr, 1979).

<sup>15</sup> Ahmad Syafiq, "Prospek Zakat Dalam Perekonomian Modern," *Ziswaf: Jurnal Zakat Dan Wakaf* 1, no. 1 (2014), p. 146–170.

<sup>16</sup> Abd al-Rahman Al-Jaziri, *Al-Fiqh Ala Madzahib Ala-Arbaah, Juz I*, Cet. 4 (Beirut: Dar Fikr, 1983).

<sup>17</sup> Sayyid Sabiq, *Fikih Sunnah, Jilid 2* (Beirut: Dar Fikr, 1983).

oneself from unethical businesses. The prophets were free from unethical business practices, had no wealth, and would not inherit wealth.<sup>18</sup>

Zakat is sacred and has economic value, so it is challenging to understand the nature and essence of zakat logically and rationally. To better understand the concept of zakat, we must understand its most important wisdom and secrets. It is easier to understand and practice zakat if we study the philosophical reasons why zakat is mandatory. The state collected zakat during the time of Prophet Muhammad PBUH and the Islamic caliphate. After the collapse of the Islamic caliphate, many Muslim-majority countries no longer intervened in collecting and distributing zakat, including Indonesia. Until now, there are different opinions regarding zakat collection by the state among ulama and the Muslim community.<sup>19</sup>

Zakat as a deduction from taxpayers' income tax payable (tax credit) is regulated in Article 192 of the Aceh Government Law, which states that zakat paid is a deduction of the amount of taxpayers' income tax payable (tax credit). It differs from the zakat regulation in Law Number 23 of 2011, which applies nationally, stating that zakat is a reduction in taxable income (tax-deductible). The background to this reduction is explained in the elucidation of Article 14 Paragraph (3) of Law Number 38 of 1999 concerning Zakat Management, which states that the deduction of zakat from the remaining taxable profit or income aims to prevent taxpayers from being hit by a double burden, namely the obligation to pay zakat and tax. This provision is still regulated in the previous replacement law, namely Article 22 of Law Number 23 of 2011, "Zakat paid by muzaki to BAZNAS or LAZ is deducted from taxable income."

The national legal basis regulating zakat as a deduction from income tax can be found in Law Number 38 of 1999 concerning Zakat Management, Law Number 17 of 2000 concerning the Third Amendment to Law Number 7 of 1983 concerning Income Tax, Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax, Law Number 23 of 2011 concerning Zakat Management, Government Regulation Number 60 of 2010 concerning Zakat or Mandatory Religious Contributions that can be deducted from Gross Income, Regulation of the Director General of Taxes No. PER-6/PJ/2011 of 2011 concerning Payment and Preparing Proof of Payment for Zakat or Mandatory Religious Contributions that can be deducted from Gross Income, Regulation of the Director General of Taxes No. PER-33/PJ/2011 concerning Bodies or Institutions Established or Authorized by the Government Designated as Recipients of Zakat or Mandatory Religious

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<sup>18</sup> Nurfiana Nurfiana and Sakinah Sakinah, "Zakat Dan Kajiannya Di Indonesia," *Milkiyah: Jurnal Hukum Ekonomi Syariah* 1, no. 2 (2022), p. 21–25.

<sup>19</sup> Achmat Subekan, "Potensi Zakat Menjadi Bagian Keuangan Negara," *Jurisdictie* 7, no. 2 (2016), p. 105–126.

Contributions that can be deducted from Gross Income, Regulation of the Director General of Taxes Number PER-15/PJ/2012 concerning Amendments to Regulation of the Director General of Taxes No. PER-33/PJ/2011 concerning Bodies or Institutions Established or Authorized by the Government Designated as Recipients of Zakat or Mandatory Religious Contributions that can be deducted from Gross Income.

Law Number 38 of 1999, later replaced by Law Number 23 of 2011, have regulated that zakat reduces income tax payments. This provision remains in effect in Law Number 23 of 2011, which states that "Zakat paid by muzaki to the zakat management organization is deducted from taxable income". Likewise, the tax provisions of Article 4 Paragraph (3) letter a number 1 of Law Number 17 of 2000 states: "What is not included as tax objects are: donations, including zakat received by amil zakat bodies or institutions that are formed or authorized by the government and the entitled zakat recipients."

The provisions for zakat as a deduction from income tax are stated in Article 4 Paragraph (3) letter a of Law Number 36 of 2008, which reads: what is excluded from tax objects are aid or donations, including zakat received by amil zakat bodies or institutions established or authorized by the government and received by eligible zakat recipients, or religious donations which are mandatory for religious believers in Indonesia, received by religious institutions established or authorized by the government and eligible recipients, with provisions regulated by or based on Government Regulations.

The bodies or institutions designated as recipients of zakat or mandatory religious donations, which can be deducted from gross income, are regulated in the Regulation of the Director General of Taxes Number PER-15/PJ/2012 (effective 11 June 2012). It was previously regulated by the Regulation of the Director General of Taxes Number PER-33/PJ/2011. The bodies or institutions include the National Amil Zakat Agency, LAZ Dompot Dhuafa Republika, and LAZ Rumah Zakat Foundation Indonesia.

The mechanism for deducting zakat from gross income is regulated in the Regulation of the Director General of Taxes Number PER-6/PJ/2011 of 2011 concerning Payments and Preparing Proof of Payments for Zakat or Mandatory Religious Contributions that can be deducted from gross income. Zakat can reduce tax because it is excluded from tax objects. Tax reduction also applies to other mandatory religious donations for religions recognized in Indonesia, received by religious institutions established or authorized by the government and received by eligible donation recipients.

Every muzaki who makes zakat payments through the amil zakat agency or according to Law Number 23 of 2011 changed to BAZNAS, provincial, regency, and city BAZNAS or registered amil zakat institutions (LAZ), receive incentives related to income tax payments. In this case, the proof of zakat

payment is considered as a cost component, which is a deduction from taxable income or called a deduction from gross income.

The government makes an exception for income zakat only and does not apply to other types of zakat. This condition is related to the calculation of income tax in which only payments or expenses related to efforts to obtain, collect, and maintain taxable income are recognized as tax deductions. Meanwhile, zakat mal (wealth) and zakat *fitriah* (a type of mandatory zakat that Muslims must issue during Ramadan until approaching Eid al-Fitr) are not related to income but are related to the wealth or assets owned by a Muslim as well as their self and soul as a Muslim. According to the Income Tax Law, income zakat can be recognized as a tax deduction by fulfilling several requirements which are cumulative and must be reported in the annual income tax report, namely:

1. Zakat must be paid by individual taxpayers who are Muslim and domestic corporate taxpayers owned by a Muslim.
2. Zakat is paid to amil zakat bodies or institutions established or authorized by the government.
3. The zakat being paid is zakat relating to income as a tax object.<sup>20</sup>

Income zakat payers must report the income zakat they pay in their year-end income tax report (the Annual Income Tax Return) to prepare a year-end income tax report. The zakat payer (individual or corporate) should be registered as a taxpayer at the local tax service office and provided a Taxpayer Identification Number.

In Aceh, zakat is regulated in Article 180 Paragraph (1) letter d of the Aceh Government Law, which reads: "Zakat is one of the sources of Aceh's, regencies', and cities' own-source revenues." Article 192 states that zakat is a reducing factor in the income tax payable. This provision was initially considered to be extraordinary progress for Muslims in Aceh. This is the difference between zakat as a tax deduction for taxable income based on Law Number 23 of 2011 in conjunction with Law Number 36 of 2008 and zakat as a deduction from income tax payable or tax credit based on the Aceh Government Law.<sup>21</sup>

In order to calculate the tax due, the tax payable must be deducted from the tax credit. The philosophical equality between income zakat and income tax creates a double burden for Muslim taxpayers. Therefore, to harmonize philosophical aspects, avoid double burdens, and create justice, income zakat

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<sup>20</sup> Widarno Bambang, "Zakat Sebagai Pengurang Penghasilan Kena Pajak Bambang Widarno Fakultas Ekonomi Universitas Slamet Riyadi Surakarta," *Jasti: Jurnal Akuntansi Dan Sistem Teknologi Informasi* 5, no. 1 (2006), p. 77–88.

<sup>21</sup> Muhammad Akbar Fadzkurrahman Annah, Ali Chamani Al Anshory, and Mahdiah Aulia, "Why Do Muzaki Pay Zakat Through Institutions? The Theory of Planned Behaviour Application," *Journal of Islamic Monetary Economics and Finance* 7, no. 1 (2021), p. 203–226.



must be treated as a direct deduction from income tax (tax credit) as regulated in Article 192 of the Aceh Government Law. Income tax should be 12.5%, and zakat is 2.5 % of the salary, so the government deducts 15% off the employee's salary for the local own-source revenue.

Calculation of zakat as a tax deduction. Zakat can be deducted from a person's annual gross income, accompanied by deduction fees according to the Income Tax Law, along with Non-Taxable Income, and produces total Taxable Income. Net income is calculated after gross income is deducted by the costs regulated in the Income Tax Law. Based on Article 21 of the Income Tax Law, the costs include a position fee of as much as 5% of the annual gross income with a maximum of IDR 6 million yearly, pension costs of as much as 5% of the annual gross income or a maximum of IDR 2.4 million yearly, and health insurance contributions (paid by employees), which includes pension and health plans, as well as pension guarantee.

The limit on Non-Taxable Income is the limit on whether a person's income can be taxable. If it is analogous to zakat, non-taxable income is the equivalent to nisab (threshold) for someone to be considered a taxpayer. The 2018/2019 amount of non-taxable income is regulated in PMK 101-PMK.010-2016, in which the rate for unmarried taxpayers is IDR 54 million. The Article 21 Income Tax rate is the percentage of the tax rate imposed on taxpayers according to a certain amount of income, currently regulated in Article 17 of Law Number 36 of 2008. This rule differs for those who have a Taxpayer Identification Number and those who do not have one. The Article 21 Income Tax rate for Taxpayer Identification Number holders with Taxable Income up to IDR 50 million is 5%. For those with an income between IDR 50 to 250 million rupiahs, the tax rate is 15%.

The following is the system for regulating zakat as a tax deduction based on Law Number 23 of 2011 in conjunction with Law Number 36 of 2008 and the Aceh Government Law. Suppose Mr. Budi, an unmarried employee, has a gross annual income of IDR 300 million. Deductions according to the law: Position fee  $5\% \times \text{IDR } 300 \text{ million} = \text{IDR } 15 \text{ million}$ ; Pension Plan  $2\% \times \text{IDR } 300 \text{ million} = \text{IDR } 6 \text{ million}$ ; Pension Guarantee  $1\% \times \text{IDR } 300 \text{ million} = \text{IDR } 3 \text{ million}$ . Total deduction = IDR 24 million. The zakat deduction is 2.5% of gross income:  $\text{IDR } 7.5 \text{ million} + \text{IDR } 54 \text{ million}$  (non-taxable income for unmarried people) = IDR 61.5 million. The total Taxable Income is IDR 214.5 million. Mr Budi's income tax is the first 5% of IDR 50 million = IDR 2.5 million. Then 15% of taxable income is  $15\% \times \text{IDR } 164.5 \text{ million} = \text{IDR } 24.675 \text{ million}$ . Mr. Budi's total tax is IDR 27.175 million. The zakat that must be paid is IDR 7.5 million, and the income tax is IDR 27.175 million, a total of IDR 34.675 million. The impact of implementing this law is that a person will be subject to two types of deductions simultaneously, which does not reflect justice. Justice

happens if zakat is used as a direct tax deduction (tax credit), as stipulated in Law Number 11 of 2006.

Based on Law Number 11 of 2006, the taxable income of which 2.5% (IDR. 7,500,000.0) zakat is deducted in advance, so the taxable income is IDR 222 million. Next, the PPh is calculated, namely the first 5% from IDR 50 million = IDR 2.5 million, continued with 15% of the remaining taxable income (IDR 172 million) = IDR 25.8 million. Mr Budi's total tax is IDR 28.3 million before deducted by zakat. After deducted with income zakat payable:  $2.5\% \times \text{IDR } 222 \text{ million} = \text{IDR } 5.55 \text{ million}$ . Thus, the income tax obligation becomes IDR 28.3 million, deducted by zakat IDR 5.55 million to become IDR 22.75 million. Based on this calculation, the state revenue from Mr Budi's income tax is IDR 22.75 million and from the income zakat is IDR 5.55 million. These financial revenues, including zakat, are state or regional revenues.<sup>22</sup>

Meanwhile, according to Law Number 23 of 2011, zakat is not a source of local own-source revenue, so 2.5% of zakat becomes the revenue of the amil zakat institution, BAZNAS. Thus, the total religious and state obligations that are received by the state are only from tax, at an amount of IDR 28.3 million. Meanwhile, in Aceh, according to Law Number 11 of 2006, zakat and taxes, at IDR 28.3 million, become state revenue because zakat is a deduction from income tax payable and a source of local own-source revenue. Thus, state revenue will remain the same if the provisions on zakat as a deduction from income tax (tax credit) are implemented following Law Number 11 of 2006.

This kind of arrangement has long been in place in Malaysia. In the Malaysian tax regulations, namely the Income Tax Act 1967, which was last revised in 2006, the Malaysian government included zakat in Part II Imposition and General Characteristics of the Tax in Section 6A Subsection (3), which contains Tax Rebates. The Malaysian tax regulation states that zakat is a discount or deduction from income tax payable. It also includes zakat fitrah and other obligations that should be paid by Muslims, as long as there is proof issued by a legal institution specifically handling zakat.<sup>23</sup>

Based on the description above, the regulation of taxes and zakat, according to the Aceh Government Law, better reflects justice. The presence of this law has had an impact where the people of Aceh are not double credited by paying income zakat of 2.5% and income tax of 5%, 15%, 25%, and 30%, which is very burdensome for the community when viewed from the national zakat and tax regulations. However, due to regulatory constraints, the zakat and tax regulations according to the Aceh Government Law have yet to be realized, even though these regulations are part of Aceh's special autonomy and

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<sup>22</sup> Abubakar, "Zakat Pengurang Pajak, Kapan Berlaku?"

<sup>23</sup> Gazali, "Advokat dalam Perspektif Hukum Islam dan Hukum Positif," *Muamalat: Jurnal Hukum Ekonomi Syariah* 7, no. 1 (2015), p. 84–102.

privileges. For Article 192 of the Aceh Government Law to be enforced, the government must issue an implementing regulation in the form of a Government Regulation, which regulates the role of zakat as a deduction from income tax payable in Aceh.

### **The Implications of Zakat as A Source of Local Own-Source Revenue on Zakat Criminal Norms**

According to Article 180 Paragraph (1) of Law Number 11 of 2006, the local own-source revenue of Aceh, regencies, and cities consists of regional taxes, regional levies, the results of separate wealth management belonging to Aceh, regencies, and cities, as well as capital participation, zakat, and other legitimate own-source revenues. According to Article 180 Paragraph (1) letter d and Article 191 Paragraphs (1) and (2) of Law Number 11 of 2006, zakat is declared as local own-source revenue and is managed by Baitul Mal. Baitul Mal also stipulates that zakat is a source of local own-source revenue. Although zakat is mentioned "as a source of Aceh's, regencies', and cities' own-source revenues" in Law Number 11 of 2006, its management cannot be equated entirely with the management of other local own-source revenues based on the Government Regulation Number 58 of 2005 concerning Regional Financial Management because zakat differs from other types of local own-source revenues. The difference is evident from the legal basis of zakat, stipulated in the Koran and Hadith. Moreover, regarding its subject, object, and designation, zakat is only collected from Muslims whose nisab and hisab levels have been determined in Islamic law.

National and regional financial management principles must be applied to manage zakat collected from muzaki by Baitul Mal in Aceh. Since zakat is regional finance, a person or civil servant assigned to manage it but misuses it can be punished for a criminal act of corruption, not an ordinary crime. Article 157 Paragraph (1) of Aceh Qanun Number 10 of 2018 concerning Baitul Mal states that "Baitul Mal officers who commit, participate in, or assist in embezzlement of zakat, infaq, waqf, or other religious assets managed by Baitul Mal, shall be punished for embezzlement with 'uqubat ta'zir in the form of public flogging at least ten times and a maximum of thirty times, or imprisonment for a minimum of ten months and a maximum of thirty months."

This situation makes proving at trial difficult for the public prosecutor. There is no specific term for "embezzlement" in Islam. However, based on the act and its elements, there are similarities between embezzlement and criminal acts regulated in Islam, such as *ghulul*, *ghasab*, *sariqah*, and *khianat*, in which currently, there is no qanun *jinayah* that regulates these acts. There needs to be more clarity between the hierarchy, type, and content of qanun as the implementing regulation for Law Number 11 of 2006 concerning the Aceh

Government because Aceh Qanun Number 10 of 2018 is a delegated legislation or additional legislation (secondary legislation).

There should be no contradiction between the regulation of zakat crime norms so that law enforcement does not experience difficulties. In line with the definition of state finances, Law Number 30 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001 concerning Amendments to the Law on the Eradication of Corruption Crimes,<sup>24</sup> defines state finances as follows:

All state assets, in whatever form, separated or not separated, including all elements of state assets and all rights and obligations arising from:

1. Being under the control, management, and accountability of state agency officials, both at the central and regional levels;
2. Being under the control, management, and accountability of state-owned or regional-owned enterprises, foundations, legal entities, and companies that include third-party capital based on an agreement with the state.

Based on the description above, the zakat management system as a local own-source revenue follows the principles of regional financial management. Zakat as a local own-source revenue is part of regional finances in Aceh or equivalent to state finances. A legal problem arises here. The qanun, which regulates zakat as local own-source revenue (regional finance), must be more consistent. Abuse of zakat should not be categorized as embezzlement but a criminal act of corruption. Meanwhile, "inconsistency" means contradictory or inconsistent. This legal inconsistency leads to unclear legal rules.

Indonesia's legal system can be affected if a regulation is inconsistent with other regulations. According to Hans Kelsen, the legal system is a hierarchy of norms where higher-level norms regulate the creation of lower-level norms.<sup>25</sup> Therefore, it is expected that regulations are consistent. A regulation can be viewed from the hierarchy of existing laws and regulations; therefore, regulations in a lower order must not conflict with those in a higher order. This concept follows Article 7 Paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation.

Based on the hierarchy of statutory regulations, Aceh Qanun Number 10 of 2018 is below the law or equivalent to Provincial Regulations. Thus, the provisions stipulated in Article 157 Paragraph (1) concerning criminal acts of zakat must be adjusted to the Corruption Eradication Law. A synchronization

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<sup>24</sup> Muhammad Natsir, et. al., "Legal Forms Against Corporations as Perpetrators of Environmental Crime in Indonesia: Study Based on the Environmental Protection and Management Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024), p. 646–664.

<sup>25</sup> Jimly Asshiddiqie and M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum* (Jakarta: Sekretariat Jenderal & Kepaniteraan Mahkamah Konstitusi RI, 2006).

method is used to harmonize existing and currently drafted legislation. The purpose of synchronization is to ensure that all existing regulations are in harmony. Synchronization can be carried out vertically between equivalent regulations or horizontally between regulations higher than it.<sup>26</sup>

Related to this article, vertical synchronization needs to be conducted, i.e., the Aceh Qanun regarding Baitul Mal must be viewed from a higher regulatory position. Lower rules should be consistent with higher ones<sup>27</sup>. Therefore, higher legal products are used to create lower legal products. Bambang Sunggono believes that vertical synchronization analysis aims to understand whether specific laws and regulations conflict with others when viewed from a vertical perspective under the hierarchical order.<sup>28</sup>

According to Lon L. Fuller, eight requirements must be met so that the law can work well and create certainty and order in society. The eight requirements are:

1. A legal system consisting of regulations based on something other than fallacious decisions on some issues.
2. These regulations are announced to the public.
3. It does not apply retroactively because it will damage the integrity of the system;
4. Made in a formulation that is understood by the public;
5. There must be no conflicting regulations;
6. Must not demand actions beyond what can be done;
7. Should not be changed frequently;
8. There must be conformity between regulations and daily implementation.<sup>29</sup>

According to Sudikno Mertokusumo, conflicts between legal norms can be followed up using the principles of conflict resolution (principle of preference), namely *Lex superior derogate lex inferiori*, which means that higher statutory regulations will defeat lower statutory regulations.<sup>30</sup> It is

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<sup>26</sup> Shandra Lisy Wandasari, "Sinkronisasi Peraturan Perundang-Undangan Dalam Mewujudkan Pengurangan Risiko Bencana," *Unnes Law Journal* 2, no. 2 (2013), p. 137–150.

<sup>27</sup> Zaki Ulya, "Espaktasi Pengelolaan Tanah Terlantar Oleh Baitul Mal Dalam Peningkatan Kesejahteraan Masyarakat," *Jurnal Hukum & Pembangunan* 46, no. 4 (2016), p. 503–519.

<sup>28</sup> Wandasari, "Sinkronisasi Peraturan Perundang-Undangan Dalam Mewujudkan Pengurangan Risiko Bencana."

<sup>29</sup> Salman Luthan, "Dialektika Hukum Dan Moral Dalam Perspektif Filsafat Hukum," *Jurnal Hukum IUS QUIA IUSTUM* 19, no. 4 (2012), p. 506–23.

<sup>30</sup> Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*, Cet. III (Yogyakarta: Liberty, 2002).

critical to distinguish between these types of criminal acts because it will determine the type of punishment.<sup>31</sup>

Article 157 Paragraph (1) regarding the crime of embezzlement states that "... punished for embezzlement, with *'uqubat ta'zir* in the form of public flogging at least ten times and a maximum of thirty times or imprisonment for a minimum of ten months and a maximum of thirty months. Meanwhile, Article 8 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2021 concerning criminal acts of corruption in the form of "embezzlement", states that: "Sentenced with imprisonment for a minimum of three years and a maximum of fifteen years and a fine of at least IDR 150 million and maximum IDR 750 million; civil servants or people other than civil servants who are assigned to carry out a public office continuously or temporarily intentionally embezzle money or securities held because of their position, allow such money or securities to be taken or embezzled by other people, or assist in carrying out the act."

These sanctions differ significantly in terms of the severity of the punishment. Article 241 Paragraph (3) of Law Number 11 of 2006 reads: "Qanun may contain threats of criminal penalties or fines other than those referred to in Paragraph (2) following those regulated in other statutory regulations." It means that Article 157 Paragraph (1) of the Baitul Mal Qanun may contain similar penalties as regulated in Article 8 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2021, and the act is categorized as a criminal act of corruption in the form of embezzlement. The legislation regulates and forces people in society to obey the law, which produces balance in every social relationship. For acts that violate the law, each individual will be subject to sanctions. Therefore, to guarantee justice, the law must be based on justice, which is the principle of social justice.

The role of legislation as a source of law for citizens is greatly influenced by the Indonesian legal system, which follows the Continental European legal tradition. One of the characteristics of the statutory legal system is the importance of statutory regulations as the primary source of law or statutory law compared to a judge's decisions or jurisprudence. Therefore, the lack of clarity or inconsistency in the regulation of crimes related to zakat as a local own-source revenue can lead to the unclear meaning of "embezzlement", as mentioned in Article 157 Paragraph (1) of Aceh Qanun Number 10 of 2018 concerning Baitul Mal. The general provision of the qanun does not explain or define "embezzlement" related to zakat management.

Consequently, law enforcers will have difficulties in proving the crime of zakat embezzlement, which in the formulation of the norms does not describe

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<sup>31</sup> Ady Thea DA, "KUHP Baru Beri Rambu Hakim Dalam Memutus Perkara," Hukum Online, 2023.

the elements of the offence of embezzlement as is usually the case in formulating offences contained in the 1946 Criminal Code. Another implication of regulating criminal acts regarding the misuse of zakat funds as local own-source revenue, as contained in Article 157 Paragraph (1) of the Aceh Qanun concerning Baitul Mal, is the emergence of legal uncertainty. Meanwhile, Article 237 Paragraph (1) letter i emphasizes that "Qanun content contains the principles of: ... legal order and certainty; balance, harmony, equality, and harmony".

Concerning Article 157 of the Baitul Mal Qanun, law enforcement can only implement this article if it follows the Corruption Crime Law. An example is the case in North Aceh, reported by CNN Indonesia. YI (43), the Head of North Aceh Baitul Mal, has been named a suspect in the alleged corruption case in the construction of houses for people experiencing poverty in the 2021 fiscal year. YI is the head of Baitul Mal and the director of the implementation team. There were four other suspects, namely Z (39), the coordinator of the implementation team, and ZZ (46), the Head of the Baitul Mal Secretariat. The prosecutor also named M (49), the PPTK, and RS (36), the head of the project implementation team, as suspects. Five people have been named as suspects for alleged corruption in the construction of houses for the poor by the investigation team at the North Aceh District Attorney. The alleged criminal act of corruption emerged when the local Baitul Mal Secretariat built 251 housing units in various districts in North Aceh. The construction was self-managed with a budget of IDR 11.2 billion from North Aceh's own-source revenue sourced from zakat funds.

The work started in August 2021 with a construction period of 120 calendar days, and to date, most of the construction of the houses has yet to be 100 percent complete. The five suspects were charged under Article 2 Paragraph (1) in conjunction with Article 18 Paragraph (1) letter b, Paragraphs (2) and (3) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to the Law Number 31 of 1999 concerning the Eradication of Corruption Crimes.<sup>32</sup> The prosecutor did not apply the crime-related articles regulated in the Baitul Mal Qanun.

Another implication is the violation of the hierarchy of statutory regulations and legal order as regulated in Article 7 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Laws/Government Regulations in Lieu of Laws;
4. Government Regulations;

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<sup>32</sup> Anonimous, "Kepala Baitul Mal Aceh Utara Jadi Tersangka Korupsi Rumah Fakir Miskin," CNN Indonesia, 2023.

5. Presidential Regulation;
6. Provincial Regulations; and
7. Regency/City Regulations.

Aceh Qanun Number 10 of 2018 is equivalent to the Provincial Regulation, below the Presidential Regulation. According to Hans Kelsen, all legal norms are one unit with a pyramid structure. According to this theory, the basis (legality) of a norm lies in a higher-level norm. In this case, the highest is called Ursprungsnorm or Grundnorm. Ursprungsnorm or Grundnorm, which is still relative or abstract, is elaborated into a positive norm, namely Generalnorm. Next, the Generalnorm is individualized into a concrete norm, the Concretenorm.<sup>33</sup> Based on these things, norms at a lower level should not conflict with norms at a higher level. It means that higher statutory regulations apply, are sourced, and are based on even higher statutory regulations, and so on up to the highest level of statutory regulations. Consequently, every lower statutory regulation must be consistent with higher statutory regulations.<sup>34</sup>

Soehino defines legal order as a system consisting of various kinds of legislation arranged hierarchically from the highest to the lowest.<sup>35</sup> Likewise, J. H. A. Logemann mentioned that, just like a social order, which is an interrelated whole, positive law is also a legal order, which is determined by analyzing the overall relationship of norms. As a result, there are no conflicting norms in positive law.<sup>36</sup> This needs to be done to guarantee legal order (rechtsorde), ensure the upholding of the law, and guarantee the achievement of legal objectives such as justice, legal certainty, and legal benefits. Logically, this will result in strengthening the state of law.<sup>37</sup>

Based on the theoretical analysis above, it is concluded that the provisions contained in Article 157 Paragraph (1) Qanun Aceh Number 10 of 2018 are in conflict and need to be harmonized with the provisions contained in Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes because the misused zakat funds are regional finances.

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<sup>33</sup> Rachma Trijono, *Dasar-Dasar Ilmu Pengetahuan Perundang-Undangan*, 2013, p. 1–50.

<sup>34</sup> Asshiddiqie and Safa'at, *Teori Hans Kelsen Tentang Hukum*.

<sup>35</sup> Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang* (Jakarta: Konstitusi Press, 2006).

<sup>36</sup> Moh. Fadli, et.al., *Hukum Dan Kebijakan Lingkungan* (Malang: UB Press, 2016).

<sup>37</sup> Widayati, *Negara Hukum, Konstitusi, Dan Pembentukan Peraturan Perundang-Undangan* (Semarang: Unissula Press, 2016).



## Conclusion

Theoretically, the legal implications of regulating zakat as a factor in reducing income tax payable (tax credit) as regulated in Law Number 11 of 2006, as part of Aceh's special autonomy, cannot be applied because it is not in line with Law Number 17 of 2006. 2000 concerning Income Tax and Law Number 23 of Year 11 concerning Zakat Management which regulates zakat as a tax deduction on taxable income (tax-deductible). Meanwhile, the rules on zakat as a source of regional original income remain in effect. Therefore, the legal implications of implementing zakat as a source of original regional income make zakat part of the state financial management system managed by Baitul Mal. Criminal acts related to zakat as regional original income are categorized as embezzlement based on Article 157 Paragraph (1) Qanun Number 10 of 2018. This condition is inconsistent with the definition of corruption, considering that embezzled zakat is part of state finances. The description of embezzlement in Article 157 Paragraph (1) is unclear because it does not mention the elements of the offence. Other consequences are legal uncertainty and violations of the hierarchy of laws and regulations and legal order. Therefore, it is necessary to carry out vertical harmonization by revising the Aceh Qanun concerning Baitul Mal.

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