

Implementation of *Zakat* & Professional Income Tax Payments for Notaries & PPAT (Comparative Law Study of *Zakat* Payment System & Professional Income Tax)

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Abstract. *The purpose of this study is to see the implementation of the Notary and PPAT professional zakat and Income Tax payment system, the reason is that the assisting system of implementing zakat and Income Tax of the Notary and PPAT profession has not met expectations and has not been able to eradicate poverty, ideal implementation of zakat and income tax notary and PPAT in the context of poverty alleviation. The approach method used in this research is the normative juridical method. The specification of this research is research with descriptive analytical breakdown specifications. Sources of research data are primary and secondary data. The data collection uses literature study as the main data and interviews as supporting data. The data analysis method used in this study is a qualitative method. The results of the study state that the implementation of the zakat and tax payment system in the stages of the notary profession and PPAT has not met expectations and has not been able to eliminate poverty because government and private 'amil zakat institutions are still unable to collect large amounts of zakat funds. The reason the notary and PPAT professional zakat and tax payment systems have not met expectations and have not been able to incubate poverty are religious factors and non-religious factors. Ideally, the implementation of zakat and tax payments at the professional level of notaries and PPAT in the context of poverty alleviation, such as in Malaysia, taxes that have been deducted by each individual against a number of values that are not actually tax payments .*

Keywords: Zakat; Income Tax; Comparative Law.

1. Introduction

Act No. 38 of 1999 concerning *Zakat* Management as a juridical foothold in managing and distributing *zakat* and is a solution that must be supported intensively, so that the system for handling and managing *zakat* is truly professional which will be more

successful in order to elevate human dignity, while we close the gap for various irregularities and abuse of authority in the management of *zakat*.

The *zakat* law also states the types of assets that are subject to *zakat*, namely "income and services" or in other words, professional *zakat*. According to prof. Didin Hafidhuddin professional *zakat* is *zakat* imposed on any particular job or professional expertise, either alone or with other people or institutions, which brings income (money) that fulfills *Nisab*.¹ Nowadays, the form of income that most often generates large wages or salaries is obtained from professions such as Notaries and Land Deed Making Officials (PPAT).

The sources of income from the profession are not widely known, therefore there are not many discussions about the types of *zakat* in the profession with a level of detail that is equivalent to other types of *zakat*. And it is very unfair and of course in conflict with the mission of Islamic justice and its siding with the poor, if there are low-income community groups (farmers, traders, breeders, and small miners) are obliged to pay *zakat*, while there are other Muslim groups with higher income, but it is "allowed" not to pay *zakat*.

Professional *zakat* has indeed been debated for a long time until now. According to people who reject professional *zakat*, they argue that there are no clear and strong arguments and no specific concrete examples of the *sunnah* of Rasulullah SAW. However, for people who agree with and support this professional *zakat* because people think that *zakat* is actually *zakat* on income is not a new thing in Islam.²

However, Rasulullah SAW never appointed and instructed several friends ('Umar bin al-Khattab, Abdullah bin Lutabiyah, Abu Mas'ud, Abu Jahem, Uqbah bin Amir, al-Dhahhak, Ibn Qais' Ubadah bin Shamit and Muadz bin Jabal) as '*amil zakat*' at the regional level who is responsible for fostering various countries to remind their inhabitants, and Allah swt. informed them. Has established that there is a right for the poor in their property. *Zakat* is specifically intended to reduce or alleviate poverty by helping those in need.

In Act No. 38 of 1999 which has been replaced by Act No. 23 of 2011 concerning *Zakat* Management states that *zakat* can be used as a deduction for taxable income (withholding tax). In addition, Act No. 36 of 2008 concerning Income Tax also regulates professional *zakat*, one of which is for notaries and officials who make land deeds. Act No. 36 of 2008 concerning Income Tax as a third amendment to Act No. 7 of 1983 concerning Income Tax, is regulated in Article 4 paragraph (3) letter a number 1, which reads: "What does not include taxable income is religious aid donations, *Zakat* and taxes are both obligations that must be paid. This is a double liability imposition. Muslim communities have been burdened with the obligation to pay *zakat*, then as citizens also have obligations as taxpayers. On the one hand, get sanctions from Allah for failing to pay *zakat*, and on the other hand, the state sanctions for not paying tax obligations."³

1 Qardhawi, Yusuf. (1996). *Hukum Zakat: Studi Komparatif Mengenai Status dan Filsafat Zakat berdasarkan Al-Quran dan Hadis*. Diterjemahkan oleh Salman Harun, dkk. Bogor: Pustaka Litera Antar-Nusa. p. 459

2 Hafidhuddin, Didin. (2007). *Agar Harta Berkah dan Bertambah*. Jakarta: Gema Insani. p. 96.

3 Bohari, H. (2006). *Pengantar Hukum Pajak*. Jakarta: Raja Grafindo Persada. p. 25.

At the time of the Prophet Muhammad, *zakat* was a state command. The implementation of this *zakat* obligation is evidenced by the order of the Prophet Muhammad as head of state to Muadz bin Jabal who will become governor in the Yemeni area to collect *zakat* from the public.⁴

In relation to human relations with Allah SWT (worship), and human relations with fellow humans (*mu'amalah*), every Muslim must have a strong awareness to pay *zakat fitrah* besides that we as Muslims should not forget to pay *zakat mal* (*zakat* profession). The lack of public awareness of the cases of paying *zakat* (professional *zakat*) will have an impact on the receipt of *zakat*. The thing that should be grateful at this time is the good growth of society, along with the development of the community's economy, it should have an impact on the collection of *zakat*, which can be used for the welfare of the less fortunate. However, the implementation of *zakat* is not currently running well,

Some people are only aware of paying *zakat fitrah* and mal without knowing in depth about *zakat mal* that in fact professional *zakat* is also a part of *zakat mal* which is general in nature, in fact it contains various forms of *zakat mal*, among which it is also mentioned as professional *zakat*. However, current professional *zakat* is rarely paid by the community due to the lack of socialization of the role of scientists who are experts on *zakat* and *zakat* institutions such as: LAZ, BAZ, and UPZ. So they think that if they pay *zakat* from this profession they spend a lot of money and they are afraid that their assets will decrease because they are used to paying *zakat fitrah* every month of Ramadan.

In fact, more than 52% of the public still do not know that the paid income *zakat* can be used as a deduction from gross income, so that there is no double burden on society.⁵ Even though tax and *zakat* are inseparable things in fulfilling obligations both in living a state and religious life. Tax and *zakat* have similarities in their implementation objectives, namely to improve the welfare and prosperity of the people.

However, the fact remains that very few people include the calculation of *zakat* as a deduction for income tax, even though the government has facilitated it. In general, the *zakat* and tax management system does not reflect accountability and creditability. This can be seen from, first, the government side, the lack of socialization regarding *zakat* as a deduction for taxable income is one of the obstacles. The public is confused over the rules that must be met so that *zakat* can be a deduction from taxable income. This lack of socialization results in the absence of interest in paying *zakat* through *zakat* recipient bodies/institutions that are established and endorsed by the government, even though this is actually beneficial for *zakat* payers.

Second, the limited number of institutions established and endorsed by the government is the reason for public confusion. When people pay *zakat* in institutions that are not authorized by the government, the *zakat* cannot be a deduction from taxable income. In addition, public trust in *zakat* institutions that have been approved

4 al-Bukhari, Muhammad bin Ismail. (1981). *M/1401 M*. Istanbul: Sahih al-Bukhari. Juz II. Dar al-Fikr.

5<https://news.ddtc.co.id/menyinergikan-zakat-dan-pajak-18389#:~:text=Menurut%20PP%20No.%2060%20Tahun,yang%20dibentuk%20dan%20disah%20pemerintah.> Accessed on June 24, 2020

by the government is also relatively low. This happens because when people pay *zakat*, people want the *zakat* they pay to be used properly.

Whereas as previously explained, income *zakat* has been regulated in Act No. 36 of 2008 concerning Income Tax. Even though it has been regulated in legislation, in practice income *zakat* still invites pros and cons in the community. The existence of different views among the *ulama* has made *zakat* income still not fully implemented for the professional class. However, if we refer to Act No. 36 of 2008 concerning Income Tax, it states that part of the income must be set aside for charity activities such as *zakat* so that there is no longer any reason for the profession not to spend *zakat* from their income.

Based on this description, the problems will be discussed in this thesis proposal ideally implementation payment of *zakat* and income tax Notary profession and PPAT in the context of poverty alleviation.

2. Research Methods

The approach method used in this research is the normative juridical method, namely legal research which is carried out by examining library materials or secondary data as the basic material for research by conducting a search of the regulations and literature related to the problem under study⁶. The specification of this research is research with descriptive analytical breakdown specifications, which is intended to provide data as accurate as possible about a condition or other symptoms.⁷ The research specification uses descriptive analytical, because specifically this study aims to describe the problems in this study, namely the implementation of *zakat* and income tax payments. Notary profession and PPAT in the context of poverty alleviation.

The data sources used in this study are as follows:

- a. Primary data is data obtained directly from the first source, in this case primary data from interviews. Interviews were conducted with the leaders or staff of the Semarang City National 'amil *Zakat* Board and notaries or Land Deed Making Officials (PPAT).
- b. Secondary data is data that is collected and obtained from a second person or other party. In this case, the implementation is by examining secondary materials such as related literature and supporting research results, theses, magazines, papers, newsletters, newspapers and the internet. The legal materials for research are:
 - 1) Primary legal materials: Act No. 38/1999 on *Zakat* Management, Act No. 23 of 2011 concerning *Zakat* Management, Act No. 36 of 2008 concerning Income Tax, Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary, and Government Regulation Number 24 of 2016 concerning Amendments to Government Regulations Number 37 of 1998 concerning Land Deed Officials Regulation

6 Muhammad, Abdulkadir. (2004). *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti. p. 134

7 Soekanto, Soerjono. (1981). *Pengantar Penelitian Hukum*. Jakarta: UI Press. p. 10.

- 2) Secondary legal materials: scientific papers in the form of theses, theses, dissertations, books, scientific journals in printed media or from online media (internet).
- 3) Tertiary legal materials: opinions of scholars, legal literature, seminar materials, articles/newspapers, internet and encyclopedia dictionaries.

The data analysis method used in this study is a qualitative method. Qualitative method is a research method that produces analytical descriptive, which is expressed by respondents in writing or orally as well as real behavior, which is researched and studied as a whole.⁸ The analysis can be carried out in a descriptive analytical way, which means describing the existing data and then analyzing it and with relevant theories and norms that have quality to solve the problems in this research.

3. Results and Discussion

The implementation of the *zakat* payment system and income tax for the notary profession and PPAT has not met expectations and has not been able to eradicate poverty because government and private '*amil zakat* institutions are still unable to collect large amounts of *zakat* funds. One of the reasons is the lack of public awareness, especially notaries and PPATs in paying professional *zakat*. There are many wrong assumptions, that paying *zakat* can directly reduce the taxes that will be paid even though they are not.

The reason that the notary and PPAT payment system for *zakat* and income tax has not met expectations and has not been able to incubate poverty is a religious factor in the form of an understanding of community *zakat* based on classical *fiqh*, some Muslim communities still carry out *zakat* obligations individually through religious figures such as *Kyai* or social institutions leadership such as DKM or Islamic boarding schools as well as non-religious factors, namely the notary's reluctance to submit proof of *zakat* deposits, awareness of paying professional *zakat* and income tax is still low, and the lack of public trust in *zakat* institutions.

Basically, both income *zakat* and income tax are imposed on the same object, namely income received by an individual who is Muslim. The existence of two obligations towards the same object can be said to be a double obligation. Abdul Basir stated that, by including income *zakat* as taxable income, the avoidance of double burden imposition is only effective at a maximum of 30% (PPh rate). This means that Muslim taxpayers must bear a double burden of 70%. The policies that have been implemented by the government have not eliminated the dual obligations that Muslims have to bear, but only reduce the tax burden owed.⁹

With the non-fulfillment of income *zakat* in the criteria as expenses related to activities to earn, collect, and maintain income, the treatment of income *zakat* as a deduction for taxable income is not appropriate.¹⁰ The existence of a philosophical equality between income *zakat* and income tax which creates aspects of congruence, of course for citizens, especially Muslim taxpayers, will cause a double burden. To harmonize

8 Soemitro, Ronny Hanitijo. (1990). *Metodologi Penelitian Hukum*. Jakarta: Ghalia Indonesia.p. 12-13.

9 *Ibid.*,

10 *Ibid.*,

philosophical aspects and avoid double burdens and create justice, the ideal is that the payment of *zakat* and professional income tax for Notary Public and PPAT in the context of poverty alleviation is carried out with income *zakat* as a direct deduction of income tax (tax credit) because the public is more aware of paying taxes than *zakat*. . For example, in Malaysia, taxes that have been paid by each individual can be deducted against an amount that is not actually a tax payment. The 1967 Income Tax Law in Malaysia states that, apart from prepaid tax, this tax can also be credited with tax deductions for individuals, *zakat* and *fitrah* paid, and labor permit processing. On the other hand, in Indonesia until now, taxes can only be credited against taxes. Income tax obligations in Indonesia will not be mixed with others. Because what is being taxed is income, then what becomes a tax credit is the matter related to the income itself. Thus, personal income tax payable can only be credited with the prepaid tax paid in the current year.

The treatment of *zakat* in Indonesia is only one part of the cost component that can reduce net income, unlike in Malaysia *zakat* has been used as a tax credit. Thus, the double burden that must be borne by Muslim taxpayers is not only minimized, but with this policy, *zakat* and tax revenues also increase. In Malaysia, the *zakat* policy as a tax credit only applies to individual taxpayers. The experience of applying the *zakat* policy as a tax credit applied by Malaysia shows that this policy can trigger an increase in income in both instruments simultaneously. The acceptance of both has increased after the implementation of the policy.

Zakat as a direct deduction from income tax as has been implemented in Malaysia. They consider that although the essence of *zakat* and tax is different, they both have the same goal, namely for the welfare of society. So a solution is needed to avoid double loads on the same object. According to Muktiyanto and Hendrian, if this is implemented, many good things will emerge, including:¹¹

1. There will be an increase in the tax ratio, that is, the number of taxpayers will increase. Muslim taxpayers will be more eager to pay *zakat* and taxes, because there are no more double payments.
2. Because of the *zakat* allocation for the eight groups of *mustahik*, the poor will be helped. With the increasing number of *zakat* funds channeled through the 'amil *Zakat* Agency and the 'amil *Zakat* Institution, more and more community empowerment programs will be rolled out. Of course this is also very helpful for government programs, especially in poverty alleviation.
3. There will be demands on *zakat* management bodies or institutions to apply the principles of good governance, namely trustworthiness, professionalism, and transparency.
4. So far, the application of tax-deductible *zakat* is only at the level of *zakat* as a deduction for income. The effect is certainly not big for taxpayers who are also *zakat* payers because they are not credited directly to the tax payable. However, of course there will be a greater impact of *zakat* on taxes if the *zakat* can be credited directly to income tax. The logic for using it is certainly the

11 Muktiyanto, Ali dan Hendrian. (2008). *Zakat Sebagai Pengurang Pajak*. Jurnal. Organisasi dan Manajemen, Vol. 4, No. 2. p. 103

same. Taxes are used for the development and welfare of employees, as well as *zakat* which has implications for the welfare of the community.

On the other hand, this expectation creates disagreements among the public. They consider that this is a discriminatory policy against non-Muslims. There is also an opinion that says that the matter of *zakat* and tax does not need to be linked. Those who fall into this opinion are worried that the *zakat* obligation will appear unwilling when they demand reimbursement either by deducting the *zakat* from taxable income or deducting it directly from income tax. However, the real problem is not that, but there are concerns among some who claim that if *zakat* is used as a direct deduction from income tax, the tax revenue will be reduced.

In addition, in this study, the researcher used Gustav's legal theory to analyze the implementation of *zakat* and income tax payments for the notary profession and PPAT in the context of poverty alleviation. This means that ideally the implementation of payment of *zakat* and income tax for notary profession and PPAT in the context of poverty alleviation must have the principles of justice, legal certainty, and benefits.

This principle of justice means the act that lies between giving too much and too little. Justice can be interpreted as giving something to everyone according to what is their right. In realizing the guarantee of justice, it is necessary to have certain institutions that function to fight for the application of the two principles above in the life of society, nation and state. The principles of justice in the payment of *zakat* and professional income tax include:

1) Equal in *zakat* and tax obligations

Every Muslim who has one *zakat* ratio is obliged to do *zakat* regardless of nation, color, descent, or position in society, male, female, government, governed, religious leaders, state leaders, all the same. In taxation there is a principle of equality, namely that a person in the same situation should be subject to the same tax. Justice in this case is that a country is not allowed to discriminate among taxpayers.

2) Freeing up assets (*zakat* and tax) that are less suitable or with a predetermined limit
In achieving justice, Islam in the obligation of *zakat* frees a small amount of property from the obligation of *zakat*. *Zakat* is not obligatory except for assets that reach one *Nisab*. This is so that the collection of *zakat* from excess will be easy for the soul and not difficult for human nature. Likewise with the taxation principle that exempts taxes for those whose income is below the basic needs of society.

3) Prohibition of giving *zakat* and taxes twice

Islamic financial tax justice establishes the principle of unifying *zakat* applications and no double *zakat* to prevent coercion of property owners, the existence of elements of tyranny, barrier to assets, and maintenance of the ability to load assets. So, in this case the Indonesian government is expected to change the payment system for *zakat* and taxes to make it appear fair for all professions.

4) Fairness in tax and *zakat* practices

Islam pays special and careful attention to those who collect *zakat* (*'amil*), that is, with high requirements to become *'amil*, and a noble position for them.

The second is the principle of certainty. Tax certainty is determined to tax subjects in a sure, non-hidden manner, whether regarding the time, procedure, amount of deposit, must be clear and clear to the tax subject and to anyone. This certainty is closely

related to tax stability. If the tax subject is used to submitting certain tax payments, then he feels certainty in the matter.

The stability of social life and human relations will lead to the development of economic progress. The situation is comparable to a tax. The many changes regarding taxation regulations will no doubt result in a loss of trust and the emergence of doubts among the public. The certainty method in *zakat* is seen because Allah SWT has made it obligatory in His book and has determined the level through His Messenger.

Legal certainty in the implementation of *Zakat* and Income Tax payments in Indonesia actually already exists in Indonesia. It's just that the application in the payment system is less effective. Usually in the payment of *zakat*, people prefer to distribute it themselves because of the lack of public trust in the '*amil zakat*' body. This is due to the lack of transparency in the financial system of the '*amil zakat*' bodies in Indonesia. Meanwhile, if the public income tax has entrusted it to the government because the reports provided by the government are already transparent. In addition, the income tax payment sanctions are stricter than the payment of *zakat* making people feel that *zakat* payment is only a matter of religion without anything to do with the government.

The third is the principle of expediency, legal benefit is the principle that accompanies the principles of justice and legal certainty. In implementing the principle of legal certainty and the principle of justice, the principle of benefit should be considered. The benefits of law need to be considered because everyone expects benefits in the implementation of law enforcement. Do not let law enforcement cause public unrest. Because when we talk about law we tend to look only at laws and regulations, which sometimes are imperfect and not aspirational in people's lives.

In implementing *zakat* and tax payments, ideally, it provides benefits for poverty alleviation. In fact, in the profession of Notary Public and PPAT, almost all of them have paid both income taxpayers and *zakat* payments. However, in paying *zakat*, Muslim Notaries and PPAT are more entrusted to distribute it themselves to their less fortunate neighborhoods, because they consider that paying *zakat* is their business with their religion. In addition, almost all of the Notary and PPAT profession income tax payments have been implemented, but there are still many people with other professions who have not fulfilled their income tax payments. This is what makes the goal of paying *zakat* and taxes for poverty alleviation in Indonesia not yet fully implemented.

4. Closing

4.1 Conclusion

Based on the results of the research and discussion above, it can be concluded that ideally the implementation of payment of *zakat* and income tax for notary public and PPAT in the context of poverty alleviation, such as in Malaysia, taxes that have been paid by each individual can be deducted against a number of values which are not actually tax payments. The 1967 Income Tax Law in Malaysia states that, apart from prepaid tax, this tax can also be credited with tax deductions for individuals, *zakat* and

fitrah paid, and labor permit processing. On the other hand, this expectation creates disagreements among the public. They consider that this is a discriminatory policy against non-Muslims.

4.2 Suggestion

Based on the above conclusions, the authors suggest that with the proposed treatment of *zakat* as a direct deduction for income tax (tax credit) as successfully implemented in Malaysia, this should be taken into account in revising Act No. 22 of 2011 concerning *Zakat* Management. What needs to be considered is that when the tax issue has been revised in the *zakat* law, its implementation must also be regulated in the tax law so that its application will run better. There needs to be a clear legal umbrella if *zakat* is really applied as a direct deduction from income tax. The legal umbrella will also have to pay attention to taxpayers who do not pay *zakat* (non-Muslims). Whether similar religious contributions in other religions will be treated the same as *zakat*-paying taxpayers. And most importantly, there must be clear management standards for the management of *zakat* in the country of Indonesia.

5. References

Journals:

Muktiyanto, Ali dan Hendrian. (2008). *Zakat* Sebagai Pengurang Pajak. Jurnal. Organisasi dan Manajemen, Vol. 4, No. 2.

Books:

- [1] Ali, Mohammad Daud. (1988). *Sistem Ekonomi Islam Zakat dan Wakaf*. Jakarta: UI Press.
- [2] al-Bukhari, Muhammad bin Ismail. (1981). *M/1401 M*. Istanbul: Sahih al-Bukhari. Juz II. Dar al-Fikr.
- [3] Soemitro, Ronny Hanitijo. (1990). *Metodologi Penelitian Hukum*. Jakarta: Ghalia Indonesia.
- [4] Soekanto, Soerjono. (1981). *Pengantar Penelitian Hukum*. Jakarta: UI Press.
- [5] Qardhawi, Yusuf. (1996). *Hukum Zakat: Studi Komparatif Mengenai Status dan Filsafat Zakat berdasarkan Al-Quran dan Hadis*. Diterjemahkan oleh Salman Harun, dkk. Bogor: Pustaka Litera Antar-Nusa.
- [6] Wibisono, Yusuf. (2016). *Potensi Zakat Nasional: Peluang dan Tantangan Pengelolaan* Makalah disampaikan pada Seminar Nasional *Zakat*.

Internet:

<https://news.ddtc.co.id/menyinergikan-zakat-dan-pajak-18389#:~:text=Menurut%20PP%20No.%2060%20Tahun,yang%20dibentuk%20dan%20disah%20pemerintah.> Accessed on June 24, 2020.