

Zakat Nature of Social Security Systems as Positive Law: Indonesia' Law Perspective

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Abstract

The National Social Security System is one form of social protection organized by the Republic of Indonesia in order to guarantee the constitutional rights of the peoples. The National Social Security System as a procedure of maintaining the social security program. Zakat (tithe) is one of the social security system in the perspective of positive legislation in Indonesia. Considering the issues, this study emphasizes the effort to explore the essence of Zakat to find its contribution to the Social Security System in Indonesia, and then the approach used is a conceptual approach. The results shows that the essence of Zakat has three aspects; outer, inner and spiritual aspects. Outer aspect aims to clean or spend a portion of property as the rights of others under the provisions of syariah, obtained lawfully, and it reach amount dan period. Inner aspect aims to purify the soul of miserly and world love, and thus will grow spaciousness in the soul and compassion toward others. Spritual aspect aims to make man as a servant with a true servant. The government and especially for the House of Representatives is expected to encourage against the obligation of Zakat through new legislation. Through new legislation, the role and function of BAZNAS, especially for Amil Zakat (collector) to conduct planning and development in the form of a work program.

Keywords: Zakat, Tithe, Islamic Law, Social Security Systems

1. Introduction

A history of human civilization has proved that no human can live without socialize with other humans. A tendency of human being to always live in groups, eventually creates a communion of life. It intended begins from the simplest like the family to the complex like the State. A broader form of a State called as a *Super State*.¹

In line with the ideals of the Indonesian nation to create a society that is fair and prosperous as stipulated in the Preamble to the 1945 Constitution of the Republic of Indonesia, then the obligation of zakat for Muslims in Indonesia are expected to contribute significantly in the effort to achieve these ideals. In this perspective, the 1945 Constitution set explicitly in the form of social security as the constitutional basis.

In principle, the National Social Security System is a social security system that applied in Indonesia. It is one form of social protection organized by the Republic of Indonesia in order to guarantee its citizens to meet basic life needs as established in the UNs' Declaration on Human Rights in 1948 and ILOs convention No.102 of 1952.

The National Social Security System as a procedure of maintaining the social security program by some organizing body.² It is basically as a State program and aimed to providing protection certainty and social welfare for all Indonesian people. Through this program, every citizen is expected to meet the basic needs of a decent life in an accident, loss of a job and retirement. Meanwhile, social security is defined as one form of social protection to ensure that all citizens are able to meet the basic needs of living. Basic life needs is defined as individual essential needs³ in order to live a decent for the realization of social welfare for all Indonesian people.

Refers to the development of Zakat in Indonesia - before and after independence - legal basis concerning the obligation for Muslims to Zakat as well as the attention of the government is so great to the management of

¹ It known various kinds of form and State arrangement. Starting from municipal State, until super structural "superstate" State such as Europe Uni. See Jimly Asshiddiqie, 2010. *Konstitusi Ekonomi*, Penerbit Buku Kompas, Jakarta.

² Soekamto et al. 2006. Reform of Social Security System in Indonesia, the Ministry of Coordinator of People Welfare the Republic of Indonesia in cooperation with German Technical Cooperation, Jakarta, Page. 4

³ Simon Butt. (2010). "Regional autonomy and legal disorder: The proliferation of local laws in Indonesia". *Sydney Law Review.*, Vol. 32: 177-191.

Zakat, then the problem of poverty in Indonesia should be resolved.¹ Therefore, in the economy, Zakat is enormous. Based on the data presented by a accountant lecturer of UIN Alauddin Makassar, Wahyuddin Abdullah² that with a population of 241 million and about 88% are Muslims, then the potential of Zakat to be collected is Rp. 217 trillion per year. This potential is equivalent to 3.14% of Gross Domestic Gross (GDB) in 2011. However, the Zakat collector can only collect Rp.1.5 trillion. This amount also includes large. For the data collected in 2009 is Rp.1.2 trillion, in 2008 amounted to Rp.920 billion, and in 2007 only amounted to Rp.450 billion.

As survey conducted by the *Public Interest Research and Advocacy Center* (PIRAC) in 11 major cities in Indonesia; Jakarta, Bandung, Semarang, Surabaya, Medan, Padang, Denpasar, Manado, Makassar, Pontianak and Balikpapan, showed 94% of the people are *muzakki* with an average value of Rp.124.200 for every *muzakki*. Other potential is Muslim government employees grew to 4.5 million. This figure does not include private employees or professionals.³

Looking the potential of Zakat is so great, actually total collected by the institution (*Zakat collector*) as established by the government did not large. For data in 2010 data, the amount of Rp.217 trillion which is unlikely to be collected, but successful collected by the National Zakat Agency is only Rp.1.5 trillion.⁴ This amount is also large for poverty reduction in Indonesia. Also, if consider the attention of the government (the State) are so large in terms of the management of Zakat, should the number of poor people in Indonesia can be reduced.

The facts above show a problem by the increasing number of poor people from year to year, although various poverty alleviation programs have been launched by the government. Increasing the number of poor people may cause social problems are more extensive and varied and it can even encourage the emergence of the issue of national disintegration. Moreover, these facts also indicate a trend that more or less in Zakat management as expected to address the problem of poverty in Indonesia, is not optimal.

Problem and issues related to such Zakat, become a basis for the researcher to study the problem in-depth and comprehensive. The central issue in this study is associated with the implementation of Zakat as a social security system under the legislation in Indonesia.

2. Method of Research

Considering the issues, this study emphasizes the effort to explore the essence of Zakat to find its contribution to the Social Security System in Indonesia, and then the approach used is a conceptual approach.⁵ It is conducted in Makassar as the capital of South Sulawesi province. As the provincial capital, Makassar has a number of *Mustahiq* and *Muzakki* with all sorts of problems that are complex.

3. Relevance of Zakat and Social Security

Various kinds of vocabulary used in the Qur'an to reveal something, often seen at similar sense and meaning, and vice versa. Deepening the concept of Zakat, particularly in the Qur'an and Hadits, we will find various kinds of vocabulary that sometimes can be understood with the similar meaning or different. For example, the term of *Sadaqah*, *Zakat*, *Infaq*, *Nadzar* and *Kafarat*, each has a meaning giving something. But the difference this term cannot be immediately understood same, because specifically have a different meaning.

Zakat in various studies and scientific papers are often referred to have 2 (two) dimensions, namely the transcendent⁶ and social dimension. As social worship, Zakat will have an impact not only to the payers (*muzakki*), but also the recipients (*mustahik*) personally and the society at large. Although, the Zakat cannot be seen partially, in a separate sense as *mahdah* worship and as a social worship. Although social charity actually been implemented and managed in accordance with the objectives mentioned in Surah At-Taubah (9:60), but it was not carried out with the intention as the devotion of a servant to God, Zakat will not have an impact on purification of the soul for *muzakki*. Therefore, it is necessary to study and deeper understanding of the wisdom of zakat and usefulness for personal and social life.

¹ Mawardi. 2005. *Strategi Efektifitas Peran Lembaga Zakat di Indonesia*. Jurnal Hukum Islam. 4 : 172-186.

² Wahyuddin Abdullah, *Zakat Pengurang Utang Pajak*, Fajar, Tuesday, 7 August 2012 Page 6.

³ Public Interest Research and Advocacy Center. 2005. *Muslim Philanthropy*. Pustaka. Jakarta.

⁴ Badan Amil Zakat Nasional. 2010. *Annual Report 2009, Makin Dekat dengan Mustahik*. BAZNAS. Jakarta.

⁵ Peter Mahmud Mazuki, 2010. *Penelitian Hukum*, Cet. ke-6, Kencana, Jakarta, Pages 137-139.

⁶ Transcendent implies beyond all human ability, extraordinary. In associated with the Zakat it refers to the divine dimension, namely as *mahdah* worship (*habluminallah*).

On the other hand, to see the essence of social security in Indonesia,¹ it is need looking back articles of the 1945 Constitution as the constitutional basis of social security.

- a. *Article 28H paragraph (1):*
Everyone is entitled to live in physical and spiritual prosperity, reside and obtain a good living environment and healthy and a right to get medical care.
- b. *Article 28H paragraph (2):*
Everyone is entitled to have the ease and special treatment to obtain the similar opportunities and benefits in order to achieve equality and justice.
- c. *Article 28H paragraph (3):*
Everyone is entitled to social security which allows the development of fully as a dignified human being.
- d. *Article 34 paragraph (1):*
Destitute and neglected children who are maintained by the State
- e. *Article 34 paragraph (2):*
The State develops social security system for all citizens and empowers the people who are not able to correspond with human dignity.

What is meant as a social security according to the 1945 Constitution is a form of right, precisely as a form of citizens' rights. Rights in the legal dictionary² is defined as 1) the power, the authority granted by law to legal subjects, 2) legal claims for other people behave in a certain way. There are also so-called absolute rights, i.e any powers granted by law to legal subjects to do something or to act in upholding its authority.

Citing the opinion of L.J. van Apeldoorn³ that the rights is a law linked to the human person or the subject of specific laws which are then transformed into a power. He then divides the right to absolute- and relative rights. Absolute rights are rights to authorize someone to do a deed, which rights can be defended against anyone, and instead everyone should respect that right. While the relative rights is the right to authorize a certain person to demand that someone or some certain others giving something, do something, or not do something.⁴ Furthermore, the absolute right divided over human, absolute public and civil absolutes.

Based on the definition of the rights and by looking at the arrangement of social security in the 1945 Constitution, then it is understood that social security is one of citizens' rights which authorizes citizens to do something and depend it, and obliging for other, including State to respect it. The type of the rights which belong to the social security is not mentioned explicitly and in detail in the 1945 Constitution except what can be interpreted from the articles that have been put forward as; welfare, shelter, good and healthy environment, health service, convenience and special treatment in accessing equality and justice, and the guarantees of the State for the poor and neglected children.

Furthermore, social security as mentioned above is then translated into a form of social protection to ensure that all people in order to meet the basic needs of a decent life, as referred to in Article 1 (1) of Act No. 40 of 2004 on the National Security System. What is interesting is the term of *social security* which implies the definition of absolute obligation⁵ to the warrantor, then gradually shifted into a form of *social insurance*. Shift such meaning can be seen as a systematic attempt through legal means for the State to transfer its obligations and responsibilities to other parties that resulted in the loss or limitation of the ability of citizens in the fulfillment of their fundamental rights as citizens, as well as provide direct advantages to certain parties who are not part from State institutions.

If then the State has not been able to meet all its obligations towards its citizens, at least the responsibility was not transferred to another party which gives rise to additional losses for citizens, and benefit certain parties. Even if the State has limitation to the implementation of tasks and responsibilities, then the release or transfer of tasks and responsibilities of the State as has been done in the form of State-Owned Enterprises, did not diminish the control of the State.

What is meant by social protection, and then understood as an effort to fulfill decent basic need? What is a decent basic need, there is no clear definition in Act No. 40 of 2004. The only thing that can be understood as a

¹ Pelupessy, E. (2017). The Land Rights of Indigenous Peoples: Revaluation of Papua Special Autonomy. *Hasanuddin Law Review*, 3(1), 77-90. doi:<http://dx.doi.org/10.20956/halrev.v3i1.1047>

² Anonymous, 2011. *Kamus Hukum*, Citra Umbara, Bandung, Page. 124

³ Sudikno Mertokusumo, *Mengenal Hukum*, Yogyakarta: Liberty, 1986, Page. 71

⁴ Daniel S. Lev. (1978). "Judicial Authority and the Struggle for An Indonesian Rechtsstaat" *Law and Society Review* 37(13).

⁵ It mentioned absolute because the right of the State is a fundamental right. In the constitutional system, the State can only delegate to another party to carry out or perform/realize what its duty without prejudice to the form and content of what the rights of the citizens.

basic need in the law as stated in Article 18 which becomes a social security program which includes; health insurance, accident insurance, old age insurance, pension insurance and life insurance.

The problem is that the kinds of insurance that have been mandated by the 1945 Constitution as the duties and responsibilities of the State, and then transferred to the insurance company that in fact it pursuit the profit.¹ The burden of financial arising from the insured was then charged entirely to the participants of the so-called trust fund. If required the division of the burden, the largest burden remains on the State or the administrator, not by shifting entirely to participants. Then, what responsibility has been done by State, or achievements of what has been done by the administrator (BPJS) against citizens, but instead take advantage of the premiums paid by participants.

Eventually, the social security as the rights of all citizens be directed only to those who have certain jobs or private parties are able to pay insurance.² In essence, the insurance company engaged in health and employment. Even to call it as an insurance company was questionable considering membership status is accompanied by the threat of sanctions.

In this context, we come to a conclusion about the essence of Zakat and social security. If social security is seen as a right of citizens to obtain a guarantee of social protection in the form of meeting the basic needs to be able to decent live, then the social security system by the government via BPJS is no longer in line with the 1945 Constitution.

Given the essence of Zata as described, it can also be concluded that the Zakat is far beyond to simply refer to as social security. The implementation of Zakat is guided by sincerity, faith and piety to Allah SWT, its target is really to those in needs. Zakat is also not merely to pay, but further it creates social relationships and its benefit is not only has an impact in the world, but a provision in the next life.

4. The Contribution of Zakat against Social Security System

The right of citizens and as responsibility of the State to provides social security to its citizens.³ What is meant as social security is then translated by statute into a form of social protection as an effort to fulfill the basic needs of citizens eligible for humanity, which is subsequently reduced to the National Social Security System program which includes; health insurance, accident insurance, old age insurance, pension insurance and life insurance. Furthermore, social security was originally the rights of citizens, then turned into a liability and partly still be limited citizens' rights. Similarly, a brief overview of what is meant by the social security system according to positive legislation Indonesia.

Unlike Zakat, it provides benefit to citizens who are Muslims, as well as non-Muslim, do not see the basis of contributions or what role the citizen against the State. But Zakat provides benefit by socioeconomic circumstances a person, even with the state of his/her soul. And also, it creates a relationship of brotherhood among human beings. It is also not just about how to meet basic life needs for humanity, but how to lift and change condition for better. The principle is to hand over is better than below. Its reach is not only brings benefit life in the world, but also a means of purification of the soul in order to obtain the benefit of the afterlife.

According to Bagir Manan⁴, that in the concept of the State' welfare law, the State bears responsibility for social justice, public welfare for the prosperity of the people. In the concept developed by Isbandi Rukminto Adi⁵, that every citizen also has the responsibility to realize social welfare. Thus, it is understood that the State is not the only actor to organize social services. Community, business, religious social institutions, and even international humanitarian agencies have an important role in the implementation of social services. However, as one form of social policies and *public goods*, social services cannot merely give to the public and private sectors.

As an institution that has public legitimacy are selected and financed by the people, the State has an obligation to fulfill, to protect and to respect the basic rights, the economy and culture of its citizens. The mandate of the State to do social services is stronger than society or the business world. Based on international conventions, mandates the State in social services is "compulsory". Meanwhile, the mandate of people and business world is "responsibility".⁶

¹ Huda, M. (2017). Good Faith in Life Insurance Contract by Indonesian Court. *Hasanuddin Law Review*, 3(1), 49-58. doi: <http://dx.doi.org/10.20956/halrev.v3i1.1046>

² See Article 20 UU No.40 of 2004 on the National Social Security System

³ See Article 28 H and 34 UUD NRI of 1945

⁴ Bagir Manan, *loc cit*.

⁵ Isbandi Rukminto Adi, *loc cit*.

⁶ The word "responsibility" is derived from 2 (two) words "*response*" and "*ability*". That is, a response is not mandatory. But it adjusted to the ability. As an illustration, providing basic education is the responsibility of the child's parents. However,

In the context of a just social policy, the role of the State and society are not in a paradoxical position. Rather, two position in synergy. Even in Indonesia, the commitment and the role of the State in social services should be strengthened rather than weakened, as suggested by the neoliberal free-market devotee. In this decentralization era, strengthening of the State includes a clear division of roles between central and local governments. Local government is expected to have a social policy agenda in accordance with the conditions of the region. Wider authority to the local government is not only intended simply increase local revenue economically, without concern for the problem of region social.

The strong relationship between the State and citizens in the constitutional system that builds on the 1945 Constitution, then become an entry point for citizens who are Muslims to participate in the fulfillment of their basic life needs for humanity. Implementation and management of Zakat with all legal instruments that are being built today, not with the intention to take over or perform the same role with the social security system that has been in effect. Rather, in traditional model,¹ it can take other roles is more strategic for example in the improvement of education and economic sectors.

Efficiency and effectiveness of the management of Zakat made institutionally through “*Badan Amil Zakat Nasional*” (BAZNAS) that directed to 4 (four) group, which is to help the people of “slavery” in all its forms, help people who are in debt, the fighters in the way of Allah and the travelers who are in economic difficulties. While, the first four of group remain as usual, to strengthen Islam brotherhood. Here, the forms of programs that can be developed by *Amil Zakat* institutions under the coordination of BAZNAS.

4.1. Slavery Elimination Program

Slaves in Indonesian’ Dictionary is defined as a servant or people who paid. If associated with the term “liberation of slaves”, then the slave can be seen as a person deprived of his/her freedom to work for the benefit of other human groups, although he get paid.

Slaves in definition of Al-Qura’n as mentioned in QS (23) Al Mu’minuun verses 1-11 and QS (4) An-Nisa verse 24 can be understood as the people who work for others with all my body and soul, do not have the freedom to determine own-desire and solely devote himself to his/her master. Slaves is obtained either by way of purchase, gift or through war.

The notion of slaves in the present context can be understood as people who work for others because of the powerlessness economically, so that any kinds of work to do just to meet the needs of everyday life. For example, a housekeeper without work contract. Included in this sense by Muthoifin and Nuha² is oppressed peoples.

Therefore, slaves and slavery in the context of the Al-Qura’n and Hadith in extrinsic meanings are no longer existing, then the meaning of slaves and slavery can be understood, as noted above. Program of liberation of slaves as part of Zakat can be directed on improvement of human resources directed to those who are not able to do it independently. Similarly, the program can be directed to the liberation of the oppressed or neglected communities and other isolated tribes.

4.2. Peoples’ Economic Empowerment Program

Fakir according to the dictionary is deprived people, very poor. Shortages and poverty in question is in terms of the property/wealth or the needs of everyday life. Such people have a strong attachment to property that tends to justify any means to meet their needs. *Fakir* in question is a kind of dependency and strong attachment to possessions. So, it may be there are people who do not own property, but never feel deprived of the gift of Allah SWT because he has the nature of *al-Ghani*.

Basically, *fakir* is a form of problem arises in the life of society. Generally, *fakir* is sketched with the lack of income to fulfill the basic life needs, such as food, clothing, shelter and education, so he experiences suffering and affliction in his/her life. The poverty in question is poverty in material aspect (economy).

Essentially, poverty is not merely something that self-realized apart from other aspect, that is mentality (culture) and poor structure. Poverty concern people’ mental aspect or commonly called as cultural poverty, usually they

when something causes, such as poverty, make parents could not afford to give formal education their children; the parents cannot be subject to sanctions. State bears the obligation to provide basic education for citizens who cannot afford.

¹ The traditional model in question is collect and distributes Zakat is merely consumptive, though some *Amil Zakat* as a creature of communities have started to have specific programs but not yet known by the public at large. The hope is that the first four group of Zakat continue to receive zakat and *sedekah* directly from *muzakki*, while the next four group of receive Zakat compensation in the form of empowerment.

² Muthoifin and Nuha, 2016. *Kontekstualisasi Makna Zakat: Studi Kritis Kosep Sabilillah Menurut Masdar Farid Mas’udi*, Jurnal Muthoifin. 30(2): 122-145.

are characterized as lazy to work, as other and do not want to improve the level of prosperity although there are effort from others. In this regard, they tend to consider the poverty as a destiny. They are more interest to mooch or they works if there are people want him. Beside, consumptive lifestyle that causing the large of individual spends is also can cause this poverty.

Poverty as result of poor system or structural poverty is a poverty occurs not a lazy mental of people, but system (especially government) that does not support the realization of poverty.

If we talk about management and empowerment of Zakat in a comprehensive manner, then the Zakat is not just for shares of asset to *mustahik*. The Zakat collector (*amil*) must think further to observe and find the sources of Zakat, as well as finding the causes and solutions for individual economic downturn. *Amil* is not just about how to pay the debt of *al-ghaarimiin*, but how to make him able to pay own-debts.

It is time for the traditional mindset about Zakat is changed to be more productive. The Zakat collector must be more creative to design programs of economic empowerment by targeting sectors that are the causes of poverty. It's not prevention better than cure? Maybe someday Zakat institutions were no longer accommodate and distribute Zakat, but it became a kind of Zakat financial institution.

5. Conclusion

The essence of *Zakat* has 3 (three) aspects; outer, inner and spiritual aspects. Outer aspect aims to clean or spend a portion of property as the rights of others under the provisions of *syariah*, obtained lawfully, and it reach amount dan period. Inner aspect aims to purify the soul of miserly and world love, and thus will grow spaciousness in the soul and compassion toward others. Spritual aspect aims to make man as a servant with a true servant to achieve *muttaqin*. *Zakat* is not just a form of social security system in the perspective of positive legislation in Indonesia, but reach deeper and broader to the aspects of outer, inner, and spiritual.

To improve Muslim' understanding and awareness, especially in Indonesia, it is recommended to the *muballiq* and Islamic law experts to conduct *da'wah* and *zakat* study which includes outer, inner and spiritual aspects in comprehensive manner. The government and especially for the House of Representatives is expected to encourage against the obligation of Zakat through new legislation. Through new legislation, the role and function of BAZNAS, especially for *Amil Zakat* (collector) to conduct planning and development in the form of a work program that includes *asnaf ar-riqaab*, *al-ghaarimiin*, *fi Sabilillaah*, and *Ibn sabil*.

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