

THE URGENCY OF FIQH ZAKAT FOR BUSINESS ENTITIES IN INDONESIA (JURIDICAL STUDY OF LAW NO. 23 OF 2011 CONCERNING ZAKAT MANAGEMENT)

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Abstract - This study points to the urgency of the fiqh zakat of business entities in Indonesia which is regulated in Law no. 23 of 2011 concerning Zakat Management. Meanwhile, the purpose of this study is to describe the modern fiqh theory of how the zakat fiqh of business entities in Indonesia is contained in Law no. 23 of 2011 concerning Zakat Management. The research method used is a normative legal study of Law no. 23 of 2011 concerning Zakat Management. The change of people's muzakki to business entities' muzakki is a thought that is considered radical in the fiqh of zakat in Indonesia. The change in the meaning of muzakki changes the epistemology of fiqh zakat which has been commonly practiced in people's muzakki to become a legal entity as a legal subject who is charged with tithing. In the theory of fiqh, the individual human being is interpreted as a mukallaf who understands and can carry out the law for the obligations imposed on him. Meanwhile, business entity muzakki can be interpreted as an individual human being as a legal subject who has the ability and ability to carry out the legal burden. A business entity is a legal entity that is attached to a number of rights and obligations that are required to be implemented with the regulations that have been regulated in the legislation. Changes also have criminal consequences for violations and crimes committed by muzakki in their legal burden. Juridically, this regulation has been promulgated by Law Number 23 of 2011 concerning Zakat Management which is explicitly regulated in Article 1 number 5 muzakki.

Keywords: Fiqh Zakat, Muslim, Business Entity, Law

1. Background of the Problem

Fiqh zakat business entities is a modern thought in the dynamics of contemporary ijtihad which is understood as a radical idea in the field of zakat today. There is an expansion of the meaning of the object of property that must be issued zakat in business activities. Business entity zakat is fundamentally analogous to zakat resulting from business activities in a productive business operated through a corporate legal entity. At the International Zakat Conference and based on the opinion of scholars, it has strengthened the opinion about zakat of business entities or companies (Ridlo, 2007).

Thought in ijtihad fiqh zakat is theoretically based on the theory of philosophical study of maqashid sharia, namely the purpose of Islamic law, which is called the theory of hifdz al-mall (economics) theory that considers the social dimensions of the community, economy and justice through the state. Hifdz al-mall theory understands that maintaining, maintaining and increasing economic power to

strengthen the economic strength of a people and nation requires thinking that can accommodate the exploration of the utilization of economic resource potentials through business activities by business entities. Utilization of economic potential requires a strong understanding to make it easier for the state to be managed by the National Amil Zakat Agency (BAZNAS) and the Amil Zakat Institution (LAZ).

Thoughts that lead to business entities as muzakki in tithing are understood as a leap of thought change that analyzes the benefit of the people towards the economic potential that can be managed by the state. So *ijtihad* activities are expanded in reaching the subject matter of zakat business entities. Although it does need limits so that there are no mistakes in practice, which changes the culture for Muslims or the community in tithing. That the legal provisions that are clear in the Qur'an and Hadith do not need to be issued a fatwa anymore. However, scholars are also required to explore the desired values in the Qur'an and Hadith and relate them to the development of the lives of today's people in modern business activities through business entities (Parman Komarudin, 2018).

The history of national legal politics has a relationship with Dutch colonial legal thought which is understood to have had a significant impact in theory and application. Many legal materials are produced from Dutch products which are still difficult to change, so that Indonesian law cannot be classified into a certain legal pattern because it is unique in the process of enactment. On the other hand, it is a product of Dutch law as a colonizer who has been entrenched in Indonesia for a long time and at the same time as the perpetrators of perverting the legal order in Indonesia. A clear example is the enactment of laws relating to the interests of Muslims related to the allocation of zakat funds and taxes (Wihda Yanuar Firdaus, 2021).

In legal theory, it is stated that the formation and ratification of legal regulations in order to provide changes for the better. According to Mochtar Kusumaatmadja (Mochtar Kusumaatmadja, 2002), states that there are two things that need to be considered in legal development, namely legal issues as a means of change (development) and the development or development of the law itself. Regarding the first thing, according to him, the problems faced in connection with efforts to develop law as a tool of social engineering. From this, his thought was born who wanted to give a role for law as a means of renewal and development, meaning the theoretical approach and/or legal philosophy of developing Sociological Jurisprudence put forward by Roscoe Pound in the United States (known in his home country with the slogan Law as a tool of law). social engineering) is one of the pillars of legal reform and development in Indonesia.

The politics of zakat management in Indonesia has not had a significant strengthening because it has not been supported by coercive legal instruments, on the other hand there is the impact of reducing the burden of paying taxes on citizens and business entities. There is a fact that the government is free to collect income taxes, both personal and corporate or privately owned companies, or associations, and taxes are more coercive on the people with various legal sanctions. Although it is

understood that the ratification of Law (UU) No. 23 of 2011 concerning Zakat Management underwent an update. These reforms apply to business entities as muzakki, strengthen organizational governance and provide administrative sanctions and apply criminal law to zakat amil parties who commit violations and crimes referred to in the provisions of the zakat management regulations.

Therefore, in strengthening the fiqh of zakat, business entities in Indonesia have been studied philosophically in the theory of the objectives of Islamic law in Hifdz al-mall (the economy) which considers the social dimensions of the community, economy and justice. Through state power, it is possible to realize an increase in the people's economic welfare in a juridical manner in Law no. 23 of 2011 concerning Zakat Management. Zakat legislation in Indonesia for Muslims and business entities with the status of subject in paying zakat has been accommodated in Article 1 point 5 of Law no. 23 of 2011. In the provisions of the article it is stated that a muzaki is a Muslim person or business entity who is obliged to pay zakat.

2. Theoretical Foundation

A. The meaning of fiqh Zakat

Etymologically ushul fiqh is made up of two words ushul and fiqh. In Arabic the words ushul and fiqh are called tarkib idhafah so that they can form a series of words ushul and fiqh. The meaning of the word ushul is the plural form of the word ashli which means something that is used as the basis for another, or means the foundation of something. The foundation can be material and non-material so that ushul fiqh can be used as the basis or foundation for fiqh. The word "fiqh" etymologically means "understanding" or "deep understanding". In addition, "fiqh" can also be interpreted as "knowing something and understanding it well" (Abû Hasan Ahmad Fâris, 1970). In terms of morphology, the word fiqh comes from the word faqiha-yafqahu-fiqhan which means "to understand or understand". So the word fiqh gives a sense of understanding in the Shari'a law which is highly recommended by Allah and His Messenger.

While the definition of fiqh in terminology is "Science that explains all religious laws related to the actions of the mukallaf extracted from clear (detailed) arguments" (Arif Shaifudin, 2019). Meanwhile, there is a definition of fiqh put forward by Al-Said al-Juraini as quoted by Nazar Bakry who puts forward the meaning of the science of fiqh as follows; "Science that explains the shari'a laws that are amaliyah and are taken from detailed arguments. Fiqh is knowledge obtained by way of ijtihad and requires reasoning and taammul.

Thus, fiqh will direct towards an act that can be punished as obligatory, haram, sunnah, makruh or permissible, which is called taklifi law (law relating to mukallaf actions). Or directing the wad'i law, namely the law that has nothing to do with mukallaf actions, such as the setting of the sun is a sign of the entry of the obligation to pray Maghrib. By understanding some of these meanings, it shows that the nature of the science of fiqh includes the following things; (1) fiqh is the science of sharia

law', (2) fiqh discusses 'amaliyah furû'iyah mukallaf (3) knowledge of sharia law' is based on detailed arguments, (4) fiqh is explored and found through ijtihad.

Based on this formulation, it is understood that fiqh is referred to as science, although there are those who argue that "fiqh" is not the same as "science". Because science must be coherent, systematic, measurable and proven. Even sometimes strictly defined, science must be empirical and have certainty value (Jujun S. Suriasumantri, 1998). While fiqh is something that can be achieved by a mujtahid with predictability, while science must not be dzanniy. However, because the dzan in fiqh is considered strong enough, it approaches science. When the science of fiqh is associated with the essence of something in a philosophical perspective, it is included in the area of ontology.

The discussion on ontology as the basis of this science seeks to answer "what" (Dadang Suhardan and Nugraha Suharto, 2012). According to Aristotle, it is The First Philosophy, which discusses the essence of things which can also be stated in an ontology discussing what we want to know, how far we want to know, or a study of the theory of being. Thus ontology tries to find the core contained in every reality (Noeng Muhadjir, 2001). So fiqh can be concluded that the essence of fiqh is Islamic teachings related to the actions of mukallaf (legal subjects) obtained through excavation or istinbat of the syara' arguments by fiqh experts.

While the definition of zakat in language means "purify", "grow" or develop. According to the term syara', zakat means issuing a certain amount of property to be given to people who are entitled to receive it (mustahik) in accordance with the conditions determined by Islamic law (Euis Amalia, 2009). In terms of language, the word zakat has several meanings, namely al-barokatu (blessing), an-namaa (growth and development), at-thoharotu (purity) and ash-shalahu (orderliness) (Kutbuddin Aibak, 2015).

The definition of zakat according to Law no. 23 of 2011 concerning the management of zakat, it is explained that zakat is an asset that must be issued by a Muslim or business entity to be given to those who are entitled to receive it in accordance with Islamic law (Fakhrudin, 2008). According to terminology, zakat is a portion (level) of certain assets that meet the minimum requirements (nisab) within a span of one year (haul) given to those who are entitled to receive it (mustahiq) with certain conditions (Kutbuddin Aibak, 2017).

While the argument about zakat is explained in Q.S 9:103 which shows the order to take or collect zakat from those (who are rich, with capital) to purify or free from sins and debts, bankruptcy. An understanding of the meaning of taking "their" zakat is understood as an implicit meaning that can show people or humans and business entities, companies and institutions. A business entity domiciled above a legal entity is a subject or muzakki in zakat which is regulated in fiqh and laws and regulations which have been implemented in Indonesia.

The definition of the meaning of zakat in the Law has developed the meaning of the subject (muzaki) in zakat, namely a business entity or company that has legality as a legal entity. The meaning of a business entity shows that fiqh on muzakki has

undergone a radical change in *ijtihad* that takes into account the socio-economic needs of sharia experienced by Muslims. Improving the quality of the economy by maximizing the potential of economic resources requires caution in order to minimize the negative aspects to achieve prosperity in a healthy life and blessings in the nation-state.

B. Meaning of Business Entity

The term company is used in the Commercial Code (KUHD), but the KUHD itself does not provide an understanding and definition of what is meant by a company. Purwosutjipto argues that the absence of an official understanding and interpretation of the company's definition aims to make the company's understanding develop in accordance with the development of the company itself in society (Gatot Supramono, 2007). Therefore, there are various opinions from scholars regarding the definition and what a company is.

Although there have been many scholars who have provided understanding and definition of what a company is, it turns out that the opinions of these scholars still have weaknesses because they do not discuss the definition of a company as a business entity according to Law no. 3 of 1982 concerning Mandatory Company Registration. In Indonesia, there are various types of business entities, which actually adopt the form of business in the Netherlands, namely Individual Companies/Trading Companies (PD), Limited Liability Companies (Comanditter Venootschap), Firms, Civil Partnerships (Maatschaap), Limited Liability Companies, Foundations, Cooperatives (Johannes Ibrahim, 2013).

Expert opinion about business entities, for example: Sadono Sukirno, gives the opinion that companies are divided into individual companies, partnerships and limited liability companies (corporation). Zainal Asikin stated that there are various types of business entities which are generally described as individual companies, business entities in the form of partnerships, and business entities that are legal entities (corporations) (Sadono Sukirno, et al., 2017). In Law no. 3/1982 concerning Compulsory Registration of Companies can be seen in several important elements in a company, namely as follows: 1) Form of business in the form of a business entity or organization; 2) The type of business is fixed and carried out continuously; 3) Working in the territory of the Republic of Indonesia; 4) Have a purpose to gain profit or profit.

In the context of *fiqh*, a business entity is defined by the word *tasarruf* which means management, property management. The business entity has similarities with *syirkah* (cooperative) but there are differences with the word corporation (company). It seems that the concept of a business entity shows similarities to the word *al-mudharabah*. *Al-Mudharabah* in terms of language comes from the root word *dharaba* which means walking, working or demanding. Another word with the same meaning is *al-qard* (Jamal al-Din Muhammad, 1997). In terms of the term *fuhaha* giving the meaning of *mudharabah*, namely the owner of the property / financier (*rab / shohib al-*

mal) gives his property (ra's al-mal) to another person (mudharib) who works for him and trades with the profits divided between them both.

The position of a business entity in a business activity is owned by more than one ownership that agrees to unite/collect capital in one type of business field in trading. With the manager (mudharib) by a person who is agreed upon by the agreement of the capital owners who are selected based on competence in the business field. Then the profits are divided based on the results of operations during the calculation period for the activation performance of the business entity or company.

C. Business Entity Zakat Challenges

Jurisprudence is only understood from a textual perspective, not context. There are problems in managing the zakat of business entities as muzakki from the results of fiqh thinking about zakat in Indonesia. So the challenges of tithing for business entities are as follows: (a) The challenge of zakat amil, it is understood that there are still many amil, especially those who are still traditional, who do not prioritize the accountability dimension. In this context, the amil only prioritizes the spiritual dimension. Amil who puts forward the spiritual dimension rigidly has the opportunity to get sanctions. Useful and useful for the community and can provide benefits for the people and be able to make the mustahik an independent person and not dependent on other parties. However, this does not mean that the amil are given the opportunity to ijtihad and be creative without limits, they still have to try to make breakthroughs in the management of zakat so that it remains in accordance with sharia. (b) Supervision challenges. The supervisory system in all Islamic financial institutions, including zakat management institutions, requires an element of the Sharia Supervisory Board (DPS) in its organizational structure which functions to supervise management management so as not to deviate from sharia rules. (c) Challenge the low awareness of business entities. The lack of awareness of paying zakat from the community is one of the obstacles in managing zakat funds so that they can be efficient in the economy. In fact, zakat is not just a worship that is applied in the month of Ramadan alone, but can also be paid in months other than Ramadan. The basic idea of zakat for the benefit of the people has shifted to being a mere ritual worship which is carried out in conjunction with fasting. The existence of a haul requirement (one year of ownership) indicates that the zakat does not recognize payment in one particular month, but every month zakat can be paid. (d) The challenge of weak sanctions. The low awareness of business entities paying zakat requires that they be given both administrative and criminal sanctions. In theory, the law has the principle of forcing the party who has the legal burden. Ratification of Law No. 23 of 2011 concerning zakat management is a law that has the power and authority to force business entities if they do not pay zakat.

3. Conclusion

Research on the urgency of the zakat fiqh of business entities in Indonesia which is regulated in Law no. 23 of 2011 concerning Zakat Management to maximize state revenue. Meanwhile, the purpose of this study is to describe the modern fiqh theory of how the zakat fiqh of business entities in Indonesia is contained in Law no. 23 of 2011 concerning Zakat Management. The research method used is a normative legal study of Law no. 23 of 2011 concerning Zakat Management. The change of people's zakat to business entities is a radical thought in zakat fiqh in Indonesia.

The change in the meaning of muzaki changes the epistemology of fiqh zakat which has been commonly practiced in people's muzaki to become a legal entity as a legal subject who is charged with tithing. In the theory of fiqh, the individual human being is interpreted as a mukallaf who understands and can carry out the law for the obligations imposed on him. Meanwhile, business entity muzakki can be interpreted as an individual human being as a legal subject who has the ability and ability to carry out the legal burden. A business entity is a legal entity that is attached to a number of rights and obligations that are required to be implemented with the regulations that have been regulated in the legislation. The amendment also has criminal consequences for violations and crimes of Law Number 23 of 2011 concerning the management of zakat.

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