

Whose Authority? Interpreting, Imposing, and Complying with Corporate Zakat Obligations in  
Indonesia

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Abstract

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This study explores the conception and implementation of a new financial obligation for corporations in Indonesia: the payment of corporate zakat (obligatory alms under Islamic law). The key issues in the promulgation of this obligation are: who has the authority to (1) interpret and (2) impose corporate zakat in Indonesia; whether (3) the creation of this corporate obligation is viewed as legitimate by the corporations that become its target, and, thus, have prompted them to comply with it. This study is qualitative research that uses a case study of Islamic commercial banks in Indonesia as the main method of inquiry. Data are collected from multiple sources that include: interviews, archives, and documents.

This study finds, first, the Council of Indonesian Ulama (MUI) has become the leading Islamic authority in Indonesia and it exercises its authority by making its *Fatwā* Commission the single door for *fatwā* production in Indonesia. It thus acts as the reviewer of other ulama's resolutions prior to promulgating them as a *fatwā*. Some resolutions that do not pass the review, therefore, are not promulgated as a *fatwā*, and this has been the case for corporate zakat. Second,

despite the MUI's reluctance to issue a fatwa on corporate zakat in Indonesia, the Zakat Law of 1999 and 2011 proceeded without controversy. The state does not see itself in the position to enforce religious obligations in Indonesia and, hence, adopts the approach of voluntary payments in zakat administration in Indonesia. The government thus confirms the authority of ulama as the interpreters of Islamic law, as well as accepting their product of interpretation (fatwā) as being one of the authoritative sources informing the formulation of statutes in Indonesia. Third, making legal entities subject to zakat could have triggered resistance from the business sector because *sharī'a* states that only natural persons are subject to zakat. Despite this, corporate zakat imposition through the Zakat Law has not triggered controversy within the business sector; many business actors are unfamiliar with the provisions, and the voluntary nature of zakat collection may have offset potential negative reactions. The lack of enforcement by the government may serve to reinforce ignorance towards the concept of corporate zakat. Although the Law defines zakat as a religious duty imposed on individuals and legal entities, its implementation becomes a personal matter and usually depends on the moral and legal consciousness of each zakat payer. From the Islamic banking sector case study, it was found that the reasons why they comply with corporate zakat duty even though they are not legally compelled to are affected by a combination of two or three factors: (1) the type of business (i.e. as a *sharī'a-related* industry that must abide by *sharī'a* moral and legal values as well as must do public good); (2) their attitudes towards the principles of zakat (i.e. an obligation in Islam to purify a Muslim's property, so that the key issue is not whether the subject of zakat is individual or legal entity); (3) the size of the company (i.e. the amount of profit that is deemed to be eligible to pay zakat); and (4) benchmarking against other competitors. A combination of factors number one and two emerges as the most significant driver for Islamic commercial banks in Indonesia that choose to pay corporate zakat.

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## DEDICATION

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## **PROFILE**

Alfitri was born in Padang, West Sumatera, Indonesia. He has lived in many places throughout his study and work. Currently he calls Samarinda, East Kalimantan his home where he works and lives with his wife and two lovely children. At the UIN Sunan Kalijaga, Yogyakarta, Indonesia he earned a Bachelor of Laws degree in *Shari'ah* in 1999 and a Master of Arts in Islamic Law in 2004. In 2006 he earned a Master of Laws at the University of Melbourne, Australia. In 2015 he earned Doctor of Philosophy at the University of Washington in Law/Law, Societies and Justice. He is a tenured lecturer at Samarinda College of Islamic Studies (IAIN Samarinda), East Kalimantan, and was appointed as the Vice Dean of Administration and Finance at its Faculty of Islamic Law (2015-2019).

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## Chapter I

### INTRODUCTION

#### A. Statement of Problem

Efforts to promulgate novel interpretations of Islamic law in Indonesia have been initiated by the state since the 1970s. They started mostly with Islamic family law and then diffused into other aspects of Islamic law, including zakat (alms tax). Responses to these interpretations, especially in the field of family law, have been mainly adversarial.<sup>1</sup> Things were different when the government enacted the Zakat Law in 1999 and made legal persons, including corporations, the subject of zakat obligations in Indonesia. The imposition of corporate zakat went on without controversy in Indonesia.

In Islamic doctrine, zakat is *fard*; which means zakat is a religious duty for which the observant will be rewarded, and the wrongdoer will be punished by God in the hereafter.<sup>2</sup> It is required of individual Muslims that they give a certain amount of their wealth to specific beneficiaries, predominantly the poor. It is like a tax on Muslims' wealth which is imposed as a

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<sup>1</sup> For example, when the government under Soeharto proposed a national marriage law draft without consulting the Ministry of Religious Affairs in 1973, the proposal was strongly opposed by Muslim representatives in the Parliament and angry protesters outside the House. The proposal was accused of being against the Islamic doctrine on marriage directly because it stated that a valid marriage exists: when the statutory requirements were fulfilled (inter alia, parties' consent and the age of majority), conducted in front of an official registrar, and then recorded by the official registrar. The opponents of the proposal maintained that, pursuant to the Shafi'i School of Islamic law which is widely recognized in Indonesia, a marriage is valid simply when the offer (*ijāb*) of the bride's guardian and the acceptance (*qabul*) of the groom are complete and two qualified witnesses are present during the marriage solemnization. The draft was enacted as Law No. 1/1974 on Marriage after the Parliament reached a compromise with the orthodox demands, wherein all provisions contrary to Islamic doctrine were removed. Thus, marriage registrations, for example, are no longer required for valid marriage requirements; if Muslims want their marriage to be legal according to state law, however, they need to perform it before the official registrar and then register it. See Mark Cammack, Lawrence A. Young, and Tim Heaton, "Legislating Social Change in an Islamic Society – Indonesia's Marriage Law," *American Journal of Comparative Law*, vol. 44 (1996): 61-62; Mark E. Cammack, Helen Donovan, and Tim B. Heaton, "Islamic Divorce Law and Practice in Indonesia" in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, eds. R. Michael Feener and Mark E. Cammack. (Cambridge, Massachusetts: Islamic Legal Studies Program, Harvard Law School, 2007), 99-100.

<sup>2</sup>See Th.W. Juynboll, "Fard." *Encyclopaedia of Islam, Second Edition*. Edited by: P. Bearman; , Th. Bianquis; , C.E. Bosworth; , E. van Donzel; and W.P. Heinrichs. Brill, 2010. Brill Online. University of Washington - LIBRARIES. [http://www.brillonline.nl.offcampus.lib.washington.edu/subscriber/entry?entry=islam\\_SIM-2277](http://www.brillonline.nl.offcampus.lib.washington.edu/subscriber/entry?entry=islam_SIM-2277)(accessed20 September 2010).

moral obligation and as one of the five canonical obligations of Muslims. Confirmation of corporate zakat mandatory status was developed late, in the 1980s at the international level by means of *fatwā* (plural: *fatāwā*) i.e. interpretations of *sharī'a* to respond to the contemporary situations.

Requiring legal entities such as companies to pay zakat, however, is a controversial regulatory move. Thus different opinions on its status as an obligation in Islam range from not requiring it, to requiring it with conditions. Theoretically, then, the enforcement of a zakat obligation in Indonesia by the state would raise concerns about both the authority of the government to do so, as well as the legitimacy of the policy itself.

In Islamic history, the Islamic state has enforced the general obligation of zakat by serving as the collector and distributor of the zakat funds. This is because zakat is not only a form of worship in Islam, but also a kind of Islamic state revenue which is integrated into state fiscal policy.<sup>3</sup> Despite Muslims being the majority of the population in Indonesia,<sup>4</sup> Indonesia is not an Islamic state so far as the 1945 Constitution is concerned. Islam is not mentioned as the religion of state and there is no repugnancy clause of the kind that makes *sharī'a* the law of the land and requires state law to conform to *sharī'a*. Thus, there is a tension in authority over law-making in Indonesia between Islam and the modern nation state, since the authority of law-making in Islam is vested in Islamic jurists/ulama, while in the modern nation state it resides in

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<sup>3</sup> See Volker Nienhaus, "Zakat, Taxes, and Public Finance in Islam", in *Islam and the Everyday World: Public Policy Dilemmas*, eds. Sohrab Behdad and Farhad Nomani. (London and New York: Routledge, 2006), 165-192; Monzer Kahf, "Taxation Policy in an Islamic Economy", in *Fiscal Policy and Resource Allocation in Islam*, ed. Ziauddin Ahmed. (Jeddah: International Center for Research in Islamic Economics, King Abdul Aziz University), 130-153.

<sup>4</sup> The 1990 census recorded 156.3 million Muslims in Indonesia, 87.2 per cent of the population and the largest Muslim population of any nation in the world. This was a steady percentage, having been 87.1 per cent in 1980. The 2010 census recorded 207.18 (87.18%). See M. C. Ricklefs, *A History of Modern Indonesia since c. 1200* (Stanford, CA.: Stanford University Press, 2008), 379; "Penduduk Menurut Wilayah dan Agama yang Dianut," *Sensus Penduduk 2010*, <http://sp2010.bps.go.id/index.php/site/tabel?tid=321&wid=0>, accessed 11 April 2015.

the legislative or judicial organs of the state. That tension is heightened in a case such as the imposition of corporate zakat, particularly where the state is the regulator, but the theological status of the obligation has not yet been confirmed by the ulama.

Through the enactment of Indonesian Law No. 38 of 1999 and its replacement, i.e. Law No. 23 of 2011, zakat become an aspect of Islam that is officially administered by the Indonesian state. The law, however, is mainly a procedural framework for Muslims who want to observe this religious duty. It does not impose an obligation on Indonesian Muslims to pay zakat, but is limited to the establishment and supervision of zakat agencies: state-run and non-state organizations.<sup>5</sup> In the case of the corporate zakat duty, the imposition of corporate zakat means it is a duty imposed by Islam, not the state. This can be seen, for example, in Art. 2 of Law No. 38 of 1999 “[e]very citizen of Indonesia who is Muslim and is able [to pay zakat] or a legal person owned by a Muslim has an obligation to pay zakat”. This clause is maintained by Art. 1(2)(5) and 4(3) of Law No. 23 of 2011. The Law No. 38 of 1999 also does not include penalties or other coercive mechanisms to compel payment of zakat, by either natural persons or legal persons.<sup>6</sup> The Law No. 23 of 2011, however, provides sanctions for unauthorized zakat collectors who collect, distribute, or utilize zakat funds: imprisonment and/or monetary fines (art. 38 and art. 41).

Given the debate about the corporate zakat status, the Council of Indonesian Ulama (Majelis Ulama Indonesia; hereinafter MUI) as a forum of cross-Islamic social organizations of Indonesian Islamic scholars finally issued a decision, stating that MUI considers it as an

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<sup>5</sup> See Arskal Salim, “Epilogue. Shari`a in Indonesia’s current transition: An Update”, in *Shari`a and Politics in Modern Indonesia*, eds. Arskal Salim and Azyumardi Azra. (Singapore: ISEAS, 2003), 229.

<sup>6</sup>This is because the Law’s objective is to increase the awareness of Muslims to perform this religious obligation as well as to maximize the potency of zakat in achieving social welfare and social justice in Indonesia by unifying, centralizing and coordinating numerous public and private zakat institutions. See *The Elucidation of Law No. 38/1999 on Zakat Management*; Arskal Salim, *Challenging the Secular State: the Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai’i Press, 2008), 128.

obligation. However, MUI has not yet promulgated that decision as a *fatwā*. The decision was reached during the 2009 *Ijtima Ulama* of the all Indonesian Fatwa Commission of MUI and Islamic organizations (hereinafter *Ijtima Ulama*). The MUI decreed that a company which meets the requirements of a zakat payer is liable to pay zakat, either in its capacity as a legal person (shakhsiyya *i 'tibariyya*) or as an agent (wākil) of the shareholders.<sup>7</sup>

Zakat levied on legal persons, more widely understood as corporate zakat in Indonesia, is a contemporary phenomenon in Islamic countries that adopt *sharī'a* as state law, such as in Malaysia and Saudi Arabia.<sup>8</sup> In classical Islamic jurisprudence, however, the obligation of zakat is imposed on every Muslim who is free, *bāligh* (has reached the age of majority), sane, and owns wealth equal to the minimum threshold of items subject to zakat through a complete unencumbered ownership.<sup>9</sup> The obligation of zakat may arise from business profits owned in common by Muslims, but zakat is due on each Muslim shareholder and it becomes zakat on his/her wealth.<sup>10</sup>

The National Zakat Agency (hereinafter BAZNAS) reported that payments of corporate zakat have been made since as early as the 2000s especially by the Islamic financial sector. The phenomenon of compliance was present in Islamic commercial banks, even before the enactment of the Zakat Law in 1999 and the decision of the *Ijtima Ulama* in 2009. The trend of corporate

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<sup>7</sup> Majelis Ulama Indonesia, "Keputusan," 50-56.

<sup>8</sup> See Donald L. Horowitz, "The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change," *The American Journal of Comparative Law*, vol. 42 (1994); Indonesia Magnificence of Zakat and Pusat Ekonomi dan Busines Syariah FE-UI, "Indonesia," 69; Russell Powell, "Zakat: Drawing Insight for Legal Theory and Economic Policy for Islamic Jurisprudence", *University of Pittsburgh Tax Review*, vol. 7 (2009-2010): 67.

<sup>9</sup> See e.g., Ibn Rushd and al-Jaziri who wrote *fiqh* on four schools of Islamic law (madhhab): Malikiyya, Hanafiyya, Shafi'iyya and Hanabila. According to them, the aforementioned requirements were agreed by all four *madhhab*. Ibn Rushd al-Qurtubi, *Bidayat al-Mujtahid wa Nihayah al-Muqtasid*, (Beirut: Dar Ibn Hazm, (1995), II: 482; Abdurrahman al-Jaziri, *Kitab al-Fiqh 'ala al-Madhahib al-Arba'ah*, (Beirut: Dar Ihya at-Turath al-'Arabi, n.y.), I: 590-591.

<sup>10</sup> See e.g. Yusuf al-Qaradawi, *Fiqh az-Zakah: Dirasah Muqarinah li Ahkamiha wa Falsafatiha fi Daw'i al-Qur'an wa as-Sunnah*, (no publication place: Mu'assasah ar-Risalah, 1977) I: 528-529.

zakat payment is also increasing lately.<sup>11</sup> If this is the case, there are questions surrounding the conception of corporate zakat, both in Islamic law and in Indonesian law, as well as its implementation in Indonesia, that need to be investigated.

## **B. Literature Review**

Research on the corporate zakat duty from the standpoint of zakat as a concept and as a regulatory duty that has been implemented in Indonesia is quite limited. Existing literature on corporate zakat in Indonesia simply covers pros and cons about its status (Ridlo: 2007,<sup>12</sup> Aflah: 2009<sup>13</sup>). No Indonesian scholars have yet explained why and how such a novel interpretation of the zakat obligation in Islam could be incorporated into Indonesian law; what authority the government has to do that; and what the role of ulama might be in the process of incorporating this obligation into Indonesian law.

On its implementation, most research on corporate zakat in Indonesia focuses only on accounting issues.<sup>14</sup> According to Adnan and Bakar, current accounting standards adopted by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Malaysian Accounting Standard Board (MASB) are not compatible with the true concept of zakat in Islam. Both accounting standards have treated zakat assets and zakat paid by business organizations as one of a number of ‘expenses’ in a company income statement. Treating zakat as expenses is against the concept of ownership in Islam by which the obligation of zakat is laid down. The absolute owner of property is Allah; the zakat payer is simply entrusted with the property because of his/her fruitful labor, and in that property there is a right of the poor. Hence,

<sup>11</sup> See Table 5. *Corporate Zakat Payment in Zakat Agencies 2000-2010*, Chapter 5.

<sup>12</sup> Muhammad Taufik Ridlo, *Zakat Profesi dan Perusahaan* (Jakarta: Institut Manajemen Zakat, 2007).

<sup>13</sup> Noor Aflah, *Arsitektur Zakat Indonesia Dilengkapi Kode Etik Amil Zakat Indonesia* (Jakarta: UI-Press, 2009).

<sup>14</sup> Muhammad Akhyar Adnan and Nur Barizah Abu Bakar, “Accounting Treatment for Corporate Zakat: A Critical Review”, *International Journal of Islamic and Middle Eastern Finance and Management*, vol. 2, no. 1 (2009); Eric Nurcahyo Atmahadi, “Analisis Perlakuan Akuntansi Zakat pada Bank Syariah di Indonesia,” Unpublished Undergraduate Final Paper, Faculty of Economics, Universitas Indonesia, 2013.

zakat payments should be treated as a dividend instead of as a non-operating expense because 'dividend' is the closest category of item available in the present financial statement which conveys the purpose of zakat payment, i.e. "to fulfill one's obligation towards the real owner of wealth by delivering the trusted wealth to the designated categories of people".<sup>15</sup> With regards to Indonesia, Adnan and Bakar did not analyze the accounting treatment for corporate zakat prepared by the Indonesian Institute of Accountants because it had not been issued when this article was published.<sup>16</sup> Atmahadi writes that since Indonesia lacks accounting standards for corporate zakat, there are some differences and deficiencies in reporting corporate zakat within Islamic commercial banks.<sup>17</sup>

The objectives of this study go beyond financial accounting for corporate zakat in Indonesia. It seeks to ask who holds Islamic authority in Indonesia, what are the politics of *sharī'a* implementation in a regulatory field such as zakat, and how do those affected view the legitimacy of regulating Islamic doctrine in Indonesia? This study thus seeks to complement and fill in the gaps left by earlier scholarship on the concept and practice of zakat in Indonesia.

On the Islamic authority in Indonesia, Otto needs to be cited here, for he evaluates the process of incorporation of *sharī'a*-based rules in national legal systems of twelve Muslim countries including Indonesia, and, then concludes that the traditional authority of *sharī'a* is superseded by state authority.<sup>18</sup> He observes that Muslim countries have replaced the old structure of *sharī'a* authority with new legal institutions, except in Saudi Arabia. This is because

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<sup>15</sup> Adnan, "Accounting," 40.

<sup>16</sup> *Ibid.*, 34.

<sup>17</sup>

As a result, the amount of zakat paid is estimated to be short by 0.0775% because the calculation is based on the solar year which is longer than lunar year (which is the the standard of time in Islamic law). The potential of corporate zakat funds in Islamic commercial banks are also unverified because they do not follow strictly two available methods of corporate zakat calculation, i.e. the earning before tax method or the net assets method of AAOIFI; Atmahadi, "Analisis," 66-75.

<sup>18</sup>

Jan Michiel Otto, ed., *Sharia Incorporated: A Comparative Overview of the Legal System of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 19-20, 33.

Muslims seem to trust the new legal institutions more than the old structures of *sharī'a* authority in law and governance. Important legal decisions in contemporary Muslim majority states are mostly made by office holders of state instead of ulama.<sup>19</sup> In focusing on the incorporation of family law and criminal law into the Indonesian legal system, Otto seems to generalize his findings to all aspects of Indonesian law, including the development of Islamic business law in Indonesia. In doing so, he fails to analyze the formation of *sharī'a* economic laws outside formal state institutions, which has been conducted primarily by the MUI through the issuance of *fatwā*.

Why have the MUI *fatwā* apparently been so influential in administering Islamic legal traditions within the *sharī'a* economy, despite not holding a monopoly on *fatwā* issuing authority in Indonesia? According to Ichwan, the shift in Indonesian politics from an authoritarian regime to a more democratic state has brought about changes in the MUI. The MUI has begun to play a political role by means of *fatwā*, and especially *tausiyya* (admonition). This has given increased independence to the MUI, which enables it to actively participate in debates about the role of Islam in Indonesia.<sup>20</sup> Subsequent studies including Nasir's and Asnawi's,<sup>21</sup> and Gillespie's<sup>22</sup> also make similar findings, arguing that in the aftermath of Soeharto's new order regime, the MUI has become more independent from state hegemony. With its new greater independence and inclusive orientation, the MUI is now seen to be the most authoritative Muslim institution in Indonesia in the sphere of *fatwā* production.<sup>23</sup>

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<sup>19</sup> Otto, "Sharia," 617, 629.

<sup>20</sup> Moch. Nur Ichwan, "Ulama, State and Politics: Majelis Ulama Indonesia after Soeharto," *Islamic Law and Society*, vol. 12, no. 1 (2005), 57.

<sup>21</sup> Mohamad Abdun Nasir and Asnawi, "The Majelis Ulama's Fatwa on Abortion in Contemporary Indonesia," *The Muslim World*, vol. 101 (2011).

<sup>22</sup> Piers Gillespie, "Current Issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama Fatwa No. 7 Opposing Pluralism, Liberalism, and Secularism," *Journal of Islamic Studies*, vol. 18, no. 2 (2007).

<sup>23</sup> Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975-1998)," *Journal of Islamic Studies*, vol. 15, no. 2 (2004); Syafiq Hasyim, "The Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and Religious Freedom," *Irasec's Discussion Paper #12* (2011).

The aforementioned studies, however, focus on the *fatwā* production in the MUI and its influence on Muslim thought in Indonesia. Ichwan, Hosen,<sup>24</sup> Gillespie, Nasir and Asnawi, Hasyim, and Sirry<sup>25</sup> look at the *fatwā* as a means by which the MUI has maintained its role in a rapidly changing political and religious environment. Gillespie and Olle<sup>26</sup> note the MUI's increasingly conservative views on moral and social issues, and its hostility toward unorthodox minority Islamic groups. The expansion of MUI's influence and authority in the aftermath of Soeharto's demise, however, remained largely unexplained until Lindsey published his study in 2012.

According to Lindsey, it is the regulatory changes since Soeharto's fall in 1998 that have allowed the MUI's formal role in the state system for the administration of Islamic legal traditions in Indonesia to expand, especially in the field of *sharī'a* economy (*mu'āmalāt*). These regulatory changes have intensified the MUI's influence and the legal authority of its *fatwā*. The MUI thus acquired new institutional roles, even monopolies in some cases, when it comes to regulating halal certification, Islamic finance and the hajj pilgrimage. He argues that the MUI has now begun to accrue quasi-legislative powers resembling those enjoyed by state ulama councils and state Muftis elsewhere in Southeast Asia, but not previously available to any modern Indonesian *fatwā-producing* body.<sup>27</sup> Lindsey admits that he did not study how the quasi-legislative power is exercised by the MUI, especially the Fatwa Commission of MUI (hereinafter

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<sup>24</sup> Nadirsyah Hosen, "Fatwa and Politics in Indonesia," in *Sharī'a and Politics in Modern Indonesia*, eds. Arskal Salim and Azyumardi Azra (Singapore: ISEAS, 2003), 168-180.

<sup>25</sup> Mun'im Sirry, "Fatwas and Their Controversy: The Case of the Council of Indonesian Ulama (MUI)," *Journal of Southeast Asian Studies*, vol. 44, no. 1 (2013), 100-117.

<sup>26</sup> John Olle, "The Majelis Ulama Indonesia versus "heresy": The Resurgence of Authoritarian Islam," in *State of Authority: The State in Society in Indonesia*, ed. Gerry van Klinken and Joshua Barker (Ithaca: Cornell Southeast Asia Program, 2009), 95-116.

<sup>27</sup> Tim Lindsey, "Monopolising Islam: The Indonesian Ulama Council and state regulation of the 'Islamic economy'," *Bulletin of Indonesian Economic Studies*, vol. 48, no. 2 (2012).

FC-MUI). This study extends his preliminary findings by examining in detail the policy of the MUI to make the FC-MUI the single door for *fatwā* production in Indonesia.

On the politics of *sharīʿa* implementation in Indonesia, Salim and Azra, for example, conclude their edited collection of essays (mainly on cases of Islamic family law and Religious Courts law) on the state and *sharīʿa* from the perspective of Indonesian legal politics with:

By controlling Islamic law, the Indonesian state has successfully instituted a new 'reception theory' – that the implementation of sharia is officially legitimate only if it has been ratified as national positive law. This is true for some of the contents of sharia that have been put into bureaucratic formulae; and its emergence into legal force is possibly only with the government's political will.<sup>28</sup>

This argument is adopted by Butt in his study on the Constitutional Court decisions on Islamic law in Indonesia (that is, the constitutionality of polygamous marriage restrictions and the constitutionality of limited jurisdiction of the Religious Court in adjudicating Islamic criminal offences). Butt argues that the Court recognizes Islamic law but only in certain narrow fields by excluding public and criminal law and denying the independence of the legal authority of Islam.<sup>29</sup> Although the adoption of new reception theory might be a legitimate way to characterize the politics of the state towards *sharīʿa* implementation in Indonesia, it risks ignoring the more subtle political and religious nuances and influences that have shaped the regulatory outcome in the zakat domain. This is because it tends to disparage (or underestimate) the role of ulama during the drafting and deliberating process of the law.

On the subjects' views of the legitimacy of the state regulating Islamic doctrine, Salim once concluded that zakat legislation would create legal dissonance. This is because by making

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<sup>28</sup> Arskal Salim and Azyumardi Azra, "Introduction: The State and Shari`a in the Perspective of Indonesian Legal Politics," in *Shari`a and Politics in Modern Indonesia*, eds. Arskal Salim and Azyumardi Azra (Singapore: ISEAS, 2003), 13.

<sup>29</sup> Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Pacific Rim Law and Policy Journal*, vol. 19, no. 2 (2010), 285; Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis*, (Oxford and Portland: Hart Publishing, 2012), 248.

zakat centrally administered by the government and obligatory through a modern legal system, creates an ambiguity, since an individual Muslim would not be permitted to subscribe to an interpretation that does not comply with the state's standard.<sup>30</sup> In another study, Salim writes that the enactment of Law No. 38/1999 on zakat management has changed the practice of zakat in Indonesia structurally and institutionally. There are two possible outcomes of the shift, namely zakat collection will become compulsory and centralized, or zakat will become an intricate part of taxation law thus losing its vertical dimension. According to Salim, the shift in zakat practice is more likely to result in the second outcome. Salim's dichotomous analysis of the impacts of zakat legislation falls short, for he did not study the perception of zakat payers towards the state's interventions in zakat management in Indonesia, which is an important dimension of the new regulatory system that needs to be studied before coming to such a conclusion.

This study considers the politics of *sharī'a* implementation in light of data gathered through interviews with informants, both drafters and ulama, involved in drafting and deliberating the Zakat Laws as well as the archives of their minutes meeting. Based on these interviews and on primary documents, this study probes the more subtle political and religious nuances and influences that have shaped the regulatory outcomes in the zakat domain. This yields an alternative explanation of the politics of state policy on *sharī'a* implementation in Indonesia which has previously been depicted as no more than the re-adoption of the Dutch colonial policy of reception theory. This study goes beyond the conception of the corporate zakat obligation in Islamic law and state law in Indonesia; it also examines empirically the phenomena of subjects' compliance with corporate zakat, despite its ambiguous legal and theological status.

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<sup>30</sup> Salim, "Challenging," 4.

### C. Research Questions

From the statement of problems and academic gaps created by previous studies, this research project proposes the following research questions:

1. Who has the authority to interpret and promulgate Islamic law in Indonesia?
2. How is corporate zakat understood and endorsed by the Council of Indonesian Ulama (MUI) and what does this say about Islamic authority in Indonesia?
3. How did the legislative process of imposing corporate zakat proceed in Indonesia and what does this reveal about the politics of state policy on *sharī'a* implementation in Indonesia?
4. How does the corporate community in Indonesia view the legitimacy of corporate zakat – which ethical, religious or secular values do corporate payers identify with this newly mandated practice?

### D. Theoretical Framework

#### 1. On *Sharī'a*<sup>31</sup>

The concept of *sharī'a* is the key to understand compliance with a religious duty in Islam. *Sharī'a* is a whole body of Islamic doctrine, as well as law as it understood as a modern concept, which is originally derived from the Qur'ān and *Sunna* (the examples of the Prophet Muhammad as preserved in authenticated reports about him and his disciples. These reports are called Hadīth).<sup>32</sup> The concept of *sharī'a* understood in this way implants a consciousness in Muslims

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<sup>31</sup> This section owes much to Prof. Frank E. Vogel's manuscript presented in the Ziadeh Lecture 2008, especially about the five characteristic of sharia. See Frank E. Vogel, "Shari'a as Law and Legal System: Changing Perceptions", *The 6th Farhat J. Ziadeh Distinguished Lecture in Arab and Islamic Studies, The Department of Near Eastern Languages and Civilization at the University of Washington* (May 6, 2008): 5-21.

<sup>32</sup>*Ibid*, 5; see also Norman Calder, "SHarīa." *Encyclopaedia of Islam, Second Edition*. Edited by: P. Bearman; , Th\_ Bianquis; , C.E. Bosworth; , E. van Donzel; and W.P. Heinrichs. Brill, 2010. Brill Online. University of Washington -LIBRARIES.20September2010  
<[http://www.brillonline.nl.offcampus.lib.washington.edu/subscriber/entry?entry=islam\\_COM-1040](http://www.brillonline.nl.offcampus.lib.washington.edu/subscriber/entry?entry=islam_COM-1040)>.

that God has established a body of rules and recommendations on which human salvation depends, as long as believers are able to identify and obey them.<sup>33</sup> According to Vogel, the understanding of *sharīʿa* as both religion and law was preserved in the Muslim world at least until a rupture happened in the structure of the *sharīʿa* system. This is when nearly all of the Muslim world was colonized in the 19<sup>th</sup> Century and the broad sphere of daily life that used to be governed by the *sharīʿa* came to be regulated by law coming from outside the Muslim world.<sup>34</sup> Vogel argues that there are five attributes of *sharīʿa* that enabled it in the pre-modern period to manage the achievement of being both a core religious doctrine as well as positive law and a legal system. Four of them provide a relevant framework for understanding the conception and implementation of the corporate zakat duty in Indonesian law, as well as for comprehending the phenomena of voluntary observance of corporate zakat duty by some companies. They are:

*First, sharīʿa* is self-executing, meaning that *sharīʿa* “applies of its own force, addressed directly, without an intermediary, to every believing individual ... [so when a believing Muslim reads a command about paying zakat in Qur’an and Hādith,] the believing Muslim feels bound by that command as if it were addressed directly to him or her.”<sup>35</sup>

*Second, sharīʿa* is transitive-delegated, meaning that *sharīʿa* is “equally a law, something that the one to who it is addressed must enforce not only on himself but also on all others over whom he wields legitimate power or influence, often by force.”<sup>36</sup> This trait of *sharīʿa* may help us to understand why for some Muslims religion cannot be separated from the state, and thus they demand that the state enforce *sharīʿa*, including in the matter of zakat.

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<sup>33</sup> Norman Calder, "SHarīʿa"; Lombardi, "State," 12.

<sup>34</sup> Vogel, "Shari'a," 6.

<sup>35</sup>

*Ibid*, 8.

<sup>36</sup>

*Ibid*, 9.

*Third, sharī‘a* is textual, meaning that to know what God’s law is on a particular matter “is an exercise not of politic, collective deliberation, or again, of an institution, but of sheer textualist interpretation – an effort to ascertain what is the most likely meaning of the revealed texts.”<sup>37</sup> This trait of *sharī‘a* may help us to understand why a state’s action in promulgating Islamic law without the involvement of Islamic jurists/ulama during the process is challenged because a legislature is not trained to perform the *ijtihād* (discernment of textual meaning), but the Islamic jurist/ulama are.

*Fourth, sharī‘a* has a body of thought and practice that engages the state which is called *siyāsa shar‘iyya* (or governance by the state according to the *sharī‘a*).<sup>38</sup>

## 2. On Islamic Authority

What sort of authority lies at the core of Islamic legal tradition? According to Hallaq, it is not moral, charismatic or even divine authority despite the supremely religious nature of Islamic law.<sup>39</sup> Yet there is a widespread belief that Islamic law is the law of God, and obedience to the law is backed by God’s authority. The answer relates to the hermeneutic process of God’s words becoming law. The Qur’ān as God’s word did not reveal law as such, but contains only textual signs or textual indications of God’s ideas on specific actions. These textual signs or textual indications obtain their legal significance only after their meanings are understood. Thus, if Islamic law says one cannot do X and Y actions, the authority backing the very stipulations of X and Y are not God’s alone, if at all, because He never revealed these provisions.<sup>40</sup> It is the human

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<sup>37</sup> *Ibid.*, 10.

<sup>38</sup> *Ibid.*, 15.

<sup>39</sup>Wael B. Hallaq, “Juristic Authority vs. State Power: The Legal Crises of Modern Islam,” *Journal of Law and Religion*, vol. 19 (2003-2004): 245.

<sup>40</sup>Hallaq seems to neglect the fact that there are few provisions in the Qur’ān that contain “instant” legal significance because the text has univocal language. Jurists have placed rulings derived directly from such text of the Qur’ān at the highest level because it is certain with respect to authenticity (all texts of the Qur’ān are

agents who are responsible for the provision because they interpreted the textual signs or textual indications from God. These human agents are called Islamic jurists, and their efforts to derive a rule of divine law from the revealed texts, the Qur'ān and the Hadīth, are called *ijtihād*. Islamic law, therefore, is characterized as jurists' law not only because the construction of Islamic law, (i.e. its methodology and constitutive elements) are carried out by Islamic jurists, but also because they have sustained it for over a millennium.<sup>41</sup>

Religious authority is insufficient to explain the authority owned by Islamic jurists because this becomes problematic when we consider Islamic theologians and mystics. Neither of these types of religious scholars attained, nor even aspired to, the status of carriers of legal authority -- despite the religious authority that they enjoyed. It was the jurists who gained this status and this was made possible because of their epistemic authority, i.e. the authority acquired through knowing the law and how it was to be derived, interpreted, and applied from its source: God's textual signs or indications.<sup>42</sup> This epistemic authority worked through the entire legal hierarchy of Islamic jurists: from the founders of the major Islamic legal schools (Hanafi, Maliki, Shafi'i, and Hanbali)<sup>43</sup> to *muqallid* or those who practice *taqlīd*, i.e. following, reinterpreting, and applying the legal doctrine that had been developed by the school eponyms.<sup>44</sup>

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indubitably regarded authentic) and meaning. See Clark Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari'a into Egyptian Constitutional Law* (Leiden; Boston: Brill, 2006), 24-25.

<sup>41</sup>Hallaq, "Juristic," 245.

<sup>42</sup>Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 1-23.

<sup>43</sup>The process of *madhhab* emergence and development started after the early formative period of Islamic law (around 8<sup>th</sup> AD) wherein the jurists associated their legal thoughts based on region. Regions coloured the legal thought because their proximity to the center of reference, the Prophet in Madina. This would affect the distribution of information. As a result there was a region in which peculiar use of reasoning emerged instead of the Prophet's tradition, given its distance from Madina. There were three distinguished guilds that constituted influential Islamic legal doctrine during this period, i.e. Kufah, Madina, and Syria. Later on around 8<sup>th</sup> - 9<sup>th</sup> AD, the *madhhab* were developed more through personal jurist names, given the nature of their *ijtihād* which derived a rule through direct confrontation with the revealed texts. This was the period when *madhhab* flourished into hundreds in number. Next development in 9<sup>th</sup> AD – 10<sup>th</sup> AD, these personal *madhāhib* crystallized into four schools of Islamic law (if we consider only Sunnī legal tradition) as a result of recognition acquired through its followers, the pupils, who

Islamic jurists, then, serve two functions: as a source of legal authority and as agents of maintaining continuity and mediating change in Islamic law. These two functions were mainly assumed by juris-consults (*mufī*) and author-jurists in the history of Islamic law. A juris-consult answers all legal questions addressed to him from all walks of Muslim life. These questions often came from a lawsuit brought to him by the judge (*qādi*) or one of the litigating parties. The *fatwā* seekers in a lawsuit respected and were influenced by what the juris-consult said on the matter in question.<sup>45</sup>

An author-jurist composed Islamic legal treatises which were consulted by a judge when adjudicating a case. The author-jurist works became a standard reference for judges because they contained the authoritative doctrines of the school of Islamic law followed by that judge. In addition to his own speculative interpretation of the revealed texts, an author-jurist also primarily used the juris-consults' *fatwā* in constructing his materials.<sup>46</sup> The products of an author-jurist's work varied depending on the level of his *ijtihād*. They range from the handbooks of Islamic guilds developed by the school eponyms (or in some cases by their pupils), to *fatwā* collections, to commentaries and super-commentaries and *mukhtāsar* (abridgement of rulings of a guild that must be followed by lower rank *mujtāhid* within the school, as a matter of authoritative

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preserved, defended and developed their master's doctrine. See e.g. George Makdisi, "The Significance of the Sunni School of Law in Islamic Religious History," *International Journal of Middle East Studies*, Vol. 10 (1979), 2-9; Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 28-33, 58-59.

<sup>44</sup>Hallaq, "Authority," 1-23; on appreciation of *taqlīd* and its importance for achieving legal uniformity within a *madhhab* by regulating actions of juris-consults and *qādi* who sat at the bottom of legal hierarchy, see Mohammad Fadel, "The Social Logic of Taqlid and the Rise of the Mukhtasar," *Islamic Law and Society*, Vol. 3. No.2 (1996), 193-233.

<sup>45</sup>David S. Powers writes on four examples of how *qādi* sought fatwas from juris-consults because they were confused by the facts of cases (given different claims provided by litigants) and unsure of how to proceed in "Four Cases Relating to Women and Divorce in Al-Andalus and the Maghrib, 1100-1500," in Muhammad Khalid Masud, Rudolph Peters and David S. Powers (eds.), *Dispensing Justice in Islam: Qadis and Their Judgements* (Leiden; Boston: Brill, 2006), 383-409; Hallaq, "Juristic," 248.

<sup>46</sup>Hallaq, "Authority," 136-235.

precedent).<sup>47</sup> These law-manuals and extensive compendia of the law, therefore, were also used by the juris-consults in preparing their *fatwā*, especially if they lived after the era of school eponyms.<sup>48</sup> The combination of the juris-consults and the author-jurists' epistemic work has authorized Islamic law and legitimized it since its formative stage in the 7<sup>th</sup> - 19<sup>th</sup> centuries.<sup>49</sup>

In the modern period, the established mechanism for the management of Islamic jurisprudence has broken down across Muslim world. This is due to western colonialization of Muslim countries and the replacement of *sharī'a* with western codes, except in the field of family law.<sup>50</sup> Classically trained jurists are no longer considered to be the only authoritative interpreters of *sharī'a* and their *madhhab*'s (schools of jurisprudence) doctrines. Traditional methods are also questioned in the modern world. Thus, the agreement about of the authority of Islamic jurists collapses.<sup>51</sup> This can be seen when Muslim countries gain their independence and want to Islamize their laws. Instead of promulgating the *fiqh* as the law of the land, the state gives the authority to its organs which often do not apply Islamic legal theories when drafting the law.<sup>52</sup> According to some Islamic legal historians, unlike the traditional Islamic jurists, modernist jurists did not strictly follow the legal methodology of *sharī'a* (the four sources of law: Qur'an, Hādith, the analogical deduction (*qiyās*) and the consensus (*ijmā'*)). Instead, eclectic devices (*takhayyur* and *taḥfīq*) and extensive use of the utility concept or public interest (*maṣlaḥa*) were

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<sup>47</sup> See about the role of *mukhtāsar* to limit the legal indeterminacy in Islamic law by formalizing the legal doctrines in particular *madhhab* in Fadel, "Social", 215-219.

<sup>48</sup>Hallaq, "Authority," 136-235.

<sup>49</sup>Hallaq, "Juristic," 248.

<sup>50</sup>The state seemed to be concerned with its authority to regulate an area of law which is considered as "partaking most closely of the very warp and woof" of Islam, given its detailed provisions in Qur'an and meticulous doctrines in the jurists' work; see Norman Anderson, *Law Reform in the Muslim World* (London: Athlone Press, 1976), 17, 38; see also Abdullahi A. An-Na'im, *Islamic Family Law in a Changing World: a Global Resource Book* (London: Zed Books, 2002), 9.

<sup>51</sup>

Wael B Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997) 209-54.

<sup>52</sup>For example, by using criminal legislative methods, an act permissible according to *sharī'a* will be sanctioned by the reformist provision to deter potential violators. See Layish, "Transformation," 92;

dominant in the modernists' methods. These eclectic devices arbitrarily chose legal rules from a variety of sources.<sup>53</sup>

The Islamic world therefore experienced a rupture of Islamic authority because there are traditional Islamic jurists who hold the authority in interpreting *sharī'a* and the state which holds the authority to promulgate Islamic law (legislation/codification or *qānun*). As a matter of historical fact, the 'rupture' started well before the 20<sup>th</sup> century. This conflict of authority is partly solved with *siyāsa shar'īyya* where the ulama and the government create and share the vision of Islamic law.<sup>54</sup>

### 3. On *Siyāsa Shar'īyya*

*Siyāsa* is an Arabic word which literally means wisdom in the management of public affairs. *Siyāsa* includes the promulgation of rules, the selection of rules of decision for courts, and the decision to enforce a particular legal norm by a ruler. A ruler's policies and governmental actions (his *siyāsa*) might naturally be based on non-Islamic considerations.

*Shar'īyya* is the adjective of the Arabic word 'sharī'a'; and it depicts something that is related to or consistent with the *sharī'a*.<sup>55</sup> *Siyāsa shar'īyya* thus means statecraft or governance according

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<sup>53</sup> Norman Anderson extensively explained the modernist law reform methods and classified them into five expedients. They are: (1) the procedural expedient: "the right of the Ruler to define and confine the jurisdiction of his courts" (*takhsīs al-qadā'*), for example: restriction on the Sharia courts to questions of only Islamic personal law and gifts and *waqf*; (2) the eclectic expedient (*takhayyur*); (3) the expedient of re-interpretation, i.e. maintaining the right of independent *ijtihād* by direct encounter with Qur'an and Hādīth and bypassing *ijmā'*; (4) the expedient of administrative orders, i.e. a legislative enactment which find its justification not in the Sharia provision per se rather in the condition that it is regarded as beneficial and 'not contrary to the *sharī'a*'; (5) the expedient of reform by judicial decisions, especially in Muslim countries formerly under British rule; see Anderson, "Law," 42-85. See e.g. Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge; New York: Cambridge University Press, 1997), 214; Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1978), 203-207, 221

<sup>54</sup> Clark B. Lombardi and R. Michael Feener, "Why Study Islamic Legal Professionals?" *Pacific Rim Law & Policy Journal*, vol. 21, no. 1 (2012), 9.

<sup>55</sup> See C.E. Bosworth, "Siyasa: (1) In the sense of statecraft, the management of affairs of state and, eventually, that of politics and political policy," in Bosworth, C.E.; Netton, I.R.; Vogel, F.E. "Siyāsa." *Encyclopaedia of Islam, Second Edition*. Edited by: P. Bearman; , Th. Bianquis; , C.E. Bosworth; , E. van Donzel; and W.P. Heinrichs. Brill, 2011. BrillOnline.UniversityofWashington-LIBRARIES, [http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-1096](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-1096) (accessed 26 January 2011); Frank E. Vogel,

to *sharī'a*, either in legislation or adjudication.<sup>56</sup> Ibn Taymiyah (1263-1328), the pioneer of the theory, stated that the theory of *siyāsa shar'īyya* can be used to justify the enactment and enforcement of statute by the state as long as the contents of statute do not go beyond limits set by ulama/Islamic jurists and they promote the public welfare.<sup>57</sup> According to Vogel, Ibn Taymiyah's doctrine on *siyāsa shar'īyya* is logical and pragmatic in terms of the sovereignty of God versus the sovereignty of state in law making because by means of *siyāsa shar'īyya*:

“... the excesses of rulers may be curtailed and *sharī'a* legitimacy extended to actual states. In effect, his doctrine [*siyāsa shar'īyya*] offers rulers *sharī'a* legitimation in return for a greater share of power for `ulama; it offers `ulama greater *sharī'a* efficacy at the cost of their being implicated further in affairs of state.<sup>58</sup>

There are two important actions in *siyāsa shar'īyya*. First, it is the identification of universal rulings and goals of the law through textual analysis of major sources of *sharī'a* (the Qur'ān, Hadīth literature and rules ratified by *ijmā'*). The process of identification is conducted by ulama by means of methods called *ijtihad* (the discretionary exercise of a thoughtful, weighed and rational opinion of an Islamic jurist towards the major sources of *sharī'a*), or *taqlīd* (an Islamic jurist following precedents of the *Sunnī* schools of law).<sup>59</sup> This step is sometimes followed by deciding a particular ruling; in this case whether a legal person is obliged to pay zakat, which would promote certain social results.<sup>60</sup> Second, it is the promulgation of this particular ruling of zakat into state law and regulation, if the state judges that this particular ruling would advance the aggregate public welfare. Or, the state, through its legislature or formal

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“Siyasa (3) In the sense of *siyāsa shar'īyya*,” in Bosworth, C.E.; Netton, I.R.; Vogel, F.E. “Siyāsa.” *Encyclopaedia of Islam, Second Edition*. Edited by: P. Bearman; , Th. Bianquis; , C.E. Bosworth; , E. van Donzel; and W.P. Heinrichs. Brill, 2011. BrillOnline. University of Washington-LIBRARIES.  
[http://www.brillonline.nl/subscriber/entry?entry=islam\\_COM-1096](http://www.brillonline.nl/subscriber/entry?entry=islam_COM-1096) (26 January 2011); Lombardi, “State,” 49.

<sup>56</sup>Lombardi, “State,” 49.

<sup>57</sup>As quoted by Lombardi, “State,” 52-53.

<sup>58</sup>Vogel, “Siyasa”.

<sup>59</sup>See this new understanding towards the concept of *taqlīd* in Muhammad Fadel, “The Social Logic of Taqlid and the Rise of Mukhtasar”, *Islamic Law and Society*, vol. 3, no. 2 (1996): 193-233.

<sup>60</sup>See Lombardi, “State,” 52.

institutions that have been given a mandate, reasons out new rules of zakat that would advance the aggregate public welfare.<sup>61</sup> Public welfare in Islamic jurisprudence is known as the concept of *maṣlaḥa*. The *maṣlaḥa* constitutes the core objective of the *sharīʿa* being revealed in Islam (*maqāsid al-sharīʿa*).<sup>62</sup> There are five *maqāsid al-sharīʿa*, namely to safeguard the faith of people, their lives, their intellect, their posterity and their wealth.<sup>63</sup> All of these five core objectives are intended to promote the welfare of human beings.<sup>64</sup>

Thus, theoretically, *siyāsa sharʿiyya* requires direct cooperation between the ulama and the ruler in order to ensure that the statute fulfills the requirements of *sharīʿa* legitimacy as well public affairs legitimacy. Practically, however, the ulama's work to ensure *sharīʿa* legitimacy can be simply a negative check on the statutes, as long as the ulama accepts that the statutes comprise the Islamic contents.<sup>65</sup>

Some Muslim countries institutionalize *siyāsa sharʿiyya*, such as Grand Muftī in Egypt (Dār al-*Iftā*) and the permanent Committee for Islamic research and *fatwā* in Saudi Arabia.<sup>66</sup> Muslim countries which do not institutionalize *siyāsa sharʿiyya* or have no clause stipulating 'sharīʿa as a/the source of law' in their Constitution are deemed to have replaced the old structure of *sharīʿa* authority with new legal institutions. This is because Muslims trust the new legal institutions more than the old structures of *sharīʿa* authority in law and governance. Important legal decisions today are mostly made by office holders of state instead of ulama.<sup>67</sup> Scrutiny of the legislative and regulatory process in particular Islamic countries, however, may

<sup>61</sup> Cf. *Ibid*, 52-53.

<sup>62</sup> See Ash-Shatibi, *al-Muwafaqat fi Usul asy-Syari`ah* (Beirut: Dar al-Kutub al-`Ilmiyyah, t. t.) II : 6.

<sup>63</sup> See Al-Ghazali, *al-Mustasfa* (Cairo: al-Maktabah at-Tijariyyah al-Kubra, 1937) I: 139-140.

<sup>64</sup> *Ibid*.

<sup>65</sup> *Ibid*, 53.

<sup>66</sup> See Nadirsyah Hosen, "Hilal and Halal: How to Manage Islamic Pluralism in Indonesia," *Asian Journal of Comparative Law*, vol. 7, no. 1 (2012), 4.

<sup>67</sup> See e.g. Jan Michiel Otto, ed., *Sharia Incorporated: A Comparative Overview of the Legal System of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 617, 629.

reveal a different conclusion, especially on the question of how the ulama's opinions (fatwā and admonitions) are taken into account in formulating public policy, such as in the case of the MUI in Indonesia.

#### 4. *On the Concept of Zakat*

Zakat (zakāh) is a noun in Arabic derived from the verb 'zakā' meaning to purify.

Terminologically, zakat signifies an obligation of Muslims to give a specific amount from their wealth – with certain conditions and requirements – to the specific beneficiaries.<sup>68</sup> By giving up a portion of their wealth, Muslims are regarded as having purified their wealth, as well as themselves, from the selfishness and greed which restrains them from alleviating others' sufferings. Likewise, zakat received by the beneficiaries is considered to sanctify them from jealousy and hatred of the rich.<sup>69</sup> Zakat is regarded as the major means of income redistribution in Islam because it tries to solve the problem of poverty, and punish those who hoard and monopolize and try to corner markets.<sup>70</sup> It is believed that under the ideal scheme (wide observance of zakat) the rich do not become poor, but the poor cease to be poor because, as Cragg writes, it "... stimulates popular purchasing power and thus quickens the market, sharpens production, boosts profits, and so finally rewards the payer of zakat and gives him a still greater income out of which to disburse again."<sup>71</sup> In this regard, zakat is deemed to be one of the Islamic cases against the evil aspects of both capitalism and communism, because zakat changes the main contradiction in capitalism to a 'happy spiral' of redistribution, and it responds to the disaffirmation of communism through the right to possess, with charitable obligation.<sup>72</sup>

<sup>68</sup> Yusuf al-Qaradawi, *Fiqh al-Zakah*, 24<sup>th</sup> ed. (Beirut: Mu`assasat al-Risalah, 1997), 37-38.

<sup>69</sup>*Ibid.*, 37; Jonathon Benthall, "Financial Worship: The Quranic Injunction to Almsgiving," *Journal of the Royal Anthropological Institute* (N.S.), vol. 5 (1999): 29.

<sup>70</sup>

Kenneth Cragg, *The Call of the Minaret* (New York: Oxford University Press, 1956), 154.

<sup>71</sup>*Ibid.*; see also Benthall, "Financial," 35.

<sup>72</sup>Cragg, "The Call," 154; Benthall, "Financial", 35.

There are two types of *zakat* in Islam i.e. *zakāt al-fiṭr* and *zakāt al-māl*. *Zakāt al-fiṭr* is a flat rate imposed on every Muslim – except those who are absolutely destitute – in the amount of a little above 2 kilograms of his/her staple food, or its equivalent monetary value due on the end of the fasting month (Ramaḍān).<sup>73</sup> Every Muslim – including poor Muslims as long as they have left over food for the day after Ramadan – has to pay *zakāt al-fiṭr* for himself/herself and their dependents with the purpose of completing their fasting. In its practice from early Islam to the modern era, *zakāt al-fiṭr* is usually paid directly to the poor without intervention from the state.<sup>74</sup>

Unlike *zakāt al-fiṭr*, *zakāt al-māl* is only levied upon Muslims whose wealth exceeds a threshold (*niṣāb*) with the rate ranging over 2.5%, 5% or 10%, contingent on items subject to *zakat*. The *zakāt al-māl*, therefore, is like a wealth tax on Muslims who possess certain liable assets such as gold, silver, cash, livestock, or agricultural products. Before calculating the *niṣāb*, basic needs of a *zakat* payer and his/her family are taken into account as well as financial obligations and due debts should be paid first. Further, the possession of wealth ought to exceed one year (according to the lunar calendar) and *niṣāb* is counted at the end of the year following acquisition.<sup>75</sup>

The criteria of *niṣāb* are based on several Hadīth which set a certain minimum amount of items that are subject to *zakat*; and they exempt Muslims who own less than these minimum requirements from the liability of the *zakat* payment.<sup>76</sup> The *niṣāb* differs from one item to

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<sup>73</sup> Muhammad Nejatullah Siddiqi, "The Role of the Voluntary Sector in Islam: A Conceptual Framework," in *Islam and the Economic Development of Southeast Asia: The Islamic Voluntary Sector in Southeast Asia*, ed. Mohammad Ariff (Singapore: Institute of Southeast Asian Studies, 1991), 17-18.

<sup>74</sup>See Alfitri, "The Law of *Zakat* Management and Non-Governmental *Zakat* Collectors in Indonesia," *International Journal of Not-for-Profit Law*, vol. 8, no. 2 (January 2006): 56.

<sup>75</sup>See Al-Qaradawi, "Fiqh," 917, 924, 930, 932; Monzer Kahf, "Zakah," *Kahf.net: Papers*, <http://monzer.kahf.com/paper/english/zakah.pdf> (accessed April 27, 2010), pp. 3-4; Alfitri, "The Law," 56. For more details on items subject to *zakat*, their *nisab* (threshold) and rates see Al-Qaradawi, "Fiqh," 121-533.

<sup>76</sup>See, eg. Al-Qaradawi, "Fiqh," 121-533; Abdullah Ibn Muhammad ath-Thayyar, *az-Zakah wa Tatbiqatuha al-Mu'asirah*, 2<sup>nd</sup> ed (Riyadh: Maktabat al-Tawbah, 1993), 70-71.

another depending on the category to which the item belongs. Based on the information from the Qur'ān and Hadīth which were then reasoned out by ulama, categories of items as well as their *niṣāb* and rates can be summarized as follows:<sup>77</sup>

**Table 1. Traditional Items Subject to Zakat, *Niṣāb* and Rate**

NO	CATEGORY	NIṢĀB	RATE
1	Main types of fortune which are recognized in the Prophet's time: a. livestock 1) camels 2) cows 3) sheep  b. inventory of trade  c. gold  d. silver	a. 1) 5 camels a. 2) 30 cows a. 3) 40 sheep  b. an amount equal in value to 85 gram gold  c. 20 Dinar of gold (a golden currency unit equals 4.25 gram)  d. 200 Dirham of silver (a silver currency-cum-weight unit equals 2.975 gram)	a. 1) 1 goat age $\geq 2$ ; or 1 sheep age $\geq 1$ a. 2) 1 cow age $> 1$ but $< 2$ a. 3) 1 goat age 2 or 1 sheep age 1  b. 2.5%  c. 2.5%  d. 2.5%
2	Savings of income which are yielded from aforementioned items of wealth after one fiscal year (lunar calendar)	An amount equal in value to 200 Dirham of silver or 20 Dinar of gold	2.5%
3	Output of Agriculture	5 <i>Wasq</i> (Arabic measurement for grain volume which takes 653 kg or 750 kg in other literatures)	- 10% for output irrigated by rivers canals or rain - 5% for output irrigated from well water which is extracted by human or animal power 20%
4	Found treasures and minerals extracted from the ground	An amount equal in value to 200 Dirham of silver or 20 Dinar of gold	

<sup>77</sup> See Al-Qaradawi, "Fiqh," 121-533; Ath-Thayyar, "az-Zakah," 77-101; Monzer Kahf, "The Principle of Socio-Economic Justice in the Contemporary Fiqh of Zakah", *Kahf.net: Papers*, [http://monzer.kahf.com/papers/english/socioeconomic\\_justice.pdf](http://monzer.kahf.com/papers/english/socioeconomic_justice.pdf) (accessed July 23, 2011), pp. 17-18.

This table mainly depicts the mainstream thinking about zakat in Islam and provides only a few details, especially on livestock items. How the existing concept of zakat may cover enormous changes in the pattern or structure of wealth and income within the contemporary economy. This issue becomes relevant when zakat law and regulation in the modern Islamic world are examined as to what extent the new concepts such as corporate zakat might be accepted.

Questions of change over time are also relevant for the concept of zakat beneficiaries. According to the classical formula, the proceeds of zakat must be distributed to one of the eight beneficiary groups as determined by the Qur'ān. These groups are: 1) the poor (al-fuqārā); 2) the needy or very poor (al-masākīn); 3) the people who are appointed to administer zakat (al-ʿāmil); 4) the people who need to be helped because they are newly converted or about to convert to Islam; 5) the captives (or, some say, the slaves); 6) debtors; 7) those who are in the way of God; 8) travelers.<sup>78</sup> When zakat become a part of a modern fiscal system, can zakat funds be utilized beyond these eight beneficiary groups?

Zakat as one topic in Islamic jurisprudence (fiqh) originates as a concept from two primary sources of *sharīʿa*: the Qur'ān and Hadīth. The verses of Qur'ān related to zakat only give general information about it, among other things: the obligation of zakat and its purpose; the virtue of zakat in the social justice mechanism; and to whom zakat is distributed. According to Al-Qaradawi (b. 1926), the style of the Qur'ān which conveys a concept in general, is in line with its nature as the basic source of Islam. Logically, if something which is basic was stipulated

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<sup>78</sup> Qur'an, chapter IX: 60; Jonathan Benthall, "Financial," 30-31.

in every detail, there would be many contradictions in its application to reality due to the changes in communities.<sup>79</sup>

The Prophet Muhammad functioned as the clarifier and exemplar of the Qur'ān. With his given authority, the Prophet explained which items were subject to zakat, specified their *niṣāb* and rates, and gave further details on the condition of zakat payers and zakat recipients as well. These Hadīth can be found in many places in Islamic jurisprudence literature in the chapters concerning zakat. Hadīth as the second source of Islamic law is limited, as Muhammad passed away fifteen centuries ago. Meanwhile, Islam continues to live and to spread in the world and the text of the Hadīth is still influential. This situation often leads to enormous questions when the concept of zakat in the Qur'ān and Hadīth are juxtaposed to new situations in the modern era. For instance, the Prophet only mentioned livestock or agriculture outputs, which are familiar in the Middle East as subject to zakat; items such as camels, cows, sheep, dates, wheat and barley.<sup>80</sup> What happens with other livestock or agriculture products beyond those items which are bred and cultivated nowadays? Likewise, savings at the time of the Prophet were based on the outcome of sales of livestock, agriculture or trade. What about contemporary occupations such as doctors, lawyers or corporate managers which yield enormous incomes, then produce great savings? Are their incomes not subject to zakat?

Problems of the gap between the primary sources of *sharī'a* and contemporary realities are solved by the concept of *ijtihād* in the epistemology of Islamic law. As the secondary source of Islamic law, *ijtihād* signifies the discretionary exercise of a thoughtful, weighed and rational

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<sup>79</sup> See Al-Qaradawi, "Fiqh," 69.

<sup>80</sup> See, eg, Ath-Thayyar, "al-Zakah," 97.

opinion of an Islamic jurist.<sup>81</sup> By means of *ijtihad*, ulama have adapted the concept of zakat to circumstances where they live – to some extent they also formulate concepts of zakat which cover changes in the future – and this adaptation derives from the Qur’ān and Hadīth because the new concept of zakat is deduced from them.

As a result, new forms of wealth and income are included in the items subject to zakat. They are personal debts, jewelry, horses and other domestic animals, herds sustained on fodder, honey, and other animal products, as well as agriculture products which are not mentioned in the Hadīth.<sup>82</sup> The reason underlying this is growth. Items such as horses, herds sustained on fodder and other animal products actually will grow and increase; while other items such as personal debts or jewelry potentially grow if they are exchanged. Some items, for example agricultural products, are a result of a growth process.<sup>83</sup> Further, they are kept not only for personal use, but also for producing benefit. Thus, if savings from this new wealth or income have reached the minimum requirement of items subject to zakat, then zakat is due on the items.

The condition of ‘growth’ thus becomes the key concept for Islamic jurists in assessing whether a new form of wealth or income is subject to zakat. Epistemologically, this condition is deduced from the Prophet’s explanation about items subject to zakat in his Hadīth which reveals that ‘growth’ either actually or potentially is what such items have in common.<sup>84</sup> In contemporary interpretations as well, some ulama such as Al-Khayyat, a leading Jordanian Islamic scholar, and Masdar F. Mas`udi in Indonesian context, argue that the traditional beneficiary group can be extended into any social welfare programs. Giving zakat thus means

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<sup>81</sup> See Susan E Rayner, *The Theory of Contracts in Islamic Law: A Comparative Analysis with Particular Reference to the Modern Legislation in Kuwait, Bahrain and the United Arab Emirates*, 1<sup>st</sup> ed. (London; Boston: Graham & Trotman, 1991), 7.

<sup>82</sup> See Al-Qaradawi, “Fiqh,” 157-159, 171, 222-232, 282-311, 426-431.

<sup>83</sup> Kahf, “Zakah,” 3.

<sup>84</sup> Kahf, “The Principle,” 28.

that a Muslim will transfer the ownership of his/her property to the beneficiaries. This is not simply giving donations, because zakat is an obligation and money or goods of zakat are a right of the beneficiaries given by God through the zakat payers.<sup>85</sup> The exclusive proposition of *zakāt al-māl* beneficiaries has also been challenged. For instance, Al-Khayyat argues that the phrase *al-fuqārā'* means 'all the (category of the) poor' in Arabic. Therefore, the beneficiaries must include the non-Muslim poor.<sup>86</sup>

The use of *ijtihād* to liberally develop the zakat concept is made possible given the dualistic character of zakat. Zakat is not only an integral part of religious ritual and one of the five Islamic canonical obligations,<sup>87</sup> but also functions as substantive legal sphere in the field of tax law in Islamic jurisprudence.<sup>88</sup> This dual characteristic has made zakat unique among all branches of law in Islam because even though the zakat obligation falls under the classification of formal rituals (*'ibāda*), its substantive legal sphere fall under the aegis of social transactions (*mu'āmalāt*). Islamic jurists maintain that interpretations of the concepts of *'ibāda* are limited by the legal maxims that read any type of worship as prohibited unless there is a ruling mentioned in the texts of Koran and Hadith that confirm them. Conversely, *mu'āmalāt*, which governs horizontal relationships about the material world among human beings, provides a significant amount of elasticity in interpretation because the legal maxims say everything is considered permissible unless there is a ruling mentioned in the texts of the Qur'ān and Hadīth that

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<sup>85</sup> Maulana Wahiduddin Khan, 'The Concept of Charity in Islam', *International Journal of Civil Society Law*, vol. 2 (2004): 95.

<sup>86</sup> See Benthall, "Financial," 31.

<sup>87</sup>

Five Islamic canonical obligations define Islam and Muslims. Every Muslim must observe these obligations unless he/she is exempted such as women during their periods and sick people in the obligation of Ramadan fasting or minor age for all obligations. They are: *shahadah* (reciting the Muslim profession of faith); *salat* (performing five time daily prayers); *zakat*; *sawm* (fasting during the month of Ramadan); and *hajj* (pilgrimage to Mecca).

<sup>88</sup> Wael B. Hallaq, *Sharia: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 231.

explicitly prohibit such acts.<sup>89</sup> The substantive law of zakat therefore is acceptable for progressive interpretations pursuant to modern economy, so long as the spirit and principle of the *sharī'a* are preserved. The problem is, then, whether expanding the zakat obligation to legal persons such as corporations, denotes the use of *ijtihād* in the sphere of *'ibāda* (formal ritual) or *mu'āmalāt* (social transactions)? This question is relevant to be asked when I investigate the conception and implementation of corporate zakat as a new social policy that is regulated by the state.

### **E. Methodology**

This is a qualitative research project which uses a case study as a research strategy. A case study is used because my research questions are related to an empirical inquiry of how the issue of authority in Islamic law in Indonesia is managed in the context of the interpretation and imposition of corporate zakat duty as well as how the legitimacy of corporate zakat *fatwā* and law is perceived when the subjects decide to comply/not to comply with it. These kinds of questions focus on a contemporary set of events/phenomena where I cannot control the behavioral events.<sup>90</sup> A case study as a research strategy is able to cover contextual conditions, benefiting from method of collecting the evidence in case study.<sup>91</sup> The ability to cover the contextual conditions is critical for understanding the reasons why corporations in Indonesia comply/do not comply with a corporate zakat duty.

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<sup>89</sup> See the discussion of the legal maxims e.g. in Alfitri, "Expanding a Formal Role for Islamic Law in the Indonesian Legal System: The Case of Mu'amalat," *Journal of Law and Religion*, vol. 23 (2007-2008): 257.

<sup>90</sup>Robert K. Yin, *Case Study Research: Design and Method*, 3rd ed., (Thousand Oaks; London; New Delhi: SAGE Publication, 2002), 3-5.

<sup>91</sup> *Ibid*, 13.

This research project used multiple sources of evidence:<sup>92</sup> documentation, interviews, and archival records. It traced the process of the creation and incorporation of corporate zakat duty in Indonesian law. Archival records were mainly used to collect evidence on arguments and reasoning underlying the *fatwā* of the MUI, the Law No. 38 of 1999 and Law No. 23 of 2011. The validity of data acquired from the archival records then is triangulated with evidence collected from documentation such as news clippings related to the events, as well as interviews with people involved in *fatwā* deliberations, and the Law drafting process.

For this purpose, I visited the Indonesian Parliament, the Directorate of Religious Courts of the Indonesian Supreme Court, and the MUI secretariat to collect archival records and conduct open-ended interviews. Data gathered from this fieldwork is used for chapters 3 and 4. The table below summarizes my fieldwork sites and activities.

**Table 2. First Fieldwork Activities**

LOCATION	FROM – TO	PURPOSE
Jakarta, Indonesia	Weeks March 9 – March 31, and April 5, 2012	<ol style="list-style-type: none"> <li>1. Visiting the Indonesian Parliament, the Directorate of Religious Courts of the Indonesian Supreme Court, legal bureau of the Ministry of Religious Affairs (MORA) and the MUI secretariat to collect archival records regarding the deliberations of Law No. 38/1999 and its amendment (Law No. 23/2011); Supreme Court Regulation No. 2/2008; and the 2009 <i>Fatwā</i> of MUI. Conducting open-ended interviews with the ulama of MUI (including staff), Members of Parliament of Commission 8 (including expert staff and legislative drafters), Supreme Court Judges (including officers in the Directorate of Religious Courts, legal drafters of the MORA legal bureau to find out arguments on the obligation of corporate zakat and reasons of incorporating it into Indonesian law = 16 interviews made. Visiting the National Zakat Agency (BAZNAS) and LAZ Dompot Dhuafa to collect information and conduct open-ended interviews about the practice of corporate zakat payments = 4 interviews made</li> <li>2.</li> <li>3.</li> </ol>
Bandung,	April 1 – April 4, 2012	1. Visiting Islamic University of Sunan Gunung Djati in

<sup>92</sup> A good case study needs to rely on multiple sources of evidence because data which are needed to carefully explain an event are never independent. These data later are needed to be converged by means of triangulation. See *Ibid*, 14.

Indonesia		Bandung to conduct open-ended interviews with Professor of <i>Shari'a</i> who drafted the Compilation of <i>Shari'a</i> Economic Laws of Indonesia = 3 interviews made
Padang, Indonesia	April 6 – April 9, 2012	1. Visiting Islamic University of Imam Bonjol in Padang to conduct open-ended interviews with Professor of <i>Shari'a</i> who attended the Council of Indonesian Ulama's Fatwa Commission Summit in 2009 = 1 interview made
Jakarta	Weeks March 19 – April 4, 2012	1. Visiting 12 companies to submit request to participate in an empirical study of corporate behaviors regarding the legal status of corporate zakat duty and observance towards this duty = done by my research assistant

For the case studies on Islamic commercial banks' compliance with corporate zakat duty, I traced the decision-making within companies with regards to paying the corporate zakat. For this purpose, a second round of fieldwork was conducted in Fall 2013. Data gathered from the second round fieldwork is used for chapters 5, 6, and 7.

I started my second round of fieldwork in Jakarta in late August 2013. I visited each head office of the BUS in Jakarta and submitted a formal request to conduct research on their banks. For BJBS whose head office is located in Bandung, I sent an e-mail through their website "contact us" and was answered from staff of the corporate secretary division. Mostly the research requests went through the human capital division as all research requests are handled by this division, except for BMI which has specific institute for research and training, i.e. the Muamalat Institute.

It took one to four weeks for my request to be confirmed. There were difficulties in arranging the schedule for interviews, given the work volume of my informants. Seven out of eleven of the Islamic commercial banks agreed to be my research subjects by appointing informant(s) to be interviewed. Four rejected my request: one did it at that time I submitted my request to the front desk (BMSI). Another one which was approached by e-mail did not answer several e-mail inquiries to follow up my request (BJBS). Two declined my request by phone

when I called the division which handles my request: one said that the bank was restructuring its organization so they did not know which right division and staff to answer my questions (BVIS); another said that my request was ping-ponged to several desks as they do not know about the implementation of corporate zakat in their bank (BCAS).

Data was collected through interviews and archives. Interviews were conducted in bank offices during office hours. Some informants agreed to receive follow up questions by email and/or text messaging. This was done to ask important questions not covered during interviews, to compare new information acquired during the latest interview, and to triangulate information from archives. The instrument used was an interview guide. I submitted a request for archives to the banks. Since most major archives such as financial reports, annual reports, and Good Corporate Governance reports are available online, however, these archives were downloaded from the banks' website. Some archives such as shareholders' annual meetings given by the informants were also available online if the banks have a 'Tbk' status (public offered status). Others without a public offered status considered the Annual Shareholders' General Meeting's decisions as classified material.

**Table 3. Subjects and Data Collected during Second Fieldwork**

<b>NO</b>	<b>BANKS</b>	<b>SUBMISSION</b>	<b>INTERVIEW</b>	<b>DATA</b>
1	BMI	August 27, 2013 in Muamalat Institute of Slipi, Jakarta	October 10, 2013; 2 Informants: from <i>Finance and Strategy Division</i> ; held in BMI headquarter of Arthaloka Building, Sudirman, Jakarta	Interview (follow up with email and text messaging) Archives: RUPS decision Financial, GCG, Annual Report <i>Sharī'a</i> Supervisory Board's <i>Fatwā</i>
2	BSM	September 9, 2013 in BSM headquarter of Sudirman, Jakarta	September 27 & 30, 2013; 3 Informants: <i>Assistant Vice President Accounting Division, Department Head Legal Division, Head Division Corporate Secretary and Legal</i> );	Interview (follow up with email) Archives: Financial, GCG, Annual Report Article of Incorporation and

			held in BSM headquarter of Sudirman, Jakarta	Bylaws
3	BMS	September 3, 2013 in BMS headquarter of Kuningan, Jakarta	September 17, 2013; 1 Informant: <i>Corporate Affairs Head</i> ; held in BMS headquarter of Kuningan, Jakarta	Interview (follow up with email and text messaging) Archives: Financial, GCG, Annual Report
4	BRIS	September 20, 2013 in BRIS Human Capital Group Learning Center of Menara Jamsostek, Jakarta August 27, 2013 in	October 23, 2013; 1 Informant: <i>Senior Officer CSR</i> ; held in BRIS headquarter of Abdul Muis, Jakarta	Interview (follow up with email) Archives: Financial, GCG, Annual Report
5	BNIS	Human Resource Division of BNIS Sequis Plaza Sudirman, Jakarta	September 17, 2013; 2 Informant: <i>Head of Legal, Compliance and Secretariat Division, Staff of Legal Compliance and Secretariat Division</i> ; held in BNIS headquarter of Wisma BNI, Sudirman, Jakarta	Interview (follow up with email) Archives: <i>Shari' a</i> Opinion of <i>Shari' a</i> Supervisory Board Financial, GCG, Annual Report
6	BCAS	August 28, 2013 in BCAS headquarter of Jatinegara, Jakarta	N/A	Archives: Financial, GCG, Annual Report
7	BJBS	August 28, 2013 via email	N/A	Archives: Financial, GCG, Annual Report
8	BPS	August 28, 2013 in BPS headquarter of S. Parman, Jakarta	September 4, 2013; 1 Informant: <i>Risk Management qua Zakat Operator</i> ; held in BPS headquarter of S. Parman, Jakarta	Interview (follow up with email) Archives: Financial, GCG, Annual Report
9	BSB	August 27, 2013 in BSB headquarter of Salemba Raya, Jakarta	September 16, 2013; 2 Informant: from <i>Product Development Division and Baitul Maal Karyawan Bukopin</i> ; held in BSB headquarter of Salemba Raya, Jakarta	Interview Archives: Financial, GCG, Annual Report Bulletin
10	BVS	September 2, 2013 in BVS headquarter of Rukan Permata Senayan, Jakarta	N/A	Archives: Financial, GCG, Annual Report
11	BMSI	August 27, 2013 in BMSI headquarter of Sona Topas Tower Sudirman, Jakarta	N/A	Archives: Financial, GCG, Annual Report

Data was analyzed qualitatively through four steps, namely: coding, i.e. linking evidence to the concepts that appear in the report; sorting, i.e. arranging the coded data into homogenous categories under files in my computer; so that the next step of data analysis, i.e. local integration (integrating the data into relevant chapters), and inclusive integration (maintaining coherence and cohesion of all chapters) would be easier.<sup>93</sup> Thus, data was analyzed once it was acquired; and the dissertation writing took place simultaneously. Following these four steps, I reflected by reviewing and considering my research; considering what the findings mean; assessing the implications for the conceptual framework; seeking disconfirming evidence; seeking alternative explanations; and comparing findings with the literature.<sup>94</sup>

#### **F. Transliteration**

In preparing Arabic transliterations for this dissertation, I have followed the system adopted by the *International Journal of Middle East Studies*. I have departed, however, from the practice of the journal when it comes to transliterating Arabic words that are known to English speakers and that are included in Webster's Third New International Dictionary. Terms that are used frequently in this dissertation and have been absorbed into Indonesian, i.e. 'zakat,' and 'ulama,' will not be transliterated.

#### **G. Dissertation Outline**

This dissertation consists of three parts and eight chapters. Part One comprises Chapter 2, focusing on context of the study the history of the evolution of Islamic legal authority in Indonesia and provides an account of how that is contested and negotiated in contemporary Indonesia, using the history of family law reform as an illustrative example. Part Two comprises

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<sup>93</sup> See Robert S. Weiss, *Learning from Strangers: The Art and Method of Qualitative Interview Studies* (New York: The Free Press, 1994), 154-162; see also Bruce L. Berg, *Qualitative Research Methods for the Social Sciences*, 7<sup>th</sup> ed. (Boston: Allyn & Bacon, 2009), 321.

<sup>94</sup> *Ibid.*

Chapter 3 and 4, focusing on the concept of corporate zakat in Indonesia both in Islamic law and Indonesian law. Chapter 3 talks about the interpretation of corporate zakat as a duty in Islam carried out by ulama and the authority of Council of Indonesian Ulama (MUI) in determining what constitutes Islamic law in Indonesia. Chapter 4 discusses the legislative and regulatory process of imposing corporate zakat in Indonesian law and the state politics of *sharī'a* implementation in Indonesia. Part Three comprises Chapter 5, 6, and 7 analyzing the implementation of corporate zakat in Indonesia and whether the provisions concerning corporate zakat obligations are viewed as legitimate by the corporations that are the targets of the new regulation. These chapters focus on case studies of compliance with corporate zakat in Islamic commercial banks in Indonesia. Three aspects are scrutinized, i.e. decisions to pay zakat, channeling corporate zakat funds, and mixing/separating the funds in doing corporate social responsibility. In Chapter 8, I conclude all the three parts into a reflective conclusion that shows how the issue of Islamic authority in Indonesia has evolved and what this evolvement means to different groups of zakat stakeholders as well as corporations subject to zakat obligation.

## Chapter II

### AUTHORITY AND LEGITIMACY IN QUESTIONS: AN ILLUSTRATIVE EXAMPLE

#### A. Introduction

This chapter addresses the issues of the authority of Islamic law and the legitimacy of the authors interpretation of Islamic law in Indonesia by examining the history of the evolution of Islamic authority in Indonesia and providing an account of how that is contested and negotiated in contemporary Indonesia.

This chapter uses the history of family law reform as an illustrative example because family law is the only aspect of Islamic law that has been regulated by the state since Indonesia independence. There is a plurality of sources of authority for Islamic law in Indonesia – both institutional actors and textual sources – as they operate within the domain of family law. The case studies of family law in this chapter and corporate zakat in the chapter that follow, reveal tensions between continuity and change in the development of Islamic legal principles and the strategies that different actors employ to advance their preferred version of Islamic legal norms.

This chapter focuses on analyzing the promulgation of National Marriage Law No. 1/1974, the drafting of Islamic marriage code (the 1991 Compilation of Islamic Law of Indonesia and its 2004 Counter Legal Draft), and three Constitutional Court Cases (*M. Insa v. the State* concerning the validity of polygamous marriage restrictions; *Halimah v. the State* concerning the validity of irreconcilable difference as the ground for a *ṭalāq* divorce; and *Machica v. the State* concerning the validity of legal relationship of a child born outside wedlock).

## **B. Islamic Law in the Era of Codification in Indonesia: What were the Authoritative Sources and Who were the Actors?**

Although Indonesia is the world's most populous Muslim country,<sup>1</sup> Islam has not been adopted as the state ideology in Indonesia. Similarly, the Indonesia Constitution does not make any reference to *sharī'a* or Islamic principles.<sup>2</sup> In the event of questions on which Islamic laws or which Islamic jurists' opinions should be followed, there is nothing like a 'blue book' or ready guide to the resolution of conflict of laws within Islamic law in Indonesia. The state holds the authority to enact law through the legislature and other mandated organs such as the President, the Ministries and the Supreme Court. When it comes to Islamic legislation or codification, these state organs utilize Islamic juristic expertise in drafting and deliberating, with the aim of maintaining legislative consistency with *sharī'a*.<sup>3</sup> Despite this, such state 'Islamic' law is still challenged by other Islamic jurists and Muslims in Indonesia, both as to its authority and as to the legitimacy of its new interpretations of particular subjects or regulatory issues.

This problem may occur in Muslim world because Muslims still use the traditional theory of sources of Islamic law as the parameters through which to determine the legitimacy of the codification of Islamic law by the state. When a theory of sources of Islamic law falls behind the developmental needs of a legal system, actual legal developments become hard to reconcile with

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<sup>1</sup> According to the Pew Research Center, Indonesia is a nation home to 12.7% of the world's Muslim; Pakistan, India, and Bangladesh come after Indonesia with the percentages of the world's Muslim are 11%, 10.9%, and 9.2% respectively. See Pew Research Center, "Muslim Population by Country," <http://www.pewforum.org/2011/01/27/table-muslim-population-by-country/>, accessed April 25, 2015.

<sup>2</sup> There are several attempts to incorporate *sharī'a* as the law that must be observed by the Indonesian Muslims, but they have failed. For the initial effort to incorporate *sharī'a* into the Constitution during the preparation of the independence, see e.g. Anthony H Johns, "Indonesia: Islam and Cultural Pluralism," in *Islam in Asia: Religion, Politics and Society*, ed. John L. Esposito (New York: Oxford University Press, 1987), 210; Robert W Hefner, *Civil Islam: Muslim and Democratization in Indonesia*, 1st ed. (Princeton, NJ: Princeton University Press, 2000), 42; BJ Boland, *The Struggle of Islam in Modern Indonesia* (The Hague: Nijhoff, 1982), 26; for the latest effort during the constitutional reform period 1999-2002 see e.g. Nadirsyah Hosen, "Religion and the Indonesian Constitution: A Recent Debate," *Journal of Southeast Asian Studies*, Vol. 36, No. 3 (October 2005): 419-420, 425-427.

<sup>3</sup> See Wahiduddin Adams, *Pola Penyerapan Fatwa Majelis Ulama Indonesia (MUI) dalam Peraturan Perundang-Undangan 1975-1997* (Jakarta: Bagian Proyek Peningkatan Informasi Penelitian dan Diklat Keagamaan, 2004), 121-225.

the theory.<sup>4</sup> In the traditional theory of sources of Islamic law, known as *uṣūl al-fiqh*, there are four sources of *sharīʿa*, namely the Qurʾān, Hadīth (the Prophet tradition), *ijmāʿ* (consensus), and *qiyās* (reasoning by analogy). Given their characteristics as religious texts, the Qurʾān and Hadīth are then called the material sources of *sharīʿa*. Meanwhile, *qiyās* or *ijtihād* is considered to be a technique of reasoning that may be used to elaborate and interpret the religious texts (the Qurʾān and Hadīth). As for *ijmāʿ*, it has been used by jurists as the principle for reconciliation of competing legal opinions in order to reach a consensus.<sup>5</sup> On the other hand, a modern legal system uses the concept of primary sources, which someone consults to find the actual texts of laws, and secondary sources, which someone uses to find clarification of the rules stated in the primary sources.<sup>6</sup>

The modern legal system of sources of law, which is based on the hierarchical ranking of legal sources, then, is also applied to *sharīʿa*. So, *fiqh*, which is a juristic elaboration of the meaning of the Qurʾān and Hadīth, is today largely treated as the primary source in Islamic law.<sup>7</sup> This is so especially after the four schools of Islamic law were established around the 10<sup>th</sup> Century, and their distinctive rules had developed. To help clarify rules set forth by the *fiqh*, jurists following the four eponyms of the Islamic schools of law referred to their own guild's legal handbook, fatwa collections, commentaries and super-commentaries, and these are today treated as the secondary sources of Islamic law. Meanwhile, the Qurʾān and Hadīth are relegated to the status of remote sources of law, because jurists no longer derive the rules of *sharīʿa*

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<sup>4</sup> See Ann Elizabeth Mayer, 'The Shari'ah: A Methodology or a Body of Substantive Rules?' in Nicholas Heer (ed), *Islamic Law and Jurisprudence* (University of Washington Press 1990), 178.

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See details about sources of *sharīʿa* in e.g. Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 2003), 16-305; Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997), 7-35.

<sup>6</sup>Mayer, "The Shari'ah," 184.

<sup>7</sup>

*Ibid.*

directly from them.<sup>8</sup> There was a prevailing perception among Muslims after the establishment of the four schools of Islamic law that every aspect of *sharīʿa* have been discussed by the four eponyms. Later jurists no longer could deduce the rules of *sharīʿa* directly from the Qurʾān and Hadīth because their level of epistemology on *sharīʿa* was considered to not reach the level of independent *mujtahid* (*mujtahid mustaqīl*)<sup>9</sup> equivalent to that of the four eponyms. This situation is known as the closure of the gate of *ijtihād* (*insidād al-bāb al-ijtihād*) and some Muslims still perceive it to be true.<sup>10</sup> As a consequence, *fiqh* supremacy is reinforced and exercising free *ijtihād* -- abandoning the *fiqh* by directly interpreting the Koran and the Hadith especially without employing the traditional methodology -- is rejected.

In the contemporary era, however, some groups of Muslims question the authority of classical jurists as the sole interpreters of *sharīʿa* sources. They tend to demote classical *fiqh* to the rank of secondary sources and to deny it any legal binding force upon Muslims to solve their contemporary legal problems. Other Muslim groups entirely reject the authority of *fiqh* and treats the Qurʾān and Hadīth as the primary sources of Islamic law. There are also a growing number of

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<sup>8</sup> *Ibid.*

<sup>9</sup> *Mujtahid mustaqīl* is the highest level of *mujtahid* where a *mujtahid* perform *ijtihād* by employing his own methodology and derived a rule without relying on the view of other jurists. According Wahbah al-Zuhayli, there are five levels of *mujtahid*, and each level determine the level of competence to perform *ijtihād*. So, in the second rank stand *mujtahid* who have qualifications to perform *ijtihād* but follow the methodology of his guild's eponym (*mujtahid muṭlaq ghayr mustaqīl*). Next, a jurist who follows an eponym, but perform *ijtihād* by examining the arguments of the guild in order to defend the position of his guild or explain the opinion of his guild about *fiqh* (*mujtahid takhrīj*). Fourthly, a jurist who performs *ijtihād* by choosing one from a number of opinions proposed by *mujtahid* (*mujtahid tarjīh*). Lastly, *mujtahid futya* or a jurist who issue a fatwa (a ruling on a point of Islamic law). To know more about this level of *mujtahid*, see Wahbah az-Zuhayli, *Usul al-Fiqh al-Islami*, Vol. 2 (Damaskus: Dar al-Fikr, 1986), 1079-1081.

<sup>10</sup> According to Hallaq, study on the development of Islamic law after the establishment of Islamic schools of law reveal that the notion of “*insidād al-bāb al-ijtihād*” is untenable because every period has *mujtahid* who performed *ijtihād* and went beyond the methodology of their guild's eponym and, to some extent, practiced eclecticism. See Wael B. Hallaq, “Was the Gate of *Ijtihād* Closed?,” *International Journal of Middle East Studies*, Vol. 16, No. 1 (1984), 3-41.

people who question the authenticity of the collected Hadīth. They then treat the Qur’ān as the sole primary source of *sharī’a* and classify the Hadīth and *fiqh* as secondary sources.<sup>11</sup>

In the context of Indonesia, I argue that professors of *sharī’a* are the group who mainly campaign for the reconsideration of the authoritative status of classical *fiqh* as well as methods of interpretation of the Qur’ān and Hadīth laid down by the classical jurists. Professors are one of the four agents of legal change in the Islamic legal tradition besides the *qadi* (judges), the *mufti* (juris consults) and the *musannif* (author-jurists). In his study on the role of these four legal professions from the formative period to pre-modern period (7<sup>th</sup> C. – 18<sup>th</sup> C.), Hallaq found that it was the juris consults and the author-jurists who adapted Islamic law to meet the demand of new circumstances. Professors, and the *qadi* alike, were not involved in legal change because this was not part of their roles, namely to teach law students and/or write condensed works for their students’ benefit. When they engaged in articulating a legal reaction to social changes, they did not carry out this task in their capacity as a professor qua professor but more as an author-jurist or juris consult.<sup>12</sup> We also know from Hallaq’s study that the roles of these four legal professions rarely stood independently of each other because an Islamic jurist might become a *qadi* but at the same time also a juris consult and/or an author-jurist and/or a professor at *sharī’a*. After the eighth century, a complete Islamic jurist career was determined by the success of fulfilling all these roles. Ability to reach the level of author jurist, followed by a juris consult, is deemed as the highest achievement; meanwhile, being a *qadi* was not regarded as a prerequisite for crowning success.<sup>13</sup>

To some extent, Hallaq’s finding on the overlapping roles of the Islamic legal professions is relevant to the contemporary context of Indonesia. A professor of *sharī’a* in Indonesia may

<sup>11</sup> Mayer, “The Shari’ah,” 186.

<sup>12</sup> Hallaq, “Authority,” 167, 173, 233-235.

<sup>13</sup> *Ibid*, 167, 233-235.

also be a judge, a juris-consult, and/or an author-jurist (see cases below for further explanation). In the process of codification of Islamic family law, however, *sharī'a* professors in Indonesia have engaged more actively than the juris consults or author-jurists in articulating legal change to meet such social demands as equal rights for women and protection for minors. As noted earlier, family law was the only aspect of Islamic law that remained governed by the *fiqh* in Muslim countries until the pre-modern period. When the state initiated Islamic legal reforms in the 1980s, however, Islamic family law was the first law which underwent modernization. This was done in order to meet such modern legal system agendas such as legal certainty and human rights protection.<sup>14</sup>

In Indonesia's experience, professors of *sharī'a* either proposed the legal draft of Islamic family law to the government, or were appointed by the government to formulate it. They were able to come up with the formula that met the state's political agenda because they did not bind themselves to follow the traditional method of *ijtihad* in the same way as their counterparts, i.e. the juris-consults or author-jurists, did. So, similar to Norman Anderson's finding on methods employed by the modernists in some other Muslim countries, professors of *sharī'a* in Indonesia also utilized public utility and eclecticism in formulating these legal draft as well as asserting

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<sup>14</sup> Indonesia has ratified numerous international human right legal instruments such as ICCPR in 2006 without reservation, CAT in 1998 (reservation to art. 30(1)), CEDAW in 1984 (reservation to art. 29(1)), and Convention on the Right of Child (CRC) in 1990 (reservation art. 1, 14, 16, 17, 21, 22 and 29). With regards to family law reform, the government has made gender equality as a part of national agenda. The President, for example, issued a decree in 2000 for mainstreaming gender equality in the national development by which every ministry and state department are required to include gender equality in their policy and agenda. Department and commissions on women empowerment and children have also been established in the 2000s; see Alfitri, "Legal Reform Project, Access to Justice and Gender Equity in Indonesia," *Indonesian Journal of International Law*, vol. 9, no. 2 (2012), 302; Alfitri, "Konflik Hukum antara Ketentuan Hukum Pidana Islam dan Hak-Hak Sipil? (Telaah Konsep HAM dan Implementasi Ratifikasi ICCPR dan CAT in Indonesia)," *Jurnal Konstitusi*, vol. 7, no. 2 (2010), 102, 126.

their right to do *ijtihad*, even on a subject matter on which the Qur'an clearly stipulated, or which has been decided by the eponyms of schools of Islamic law.<sup>15</sup>

This is not to say that the author-jurists and jurist-consults in Indonesia are absent from articulating legal changes. In fact, studies on Islamic legal thought in Indonesia found that the Islamic jurists have played an important role in translating the Islamic legal tradition, which is heavily influenced by Middle Eastern culture and traditions, into the context of Indonesia. Having examined the spirit of *ijtihad* which accompanied modernization in Indonesia and identified the specific contribution made by the Islamic jurists from Moenawar Chalil and A Hassan in 1900s to Masdar F. Mas'udi and Husein Muhammad in the 2000s, Michael Feener writes that Indonesian conversations on Islamic legal thought are dynamic. These jurists were able to re-conceptualize an approach to the religious texts and classical legal traditions in terms of the specific conditions of Indonesian society and the needs of Muslims living therein.<sup>16</sup> However, when it comes to adapting Islamic family law to the state's agenda of unification and legal certainty, or to the requirements of human rights upheld by the state, many jurists have rejected the legal reform proposals and utilized classical *fiqh* as the parameters for determining the *shari'a* compliance of such proposals. They usually affiliate themselves with fatwa issuing from organizations such as the Council of Indonesia Ulama (MUI) or orthodox Islamic organizations such Muhammadiyah, Nahdlatul Ulama (NU), Hizbut Tahrir and the like.

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<sup>15</sup> Norman Anderson extensively explained the modernist law reform methods and classified them into five expedients. They are: (1) the procedural expedient: "the right of the Ruler to define and confine the jurisdiction of his courts" (*takhsis al-qada'*), for example: restriction on the *shari'a* courts to questions of only Islamic personal law and gifts and *waqf*; (2) the eclectic expedient (*takhayyur*); (3) the expedient of re-interpretation, i.e. maintaining the right of independent *ijtihad* by direct encounter with Qur'an and Hādith and bypassing *ijmā'*; (4) the expedient of administrative orders, i.e. a legislative enactment which find its justification not in the *shari'a* provision per se rather in the condition that it is regarded as beneficial and 'not contrary to the *shari'a*'; (5) the expedient of reform by judicial decisions, especially in Muslim countries formerly under British rule; see Norman Anderson, *Law Reform in the Muslim World* (London: Athlone Press, 1976), 42-85.

<sup>16</sup>R. Michael Feener, "Muslim Legal Thought in Modern Indonesia: Introduction and Overview," in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, eds. R. Michael Feener and Mark E. Cammack (Cambridge: Harvard University Press, 2007), 13-26.

This does not negate dissenting opinions voiced by individual jurists of these organizations but, as shown in the cases below, the MUI and Islamic organizations do not support government's proposals to radically change Islamic family law such as banning polygamy or criminalizing unregistered marriage. In response, they usually issue fatwa or arguments in the mass media to show the public what 'true' Islamic law says about this issue and, thus, push the government to revoke or withdraw its proposals. We explore the details of how the issue of authority and legitimacy of Islamic legislation in Indonesia is contested and negotiated in case studies below.

### **C. The case of Indonesia's Marriage Law No. 1 of 1974**

#### *1. Drafting and Amending the Law*

When President Soeharto proposed a national marriage law draft without consulting the Department of Religion in 1973,<sup>17</sup> the proposal was strongly opposed by Muslim representatives in the Parliament (the United Development Party) and angry protesters outside the House.<sup>18</sup> The proposal was deemed to attack the Islamic doctrine on marriage directly because there were several clauses in the proposal which contradict it and, thus, would invalidate a marriage or divorce performed pursuant to Islamic law. For example in the clause on a valid marriage, according to the bill, a valid marriage would exist: when the statutory requirements were fulfilled (inter *alia*, parties' consent and the age of majority), conducted in front of an official registrar,

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<sup>17</sup> Katz and Katz wrote that it was not clear who created the draft. They quoted, however, a source from *Tempo* (a leading national magazine which voices a national-secularist point of view) that the draft was written by the Catholic member of *Golkar* (the government political party) as per suggestion of Tien Soeharto, the President wife. Meanwhile, the Department of Religion and Islamic leaders (called *ulama* in Indonesia and this include Islamic jurists) had not been given a role at all in drafting the bill. See June S. Katz and Ronald S. Katz, "The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems, *American Journal of Comparative Law*, Vol. 23, No. 4 (Autumn, 1975), 660.

<sup>18</sup> The background was the failure of several efforts to formulate a unified national marriage law before. In 1952, the Minister of Religion already formed a Governmental Committee to draft a marriage bill. However, a draft of Muslim Marriage law produced by the Committee in 1954 fell through in the Parliament because of a deadlock in the deliberations. In 1967 and 1968, the government again submitted a marriage bill for Muslim Indonesians and a marriage bill applicable to all religions Indonesia subsequently, but this also produced no result after the deliberations in the Parliament from 1967 to 1970. See Azyumardi Azra, 'The Indonesian Marriage Law of 1974: An Institutionalization of the *Shari'a* for Social Changes', in Arskal Salim and Azyumardi Azra (eds), *Shari'a and Politics in Modern Indonesia* (Singapore: Institute of Southeast Asian Studies 2003), 82.

and then recorded by the official registrar. The opponents of the proposal maintained that, pursuant to the Shafi'i School of Islamic law, which is widely recognized in Indonesia, a marriage is valid simply when the offer (ijāb) of the bride's guardian and the acceptance (qabul) of the groom are complete and two qualified witnesses are present during the marriage solemnization.<sup>19</sup> Other clauses in the proposal that incited public outrage were: first, the requirement of an application for polygamous marriage intent, and the transfer of divorce petitions to a civil court instead of religious court; second, the principle that religious differences were not the impediment to marriage; third, that adopted children have the same status as natural children; fifth, that the legal status of an engagement was recognized and, thus, pregnancy resulting from an engagement would give the child born subsequently the legal status as a child born in wedlock.<sup>20</sup>

The bill then underwent redrafting by a ten-man member of a working committee consisting of representatives of parties in the Parliament in response to the controversies in the House and demonstrations outside the House. The bill was enacted finally as Law No. 1 of 1974 on Marriage after the working committee made adjustments pursuant to the demands of the United Development Party which represented Muslim voices in the Parliament. The result was that the Islamic religious law on marriage as well as the role of religious courts would not be decreased or changed. All provisions contrary to Islamic doctrine were removed from the bill. Marriage registration was no longer required to validate marriage requirements, but, as a consequence, a marriage conducted pursuant to the religious law applicable to the parties would

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<sup>19</sup> See Mark Cammack, Lawrence A. Young, and Tim Heaton, "Legislating Social Change in an Islamic Society – Indonesia's Marriage Law," *American Journal of Comparative Law*, Vol. 44 (1996): 61-62; Mark E. Cammack, Helen Donovan, and Tim B. Heaton, "Islamic Divorce Law and Practice in Indonesia" in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, eds. R. Michael Feener and Mark E. Cammack. (Cambridge, Massachusetts: Islamic Legal Studies Program, Harvard Law School, 2007), 99-100; Simon Butt, "Polygamy and Mixed Marriage in Indonesia: The Application of Marriage Law in the Courts", in *Indonesia: Law and Society*, ed. Tim Lindsey (Leichhart, New South Wales: The Federation Press), 122-123.

<sup>20</sup> See Katz and Katz, "New Indonesian," 661-662.

be sufficient. (If Muslims, however, wanted their marriage to be legal according to state law, they needed to perform it before the official registrar and then registered it). On the other hand, the United Development Party had to accept the provisions to prevent arbitrary divorces and polygamy put forward by the government as a part of the legislative consensus. Thus, Muslims must get permission from the religious court prior to committing to a polygamous marriage, and an application for a no-fault divorce would not be granted by the religious courts.<sup>21</sup>

The promulgation of Marriage Law No. 1 of 1974 was intended to elevate the status of women and minors. By means of the Law, the government tries to limit arbitrary *ṭalāq* divorce and polygamy by men, as well as eliminate child marriage.<sup>22</sup> However, studies found that the government efforts to push its modernization agenda through the Marriage Law have been only partially successful.<sup>23</sup> Despite sanctions for the offenders, the Law cannot completely deter such practices as unregistered marriage, minor age marriage, divorces pronounced outside the religious courts, and polygamy conducted without the religious courts' permission. One of the factors revealed by these studies is the strong influence of Islamic religious law on marriage. The un-codified Islamic marriage law (in this regard the *fiqh* of Shafī'i) is deemed to be sufficient by Indonesian Muslims for contracting their marriages. This belief is shaped, *inter alia*, by

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<sup>21</sup> See *Ibid*, 663-666; see also Cammack, Young, and Heaton, "Legislating," 61-62; Cammack, Donovan, and Heaton, "Islamic," 99-100; Butt, "Polygamy," 122-123.

<sup>22</sup> See Cammack, Young, Heaton, "Legislating," 45; Azyumardi Azra, "The Indonesian," 78.

<sup>23</sup> On the partial impact of the Marriage Law on the practice of divorce, see Cammack, Donovan, and Heaton, "Islamic," 99-127; on the practice of child marriage, see Cammack, Young, and Heaton, "Legislating," 45-73; on the practice of unregistered marriage (including polygamy without permission of the religious courts) see Stijn Cornelis van Huis and Theresia Dyah Wirastri, "Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws," *Australian Journal of Asian Law*, Vol. 13, No. 1, Art. 5 (2012), 1-17.

continuous endorsement by Indonesian ulama (both jurists and non-jurists) of the superiority of *fiqh* on marriage in comparison with codified legislation.<sup>24</sup>

The superiority of *fiqh* over legislation, and the assertion of the authority of Islamic jurists as the de facto interpreters of Islamic law, can also be seen in the recent effort to pass the Muslim Marriage Law in 2010. The bill was drafted by the Supreme Court and the Ministry of Religious Affairs with the involvement of religious scholars (ulama), judges of the Religious Courts and women's rights group. Given controversies created by the bill, the Parliament has not approved the bill to date. The bill was strongly opposed by Muslims, including the leaders of two largest Islamic organizations (Muhammadiyah and NU) and the MUI, because it contains a provision that will criminalize the practice of unregistered marriage as a felony (Note: Law No. 23 of 2006 on Civil Registration already treats unregistered marriage as regulatory offence, punishable with fine of Rp. 1 million).<sup>25</sup> The MUI through its Chairman Ma`ruf Amin for example, stated in a national media release that unregistered marriage is only forbidden (*harām*) when there is a victim from that kind of marriage. In response to the bill, he added that the MUI had not reviewed it yet, but the MUI has already issued a fatwa in 2006 on the validity of *nikah di bawah tangan* or marriage without the presence of registrar and, thus, unregistered, as long as it fulfilled the requirements outlined by *fiqh* on marriage.<sup>26</sup>

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<sup>24</sup> For example the Nahdlatul Ulama issued a fatwa in 1989 on the same effect and consequences of an-extra judicial *talāq* divorce as a *talāq* divorce pronounced in court as required by the 1974 Marriage Law, see Cammack, Donovan, and Heaton, "Islamic," 125-126.

<sup>25</sup>Huis, "Muslim," 2, 5-6, 10; see also "Hasyim Muzadi: Nikah Siri Sanksi Administrasi Sajalah", <http://oase.kompas.com/read/2010/02/19/13064577/Hasyim.Muzadi.Nikah.Siri.Sanksi.Administrasi.Sajalah>, accessed April 1, 2013; "Syafii Maarif: Nikah Siri Sah, tapi Lebih Baik Dicatatkan," <http://megapolitan.kompas.com/read/2010/02/17/20163935/Syafii.Maarif.Nikah.Siri.Sah.tapi.Lebih.Baik.Dicatatkan>, accessed April 1, 2013; "MUI: Kawin Siri Haram Kalau Ada Korban," <http://kesehatan.kompas.com/read/2010/02/16/0716178/MUI.Kawin.Siri.Haram.kalau.Ada.Korban>, accessed April 1, 2013.

<sup>26</sup>See "MUI: Kawin Siri Haram Kalau Ada Korban." About the fatwa, see Majelis Ulama Indonesia, *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975* (Jakarta: Sekretariat MUI – Penerbit Erlangga), 531-534.

## 2. *Constitutional Court Cases:*

Earlier, I mentioned that Indonesia does not have a formal guide for conflict of laws resolution so far as effective Islamic law in Indonesia is concerned. After the establishment of the Indonesian Constitutional Court in 2003 during the ‘reformation’ era of Indonesia democratization, however, the question of which Islamic law or which Islamic jurist opinions are valid has new venues in which to be resolved. Once a bill of rights was introduced as part of the constitutional amendments of 2000, using the framework of freedom of religion, equal treatment, or freedom from any form of discrimination,<sup>27</sup> Indonesian Muslims were able to challenge ‘Islamic’ laws that have been enacted by the Parliament. A structural problem, however, was that the Constitutional Court Judges appointed in Indonesia did not have the classical Islamic legal training necessary to carry out the difficult task of arbitrating contentious disputes between conservative Muslims and the state’s claims regarding the extent to which Islamic law should be recognized, applied, and enforced by the state’s organs. We explore the details of how the issue of the authority and legitimacy of Islamic legislation in Indonesia was approached by the Court in the discussion below.

### *a. Muhammad Insa vs. the State (Polygamous Marriage Restrictions)*

This petition is about the constitutionality of polygamous marriage restrictions imposed by the Marriage Law No. 1 of 1974. The petitioner is Muhammad Insa, an entrepreneur whose application to the Religious Court for creating a polygamous marriage was rejected in 2007. Interestingly, he had already entered into this polygamous marriage on an unregistered basis in

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<sup>27</sup> The bill of rights is as a result of the second amendment to the 1945 Constitution which was assented on August 18, 2000. The second amendment has brought about significant change to the 1945 Constitution by introducing, *inter alia*, bill of rights which was specifically promulgated under the chapter XA comprising ten new articles (28A – 28J). This bill of rights acknowledges and guarantees civil, political, economic, and cultural rights to Indonesian citizens, which are more compatible with the international human right instruments, as a consequence of their ratifications to Indonesian legal system.

2001; so, his application was actually for officially registering his 2001 polygamy.

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Religious Court found that he was unqualified to do so because his first wife refused to give her consent as required by the 1974 Marriage Law.<sup>28</sup> He then claimed that the polygamy restrictions set by the Law No. 1 of 1974 concerning Marriage had limited his freedom to worship Allah, as he believed that polygamy is a type of worship under Islamic doctrine. He further argued that it had also violated his right to create a family and to continue his lineage through a valid marriage as per Article 28B(1) of the 1945 Constitution. He then demanded that the Constitutional Court to declare that the provision on polygamy in Law No. 1 of 1974 concerning Marriage<sup>29</sup> did not comply with the Constitution<sup>30</sup> and to declare that provision null and void.<sup>31</sup> To support his claim from an Islamic point of view, he cited the Qur'ān (Chapter an-Nisā' verse 3) and Hadīth (from Ṣaḥīḥ Muṣṭafī) which set out the permissibility of polygamy in Islam. He also brought in two expert witnesses. One of them was a professor of *sharī'a* (Ahmad Sudirman of the State Islamic University, Jakarta) who questioned *sharī'a* basis for the polygamy restrictions set up by the Law because Qur'an allows it and none of the four schools of Islamic law prohibit it.

This suit failed because the Constitutional Court held, *inter alia*, that monogamy is the marriage principle in Law No. 1 of 1974, but polygamy is permitted as long as it fulfills the requirements of Islamic doctrines, such as the ability of being fair. In framing its holding, the Court confirmed the interpretation of Islamic marriage law provided by expert witnesses brought in by the government (Maftuh Basyuni, the Minister of Religious Affairs, who was also an ulama

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<sup>28</sup> Once approval from a first wife received, the Religious Court will proceed to determine whether an application for the polygamous marriage granted based on the first wife conditions, namely: whether she can perform as a wife; whether she acquired disability or incurable diseases; whether she can give birth to offspring. See Law No 1 of 1974 on Marriage, art. 4(1-2), 5(1).

<sup>29</sup> *Ibid.*, art. 3(1-2), art. 4(1-2), art. 5(1), art. 9, art. 15, art. and art. 24.

<sup>30</sup> The 1945 Constitution of Indonesia, art. 28B(1): i.e. right to marry and found a family, art. 28E(1): i.e. right to hold a religion and to manifest it, art. 28I(1-2): i.e. religious rights are non-derogatory, and freedom from any forms of discrimination, art. 29(1-2): i.e. the state is based on belief in the Almighty God, and religious freedom is guaranteed.

<sup>31</sup> See *Muhammad Insa v. the State (No. 12/PUU-V/2007)*, p. 17.

of the Nahdlatul Ulama, and Quraish Shihab, a professor of Koranic exegesis). Both maintained that polygamy does not fall under the category of worship (*'ibāda*) in *sharī'a*. Instead, the expert argued, it is classified under the aegis of social relations (*mu'āmalāt*) and its basic legal status is recognized within the five *sharī'a* classifications of human actions, i.e. mandatory, recommended, permissible/neutral, reprehensible, and prohibited. Since the status of polygamy is permissible, statutory restrictions set up by the state are not in conflict with the religious freedom clause. This is because not committing polygamy does not constitute a transgression against Islamic obligations on worship. Statutory restrictions on polygamy do not contradict Islamic doctrines on marriage because they will ensure that the principle of fairness (*'adl*) required for committing polygamy would be observed by the applicants. Fairness in polygamy is reasoned by the Court as requiring the ability to provide maintenance for wives and children and the ability to manage time for a husband's households. It is the obligation, of the state by means of its legislation and justice system, to guarantee the materialization of fairness for parties who will be affected by polygamy, especially women and children. The statutory restriction thus promotes the objective of (Islamic) marriage in Indonesia, by setting up a tranquil, affectionate, and compassionate family (*sakinah, mawaddah, dan rahmah*).<sup>32</sup>

The Court also confirmed state authority to regulate Islamic law, and state obligations to regulate legal matters that will realize justice, including placing restrictions on polygamy. In doing so, the state's action actually accords with Islamic jurisprudence (*fiqh*). The Court then quoted the testimony provided by Huzaimah T. Yanggo, the government expert witness who was a professor of *sharī'a* (State Islamic University, Jakarta) and an Islamic Jurist (member of MUI fatwa commission). According to Yanggo: "... the state (*ulil amr*) has the authority to determine the requirements which must be fulfilled by citizens who wish to enter into a polygamous

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<sup>32</sup> *Ibid*, pp. 93-96, 97-99.

marriage in the interest of the public, particularly to achieve the goals of marriage – that is, to create a happy and everlasting family (household) based on the Almighty God”.<sup>33</sup>

From this case, we can see that a Muslim citizen challenged the government’s authority to interpret monogamy as a core principle of marriage principle, and thus put statutory limitations on the practice of polygamy for Muslims, as well as the legitimacy of such an alternative interpretation of marriage validity. The petitioner based his arguments on the proofs of *sharī‘a* from the Qur’an, Hadīth, and the doctrines of *fiqh* as provided by his expert witnesses. The Court, however, confirmed the government’s interpretation on this matter as provided by its expert witnesses who based their opinions on distinction within *sharī‘a* with regards to *‘ibāda* (formal ritual) and *mu‘āmalāt* (social transactions) and the objective of marriage in Islam. The Court then upheld statutory limitations for practicing polygamy as a legitimate interpretation of Islamic law on the ground that the government measures to realize the objectives of marriage, in this case its fairness, through legislation is compatible with *sharī‘a* (*siyāsa shar‘iyya* or *sharī‘a*-oriented policy).

*b. Halimah vs. the State (Valid Reasons for Divorce)*

The petition of *Halimah vs. the State* is about the constitutionality of irreconcilable differences as one of the valid reasons for a divorce in the Marriage Law No. 1 of 1974. It was made by Halimah, a housewife who married the high profile Bambang Trihatmojo in 1981 (Bambang is the son of ex-President Soeharto). Her divorce from Bambang attracted national attention because it was triggered by Bambang’s affair with a celebrity that dated from 2002. Bambang then married the celebrity in an unregistered procedure, while still married to Halimah. Halimah did want to get a divorce, but Bambang filed a *ṭalāq* divorce with a Religious Court in 2007 on the grounds that there were *irreconcilable differences/irretrievable breakdown* among

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<sup>33</sup> *Ibid*, para. 3.15.4.

them. ‘Irreconcilable differences/irretrievable breakdown’ is one of the reasons for a divorce listed by the elucidation of Law No. 1 of 1974, art. 39(2). In *Halimah vs. the State*, Halimah claimed that this provision violated her constitutional rights to legal protection and justice (the 1945 Constitution, art. 28D(1) and 28H(2)). To support her claims, Halimah also referred to *fiqh* which does not list ‘irreconcilable differences’ as a reason for *ṭalāq* divorce. Instead, *sharī‘a* only mentioned adultery, disobedience (*nushūdh*), drinking, gambling, or criminal acts perpetrated by a wife as the grounds for divorcing her. To support her arguments, Halimah quoted a treatise on Islamic marriage law written by Mandani in 2011.<sup>34</sup> She also mentioned the Qur’ān chapter an-Nisa verse 19 which contains an admonition to men who hurriedly divorce their wives.<sup>35</sup>

Halimah brought expert witnesses to the Court, including a former Supreme Court Judge who has adjudicated many family law cases, Bismar Siregar J.; a Muslim feminist and research professor in Islamic studies who had been involved in Islamic family law reform in Indonesia, Siti Musdah Mulia; and a Muslim women activist who was also the wife of former President Gus Dur, Sinta Nuriya. All the expert witnesses questioned the philosophical value of ‘irreconcilable differences’ and argued its incompatibility with universal values of relationships between men and women set out in the Qur’ān and Hadīth. Siti Musdah Mulia, for example, stated that the Qur’ān and Hadīth never detail reasons for a husband to validly *ṭalāq* divorce his wife.<sup>36</sup> The *fiqh* does mention the reasons; Mulia quoted classical Islamic jurists’ commentary, namely the practice of wife-initiated divorce: *khul’*,<sup>37</sup> the existence of *khiyār*,<sup>38</sup> existence of *faskh*,<sup>39</sup>

<sup>34</sup> There is no complete information about this book in the text of Court decision; online searching also could not find this book to verify more about the author’s biography.

<sup>35</sup> *Halimah v. the State (No. 38/PUU-IX/2011)*, pp. 3-6.

<sup>36</sup> *Ibid*, 14.

<sup>37</sup> “A divorce at the instance of the wife, who must pay compensation to the husband.” See “*khul’*.” *Encyclopaedia of Islam*, Second Edition, Glossary and Index of Terms. Edited by: A B. Brill Online, 2013. Reference. University of Washington LIBRARIES.

existence of *nushūdh* (a recalcitrant wife), and *zihār*.<sup>40</sup> The statutory conditions for divorce in Muslim countries such as Indonesia and Malaysia are part of statutory interpretation of state law. According to Mulia, government interpretation of Islamic law is allowed, based on the doctrine of *siyāsa shar‘iyya* as per the treatises of classical jurists Al-Mawardi and Ibn Taimiyah. With regard to ‘irreconcilable differences’, however, Mulia argued that this is not included in *siyāsa shar‘iyya* because it has no basis in Islamic teaching, is discriminatory against women, potentially harms wives, and is incompatible with human rights protections upheld by the Constitution.<sup>41</sup>

The Court, however, turned down her petition because her legal argument was without merit. Article 28H(2) of the 1945 Constitution concerns affirmative action; meanwhile, the relations between husbands and wives in a marriage is equal, pursuant to article 31(1) of Law No. 1/1974 on Marriage. Thus, affirmative action is not needed. Furthermore, the Court viewed ‘irreconcilable differences’ as a valid reason to terminate a marriage which is no longer in line with the objective of marriage in the Marriage Law, namely to build up a tranquil, affectionate,

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[http://referenceworks.brillonline.com.offcampus.lib.washington.edu/entries/encyclopaedia-of-islam-2-Glossary-and-Index-of-Terms/khul-SIM\\_gi\\_02358](http://referenceworks.brillonline.com.offcampus.lib.washington.edu/entries/encyclopaedia-of-islam-2-Glossary-and-Index-of-Terms/khul-SIM_gi_02358), accessed 22 April 2013.

<sup>38</sup>“The right for the parties involved to terminate the legal act unilaterally.” In marriage, *khiyār* may apply in the case of incompatible marriages, or when a minor still below the age of puberty has been married by a legal guardian (*wāli*) other than her own father or grandfather. So, when the minor reaches his majority, he can choose between maintaining the marriage in being or dissolving it. See “Khiyār.” Encyclopaedia of Islam, Second Edition. Brill Online, 2013. Reference. University of Washington LIBRARIES.

[http://referenceworks.brillonline.com.offcampus.lib.washington.edu/entries/encyclopaedia-of-islam-2/khiyar-COM\\_0509](http://referenceworks.brillonline.com.offcampus.lib.washington.edu/entries/encyclopaedia-of-islam-2/khiyar-COM_0509), accessed 22 April 2013.

<sup>39</sup> Dissolution of marriage by means of *faskh* takes place at the instance of the wife or her relatives. In contemporary era, it is carried out by judicial process. *Faskh* may apply in marriage cases of failure to fulfill an express or implied condition, as well as those cases where the contract is vitiated by some irregularity. The reasons for dissolution of marriage by way of *faskh* are defined by the law. Usually, *faskh* constitutes the legal means open to the wife of dissolving the conjugal tie in case of serious cruelty. Chahata, Chafik. “Faskh.” Encyclopaedia of Islam, Second Edition. Brill Online, 2013. Reference. University of Washington LIBRARIES.

[http://referenceworks.brillonline.com.offcampus.lib.washington.edu/entries/encyclopaedia-of-islam-2/faskh-SIM\\_2316](http://referenceworks.brillonline.com.offcampus.lib.washington.edu/entries/encyclopaedia-of-islam-2/faskh-SIM_2316), accessed 22 April 2013.

<sup>40</sup>“An insult proffered by a husband upon his wife which likens the wife to some prohibited female relation of his, and exposes the husband to divorce.” See <<http://www.duhaime.org/LegalDictionary/Z/Zihar.aspx>> accessed April 22, 2013.

<sup>41</sup> *Halimah v. the State (No. 38/PUU-IX/2011)*, pp 14-19.

and compassionate family (*sakinah, mawaddah, rahmah*). This is because the law should provide a way out to avoid unwanted adverse events from a marriage experiencing irreconcilable differences, which may end up jeopardizing one party's safety. By making 'irreconcilable differences' one of the valid reasons for divorce, the law then has given a precautionary step away from domestic violence, for example, occurring in such a marriage.<sup>42</sup> Interestingly, the Court backed up its legal reasoning by citing the Islamic principle of *sadd al-dhari'a* (blocking means).<sup>43</sup>

From this case, we can see that another Muslim citizen challenged the government authority in interpreting valid reasons to terminate a marriage as well as the legitimacy of such interpretation. The petitioner based her arguments on the proofs of *shari'a* from the Qur'an and, most importantly, from doctrines of *fiqh* as provided by her expert witnesses. The Court, however, confirmed the government interpretation and upheld that irreconcilable difference, despite its absence in the *fiqh* doctrine on divorce, is a legitimate interpretation of Islamic law. This is because introducing irreconcilable difference as a novel ground for a divorce will realize the objective of marriage for it will protect one party's safety and keep them safe from domestic violence that may occur within a troubled marriage.

*c. Machica vs. the State (Illegitimate Children)*

This petition *Machica vs. the State* is about the constitutionality of the illegitimate children provision in the Marriage Law no. 1 of 1974. The petitioner is Machica, a singer who had been married to Moerdiono according to Islamic religious law, but the marriage was unregistered pursuant to the state law. Moerdiono was the Secretary Minister in the Soeharto's regime. When he married Machica he was still married to his first wife. He contracted his

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<sup>42</sup> *Ibid*, p. 43.

<sup>43</sup> *Ibid*.

marriage with Machica in compliance with the requirements of the *sharī'a*, i.e. presence of a bride, a groom, marriage guardian of the bride, offer from the guardian (*ijāb*), and acceptance from the groom (*qabul*). The child of their marriage, then, had only a legal relation to his mother and the family of his mother's side, according to art. 43(1) of the Marriage Law. This is because his parent's unregistered marriage does not have legal implications according to state law under art. 2(2) of the Marriage Law. As a consequence, the child could not acquire his father's name (Moerdiono) or have this printed on his birth certificate. Machica then struggled to establish the legal status of her marriage and her son's paternity, as required in order to make a claim for child maintenance from Moerdiono, but she always failed.

After the Constitutional Court was established, she filed a petition to the Court in 2010 on the unconstitutionality art. 2(2) and 43(1) of the 1974 Marriage Law. She claimed that her son and herself had constitutional rights to form a family and enjoy decency through a valid marriage, (art. 28B(1)), and for her son, the freedom to grow up free from discrimination ( art. 28B(2)), and to be recognized and assured legal certainty and equality before the law (28D(1)). These she claimed were rights violated by the aforementioned provisions of Marriage Law. She believed that her marriage to Moerdiono was valid pursuant to state law, as it was contracted in compliance with the requirements of *sharī'a* (art. 2(1) of the 1974 Marriage Law). Hence, art. 43(1) of the Law Marriage should not be applied to her case.

To support her claim, Machica brought a professor of *sharī'a*, Nurul Irfan of UIN Jakarta, as an expert witness who then testified that there is no requirement to register a marriage in *fiqh*. On the issue of legitimate child, however, he criticized the provision of art. 42 “legitimate child is a child born within or as a result of valid marriage” as in conflict with principles of Islamic law. The word “within [a marriage]” will give legitimation to a child who

was procreated before a marriage occurred, e.g. in cases of adultery or fornication, but born within a valid [civil or religious marriage] marriage. A citizen, however, is required by the Qur'ān and Hadīth to obey the government, including its law, as long as the law is not in conflict with the God's provision. The provision of art. 42 of Law No. 1 of 1974, however, contradicts the principle of Islamic law which considers a legitimate child to be one that is born inside wedlock. Because the requirements of marriage registration and the status of a child born outside the wedlock have the quality of *siyāsa shar'īyya*, he suggested to the Court that it weigh whether keeping or removing them would yield a less negative impact (*maḍārāt*). This is pursuant to the canons of interpretation in Islamic law.<sup>44</sup>

In 2012 the Court granted half of her petition, declaring art. 43(1) of the Marriage Law unconstitutional. The court, however, then qualified the article and pronounced it void (unconditionally unconstitutional), unless it was read in the following way:

A child born outside the wedlock has only a civil relationship with her mother and her mother's family [this is the text of art. 43(1)] *as well as with the man as her father and her father's family, if it can be proved, by means of science and technology and/or other evidence according to the law, that the child and the man have blood relationship.*<sup>45</sup>

According to the court, a woman cannot get pregnant without a man contributing his sperm; hence, it is injustice if the law says that the legal relationship of a child born outside the wedlock is only with her mother, as this releases the man whose his sperm impregnated the woman from any legal responsibility to the child. The law therefore must give legal protection to every child, irrespective her parents' marital status, as long as it can be proved through science and technology that the man is her biological father. As for the marriage registration provision, the Court decided that Machica's claim was unwarranted. Registration does not determine the

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<sup>44</sup> *Machica v. the State (No. 46/PUU-VIII/2010)*, pp. 12-14.

<sup>45</sup> *Ibid*, pp. 35-36. Italics from the author.

validity of a marriage; contracting marriage pursuant to religious law does. Registration is simply an administrative obligation imposed by the statute.<sup>46</sup>

All of the Constitutional Court decisions are final decisions. This thus will prevent future family law legislation in Indonesia, either the amendment of the 1974 Marriage Law or Islamic Family Law, to deny the legal relationship of children born outside of wedlock with their father. Given the magnitude of the impact of this decision on the very foundation of Islamic family law in Indonesia, the Fatwa Commission of the MUI issued a fatwa responding to the Court's decision. The subject matter of the fatwa reiterates author-jurists' opinions and previous fatwas on the legal status of a child born outside of wedlock (e.g. from adultery or fornication), namely her lineage, inheritance and maintenance relationship is only with her mother and mother's family. Furthermore, the state has the power to impose discretionary sanctions (ta'zīr) on a man who has caused the birth of the child, such as providing child maintenance or making mandatory bequests for the child.

The MUI, then, recommends the Parliament and government draft a law that will regulate adultery and fornication as common offenses punishable with severe punishments. Current criminal law only treats adultery as an offense when injured parties complain to police. This is done to deter people from committing adultery and fornication; meanwhile, the Court decision will stimulate people to commit adultery and fornication.<sup>47</sup> The MUI also recommends through its press release responding to the Court decision that the Legislature revise the Law on the Constitutional Court so that: first, the Court is no longer allowed to hear a petition whose decision is potentially at odds with the teachings of recognized religions in Indonesia; second, if the Court's decision is contrary to the teaching of religions recognized in Indonesia then the

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<sup>46</sup> *Ibid*, pp. 33-34.

<sup>47</sup> *Fatwa Majelis Ulama Indonesia No. 11 of 2012 concerning the Status of Children Born outside Wedlock and Treatment to Them*. Hardcopy available with author.

decision is not binding.<sup>48</sup> There is no resolution yet on this ultimatum from the MUI because the Legislature has not revised the Constitutional Court law.

From this case we can see that on the issue of the authority of *fiqh* versus statute, the Court thus responded differently. On the issue of marriage validity, the Court confirmed the authority of *fiqh* in determining the validity of Muslim marriages. On the issue of status of children born outside of wedlock, however, the Court gave higher priority to the Constitutional norms to be observed. The Court does not distinguish in its decision between a child born within an unregistered marriage, yet valid religiously, and a child born outside of wedlock. Meanwhile, the classical *fiqh* states the legal relationship of a child born outside of wedlock is only to her mother.

The previous section has provided an illustrative example on how the issue of authority and legitimacy are contested in the case of national marriage law formulation and judicial review in the Constitutional Court. The following section looks specifically at the Islamic marriage law of Indonesia as compiled in the Compilation of Islamic Law of Indonesia (hereinafter KHI or *Kompilasi Hukum Islam*) and efforts to reform it through introducing a counter legal draft to the KHI, which is also known as CLD-KHI.

#### **D. The case of the Compilation of Islamic Law of Indonesia (KHI)**

##### *1. National Madhhab vs. Fiqh of Madhhab Eponyms*

In 1991, President Soeharto issued a decree to implement the KHI as a guide for Religious Court Judges in adjudicating cases. The objective of its implementation is to help Islamic legal tradition keep pace with the requirement of a modern legal system of Indonesia in 1991. Previously, the *sharīʿa* judges of the Religious Courts referred to classical books of *fiqh* to

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<sup>48</sup> *Tanggapan Majelis Ulama Indonesia Indonesia terhadap Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 Pengujian UU No. 1 Tahun 1974 tentang Perkawinan*. Hardcopy available with author.

adjudicate cases.<sup>49</sup> As a result, discrepancies among the *sharī'a* judges' decisions for similar cases were considerable. The promulgation of KHI therefore was intended to be a standard code of Islamic family law (marriage, divorce, and inheritance plus trust law (waqf)) to be used by the *sharī'a* judges in order to bring legal certainty back to the religious courts' decision.<sup>50</sup>

Literature on the history of KHI formulation gives credit to professor of *sharī'a* and judges (of the *sharī'a* chamber of the Supreme Court) qua professors of *sharī'a* in playing an important role in giving life to the KHI.<sup>51</sup> Bustanul Arifin J., the Chief of Islamic Chamber of the Supreme Court and the founder as well as first president of Sultan Agung Islamic University, is considered as the key actor. He proposed the project of KHI to the President Soeharto, who in 1985 sanctioned its implementation by cooperative work between the Supreme Court and the Ministry of Religious Affairs. He was then appointed as the project leader; and the project team comprised sixteen committee members: one from the Council of Indonesian Ulama (MUI), eight from the Supreme Court and seven from the Ministry of Religious Affairs.

Earlier I mentioned that there was a problem of legal indeterminacy of the Religious Courts' decisions as a result of lack of a unified Islamic code. In addition to this, Bustanul Arifin J. was concerned with the suitability of classical texts referred to by the judges, for applying to the conditions prevailing in Indonesia. His concern was with the importance of a state-sanctioned

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<sup>49</sup> There were thirteen books of Shafi'ite *fiqh* designated as the standard books to be used by the Religious Judges pursuant to the Circular Letter of the Ministry of Religious Affairs in 1958. See Jan Michiel Otto, "Sharī'a," fn. 28, p. 486. For the list of thirteen books, see M.B. Hooker, *Islamic Law in South-East Asia* (Singapore: Oxford University Press, 1984), 279-280.

<sup>50</sup> See Otto, "Sharī'a," 459.

<sup>51</sup> See e.g. Ahmad Imam Mawardi, "The Political Backdrop of the Enactment of the Compilation of Islamic Laws in Indonesia," in Arskal Salim and Azyumardi Azra (eds), *Shari'a and Politics in Modern Indonesia* (Singapore: Institute of Southeast Asian Studies 2003); M.B. Hooker, *Indonesian Syariah: Defining a National School of Islamic Law* (Singapore: ISEAS, 2008); Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010).

and a uniquely local, revised edition of *sharī'a* in Indonesia, which confirmed the earlier theses made by professors of *sharī'a* such as Hazairin, Hasbi ash-Shiddieqi and Munawir Syadzali.<sup>52</sup>

To come up with a formula of Islamic law suitable for Indonesia, the committee employed the following methods in preparing the KHI draft; first, gathering material from classical *fiqh* by studying thirty-eight books of *fiqh*. These books not only originate from the Shafi'i school of law, a *madhhab* widely used in Indonesia, but also from other Sunnī orthodox *madhhab* of Hanafīyya, Malikiyya, Hanabila, and Zahirīyya schools. This stage was assisted by professors of *sharī'a* from seven Islamic universities in Indonesia (IAIN) who were asked to resolve legal questions devised by the project. Second, ulama were interviewed on legal problems generated by the gap between the text of *fiqh* and social conditions in Indonesia. There were 166 ulama interviewed and they represented various Islamic organizations and leading individuals in Indonesia. Third, they conducted comparative studies with some Muslim countries by sending some professors of *sharī'a* to Egypt, Turkey, and Morocco. Finally in 1988, they organized a workshop attended by representatives of MUI, the Religious Courts, deans of *sharī'a* schools, women's organizations, and independent scholars.<sup>53</sup>

After three years of work the draft was completed, but the draft was idle for three years because of a dispute over its status. There was a disagreement among the KHI drafting committee when they asked the government to give the new code a formal status. Some committee members thought the KHI should be issued as a law (Undang-Undang) while other argued that it would be realistic as a Presidential Decision (Keputusan *Presiden*) considering the painstaking struggle to have Islamic law legislated in the Parliament.<sup>54</sup> The KHI was finally

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<sup>52</sup> See Hooker, "Indonesia," 21; Nurlaelawati, "Modernization," 218.

<sup>53</sup> Mawardi, "The Political," 127-131.

<sup>54</sup> Latest example that shaped these committee members' concern was the legislative process of Law No. 7 of 1989 concerning Religious Courts. Aware of this situation and wanting to take advantage of it to gain Muslims' support of

promulgated through a Presidential Instruction (Instruksi *Presiden* or *Inpres*) in 1991. Soon after that, the KHI legal status became part of an academic debate, because an *Inpres* is not a formal mechanism for issuing a law in Indonesia.<sup>55</sup> Not only the legal status, but also the content of the KHI was also challenged by ulama in Indonesia. Conservative groups claimed that the KHI had gone too far from traditional *fiqh*, in order to achieve reforms in Islamic family law that fitted with the state's agenda.<sup>56</sup> In fact, Yahya Harahap J. (one of drafting committee members) points out that the compatibility of KHI with traditional *fiqh* was not the main concern of the drafters, as the traditional *fiqh* was the raw material used in the process of code-making. In addition, Yahya argues, the texts of *fiqh* are contextual, for they were selected and interpreted by their authors from the Qur'ān and Hadīth subject to the influences of their time and circumstances.<sup>57</sup> So, in the case of the inheritance law for example, the KHI project team employed the principle of utility and public interest (*maslaḥa mursala*) and a right to exercise free *ijtihad* to include the provision of representation of heirs and obligatory bequest, by which inheritance rights are also conferred on orphaned grandchildren regardless their gender. This provision in the compilation directly clashed with the established classical system of inheritance in *fiqh*, which states that the

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his leadership for the next terms, President Soeharto issued the KHI as a Presidential Instruction. See about the political rationale behind the KHI in Mawardi, "The Political," 136-138.

<sup>55</sup> A. Hamid S. Attamimi, a professor of law from Universitas Indonesia, argues that the KHI has limited legal force because of its status as an *Inpres*. Unlike *Keputusan Presiden* (Presidential Decision or now become *Peraturan Presiden* (Presidential Regulation)), an *Inpres* does not have normative characteristic to impose an abstract rule to public on continuous basis (*dauerhaftig*). Instead, an *Inpres* is simply used to direct and guide government officials in implementing their tasks and jobs. Thus, it is individual and concrete in nature and once applied completed (*enmahlig*). See A. Hamid S. Attamimi, "Kedudukan Kompilasi Hukum Islam dalam Sistem Hukum Nasional: Suatu Tinjauan dari Sudut Teori Perundang-undangan Indonesia," in *Dimensi Hukum Islam dalam Sistem Hukum Nasional: Mengenang 65 Tahun Prof. Dr. H. Bustanul Arifin, SH.*, Amrullah Ahmad et al. (eds.) (Jakarta: Gema Insani Press, 1996), 153-154.

<sup>56</sup> Even two Islamic organizations in Indonesia, Muhammadiyah and Nahdlatul Ulama, whose views are deemed to represent moderate Islam, have strongly criticized the KHI as an immature product. Nahdlatul Ulama says it lacks (sufficient grounding in) *fiqh*, while Muhammadiyah sees that it lacks a clear rationale grounded in the Koran. See Nurlaelawati, "Modernization," 220; see also for inheritance law case in Mark Cammack, "Inching toward Equality: Recent Developments in Indonesian Inheritance Law," *Indonesian Law and Administration Review*, Vol. 5, No. 1 (1999), 19-50.

<sup>57</sup> As quoted by Tim Lindsey, *Islam, Law and the State in Southeast Asia* (London; New York: I.B. Tauris, 2012), 72.

share should only be conferred upon and be divided among the collateral relatives (brothers and sisters) of the deceased.<sup>58</sup> M.B. Hooker points out, in his study of the KHI as the national school of Islamic law in Indonesia, that there are five points of conflict between the KHI and the classical *fiqh* which potentially lead to objections and resistance toward its legitimacy.<sup>59</sup> First, the prohibition of interreligious marriage; second, restrictions on polygamy; third, introduction of a minimum age for marriage and the displacement of the authority of the guardian; fourth, the intervention of the Religious Courts in the matter of divorce; and fifth, the introduction of joint property in inheritance.<sup>60</sup>

An empirical study conducted by Euis Nurlaelawati on the application of the KHI in the Religious Courts found that some judges in West Java province, who have been trained to use the KHI during their studies, continue to adhere to the traditional legal doctrines of *fiqh* in cases where the KHI deviates from it. These judges disregarded the KHI provisions on inheritance, child custody rights (*haḍana*), the minimum age of marriage for girls and boys, as well as *ithbāt al-nikāḥ* (legalization of unregistered marriage), instead applying the relevant principle drawn from *fiqh* texts. In one *haḍana* case, judges transferred the right of custody to the father, even though the KHI rule is that it devolves to mothers, provided that children are under age. In this case the Court declined to apply that principle because it found that the mother had renounced Islam as her religion. The judges cited the opinion of the majority of jurists (Hanāfi, Māliki, Shafi'i and Hanbali), that being Muslim is one of the qualifications for a person to be a guardian. Nurlaelawati also found out that judges employed a public utility argument (*maslaḥa*) when they based their reasoning on classical *fiqh* texts rather than the KHI.<sup>61</sup>

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<sup>58</sup> See Nurlaelawati, 219. See Hooker, "Indonesia," 22-25.

<sup>59</sup> Hooker, "Indonesia," 22-25

<sup>60</sup>

*Ibid.*

<sup>61</sup> Nurlaelawati, "Modernization," 221.

What this process suggests is that, notwithstanding the codification of Islamic law principles within the KHI, it does not enjoy universal acceptance. In practice some judges in the Islamic Courts in Indonesia, for example, feel able to draw on classical *fiqh* as a primary resource in order to interpret, expand, or distinguish the statutory rules of the KHI. This process of looking beyond the text of the statute to support or validate judicial reasoning for ‘public policy’ reasons is one that is well-known and routinely used in most modern legal systems, including ones in which Islamic law plays a core role. What is notable here, however, is that the primary source being drawn upon, in at least some of the cases, is precisely the body of rules (classical *fiqh*) that were ostensibly displaced by the KHI.

## 2. Counter Legal Draft of the KHI: Ethics in the *Qur’ān*, *Fiqh* and Human Rights

The KHI was criticized by both conservative and liberal group. *Fiqh* oriented groups, for example, accused the KHI and its drafters of having distorted Islamic law. Liberal groups viewed the KHI as having done little to elevate the status of women in marriage. They claim there were inherent gender biases, evident in articles that reflect an outdated *fiqh* drawn from Middle Eastern perspectives rather than principles attuned to local Indonesian needs. For instance, this view was well articulated by the Working Group for Gender Mainstreaming Team of the Ministry of Religious Affairs, which proposed a Counter Legal Draft of the KHI in 2004 (hereafter referred as CLD-KHI). The working group was led by Siti Musdah Mulia, a professor of Islamic political thought at UIN Jakarta, who also previously received secondary education at a traditional Islamic school (*pesantren*). The ten members of working group consisted of seven junior professors of *sharī‘a* and Islamic studies from state and private Islamic universities/colleges and three researchers (two from the Ministry of Religious Affairs, one from an NGO research center). Half of the members were trained at *pesantren* for their secondary

education, while the rest studied Islam during their tertiary education. They come from diverse Islamic organizations in Indonesia, but arguably shared similar concerns about contemporary issues in Islam, such as pluralism, gender, and human rights. Interestingly, two members were active on the board of the Council of Indonesian Ulama (MUI) at the national level.<sup>62</sup>

The working group worked for almost two years from 2003 to 2004 in an effort to come up with the formulation of Islamic law which “may become the fundamental reference for a just society and which upholds values of humanity, respects women’s rights, spread wisdom and kindness, and achieves wellbeing for all of humankind.”<sup>63</sup> For this purpose, they reviewed the KHI, studied the texts of classical *fiqh*, conducted fieldwork in several areas in Indonesia, examined opinions from ulama and legal experts, and organized public hearings. During the process, some leading figures in *fiqh* and gender issues contributed to the work; they included Husein Muhammad (an ulama) and Lies Marcoes-Natsir (an activist).<sup>64</sup>

Despite this process, the CLD KHI received criticism from many quarters of the Indonesian Muslim community when it was finally launched on October 4, 2004. These criticisms were unsurprising because almost all provisions in the KHI, especially those which were considered to discriminate against women, were dismantled in the CLD KHI draft. The drafters deconstructed the KHI by means of invoking legal ethics and universal values of Islam induced from the Qur’ān, such as equality (al-musawwa), fraternity (al-ikhā’), justice (al-‘adl),

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<sup>62</sup> For details about education, occupation and organization of the working group, see Marzuki Wahid, “Reformation of Islamic Law in Post-New Order Indonesia: A Legal and Political Study of the Counter Legal Draft of the Islamic Law Compilation,” in *Islam in Contention: Rethinking Islam and the State in Indonesia*, Ota Atsushi *et al.* eds. (Jakarta; Kyoto; Taiwan: Wahid Institute-CSEAS-CAPAS, 2010), 84-86.

<sup>63</sup> This is the objective of the Counter Legal Draft of the KHI written in the book prepared by the working group. The book contains 178 proposed rules on marriage, inheritance, and bequest law. See Tim Pengarusutamaan Gender Departemen Agama RI, *Pembaruan Hukum Islam: Counter Legal Draft Kompilasi Hukum Islam* (Jakarta: Departemen Agama, 2004), 8.

<sup>64</sup> Wahid, “Reformation,” 86.

usefulness (*maslaḥa*), human rights, pluralism and gender equality.<sup>65</sup> Of one hundred and seventy eight proposed articles of the CLD-KHI, twenty-three articles proposed substantive reforms to Islamic marriage law. These included marriage registration as a legal condition for a valid marriage; polygamy disallowed and deemed void by law; the permissibility of interfaith marriages; equal shares for male and female heirs; and the principle of disobedience (*nushūdh*) being applied also to the husband.<sup>66</sup> These radical measures can be seen as a move to evoke public awareness of some social problems that stem in part from some provisions in the KHI. Such problems include the increasing number of abandoned wives and children as a result of polygamy, and domestic violence against women.<sup>67</sup>

As for methodology, the working group of CLD-KHI shared the same concerns as the drafters of the KHI, i.e. how to use the classical *fiqh* in making a code suitable to the circumstances of modern Indonesia, instead of producing a code that was simply compatible with the classical *fiqh*. Both groups, therefore, asserted their rights to exercise free *ijtihad* as well as employing non-traditional approaches to interpreting the religious texts, such as public utility (*maslaḥa*), custom (*ʿurf*) or the goals and objectives of *sharīʿa* (*maqāṣid al-sharīʿa*). The CLD-KHI working group, however, went further with their approach by including social science perspectives grounded in human rights and gender studies. They argued that, as a result, they shifted the paradigm in reading the religious texts from theocentric to anthropocentric, from elitism to populism, and from deductive to inductive thinking patterns.<sup>68</sup> According to the CLD KHI team, thus, the Qurʾān and Hadīth must be adjusted according to the human thought and

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<sup>65</sup> Tim Pengarusutamaan Gender Departemen Agama RI, “Pembaruan,” 7-8.

<sup>66</sup> Complete information about these substantive reforms proposal, see Marzuki Wahid, “Reformation,” 80-82; Tim Lindsey, “Islam,” 84-88.

<sup>67</sup>Siti Musdah Mulia, ‘A Revision to Islamic Law Book’, *The International Center for Islam and Pluralism*, Vol. 2, No. 3 (2005), 4.

<sup>68</sup>Tim Pengarusutamaan Gender Departemen Agama RI, “Pembaruan,” 22-23.

social situation of communities because they were revealed to serve human beings, not God.<sup>69</sup> In order to do this, they came up with five standard interpretations: (i) making rules based on the objectives of the text of Qur’ān/Hadīth, not on its literal words (*al-‘ibrā bi al-maqāsid la bi al-alfādh*); (ii) that the text of Qur’ān/Hadīth can be altered/erased to better attain wellbeing (*jawāz al-naskh al-nuṣūṣ bi al-maslaḥa*); (iii) that public reasoning has authority to amend the text of Qur’ān/Hadīth (*tanqīḥ al-nusūkh bi al-‘aql al-mujtamā’*); (iv) that reasoning and tradition have the authority to specifically interpret the texts (*takhsīs bi al-‘aql wa takhsīs bi al-‘urf*); (v) that making a rule from a text of Qur’ān/Hadīth is always related to the context in which it has been passed on, not based on common practice (*al-‘ibrā bi khuṣūṣ al-sabāb la bi ‘umūm al-alfādh*).<sup>70</sup>

Siti Musdah Mulia, for example, illustrates how the CLD-KHI applied this new approach in reading the Qur’an to the inheritance share between male and female heirs. According to Mulia, the *tawhīd* principle must be employed to deal with a ‘difficult’ verse such as the 2:1 share in inheritance. Based on the *tawhīd* principle, every human is equal before Allah. *Tawhīd* must become the foundation of human freedom (especially for women and children) because they are the most oppressed group in human history. Parallel to *tawhīd* is the prohibition of *shirk* (association of anything with God), including praising other groups or giving them special privileges. Further, through the gradual evolution of approaches toward women’s situation from pre-Islam (*jahiliyyā*) to the Prophet’s era, full emancipation of women is contemplated by Islam. Mulia and Cammack highlighted the contrast between the image of women in the Qur’ān with freedom to participate in all forms of public life, versus restrictions on women in contemporary

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, 23-24; see also Abd Moqshit Ghazali, “Argumen Metodologis CLD <http://islamlib.com/id/index.php?page=article&id=774>, accessed September 24, 2005; Marzuki “Reformation,” 93-94; Lindsey, “Islam,” 89.

life.<sup>71</sup> Thus, the 2:1 share is a mistake if it operates to justify discriminate against women, because the spirit of the Qur’ān and Hadīth is equality, not achieved in the prophet’s time in order to avoid social upheaval and in recognition of the (then) existing social structure (men bore the full burden of family sustenance). However by contrast, in contemporary Muslims lives, many women have become the breadwinner for their families.<sup>72</sup>

This reformation of Islamic family law in accordance with gender and human rights perspective was welcomed by nearly all NGOs working on gender equality, justice, human rights and pluralism in Indonesia,<sup>73</sup> but rejected by major Islamic organizations in Indonesia, including the MUI, Muhammadiyah, NU, and Islamic Defender Front (FPI).<sup>74</sup> Huzaimah T. Yanggo, professor of *Shari’ah* from UIN Jakarta and jurisconsult of the MUI, is among the few who systematically critiqued the CLD-KHI from an Islamic jurisprudence point of view right after it was unveiled in 2004. Her response was expressed during a panel discussion organized by YARSI University of Jakarta on October 29, 2004 following the controversy over the CLD-KHI.

According to Yanggo, the radical changes to Islamic family law proposed by the CLD-KHI nullify the existence of specific verses in the Qur’ān and Hadīth which have direct legal significance because of their clear meaning, for example the provisions regarding polygamy. According to art. 3(1-2) of the CLD-KHI: “the basic principle of marriage is monogamy (*tawahhūd al-zawj*); the marriage which is not conducted according to paragraph (1) is void”.<sup>75</sup> Thus, based on this article, polygamous marriage would be banned in Indonesia. In response to

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<sup>71</sup> Siti Musdah Mulia and Mark Cammack, “Toward a Just Marriage Law: Empowering Indonesian Women through a Counter Legal Draft to the Indonesian Compilation of Islamic Law,” in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, R. Michael Feener and Mark Cammack, eds. (Cambridge: Harvard University Press, 2007), 135-138.

<sup>72</sup> *Ibid.*

<sup>73</sup> These include the National Commission on Violence Against Women, Fahmina Institute, the Institute for Gender and Religious Studies, Rahima, Puan Amal Hayati, Women’s Journal, Women Study Center, Kalyana Mitra, Kapal Perempuan, Solidaritas Perempuan, LBH APIK, Fatayat NU and Rifka An-Nisa; see Wahid, “Reformation,” 103.

<sup>74</sup>For complete list of the organizations and their comments, see Wahid, “Reformation,” 98-103.

<sup>75</sup>Tim Pengarusutamaan Gender Departemen Agama RI, “Pembaruan,” 36.

this article, Yanggo points out that there are no texts (*naṣ*) of the Qur'ān and Hadīth which stipulate that polygamous marriage is invalid. As a matter of fact, chapter an-Nisa (31) states that polygamous marriage is legal, and can be carried out subject to the condition of fairness.<sup>76</sup>

Another example is interfaith marriage. The provision on interfaith marriage was proposed by the CLD KHI because there have been cases of interfaith marriage in Indonesia. Unfortunately, the current marriage laws in Indonesia (UU No 1/1974 and the KHI) do not accommodate this kind of marriage. As a result, one party has to convert to the other party's religion, so as to contract the marriage legally in Indonesia. If each party wishes to maintain his/her religion, they usually go abroad to contract their marriage and, then, registered it in a civil registry office in Indonesia. Again, according to Yanggo, the CLD KHI provision overtly contravenes the *sharī'a*. She bases her arguments on chapters al-Baqāra (221); al-Mumtaḥana (10); al-Mā'ida (5) which are combined with the *fatwa* of the MUI and Ibn `Umar about the corruption (*mafsada*) of inter-religious marriage, which outweighs its benefits (*maslaḥa*), and the *ijmā'* (consensus) of Islamic jurists about the prohibition of Muslim women marrying non-Muslim men.<sup>77</sup>

Criticism was not only directed at the content, but also to the methodology and approach employed by the CLD-KHI. According to Rifyal Ka'bah (professor of *sharī'a* of YARSI University and a Supreme Court Judge) who was also a panelist of the discussion, new concepts outlined by the CLD KHI were not consistent with Islamic law reformation; rather, they contravene the original concepts of Islamic law. This is because the approaches employed by the CLD-KHI drafters were not an Islamic law approaches. The CLD KHI drafters employed

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<sup>76</sup> Chamzawi, "Sebuah Catatan tentang Kontroversi Revisi Kompilasi Hukum Islam", [http://www.yarsi.ac.id/kolom\\_chamzawi/detail.php?id=26](http://www.yarsi.ac.id/kolom_chamzawi/detail.php?id=26), accessed October 6, 2005; see also Marzuki Wahid, "Reformation," 101-103.

<sup>77</sup> See Chamzawi, "Sebuah"; Marzuki Wahid, "Reformation," 101-103.

gender, pluralism, human rights, and democracy as their approaches because to them the objectives of *sharīʿa* are to uphold social justice values, wellbeing of the human race, mercy for the universe; and social virtues. Meanwhile, he argued the true objectives of the *sharīʿa* (*maqāsid al-sharīʿa*) are to safeguard one's religion, life, intellect, posterity, and wealth.<sup>78</sup> Based on this, it can be understood why the opponents of the CLD-KHI reject, for example, inter-religious marriage. This is because the value of 'safeguarding the religion' should take precedence over 'human rights' or 'pluralism'. The opponents of the CLD-KHI draft see the possibility of giving up Islam by committing inter-religious marriage.

Likewise, Yanggo criticizes the methodology and approaches of the CLD-KHI as biased, emotional and deconstructive. This is because, to the CLD-KHI drafters, the Qurʾān and Hadīth must be adjusted according to the human thought and social situation of the communities. Thus, human logic (*raʿy*) might amend the texts of Qurʾān and their univocal language (*nuṣuṣ*) by means of *maslaḥa* (public utility).<sup>79</sup> Here, we can see that the opponents support the traditional sources of Islamic law theory, which is very normative-deductive in approaching religious texts. Consequently, human beings are not allowed to go beyond the text, especially textual provisions with univocal language quality. This is because the authority to make law lies in God's hands, while human beings, in line with the role of Islamic jurists for centuries, seek only to find the law from the texts. Therefore, the radical changes proposed by the CLD KHI are accused of being not Islamic law, because they contradict the texts and even make new rules out of the texts.

However, the CLD-KHI drafters rebutted the accusation of not basing their arguments on the Qurʾān. They maintained that the universal injunctions of the texts with regard to justice, *maslaḥa*, pluralism, human rights and gender equality are employed in formulating the CLD-

<sup>78</sup> See Chamzawi, "Sebuah"; About the concept of *maqāsid al-sharīʿa*, see e.g., al-Ghazali, *al-Mustasfa* (Cairo: al-Maktabah at-Tijariyyah al-Kubra, 1937) I: 139-140.

<sup>79</sup> See Chamzawi, "Sebuah,"; see also Wahid, "101-103; Lindsey, "Islam," 91.

KHI. By means of an empirical-inductive approach outlined in their standards of interpretation set out above (see fn. 70), these universal injunctions are given precedence ahead of particular injunctions relating to issues such as polygamy, inter-religious marriage, and the 2:1 inheritance share in favor of men. This is because, instead of solving the legal problems faced by Muslims in Indonesia, the particular injunctions themselves have become problems which have to be solved in the contemporary world.<sup>80</sup> This happens because the KHI principles can no longer accommodate developments within Indonesian society. Moreover, many provisions of the KHI are literally based on particular injunctions, without further reading them contextually. Further, if the contemporary legal system and government policy are taken into account, the KHI must be amended by the government, so as to be compatible with its current policy.<sup>81</sup> Here we can see that the CLD-KHI drafters assert their right to exercise free *ijtihad* by interpreting directly the religious texts using largely social science approaches. To them, classical *fiqh* is no longer a source of authoritative law in Indonesia, given the different circumstances between contemporary Indonesia and the medieval Middle East where the classical *fiqh* was formulated.

As with the process of the Marriage Law drafting in the 1970s, The CLD KHI draft was withdrawn so as not to create unrest among Muslim communities. The Minister of Religious Affairs, then, dissolved the working group and removed the CLD-KHI from the Ministry Religious Affairs' agenda on February 14, 2005.<sup>82</sup>

Hence, we see in this process a reformist and pluralist drafting group convened by the government under the Ministry of Religious Affairs that produces a progressive and rather dramatic re-writing of Islamic family law principles for Indonesia. These are critiqued from many quarters and, rather than push forward with a revision of the codification of Indonesian

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<sup>80</sup> See Ghazali, "Argumen".

<sup>81</sup> See Wahid, "Reformation," 94-96.

<sup>82</sup> See *Ibid.*, 106; Lindsey, "Islam," 91.

Islamic law represented by the KHI, the Ministry withdraws the draft. In this process multiple critical Islamic organizations and voices exercise a ‘veto’ over the progressive draft, but it is not clear which, if any, plays a definitive role in blocking the proposed direction of family law reform.

### **E. Conclusion**

What we see in these episodes of judicial reasoning and legislative drafting and revision with regard to family law in Indonesia is that determining who has authority to declare which sources of Islamic law are authoritative is not a clear-cut exercise. We see that author-jurists and juris-consults (also generically called *ulama* in Indonesia<sup>83</sup>) -- who traditionally authorized and legitimized Islamic law and its interpretation -- now have rivals from their colleagues (professors/researchers, judges and activists) who were traditionally not considered part of the epistemic community of Islamic authority. This rivalry/expansion of the epistemic community has been made possible because government authorize professors/judges qua professor to draft Islamic ‘state’ law.

The traditional textual sources of authority are also in question. We find that the classical *fiqh* of *madhhab* eponyms have been largely treated as the primary source of Islamic law in Indonesia to date. However, this has now been challenged by reformist jurists (from among the *ulama*, professors/researchers and Supreme Court judges) by means of resolving contemporary legal problems faced by Muslim in Indonesia by referring directly to the Qur’ān by means of invoking traditional Islamic legal theory (*uṣūl al-fiqh*) combined with insights from humanities and social sciences. This is illustrated in both the Constitutional Court case reasoning in *Machica*

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<sup>83</sup> Specialist terms for Islamic jurists or *fukaha* in Indonesia such as author-jurists (*musannif*) and juris-consults (*mufti*) are not commonly used in Indonesia. see Mohammad Atho Mudzhar, *Fatwas on the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975-1988* (Jakarta: INIS, 1993), 3.

vs. *the State* and the history of attempts to reform the KHI through the CLD KHI, notwithstanding the fact that this proposed draft was ultimately abandoned.

This synthetic approach is made possible because ulama qua professors/researchers and judges conversant with the development of different approaches to Islamic law in the contemporary world as part of their training in *sharī'a* law school.<sup>84</sup> This is done to accommodate multiple authorities of textual sources for Islamic law in Indonesia. Their decisions, therefore, consist of both Islamic and non-Islamic legal instruments, reflecting both their tribute to Islamic legal norms as well as transformation of *sharī'a* principles in the light of requirement to comply with human rights.

Having examined the case of legislative reform and codification of Islamic family law, we are left with a question whether the historical structure of authority of Islamic law in Indonesia has been transformed, considering the active role played by professors/researchers and judges in reshaping Islamic law in Indonesia. This case study also prompts the question whether we can only look to the traditional authority to ascertain whether the legislation or codification of Islamic law violates *sharī'a*.

These judicial and legislative drafting debates concerning family law in Indonesia do not reveal any single Islamic actor as having an authoritative voice or veto power that shapes the interpretation or creation of Islamic law norms in Indonesia. By contrast, however, recent developments in Islamic legislation and codification, in the fields of Islamic business law (*mu'āmalāt*) and food regulation, suggest a different pattern of institutionalizing authority over Islamic law interpretation. This development is interesting because it is consistent with earlier

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<sup>84</sup> For comprehensive discussion on *sharī'a* education in Indonesia especially on tertiary level, see Ayumardi Azra, "Islamic Legal Education in Modern Indonesia," in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, R. Michael Feener and Mark E. Cammack, eds. (Cambridge, Massachusetts: Harvard University Press, 2007), 257-270. For comprehensive discussion on Islamic education on all levels in Indonesia, see Lindsey, "Islam," 217-251.

studies that argue that the MUI has acted as the guardian of Islamic law in Indonesia in that ascertaining that state laws and regulations do not contradict the *sharīʿa*. This proposition is explored and tested in this dissertation, which outlines the role of the MUI in developing fatwa regarding the new legal field of duty to pay corporate zakat.

*Chapter III*

**INTERPRETING CORPORATE ZAKAT: THE COUNCIL OF INDONESIAN ULAMA  
(MUI) AND ISLAMIC AUTHORITY IN INDONESIA**

**A. Introduction**

This chapter focuses on the issue of how Islamic legal authority in Indonesia has responded to corporate zakat as a new religious obligation in Islam. It will analyze ulama's opinions on this matter, especially those affiliated with the Council of Indonesian Ulama (Majelis Ulama Indonesia, hereinafter MUI), in order to understand their methods and arguments in advancing their opinions on this matter and what this says about Islamic authority in Indonesia.

The discussion in this chapter begins with overview of the MUI's origin and development and the relationship between the MUI's *fatāwā* (singular: *fatwā*) and the state's legislative agenda, especially in the area of the *sharī'a* economy (mu'āmalāt). Why have the MUI *fatāwā* apparently been so influential in this new regulatory domain, despite the fact that the MUI does not possess a monopoly on *fatāwā* issuing authority in Indonesia? The role of the MUI in this regulatory domain is emphasized because of the expansion and, then, institutionalization, of MUI's formal role in the state system for administering Islamic legal tradition for the *sharī'a* economy.<sup>1</sup>

In Chapter Two I described the plurality of sources of authority for Islamic law in contemporary Indonesia – both institutional actors and textual sources – as they operate within the domain of family law, the first and foremost field of Islamic law regulated by the state. By contrast, however, recent developments in Islamic legislation and codification in the field of

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<sup>1</sup> See Tim Lindsey, "Monopolising Islam: The Indonesian Ulama Council and state regulation of the 'Islamic economy'," *Bulletin of Indonesian Economic Studies*, vol. 48, no. 2 (2012), 253-274.

*sharī'a* economy, suggest a different pattern of institutionalizing authority over Islamic law interpretation. In the case of Islamic financial services, for example, the state now institutionalizes a mechanism for ascertaining *sharī'a* compliance of Islamic banks in Indonesia. The state vests the MUI with the authority to determine *sharī'a* compliance and the *Sharī'a* National Board, the MUI's organ, runs the authority technically by issuing *fatāwā* related to financial services. Their implementation is supervised at the financial institution level by the *Sharī'a* Supervisory Board which is appointed on the recommendation of the *Sharī'a* National Board.<sup>2</sup> The *Sharī'a* National Board *fatāwā* are then absorbed into the Central Bank Regulations by means of a regulatory process within the *Sharī'a* Banking Committee which is under the authority of the Central Bank.<sup>3</sup> Given the extensive design of MUI regulation of financial services, my concern is whether the MUI can then expand this authority into other fields of Islamic law, and if so, why and how the MUI does that.

The role of the MUI in deciding to frame corporate zakat as a mandatory duty enforceable by the Indonesian government is important, because the obligation itself is ambiguous, both in Islamic jurisprudence and in Indonesian statutory law. There is no concept of a legal person in classical Islam; thus the duty of zakat only applies to natural persons; so there is no precedent for applying the duty of zakat to a legal person in classical Islam. Following confirmation of its status in the 1980s by an international zakat forum, a decision was made by the *Ijtima Ulama* of the All Indonesian *Fatwā* Commission of MUI and Islamic organizations in 2009, requiring the payment of corporate zakat. The *Ijtima Ulama* is a collective *ijtihād* forum

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<sup>2</sup> Elucidation of Law No. 21 of 2008 concerning *Sharī'a* Banking art. 1(12) of Law No. 21 of 2008: “*Sharī'a* principles are the principles of Islamic law in banking activities based on the *fatwā* issued by the agency having authority in the determination of the *fatwā* in the field of *sharī'a*,” art. 26(2) of Law No. 21 of 2008: “The *Sharī'a* principles as referred to in art. (1) is ruled by the Council of Indonesian Ulama,” art. 26(3) of Law No. 21 of 2008: “*Fatwā* as contemplated in art. (2) is promulgated in the Central Bank Regulation.”

<sup>3</sup>Elucidation of Law No. 21 of 2008 concerning *Sharī'a* Banking, art. 26(4): “The *Sharī'a* Banking Committee, consisting of the elements of the Central Bank, Ministry of Religious Affairs, and the public with a balanced composition, has expertise in the field of *sharī'a* and numbered eleven people.”

that involve all ulama across Islamic organizations in Indonesia; it is organized biannually by the MUI since 2003 in order to resolve contemporary legal problems faced by Muslims in Indonesia. Why, on the one hand, was there a *fatwā* issued by a *Fatwā* Commission (and the *Sharī'a* National Board in the case of Islamic Financial Services) and a resolution issued by *Ijtima Ulama* on the other hand? What is their difference? Further, why has the decision of the 2009 *Ijtima Ulama* not yet been promulgated as a *fatwā* by the MUI?

This chapter then continues with the discussion of methods and procedures for issuing a *fatwā* employed by the *Fatwā* Commission of MUI and the *Ijtima Ulama*. Most importantly, it analyzes the responses of ulama on corporate *zakat* as a new obligation in Islam. This chapter considers these problems in light of data gathered through interviews with informants involved in the 2009 *Ijtima Ulama*, as well as documentation of ulama's opinions either in the form of treatises such as book chapters or seminar proceedings.

## **B. Overview of The Council of Indonesian Ulama's Origin and Development**

### *1. When and why the MUI was instituted?*

The MUI was officially established during the first National Conference of all Indonesian Ulama Councils on 21-27 July 1975. From the literature we know that its bylaws were signed by the assembly, comprising 53 leading ulama of Indonesia and a board of directors of the local MUI on 26 July 1975. The final day of the conference, i.e. 27 July 1975, saw the instalment of a board of directors for period 1975-1980 by the Minister of Religious Affairs.<sup>4</sup>

The narrative history of the MUI mentions that the aspiration of ulama is to have a special forum for all ulama across Islamic organizations came from both government and Islamic organizations. Firstly, for example, the all Indonesian Ulama Conference (*Musyawahar Alim*

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<sup>4</sup> Majelis Ulama Indonesia, *15 Tahun Majelis Ulama Indonesia: Wadah Musyawarah para Ulama, Zu'ama dan Cendekiawan Muslim* (Jakarta: Sekretariat MUI, no date), 85-91.

*Ulama se Indonesia*) on 30 September 1970 in Jakarta was organized by the Center for Indonesian Islamic Propagation (*Pusat Dakwah Islam Indonesia*). At this event, many ulama suggested the establishment of an ulama council which would have a *fatwā* body. The Center itself was set up by the Minister of Religious Affairs. The idea came from Ibrahim Hosen's paper quoting the decision of the *Majmā' al-Buhūts al-Islāmiyya* in Cairo in 1964 on the need for and significance of practicing collective *ijtihād*. Hamka, the (then) first general secretary, rejected the idea on the same occasion, especially on the point of inviting secular scholars to get involved in the practice of collective *ijtihād*. He recommended that President Soeharto appoint a *muftī* who would advise the government and Muslim communities, instead. Given this, the conference merely recommended that the Center review the possibility, but this recommendation went unnoticed for about four years.<sup>5</sup>

Another key historical event was a workshop for Islamic preachers (*mubāligh*) on 26-29 November 1974. The workshop produced a consensus to establish an ulama council which would guide Muslims' participation in national development. The consensus was reached because of a strong suggestion from President Soeharto who saw the need for a nationwide body of ulama to represent Muslims in an interreligious body.<sup>6</sup> The consensus, however, meant that the format of the ulama council was left to the discretion of each region pursuant to their local conditions. This consensus was further supported by Soeharto during the closing ceremony, by stating that the existence of some sort of ulama and religious leader forums were badly needed for national development. This would be impossible if the community, especially the religious adherents, did not get together in a special forum. The president thus urged that ulama and religious leader forums to be instituted, so that each forum representing ulama or religious leaders from a given

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<sup>5</sup> Nadirsyah Hosen, "Behind the Scenes: Fatwas of Majelis Ulama Indonesia (1975-1998)," *Journal of Islamic Studies*, vol. 15, no. 2 (2004), 149

<sup>6</sup> *Ibid*, 150.

religion in Indonesia could talk and cooperate in fostering harmony, mutual understanding, and respect among religious adherents in Indonesia.<sup>7</sup>

On 24 May 1975, at an event of the Council of Indonesian Mosques (*Dewan Masjid Indonesia*), Soeharto again stated his aspiration for seeing the development of the Council of Indonesian Ulama. Efforts to establish ulama councils in the regions where they had been set up were intensified pursuant to the instruction of the Minister of Internal Affairs. By May 1975, local offices of the Council of Indonesian Ulama had been established by the Minister's directive at the provincial levels and some district levels of Indonesia.<sup>8</sup> Meanwhile for the central office, a committee of the first National Conference of the all Indonesian Ulama Council mentioned above was set up by the President's directive to prepare its establishment.<sup>9</sup>

The birth of MUI, hence, can be said as the result of both ulama's and government's awareness of the need for a specific forum for ulama across Islamic organizations. As per its bylaws, the MUI functions to advise both the government and the Muslim community on religious matters or problems faced by the nation in general, by means of a *fatwā* and *tausiyya* (admonition). It also encourages unity among Muslims, mediating relationships between government and ulama, to represent Muslims in inter-religious forums. Hasan Basri, the third general chairman, classified the MUI function as a watchdog for government policy, ascertaining that laws in Indonesia will not contradict the teachings of Islam.<sup>10</sup>

The function of MUI was meant to be purely consultative. It is not allowed to become involved in practical programs such as running schools or mosques, nor practical politics. These

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<sup>7</sup> Majelis Ulama Indonesia, "15 Tahun," 46.

<sup>8</sup> *Ibid.*, 47.

<sup>9</sup>

The conference was held on 21-27 July 1975. The fifty-three participants were representatives of the newly established regional council of ulama, representatives of the central committees of ten existing Islamic organizations, a number of independent ulama, four representatives of Muslims servicemen in the Indonesian Armed Forces; see Hosen, "Behind," 150.

<sup>10</sup> Muhammad Atho Mudzhar, *Fatwas of the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975-1988* (Jakarta: INIS, 1993), 54.

limitations were made by the government as per Soeharto's speech during the 1<sup>st</sup> National Conference of ulama in 1975. Hamka, however, stated that the limitations were proposed by the ulama themselves so as not to become a rival to government.<sup>11</sup>

In the course of time, however, it turns out that both government and ulama have political motives in establishing the MUI. The government used the MUI to justify its public policy related to Islam. Hooker in his study on the MUI's *fatāwā* from 1975 to early 1990s argues that the main function of MUI was to support and, in some cases, to justify government policies and programs.<sup>12</sup> Some *fatāwā*, such as on the permissibility of breeding of frogs and rabbits for food, are controversial and several Muslims claim that the MUI tends to legitimize government policies, rather than act for the common good.<sup>13</sup>

Ulama, on the other hand, used the MUI to influence the government public policy so as not to be contradictory to Islamic teachings but empathic to Muslim interests. Hamka was known for being critical of the New Order regime when it came to Muslim interests in Indonesia. Yet, he finally assumed the position of MUI General Chairman; arguing that Muslims should cooperate with Soeharto's government, since it was anti-Communist, and that the establishment of the MUI could improve relations between the government and Muslims.<sup>14</sup> The ulama were aware that it would be hard to ascertain the interests of Muslims and that these would not be well served unless they cooperated with the regime.

As a non-governmental organization, the birth of the MUI was made possible by government approval.<sup>15</sup> This is because it was established during the first decade of Soeharto's

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<sup>11</sup> Mudzhar, "Fatwas," 54.

<sup>12</sup> MB Hooker, "Islam and Medical Science: Evidence from Malaysian and Indonesian fatwas," *Studia Islamika*, vol. 4, no. 4 (1997), 16; Hosen, "Behind," 154

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, 151.

<sup>15</sup> Hosen uses the phrase "strong suggestion" especially from the president that made the institution of a national council for ulama possible. Hosen, "Behind," 151.

New Order regime, which was notoriously antagonistic to Islam as a politic. It also continues to receive funding from the state through the Ministry of Religious Affairs.<sup>16</sup> This fact might have contributed to public perception that the MUI was no more than a stamp for government policy especially in the first two decade of its existence in Indonesia. Likewise, the so-called vast authority it enjoys now is deemed to be a ‘gift’ from the government instead of owing to the ulama’s epistemic capability.

## 2. How was the quasi-legislative power accrued?

Although its establishment was initiated by the government, the MUI is not necessarily controlled by the government and, thus, not always in support of government’s law and policies affecting Muslims in Indonesia. Mudzhar found that the majority of *fatāwā* issued from 1975 to 1988 were neutral (eleven *fatāwā*) and in some cases were in opposition to government policies, e.g. the prohibition on Muslims attending Christmas celebrations. Only eight *fatāwā* are supportive of government policies.<sup>17</sup> Hooker, too, found that there are *fatāwā* from the 1960s and 1970s which say that it is obligatory (*wājib*) for Muslims to vote for Islamic political parties; this is not acceptable to the government in contemporary Indonesia.<sup>18</sup>

The shift in Indonesian politics from an authoritarian regime to a more democratic state in 1998 has also brought about changes in the MUI. Ichwan argues that the MUI started to play a political role by means of *fatāwā* and, especially *tausiyya* (admonition). This gave increased independence to the MUI which enabled it to actively participate in debates about the role of Islam in Indonesia. It supported, for example, the legality of Habibie’s appointment to the presidency, which was criticized as unconstitutional, because Habibie was deemed to be a Muslim representative. It also issued three series of admonitions which called for Muslim

<sup>16</sup> Interview with Ichwan Syam, in Jakarta, 13 March 2012; see also Lindsey, “Monopolising,” 261-262.

<sup>17</sup> Mudzhar, “Fatwas,” 122.

<sup>18</sup> Hooker, “Islam,” 16.

participation in the general election and votes for parties which fight for the aspirations and interests of the Muslim community, nation and state, and withholding votes from non-Muslim political leaders and parties dominated by non-Muslims.<sup>19</sup> Subsequent studies, including Nasir's and Asnawi's,<sup>20</sup> and Gillespie's<sup>21</sup> also found a similar pattern, and argued that in the aftermath of Soeharto's new order regime, the MUI has become more independent from the state's hegemony.

The shift in Indonesian politics has also redefined the MUI's position from being state-oriented to being Muslim-community-oriented. This new orientation of the MUI was characterized by Ali Yafie, the MUI's General Chairman 1990 - 2000, as 'from the state to the people.'<sup>22</sup> The MUI tries to get a broader reception among Indonesian Muslims by introducing the concept of 'big tent,' a sort of clearing house for all Muslim organizations in Indonesia, including the hard line groups. Every member should have theological platforms and directions similar to that of the MUI, i.e. Sunni theology. Hence, there is no room for both *salafi* and liberal Muslim groups in the MUI.<sup>23</sup> According to Mudzhar there are three basic attitudes of the MUI in dealing with government, the Muslim community and other religious groups in Indonesia as reflected in their *fatāwā*, namely: the desire to maintain good relationships with the

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<sup>19</sup> Moch. Nur Ichwan, "Ulama, State and Politics: Majelis Ulama Indonesia after Soeharto," *Islamic Law and Society*, vol. 12, no. 1 (2005), 57.

<sup>20</sup>They specifically analyze MUI's *fatwā* on abortion which differ from the State law. Mohamad Abdun Nasir and Asnawi, "The Majelis Ulama's *Fatwā* on Abortion in Contemporary Indonesia," *The Muslim World*, vol. 101 (2011).

<sup>21</sup>Piers Gillespie, "Current Issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama *Fatwā* No. 7 Opposing Pluralism, Liberalism, and Secularism." *Journal of Islamic Studies*, vol. 18, no. 2 (2007).

<sup>22</sup>Syafiq Hasyim, "The Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and Religious Freedom," *Irasec's Discussion Paper #12* (2011), 6.

<sup>23</sup>Hasyim, "The Council," 7.

government;<sup>24</sup> the preoccupation with the threat of Christianization;<sup>25</sup> and the desire to be accepted by both Muslim organizations and the Muslim masses.<sup>26</sup>

With its new greater independence and ‘inclusive’ orientation, the MUI is now deemed to be the most authoritative Muslim institution in Indonesia in the sphere of *fatwā* production. Hosen, for example, maintains that the government tends to defer to, or use only, the MUI’s opinions since the MUI could be considered representative of all Islamic organizations, although it also considered opinions from other Islamic organizations.<sup>27</sup> Hasyim further argues that it is evident in the last ten years since other *fatwā* commissions of Muslim organizations belonging to NU and Muhammadiyah are not so prolific in issuing *fatāwā*, and they both tend to hand their authority to issue a *fatwā* to the MUI. They issue fewer *fatāwā* than the MUI, and they will not publish a *fatwā* that has been released by the MUI’s *Fatwā* Commission.<sup>28</sup>

The aforementioned studies, however, focus on the production of *fatwā* in the MUI and its influence on Muslim thought in Indonesia. Ichwan, Hosen,<sup>29</sup> Gillespie, Nasir and Asnawi, Hasyim, and Sirry<sup>30</sup> look at the *fatāwā* as a means by which MUI maintained its role in a rapidly changing political and religious environment. Gillespie and Olle<sup>31</sup> also note the MUI’s increasingly conservative views on moral and social issues and its hostility toward unorthodox

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<sup>24</sup> *Fatāwā* on frog breeding, rabbit meat, the mechanical slaughtering of animals, family planning (this one even prompted the MUI to repeal its previous *Fatwā* on the prohibition of IUDs); the validity of Jeddah and King Abdul Aziz Airport as places of *miqāt* for Indonesian pilgrims were partly influenced by the basic attitudes of supporting government, even though the subject matter deals with ritual. Mudzhar. “Fatwas,” 119-120.

<sup>25</sup> They are *fatāwā* on the prohibition of Muslims to attend Christmas celebration, inter religious marriage, child adoption, and sale of inherited land. *Ibid*, 120-121.

<sup>26</sup> *Ibid*, 121.

<sup>27</sup> Hosen, “Behind,” 151.

<sup>28</sup> Hasyim, “The Council,” 8. Hasyim supports his conclusion from interview with a functionary of Muhammadiyah who also a member of MUI.

<sup>29</sup> Nadirsyah Hosen, “Fatwā and Politics in Indonesia,” in *Shari`a and Politics in Modern Indonesia*, eds. Arskal Salim and Azyumardi Azra (Singapore: ISEAS, 2003), 168-180.

<sup>30</sup> Mun`im Sirry, “Fatwas and Their Controversy: The Case of the Council of Indonesian Ulama (MUI),” *Journal of Southeast Asian Studies*, vol. 44, no. 1 (2013), 100-117.

<sup>31</sup> John Olle, “The Majelis Ulama Indonesia versus ‘heresy’: The Resurgence of Authoritarian Islam,” in *State of Authority: The State in Society in Indonesia*, ed. Gerry van Klinken and Joshua Barker (Ithaca: Cornell Southeast Asia Program, 2009), 95-116.

minority Islamic groups. The phenomena of the expansion of the MUI's influence and authority in the aftermath of the demise of New Order regime, therefore, were unexplained until Lindsey published his study in 2012.

According to Lindsey, it is the regulatory changes since Soeharto's fall in 1998 that have expanded the MUI's formal role in the state system for the administration of Islamic legal traditions in Indonesia, especially in the field of *sharī'a* economy (*mu'āmalāt*). These changes have intensified the MUI's influence and the legal authority of its *fatāwā*. The MUI thus has been granted new institutional roles by the state, even monopolies in some cases, when it comes to halal certification, Islamic finance and the *hajj* pilgrimage. Lindsey argues that the MUI has now begun to accrue quasi-legislative powers resembling those enjoyed by state ulama councils and state *muftī* elsewhere in Southeast Asia, but not previously available to any modern Indonesian *fatwā-producing* body.<sup>32</sup> This is possible due to President Yudhoyono's commitment to placing the MUI in a central role in matters regarding the Islamic faith.<sup>33</sup> Yudhoyono, like Soeharto, was keen for the MUI to maintain its semi-official, quasi-state, 'central' role as a religious 'watchdog'. However, by contrast to Soeharto, Yudhoyono saw the MUI as a means by which ulama could influence and guide the state. He therefore actively encouraged the MUI to issue *fatāwā* that he would consider as a policy, or even as a type of de facto law on Islamic issues that could guide state organs.<sup>34</sup>

Lindsey admits he did not study how the quasi-legislative power is exercised by the MUI, especially the *Fatwā* Commission of the MUI (hereinafter the FC-MUI). This chapter extends Lindsey's findings by examining particularly the policy of the FC-MUI to make the FC-MUI the

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<sup>32</sup> Lindsey, *Monopolising*, 258-259.

<sup>33</sup> This commitment is stated several times during his speech in the MUI's national meeting of 2005 and 2007. See Syafiq Hasyim, "Majelis Ulama Indonesia and Pluralism in Indonesia," *Philosophy and Social Criticism* (2015), 5; Lindsey, *Monopolising*, 258-259.

<sup>34</sup> Lindsey, *Monopolising*, 258-259.

single door for *fatwā* production in Indonesia. My argument here is that, along with the adoption of the ‘big tent’ approach outlined above, the MUI seeks to further intensify the acceptance of its *fatāwā* among Muslim communities in Indonesia. This is done by engaging as many *fatwā* commissions and Islamic organizations as possible in the *fatwā* production. For this purpose, the MUI organizes the biannual collective *ijthād* forum called *Ijtima Ulama* where they seek to resolve contemporary problems faced by Indonesian Muslims. In exercising and maintaining its status as the most authoritative institution for *fatwā* production, the FC-MUI thus acts as the ‘reviewer’ of the *Ijtima Ulama* resolutions prior to promulgating them as a *fatwā*. Some *Ijtima Ulama* resolutions which do not pass the review, therefore, cannot or are not promulgated as a *fatwā*, such as the case of the obligation of corporate zakat in Islamic law.

### **C. The *Fatāwā* of the MUI and the State Legislative Agenda**

#### *1. Authority in Fatwā Production: Epistemic authority or new institutional role granted by the state?*

A *fatwā* is formal advice from an authority on a point of Islamic law or dogma. A *fatwā* is given to respond to a question that has not been addressed by *sharī‘a* or where there is no clear answer based on *sharī‘a*. It is usually a reiteration of a famous opinion in the books of *fiqh*, but may also be a response to legal matters generated by new circumstances. *Fatāwā* are used as the mechanism in Islam to meet the demands of social and legal changes; this is the most important role of a *fatwā*.<sup>35</sup> The history of *fatwā* dates back to the 10<sup>th</sup> century when the need to interpret God’s Law (*sharī‘a*) emerged as a result of changing circumstances, when the revelation was complete with the death of the Prophet Muhammad.

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<sup>35</sup> MB. Hooker, *Indonesian Islam: Social Change through Contemporary Fatwā* (Crowns Nest, NSW; Honolulu: Allen & Unwin and University of Hawai’i Press, 2003), 1.

Interpretation of *sharī'a* is considered to be the role of jurists. In the history of Islamic jurisprudence, the development of doctrine and method of Islamic law carried out by Islamic jurists then led to the birth of Islamic schools of law (*madhhab*). There were hundreds of *madhhab* which finally crystalized into four schools of Islamic law in Sunni Islam: Hanafiyya, Malikiyya, Shafi'iyya, and Hanabila. After these four Islamic schools were established around the 10th century, some consensus formed that authority to interpret Islamic law was held by jurists associated with one of the four *madhhab*. To be a member of one of these existing guilds, a jurist must undergo training in a specified *fiqh* literature of the *madhhab* under the supervision of a recognized scholar. One must undertake training in the method of interpretation adopted by the *madhhab* and study the standard *fiqh* texts listed by the *madhhab*. Once a candidate has completed the training and is accepted into the guild, his achievement would be recognized in the form of a license (*ijāza*) to transmit and further elaborate upon legal rulings consistent with the established doctrines of the *maddhab*.<sup>36</sup>

The acceptance of a *fatwā* by users depends on the authority of the jurist who issued it (*al-ijāza li al-iftā*). Authority was acquired through general acceptance by a known circle of eminent jurists. For a jurist to receive general acceptance, he must show qualities required, such as mastery of the Islamic legal theory (*uṣūl al-fiqh*), the exegesis of Qur'ān and Hādith science, Arabic, and so forth, so that he is able to deduce the rules from the major sources of *sharī'a* and Islamic jurisprudence.<sup>37</sup> In other words, the jurists' authority to interpret Islamic law after the establishment of the Islamic school of laws is acquired because of his association with the *madhhab* and this continues from the pre modern period to the 20<sup>th</sup> century.<sup>38</sup>

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<sup>36</sup> Clark B. Lombardi and R. Michael Feener, "Why Study Islamic Legal Professionals?" *Pacific Rim Law & Policy Journal*, vol. 21, no. 1 (2012), 5-6.

<sup>37</sup>Hooker, "Indonesian," 1.

<sup>38</sup>Lombardi and Feener, "Why," 6.

In the modern period, the established mechanism for the management of Islamic jurisprudence has broken down across the Muslim world. This is due to western colonialization of Muslim countries and, thus, the replacement of *sharī‘a* with western codes, although less comprehensively in the field of family law. Classically trained jurists are no longer considered to be the only authoritative interpreters of *sharī‘a* and their *madhhab*’s doctrines. The appropriateness of traditional methods are also questioned in the modern world. Thus, the agreement outlined above about the authority of jurists collapses.<sup>39</sup> This can be seen when Muslim countries gain their independence and want to Islamize their laws. Instead of promulgating the *fiqh* as the law of the land, the state gives the authority to its organs (legislature, Supreme Court or Ministry of Religious Affairs) which often do not apply Islamic legal theories when drafting the law, as in the case of Indonesia (see details on Chapter 1 and Chapter 2), but each Muslim-majority country is different in its application of *sharī‘a* principles and its use of *fiqh*.

Muslim countries have therefore experienced a rupture of Islamic authority because there are traditional Islamic jurists who hold the authority in interpreting *sharī‘a*, and the state which holds the authority to promulgate Islamic law (legislation/codification or *qanūn*). This conflict of authority is partly solved with *siyāsa shar‘iyya* where ulama and the government create and share a vision of Islamic law.<sup>40</sup> Some Muslim countries institutionalize *siyāsa shar‘iyya*: the Grand mufti in Egypt (the *Dār al-Ifitā*), for example, is a government agency established in 1895. On important issues, issuing an official *fatwā* is taken care of by the *Muftī* Sheik, while more routine *fatāwā* are handled by dozens of subordinate *muftī*, via phone and internet. In Saudi Arabia, it is called the permanent Committee for Islamic research and *fatāwā*, established in

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<sup>39</sup> Wael B Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997) 209-54.

<sup>40</sup> Lombardi and Feener, “Why,” 9.

1971, whose main function is to issue *fatāwā*.<sup>41</sup> Muslim countries which do not institutionalize *siyāsa shar'īyya* or have no clause stipulating 'sharī'a as a/the source of law' in their Constitution are deemed to have replaced the old structure of *sharī'a* authority with new legal institutions. This is because Muslims are seen to trust the new legal institution more than the old structures of *sharī'a* authority in law and governance. Important legal decisions are mostly made by office holders of the state instead of ulama.<sup>42</sup> Scrutiny of the legislative and regulatory process in particular Islamic countries, however, may reveal different conclusions especially on how the ulama's opinions (*fatwā* and admonition) are taken into account in formulating public policy by the government.

In Indonesia, a *fatwā* was issued by individual ulama until the beginning of the twentieth century. Before this, Indonesian Muslims often sought a *fatwā* from ulama in the Middle East. When Islamic mass organizations emerged in the second quarter of the twentieth century, some *fatāwā* had begun being issued by a group of ulama of those organizations. Since then, a *fatwā* have been given collectively by councils independent of the state and appointed by Islamic organizations.<sup>43</sup> The most significant of these councils are the MUI, Persis, Nahdlatul Ulama and Muhammadiyah. Nahdlatul Ulama was established in 1926 and started issuing *fatāwā* as early as its first congress in 1926 through the process called *baḥthu-l-masā'il*. Muhammadiyah was established in 1912 and began issuing *fatāwā* in 1927 following the institution of a special committee assigned to deal with religious issues in general, and Islamic law in particular, called *majlis tarjih*.<sup>44</sup> These two organizations are often said to be the largest Muslim organizations in

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<sup>41</sup> See Nadirsyah Hosen, "Hilāl and Ḥalāl: How to Manage Islamic Pluralism in Indonesia," *Asian Journal of Comparative Law*, vol. 7, no. 1 (2012), 4.

<sup>42</sup> See e.g. Jan Michiel Otto, ed., *Sharī'a Incorporated: A Comparative Overview of the Legal System of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), 617, 629.

<sup>43</sup> Hosen, "Hilāl," 9.

<sup>44</sup> Deliar Noer, *Modernist Muslim Movement in Indonesia 1900-1942* (Singapore: Oxford University Press, 1973), 8, 80-82, 231-232.

the world, but as discussed earlier, over the last 10 years the MUI has become the most authoritative Muslim institution in producing *fatwā* in Indonesia. This is because *fatāwā* or *tausiyya* have been sought from the MUI by individuals as well as both government and non-governmental agencies.

Adams found that the MUI since its establishment in 1975 has played an active role in legislative and regulatory rule-making in order to assure that law and regulation in Indonesia are not contradictory to *sharī'a*, by means of *fatwā* and *tausiyya* issuance.<sup>45</sup> Long before the *Sharī'a* National Board was instituted in 1999, the formal role of the MUI in assuring *sharī'a* compliance of law and regulation had been institutionalized in the form of MUI inclusion in the Ministry of Health's Advisory Board for Health and *Sharī'a*. The Board consists of representatives of the Ministry of Health, medical experts, and ulama (mostly are from the MUI) and is responsible for advising the Ministry in matters where medical and religious concerns could collide.<sup>46</sup> After the promulgation of Law No 23 of 1992 concerning Health, the Advisory Board for Health and *Sharī'a* was transformed into National Health Advisory Body and was set up by means of Presidential Decree No. 12 of 1994. The membership was extended to include other expertise, such as sociologists and economists, but the new body still comprises ulama. In 1994 three of MUI's members were appointed to the National Health Advisory Body.<sup>47</sup>

When the *Sharī'a* National Board was instituted in 1999, the authority of its *fatāwā* had been de-facto recognition by the government although the legal basis for this recognition, i.e. the Law No. 21 of 2008 concerning *Sharī'a* Banking, was not enacted until 2008. Nafis found that 63 *fatāwā* out of 65 *fatāwā* of the *Sharī'a* National Board (96.92%) from 2000 to 2007 had been

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<sup>45</sup> Wahiduddin Adams, *Pola Penyerapan Fatwā Majelis Ulama Indonesia (MUI) dalam Peraturan Perundang-Undangan 1975-1997* (Jakarta: Bagian Proyek Peningkatan Informasi Penelitian dan Diklat Keagamaan, 2004), 174, 180.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, 180-181.

absorbed into the regulations of Central Bank and Ministry of Finance.<sup>48</sup> The Board issued a *fatwā* based on requests from regulator of Islamic finance in Indonesia. For example, article 31 of the Decree of Central Bank Governor No. 32/34/1999 says that in running their business, Islamic commercial banks are required to refer to *fatāwā* of the *Sharīʿa* National Board. Article 28 and 29 read that, where a *fatwā* has not been issued on a matter, the bank is required to seek approval from the *Sharīʿa* National Board.<sup>49</sup>

The aforementioned studies thus suggest that there is a perception from *fatwā*-seekers that the MUI holds the authority of Islamic law in Indonesia. In the case of corporate zakat obligations, the Board of *Sharīʿa* Accounting Standard of the Association of Indonesian Accountants sought a *fatwā* from the MUI (and not other *fatwā* bodies) for this reason. When I asked the (then) technical director of the Association why they had asked the MUI, she asked in turn whether there are any other institutions that issue *fatāwā* in Indonesia. Based on her understanding, every product of an Islamic bank must be endorsed by a *fatwā* of the *Sharīʿa* National Board prior to launch, to maintain its consistency with *sharīʿa*. When asked why not seek a *fatwā* from another institution, she asked whether *fatāwā* issued by Nahdlatul Ulama and Muhammadiyah are recognized by the state. She then added:

[Within Islamic banking] *sharīʿa* audit is performed by the each bank's *Sharīʿa* Supervisory Board and they are members of the MUI too; if the Central Bank seeks *fatāwā* from Nahdlatul Ulama and Muhammadiyah, we might also do that; we never think of that possibility before. The Board of *Sharīʿa* Accounting Standards only issues *Sharīʿa* Accounting Standards which have a *fatwā* from the MUI.<sup>50</sup>

Hence, there is arguably perception among *fatwā* seekers that the MUI is the authoritative body in Indonesia so far as Islamic doctrine matters are concerned. This perception may have

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<sup>48</sup> M. Cholil Nafis, *Teori Hukum Ekonomi Syariah: Kajian Komprehensif tentang Teori Hukum Ekonomi Islam, Penerapannya dalam Fatwā Dewan Syariah Nasional dan Penerapannya ke dalam Peraturan Perundang-undangan* (Jakarta: Penerbit Universitas Indonesia, 2011), 137.

<sup>49</sup> *Ibid.*, 107-108.

<sup>50</sup> Interview with Ersya Tri Wahyuni, via Skype (Seattle – Manchester), 29 July 2012.

been shaped by the lack of a unifying body of Islamic authority in Indonesia and the nature of the MUI as a forum for ulama across Islamic organizations in Indonesia. This might suggest that there has been transformation of Islamic authority in Indonesia from independent epistemic authority to a new institutional role granted by the state. Or, because of its activism since its establishment, the MUI is deemed to be the forum of ulama which is more authoritative than others; thus, it is granted a new institutional role by the state.

## *2. Methods and procedures of issuing a fatwā*

Within the MUI, there are two institutions vested with authority to produce a *fatwā*: the *Sharī'a* National Board and the *Fatwā* Commission (FC-MUI). This part will focus on analyzing the FC-MUI because it is this institution that will potentially further expand the quasi-state mufti role. The FC-MUI is an organ in the structure of the MUI organization which is vested with authority to issue a *fatwā*. The leaders and members of the FC-MUI are elected periodically by its members. In its first institution in 1975, the FC-MUI comprised seven ulama representatives of Islamic organizations. This number keeps changing with every turn over of the management of the FC-MUI five yearly. In the period of 2005-2010 it consists of as many as 38 ulama while in 2010-2015 there are 52 ulama. The current members of FC-MUI include 12 professors whose specializations include in Islamic jurisprudence, comparative Islamic jurisprudence, Islamic legal theories, law, the exegesis of Qur'ān, and Hadīth, as well as 32 PhDs from various disciplines in Islamic studies. Women are also better represented in the current FC-MUI because one sits as chairman (Huzaimah Tahido Yanggo; see chapter 2 for details on her role in maintaining the orthodoxy of Islamic marriage law in Indonesia) and three as members.<sup>51</sup>

The FC-MUI schedules commission meetings to deliberate and issue a *fatwā* attended by its members, the Chief of the regional MUI, as well as experts on the subject matter, e.g. medical

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<sup>51</sup> Compiled from online resources; interview with Asrorun Ni'am Saleh, in Jakarta, 13 March 2012.

doctors, biotechnologist and so forth, if necessary. A meeting must be held if there is a request or demand which is considered necessary to issue a *fatwā* from the community, government, or social institutions, as well as the MUI's response to specific problems. A *fatwā* can be issued in one session or this can be after multiple sessions, depending on the level of complexity and the quality of the problems. Issues that have a lot of public attention are usually very difficult to conclude and, thus, need to be done in several sittings, for example *fatāwā* on smoking prohibitions, Ahmadiyah, terrorism, and pluralism. Meanwhile *fatāwā* on vasectomy, tubectomy, and cornea donation were issued in one session.<sup>52</sup>

Since 2003, the FC-MUI has adopted a guidance and procedure in relation to *fatwā* promulgation. This is part of the decisions made by the 1<sup>st</sup> *Ijtima Ulama* in Jakarta in 2003. There are requirements that must be met for issuing a *fatwā*. First, it must fulfill the methodology (*manhāj*) because issuing a *fatwā* simply to meet the need (*hāja*), public interest (*maslaḥa*), or objectives of *sharī'a* (*maqāsid al-sharī'a*) without taking into account the religious texts (the Qur'ān and Hadīth) whose meaning in certain, may lead to arbitrary rulings and abuse reason. On the other hand, holding on to the religious texts rigidly without considering the public interest and objectives of *sharī'a* constitutes a reckless deed.<sup>53</sup> Thus, in promulgating a *fatwā*, the MUI refer hierarchically to the Qur'ān, Hadīth, *ijmā'*, *qiyās*, and other legal reasoning methods in Islamic legal theory, i.e. *istiḥsān* (equity in Islamic law), *maslaḥa mursala* (considerations of public interest), or *sadd al-dharī'a* (blocking means).<sup>54</sup>

There are three approaches employed by the FC-MUI: 1) *Naṣ qat'iy* approach, 2) *Qawliyy* approach, 3) *Manhājiyy* approach. The *Naṣ qat'iy* is done by referring to the text of Qur'ān and

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<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid*; *Himpunan Fatwā MUI Sejak 1975* (Jakarta: Sekretariat MUI and Erlangga, 2011).

<sup>54</sup> Pedoman dan Prosedur Penetapan *Fatwā* Majelis Ulama Indonesia, chapter II "Basic and Character of *Fatwā*", Chapter III "Methods to Promulgate *Fatwā*".

Hadīth if both clearly present the answer for the questions raised. If the answer is not available then the jurists employ the *Qawliyy* approach first and, if not sufficient, then the *Manhājīyy* approach. The *Qawliyy* approach is done by referring to the opinions of classical jurists documented in the books of classical Islamic jurisprudence. If there are conflicting opinions from classical jurists, the FC-MUI will first try to reconcile the opinions (*al-jam‘u wa al-tawfīq*). If this step fails, the FC-MUI will choose the most reasoned opinion by means of comparative method in Islamic legal theory (*fiqh al-muqāḥarāna*). If the opinion is not relevant anymore because of its impracticality or the effective cause (*‘illa*) of a ruling has changed, the opinion will be reviewed. When there is no single opinion on the subject matter raised in the book of *fiqh*, the FC-MUI then apply the *Manhājīyy* approach, the process of promulgating *fatwā* by means of canons of interpretation (*al-qawā‘id al-uṣūliyya*) and proofs of *sharī‘a* (*dālil shar‘iy*) developed by classical jurists including: *qiyās*, *maslaḥa mursala*, and *sadd al-dharī‘a*.<sup>55</sup>

In practice, however, the aforementioned methods are not followed consistently. This fact leads to criticisms of the epistemic quality of the FC-MUI’s members and their *fatāwā* from some scholars such as Mudzhar and Hosen. Having examined the methodology employed by the MUI in its *fatāwā* 1975-1998, Hosen argues that the members of the FC-MUI did not reach the level of independent *mujtahid* (see Chapter 2) given the practice of collective *ijtihād* adopted by the MUI. The MUI’s *fatāwā* mostly reiterated classical *fiqh* books without modification or with just slight changes. This is as a consequence of the absence of a methodology for deriving legal opinions which is consistent with the spirit of Qur’an and Sunna and Islamic legal tradition as well as able to meet rapid social changes in Indonesia. The MUI faced an uneasy situation in attempting to satisfy both society and government. It tried to give answers carefully by balancing

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<sup>55</sup> Pedoman dan Prosedur Penetapan *Fatwā* Majelis Ulama Indonesia, Chapter III “Methods to Promulgate *Fatwā*,”; Interview with Asrorun Ni’am Saleh, in Jakarta, 13 March 2012.

competing opinions, methods and arguments found in classical Islamic jurisprudence (*fiqh*) in order to assist Muslims with legal questions when the Koran and Hadith are silent.<sup>56</sup>

Mudzhar, who examined the methodological formulation of the MUI's *fatāwā* 1975-1988, concludes that the MUI's *fatāwā* did not follow a consistent pattern. Some began with arguments of the Qur'ān before citing relevant Hadīth and referring to *fiqh* texts; others directly examined the available *fiqh* texts and established analogies to the question being discussed without prior examination of relevant verses of the Qur'ān or Hadīth. A few *fatāwā* did not present any arguments at all, either textual or rational; they were simply pronounced. The MUI believes that a *fatwā* may only be issued after exhaustive examination of the four sources of Islamic law: Qur'an, Hādīth, *ijmā'*, and *qiyās* (analogy), the authoritative order of which is pursuant to the Shāfi'ī School of law. In practice however, that methodological procedure is not always followed.<sup>57</sup>

To deal with the question of epistemic quality, the FC-MUI (as well as all *fatāwā* issuance bodies in Indonesia) implements collective *ijtihād*, instead of individual *ijtihād*. The lack of epistemic authority, I argue, correlates with the practice of collective *ijtihād* because individual expertise, e.g. the exegesis of Qur'ān, Hadīth, Islamic legal theory (*uṣūl al-fiqh*), or Islamic jurisprudence (*fiqh*) can support each other's arguments during *fatwā* deliberation. The collective *ijtihād* practice even makes possible the involvement of other than Islamic science experts, such as medical doctors, biologists, economists and so forth. Their involvement is now considered vital in order to yield a *fatwā* that is relevant to contemporary life.<sup>58</sup>

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<sup>56</sup> Hosen "Behind," 149.

<sup>57</sup> Mudzhar, "Fatwas," 119.

<sup>58</sup> Cf. Hosen for his observation on the advantages of collective *ijtihād* in modern time, especially when there are concerns of qualification of contemporary ulama to perform *ijtihād* as well as the crisis of thought in the Muslim world. See Nadirsyah Hosen, "Nahdlatul Ulama and Collective *Ijtihad*," *New Zealand Journal of Asian Studies*, vol. 6, no. 1 (June, 2004), 5-6.

Some contemporary Islamic jurists support the practice considering the qualification of contemporary of ulama to perform *ijtihād* and the crisis of thought in the Muslim world. They include the forum of leading ulama of Islamic countries in its first conference in 1964 (Majmā‘ *al-Buhūth al-Islāmiyya*) which decided:

The procedure to maintain the *maslahah* (benefit) when facing new cases or problems is by choosing laws from the schools of Islamic law which are suitable for that case, and if there is still no answer by doing that, then by performing *al-ijtihād al-jamā‘iy al-madhhabiy* (collective *ijtihād* within the school), and if this way is not enough (to solve the problems), then by performing *al-ijtihād al-jamā‘iy al-muṭlāq* (absolute collective *ijtihād*).<sup>59</sup>

Likewise, Yusuf al-Qaradlawi said that “the *ijtihād* which we need in our era is *al-ijtihād al-jamā‘iy* [collective *ijtihād*].”<sup>60</sup>

The MUI considers that anyone who has the ability to perform *ijtihād* is eligible to do so. If classical jurists underwent rigorous training in a *madhhab* before being granted the authority to do *ijtihād*, the MUI acknowledges that educational background and training in *sharī‘a*. So, the FC-MUI members now come from various institutions ranging from graduates of traditional madrasa (pesantren), Middle Eastern tertiary education institutions (Al-Azhar University, Ummul Quro Medina, and so forth) to *sharī‘a* law schools of national Islamic universities.<sup>61</sup> Some members of the *fatwā* commission worked or apprenticed before assuming the position in the *fatwā* commission (e.g. Asrorun Niam Sholeh and Hasanuddin). In the case of Hasanuddin, he was brought to MUI by the late chairman Ibrahim Hosen. Hasanuddin lectured at the Institute for Koranic Studies where Hosen was the rector of the Institute; he was also personal secretary to Hosen. Hasanuddin said that Hosen might know personally his capacity and wanted to train him

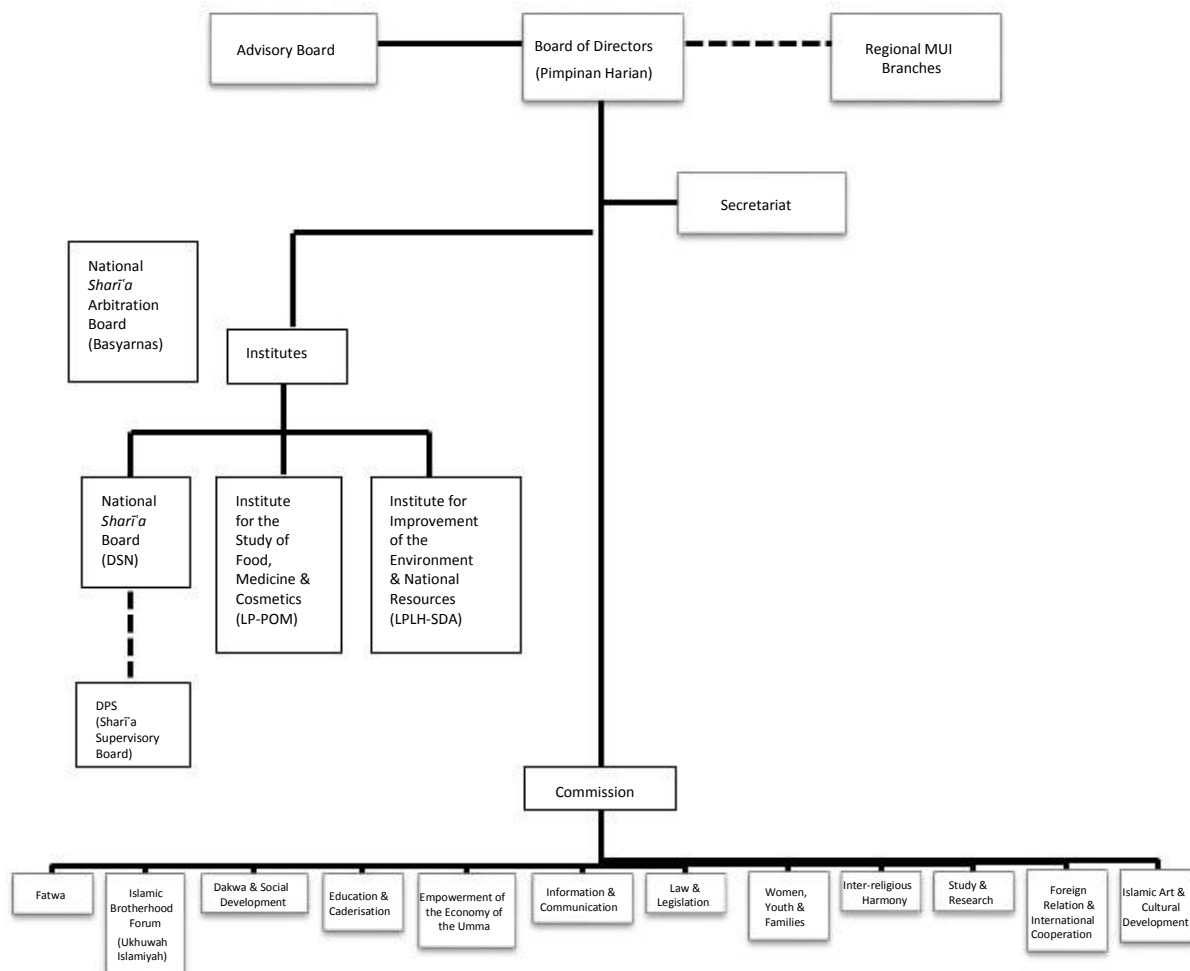
<sup>59</sup> As quoted by Hosen, *ibid*, 6.

<sup>60</sup> *Ibid*, 7.

<sup>61</sup> Interview Asrorun Niam Saleh, in Jakarta, 13 March 2012.

as a junior jurist at MUI.<sup>62</sup> In this respect, I argue, the Chairmen of MUI act like an ‘eminent circle of jurists’ of classical times where they invite potential young intellectuals to be prepared as an ulama/jurist.

**Figure 1 The Structure of MUI at the National Level<sup>63</sup>**



In addition to educational background and personal competence (sufficient knowledge of Islamic law), the aspect of representativeness of FC-MUI’s members from various Islamic

<sup>62</sup> Interview with Hasanuddin, in Jakarta, 21 March 2012.

<sup>63</sup> Lindsey, “Monopolising,” 260.

organizations is also taken into account. According to Ni'am, this highly diverse background will enrich the *fatwā* deliberations in the FC-MUI since each member will bring his/her readings into the discussion.<sup>64</sup> It also has a designated objective in order to heighten the level of acceptability of *fatwā* in society because almost all Islamic organizations in Indonesia have representatives in the FC-MUI. The intention is thus to mitigate resistance to the *fatwā*, e.g. on the grounds that one's doctrine is not accommodated in the FC-MUI.<sup>65</sup>

### 3. How does the Fatwā Commission of the MUI exercise its quasi-legislative power?

Since 2003, the MUI has organized an inclusive collective *ijtihad* forum through an *Ijtima Ulama* of all the FC-MUI and all 'Ormas' Islam (Islamic social organizations especially those which have *fatwā* institutions in their organizational structure. This is done to increase the efficacy of *fatwā* issued on legal matters. <sup>66</sup>

Of around 26 decisions of three *Ijtima Ulama* (those held in 2003, 2006, 2009)<sup>67</sup> only five decisions have been promulgated as *fatāwā* of the FC-MUI. They are concerning (1) bank interest; (2) the determination of first day of *Ramaḍān*, *Shawwāl*, and *Dhulhijja*, (3) terrorism<sup>68</sup>; (4) Short Message Service (SMS) prizes; and (5) unregistered marriage.<sup>69</sup> Of these five *fatāwā*, four *fatāwā* were promulgated only with one general meeting of the FC-MUI while the *fatwā* concerning bank interest was promulgated after three sessions. Most *fatāwā* promulgated from the decisions confirm the rulings adopted by the *Ijtima Ulama* but with different redactions.

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<sup>64</sup> Some Islamic organizations in Indonesia have their own preferred books of *fiqh*; for Nahdlatul Ulama, see Hosen, "Nadlatul," 20-25; for Muhammadiyah, see Nadirsyah Hosen, "Revelation in a Modern Nation State: Muhammadiyah and Islamic Legal Reasoning in Indonesia," *Australian Journal of Asian Law*, vol. 4, no. 3 (2002), 247-250

<sup>65</sup> Interview with Asrorun Ni'am Sholeh, in Jakarta, 13 March 2012.

<sup>66</sup>

Interview with Hasanuddin, in Jakarta, 21 March 2012.

<sup>67</sup> This excludes the recent 2012 decisions because the compilation of *Fatwā* of MUI and FC-MUI was published in 2011.

<sup>68</sup>

All three decisions are from the 2009 *Ijtima Ulama*.

<sup>69</sup>

Both decisions are from the 2006 *Ijtima Ulama*.

Details on how the decisions of the *Ijtima Ulama* have been treated by the FC-MUI up till the publication of MUI's *fatwā* compilation in 2011 can be seen in Annex 1.

The rest of the decisions of the *Ijtima Ulama* have not been promulgated for the following reasons: *first*, they need further study by the FC-MUI (e.g. in the case of corporate zakat); *second*, the FC-MUI has issued *fatwā* earlier with similar subject matter, or the FC-MUI issued a *fatwā* afterward without referring to the decision although, it has similar subject matter; *third*, they are more like an admonition (*tausiyya*) than a *fatwā* because of lacks of normative points (although some admonitions from earlier records in the MUI history were promulgated as *fatwā*); *fourth*, time constraints on the deliberation meeting given the busy schedules of the members of the FC-MUI.

Most members of the FC-MUI hold permanent positions and occupations outside the MUI and it is highly likely a member assumes multiple jobs and positions in their working place and social organizations. Hasanuddin, for example, is a tenured lecturer at UIN Jakarta, secretary of the FC-MUI, a member of the *Sharī'a* National Board of MUI, a member of the National *Sharī'a* Accounting Standards Board, and *Sharī'a* Advisory Board in several Islamic financial institutions. Asrorun Ni`am Sholeh is a tenured lecturer at UIN Jakarta, Commissioner of Indonesia's Child Protection Commission, a member of the FC-MUI, and *Sharī'a* Advisory Board in several Islamic financial institutions. This situation is also true for the rest of the FC-MUI members, especially those who also sit in the *Sharī'a* National Board. There is a tendency among Islamic financial institutions in Indonesia to make use of ulama connected with the MUI, and in turn their perceived authority of Islamic law in Indonesia, by appointing them as *sharī'a* supervisors of their banks or insurance companies.

## D. The *Ijtima Ulama* Decision on Corporate Zakat Status and the MUI as Islamic

### Authority in Indonesia

The question of whether a legal entity such as a corporation is required to pay zakat finally became one of the agenda items for resolution by the MUI in 2009. During the 3<sup>rd</sup> *Ijtima Ulama* of the All Indonesian FC-MUI and ‘Ormas’ Islam, it was decided that corporate zakat is mandatory with the condition that a company that has been qualified as a zakat payer is obliged to pay zakat, either as a legal person (*syakhsiyya i ‘tibariyya*) or as a representative of the shareholders.<sup>70</sup>

Previously, the pros and cons of the status of the corporate zakat obligation had been debated among ulama in Indonesia. The idea of corporate zakat became part of public discourse for the first time in Indonesia during the 1<sup>st</sup> All Indonesia Zakat and Islamic Charity Agency National Meeting, 2-4 March 1992. The keynote speaker was Dawam Rahardjo, a Muslim scholar pioneering Islamic economics, who argued that companies and legal entities are not subject to a zakat obligation as they do not observe Islamic formal-rituals (*al-‘ibāda al-mahḍa*) such as *ṣalāt* (five daily prayer times), *ṣaum* (fasting), or zakat.<sup>71</sup> Among the discussants were ulama such as Ahmad Azhar Basyir of Muhammadiyah and Mochamad Ilyas Ruchiyat of Nahdhatul Ulama, who did not assert their opinion on the matter.<sup>72</sup> The National Meeting finally

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<sup>70</sup> “Keputusan Komisi B Ijtima Ulama Komisi *Fatwā* MUI Se Indonesia III tentang Masail Fiqhiyyah Mu`ashirah (Masalah fikih kontemporer), ii. Masalah Yang Terkait Dengan Zakat,” in *Ijma Ulama: Keputusan Ijtima Ulama Komisi Fatwā Se Indonesia III Tahun 2009*, ed. Ichwan Sam (Jakarta: Majelis Ulama Indonesia, 2009), 49-56.

<sup>71</sup>M. Dawam Rahardjo, “Manajemen Zakat,” in *Pedoman Pembinaan Badan Amil Zakat, Infaq dan Shadaqah; Hasil Pertemuan Nasional I BAZIS Se Indonesia 3-4 Maret 1992* (Jakarta: Ditjen Bimas Islam dan Urusan Haji Departemen Agama, 1992), 20.

<sup>72</sup>KH. Moch. Ilyas Ruchiyat, “Mendorong Pelaksanaan Zakat Bagi Tenaga Professional dan Perusahaan,” in *Ibid*, 45-55; KH. Ahmad Azhar Basyir, “Pokok-Pokok Bahasan Sumbang Pikir tentang Zakat, Infaq dan Shadaqah,” in *Ibid*, 57-60.

simply recommended the establishment of a zakat and Islamic charity task force on companies but not as a means of collecting corporate zakat from companies.<sup>73</sup>

The polemic on corporate zakat status as an obligation in Islam continued, especially after the promulgation of the Zakat Management Law (No. 38 of 1999). The pro lobby gained momentum to disseminate their opinion on the obligation of corporate zakat thanks to a series of seminars on corporate zakat organized by non-governmental zakat agencies especially Dompot Dhuafa, and later co-organized by the National Zakat Agency or BAZNAS. Zakat agencies (both state and non-state) were supporters of clarifying its legal status because of its potency as a source of social development funds if it were to be mandated. The purpose of the seminars was to socialize the concept of corporate zakat and to discuss its tax treatment for companies. Ulama were involved in (and arguably utilized by) the seminars in order to deliver papers which always endorsed the concept of a corporate zakat duty. Didin Hafidhuddin is one of the ulama who was heavily involved in disseminating the idea that corporate zakat is a new mandate in Islam.

With fewer channels and less coverage, the con group also kept spreading their opinion. Amir Syarifuddin can be regarded as the most persistent opponent of a corporate zakat obligation. Prior to the *ijtima ulama* of 2009, he had asserted his opinion in a limited discussion about corporate zakat status held by the BAZNAS in its headquarters in Jakarta before the *Ijtitima Ulama* in 2009. Other ulama opinions in this group are documented in a book of zakat development in Indonesia by Noor Aflah which specifically dedicates a chapter to discuss corporate zakat.<sup>74</sup>

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<sup>73</sup> “Kesimpulan dan Rekomendasi Pertemuan Nasional I Badan Amil Zakat, Infaq, dan Shadaqah,” in *Ibid*, 3; see also Amidhan, “Pelaksanaan SKB Mendagri dan Menag tentang Pembinaan BAZIS No. 29 dan 47 tahun 1991,” in Majelis Ulama Indonesia, *Keputusan Rapat Kerja Nasional Majelis Ulama Indonesia Th. 1992* (Jakarta: Sekretariat Majelis Ulama Indonesia, 1993), 59.

<sup>74</sup>See mainly their opinion in Aflah, “Arsitektur.”

The Qur'ān and Hadīth do not specifically mention legal entities as the subject of zakat. Corporate zakat status thus is a matter of *ijtihād* in Islam. As a result, both groups employ proofs of *sharī'a* either from the major sources (the Qur'ān, Hadīth, *ijmā'* and *qiyās*) or minor sources such as *maslaḥa mursala* (consideration of public policy) with different emphasis. If the proponents utilize the above proofs of *sharī'a* by putting forward the spirit of the texts in order to gain a greater public utility, the opponents employ them with the spirit of clear distinction between the aspect of worship (*'ibāda*) and social transactions (*mu'āmalā*) in Islamic law as well as justice, i.e. averting an arbitrary rule for the target group. For example the proponents' use of Hadīth on the existence of partnership in Islam is countered by the opponents arguing that the concept of partnership in Islam is incomparable to the modern concept of a corporation because the former lacks the shield that is the feature of the latter. Thus, the obligation of zakat on a partnership's wealth lies with each party, not with the partnership. Some Islamic scholars argue that Islam did not have a concept of legal person, since there was no precedent on the issue of an entity shielded from Islamic commercial transaction regimes (*fiqh al-mu'āmalāt*).<sup>75</sup> Hence, the concept of a corporation was also completely absent in the pre-modern Islamic world. What contemporary jurists proposed as the concept of an Islamic legal person (*shakhsiyya i'tibariyya*) is simply the widely accepted western concept of a corporation.<sup>76</sup> The 2009 Ijtima Ulama decision, in fact, did refer to R. Subekti – an Indonesian expert in *hukum perdata* or civil law –

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<sup>75</sup> See Timur Kuran, "The Absence of the Corporation in Islamic Law: Origins and Persistence," *American Journal of Comparative Law*, vol. 53, no. 4 (2005): 785-834; see also Imran Ahsan Khan Nyazee, *Islamic Law of Business Organization: Partnership* (New Delhi: Kitab Bhavan, 2006); Imran Ahsan Khan Nyazee, *Islamic Law of Business Organization: Corporations* (New Delhi: Kitab Bhavan, 2006); Nicholas H. D. Foster, "Islamic Perspectives on the Law of Business Organisations I: An Overview of the Classical *Sharī'a* and a Brief Comparison of the *Sharī'a* Regimes with Western-Style Law," *European Business Organization Law Review*, vol. 11 (2010); Nicholas H. D. Foster, "Islamic Perspectives on the Law of Business Organisations II: The *Sharī'a* and Western-style Business Organisations," *European Business Organization Law Review*, vol. 11 (2010).

<sup>76</sup>See Kuran, "The Absence," 785.

and his definition of a legal person when framing its argument.<sup>77</sup> According to Nyazee, the concept of the legal person may be accepted within the fold of Islamic law as long as some changes are made to the existing structure of the business corporation. Unless some adjustments in conformity with *sharī'a* are made, the so called Islamic corporation will therefore embody governance and scope of business features such as interest-based financing, capital investment and issuance of securities which are questionable according to *sharī'a*.<sup>78</sup>

Similarly, when jurists analogize business to trading as a legal basis for its being an item subject to zakat, they mean the business activity which causes the zakat duty, not the entity. Proponents obscure this in their opinions because they do not distinguish between zakat paid by the corporation as an entity, and zakat paid by the shareholders or employees in the name of the corporation. According to the opponents, thus, the basis of the proponents' arguments is erroneous because they mean corporate zakat as zakat paid by the entity, while neglecting the fact that the jurists require this type only if the shareholders do not pay zakat on their share, or the shareholders have delegated the payment of zakat due on their shares to the corporation. Details on these rebuttals can be seen below.

**Table 4. Polemic on the Legal Status of Corporate Zakat Following the Zakat Law of 1999**

No	Proponents	Arguments		Opponents
1	Didin Hafidhuddin  (Ulama of MUI; Chief of BAZNAS; Sharī'a Adviser to BRIS)  Source: book chapters <sup>79</sup> ; paper	1) the general text of Qur'ān (al-Baqāra: 267, and al-Tawba: 103 on the obligation of zakat of Muslim wealth) 2) Hadīth on partnership. From several Hadīth on partnership, he concludes that a business entity has a legal personality which is subject	1) there are no legal arguments from the Text, either general or particular one, 2) subject of law (mukallaf) in Islamic law is only human beings not legal persons; 3) the imposition will be a double burden on the Muslim	Amir Syarifuddin  (Prof. Sharī'a of IAIN Imam Bonjol Padang, member of FC-MUI)  Source: Archive (paper during limited

<sup>77</sup> Majelis Ulama Indonesia, "Keputusan," 55.

<sup>78</sup> Nyazee, "Islamic: Partnership," 301, 316-317.

<sup>79</sup>

Noor Aflah, *Arsitektur Zakat Indonesia Dilengkapi Kode Etik Amil Zakat Indonesia* (Jakarta: UI-Press, 2009), 91-103; Didin Hafidhuddin, *Zakat dalam Perekonomian Modern* (Jakarta: Gema Insani Press, 2002).

	seminar, <sup>80</sup> interview. <sup>81</sup>	to the obligation of zakat in addition to the obligation of the owners or shareholders to pay zakat individually. 3) <i>Ijmā'</i> : 1 <sup>st</sup> international zakat conference in Kuwait in 1984 and the Zakat Management Law No. 38 of 1999. <sup>82</sup> 4) reasons ( <i>dalil naqliy</i> ): right now there are around 40 companies paid their zakat through the BAZNAS, if this forum decided no obligation for companies to pay zakat it will discourage them to pay in the future.	shareholders' property; thus, imposing financial obligations on a human being without justified reasons is an illegal and despotic act. 4) on the use of <i>maslaḥa</i> ; one must be very careful because <i>maslaḥa</i> utilizes a lot of human reason, thus it is relative; cannot be used to establish legal liability in worship especially <i>'ibāda mahḍa</i> . 5) on <i>siyāsa shar'iyya</i> : the government already set up financial obligations in the form of tax, thus it will create a double burden on the same subject for the same property	discussion in BAZNAS); interview; documented opinions <sup>83</sup>
2	Surahman Hidayat  (Executive director of <i>sharī'a consulting center</i> )  Source: documented opinions <sup>84</sup>	1) Zakat law No. 38/1999 obliges it. 2) Text spirit: in a company there is wealth that potentially grows thus meets the criteria of items subject to zakat 3) <i>Fiqh</i> concept of <i>wakāla</i> (delegation): the shareholders give a mandate to the company to pay zakat on their behalf 4) 1 <sup>st</sup> international zakat conference in Kuwait in 1984 has decided its status as mandatory	1) the Qur'ān and Sunna already mentioned clearly that zakat obligation is imposed on human beings 2) double zakat on individual property, thus, burdensome and unfair. 3) The use of <i>shakhsīyya i'tibariyya</i> as the argument for corporate zakat duty on companies is erroneous because the Qur'ān and Hadīth have set up the rule that zakat obligation is imposed on human beings. The argument will be correct if it is used to, for example, dissolve a company because the court found it already inflicted financial loss on the society.	Ikhwan Abidin Basri  (Sharī'a Advisory Board of HSBC Amanah, Bank Bukopin Syariah, Deutsche Bank; member of Sharī'a National Board)  Source: documented opinions <sup>85</sup>
3	Moh. Taufik Ridlo  (Consultant Manager of Indonesia Magnificence Zakat,	1) <i>Fiqh</i> doctrine on <i>shakhsīyya i'tibariyya</i> : law considers them to have a will which can be manifested by the decision of its	1) We must distinguish between zakat imposed on modern business activities and on business entities. The former is subject to zakat	Nahar Nahrawi,  (Member of the FC-MUI; Sharī'a Advisory Board of

<sup>80</sup> “Undang-Undang Pengelolaan Zakat dan Undang-Undang Pajak dalam Perspektif Syariah,” *Seminar Zakat Perusahaan: Implikasi Berlakunya Undang-Undang Pengelolaan Zakat dan Undang-Undang Pajak*, Jakarta, September 7, 2010

<sup>81</sup> Interview with Didin Hafidhuddin, in Jakarta, 27 March 2012.

<sup>82</sup> *Ibid.*, 99 – 101

<sup>83</sup> Aflah, *Arsitektur*, 99-102.

<sup>84</sup> *Ibid.*,

<sup>85</sup> *Ibid.*,

	<p><i>the think tank of zakat of Dompot Dhuafa)</i></p> <p>Source: book,<sup>86</sup> documented opinions<sup>87</sup></p>	<p>shareholders and management</p> <p>2) 1<sup>st</sup> international zakat conference</p>	<p>obligation because its legal status is the same as zakat on trade which has been categorized as one of the items subject to zakat in the classical <i>fiqh</i>.</p> <p>2) Terms and conditions for zakat on modern business activities, i.e. minimum threshold (<i>niṣāb</i>) and rate, is similar to zakat on trade.</p> <p>3) zakat on modern business: if it is a sole proprietorship company, then, the obligation of zakat is on the owner; thus, the legal person of the business activity, e.g. a company, is not obliged to pay zakat. If it is a partnership, the obligation of zakat is on the owner of capital (or shareholder in the case of corporations). If the company wants to pay its zakat, then it is the owner's or shareholders' zakat paid in the name of company.<sup>88</sup></p>	<p><i>MAA General Assurance, Bank BII, and kospin jasa syariah)</i></p> <p>Source: seminar paper</p>
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This decision of *Ijtima Ulama* of 2009 is apparently not promulgated yet as a *fatwā* by the MUI as there are sharp disagreements about the corporate zakat obligation and unresolved discussion on the matter in the level of the FC-MUI. The measure of deferring the promulgation of *Ijtima Ulama* decisions, in this case the corporate zakat duty, confirms this study's thesis that the MUI expands its authority and asserts itself as the most authoritative institution in interpreting Islamic law. This is then implemented by the MUI, acting as a reviewer of *Ijtima Ulama* decisions, although the *Ijtima Ulama* forum was attended by more ulama than the FC-MUI meeting. This is so especially when the subject matter of the *fatwā* is controversial and the deliberation processes were patchy during the *Ijtima Ulama*. Meanwhile, the MUI aims at not

<sup>86</sup> Moh. Taufik Ridlo, *Zakat Profesi dan Zakat Perusahaan* (Jakarta: Institut Manajemen Zakat, 2007).

<sup>87</sup> Aflah, *Arsitektur*,

<sup>88</sup> Nahar Nahrawi, "Masalah-Masalah Hukum Terkait dengan Zakat," in Majelis Ulama Indonesia, *Ijma Ulama Keputusan Ijtima Ulama Komisi Fatwā Se Indonesia III Tahun 2009* (Jakarta: MUI, 2009), 320-321.

only elevating the acceptance of its *fatāwā* but also improving the quality of *fatāwā* produced. This is done by adopting methods and approaches in producing *fatāwā* and improving *fatāwā* publication. Unlike previous publications, current publications include not only the text of the relevant *fatwā* but also the background of the *fatwā*, explanation, and elucidation of each proof of *sharī'a* used.<sup>89</sup>

Based on interviews with some key figures taking part in the session on corporate zakat, not all participants came to the forum well prepared.<sup>90</sup> Working papers developed by the FC-MUI on the matter of corporate zakat was sent out only one to two weeks in advance.<sup>91</sup> Arguments were mainly proposed based on logic, not on the religious texts or books of *fiqh*; the discussion was intense but vocal speakers in the forum were not necessarily those with the strongest opinions.<sup>92</sup> While weighing both arguments, and while the debate was not yet complete, the panel suddenly decided to state that corporations are obliged to pay zakat.<sup>93</sup> The panel was chaired by Didin Hafidhuddin (the main proponent). Amir Syarifuddin (the main opponent) presented his argument on the first day of the panel.<sup>94</sup> He observed that the participants divided into pro and con group on the issue. Syarifuddin did not attend the panel on the second day because he attended another panel charged with a pressing issue - the ban on smoking. He also perceived that it was not possible to decide positively or negatively on the corporate zakat issue when the deliberation was not yet complete. Surprisingly, he was informed by the participants who supported his argument against the corporate zakat duty that the panel

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<sup>89</sup> Interview with Asrorun Ni'am Soleh, in Jakarta, 13 March 2012; interview with Hasanuddin, in Jakarta, 21 March 2012; see also the latest compilation of *fatwā* publication for examples on background, explanation and elucidation of *fatwā*.

<sup>90</sup> Interview with Hasanuddin, in Jakarta, 21 March 2012; interview with Amir Syarifuddin, in Padang, 7 April 2012.

<sup>91</sup> Interview with Didin Hafidhuddin, in Jakarta 27 March 2012.

<sup>92</sup> Interview with Hasanuddin, in Jakarta, 21 March 2012.

<sup>93</sup> Interview with Hasanuddin, in Jakarta, 21 March 2012; interview with Amir Syarifuddin, in Padang, 7 April 2012.

<sup>94</sup> The paper is similar to the one he delivered during limited discussion on the issue of corporate zakat duty in the BAZNAS

had decided positively on the issue. He suspects that Hafidhuddin played a role in bringing the panel to such a conclusion, given his activism with the BAZNAS in campaigning for the concept of corporate zakat duty. Hafidhuddin himself confirms that he told the forum if they decided negatively, it would affect the willingness of companies which already paid their zakat through the BAZNAS, as well as the future corporate payers targeted by the BAZNAS.<sup>95</sup>

### E. Conclusion

The MUI increasingly shows its independence from the state control and asserts itself as the institution to be consulted by the government so far as Islamic law in Indonesia concerned. The MUI has been more confident in asserting this role as the authority of Islamic law in Indonesia, following the regulatory changes since Soeharto's fall in 1998 and the expansion of the MUI's formal role in the state system for the administration of Islamic legal traditions in Indonesia, especially in the field of *sharī'a* economy (*mu'āmalāt*). These changes have intensified the MUI's influence and the legal authority of its *fatāwā*.

With this newly acquired institutional role, the MUI continues to expand its authority in *fatwā* production in Indonesia. This is done by making the FC-MUI the single door for *fatwā* production in Indonesia. The MUI seeks to further intensify the acceptance of its *fatāwā* among Muslim communities in Indonesia. This is done by engaging as many *fatwā* commissions and Islamic organization as possible in the *fatwā* production. For this purpose, the MUI organizes the biannually collective *ijithād* forum called *Ijtima Ulama*, where contemporary problems faced by Indonesian Muslims sought to be resolved. In exercising and maintaining its status as the most authoritative institution in *fatwā* production, the FC-MUI thus acts as the 'reviewer' of the *Ijtima Ulama* resolutions, prior to promulgating them as a *fatwā*. Some *Ijtima Ulama* resolutions which do not pass the review, therefore, cannot be and are not promulgated as a *fatwā* such as the

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<sup>95</sup> Interview with Didin Hafidhuddin, in Jakarta 27 March 2012.

obligation of corporate zakat in Islamic law. In this way, the MUI has tried to balance the need to meet social and legal change still within the boundaries of *sharī'a*, and increase the efficacy of the *fatwā* issued through legal determinacy in the answer to the questions posed for resolution, by utilizing collective *ijtihād* of all *fatwā* bodies in Indonesia.

*Chapter IV*

**IMPOSING CORPORATE ZAKAT: THE POLITICS OF STATE POLICY ON *SHARĪʿA*  
IMPLEMENTATION IN INDONESIA**

**A. Introduction**

This chapter looks at the process by which the Islamic doctrine of (corporate) zakat became a new area of social policy that is regulated and managed by the state in Indonesia. This is essential, in order to better understand the overarching question of who has the authority to impose the obligation of (corporate) zakat in Indonesia, and what this reveals about the politics of state policy on *sharīʿa* implementation in Indonesia. In this chapter, I will focus on analyzing the perspectives of zakat management stakeholders (ulama, zakat agents, the government) in this area of policy; that is, whether they perceive that (corporate) zakat should be regulated and whether this is an obligation that should be imposed by the state. On the other hand, I also ask whether state actors share similar perceptions to ulama and zakat agents, or whether they are self-aware about their lack of authority to enforce religious obligations, and to what extent they are concerned about regulating the transparency and accountability of zakat administration in Indonesia.

Zakat administration by the state in Indonesia is a late development compared to the demands for its introduction that stretch back to the 1950s or even earlier.<sup>1</sup> The state finally accommodated the demands of some Muslims in Indonesia in 1999 through the promulgation of Law No. 38 of 1999 concerning Zakat Management. Despite being regulated by the state,

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<sup>1</sup> In 1951, the Ministry of Religious Affairs (MORA) issued a circular letter No. A/VVII/17367 dated December 8, 1951 stating that the MORA will not interfere with the zakat administration (so the government continued the Dutch colonial policy on zakat in Indonesia). Instead, the MORA simply encouraged Muslims to observe their religious obligation to pay zakat, and ensured the zakat distributed properly pursuant to *sharīʿa*. This circular letter arguably was issued in response to the demands of state intervention for zakat administration in Indonesia. About the circular letter, see Andi Lolo Tonang, “Beberapa Pemikiran tentang Mekanisme Badan Amil Zakat,” in *Zakat dan Pajak*, ed. B. Wiwoho (Jakarta: PT Bina Rena Pariwisata, 1992), 268.

Indonesia adopted a voluntary system of zakat payment which was at odds with the demands of proponents of zakat administration by the state. If we compare this to other systems of zakat payment in Muslim countries, Indonesia's position is not novel. Predominantly Muslim countries take a wide variety of approaches to zakat and these can be grouped into three categories. First, some countries have no government system for zakat, and this is the most common approach. Second, we can identify countries where payment of zakat is voluntary: the government facilitates the collection and distribution of zakat in the interest of transparency and accountability with varying degrees of governmental oversight and involvement. Bahrain, Bangladesh, Egypt, Iran, Jordan, Kuwait, Lebanon, United Arab Emirates are countries which adopt this system. Third, we have countries where zakat is mandatory: zakat is treated like a tax and distributed as an analog to welfare, while zakat evasion is punishable with fines and/or imprisonment. Countries with this system are Libya, Malaysia, Pakistan, Saudi Arabia, Sudan, and Yemen.<sup>2</sup>

The replacement of Law No. 38 of 1999 with Law No. 23 of 2011 prompts us to re-examine the authority of the state not only to regulate, but also to manage, zakat in Indonesia. This is because even though the proposal from the government (the Ministry of Religious Affairs) to introduce a mandatory zakat payment in the new law was not accepted by the Legislature,<sup>3</sup> the government did succeed in reaffirming its role as the administrator of zakat in Indonesia. According to the new Zakat Law, to carry out zakat management, i.e. collection and distribution, in Indonesia, the government will set up state-run zakat agencies (*Badan Amil Zakat Nasional* or BAZNAS) at all levels, from national to local (provinces and districts/cities) as well

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<sup>2</sup> Russell Powell, "Zakat: Drawing Insight for Legal Theory and Economic Policy from Islamic Jurisprudence," *University of Pittsburgh Tax Review*, vol. 7, no. 43 (2009-2010), 58-73.

<sup>3</sup> This resembles the situation of Law No. 38/1999 when legislature also believed that the state does not have authority to enforce a belief to its Muslim citizens.

as zakat collector units (*Unit Pengumpul Zakat* or UPZ) in either sub-districts/villages, or government agencies and private companies.<sup>4</sup> Meanwhile, the roles of existing non-state-run zakat agencies (*Lembaga Amil Zakat* or LAZ) are now subordinate to the BAZNAS and there are rigorous requirements to be fulfilled to maintain their authorized status as zakat collectors, or to establish a LAZ.<sup>5</sup> The new Zakat Law also penalizes unauthorized zakat collectors which collect, distribute, or utilize zakat funds, by prescribing imprisonment and/or monetary fines for those offenses.<sup>6</sup>

This in turn prompts a second inquiry, which is how the zakat laws were drafted, especially, how the provisions relating to corporate zakat were incorporated into Indonesian zakat laws. As revealed in the previous chapter, Indonesian ulama (in this regards the Council of Indonesian Ulama or *Majelis Ulama Indonesia* (MUI)) never agreed to impose the obligation of zakat upon legal entities including corporations, and were only willing to consider this new obligation in 2009 through a decision of *Ijtima Ulama* of the All Indonesian Fatwa Commission of MUI and Islamic organizations (a collective *ijtihād* forum). Yet, the MUI still has not promulgated the decision of the *Ijtima Ulama* on this question as a *fatwā* even though its *Fatwā* Committee has subsequently conducted further study on the matter. Meanwhile, individual ulama concerns with zakat matters in Indonesia are also riven with dissensions: some scholarly views requiring corporate zakat with or without qualification, while others argue that corporate zakat is not a religious requirement.

Despite its ambiguous status, the new Zakat Law No. 23 of 2011 stands, and includes legal persons as subjects to zakat obligations. This prompts us to ask what references were relied upon for creating and inserting the provisions regarding a duty of corporate zakat? Or, who

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<sup>4</sup> See art. 5(1), 16(1), *Law No. 23 of 2011 concerning Zakat Management*.

<sup>5</sup> *Ibid*, art. 17-20.

<sup>6</sup> *Ibid*, art. 38 and art. 41.

advised the government to include legal entities as subjects of zakat? Why were the provisions permitting/encouraging payment of corporate zakat included in the Law?

This chapter considers these questions in light of data gathered through interviews with informants involved in drafting and deliberating the Zakat Laws as well as archives of the minutes meeting during drafting and deliberating process. Based on these interviews and on primary documents, this chapter presents more subtle political and religious nuances and influences that have shaped the regulatory outcome in the zakat domain.

## **B. Corporate Zakat in Law No. 38 of 1999 concerning Zakat Management**

### *1. The Idea of Corporate Zakat before the Law No. 38 of 1999*

The idea of corporate zakat arguably became part of public discourse for the first time in Indonesia during the 1<sup>st</sup> All Indonesia BAZIS National Meeting on 2-4 March 1992. The purpose of the meeting was to raise public awareness on the Joint Ministerial Decision, i.e. the Ministry of Internal Affairs and the Ministry of Religious Affairs, regarding the establishment of BAZIS (*Badan Amil Zakat, Infaq dan Shadaqah* or Collector Agent of Zakat and other Islamic Charities), as well as to discuss issues and practices of zakat in Indonesia especially corporate zakat and individual zakat paid by professionals.<sup>7</sup> The National Meeting, however, simply recommended the establishment of a BAZIS task force in companies but not as a means of collecting corporate zakat from companies.<sup>8</sup>

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<sup>7</sup> See M. Dawam Rahardjo, "Manajemen Zakat," in *Pedoman Pembinaan Badan Amil Zakat, Infaq dan Shadaqah; Hasil Pertemuan Nasional I BAZIS Se Indonesia 3-4 Maret 1992* (Jakarta: Ditjen Bimas Islam dan Urusan Haji Departemen Agama, 1992), 20; see also KH. Moch. Ilyas Ruchiyat, "Mendorong Pelaksanaan Zakat Bagi Tenaga Profesional dan Perusahaan," in *Ibid*, 45-55; KH. Ahmad Azhar Basyir, "Pokok-Pokok Bahasan Sumbang Pikir tentang Zakat, Infaq dan Shadaqah," in *Ibid*, 57-60.

<sup>8</sup> "Kesimpulan dan Rekomendasi Pertemuan Nasional I Badan Amil Zakat, Infaq, dan Shadaqah," in *Ibid*, 3; see also Amidhan, "Pelaksanaan SKB Mendagri dan Menag tentang Pembinaan BAZIS No. 29 dan 47 tahun 1991," in *Majelis Ulama Indonesia, Keputusan Rapat Kerja Nasional Majelis Ulama Indonesia Th. 1992* (Jakarta: Sekretariat Majelis Ulama Indonesia, 1993), 59.

Earlier in 1980, the Ministry of Religious of Affairs had published a treatise on zakat as guidance for society in observing this religious obligation. The guidance was part of the Directorate General of Islamic Society Guidance and Hajj Affairs' activities to socialize the concept of zakat to the Islamic community. Other means employed by the Directorate were public talks in the government television broadcasts (*Televisi Republik Indonesia* or TVRI), booklets and preaching materials.<sup>9</sup> The guidance included guidelines on zakat for the zakat collector agents, composed by ulama and the MORA officials led by Syukri Ghazali (the then MUI chairman), Amidhan, Ibrahim, Muhda Hadisaputro, Usep Fathuddin, Muslim Abdurrahman, and Bambang Pranowo.<sup>10</sup> The first edition of these was published in 1981/1982 and the second edition in 1983/1984. The guidelines were used during the training for zakat management held for the zakat collector agents by the MORA. According to Amidhan, the guideline contents are still relevant.<sup>11</sup> This statement is supported by evidence that the MORA reprinted the guidelines as recently as 2002.

Although the guidance mentioned that zakat payers are only individual Muslims (“yang *diwajibkan berzakat ialah orang Islam yang memiliki kekayaan yang cukup nisab*”),<sup>12</sup> in the listing of items subject to zakat we see that zakat is also due on capital within a partnership if the capital reaches the *niṣāb* (minimum threshold for an item subject to zakat) and one year has

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<sup>9</sup> My interviews with ex officials of the MORA in this Directorate reveal that according to the government, people awareness to pay zakat was still low. Zakat payment was channeled through religious leaders such as *kiyai* or religious teacher. Background for low observance towards zakat compared to hajj, for example, is socio-political situation during the new order regime that thwarted the MORA to gain greater public attention toward the concept of zakat, and the state reluctance to manage zakat and left it to personal matters to observe it. This prompted the MORA to keep struggled to get zakat regulated and thus managed by the state amidst the uneasy situation with the new order regime/Soeharto's attitude toward zakat. Interview with Mubarok, Jakarta, 15 March, 2012 and Abdul Ghofur Jawahir, Jakarta, 17 March 2012.

<sup>10</sup> Syukri Ghazali, *Pedoman Zakat Seri 3 Fiqih Zakat*, (Jakarta: Proyek Pembinaan Zakat dan Wakaf, Departemen Agama, 1981), verso.

<sup>11</sup> Amidhan, “Pelaksanaan SKB Mendagri dan Menag ttg Pembinaan BAZIS No. 29 dan 47 tahun 1991,” in *Majelis Ulama Indonesia, Keputusan Rapat Kerja Nasional Majelis Ulama Indonesia Th. 1992* (Jakarta: Sekretariat MUI, 1993), 57.

<sup>12</sup> Ghazali, “Pedoman,” 21.

passed since the partnership was set up. The treatise then explains that zakat due is paid by the partnership not the individual partners because the amount of contribution made by each partner is disregarded as the basis for calculation of *niṣāb*.<sup>13</sup>

In 1992, Sjechul Hadi Permono, a professor of *sharī'a* from the State Islamic University of Sunan Ampel, Surabaya, and author of a dissertation on zakat law in Indonesia, wrote a treatise on sources of zakat (*Sumber-Sumber Penggalian Zakat*). He discussed corporate zakat (*zakat perusahaan*) in a sub-chapter “*zakat perusahaan dan pendapatan*” or corporate zakat and zakat due on professional income, but all that this section does is simply summarize and discuss the pros and cons of the legal status of corporate zakat in the writing of Islamic jurists. He did not assert his own position on this debate.<sup>14</sup> What is missing from his discussion is whether the addressee of this obligation is the legal entity of the business itself (*perusahaan*) or the owners/shareholders.

The discourse on corporate zakat duty then emerged again in 1997 during a national seminar organized by Dompot Dhuafa and BAZIS Pertamina on 11-12 July 1997. There was a paper delivered by Muhammad Syafii Antonio<sup>15</sup> titled “*Zakat Profesi dan Perusahaan*” (*Zakat due on professional income and corporate zakat*) in which he supports the obligation of zakat imposed on companies and suggests that corporate zakat be regulated (It is not clear which regulation: *ulama* (*fiqh*) or the government (*statute*) or both) in order to remind companies when they ignore this obligation. (Discussed in detail in the chapter IV)

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<sup>13</sup> *Ibid*, 51.

<sup>14</sup> Sjechul Hadi Permono, *Sumber-Sumber Penggalian Zakat* (Jakarta, Pustaka Firdaus, 1992), 133-140.

<sup>15</sup> He is among the pioneers of *sharī'a* economy studies in Indonesia. He earned Bachelor of *sharī'a* from Jordan University in 1990, Master of Economics from International Islamic University of Malaysia in 1992, and PhD in Banking and Microfinance from the University of Melbourne in 2004. His dissertation is about Islamic microfinance in Indonesia. Besides developing his Tazkia *Sharī'a* Economy College and *sharī'a* economy consultant company, he also serves as an *sharī'a* adviser in several *Sharī'a* Advisory Board of Islamic financial institutions. He is now appointed by the Central Bank of Indonesia to sit in the expert committee for *sharī'a* banking development.

## 2. Incorporating Corporate Zakat into the Law No. 38 of 1999

The Zakat Law No. 38 of 1999 was drafted by a team led by Mukhtar Zarkasyi, one of the informants for this study, who is from the Ministry of Religious Affairs. That drafting process involved participants from four related ministries: Religious Affairs, Social, Internal Affairs, and Finance, as well as some ulama.

Corporate zakat provision appears in art. 1(2) and art. 2 of Law No. 38 of 1999. The legislation begins with art. 1(2) defining zakat as alms due for payment by a Muslim or entity owned by Muslim(s) to be distributed to specified beneficiaries. Art. 2 states that the subjects of zakat obligations are every citizen of Indonesia whose religion is Islam or any entity owned by Muslim(s). There is no explanation of what the article means by ‘entity owned by Muslim(s)’ (or “*badan milik orang Islam*”): is it an entity with legal person status or not; is it a business entity or does it include not-for-profit entities? The Elucidation of article 2 simply refers to the citizenship of subjects of zakat obligations and the criteria for ability to pay zakat, i.e. Indonesian citizens (those who reside in the country and abroad), and who are able to pay zakat in accordance with the provisions of *sharī‘a*.

Lexical and teleological interpretations of an “entity owned by Muslim(s)” are then given by some of MORA’s officials. Muhammad Tamyiz, the then MORA Deputy Head of Development Zakat and Waqf in 2005, argues that the phrase “entity owned by Muslim(s)” (or “*badan milik orang Islam*”) refers to business entities owned by Muslims such as sole proprietorships, firms, limited partnership, and limited liability companies. He thinks that the obligation to pay zakat is attached to the Muslim owners, not to the entity owned by them.<sup>16</sup> Mukhtar Zarkasyi, the MORA’s Head of Legal and Public Relations at the time when the Zakat

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<sup>16</sup> Juliandi Hasibuan, “Badan Islam sebagai Subyek Hukum Zakat Yaitu sebagai Muzakki dan Mustahik,” Unpublished Undergraduate Essay (Skripsi) of Faculty of Law, Universitas Indonesia (Juni 2005), 107-108.

Law was drafted, states that entity (or “*badan*”) is a business entity or legal entity (*badan usaha* or *badan hukum*). This group is subject to zakat duty, he adds, because the works of *fiqh* such as those by Yusuf al-Qaraḍawi list business entities or legal entities as zakat payers.<sup>17</sup>

Earlier in this section I mentioned that some ulama were also involved in drafting the Bill that became the 1999 Law. They included Sjechul Hadi Permono, professor of *sharī‘a* from the State Islamic University of Sunan Ampel. When asked about the reference, or source of authority, for the corporate zakat duty, the then MORA official Zarkasyi responded “Yes, maybe [we did refer to Yusuf Al Qaradlawi’s], it is among other sources, there were some ulama involved in the drafting, there was Professor Syechul Hadi Permono, he continuously participated, played a role in drafting the Zakat Law Bill; there were not [any problems or objections from ulama], [it went smoothly] until the Bill was done.”<sup>18</sup> This suggests that the existence of an epistemic community (ulama) within the drafting team authorized the concordance of the Zakat Law with *sharī‘a*. Thus, if Zarkasy is suggesting that the concept of corporate zakat may appear in the Law No. 38 of 1999 concerning Zakat Management because of the approval of ulama (he referred specifically to Sjechul Hadi Permono), this suggests that the latter must have advised the government that legal entities engaged in business are also subject to zakat in Islam.

### 3. Discussion and Analysis

The real issue emerging during deliberations about Zakat Law No. 38 of 1999, as well as its drafting within the MORA, is not about the appropriate or permissible subjects of zakat. Instead, it is the question of government intervention in the implementation of zakat in Indonesia. Zakat has been observed by Muslims and then distributed to the specific beneficiaries

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<sup>17</sup> Interview with Mokhtar Zarkasy, Jakarta, 22 March 2012.

<sup>18</sup> *Ibid.*

traditionally for centuries. The beneficiaries of this direct method of zakat payment were mostly religious teachers (kyai or the leaders of traditional Islamic boarding schools). During the legislative deliberations, there was lobbying from this group, which voiced their concerns to members of parliament who are considered to represent their interests. They questioned the credibility of government to manage zakat, given the heavy style of Indonesia's bureaucracy and widespread corruption of the government. Further, they were afraid that government intervention in zakat administration in Indonesia would affect the sustainability of their organizational source of funds.<sup>19</sup>

Considering the situation, the government offered a solution in the form of two tracks of zakat collection, i.e. by government sponsored bodies called *Badan Amil Zakat* or BAZ and voluntary sectors called *Lembaga Amil Zakat* or LAZ. The concept of LAZ originally was intended for Islamic social organizations such as Muhammadiyah, Nahdlatul Ulama and so forth in order to sustain their source of social work funds. According to Mubarak, the then Director General of Islamic Society Guidance and Hajj Affairs in the 1990s, the expansion of LAZ into Islamic banks and zakat collector bodies established by the voluntary non-profit sector with no mass organization basis, thus, represented excessive development (*kebablasan*) and a departure from the intention of the Zakat Law.<sup>20</sup>

As I mentioned earlier, the Law No. 38 of 1999 was prepared by a team formed by the MORA consisting of representatives and figures from several ministries and zakat stakeholders including the MUI and the Zakat Forum (Forum *Zakat* or FOZ).<sup>21</sup> Yet, it was the MORA,

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<sup>19</sup> *Ibid.*

<sup>20</sup> Interview with Mubarak, Jakarta, 15 March 2012; Interview with Mukhtar Zarkasyi, Jakarta, March 2012.

<sup>21</sup> Forum Zakat is an umbrella organization for zakat collector agents in Indonesia. Founded in September 1997, the FOZ functions to be, *inter alia*, mediating zakat issues with the government in the absence of a national zakat board. The first congress of Forum Zakat in January 1999 assigned the organization to prepare a draft law on zakat management by its members. Salim, "Challenging," 127-128.

according to Arskal Salim, which sought to dominate the enactment process.<sup>22</sup> The promulgation of Law No. 38 of 1999 happened after the downfall of President Soeharto's authoritarian regime. Both scholarship about this period of political transition<sup>23</sup> and informants' responses in this study suggest that the proponents of zakat administration by the state had to wait until this time because the changes to national politics had become more accommodating to the Muslims in the wake of factions within Parliament showing an increasing tendency toward Islamization. Further, the MORA attempted continuously to have Islamic law promulgated in Indonesia, and it saw this transition time as the right moment to force through zakat legislation. This linked back to perceptions by some leaders of the MORA that Muslims had been treated unjustly during the preparation of Indonesian independence. In their view, Muslims constituted the majority within the Indonesian population, but were defeated by minority' objections to *shari'a* implementation in Indonesia.<sup>24</sup>

The MORA forced through the Zakat Management Bill after President Habibie signed the Bill on Hajj Service on May 3, 1999. The Zakat Bill was not originally in the agenda of legislation of Parliament. Seeing the political transition impact on Muslims and available time for proposing another Bill because the Bill on Hajj Service was assented to earlier from the schedule, the MORA seized this opportunity by proposing the Zakat Bill. The MORA finalized its bill on zakat management and obtained a letter of permission to initiate legislation from the State Secretary on May 15, 1999. The Bill was presented to the Legislature on June 24, 1999 and

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<sup>22</sup> Salim, "Challenging," 128.

<sup>23</sup> See e.g., Bahtiar Effendy, *Islam and the State in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003: 200, 209-210, 217-218).

<sup>24</sup> Interviews with ex-MORA's leaders: Mukhtar Zarkasyi, Achmad Mubarak, and Abdul Ghafur Djawahir, Jakarta, 15, 17, 22 March 2012); Arskal Salim, 2008: 128. Arskal concluded that the MORA is one of the proponents for the Jakarta Charter, and later for Islamization of Law in Indonesia. As a matter of fact, the 1998 MPR's decree (People Consultative Assembly) on Religion and Socio-cultural aspects only mentioned a law on hajj services would be enacted, but the MORA took the chance to force through the Zakat Law too during this transition period.

deliberation began on July 26, 1999.<sup>25</sup> The process was unusually quick and there was no motion from the factions within Parliament to reject the bill. In the history of debating Islamic legislation in Indonesia, nationalist-secularist factions such as the Indonesian Armed Forces faction, the Golkar faction and the Indonesian Democracy Party faction always harshly criticized any Islamic legislation and tied it to the issue of restoration of the Jakarta Charter to the Constitution, such as in the case of draft Bill concerning the Religious Courts.

With regards to the corporate zakat duty, the legislation refers to a legal person as one of the zakat payers (art. 1(2) and art. (2)). When asked, the ex-MORA leaders who were involved in drafting the Zakat Law are unclear about where the concept originated and what it meant. One of the informants said that entity (*badan*) means Islamic social organizations such as Muhammadiyah, NU and so forth, and that they are subject to zakat too. Others referred to the works of contemporary *fiqh* such as Yusuf al-Qaradawi and justified the existence of the provision in the Law by reference to the involvement of ulama in the drafting team. Hence, I maintain that corporate zakat duty was not a concern of the drafters at that time. This situation was caused by, *inter alia*, the MUI's stance towards the corporate zakat issue. In a forum of cooperation between ulama and the government (the MORA) concerning zakat regulation in 1992, the MUI stated that legal persons such as companies cannot be subject to zakat in Islam because the obligation of zakat in Islamic doctrine is only addressed to individual Muslims.

In addition, there were other pressing issues during the deliberation process especially whether zakat collection is mandatory or voluntary.<sup>26</sup> The MORA in fact proposed the Bill as mandating zakat collection (art. 12(1)). The State Secretariat criticized this provision because it

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<sup>25</sup> Arskal Salim, "Challenging," 128, fn. 5-6.

<sup>26</sup> Other issues are the rivalry between the state endorsed zakat agent (BAZ) and the voluntary sector (LAZ). A third pressing issue was the tax deductibility of zakat payments. See Salim, "Challenging," 130; Lindsey, "Islam," 166; Alfitri, 2006: 62-63.

implied coercion in the zakat collection and would unknowingly lead to the realization of the Jakarta Charter.<sup>27</sup> Art. 12(1) thus was reworded with the added phrase “... upon notification by the payer.”<sup>28</sup>

### **C. Corporate Zakat in the new Zakat Law No. 23 of 2011**

#### *1. How was the corporate zakat idea developed after 1999?*

The promulgation of the Zakat Law No. 38 of 1999 was followed by series of seminars to socialize the management of zakat in Indonesia under the Law, especially the provisions related to zakat and tax, i.e. zakat deductible from taxable income. Since the subject of zakat is not only the individual but also entities, the seminars usually purported to discuss corporate zakat and its advantages for a company’s tax position. These seminars mostly were organized by Dompot Dhuafa, the first and most prominent voluntary zakat collector agent (LAZ) in Indonesia with support of the Ministry of Religious Affairs and a business association or chamber.

The first seminar was on September 7, 2000 at Hotel Indonesia, Jakarta. The theme of seminar was “Corporate Zakat and the Implication of Enactment of Zakat Law and Tax Law.” I could not find further information about speakers and titles of the panel discussion. I only found the paper delivered by Gunadi, the then Director of Income Tax, of the Directorate General of Tax from archives of the Indonesia Magnificence of Zakat’s library. (See below)

The second seminar on Corporate Zakat, was held at Jakarta Design Center, Slipi – Jakarta. On the agenda of the seminar was a keynote speech delivered by Tolchah Hasan (the Minister of Religious Affairs) and two panel discussions: the first one was on the perspectives of *sharī‘a* and business sector on corporate zakat; the papers were delivered by Didin Hafidhuddin (Sharī‘a Advisory Board of Dompot Dhuafa), and Hisyam Sulaiman (Vice Chairman of HIPPI).

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<sup>27</sup> Interview with Mukhtar Zarkasyi (Jakarta, 22 March 2012); see also Salim, 2008: 128-129.

<sup>28</sup> Salim, “Challenging,” 129.

The second panel discussion was on the implementation of Zakat Law and Tax Law; the papers were delivered by Syed Abu Bakar (Head of sub Directorate of Individual Income Tax) and M. Masykur Amin (Director of Islamic Affairs or the MORA).

The third seminar was on October 19, 2000 at Hotel Savoy Homann, Bandung. The title of the seminar was “Zakat as a Tax Deduction – Implementation of Zakat Law and Tax Law.”

The agenda of the seminar was a keynote speech by CEO of Dompot Dhuafa and two panel discussions: the first one was on the perspective of *sharī‘a* on corporate zakat calculation and how to calculate it, the papers were delivered by Mohammad Hidayat (Sharī‘a Advisory Board of Bank Syariah Mandiri), and Taufik Ridlo (Consultant Manager of Indonesia Magnificence Zakat, the think tank of zakat of Dompot Dhuafa). The second panel discussion was on the relationship between the Zakat Law and Tax Law, their implementation and implication for business sectors; the papers were delivered by Eri Sudewo (CEO of Dompot Dhuafa), Edwin Kasim (Head of Tax Regional Office of West Java), and Sidik Priadana (Chairman of West Java’s chamber industry).

The fourth seminar was on March 21, 2002 in Jakarta. The seminar was themed with “Zakat as a Deduction of Company’s Taxable Income.” The agenda of the seminar was presentation of three papers by Didin Hafidhuddin (Sharī‘a Advisory Board of Dompot Dhuafa) on *sharī‘a* perspective on the Zakat Law; by Tulus (Director of Zakat and Wakf Development of the MORA) on the role of the MORA in implementing the Zakat Law; and by Harry S. Hariadi (Head of sub-Directorate of Entity Income Tax of the Directorate General of Tax) on zakat and income tax in Indonesia.

Last but not the least, there was an Interactive Seminar on the MUI Fatwa “Corporate Zakat Duty” in Jakarta on April 2, 2009. This seminar was a response to the decision of the

*Ijtima Ulama* of 2009 concerning corporate zakat. I could not find further information about the seminar agenda from the archives of the Indonesia Magnificence of Zakat's library and documentation of online news.

These seminars always involved three key groups namely: ulama who delivered papers and endorsed the concept of corporate zakat duty (see Chapter IV for details on ulama and their arguments); and the association of business or business chamber's representative as the subject of corporate zakat. This group could use the forum as learning medium to know how the concept could be implemented and what sorts of incentives were available for them from the tax regime. It also featured tax officials who delivered papers explaining the relationship between tax law and zakat law, and how the tax incentives could be claimed by the corporate zakat payers. For example in the seminar "The Implication of the Enactment of Zakat Law and Tax Law" at Hotel Indonesia, Jakarta in 2000, the speaker from Directorate General of Tax, i.e. Gunadi, delivered a paper on "Zakat as a Reduction for Taxable Income." He wrote that Law No. 38 of 1999 was the first time the government had regulated the relationship between zakat and income tax. At first there was an impediment for the implementation of zakat as a deduction for taxable income because the existing tax law (Law No. 17 of 1983 concerning Income Tax) did not regulate it as such. With the promulgation of Law No. 17 of 2000 (third amendment of Law No. 17 of 1983) this impediment was removed because zakat received is not subject to income tax and zakat paid may be deducted from taxpayer's taxable income. Entities such as taxpayers are mentioned in the tax law and in relation to zakat law, they are also eligible for tax benefits, i.e. deduction and exemption (art. 4(3.a.1)) either in their capacity as zakat payer or zakat recipients as long as the zakat was paid to zakat agents formed or authorized by the government (art. 9(1.9)).<sup>29</sup>

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<sup>29</sup> It is worth noting, that the presenters from the Directorate General of Tax delivered the exact paper as conveyed by Gunadi in the other seminars. This might suggest that the Tax Regime has taken the matter of zakat as the

Treatises on corporate zakat status and calculation method also flourish in this period either in the form of book or manuscripts on the internet. These treatises were written by ulama (some affiliated with the MUI, some with zakat agents, some who serve as *sharī'a* advisers in the Islamic financial industries) advancing their support for corporate zakat as a new obligation in Islamic doctrine of zakat. (See details on chapter IV)

The Council of Indonesian Ulama (MUI), on the other hand, reconsidered its position on the status of corporate zakat through organizing a zakat and *waqf* workshop. A joint-workshop organized by the MUI and the MORA, in Bogor, September 6-8, 2001 was attended by members of the MUI including its fatwa commission from central and provincial level, Islamic social organizations, and officials of the MORA. Unlike the 1<sup>st</sup> All Indonesia Zakat and Islamic Charity Agency National Meeting in 1992 where ulama agreed that companies and legal entities are not subject to zakat, the 2001 workshop decided<sup>30</sup> that, *inter alia*, the subject of zakat obligation are natural persons and business entities/institutions owned by Muslims either in the form of sole proprietorships or partnerships running business relating to commodities or services. If the business entities do not pay their zakat, the obligation to pay will be imposed on the owner or capital owners or shareholders. The workshop also recommended the MUI and the MORA to formulate Islamic jurisprudence on zakat in accordance with the context of Indonesia.<sup>31</sup>

This then suggest that the matter of corporate zakat has no longer become a peripheral issue in the development of zakat administration in Indonesia. The stakeholders in zakat administration – the ulama, the government (the Tax Regime and the MORA), the (corporate)

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reduction of taxable income seriously and considered zakat as an element of fiscal policy in Indonesia. Previously, the Tax Regime dismissed any proposal to reduce tax paid by Muslims in Indonesia with their zakat.

<sup>30</sup> The decision used the MUI letterhead and signed by the MUI chairman and the general secretary. This format is the *fatwā* promulgation format by the MUI, but it is not a *fatwā*.

<sup>31</sup> See *Majelis Ulama Indonesia, Keputusan Lokakarya Zakat dan Wakaf, September 8, 2001*.

payers, and the zakat agents – all played roles in making this concept part of public discourse and, thus, its being (re)incorporated into the New Zakat Law of 2011.

## 2. Drafting process in the Ministry of Religious Affairs (MORA)<sup>32</sup>

The Government set up a working team for the new Zakat Law bill in 2010 comprising seventeen people coming from the following ministries: MORA, Internal Affairs, Social, and Finance. The working team was coordinated by MORA because the subject matter related to religious affairs.<sup>33</sup> The MORA team itself was led by its General Secretary and consisted of people from the legal bureau and the Directorate of Zakat Empowerment with backgrounds in law, *sharī‘a*, and Islamic studies. Ex-MORA leaders were also invited to the team including Mubarak and Mukhtar Zarkasyi. The team worked intensively for around 2-3 weeks to respond to the draft Bill from the Parliament. The method employed by the team when it came to the *fiqh* points was simply referring them to ulama involved in drafting the bill. As stated by the Head of Legal Bureau and Public Relation of the MORA:

The law is about zakat management [in Indonesia] so *fiqh* matter is not dominant; yet, when it comes to *fiqh* matters such as what are items subject to zakat, we have Didin Hafidhuddin [on board], he knows exactly about this and he becomes our reference for fikh problems and zakat development. We also have Nazaruddin Umar [was one of the MORA’s Director General and now become Vice Minister] as the expert of Qur’ānic exegesis. The MORA, thus, just communicated with the ulama for *fiqh* matters.<sup>34</sup>

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<sup>32</sup> This part comes from the transcript of discussion on art. 5 of new Zakat Law bill concerning zakatable items (property subject to zakat), and is triangulated with interviews with officials of the MORA, i.e. Imam Syaukani (Head of Legal Bureau and Public Relation) on March 29, 2012, and Wawan Djunaedi (Secretary for the MORA’s working group) on March 29, 2012. No information about when the discussion happened because the MORA only gave me the specific part of transcript meeting of art. 5 without cover.

<sup>33</sup> The MORA has persisted with the effort to expand government authority in zakat collection; thus, the directorate of zakat of the MORA submitted its own draft bill to the Parliament first (the year not clear but might be around 2010). The draft bill made a little progress because, first, slow process of much legislation in the Parliament in recent years and members of Parliament disagreement with the MORA proposal to centralize and monopolize zakat under the auspice of new body; meanwhile the LAZ role will be simply subsidiary as they will be amalgamated and required to join the new body. See Lindsey, “Islam”, 172 (quoting news from Forum Zakat when met the members of Parliaments).

<sup>34</sup> Interview with Imam Syaukani, Jakarta, 29 March, 2012.

With regards to the provision of corporate zakat, the MORA team's work was to respond to the Parliament's draft Bill, which excluded entities as zakat payers. The day of discussion began with resolving the issue of whether the Law will include *zakāt al-fīṭr* (zakat due by the end of Ramadan).<sup>35</sup> Law No. 38 of 1999 regulated *zakāt al-fīṭr* too, but the Law emphasized the management of *zakāt al-māl* (zakat due on a Muslim's wealth).<sup>36</sup> The General Secretary of the MORA suggested that the new Law would also mention *zakāt al-fīṭr* but this will not take over the role of local ulama and mosques, who traditionally have served as the collectors and distributors of *zakāt al-fīṭr* for years in Indonesia.

Then, the discussion came to the point of trading (perniagaan) as an item traditionally subject to zakat (perniagaan or *tijarah* (Arabic), because it is mentioned in *fiqh*). The General Secretary wanted to clarify whether the paragraph related to "perniagaan" means the activity of trade or includes the entity which runs the trade. Consequently, is "perniagaan" an item subject to zakat and owed by individuals who are involved in the commercial exchange of goods and services, or does it also cover companies and corporations? A. Karim said that the *fiqh* mentions "perniagaan" as an item subject to zakat due to the profit yielded from trade, but not the entities (companies) which run the trade. He did not cite his authority for this, but he believes that this is the common opinion in books of *fiqh* when discussing the nature of the item "perniagaan" (*tijāra*) is subject to zakat.

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<sup>35</sup> *Zakāt al-fīṭr* is a flat rate imposed on every Muslim – except those who are absolutely destitute – with the amount of a little above 2 kilograms of his/her staple food, or its equivalent monetary value due on the end of the fasting month (Ramadan). Muhammad Nejatullah Siddiqi, "The Role of the Voluntary Sector in Islam: A Conceptual Framework," in *Islam and the Economic Development of Southeast Asia: The Islamic Voluntary Sector in Southeast Asia*, ed. Mohammad Ariff (Singapore: Institute of Southeast Asian Studies, 1991), 17-18; see also Alfitri, "The Law," 56.

<sup>36</sup> *Zakāt al-māl* is like a wealth tax on Muslims who possess certain liable assets such as gold, silver, cash, livestock, or agricultural products. It is only levied from Muslims whose wealth exceeds a threshold (*niṣāb*) with the rate ranges over 2.5%, 5% or 10% contingent on items subject to zakat. Before calculating the *niṣāb*, basic needs of a zakat payer and his/her family as well as financial obligations and due debts should be paid first. Further, the possession of wealth ought to pass one year (lunar calendar) and *niṣāb* is counted at the end of a one year acquisition. See Al-Qaradawi, "Fiqh," 917, 924, 930, 932; Monzer Kahf, "Zakah," *Kahf.net: Papers*, <http://monzer.kahf.com/paper/english/zakah.pdf> (accessed April 27, 2010), pp. 3-4;

Then, it came to the point regarding “terms and condition” for items subject to zakat. Mubarak suggested terms and conditions, as well as calculation methods for both *zakāt al-māl* and *zakāt al-fiṭr*. The General Secretary, however, responded to this proposal with, “We do not know, do we? – the technique of zakat?” Hence, it would be further regulated in the Ministerial Regulation in order to get the uniformity of understanding in the community.

After a meal break, Didin Hafidhuddin commented on the liability for zakat payments (it seemed that he missed the earlier session). According to the International Zakat Meeting (he referred to the meeting in Kuwait in 1984 which decided, *inter alia*, the obligation of corporate zakat provided that terms and conditions be fulfilled), companies are subject to zakat. Thus, in this draft “perusahaan” (company) means not the individual who owns the company but the entities. He thus argued that “perusahaan” should remain in the paragraph as one of items subject to zakat because it is different from *perindustrian* (industry).

The General Secretary then replied that the discussion from paragraph c to h (art. 5 concerning items subject to zakat) covered both individuals and business entities such as companies. Thus, “perniagaan” (trade) can be by individuals or trading companies. “Perindustrian” (industry) covers all but trading activities. Since the MORA intended to cover all types of business activities in this Law, the General Secretary then asked “Is it possible to add an article which explicitly regulates that zakat is applicable for both individuals and companies? Accordingly, the items subject to zakat mentioned in this Law include automatically both individual and companies.” Didin Hafidhuddin then proposed his redaction (not appearing in the transcript of the drafting meeting) and the General Secretary suggested the wording for art.3 concerning the general stipulation that “*zakāt al-māl* referred to in paragraph 2, both of which are owned by individuals and companies’ *muzakki* (zakat payer).”

Then, the ownership issue for companies' *muzakki* (zakat payer) came up for discussion. Qomar then raised the query, "Business entities are not necessarily owned in the whole by Muslims; thus, is this type of company subject to zakat too, because in the general stipulation we state that being Muslim is a prerequisite for the zakat obligation?" The General Secretary then referred the question to Didin Hafidhuddin asking whether a shareholding companies must be owned 100% by Muslims to make them liable to zakat. Didin Hafidhuddin responded by comparing the situation in Saudi Arabia which does not distinguish individual persons as shareholders. Thus even, foreign shareholders are liable to zakat (his statement is not clear whether they are Muslims or non-Muslims).<sup>37</sup>

Qomar, however, stated the different conditions between Indonesia and Saudi Arabia, with the latter being an Islamic state: "It will be a problem if this were to be implemented in Indonesia."<sup>38</sup> The General Secretary then suggested setting aside this issue and further regulating later.<sup>39</sup> A Karim added that in the *fiqh* of zakat, if the company is located in a Muslim country then all shareholders are liable to zakat. However, he did not cite his source for this proposition.

### 3. *Deliberation in the Parliament (Commission 8 and Government (the MORA))*<sup>40</sup>

With regards to zakat definition, the Legislature proposed "*zakat adalah harta yang wajib dikeluarkan oleh orang Islam sesuai dengan ketentuan syariat Islam untuk diberikan kepada yang berhak menerimanya*" (zakat is alms tax owed by Muslims in accordance with the

<sup>37</sup> The most recent version of the law provides that all Saudi and Gulf Cooperation Council Nation citizens and companies, who conduct business in the Kingdom of Saudi Arabia in commercial goods, pay zakat at the rate of 2.5% (Decree No. 61/5/1 of 5/1/1383 H (28/5/1963 CA). It is then further elaborated by Ministerial Res. No. 393 art. 6 of 6/8/1370 H (13/5/1950 CA). Zakat duty shall be collected in full in accordance with the provisions of Islamic law (sharī'a) from all Saudi persons, shareholders of Saudi companies whose all shareholders are Saudi, and Saudi shareholders of joint companies whose shareholders are Saudi and non-Saudi.

<sup>38</sup> Mandatory zakat payment is listed as a sort of constitutional requirement in the Saudi Basic Law. Saudi Basic Law art. 21 states "Zakat... shall be levied and dispensed to its legitimate beneficiaries." See also Powell, "Zakat," 67, fn. 190.

<sup>39</sup> His statement is not clear which regulation: Government Regulation or Ministerial Regulation.

<sup>40</sup> This part mainly come from the Problem Checklist number 14's minutes meeting (Daftar Isian Masalah nomor 14) of the Parliament, and triangulated with interviews with legislative drafters of the Parliament, i.e. Ahmad Muchaddam Fahham, in Jakarta, on March 15, 2012 and Atisa Praharini, in Jakarta, on March 26 and 28, 2012.

provision of *sharī'a* of Islam to be given to those who deserve it). The government (the MORA) proposed the phrase “orang *Islam*” (Muslims) to be changed to “seorang *muslim*” (a Muslim), and after the word “Muslim” added with the phrase “atau *badan usaha*” (or business entities) because those affected by the imposition of zakat would be not only individuals but also business entities (*badan usaha*).

After the amendment, the definition of zakat became “zakat *adalah harta yang wajib dikeluarkan oleh seorang Muslim atau badan usaha untuk diberikan kepada yang berhak menerimanya sesuai dengan ketentuan syariat*” (zakat is alms tax owed by a Muslim or business entities to be given to those who deserve it in accordance with the provision of *sharī'a*).

Then there was a discussion on the nature of business entities (*badan usaha*); whether it is general or specific to state and local-government-owned enterprises only, and where should its definition appear: the Law (general provisions) or its Elucidation. Amidst this technical discussion, one of the law makers, Mahrus Munir from the Democrat Party faction, questioned the background for including business entities as zakat payers. The Vice Minister of MORA, Nazaruddin Umar, also a professor of Qur'ānic exegesis of UIN Jakarta, replied to his question saying that the government proposed this pursuant to the decision of [the *Fiqh* Academy of] the Organization of Islamic Conference (OIC) which had agreed to assume the sameness of business entities as natural persons, i.e. persons being not only natural persons but also legal persons. He did not give further information about the decision, nor explain in which regards business entities are the same as natural persons in their rights and obligations before the law.<sup>41</sup>

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<sup>41</sup> International Islamic Fiqh Academy, 41 4<sup>th</sup> Conference in Jeddah, Saudi Arabia, February 6-11, 1988. Decree No. 28 (Resolution No. 3, Session 4 Zakat of corporate shares)

**First**, it is compulsory for shareholders to pay the *zakah* due on their shares. The management of the company is to deduct and pay it on their behalf, if: 1. it is included in the articles of association; or 2. a decision on this was made in the annual general meeting; or 3. the law of the land requires that companies pay *zakah* on behalf of the shareholders; or 4. the shareholders confer to the company the right to pay, on their behalf, the *zakah* on their shares.

KH. HM. Busro, a lawmaker from the Golkar Party faction, then commented that the discussion has entered into the sphere of Islamic jurisprudence (*fiqh*), and *fiqh* matters continue to grow. In the book of *Kifāyat al-Akhyār*, as far as business entities as zakat payers are concerned, gold mining companies are subject to zakat. Since the types of business entities have expanded in contemporary time, including oil, gas, nickel and so forth, are these companies subject to zakat too? Likewise zakat on farming produce (*zurū'*); zakat is only due from staple food farming, but now farming of chocolate and oil plants give more benefits than those types mentioned in *fiqh*. Are these new types of produce farming subject to zakat too? (This is his rhetorical question to support the inclusion of business entities as zakat payers) Hence, if business entities are mentioned in general provisions as zakat payers, this should also cover corporations such as PT Newmont, PT Freeport and Pertamina (the national oil company). He said “Our motive with this inclusion is to maximize zakat proceeds from the hidden treasures (*mengangkat pundi-pundi yang belum terangkat akarnya*) in Indonesia.”<sup>42</sup>

Reference to the first two corporations made by the Member of Parliament is not without reasons. PT Newmont and PT Freeport are multi-national corporations which are notorious for environmental damage issues from their operation in Indonesia and have done little to improve the socio-economy life of local people where they operate (Papua and West Nusatenggara).<sup>43</sup>

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**Second**, the company pays *zakah* due on the shares in the same manner that a natural human being would; i.e., the shares of all the shareholders are treated collectively, like those of a single person. It is upon this consideration that the *zakah* would be paid.

**Third**, if, for any reason, the company did not pay *zakah* of its assets, it is compulsory on the shareholder to pay the *zakah* due on his shares

**Fourth**, If a shareholder sold his shares during the year, he should add their sale price to the rest of his *zakatable* wealth and pay *zakah* upon the due date for paying *zakah* on that wealth. In the case of a buyer, he should pay the *zakah* of the shares in accordance to what has been mentioned above.

<sup>42</sup>See the Problem Checklist number 14's minutes meeting (Daftar *Isian Masalah nomor 14*) of the Parliament. Hard copy is available with the author.

<sup>43</sup>See Jane Perlez and Raymond Bonner, “Below a Mountain of Wealth, a River Waste,” *The New York Times*, [http://www.nytimes.com/2005/12/27/international/asia/27gold.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2005/12/27/international/asia/27gold.html?pagewanted=all&_r=0), accessed April 23, 2015; Telly Nathalia, “Indonesia Court Clears Newmont in Pollution Suit,” *Reuters*,

Meanwhile, as mining companies, PT Freeport, PT Newmont, and PT Pertamina earn enormously from oil and mineral exploitation in Indonesia. Hence, following up Busro's logic, there are tremendous corporate zakat potential from the mining business sector that can be utilized for social programs in Indonesia.

Nurul Iman, a lawmaker from the Democrat Party faction, later also questioned the status of non-Muslim shareholders, and demanded its explanation be included in the deliberation before the provision passed. The General Secretary of MORA just replied to all concerns that there would be an explanation either in general provisions or in specific articles. Yet, he asked the forum to agree on the obligation of zakat applying to both individual and business entities. (From the minutes of meeting, the General Secretary had to leave the deliberation soon because he needed to catch up his flight to another place in Indonesia. Busro then persuaded all Parliament members to let him go and bid him farewell suggesting that the deliberation for this issue was complete on the Parliament level).

The forum agreed on the government proposal on 30 May 2011. The provision of the new Zakat Law related to corporate zakat finally reads: art. 1(5) "zakat payers are a Muslim or business entities whose obligation to pay zakat;" art. 4(3) "zakat mal [zakat due on Muslims and business entities' properties] referred to by art. 4(2) is property owned by individual zakat payers or business entities."

#### *4. Discussion and Analysis*

The obligation of legal entities to pay zakat continued to be an issue in the drafting and deliberation process in the Parliament. This is because corporate zakat had been discussed at the national level in the form of a seminar series and the debate peaked in the 2009 *Ijtima Ulama*.

From process tracing, we can see that ulama proponents of corporate zakat (some affiliated with the Council of Indonesian Ulama, especially Didin Hafidhuddin, who is also the Chief of BAZNAS) were involved in the working team of the government (MORA) for the new Zakat Law, as well as in the later deliberation process in the Parliament. Thus, although the issue of whether legal entities are subject to zakat is not definitively settled yet in Indonesia as a matter of Islamic law, due to MUI's reluctance to promulgate the decision of *Ijtima Ulama* of 2009 as an MUI's *fatwā*, the provisions of corporate zakat were accepted by the Parliament and thus remain as part of the new legislative framework for zakat management. The reason why corporate zakat provisions were included by the government during the drafting process is largely because information provided from ulama supported the idea that legal entities have been considered as *shakhsiyya i'tibariyya* (legal persons) and thus subject to the obligation of zakat, just like natural persons. This was decided at the national level by the MUI during the *Ijtima Ulama* (incorrectly referred to by some drafters as a *fatwā*)<sup>44</sup> and ulama at international level (with the drafters referring to fatwa by Al-Azhar University's Jurists in 1965, the First International Conference of Zakat in 1984, and the OIC's *Fiqh* Academy Resolution in 1988). The government thus confirmed the authority of ulama as the authoritative interpreters of Islamic law as well as the product of their interpretation (*fatwā*) as one of the authoritative sources in formulating statutes in Indonesia.

The same explanation also applies to the deliberation process; yet this stage provided more elaboration on the reasons or the rationale for expanding the scope of zakat collection, such as the potency of zakat needing to be maximized and corporate zakat funds having enormous potency in Indonesia, thus requiring regulation by the zakat law so as to provide a legal basis for

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<sup>44</sup> i.e. Researcher (Tenaga Ahli) of Parliament Secretariat who prepared the academic draft and Nazaruddin Umar, the Vice Minister in his capacity as the expert adviser for the MORA working group.

collecting them. In this way a progressive interpretation of the zakat concept was introduced in Indonesia, with one mechanism for doing so being the inclusion of legal entities as being subject to the zakat duty.

The obligation of legal entities as subject to zakat in the new zakat law could have triggered resistance from business sector, because the very concept of corporate zakat itself remains controversial in Islamic jurisprudence. The major sources of *sharī'a* state that only natural persons are subject to zakat. However, this has not been an issue in Indonesia in practice, even among the many unfamiliar with the new law's provisions, because after its promulgation zakat payment and collection remained voluntary in Indonesia. There is no enforcement from the government in the form of, for example, sanctions imposed upon zakat evaders – either individual or corporate payers. Although the Law defines zakat as a (religious) duty imposed on individuals and legal entities, and mentions both as the subjects of zakat, its implementation becomes a personal matter and usually depends on the (*sharī'a*) consciousness of each zakat payers.

Originally there had been a proposal from the government to enforce the obligation of zakat in Indonesia by penalizing zakat evaders. However, this proposal was turned down by the Parliament saying that Indonesia, where *Pancasila* was the state ideology, lacked authority to enforce the obligations of a religious doctrine.<sup>45</sup> As with the case of the Zakat Law of 1999, the Parliament confirmed the position of the state as simply regulating the administrative aspects of zakat, i.e. authorizing and supervising zakat agencies. Therefore, issues emerging during deliberation process were those related to administrative issues of zakat collection especially the

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<sup>45</sup> This was the counter draft bill from members of Parliament. The counter draft contained no provision on sanctions for zakat evaders. It opposed the centralization of zakat by the MORA and its new body and restoring the rights of LAZ. Also, it proposed the abolition of BAZNAS and replaced it with limited body under the MORA which will only function as the regulator of zakat. See Lindsey, 2012: 172.

appropriate role of the government in zakat administration in Indonesia simply as a regulator or both as the regulator and implementer of the system?<sup>46</sup>

#### **D. Conclusion**

Having looked at the process by which the Islamic doctrine of zakat, including corporate zakat, became a new area of social policy that is regulated and managed by the state in Indonesia, we find that the state seems to have been selective about – or has ‘cherry-picked’ – the Islamic doctrines of zakat that it sought to implement. In particular, the state adopted a voluntary system of zakat payment under Law No. 38 of 1999 even though most of the supporters of the state intervention in zakat administration demanded a mandatory system. As a result, the Law stipulated that individuals and legal entities are required to pay zakat because of a religious obligation, but the state took no coercive measures in implementing this obligation. The subsequent replacement law, Zakat Law No. 23 of 2011, retains this voluntary system of zakat payment, but now includes criminal provisions for unauthorized zakat collectors who accept zakat payments and distribute the proceeds. Furthermore, the National Zakat Agency (BAZNAS) is designated to be the major zakat administrator, while the non-governmental zakat agents (LAZs) are subsumed under the BAZNAS and considered as no more than ‘helpers’ of the BAZNAS. Meanwhile, there are rigorous checklists that must be met to become an authorized LAZ,<sup>47</sup> and failure to do so will jeopardize the LAZ because its activities of collecting and distributing zakat become illegal.

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<sup>46</sup> Other issues were: the status of LAZ subordinate to the state zakat agency (the BAZNAS); debate on sanctions that should be imposed on those who act as zakat collectors but not authorized by the state; and the issue of zakat as tax credit; Cf. Mintarti 2012: 207

<sup>47</sup> As per art. 18 of Law No. 23 of 2011 concerning Zakat Management, the society can set up a LAZ provided that permission is obtained from the Minister of Religious Affairs. The Minister will grant the permission if following requirements are met: *first*, the LAZ is registered as an Islamic social organization which manages education, propagation, and social programs in the Ministry of Internal Affairs; *second*, it has a legal entity (usually a foundation); *third*, it must secure a recommendation from the BAZNAS; *fourth*, it has a *Shari’ah* Supervisory Board;

As for corporate zakat provisions, despite their apparent novelty, the state simply took the ulama's opinions expressed throughout the drafting and deliberating process for granted, and, thus incorporated them as provisions into the zakat law. There were no concerns from the Legislatures about possible objections coming from corporations which would be the targets of this obligation, except with regard to non-Muslim shareholders of a corporation who are not supposed to be subject to the obligation of zakat. This matter was resolved through the general provisions of the Zakat Law, which state that being a Muslim is one of the conditions for the zakat obligation.

What then does this reveal about the politics of the state towards the implementation of *sharī'a* in Indonesia? From arguments proposed by proponents of zakat administration by the state, we know that the government and some stakeholders of zakat in Indonesia see that the state intervention as necessary because the voluntary system of zakat obligation has marginalized the zakat role in income redistribution, or because the full incorporation of zakat into the fiscal system may assist Indonesia to achieve its goal of social justice. However, proponents of state intervention in the implementation of zakat using these arguments differ in their views when it comes to the issue of the appropriate role of the government in zakat administration. The Zakat Law has violated freedom of the religion clause in the Constitution. They believe *sharī'a* allows Muslims to pay their zakat through whichever zakat collector that they think fit to their purpose.

The Constitutional Court, however, confirms the constitutionality of state intervention in implementing zakat in Indonesia, i.e. the BAZNAS as the national operator of zakat and, thus the coordinator among zakat agents in Indonesia. The reason is that Indonesia has the *Pancasila* as the state ideology, with belief in one god as the first principle. The first principle suggest that

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*fifth*, it is not-for-profit oriented; *sixth*, its programs orient to Muslims well-being; *seventh*; it is willing to be audited, both *sharī'a* and financial; *eight*, it has technical, administrative and financial ability to function.

when it comes to the direction of welfare policy, Indonesia is a religious welfare state, i.e. the duty of state is to guarantee public welfare through programs that are in line with, but not limited to, religions existing in Indonesia. The Court, however, relaxes the rigorous checklist for acquiring an authorized status as a zakat collector by, for example, changing the cumulative requirement of the mass organization status<sup>48</sup> that must be acquired by a LAZ from the Ministry of Internal Affairs to being an optional requirement. So, the formulation is no longer “The LAZ is registered as an Islamic social organization which manages education, propagation, **and** social\_\_\_\_\_ programs in the Ministry of Internal Affairs,” but “The LAZ is registered as an Islamic social organization which manages education, propagation, **or** social programs in the Ministry of Internal Affairs.”<sup>49</sup> This measure is taken by the Court in order to appreciate the role of nongovernmental organizations in increasing zakat payment awareness among Muslims and in modernizing zakat agencies in Indonesia.

With regards to sanctions for unauthorized zakat collectors such as staff of mosques or *kyai* or leaders of Islamic boarding schools (*pesantren*), the Court confirms its constitutionality partially. Zakat is a religious obligation with a vertical dimension, i.e. worshipping Allah, but at the same time having horizontal dimensions, i.e. social justice and redistributive income. The clause of freedom to manifest one religion (article 29(2) of the Constitution)) can be limited pursuant to the law. State intervention through sanctioning the unauthorized zakat collectors is actually a kind of limitation on manifesting one’s belief by channeling zakat to beneficiaries directly or through intermediaries such as *kyai* or mosque staff. This is done to assure the accountability of zakat management in Indonesia because it involves the utilization of public

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<sup>48</sup> “The LAZ is registered as an Islamic social organization which manages education, propagation, **and** social programs in the Ministry of Internal Affairs.”

<sup>49</sup> See Constitutional Court Decision No. 86/PUU-X/2012: *Zakat Agencies and Zakat Payers vs. the State*, pp. 90-92.

money.<sup>50</sup> Since the number of zakat agents and their coverage are not reliable to force every zakat payer to channel their zakat through official zakat collectors, it may hamper Muslims to manifest their belief through observing the obligation of zakat, and the Court finds the provision of sanctions is cancelled (partially unconstitutional) for this reason.<sup>51</sup>

In this case, the Court again reasons employing the dimensions of freedom of religion that is susceptible to limitation. It has two dimensions, i.e. internal and external. The internal dimension is to believe, while the external dimension is to manifest it. The external dimension of freedom of religion is subject to government intervention because it deals with multiple religious adherents, peace and order. (This is consistent with the Constitutional Court's decisions on blasphemy law, i.e. the external dimension of religious freedom can be limited by means of law).<sup>52</sup>

This kind of policy towards *sharī'a* implementation in Indonesia has been described by Indonesian legal historians as the re-adoption of the Dutch colonial policy of reception theory. The reception theory was proposed by Snouck Hurgronje, a Dutch orientalist, to the Dutch colonial government in Indonesia by which the government developed *adat* (customary) law more intensively than Islamic law. According to Hurgronje, as far as Indonesian Muslims practices are concerned, *adat* law was to be preferred to Islamic law, and Islamic law was only effective after being assimilated by *adat* law.<sup>53</sup> Having compared the Dutch colonial policy with Indonesian government policy on the implementation of Islamic law, Salim and Azra conclude

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<sup>50</sup> See *ibid*, pp. 89-90, 94.

<sup>51</sup> *Ibid*, 108-109.

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See e.g. Constitutional Court Decision No. 140/PUU-VII/2009: *Imparsial et. al. vs. the State*.  
<sup>53</sup> See M. B. Hooker, "The State and *Sharī'a* in Indonesia," in *Indonesia: Law and Society*, ed. Timothy Lindsey (Sydney: The Federation Press, 1999), 98-99; Peter Burns, *The Leiden Legacy: Concept of Law in Indonesia* (Leiden: KITLV Press, 2004), 169-172.

the essays (mainly on case of Islamic family law and Religious Courts law) that they edited for a book on the state and *sharī'a* from the perspective of Indonesian legal politics with:

By controlling Islamic law, the Indonesian state has successfully instituted a new 'reception theory' – that the implementation of *sharī'a* is officially legitimate only if it has been ratified as national positive law. This is true for some of the contents of *sharī'a* that have been put into bureaucratic formulae; and its emergence into legal force is possibly only with the government's political will.<sup>54</sup>

This argument is adopted by Simon Butt in his study on the Constitutional Court Decisions on Islamic law in Indonesia (Muhammad Insa' case on the constitutionality of polygamous marriage's restriction and Suryani case on the constitutionality of limited jurisdiction of the Religious Court in adjudicating Islamic criminal offences. See details in chapter 2), arguing that the Court recognizes Islamic law but only in certain narrow fields by excluding public and criminal law and denying the independence of legal authority of Islam.<sup>55</sup>

Although the adoption of new reception theory is a legitimate way to characterize the politics of the state towards *sharī'a* implementation in Indonesia, I argue, that they are not all about the adoption of the Dutch legacy of reception theory. This is so especially if we take into account the perspectives of the subjects of zakat and corporate zakat obligations in Indonesia. To them, the meaning of *sharī'a* as moral guidance, instead of law, have motivated them to comply with zakat obligations in Indonesia (see Chapter 6), including its novel interpretation in the form of mandating business entities such as corporations to pay zakat. Their compliance with corporate zakat duty, in fact, is not affected by the ratification of the *sharī'a* of zakat as a national positive law in Indonesia (see following Chapters 5, 6, 7).

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<sup>54</sup> Arskal Salim and Azyumardi Azra, "Introduction: The State and Shar`a in the Perspective of Indonesian Legal Politics," in *Shari`a and Politics in Modern Indonesia*, eds. Arskal Salim and Azyumardi Azra (Singapore: ISEAS, 2003), 13.

<sup>55</sup> Simon Butt, "Islam, the State and the Constitutional Court in Indonesia," *Pacific Rim Law and Policy Journal*, vol. 19, no. 2 (2010), 285; Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis*, (Oxford and Portland: Hart Publishing, 2012), 248.

In addition, by building on the analysis in Chapter 2, where I analyzed the evolution of Islamic legal authority in the field of Islamic family law, I further argue that the emergence of novel provisions in the Zakat Laws in Indonesia is still within the framework of Islamic law arguments within *siyāsa shar‘iyya*. From the process tracing outlined in this chapter, we can see that in every measure taken by the state, either at the stage of drafting and deliberating the (Islamic state) law in the government office (MORA) or in the Parliament or in the judicial review process of the Constitutional Court, the deliberators have been advised by, or have taken into account, opinions of ulama. In the Zakat Law, the inclusion of corporate zakat provisions, as well as the state’s further intervention in zakat implementation by means of the institution of BAZNAS and prioritizing official zakat agents in channeling zakat, are justified through, *inter alia*, *maslaha* (public utility) and *sadd al-dharī‘a* (blocking means) arguments. These arguments emphasize maximizing the potency of zakat for realizing the social welfare in Indonesia, and maintaining transparency, accountability and, thus, security of public money. Hence, when Tim Lindsey concludes in his article on the recent development of *sharī‘a* economy regulation in Indonesia that “the government will naturally always be concerned to exercise control over the administration of any aspect of Islamic legal traditions in Indonesia where wealth is involved,”<sup>56</sup> that pragmatic instrumentalist explanation risks ignoring the more subtle political and religious nuances and influences that have shaped the regulatory outcome in the zakat domain.

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<sup>56</sup>Tim Lindsey, “Between Piety and Prudence: State Syariah and the Regulation of Islamic Banking in Indonesia,” *Sydney Law Review*, vol. 34, no. 107 (2012), 127; see also Lindsey, “Islam,” 173.

## *Chapter V*

### **COMPLYING WITH CORPORATE ZAKAT I: WHY DO ISLAMIC COMMERCIAL BANKS PAY ZAKAT?**

#### **A. Introduction**

The practice of paying corporate zakat has been observed by some companies in Indonesia, despite its ambiguous status in both Islamic jurisprudence (*fiqh* and *fatwā*) and Indonesian law (the Zakat Law). This chapter (and chapters 6 and 7) aims at exploring how the corporate community in Indonesia views the legitimacy of corporate zakat and which ethical, religious or secular values corporate payers (and non-payers) identify with this newly mandated practice. If zakat laws and regulations in Indonesia are not forcing businesses to pay zakat, then do Islamic commercial banks obey this obligation in order to fulfill a religious obligation? It will focus on case studies of compliance with corporate zakat by Islamic Banks in Indonesia. These are eleven Islamic commercial banks, i.e. fully-pledged Islamic banks (Bank *Umum Syariah* or BUS), as opposed to *sharī'a* windows owned by conventional banks (Unit *Usaha Syariah* or UUS).

The BUS are selected as the case studies of my research for the following reasons: 1) the BUS management make their own decisions with regards to running the business, while the UUS follow their parent bank's management decisions; 2) the nature of the BUS business (and UUS as well), which must abide by the *sharī'a* rules as per Indonesia banking laws and regulations; 3) their dual tier corporate governance, i.e. the existence of a board of directors as well as a *sharī'a* supervisory board, where the latter will assure compliance with *sharī'a* in the company's management and products and answer all questions related to *sharī'a* referred by management;

and 4) the availability of publicly accessible annual reports (finance, good corporate governance, and corporate social responsibility) with which to triangulate data from interviews for this study.

Employing case studies as the primary research method, I provide detailed contextual analysis of each bank's experience when deciding to pay or not to pay their zakat, in order to explore the legitimacy of corporate zakat, both in its interpretation and imposition, from the subjects' perspective. For this purpose, I first discuss the reality of corporate zakat payments in Indonesia. Next, I discuss data showing corporate zakat payments made by eleven Islamic commercial banks from 1992, when the first Islamic bank was established in Indonesia, to 2012. Finally, I will analyze the process of decision making within banks regarding payment of zakat. From this process I will explore who or what are regarded as Islamic law authorities and how the legitimacy of their legal/regulatory products are viewed from the standpoint of their intended subjects.

## **B. Corporate Zakat Payment in Indonesia**

### *1. Why does a corporation give?*

A study on the pattern on corporate giving in Indonesia in 2001 and 2002 by the Public Interest and Research Advocacy Center (PIRAC) shows that corporate giving was generally unplanned and unforced. Contributions made were incidental and mostly in response to requests. The study concluded that the pattern was caused by corporate perceptions that social activities are not their responsibility. With regards to the phenomena of individual giving by chief executive officers, the study argued that the motivation of executives from well-respected companies to give is individual and motivated by a transcendent spirit, i.e. to satisfy their

personal religious spirit. This can be seen from the main identity of the main beneficiaries of such gifts, such as nursing homes, orphanages and places of worship.<sup>1</sup>

Malaysia is more advanced in corporate zakat studies, given its status as a hub of *sharī'a* economic norms. For example, an explanatory study on factors influencing companies towards zakat payment in Malaysia in 2011 concludes that there is relationship between compliance with zakat by business, having Muslims as Boards of Directors, and the type of industry. That is, companies in the service industry and in manufacturing have stronger responses towards zakat payment. The data was collected from the annual report of 281 *sharī'a-compliant* listed companies retrieved from the Bursa Malaysia's website and analyzed by using content analysis.<sup>2</sup> The study also found that the collection of zakat from business is still poor if it is compared to collection of zakat from individuals' income in Malaysia.<sup>3</sup>

Another study by Hasan and Shanaz in 2005 investigated an entrepreneur group in Terengganu in Malaysia. They found several factors proven to influence paying zakat on business activity through feedback from 158 entrepreneurs selected through stratified random sampling. The factors included organization, attitudes and awareness, and level of knowledge. In their study, attitudes and awareness are the significant factors influencing paying zakat on business earnings.<sup>4</sup>

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<sup>1</sup> Andy Agung Prihatna, et.al, *Caring and Sharing: Pattern of Giving in Indonesian Society – Results of Survey in Eleven Cities, 2000 and 2004* (Depok: PIRAC and Ford Foundation, 2005), 9-11.

<sup>2</sup>There are 846 companies listed as *Sharī'a* Compliant Securities as reported by the *Sharī'a* Advisory Council of the Securities Commission Malaysia in November 2009. This study used around 30% of the total population, viz. 281 companies, by using the systematic sampling. The logic of 30% is because Malaysia targeted to achieve 30% equity ownership of *bumiputera* by 2020; Halizah Md Arif, et.al., "Factors Influence Company towards Zakat Payment: An Explanatory Studies," *2<sup>nd</sup> International Conference on Business and Economic Research Proceeding*, Langkawi, Kedah, Malaysia (March 114-16, 2011), 2519-2520

<sup>3</sup>Halizah, "Factors," 2522.

<sup>4</sup>Mohd Rahim bin Khamis, et.al., "Compliance Behavior of Business Zakat Payment in Malaysia: A Theoretical Economic Exposition," *Proceeding of 8<sup>th</sup> International Conference on Islamic Economics and Finance*, Qatar, 19-21 December (2011), 4.

Findings of previous studies from Malaysia are built on the fact that the legal status of corporate zakat as an obligation in Islam is not debated in Malaysia.<sup>5</sup> One of the reasons may be because law and regulations obliging Muslims in Malaysia to pay zakat provide for sanctions and fines for zakat evasion.<sup>6</sup> Certain businesses such as Islamic banks are required to pay zakat by statutory law. For other businesses, a zakat officer will look at official records of the company and decide whether the shareholders could be liable for zakat, e.g. indicators such as Muslim names.<sup>7</sup>

Without prejudice to the status of corporate zakat in Malaysia, this study will focus on compliance issues of Islamic commercial banks against a corporate zakat obligation when its legal status in Islamic law in Indonesia (fatwā) and Indonesian law (Law of Zakat Management) is still debated.

## 2. Recorded corporate zakat payments through zakat agencies 2000 - 2010

The potential of corporate zakat funds in Indonesia is enormous. Based on a recent study by the National Zakat Agency (*Badan Amil Zakat Nasional*, hereinafter BAZNAS) and the School of Economics and Management of Bogor Agricultural Institute in 2011, it is estimated that the total potential of zakat in Indonesia is around IDR 217 trillion per year which is equivalent to 3.4 % of the national GDP. More than half of that figure comes from corporate zakat, whose estimated potential from the industrial sector amounted to IDR 114.89 trillion and

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<sup>5</sup> In her study on corporate zakat practice in Malaysia, Kerstin Steiner concludes that Malaysian business in general seem to be accepting the idea that there is a need to pay business zakat. But usually it takes three years of lobbying before a business finally pays zakat from the first contact to when payment is made. The compulsory nature of business zakat is not debated, but the practical implementation of it is debated. Hence, zakat collection center usually provide training sessions for corporate accountant to train them on how to calculate zakat in their company; see Kerstin Steiner, “‘Unpacking’ a Global Norm in a Local Context: An Historical Overview of the Epistemic Communities That are Shaping the Zakat Practice in Malaysia,” *Law and Development and the Global Discourses of Legal Transfers*, John Gillespie and Pip Nicholson, eds. (New York: Cambridge University Press, 2012), 374.

<sup>6</sup> Lack of the zakat law enforcement by the government, however, makes the implementation of zakat mostly depend on the conscience of each Muslim up till now; see Aznan Hasan, “Undang-Undang Pentadbiran Zakat di Malaysia,” *Pentadbiran Undang-Undang Islam di Malaysia*, Mahamad Arifin, et.al. (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2007), 253.

<sup>7</sup>Steiner, “Unpacking,” 374.

from state owned enterprises amounted to IDR 2.4 trillion. Zakat agencies, especially Dompot Dhuafa and the BAZNAS, are aware of this tremendous potential and arguably want to intensify corporate zakat proceeds under their management. BAZNAS, for example, approaches state owned enterprises and the Indonesian Chamber of Industry to socialize and intensify zakat collection, both as individual and corporate zakat, from the business sector. This is done by establishing zakat collector units in each company as an extension of BAZNAS.<sup>8</sup>

Despite this, data on corporate zakat payments in Indonesia is not readily available. When I requested information on the 2000-2010 corporate zakat payments from two major national zakat collector agencies, BAZNAS and Dompot Dhuafa, the information given was simply a list of non-individual zakat payers, isolated from their archives of zakat payers. Its accuracy, thus, is questionable because it may contain zakat paid by legal entities or zakat paid by individuals but channeled through the zakat agencies under a (legal) entity's name. After analyzing the content from Dompot Dhuafa's data, it turns out that some of the so-called corporate zakat payments made from 2000-2010 are: zakat paid by employees/Muslim employees (15 transactions); zakat paid by congregations of mosques or Islamic recitation groups (15 transactions); zakat paid by customers (7 transactions); zakat collected in mosques, e.g. from housing complexes or office towers (5 transactions); zakat paid by members of an association (3 transactions); receiving zakat channeled from a zakat agency (3 transactions). Many of the IDs on the list conflict because the same payers are repeated.<sup>9</sup>

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<sup>8</sup> See Appeal Letter of Minister of State Owned Enterprises No. S 701/MBU/2010 concerning Call for Paying Zakat through BAZNAS; see also Joint Agreement Minister of Religious Affairs, Ministry of Finance, Chairman of Indonesian Chamber of Industry No. 17 of 2003, No. 29/KMK.01/2003, No. 001/DP/I/2003 concerning socialization and raising charity in the national business community to improve people's welfare; and Circular Letter of Minister of Religious Affairs No MA/296/2001 concerning the establishment of zakat collector units in state owned enterprises. Hard copies are available with authors.

<sup>9</sup> See ANNEX 2 Recapitulation of 2000-2010 Corporate Zakat Payment in Dompot Dhuafa.

Recapitulation from BAZNAS's data, on the other hand, does not provide clear information about whether a company continues paying its zakat in following years. When I sought to clarify this issue with BAZNAS, I did not receive a reply. Although zakat payers from the BAZNAS's data are mostly listed under a legal entity's name (e.g., limited liability company, limited liability partnership, sole proprietorship and so forth),<sup>10</sup> the zakat paid is not necessarily corporate zakat. For example, SNS Law Firm (No. 65 on the list) paid zakat in 2008. When I conducted my first fieldwork in 2012, I listed this company as one of my case studies on compliance with corporate zakat in the category of limited liability partnership. When I lodged my research request with the law firm, it welcomed my research but said that the company has not paid corporate zakat yet. Thus, what has been paid so far is simply zakat made by the firm's employees but recorded by the BAZNAS as an entity zakat payer (SNS Law Firm), instead of individual zakat payers (employees of SNS Law Firm).

This misclassification of zakat paid by employees as corporate zakat was also revealed from the Dompot Dhuafa's data during my first fieldwork in 2012. PT. IE (No. 192 on the list, listed as paying zakat continuously since 2008) and PT. MI (No. 200 on the list, listed as paying zakat continuously since 2007) are companies in the mining sector. I made them case studies on compliance with corporate zakat in the mining sector purposively to find out whether corporate zakat proceeds are used simultaneously as a company's Corporate Social Responsibility (CSR). We should note that CSR is mandatory for companies whose business impacts directly on the environment.<sup>11</sup> In its reply to my research request, the vice president HR & GS of PT. MI wrote

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<sup>10</sup> See ANNEX 3 Recapitulation of 2000-2010 Corporate Zakat Payment in BAZNAS.

<sup>11</sup> Art. 74(1), Law No. 40 of 2007 concerning Limited Liability Company.

that my research "... is irrelevant to activities in our company, hence, we do not own documents related and needed for the research."<sup>12</sup>

Below I compare corporate zakat payments recorded by two major zakat agencies in Indonesia (the BAZNAS and Dompot Dhuafa) from 2000-2010. Data are compiled from the BAZNAS's and Dompot Dhuafa's records.

**Table 5. Corporate Zakat Payments in Zakat Agencies 2000-2010**

Data Year	BAZNAS											DOMPET DHUafa												
	00	01	02	03	04	05	06	07	08	09	10	00	01	02	03	04	05	06	07	08	09	10		
EXZII	?	?	?	?	?	29	41	49	66	107	139	10	16	19	33	30	34	30	51	100	96	91		
Trans.	?	?	?	?	?	?	?	?	?	?	?	14	17	20	49	52	58	44	82	202	274	321		
Nom.	?	?	?	?	?	?	?	?	?	?	?	\$ 3,623,312,377,668,778,055,492,803,263,603,599,256,817,46,929,710,371,961,417,215,293.98												

**Note**

EXZII: Numbers of Corporate Zakat Payer  
 Trans.: Transactions  
 Nom.: Nominal (1 USD = 12,000 IDR)

The problem of misclassification may have been generated by lack of accounting standards for zakat collector agencies. As a result, they simply report received zakat funds from non-individuals payers as corporate zakat. The accounting standards for zakat collector agencies, (i.e. PSAK 109), was released in 2012 by the Indonesian Institute of Accountants. Zakat proceeds received must be explained as individual payers or entity payers in the statement of changes in fund. Accordingly, BAZNAS has distinguished zakat funds received as individual zakat and corporate zakat since 2012. In its 2012 financial report, BAZNAS received USD 140,025.4475 (USD 176,234.5196 in 2011) of legal entity zakat payers, and USD 3,202,203.4980 (USD 2,519,603.8385 in 2011) of individual zakat payers. Meanwhile, from its

<sup>12</sup> Response letter from Medco Group, dated April 25, 2012. Hard copy is available with author.

audited financial reports of 2002-2011 available from its website, BAZNAS only reported zakat proceeds received under categories income of zakat on wealth and zakat on professional income.

In essence, it takes cross-checking for validation of corporate zakat payment transactions with the zakat collector agents which receive corporate zakat channeled from non-individual zakat payers. The problem is, not all zakat collector agents are willing to reveal data on non-individuals zakat payers, because they want to maintain the confidentiality of corporate financial information.<sup>13</sup> Some zakat collector agents are also committed to maintaining the trust of non-individual zakat payers that culminates in subtle rejections of the request for data. Dompot Dhuafa which responded positively to this research, still needed to secure confirmation from the non-individual zakat payers before issuing a recommendation for this research.

When non-individual zakat payer information is obtained, the next challenge is getting them to want to be involved in this research. Some companies were reluctant to cooperate because zakat payments they have made were not corporate zakat, such as in the case of PT IE and PT MI. Meanwhile, verifying this through their financial reports is not possible because the financial statements are not made public.

We may discover which companies pay their corporate zakat from news covering ceremonies in which corporate zakat is channeled to zakat agencies. For example: PT ReIndo,<sup>14</sup> PT National Quality Assurance,<sup>15</sup> PT K-Link,<sup>16</sup> PT Energasindo Heksa Karya,<sup>17</sup> and some other

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<sup>13</sup> This is what happens when I ask about corporate zakat payments in Rumah Zakat via e-mail. They simply asked me to see corporate logos on their website. Other zakat agencies such as Baitul Maal Hidayatullah and LAZIS Muhammadiyah did not respond to my e-mail inquiring about corporate zakat payment channeled to them.

<sup>14</sup>“Penyerahan Zakat Perusahaan ReINDO”, *Badan Amil Zakat Nasional – Berita 04/17/09*, <http://www.baznas.or.id/ind/?view=detail&t=berita&t2=list&id=20090421001> (accessed January 22, 2011); “PT ReINDO Menyalurkan Wajib Zakat Perusahaan kepada Baznas”, *Republika Online 04/21/09*, [http://sylviagustin.myrepublika.com/berita/45399/PT\\_ReINDO\\_Menyalurkan\\_Wajib\\_Zakat\\_Perusahaan\\_kepada\\_BAZNAS](http://sylviagustin.myrepublika.com/berita/45399/PT_ReINDO_Menyalurkan_Wajib_Zakat_Perusahaan_kepada_BAZNAS) (accessed October 14, 2009).

<sup>15</sup>“BMM Terima Zakat Perusahaan Rp 80 Juta”, *Baitul Mal Muamalat – Berita 04/09/12*, <http://www.baitulmaal.net/berita-382-bmm-terima-zakat-perusahaan-rp-80-juta.html> (accessed June 8, 2012).

companies make media announcements about their corporate zakat. The CEO of ReIndo said to the media during delivery of zakat to BAZNAS "God willing, by paying corporate zakat, our company would grow bigger, and other than that it would make our employees work in peace because our business would be more blessed by Allah".<sup>18</sup> The Director of PT Recci Indonesia said "... one example of the form of the company's concern. I hope this effort is also followed by other similar companies. This departs from the concept of charity that cleans the business assets and property employees."<sup>19</sup> The *Shari'a* Board of PT K-Link said "This submission is to fulfill the religious obligation with the intention to help others. Zakat is not only related to Ramadan and zakat mal [a type of zakat, see Chapter 1] is the major charity in Islam. Its proceeds are channeled to credible and official institutions which will issue the receipt of payment that also serves as a deduction from taxable income.<sup>20</sup> From these quotes taken from media which covered the payments of corporate zakat made by some companies, the main motive to pay corporate zakat is religious (to fulfill the Islamic obligation to purify one's wealth), and further motivated by tax interest (PT K-Link). The next section will explain Islamic commercial banks' experience with corporate zakat payment.

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<sup>16</sup> "K-Link Indonesia Serahkan Zakat Perusahaan Melalui BMH," *Baitul Mal Hidayatullah – Berita*, <http://www.portalbmh.com/profile/145-k-link-indonesia-serahkan-zakat-perusahaan-melalui-bmh> (accessed June 8, 2012).

<sup>17</sup> "PT EHK Keluarkan Zakat Perusahaan 150 Juta," <http://www.pkpu.or.id/news/pt-ehk-keluarkan-zakat-perusahaan-150-juta> (accessed June 8, 2012).

<sup>18</sup> See "Penyerahan Zakat Perusahaan ReINDO", *Badan Amil Zakat Nasional – Berita 04/17/09*, <http://www.baznas.or.id/ind/?view=detail&t=berita&t2=list&id=20090421001> (accessed January 22, 2011); "PT ReINDO Menyalurkan Wajib Zakat Perusahaan kepada Baznas", *Republika Online 04/21/09*, [http://sylviagustin.myrepublika.com/berita/45399/PT\\_ReINDO\\_Menyalurkan\\_Wajib\\_Zakat\\_Perusahaan\\_kepada\\_BAZNAS](http://sylviagustin.myrepublika.com/berita/45399/PT_ReINDO_Menyalurkan_Wajib_Zakat_Perusahaan_kepada_BAZNAS) (accessed October 14, 2009).

<sup>19</sup> PT Recci Indonesia Salurkan Zakat Melalui Dompot Dhuafa, [www.dompetdhuafa.org/2013/07/10/pt-recci-indonesia-salurkan-zakat-lewat-dompot-dhuafa/](http://www.dompetdhuafa.org/2013/07/10/pt-recci-indonesia-salurkan-zakat-lewat-dompot-dhuafa/)

<sup>20</sup> "K-Link Indonesia Serahkan Zakat Perusahaan Melalui BMH," <http://www.portalbmh.com/home/39-bmh-pusat/145-k-link-indonesia-serahkan-zakat-perusahaan-melalui-bmh> (accessed June 8, 2012).

### **C. Corporate Zakat Payments of Islamic Commercial Banks**

Up until 2013, five Islamic banks (BMI, BSM, BMS, BNIS, BRIS) reported paying corporate zakat. Six other Islamic commercial banks including BPS and BSB responded to this study by stating that their company has not paid corporate zakat. Informants from BPS stated that there have been discussions at management level about paying corporate zakat and the conclusion has been delivered to the owner who then approved this plan (although the majority ownership of BPS, namely BP, is non-Muslim). Informants from BSB stated that they received a letter of appeal issued by the BAZNAS about corporate zakat. This issue will be discussed internally at the management level and may be decided at the Annual General Meeting of Shareholders. Based on the financial statements, management and Good Corporate Governance reports, neither bank had realized a corporate zakat payment plan in 2013.

The other four Islamic commercial banks (BCAS, BJBS, BVS, BMSI) did not respond to my research requests. When information about their corporate zakat payments was sought through archives (management, corporate governance, and financial reports), BCAS and BMSI appeared not to have paid their zakat. While BVS (2011, 2012, and 2013) and BJBS (2013) reported the availability of internal zakat from the banks, it is unclear whether this is corporate zakat, or zakat on income paid by the bank employees. The following table details eleven Islamic commercial banks' compliance with corporate zakat since its establishment. Data are compiled from interviews and archival records.

**Table 6. Corporate Zakat Payments of Islamic Commercial Banks 2010-2012**

No	Banks/ Est.	Ownership (2012 Report)	Compliance			Commenced
			2010	2011	2012	
1	BMI 1992	1) Islamic Development Bank: 32.74% 2) Saudi Economy and Development Cooperation (SEDCO) Group: 24.87% - Atwill Holdings Limited (17.91%) - IDF Investment Foundation (3.48%) - BMF Holdings Limited (3.48%) 3) Boubyan Bank of Kuwait: 19.03% 4) National Bank of Kuwait: 6.00% 5) Other Shareholders (legal entities and individuals): 17.36% - Abdul Rohim (3.72%) - Rizal Ismael (3.23%) - Apkindo-MPI Timber Cooperative or KOPKAPINDO (1.92%) - Public Shareholders of more than 800,000 legal entities and individuals (8.49%) <sup>21</sup>	v	v	v	since 1993
			\$	\$	\$	
			107,816,367	188,570,045.00		
2	BSM 1999	PT Bank Mandiri (Persero) Tbk.: 99,9999966% PT Mandiri Sekuritas: 0,0000034%	v	v	v	since 2000
			\$	\$	\$	
			1,215,240,398,150,344,300.54			
3	BMS 2004	PT Mega Corpora: 99,999999% PT Para Rekan Investama: 0.000001% (both owned by Chairul Tanjung)	v	v	v	since 2008; delayed for 3 years
			\$	\$	\$	
			180,241,753,968,527,166.66			
4	BRIS 2008	PT Bank Rakyat Indonesia (Persero), Tbk.: 99.99% Yayasan Kesejahteraan Pekerja (YKP) BRI: 1.11%	x	x	v	since 2012; delayed for 3 years
					\$	
					186,583.33	
5	BNIS 2010	PT Bank Negara Indonesia (Persero) Tbk.: 99.9% PT BNI Life: 0.1%	N/A	v	v	since 2011
				\$	\$	
				214,916,266,083.33		

<sup>21</sup> Bank Muamalat Annual Report 2012, "Shareholder's Profile," 32-25.

6	BCAS 2010	PT Bank Central Asia Tbk: 99,9997% PT BCA Finance: 0.0003%	N/A	x	x	
7	BJBS 2010	PT BPD Jawa Barat dan Banten, Tbk.: 97.63% PT Banten Global Development: 2.37%	N/A	x	x	N/A
8	BPS 2009 BSB	PT Bank Panin Tbk: 99,999% Ahmad Hidayat: 0,001% PT Bank Bukopin Tbk: 77.569%	x	x	x	planned in 2013; realized in 2015
9	2009	PT Mitra Usaha Sarana: 1.404% PT Jamsostek (Persero): 6.142% PT Bakrie Capital Indonesia: 6.142% PT Mega Capital Indonesia: 6.142% Other Shareholders (Individuals): 2.601% PT Bank Victoria International Tbk: 99.98% Public: 0.02%	x	x	x	N/A
10	BVS 2010	Malayan Banking Berhad: 99% PT Prosperindo: 1%	N/A	x	x	N/A
11	BSMI 2010	TOTAL	N/A	x	x	N/A
			\$	\$	\$	
			1,503,298,357	3,340,238,895	4,223,892,178.8	

In the section below, I describe the process through which each bank decided to pay their zakat.

#### D. Case Studies

##### 1. Bank Muamalat Indonesia (BMI)

In my interview with a BMI senior officer in the firm's Finance and Strategy Division, I learned that the bank has paid its corporate zakat since the beginning, following the year of its official operations commencing in 1992. The informant, however, did not know exactly the process of deciding to pay corporate zakat in 1993, so he admitted that his answer is probable and based on logic. The informant explained that BMI's decision to pay corporate zakat is mentioned in the *fatwā* of BMI's *Shari'ah* Supervisory Board (*Dewan Pengawas Syariah*, hereinafter DPS) and BMI's bylaws. BMI's payment of corporate zakat was then decided in the Annual Shareholders General Meeting (hereinafter ASGM), where it was resolved that BMI will

pay zakat from each year's profit before tax. This process was repeated every year through the ASGM decision.<sup>22</sup>

The *fatwā* of BMI's DPS gives a brief explanation about the process. The consideration part of the *fatwā* states that some of the shareholders asked BMI to pay zakat on the profit of their shares because their share had already reached the *niṣāb* (minimum threshold for zakat due) and the profit of BMI from November 1991 to December 1992 also reached the *niṣāb*. The *fatwā* also stipulates that BMI will issue its corporate zakat at the end of its bookkeeping period. It is not clear how the shareholders' wish is communicated to the DPS. However, considering that one of the duties and authority of DPS in Islamic banking corporate governance is to issue a *fatwā* (now called *sharī'a* opinions after the institution of MUI's *Sharī'a* National Board in 1999), it was arguably BMI's management who brought this issue to the DPS for an answer. As for the basis of the *fatwā*, DPS mentioned two verses of Qur'ān stating the general obligation of zakat<sup>23</sup> and some Islamic jurists' opinions, especially from the Shafi'i school of law, which oblige a corporation to pay zakat as it is considered a legal person (*shakhsiyya i'tibariyya*) as long as the corporation's wealth reaches the *niṣāb* and passes *haul* (one year uninterrupted ownership).

## 2. Bank Syariah Mandiri (BSM)

According to the BSM Assistant Vice President of the Accounting Division, BSM has paid its corporate zakat since the beginning, following the year of its establishment in 1999. Yet, the informant did not now know precisely the process of deciding to pay corporate zakat in 2000 because he started working in BSM in 2004.<sup>24</sup> From the annual report of 2000, it can be verified that BSM did indeed pay its corporate zakat from the beginning: first, the Board of

<sup>22</sup> Interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.

<sup>23</sup> They are: Chapter IX : 103, and Chapter II : 267.

<sup>24</sup> Interviews with BSM *Assistant Vice President Accounting Division*, in Jakarta, on September 30, 2013.

Commissioners wrote in the report about encouraging development of BSM amidst sluggish economic conditions but where the profit before tax and zakat reached IDR 15.3 billion; second, the directors reported that up the end of December 2000, the source of zakat funds of BSM were: from bank allotment (corporate zakat), employees' zakat, account holders' zakat, profit sharing margin, and others; and third, BSM also organized or followed corporate zakat seminars as part of human resource development.<sup>25</sup>

When asked why BSM decided to pay, the informant said that the basis for paying corporate zakat was not a *fatwā* or positive law. Meanwhile, from an accounting perspective it is cumbersome, i.e. corporate zakat becomes a burden for the current financial report as last year's financial transactions are paid and reported in the current fiscal year. BSM's decision to pay, the informant added, was more due to the awareness of top management about Islamic values in general and zakat in general as an obligation. At that time, the concept of zakat on professional income also grew within BSM so that the management related corporate zakat implementation to that.<sup>26</sup>

Specifically the informant mentioned the involvement of the accounting division in determining BSM zakat before it was approved by the ASGM. This is because the custody, management, and reporting of corporate zakat are in accounting department. Meanwhile, the corporate secretary division executes the utilization of corporate zakat. In that process, there is input from the DPS because corporate zakat and benevolence funds (*qard al-ḥasan*, i.e. non halal income such as interest from non-Islamic banks correspondence) involve the DPS and its extension, i.e. compliance with the *sharī'a* division. The decision to pay finally is made through the Annual Shareholders General Meeting. In its decision, the general meeting mentioned that

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<sup>25</sup> BSM Annual Report of 2000, pp. 13-14, 20, 30, 36.

<sup>26</sup> After I explained about zakat related regulation in Indonesia, he confirmed that Law No. 38 of 1999 concerning Zakat Management also becomes one of the considerations).

the company will pay corporate zakat, and no reasons were given because it is routine and internal policy.<sup>27</sup>

### 3. Bank Mega Syariah (BMS)

According to the BMS Corporate Affairs Head, BMS has paid its corporate zakat since 2008 for profit made in 2007 and it continues to do so to the present. For the period of 2005-2007, BMS had not paid zakat.<sup>28</sup> When I followed up with the informant via email, he said that it was basically a matter of choice, given the controversy surrounding the status of corporate zakat as an obligation. The management during the 2005-2007 periods might have opted out from paying zakat. (The informant could not clarify whether paying or not paying corporate zakat was even being discussed by management at that time, since he did not then work at BMS. Meanwhile, in 2007 there had been a change in the level of decision makers (Directors), and the new Directors adopted a policy that the company had to pay corporate zakat.

The decision to pay corporate zakat seems to have been made just at the level of management, based on the owner's agreement. This is because BMS is not a public company but a sole proprietorship. The informant said that the process was thus quite simple in BMS; the owner even has aspirations that his other companies would also pay corporate zakat.<sup>29</sup>

The process started from the Board of Directors which makes strategic decisions, including BMS paying corporate zakat. The decision was brought to the owner and agreed by the owner. The management executed the decision and it continues in force to the present. When asked why the Board of Directors decided this, the informant said that the management of BSM

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<sup>27</sup> *Ibid.* It is worth noting that, unlike other informants in BSM (and other case studies), the informant was appointed by BSM to answer my question shortly before the interview began. He seems to be very conversant with corporate zakat process in BSM prior to the RUPS decision, given that he had not seen my interview guide and abstract in advance.

<sup>28</sup> Interview with BMS Corporate Affairs Head, in Jakarta, on September 17, 2013.

<sup>29</sup> *Ibid.*

realized that Islamic banking is an ethical industry, so “anything ethical ... according to ethics it is a must, even though its status is disputed we will opt in.”<sup>30</sup> Prior to making the decision, the management looked at contemporary Islamic jurisprudence works by authors such as Yusuf al-Qaradawi and Wahbah al-Zuhayli.<sup>31</sup> The DPS of BMS also played a role. When the management discussed the legal basis of corporate zakat, they communicated with DPS. The DPS gave their opinion on this matter, stating that there are many opinions on this, and according to DPS the stronger argument is that business entities are subject to zakat,<sup>32</sup> so then the Board of Directors decided to pay corporate zakat. The format of the decision was simply an approval memo from a division to top financial management, then to the Board of Directors, then the Board of Directors communicated to the owner.<sup>33</sup>

When asked whether there was an effort to clarify the status of corporate zakat with the MUI or other *fatwā* bodies, then informant said yes. According to the informant, Muhammadiyah and Nahdlatul Ulama were not aware that corporate zakat is a matter of dispute. As to the MUI, BMS got a response suggesting that corporate zakat is a matter of dispute (*khilāfiyya*); and the MUI had issued a *fatwā* in 2009,<sup>34</sup> which further strengthened BMS’s decision in paying zakat.

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<sup>30</sup> *Ibid.*

<sup>31</sup> Both are contemporary Islamic jurists whose work on zakat, Islamic jurisprudence (*fikh*), and Islamic legal theory (*uṣūl al-fiqh*) are heavily referred by ulama in Indonesia. Yusuf al-Qaradawi was born in Egypt in 1926. He is currently the chairman of the International Union of Muslim Scholars. His main work on zakat is *Fiqh al-Zakah* (Islamic jurisprudence on zakat); for details see [http://en.wikipedia.org/wiki/Yusuf\\_al-Qaradawi](http://en.wikipedia.org/wiki/Yusuf_al-Qaradawi), accessed June 2, 2015; Wahbah al-Zuhayli was born in Syria in 1932. He is the Chairman of Islamic jurisprudence in the College of *Sharī‘a* at Damascus University. His main work on Islamic jurisprudence is *al-Fiqh al-Islamiyy wa Adillatuh* (Islamic Jurisprudence and Its Proofs); for details see [http://en.wikipedia.org/wiki/Wahba\\_Zuhayli](http://en.wikipedia.org/wiki/Wahba_Zuhayli), accessed June 2, 2015.

<sup>32</sup> I could not verify this information because there is no written document such as *sharī‘a* opinion of the BMS’ *Sharī‘a* Adviser just like the case of BNIS. Meanwhile, one of BMS’ *Sharī‘a* Adviser is K.H. Ma’ruf Amin who persistently denies that corporations can be the subject of zakat obligation. Thus, I will not consider the informant statement that the decision of BMS to pay zakat is, *inter alia*, because of the *sharī‘a* opinion of its *Sharī‘a* Advisers.

<sup>33</sup> *Ibid.*

<sup>34</sup> There is a misconception among users related to Islamic legal/regulatory products issued by MUI regarding the obligation of corporate zakat. In some occasions, the users such as the informant of BMS stated that it was a *fatwā*, whereas after the investigation conducted, it was still in the form of decision of Ijtima Ulama. The MUI *Fatwā* Commission has yet to set the decision as a *fatwā* because many aspects that still need to be assessed from the obligation of corporate zakat.

The management of BMS was aware that the chief of DPS (Ma`ruf Amin) once said in the media around 2008 that there is no obligation for corporation to pay zakat. The management was also informed about the different opinions and choices that could be made. From these choices, the Board of Directors chose to take a precautionary act (*ikhtiyāfī*), i.e. opting in to the (presumed) obligation to pay zakat lest it is more valid and, thus, BMS (in this regard the management and owner) would not have neglected its religious obligation. Moreover, the government gives an incentive for corporate zakat payments in the form of a deduction to the company's taxable income, thus, "*lebih enak lagi kita dalam membayarnya*" (We are better off paying the corporate zakat).<sup>35</sup>

#### 4. *Bank Rakyat Indonesia Syariah (BRIS)*

In my interview with a BRIS Senior Officer CSR, BRIS has just started paying its zakat in 2013 (for profits made in 2012) even though it was established in 2008 (as a spin off from its parent company, BRI, in 2009). When asked why 2013, the informant replied that BRI could make a profit in 2012; for the first two years BRIS did not pay, because it did not make a profit. He added that zakat should be paid from the company's profits. The idea to pay corporate zakat, however, has emerged since BRIS' establishment and this was suggested by the DPS.<sup>36</sup>

The process of paying corporate zakat in BRIS began with the implementation of zakat on professional income levied from employees in June 2011. The nature of the employee's zakat is voluntary, as BRIS adopts negative confirmation, meaning if an employee does not opt out from paying zakat in his payroll, the zakat will be automatically deducted from his salary monthly. Following this policy, the DPS advised BRIS management that the company should

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<sup>35</sup>*Ibid.*

<sup>36</sup>Interview with BRIS *Senior Officer CSR*, in Jakarta, on October 23, 2013. Note: The chief DPS of BRIS is Didin Hafidhuddin, and he is one of the proponents of corporate zakat implementation in Indonesia.

pay zakat. The proposal then was brought to the Board of Directors' meeting in 2013, and then the ASGM which decided that BRIS will pay zakat 2.5% of its profit.<sup>37</sup>

The informant also mentioned that there was a study conducted by DPS prior to making the recommendation of paying zakat to the management. The informant was in the team; he advised that "if we opt for CSR this becomes social funds, and the scope of CSR fund is general beneficiaries; as for zakat, it is for specific beneficiaries mentioned in the Qur'ān, i.e the eight beneficiaries group or *asnāf*."<sup>38</sup> Meanwhile, the DPS gave input from religious arguments both using the texts and reasons, including opinions from ulama.<sup>39</sup> The informant, however, did not specify the religious arguments coming from the DPS and ulama.

##### 5. *Bank Negara Indonesia Syariah (BNIS)*

According to the Head and a senior officer of legal compliance and secretariat division, BNIS has decided to use its profit to fund corporate zakat since 2011.<sup>40</sup> When asked why since 2011, the informants replied that BNIS was not a fully-pledged *sharī'a* bank before 2010, but a *sharī'a* division of a conventional bank, i.e. BNI. Thus, all policies were made by BNI management, including the use of profits. Further, the new zakat law which stipulates legal entities are subject to a zakat obligation was not promulgated until late October 2011.<sup>41</sup> When I asked did BNIS also refer to Law No. 38 of 1999, the informants said that it was not applicable, given that BNIS was established in 2010 and the process of deciding to pay zakat was initiated in 2011.<sup>42</sup>

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<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> Interview with BNIS Head of Legal, Compliance and Secretariat Division, and Staff of Legal Compliance and Secretariat Division, in Jakarta, on September 17, 2013.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.* It is worth noting that both informants are from legal and compliance division and their responses were based on legal reasoning.

Before the interview started, we chatted about my topic, and as personnel of the legal and compliance division they saw corporate zakat is not an obligation of Indonesian law and regulations. They concluded this after examining the provisions of zakat obligation in effective laws and regulations which suggest the voluntary nature of zakat payment in Indonesia. When asked why BNIS finally decided to pay zakat, the informants said that there was a study made by BNIS management in 2010. The Legal and Compliance Division examined the positive laws and found no provision which compelled business entities to pay zakat, either in the Zakat Law of 1999 or the Limited Liability Law of 2007.<sup>43</sup>

Meanwhile, the DPS through its staff (one person who had a *sharī'a* background) conducted a study from the Islamic law perspective and brought the finding to the DPS. The DPS in this case, Hasanuddin and Ma`ruf Amin, are both *muftī* of the MUI, however they opined that:

The parties obliged to pay zakat are not the company as a legal entity but the shareholders qua individual Muslims. So, if there are shareholders who are non-Muslims, it is not obligatory for them to pay zakat. If the non-Muslim shareholders are willing to set aside their profit for charity as the Muslim shareholders do, the fund can be utilized for the benefit of the needy (kaum *dhu'afa*). As an Islamic financial institution, BNIS should practice *sharī'a* to the entire extent (kaffā), in this case include paying zakat from its profits. Since the shareholder of BNIS is BNI which is incidentally a state owned enterprise, BNIS thus is not qualified to be subject to a religious mandate (*mukallaf*). The *mukallaf* of zakat are a combination of conditions: being a Muslim, self-determined (*merdeka*), religious majority age (*balīgh*), and sane (*berakal*). Consequently, BNIS profit is not subject to zakat.<sup>44</sup>

Despite the *sharī'a* opinion and finding from the legal and compliance division, the Board of Directors kept bringing up the idea of paying corporate zakat to the Commissioners, who then agreed and recommended it. According to the informants, when BNIS had the first ASGM in 2011, the Board of Directors stated that some Islamic banks already paid corporate

<sup>43</sup> *Ibid.* This statement is inconsistent with his earlier statement that says that BNIS only refers to the Law 23 in 2011

<sup>44</sup> The *Sharī'a* Opinion of BNIS DPS. Translation by the author; hardcopy available with the author.

zakat, and they also received questions from the media about whether BNIS had paid its zakat. The ASGM of 2011 finally approved the proposal of the Board of Directors to spend BNIS' 2010 profit on zakat.<sup>45</sup> To the informants, the basis of corporate zakat implementation in BNIS is their wish to internalize *sharī'a* values, for this what distinguishes Islamic banks from the conventional banks, and by benchmarking to other Islamic bank practice.<sup>46</sup>

### **E. Discussion and Analysis**

The system of zakat payment in Indonesia is voluntary, because the legal mandate is unclear and there is no sanction from the state to zakat evaders. Consequently, the payment of zakat is handed over to each zakat payer's moral and legal conscience. This condition is understood by Islamic commercial banks, those either paying or not yet paying, because none of the banks (BMI, BSM, BMS) based their decision to pay zakat following the promulgation of Law No. 38 in 1999 on the provisions of this Law. Similarly, Islamic commercial banks that paid their zakat when the new Zakat Bill was being intensively discussed in 2010 and finally approved in 2011 (i.e. BRIS and BNIS) did not base their reasons for paying zakat on the provisions of this Law. The new Zakat Law, nevertheless, clearly states that zakat is the obligation of a Muslim and business entities. BNIS specifically explained that its decision-making process was preceded by a study in terms of the legal and regulatory aspects of zakat in Indonesia; it emphatically said that there is no provision that forces businesses to pay zakat. The table below is the summary of Islamic commercial banks' reasons to pay (or intention to pay) corporate zakat that is compiled from interviews and archives.

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<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

Table 7. The reasons of Islamic Commercial Banks Pay (or will Pay) Zakat

No	Bank	Initiative	Process	Why Pay (or Will Pay)?					
				Legitimacy		Other			
				Zakat Law	Fatwā /Shari'a Opinion	Zakat Principles	Type of Industry	Size	Benchmark
1	BMI	Shareholders	Management ↓ DPS (internal <i>fatwā</i> ) ↓ ASGM <sup>47</sup> ↓ Documented in Bylaws	N/A	Yes, internal <i>fatwā</i>	Yes	Yes	No	No
2	BSM	Management	Management ↓ [DPS] <sup>48</sup> ↓ ASGM	No	No	Yes	Yes	No	No
3	BMS	Management	Management ↓ DPS ↓ Owner	No	No	Yes	Yes	No	No
4	BRIS	Management	Management ↓ DPS ↓ ASGM	No	No	Yes	Yes	Yes	No
5	BNIS	Management	Management ↓ DPS ↓ ASGM	No	No	Yes	Yes	No	Yes
6	BPS	Management	Management ↓ DPS ↓ Owner	No	No	Yes	Yes	Yes	No
7	BSB	N/A		No	N/A	N/A	N/A	N/A	N/A

<sup>47</sup> Annual Shareholders General Meeting.

<sup>48</sup> There could be an effort to seek *shari'a* opinion from DPS, but it was not revealed during the interviews.

It could be assumed that the other six Islamic commercial banks are not paying their zakat because there is no obligation to do so in terms of the laws and regulations in Indonesia. BPS and BSB emphatically said that there is no obligation to pay zakat for the corporate enterprise. BPS even said that many businessmen do not care about the provisions of corporate zakat in the Zakat Law because there is no issue there. If zakat laws and regulations in Indonesia are not forcing businesses to pay zakat, then do Islamic commercial banks obey this obligation in order to fulfill a religious obligation?

Based on the textual and historical analysis of the provisions in the Zakat Law, the obligation of zakat is according to the Islamic religion (see Chapter 4). In terms of Islamic law itself there are differences of opinion about the status of corporate zakat obligation. This is due to the obligation of zakat being traditionally and historically only applied to Muslim individuals who meet certain requirements (being Muslim, having reached age of puberty, being rational, their wealth reaches the minimum of threshold or *niṣāb*, and one year of ownership or *haul*). Contemporary ulama of *fiqh* later wrote about this corporate zakat when discussing the obligation of zakat on stocks and bonds of companies, such as Sheikh Abdurrahman Isa and Professor Abu Zahrah. Professor Abu Zahrah, Abdurrahman Hassan, and Abdul Wahab Khallaf then further specify that the company as an entity is also required to pay zakat from profits earned before it is distributed to shareholders; while shareholders are also required to issue zakat of their shares (including part of the dividends earned).<sup>49</sup> Yusuf al-Qaradawi, considered this provision to be contrary to Islamic principles which prohibit the imposition of zakat twice against the same property type (double zakat), and he argued that only one of the two forms of zakat (on a company or on a stock/bond), is applicable.<sup>50</sup>

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<sup>49</sup> See Yusuf al-Qaradawi, *Fiqh al-Zakah (Volume 1)*, (Beirut: Mu`assasah al-Risalah, 1984), 521-533

<sup>50</sup> *Ibid*, 533.

This difference of opinion then was sought be reconnected through forums involving ulama. In 1984, the First International Conference on Zakat in Kuwait decided that corporate zakat is mandatory if it satisfies the following four provisions: the presence of provisions of governing laws; the company's bylaws also stipulate it; it was decided by the Annual General Meeting of Shareholders; and the approval of company's shareholders is given to pay zakat on their behalf. The Academy of Islamic *Fiqh* of the Organization of the Islamic Conference (OIC) issued a resolution from the fourth conference in Jeddah in 1988, that shareholders must pay zakat on their shares; a company will calculate and release on behalf of the shareholders if it meets the aforementioned four conditions. The company is also required to issue zakat on their assets; if the company does not do so, then the shareholders must pay zakat on their shares.

Despite the existence of two *fatāwā* above, ulama in Indonesia still have different opinions about the status of the corporate zakat obligation: some deny it, some accept it entirely, and some accept it with conditions (see Chapter 3). The Council of Indonesian Ulama itself - after not taking a stand in 1992, recommended it in 2001, but rejected it through individual ulama of the MUI *Fatwā* Commission in 2007 and 2008 making statements in the media – and then decided through the forum of *Ijtima Ulama* in 2009 that "a company that has been qualified as a zakat payer is obliged to pay zakat, either as a legal person (*syakhsiyya i'tibariyya*) or a representative of the shareholders". This decision was apparently not promulgated as a *fatwā* by the MUI as there are sharp disagreements about the corporate zakat obligation and unresolved discussion on the matter at the level of the MUI *Fatwā* Commission.

Many ulama of the MUI *Fatwā* Commission (and the MUI National *Sharī'a* Board) sit as members of the *Sharī'a* Supervisory Board in Islamic commercial banks. Related to the issue of corporate zakat in Islamic commercial banks, it can be assumed that the ulama would give

*Sharī'a* opinions pursuant to their preferences. Didien Hafidhuddin (BRIS), Syafii Antonio and Mohamad Hidayat (BSM) belong to the group of ulama supporting a corporate zakat obligation, while KH. Ma'ruf Amin (BMI and BNIS), Hasanuddin (BNIS) and Ikhwan Abidin (BSB) come under the group of ulama who do not approve the obligation of zakat on legal persons such as business entities.<sup>51</sup> Even so, the decision of Islamic commercial banks to pay (or not to pay or not to pay yet) was not too affected, except for the case of BMI, by the *sharī'a* opinions given by the *Sharī'a* Supervisory Board. (This occurs when the management brings this issue to the Board as in cases of BMS, BRIS, BNIS, and BPS).

When asked why they decided to pay (or pay in future), all Islamic commercial banks in this case study (BMI, BSM, BMS, BRIS, BNIS, and BPS) associate their answers with the principles of zakat (i.e. to purify a Muslim's wealth) and the nature of their industry which closely relates to *sharī'a*. For example, a BMI informant said:

BMI is the first Islamic bank and pure *sharī'a*, [the payment of corporate zakat is] to purify our profit ... to manifest *sharī'a*. ... If we see that the BMI has committed to pay zakat since the beginning of its establishment, this shows BMI's commitment to zakat, [because] the nature of our business and we want to implement *sharī'a*.<sup>52</sup>

A BSM informant stated:

The decision to pay [zakat] because of our awareness that [zakat] is an obligation, although we realize that there is a difference [of opinion about] it. We know about the concept of corporate zakat; there is an opinion that [legal] entity is not obliged [to pay zakat] because zakat obligation is imposed on the individual, but there are also opinions that say that [legal] entity is required [to pay zakat]. We chose the opinion that oblige corporate zakat because we see greater utility [than not paying] and we are an Islamic financial institution ... there is an anecdote at that time "corporations do not recite the Islamic creed anyway, those are subject to [corporate] zakat will not enter heaven, it is shareholders who should get the burden of zakat payment" ... as a *sharī'a* institution, we must deliver utility, this is the uniqueness of Islamic banks; if Islamic banks do not pay [then] what is the difference between Islamic banks and conventional banks. Although

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<sup>51</sup> For each ulama biographical details and affiliates see Chapter 3 (Didien Hafidhuddin, Mohamad Hidayat, Hasanuddin, and Ikhwan Abidin), and Chapter 4 (Syafii Antonio).

<sup>52</sup> Interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.

the new Zakat Law does not oblige corporate zakat [sic. enforce its obligation], it does not change our decision.<sup>53</sup>

Meanwhile, a BMS informant explained:

We are aware of the Islamic bank is ethical industry. We must uphold all ethical values: either *sharī'a* or law. [In] our law, there is no obligation [of corporate zakat], the government only encourage to pay it by [giving] incentives. We feel morally obligated [to pay zakat] not [because of] positive law, [rather] it relates to our business ethics ... we realize that zakat is obligated [but] corporate zakat is *khilāfiyya* [a matter of dispute], but we decided to get out of the difference of opinion (*khurūj `an-l-khilaf*), we pay zakat ... zakat is an obligation in Islam, there is an opinion [saying that] *syakhsiyya i 'tibariyya* [legal person] subject to zakat obligation [too], how come as a *sharī'a* bank we do not pay our zakat? ... If *sharī'a-based* legal entities do not pay [zakat] how do we expect other kind of legal entity to do so?<sup>54</sup>

The BRIS informant explained: "The reason why [our] management decided to pay corporate zakat is; first is to comply with *sharī'a*, corporate zakat is obligatory according to some opinions; second, we expect that by paying corporate zakat will provide utilities for the benefit of society and BRI."<sup>55</sup>

In addition to giving reasons of principle and relating payment of zakat to the nature of the industry, two Islamic banks also associate the case with the size of the profits earned by the banks that are considered 'eligible' to pay zakat (BRIS and BPS). When asked why they just planned to pay zakat in 2013, the BPS informant said "This is a new bank; we have just started the operation, so we can gain profit or loss for the period; we do not get profit [previously], so there is no zakat of course; the reasonable profit to [pay] corporate zakat is from profit of 2012; 400-500 million profit is not 'eligible' yet to pay zakat, let alone to cover the losses of last year."<sup>56</sup>

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<sup>53</sup> Interview with BSM Assistant Vice President Accounting Division, in Jakarta, on September 30, 2013.

<sup>54</sup> Interview with BMS Corporate Affairs Head, in Jakarta, on September 17, 2013.

<sup>55</sup> Interview with BRIS Senior Officer CSR, in Jakarta, on October 23, 2013.

<sup>56</sup> Interview with BPS Risk Management qua Zakat Operator, in Jakarta, on September 4, 2013.

Terms and conditions of corporate zakat are analogized to zakat on trading (*'urūd al-tijāra*). The *niṣāb* of zakat on trading, and therefore also corporate zakat, is 20 dinars (equivalent to 85 grams of pure gold). This means that if a company has a wealth at year-end (capital and profit) that is greater than or equal to 85 grams of gold, then it is obliged to pay zakat of 2.5% of the wealth. If we assume a gram of gold is equivalent to IDR 400,000.00 (USD 33,33) then the Nisab of corporate zakat is IDR 34,000,000.00 (USD 2833.33). BRIS posted a profit before tax in 2010 (IDR 451,325,000.00 or USD 37,610.42) and in 2011 (IDR 417,525,000.00 or USD 34,793.75), while the BPS in 2011 (IDR 310,268,100.00 or USD 25,855.675). If we follow the provisions of zakat on trading, there is the potential for corporate zakat on BRIS and BPS from the first year they officially operated as Islamic commercial banks.

One Islamic commercial bank (BNIS) also mentions 'benchmarking' to the practice of other Islamic commercial banks as one of the reasons they pay corporate zakat. As mentioned earlier, BNIS' compliance with corporate zakat is also as a response to mass media queries. There is no information about which mass media posed the question to BNIS. In the reformation era, however, there are several mass media outlets in Indonesia which can be categorized as 'green media' (Islamic media) for they consistently voice and cover Muslims' interests. *Republika*,<sup>57</sup> for example, regularly covers news and features related to zakat in its printed and online version. *Republika* has been concerned with zakat in Indonesia; in fact, the largest zakat agency *Dompot Dhuafa* was instituted by the newspaper. It also initiated the establishment of BAZNAS together with *Forum Zakat*. The weekly *Zakat* page of the newspaper mostly covers the BAZNAS activities, as well as columns written by the BAZNAS leaders such as *Didin Hafidhuddin* and *Fuad Nashar*. Zakat agencies also publish zakat magazines such as *Forum*

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<sup>57</sup> *Republika* was founded in 1992 and its first edition was printed on January 3, 1992. *Republika* is known and associated itself as a publication for Muslims' voice. Its establishment was supported by the Association of Indonesian Muslim Intellectuals (ICMI). See [www.republika.co.id](http://www.republika.co.id).

Zakat's Info+Z,<sup>58</sup> and the BAZNAS' *Majalah Zakat*.<sup>59</sup> Last but not the least, most zakat agencies' websites also feature zakat news: either original news coverage on zakat payments made to the zakat agency, or copy news featured in other newspaper.<sup>60</sup>

## F. Conclusion

The main issue addressed in this chapter is why corporations pay zakat when they are not legally compelled to. The observation starts from the uptrend of corporate zakat payments in general and then converging on the phenomena of compliance with corporate zakat in Islamic commercial banks. This study finds that although there is an imposition of corporate zakat in the Zakat Law, this has not sparked controversy among the business sector in Indonesia. In fact, many of them are not familiar with its provisions, because of the voluntary nature of zakat collection in Indonesia. The lack of enforcement by the government, for example by applying sanctions to zakat evaders either as individuals or corporate entities maybe contributing to 'ignorance' towards the concept of corporate zakat. Even though the Zakat Law defines zakat as a religious duty imposed on individuals and legal entities, and mentions both as the subject of zakat, its implementation becomes a personal matter and is usually dependent on moral or legal conscience of each zakat payers.

With regards to the phenomena of corporate zakat payments in Islamic commercial banks in Indonesia, the fact that many ulama members of the MUI who serve as *sharī'a* advisers in Islamic financial services, turns out to have less effect on the banks' decision to pay their zakat. This may be because the status of corporate zakat as an obligation is still ambiguous in Islamic

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<sup>58</sup> Info + Z is a magazine published by the Forum Zakat (FOZ) that serves as a network of information, communication and advocacy for LAZ and BAZNAS throughout Indonesia with a mission to develop zakat, Islamic charity, and wakf in Indonesia. Archives of the magazines are available from [www.forumzakat.net](http://www.forumzakat.net), or [www.asosiasizakat.blogspot.com](http://www.asosiasizakat.blogspot.com).

<sup>59</sup> Archives available from the BAZNAS website at <http://pusat.baznas.go.id/tag/majalah-zakat/>.

<sup>60</sup>See footnote 15 – 21 above.

law in Indonesia. As a result, the existence of a Zakat Law and a *sharī'a* opinion of the *Sharī'a* Supervisory Board, has little, if any, influence on the Islamic commercial banks' compliance with corporate zakat (except for the case of BMI). From the banking sector case study, it was found that the views of Islamic commercial banks about the legitimacy of provisions of corporate zakat in Indonesia is affected by a combination of two or three factors: (1) the type of business i.e. as *sharī'a-related* industries; (2) their attitudes towards the principles of zakat, i.e. an obligation in Islam to purify a Muslim's property, so that the issue is not whether the subject of zakat is individual or legal entity; (3) the size of the company, i.e. the amount of profit that is deemed to be eligible to pay zakat; and (4) benchmarking with other competitors. A combination of factors number one and two thus becomes the most salient driver for corporate zakat compliance.

Islamic commercial banks that do not yet embrace the *fatwā* resolution on corporate zakat status or its imposition in the Zakat Law feel that corporations do not fall under the moral authority of the corporate zakat requirement. Despite this, the employees of these banks (and arguably executives as well) pay their zakat as individuals (zakat on professional income). The collection of these zakat funds is managed by the zakat unit of the banks and then channeled to the BAZNAS or LAZs. Given the awareness of these banks' employees and executives to pay their zakat on professional income, can we expect that the non-paying group of Islamic commercial banks will pay their corporate zakat?

Latest development in corporate zakat payments within Islamic commercial banks in Indonesia, BPS announced in April 2015 that it will pay corporate zakat for profit made in 2014. The decision was made in the Annual Shareholders General Meeting of BPS. The meeting reveals that BPS became an Islamic commercial bank with the highest growth rate in the *sharī'a*

banking industry in 2014. BPS will pay corporate zakat amounting to IDR 2.5 billion beyond budgeted CSR and non-halal income (penalty for default payments of loans).<sup>61</sup> Earlier I mentioned that there has been discussion in the level of BPS management to pay corporate zakat in 2013; and the realization was finally made in 2015. One of the reasons maintained by the BPS informant about why the bank just discussed the plan to pay corporate zakat in 2013 – while it was already established in 2009 and made profit every year – is the size of the company, i.e. the amount of profit that is deemed to be eligible to pay zakat. Hence, the factor of size of company may also become a critical factor for the non-paying group of Islamic commercial banks to voluntarily comply with corporate zakat obligation.

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<sup>61</sup> I acquired this information from a *sharī'a* adviser of BPS who wrote in his social media wall about the meeting and one of the decisions, i.e. paying corporate zakat. I then followed up this information through e-mail communication with the *Sharī'a* Adviser, April 28, 2015.

## *Chapter VI*

### **COMPLYING WITH CORPORATE ZAKAT II: WHY DO ISLAMIC COMMERCIAL BANKS CHANNEL THEIR ZAKAT TO A ZAKAT AGENCY?**

#### **A. Introduction**

As we saw in Chapter 5, Islamic Commercial Banks' decisions to pay corporate zakat are not based on the provisions regarding corporate zakat in the Zakat Laws and the *fatwā* or *sharī'a* opinions of the Banks' *Sharī'a* Supervisory Board. The legitimacy of the interpretation and imposition of corporate zakat is not an issue in the context of its implementation in Indonesia. However, another aspect of its implementation, i.e. channeling corporate zakat collected, needs to be examined, since it is closely related to the notion of state intervention in zakat management in Indonesia.

This chapter examines where the Islamic commercial banks pay their corporate zakat: do they directly distribute it to zakat beneficiaries or do they channel their zakat payments through zakat collector agents? There are two types of zakat collector agents in Indonesia, i.e. state-run and NGO-run, and thus it is necessary to understand bank preferences in channeling their zakat payments. From the channeling preferences we can infer the subjects' views on government intervention in the administration of zakat in Indonesia.

After the collapse of the New Order regime in the late of 1990s, the government is now involved in managing zakat in Indonesia through the issuance of the Zakat Law and related regulations. Although state involvement in zakat management is not novel in Islamic history, (to some extent it is even encouraged by the doctrine of zakat according to an interpretation), it is interesting to understand the subjects' view on this issue, especially when the state positions

itself not only as the regulator but also the collector of zakat. As we will see, it then seeks to dominate the collection of zakat.

The history of zakat collection including other types of Islamic charity is marked by an ongoing dialectic between the prerogative of religiosity and secular state power, and between individual spirituality and the public realm.<sup>1</sup> The realm of public life and the state have furthermore been the sites of continuing contestation in modern times between Muslim civil society groups vis-a-vis the government (Ministry of Religious Affairs, hereinafter MORA), Islamist and Revivalist groups who want to impose formal Islamic law, and those who want to maintain the secular state.<sup>2</sup> Before we assess how this contestation is perceived by the Islamic commercial banks when channeling their corporate zakat, this chapter will briefly discuss the origin and development of zakat agencies in Indonesia. This discussion is necessary to better comprehend the current tug of war between the state, which is represented by the MORA and the National Zakat Agency (*Badan Amil Zakat Nasional*, hereinafter BAZNAS), and society over zakat collection in Indonesia.

### **B. Zakat Agencies' Platform under Indonesian Law and Regulations**

The Qur'an as the major source of *sharī'a* has outlined that zakat must be distributed to the groups of beneficiaries called *asnāf*. There are eight groups of such people as: the poor (*al-fuqārā'*); the indigent/the needy (*al-masākin*); zakat collectors (*al-āmilīn 'alayh*) those whose hearts have been reconciled to the truth, such as new converts to Islam (*al-mu'allaf*); those in bondage/slaves (*ar-riqāb*); those in debts (*al-ghārimīn*); those in the cause of God/those going to war (*fī sabīlillāh*); and wayfarers (*ibn as-sabīl*).<sup>3</sup>

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<sup>1</sup> Amelia Fauzia, *Faith and the State: The History of Islamic Philanthropy in Indonesia* (Leiden: Brill, 2013), 259.

<sup>2</sup> *Ibid.*

<sup>3</sup> Qur'an, Chapter IX : 103.

Zakat may be paid directly to one or more of these beneficiaries, or paid through an intermediary zakat collectors (*al-‘āmilīn ‘alayh*). These two channels of zakat payment co-exist throughout the history of zakat payments in Indonesia. The direct payment method may have been practiced since Islam came to the archipelago in the 13<sup>th</sup> century. This practice was coupled with ‘state’ institutionalization during the Islamic city-states and monarchs era before the nineteenth century. The Sultan of Aceh in seventeenth century, for example, followed the Ottoman and Mughal empires in separation of zakat between private and public realms where rulers have rights to collect zakat only on agricultural and trade items; meanwhile for other possessions such as gold or silver, collection was left to be carried out privately by Muslims.<sup>4</sup>

During the Dutch colonial administration in the eighteen and nineteen century, the practice of zakat and Islamic charity (*sedekah* and *infak*) were left to the patronage of local Muslim leaders and religious teachers.<sup>5</sup> The religious leaders took part in collecting and distributing zakat and then used zakat funds for education and welfare of the people as well as for the armed struggle against the Dutch colonization. Knowing the great consequence of zakat funds for its authority, the practice did not last long because the Dutch administration created effective control of zakat institutions. The political aim of the Dutch control over zakat was to take a financial source away from Indonesian Muslims and weaken the struggle against the colonization. The private character of zakat was thus continued and supported by the Dutch colonial administration under its secular policy.<sup>6</sup>

The use of intermediaries as permanent zakat agents marked modern zakat management in Indonesia and this began prior to independence, in the early twentieth century.

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<sup>4</sup> Fauzia, “Faith,” 260.

<sup>5</sup> See Arskal Salim, *The shift in Zakat Practice in Indonesia: From Piety to an Islamic Socio Political Economic System* (Chiang Mai: Silkworm books, 2008), 18-19.

<sup>6</sup> H. Aqib Suminto, *Politik Islam Hindia Belanda: Het Kantoort voor Inlandsche Zaken* (Jakarta: LP3ES, 1985), 163-164.

Muhammadiyah, which is the second largest socio-religious organization established in 1912, created non-profit and charitable institutions as both a collector and a beneficiary of zakat, Islamic charity, and *waqf* (Islamic trust). Muhammadiyah successfully produced modern educational institutions, hospitals, and orphanages that mostly operated without intervention from the government.<sup>7</sup> On the other hand, zakat collection and distribution continued on a local community basis, i.e. with religious leaders and teachers as the agent, preserved by a traditionalist movement represented by the largest Muslim organizations like the Nahdlatul Ulama (est. 1926). In Java for example, when Javanese Muslims paid zakat, the most notably usage of the funds was for building mosques and *madrasah* as their religious educational institutions.<sup>8</sup>

After the independence in 1945, the state's involvement in zakat started seriously under the new order regime. President Soeharto responded to demands from Muslims to introduce state-based zakat agencies and government regulations on zakat and Islamic charities. He thus appointed himself as the agent of zakat (*al-ʿāmilīn ʿalayh*) and instructed his ex-military governors to establish an organizational apparatus for the nationwide zakat collection through the issuance of Presidential Decree No. 07/PRIN/10/1968. The Presidential Decree gave impetus to incorporating zakat into the responsibilities of the state.<sup>9</sup> The governor of Jakarta, Ali Sadikin, was the first official to implement the Presidential decree by issuing a gubernatorial decision to establish a semi-autonomous *zakat* agency, called the Zakat and Islamic Charity Management Agency (*Badan Amil Zakat, Infak dan Sedekah*, hereinafter BAZIS), for Jakarta in December

<sup>7</sup> Fauzia, "Faith," 261; see also Deliar Noer, *The Modernist Muslim Movement in Indonesia 1900-1942* (Kuala Lumpur: Oxford University Press, 1973), 75, 78-80, 83.

<sup>8</sup>See Mohammed Ariff, "Resource Mobilization through the Islamic Voluntary Sector in Southeast Asia," in *Islam and the Economic Development of Southeast Asia: The Islamic Voluntary Sector in Southeast Asia*, ed. Mohamed Ariff (Singapore: ISEAS, 2003), 33; Taufik Abdullah, "Zakat Collection and Distribution in Indonesia," in *Islam and the Economic Development of Southeast Asia: The Islamic Voluntary Sector in Southeast Asia*, ed. Mohamed Ariff (Singapore: ISEAS, 2003), 54; Rachmat Djatnika, *Tanah Wakaf* (Surabaya: Al-Ikhlās, 1982).

<sup>9</sup>See Abdullah, "Zakat Collection," 51, 80.

1968.<sup>10</sup> East Kalimantan formed its BAZIS in 1972, followed by West Sumatra in 1973, West Java and South Kalimantan in 1974, and North Sulawesi and South Sulawesi in 1985.<sup>11</sup>

Besides provincial-government-owned BAZIS, community based BAZIS also started to grow in this period. They were usually established by activists of mosques or groups of Islamic teaching study, except for Dompot Dhuafa which was set up in 1993 by *Republika*, a national newspaper promoting Islam's voice, with the support of the Association of Indonesia Muslim Intellectuals or ICMI. These include *Yayasan Dana Sosial Al-Falah* of Al-Falah Mosque of Surabaya in 1987, *Lembaga Wakaf dan Zakat Salman* of Salman Mosques of Bandung Institute of Technology in 1980s, and *Dompot Sosial Ummul Quro* of Ummul Quro study group of Bandung in 1998 (the Dompot Sosial Ummul Quro is the origin of *Rumah Zakat*, one of the largest non-state zakat management agencies in Indonesia).<sup>12</sup>

The government then issued a regulation to supervise and guide the work of BAZIS through the joint ministerial decisions of Minister of Religious Affairs and Minister of Home Affairs in 1991. BAZIS as the platform for zakat payment intermediation did not last long because of its lack of legal basis and unclear guidance for the establishment and thus supervision of non-governmental BAZIS. As a result, the nongovernmental BAZIS have been subject to multiple channels of government agents in licensing and overseeing.<sup>13</sup>

After the fall of Soeharto's regime in 1998, zakat management became more institutionalized in the form of greater government involvement. The state finally promulgated a law in 1999 that regulated zakat management, i.e. collection and distribution, including its organizations. The law promised enhanced direction and accountability to *zakat* collection in

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<sup>10</sup> See M. Dawam Raharjo, *Perpektif Deklarasi Makkah: Menuju Ekonomi Islam* (Bandung: Mizan, 1987), 190-197.

<sup>11</sup> Ariff, "Resource," 34; Raharjo, "Perspektif," 189.

<sup>12</sup> Fauzia, "Faith," 225-226.

<sup>13</sup> Alfitri, "The Law of Zakat Management and Non-Governmental Zakat Collectors in Indonesia," *International Journal of Not-for-Profit Law*, vol. 8, no. 2 (2006), 59-60.

Indonesia as it required balance auditing and annual reports to the government as well public disclosure.<sup>14</sup> With regards to the platform of zakat agencies, the Law officially covers both the semi-governmental collector agencies (Badan Amil Zakat, BAZ) and the nongovernmental ones (Lembaga Amil Zakat, LAZ). The State then instituted the BAZNAS in 2001 as the highest body in the organizational structure of the semi-governmental zakat collector, and Regional Zakat Agencies in every provincial and city/regency level (in some areas even to sub-district level depending on the performance of the local office of Ministry Religious Affairs known as *Kantor Urusan Agama* or KUA).

The nongovernmental zakat collectors also mushroomed after the fall of Soeharto's era. Thus most of the current major LAZs of Indonesia were born prior to the Zakat Management Law of 1999. Fauzia, who specifically studies the history of BAZ and LAZ, found that there are two factors contributing to the fast growth of zakat collectors during this period. The first is external causes, i.e. the global phenomena of the rise of Islamic economies from the 1980s<sup>15</sup> and, most importantly, concerns for the plight of Muslims in such places as Afghanistan, Palestine, and Iraq that prompted the creation of committees for political and humanitarian action. The second is external causes which have been triggered by the *reformasi* movement (opening up ideology as well as mass organizations following the fall of Soeharto), the economic crisis in 1998, ethnic and religious conflicts such as those in Ambon and Poso, and the tsunami disaster of Aceh in 2004.<sup>16</sup> We then see that the major names in zakat agencies were established in this period following their compatriot Dompot Dhuafa, which was established during the era of the BAZIS platform. These include *Pos Keadilan Peduli Umat* or PKPU on 17 September 1998

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<sup>14</sup> *Ibid.*, 61.

<sup>15</sup> About extensive history of Islamic economy movement in Indonesia see Shofwan Al Banna Choirruzad, "More Gain, More Pain: The Development of Indonesia's Islamic Economy Movement (1980s-2012)," *Indonesia*, no. 95 (2013).

<sup>16</sup> See Fauzia, "Faith," 215-218.

(affiliated with *Partai Keadilan* now known as *Partai Keadilan Sejahtera* or Welfare-Justice Party), *Rumah Zakat* on 2 July 1998, and *Dana Peduli Umat* or DPU Daarut Tauhid on 16 June 1999 (Daarut Tauhid is the Islamic Boarding School led by well-renown Islamic preacher Aa' Gym).<sup>17</sup> Large Islamic organizations such as Muhammadiyah finally set up their own LAZ known as LAZIS Muhammadiyah on 14 July 2002; *Pusat Zakat Umat* of Persis in 2001, and *Dewan Dakwah Islamiyah Indonesia* or DDII LAZIS Dewan Dakwah in 2002. Even the traditionalist Muslim group, Nahdhatul Ulama, at last created their own LAZ, called LAZIS NU, in 2004.

This fast growth was then soon followed by rivalry between the government (the MORA) and its zakat agencies (BAZ) vis-à-vis the non-governmental zakat agencies (LAZs) which was a proxy for the dispute about the appropriate role of the state in zakat management in Indonesia.

This polemic has started following the deliberation on the Zakat Law in 1999 and became more heated during the amendment of the Zakat Law from 2010 to 2011.<sup>18</sup> After the replacement of the Zakat Law in 2011, the platform for zakat agencies became BAZNAS<sup>19</sup> and LAZ.

Community groups can set up a LAZ, provided that permission is obtained from the Minister of Religious Affairs. The Minister will grant the permission if the following requirements are met: *first*, the LAZ is registered as an Islamic social organization which manages education, propagation, or social programs in the Ministry of Internal Affairs; *second*, it has a legal entity (usually a foundation); *third*, it must secure a recommendation from the BAZNAS; *fourth*, it has a *Sharī'ah* Supervisory Board; *fifth*, it is not-for-profit oriented; *sixth*, its programs orient to

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<sup>17</sup> *Ibid.*, 218.

<sup>18</sup> See Chapter 4 for details; see also in Fauzia, "Faith," 248-256; Salim, "Challenging," 130; Lindsey, "Islam," 166.

<sup>19</sup> All government-run zakat agencies are called BAZNAS either in national or local with addition BAZNAS Provinsi or BAZNAS Kota/Kabupaten.

Muslim well-being; *seventh*; it is willing to be audited, both *sharī'a* and financial; *eight*, it has technical, administrative and financial ability to function.<sup>20</sup>

The LAZ zakat stakeholder modernists such as Muhammadiyah, Islamists such as LWZ Salman Mosque, and revivalists such as Dompot Dhuafa and PKPU, struggled to get the state involved in zakat management. However, they differ when it comes to the appropriate role of the government. The Islamists and the MORA want to have full implementation by the state in which the government acts as the main collector. The modernists and revivalists, however, reject government domination in zakat collection and distribution, and want the government focus to be on regulation. This polemic peaked with judicial review to the Constitutional Court led by Dompot Dhuafa. The petition to the Court exemplifies the revivalist group's resentment toward the government, for they believe they have played a great role in modernizing zakat management in Indonesia including proposing the draft of zakat law in 1999 and 2011, and the establishment of BAZNAS which was prepared by Republika, Dompot Dhuafa, FOZ, and the MORA.<sup>21</sup>

The amendment debate and the law have a significant impact within the development of NGO run zakat collector agents in Indonesia. The marginalization of the LAZs' role by the MORA has prompted major LAZs such as Dompot Dhuafa to transform themselves into humanitarian foundations in general. By doing so, they survive the threat of the government and harsh competition among zakat collector agents. Being a general foundation is better than being a regular LAZ, because it allows fundraising for any cause, including zakat. This step was then followed by the other three large LAZs, i.e. Pos Keadilan Peduli Umat, Dompot Dompot Dhuafa and Rumah Zakat especially when they were aware of the impact of the MORA's proposal on

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<sup>20</sup> See art. 18 of Law No. 23 of 2011 concerning Zakat Management.

<sup>21</sup> Interview with Arifin Purwakananta, Director of Dompot Dhuafa, in Jakarta, 16 March 2012; Interview with Prima Hadi Saputra, Managing Director of LAZ Dompot Dhuafa, in Jakarta, 16 March 2012; Interview with M. Sabeth Abilawa, General Manager Social Development of Dompot Dhuafa, in Jakarta, 16 March 2012.

the existing LAZs. In November 2011 Dompot Dhuafa launched its LAZ called LAZ Dompot Dhuafa. The most successful transformation, according to Fauzia, is Rumah Zakat as it now has three institutions: a corporate foundation, a zakat collecting body, and a humanitarian organization. Their fast growth is due to the CSR contributions of non-religious corporations.<sup>22</sup>

The intermediaries in zakat management are then broken down into three types, based on the organization of zakat collectors, i.e. zakat committees (*panitia zakat*); BAZNAS (the state-run zakat collectors) including its zakat collector unit (UPZ); and LAZs (NGO-run zakat collectors). There are no reliable figures regarding BAZNAS and LAZs. By 2007, there were 1001 BAZs according to the Directorate of Zakat of the MORA. This may only reflect the BAZs that formally were created but not ones that function. According to Forum Zakat, an unofficial umbrella organization for zakat agencies in Indonesia, there are only about 300 active BAZs and 73 LAZs by 2007. The relatively small number of LAZs is caused by the strict regulations set by the MORA and also many large zakat agencies do not seek formalization from the MORA or provincial governments; examples would be the LAZ of Al-Markazy mosque in South Sulawesi, the LAZ of Istiqlal mosque in Jakarta and the LAZIS Paramadina in Jakarta. Establishment of a LAZ is encouraged by modernist and revivalist Muslims, whose vision is to Islamize society and this includes having zakat law implemented by the state. Now, there are three types of modern institution which became strong basis for the establishment of LAZ, namely Islamic institutions, (secular) corporations and financial institutions. The Islamic institutions include Islamic schools (e.g. Al Azhar), Islamic parties (Welfare-Justice Party (PKS)), religious study groups (Pengajian *Al Falah* in Surabaya) and mosques. The secular corporations include PT Pupuk Kaltim, PT Pertamina and PT Garuda Indonesia. The financial institutions include BNI, BRI, Bank

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<sup>22</sup> Fauzia, "Faith," 255-256.

Muamalat and BSM.<sup>23</sup> I describe below the way in which Islamic commercial banks channel their zakat payments under the BAZNAS versus LAZ platforms.

### C. Case Studies

#### 1. Case Study of Bank Muamalat Indonesia (BMI)

My interview with two senior officers of BMI's finance and strategy division reveals that all BMI's corporate zakat funds are delivered to the BMI's zakat collector agency called *Baitulmaal Muamalat* or BMM.<sup>24</sup> The BMM was originally a unit established by BMI in 1994 to manage its zakat and charity funds (*infak* and *sedekah*) as well as its benevolence funds (*qard al-hasan*).<sup>25</sup> On June 16, 2000, the Minister of Religious Affairs inaugurated BMM as a national zakat collector agency (*Lembaga Amil Zakat* or LAZ), and on December 22, 2000, BMM acquired its legal status as a foundation (*Yayasan Baitulmaal Muamalat*).<sup>26</sup>

Because BMM was set up to be the caretaker of BMI's zakat and other social funds, this became the reason for channeling all BMI's corporate zakat to BMM (the informant: "it is our own anyway" ("punya sendiri kok")).<sup>27</sup> BMI not only channels corporate zakat to BMM, but also zakat of BMI's employees, third party zakat and charity (*infak* and *sedekah*), and social funds (fines, non-halal income).

When asked whether BMM is controlled by BMI in utilizing the corporate zakat funds pursuant to BMI's mission, the informant said that BMM is independent in the way it manages the funds. As a special unit which has its own legal entity, BMM's financial reports are not consolidated with those of BMI. BMM has an account in BMI so every transaction of zakat and

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<sup>23</sup> Ibid, 224-225.

<sup>24</sup> Interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.

<sup>25</sup>

Islamic banks have social funds originated from non halal income such as penalty, fines, and so forth.

<sup>26</sup>See "Selayang Pandang", *Baitulmaal Muamalat*, <http://baitulmaalmuamalat.org/about/overview/>, accessed April 11, 2015.

<sup>27</sup>

Interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.

Islamic charities automatically goes to BMM “Outsiders see BMM as identical to BMI ... but they are independent in day-to-day operational matters; there is no influence from BMI to channel the funds [corporate zakat], [although] informal talk maybe [happen],” explained the informants.<sup>28</sup>

## 2. Case Study of Bank Syariah Mandiri (BSM)

According to the Head of the Corporate Secretary and Legal division, BSM also delivers all of its corporate zakat funds to its own zakat collector agency called LAZ BSM.<sup>29</sup> LAZ BSM is built<sup>30</sup> “of course to channel BSM zakat”, said the informant. Pursuant to the zakat management law, LAZ BSM had the legal status of a *yayasan* (foundation) called *Yayasan Bangun Sejahtera Mitra Umat* or *Yayasan BSM Umat*. (The ‘BSM’ in LAZ BSM stands for *Bangun Sejahtera Umat*, and not the abbreviation of the bank’s name). The informant said “We purposefully sought the foundation name in line with BSM [the bank’s name]; *Yayasan BSM Umat* was set up by BSM management, because there is a need to manage zakat paid by BSM; we need a zakat agency.”<sup>31</sup>

<sup>28</sup> *Ibid.*

<sup>29</sup> Interviews with BSM Head Division of Corporate Secretary and Legal, in Jakarta, on September 30, 2013.

<sup>30</sup> LAZ BSM originated from the Islamic charity event of an Islamic spirituality activity unit (Badan Amal Zakat or BAMAZ) run by Muslim employees of *Bank Susila Bhakti* (a conventional bank jointly owned by the Employee Welfare Foundation of *Bank Dagang Negara*, a government-owned bank, and *Mahkota Prestasi LLC*). When the government merged its four banks (*Bank Dagang Negara*, *Bank Bumi Daya*, *Bank Exim*) became *Bank Mandiri* following the 1998 financial crisis, *Bank Susila Bhakti* which also suffered from the crisis was acquired by *Bank Mandiri* on July 31, 1999. *Bank Mandiri* then converted *Bank Susila Bhakti* to a Sharia-based bank on November 1, 1999 and named it BSM. Along with this development, BAMAZ was also transformed itself into a foundation, viz. *Yayasan Bangun Sejahtera Mitra Umat* (YBSM Umat), on November 21, 2001. BSM then made YBSM Umat to be the manager of zakat (Lembaga Amil Zakat or LAZ) in the environment of BSM given considerable zakat potency in BSM (corporate, employees, and customers). On September 17, 2002, LAZ BSM was inaugurated by the Minister of Religious Affairs to become a nationwide zakat collector agency. In 2011, it acquired the status of charitable organization from the General Directorate of Tax of the Ministry of Finance whereby zakat paid to LAZ BSM can be deductible from a zakat payer gross income (Peraturan Direktur Jenderal Pajak Nomor PER-33/PJ/2011). To fulfill the requirement of new zakat law, i.e. LAZ must be a registered social organization (ormas) and have a foundation legal status, LAZ BSM acquired the *ormas* status from the Ministry of Justice and Human Rights in 2012 as well as notary deed of establishment as a *yayasan* in January 4, 2012. See “Profile – LAZNAS BSM”, *Bank Syariah Mandiri*, <http://www.syariahmandiri.co.id/en/category/csr/laznasbsm-csr/>, accessed April 11, 2015; website LAZ BSM: <http://www.laznasbsm.or.id/>.

<sup>31</sup> Interviews with BSM Head Division of Corporate Secretary and Legal, in Jakarta, on September 30, 2013.

The corporate secretary and legal division is the division which deals with corporate zakat policy. The informant explained how his division manages corporate zakat in detail as well as BSM's relationship with LAZ BSM. According to the informant, after the RUPS authorized BSM plan to pay corporate zakat, the funds are not directly transferred to LAZ BSM. The Corporate Secretary will make a memo to the Board of Directors, confirming the proposal of channeling the funds through LAZ BSM. The memo is based on the proposal of utilization made by LAZ BSM. When the memo is agreed by the Board of Directors, and sent down to the corporate secretary, the corporate secretary will make a memo to the accounting division to disburse the fund through LAZ BSM.

Programs put forward by LAZ BSM in its proposal are examined beforehand by the *Yayasan BSM Umat*. This is when delicate "intervention" by BSM to LAZ BSM occurs, as senior management of BSM sit in the *yayasan* organizational structure. Two BSM directors (Hanawijaya and Zainal Fanani) serve as the Advisory Board of the *yayasan* and the informant himself is the secretary. Hence, when the Board of Directors of *Yayasan BSM Umat* organizes a meeting, they actually call the LAZ BSM into the meeting to report their work on zakat collection and distribution to BSM. As mentioned, there are multiple roles assumed by the aforementioned BSM senior management. In the community, however, the LAZ BSM is more recognized than the *Yayasan BSM Umat* because they are the agent of zakat; thus, policies and programs of the LAZ BSM are regarded independently taken by its management.<sup>32</sup>

The informant further explains how BSM makes sure that its zakat is utilized by LAZ BSM, pursuant to BSM values. He then referenced a speech of BSM CEO (Yuslam Fauzi) in his own words as follow:

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<sup>32</sup> *Ibid.*

“LAZ BSM should support BSM business. If I may make an analogy, it is like *muḍāraba muqayyada*.<sup>33</sup> There are many [zakat agencies] need BSM zakat funds, and this is part of BSM way to educate LAZ BSM personnel to work more professionally. Just because they have sustainable and enormous charitable funds from their own BSM, they can work carelessly. There are other zakat agencies which also seek for funds; hence, LAZ BSM should make the proposal or logical proposition of fund utilization. LAZ BSM then propose programs called socio-business, that is how they interpret the CEO’s instruction, i.e. stick with the eight zakat beneficiaries (*asnāf*) but please help BSM’s interest. BSM channels its zakat to LAZ BSM not in vain (*tidak asal buang*), they must support BSM’s business, BSM could channel to other agents since RUPS never dictates where to channel.<sup>34</sup>

As a nationwide zakat collector agency, LAZ BSM also raises funds from other corporations or wider society, but their funds mostly come from BSM. It happens that other zakat agencies seek funds from BSM, and in this case the corporate secretary will direct them to LAZ BSM. There is already a partnership among BSM and other zakat agencies with regards to zakat fund distribution.<sup>35</sup>

### 3. Case Study of Bank Mega Syariah (BMS)

In my interview with BMS corporate affairs Head, I discovered that BMS does not have its own zakat collector agency, so it channels its corporate zakat to some zakat agencies authorized by the government.<sup>36</sup> According to the informant, corporate zakat channeling is a matter of trust; thus “If we believe in other agencies, why not?” Channeling zakat to zakat agencies also abides by government regulation, added the informant.<sup>37</sup> The informant confirmed that BMS restricts the beneficiaries of its corporate zakat (*zakat al-muqayyād*) when channeling the zakat to some partner institutions, such as the Al Azhar Education Foundation of Indonesia.

The Al Azhar foundation program is assisted by BMS corporate zakat, but the corporate zakat is

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<sup>33</sup> “An agreement whereby a capital provider restricts the utilization of his/her funds by an entrepreneur according to specified time, types of business, business place or types of services.”

<sup>34</sup> Interviews with BSM *Head Division Corporate Secretary and Legal*, in Jakarta, on September 30, 2013.

<sup>35</sup> *Ibid.*

<sup>36</sup> Interview with BMS *Corporate Affairs Head*, in Jakarta, on September 17, 2013.

<sup>37</sup> *Ibid.* The informant, however, did not elaborate his statement, but as mentioned earlier, Islamic banks must deliver zakat, Islamic charity and other social funds to zakat agencies.

still distributed through a zakat agency in order for the payment to be eligible for tax deduction. He also confirmed that the benefits of BMS corporate zakat flow back to its employees, e.g. in the form of scholarships for children of low level employees such as drivers, office boys, security, and helpers.<sup>38</sup>

Interestingly, BMS did not care much until 2013 about the LAZ's report of its corporate zakat distribution, even though BMS has restricted the beneficiaries of its corporate zakat fund. The reason for that, the informant explained is, "it is zakat, [it is meant] for purification [of BMS wealth] so when we have paid zakat [our obligation to God is fulfilled], we let the funds go [without the desire to know where they are spent]."<sup>39</sup>

#### 4. Case Study of Bank Rakyat Indonesia Syariah (BRIS)

According to BRIS Senior Officer CSR, BRIS delivered its corporate zakat all to BAZNAS, which is done by transferring the funds to BAZNAS from a BRIS current account (giro).<sup>40</sup> When asked why it all goes to BAZNAS, the informant said that BRIS has an agreement with BAZNAS in which every payment of zakat will be made to BAZNAS, and in return BAZNAS will issue the Zakat payer Identification Number (Nomor *Pokok Wajib Zakat* or NPWZ) for BRIS employees and for the BRIS entity, which will be used to claim tax deductions.<sup>41</sup>

With regards to zakat and Islamic charity, then, BRIS becomes a zakat collector unit (Unit *Pengumpul Zakat* or UPZ) of BAZNAS. The informant said, however, there is no specific organization set up by BRIS for the UPZ since all funds are transferred to BAZNAS.<sup>42</sup> It is worth noting that BRIS owner, BRI, has its own national zakat agency, and this LAZ has acquired the

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<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> Interview with BRIS *Senior Officer CSR*, in Jakarta, on October 23, 2013.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

status of official charitable organization from the General Directorate of Tax of the Ministry of Finance whereby zakat paid to LAZ BSM can be deducted from a zakat payer's gross income.

Despite this, there is no statement from the interview that can imply that BRIS wants to establish its own LAZ.

When I asked what happens if BRIS wants to use its corporate zakat funds for BRIS' own social program, the informant said that BRIS will ask for the money from BAZNAS. He added that BRIS does not ask for all of the corporate zakat that has been paid to BAZNAS since BRIS has other sources of funds such as *qarḍ al-ḥasan* (benevolence fund) and Islamic charity (*infak* and *sedekah*). "We have more freedom to use this kind of funds," added the informant. BRIS corporate zakat also benefits its low level employees; for example, "If we have a severely ill employee whose medical bill is not covered by the health insurance, we will refer him/her to BAZNAS [for assistance]."43

The informant admitted that it is administratively complicated (*ribet*) channeling corporate zakat to BAZNAS while BRIS has their own social programs. This is because BAZNAS wants to be consistent with the traditional zakat beneficiaries (eight *asnāf*) while social programs proposed by BRIS may not match with the *asnāf* according to BAZNAS. As a result, the fund is not always readily available when the program is about to be executed. This made some of the top management upset and one even said "Never mind, we will not pay our zakat to BAZNAZ anymore; this is our money." When I asked why BAZNAS rejected the BRIS proposed program, the informant replied that it might be because the program is for social purposes in general.44

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<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

### 5. Case Study of Bank Negara Indonesia Syariah (BNIS) <sup>45</sup>

In my interview with BNIS Head of Legal, Compliance and Secretariat division and one of the senior staff, I learned that BNIS has a zakat collector unit (UPZ) which was established along with its spin-off from BNI in 2010.<sup>46</sup> Although BNIS does not have a corporate zakat fund yet, the UPZ is needed to manage zakat paid by BNIS employees<sup>47</sup> and customers as well Islamic charity (*infak* and *sedekah*) and endowments paid through BNIS. The UPZ officially received BAZNAS confirmation on August 30, 2010. The UPZ initial formation consists of a chairman, secretary, treasurer and manager of the program. According to the informants, the UPZ is a unit separate from BNIS, its staff are appointed from outside BNIS, except for the chairman.<sup>48</sup>

Despite BAZNAS confirmation for the institution of a BNIS UPZ, the UPZ was not affiliated with BAZNAS for the period 2010-2011. The informants said “We manage [zakat funds and Islamic charity] by ourselves; as far as I am concerned, there was no requirement to channel [zakat funds and Islamic charity] to BAZNAS before 2011.”<sup>49</sup>

After the promulgation of the new zakat management law in 2011, the UPZ is now affiliated with BAZNAS, but BNIS still manages its own zakat. According to the informants, the relationship with BAZNAS is simply for the appointment of a UPZ chairman and staff, since this is required by the law. Consequently, any BNIS social program that will be funded with corporate zakat funds must be approved by BAZNAS. The informant said:

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<sup>45</sup> Interview with BNIS *Head of Legal, Compliance and Secretariat Division*, and *Staff of Legal Compliance and Secretariat Division*, in Jakarta, on September 17, 2013.

<sup>46</sup> Interview with BNIS Head and a senior staff of *Legal, Compliance and Secretariat Division* in Jakarta, on September 17, 2013.

<sup>47</sup> This zakat on income of the employees is levied through payroll system.

<sup>48</sup> Interview with BNIS Head and a senior staff of *Legal, Compliance and Secretariat Division* in Jakarta, on September 17, 2013.

<sup>49</sup> *Ibid.*

Now we are in the process of negotiation ... well that is not the correct term, [we are in the process of] reaching harmony (*mencapai keharmonisan*) for the utilization of corporate zakat funds; we are committed that the utilization of zakat is for beneficiaries mentioned in Qur'an [*asnāf* or eight group of beneficiary], but we want to deliver it to the beneficiaries by ourselves through our own programs; and with this design, the BAZNAS just needs to approve the programs.<sup>50</sup>

BNIS were committed to BAZNAS from the beginning because the regulation said so (*karena ketentuan*) and “We feel comfortable with BAZNAS.” The UPZ also channels BNIS employee zakat funds to LAZ, but BNIS corporate zakat is channeled to BAZNAS. When I asked about the beneficiaries of BNIS' corporate zakat, the informants said that BNIS wants to be consistent with the provision of *asnāf* in [fiqh] zakat. Some of the corporate zakat funds also go back to employees, especially for helpers like office boys, or the cleaning service: “When they got sick and they do not have health insurance, their children get scholarship, drivers, among other things, [but it is] a tiny part.”<sup>51</sup>

#### **D. Discussion and Analysis**

Due to resistance from a number of traditional zakat collectors towards government plans to fully manage zakat funds through state-sponsored zakat agents (the BAZ) during the discussion of the Zakat Bill in 1999 (which was repeated in 2011), the government finally implemented a dual track in the collection of zakat, namely through the BAZ and LAZ (non-state-sponsored zakat agents). Like the policy of voluntary zakat collection, the dual track policy also does not influence the behavior of individual zakat payers to pay their zakat through the BAZ or a LAZ that they trust. The Public Interest Research and Advocacy Center (PIRAC) survey on the potential and reality of zakat in 2004, which is meant to update and compare the findings from 2000 (ten cities with 1936 respondents) reveals that the considerable potential of zakat is not managed well yet, as only 12.5% of zakat funds have been collected, distributed and

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<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

utilized by the BAZ or LAZ. This is due to lack of trust toward zakat agencies. Findings from Semarang, Manado and Balikpapan reveal that LAZ did not enjoy any public trust at all.<sup>52</sup>

In 2007, the PIRAC survey shows that people's awareness and capacity to pay zakat went up significantly from 49.8% in 2004 to 55% in 2007 partly thanks to the Law No. 38 of 1999. This is followed by compliance with zakat duty by the zakat payers, as 95.5% of respondents fulfill their obligation. Like the 2004 survey, most respondents (95%) channeled their zakat through zakat committees in their neighborhood mosques; only 1.2% respondents channeled their zakat through the zakat agencies. According to Fauzia, this suggests that the management of zakat by the state is not totally resisted, but also is not favored.<sup>53</sup> The 2004 figure by UIN Jakarta – PPIM's Islamic Philanthropy for Social Justice which is based on a clear distinction between *fitrah* (alms tax due every *Eid-ul-Fitr* festival) and zakat is more realistic, and shows an increase in zakat payment. Zakat is claimed to be paid by 35 percent of Muslims who are economically stable. It also shows that 45 percent of Muslims claimed to pay their zakat and *fitrah* directly to beneficiaries (including local religious leaders), and 51 percent paid through zakat committees in neighborhoods and mosques. Only 5.4 percent of Muslims claimed to pay their zakat or *fitrah* to BAZNAS or LAZs. These findings suggest that neither LAZ nor BAZNAS are yet accepted by the majority of Muslims in Indonesia.<sup>54</sup>

Despite the findings above, the existing legal basis for zakat management in Indonesia fueled the birth of new zakat agents, which vie to maximize the potential of zakat funds in public and then do the distribution to beneficiaries and utilize them productively. The government also provides incentives for the existence of BAZ and LAZ by issuing regulations authorizing

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<sup>52</sup> See e.g. Kurniawati (ed.), *Kedermawanan Kaum Muslimin: Potensi dan Realita Zakat Masyarakat di Indonesia Hasil Survei di Sepuluh Kota* (Jakarta: Piramedia, 2004).

<sup>53</sup>Fauzia, "Faith," 243.

<sup>54</sup>

*Ibid.*

nineteen zakat agents as official counters where zakat payers, both corporate and individual, are entitled to a reduction in their taxable income when they channel their zakat here.<sup>55</sup> They are:

LAZ Dompot Dhuafa, LAZ Yayasan Amanah Takaful, LAZ PKPU, LAZ BMM, LAZ Yayasan Dana Sosial Al Falah, LAZ Baitul Maal Hidayatullah, LAZ Persis, LAZ Yayasan Baitul Maal Umat Islam PT BNI, LAZ BSM, LAZ DDII, LAZ Yayasan Baitul Maal BRI, LAZ BMT, LAZ DPU Daarut Tauhid, LAZ Yayasan Rumah Zakat Indonesia, LAZIS Muhammadiyah, LAZIS Nahdlatul Ulama, LAZIS IPHI.<sup>56</sup>

This case study did not specifically investigate whether Islamic commercial banks' decision to pay their zakat through BAZNAS or LAZ is based on the desire to obtain a reduction of taxable income. At the time of data collection in the field, this issue was raised by some informants. The BMS informant stated that they utilize this incentive but does not make it as an excuse to pay corporate zakat because of its impracticability. BNIS informants even said that BNIS does not use this incentive because it is not significant.

Prior to the promulgation of special laws that regulate *sharī'a* banking, Islamic commercial banks could directly distribute zakat funds they receive (either from banks, employees, customers and the community) to the beneficiaries. When the Law No. 21 of 2008 concerning Islamic Banking was passed, this social function of Islamic banks - namely in the form of *Baitu-l-māl* (treasury house for zakat and Islamic charity) – is restricted by a provision that requires Islamic banks to distribute these funds through the zakat agents (Article 4 (2)). Moreover, the Central Bank of Indonesia issued a regulation on the obligation of Islamic banks to report "Sources and Uses of Zakat and Islamic Charity (*Zakat, Infak and Sedekah* or ZIS)

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<sup>55</sup> Peraturan Direktur Jenderal Pajak No. PER – 15/PJ/2012 tentang Perubahan Peraturan Direktur Jenderal Pajak No. PER – 33/PJ/2011 on the Agency / Institution established or approved by the Government Defined as Zakat or Donation Recipient compulsory religious who can deductible from gross income.

<sup>56</sup> Ibid.

Funds ". As the most regulated industry by the government, it can be concluded that the distribution of corporate zakat by Islamic commercial banks to the zakat agents, i.e. the BAZNAS and LAZs, is based on the assumption that the rules say so with the aim of good corporate governance. On this side it can be said, as related to banking and *sharī'a* banking, Islamic commercial banks acknowledge the state's role in the administration of zakat in Indonesia, especially for the aspects of regulation and supervision. As for the collection and distribution aspects (related to the role of BAZNAS as coordinator of zakat agents in Indonesia), there is reluctance on the side of corporate zakat payers, especially Islamic commercial banks.

Islamic commercial banks that already had their own LAZ (BMI and BSM) – long before the polemics of government domination through BAZNAS in the management of zakat in Indonesia as well as the moratorium on authorizing new LAZ by the MORA – and had no problems with having to distribute corporate zakat through the zakat agents. Both can even take advantage of this situation to align their social activities with their vision and mission that eventually can strengthen their brand and image in the community (see the case studies of BMI and BSM above). While Islamic commercial banks which do not yet have a LAZ and want to set up their own for the purposes of distribution of their zakat – or are content with the status of Zakat Collector Units (Unit *Pengumpul Zakat* or UPZ<sup>57</sup>)—still feel there are problems related to BAZNAS role as coordinator of the collection and distribution of zakat. This is mainly due to the mechanism of transfer of corporate zakat funds to the account of BAZNAS before being utilized by the Islamic commercial bank itself for their social programs. In doing so, they then have to propose these social programs to BAZNAS for approval and funding support. BAZNAS has its own criteria for the distribution of zakat funds (consistent with the concept of traditional *asnāf*),

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<sup>57</sup> Zakat collection unit is an organizational unit formed by BAZNAS at all levels with the task of collecting alms to serve muzakis, which in government agencies rural / urban, and the private sector, both domestically and overseas..

so that it could be a social program of an Islamic commercial bank is not approved by BAZNAS because the program does not meet the *asnāf* criteria (as in the case study of BRIS), or the funds have not come down from BAZNAS when social programs are ready to be executed. It is worth noting that BRIS' owner, PT BRI – a state owned conventional bank, has its own LAZ which acquire tax deductible status. However, BRIS channels their corporate zakat to BAZNAS, which at the moment is chaired by its *Shari'ah* Adviser, Didin Hafidhuddin.

There is one Islamic commercial bank whose shares are held entirely by a conventional bank that has its own LAZ. Benchmarking to its owner and assessing from its informant responses, it can be assumed this bank has a desire to have his own LAZ but this aspiration is limited by the fact that the MORA created a moratorium on new endorsement for LAZ.<sup>58</sup> Because it is administratively cumbersome for this bank to use their zakat funds for its own social programs when it does not have a LAZ and is just a Zakat Collector Unit (Unit Pengelola Zakat hereinafter UPZ) of BAZNAS, it finally revealed that the ideal corporate zakat management for this bank is having the funds still held by the UPZ. The funds do not need to be transferred to BAZNAS, so when the bank requires the funds, there is no need to propose programs to BAZNAS in advance.

The BPS informant stated that he, as the caretaker of zakat in his bank, will not distribute BPS corporate zakat either to BAZNAS or LAZ. Instead, he will distribute it through the UPZ owned by BPS. This is due to issues of *shari'ah* compliance that the informant saw surrounding the management of zakat throughout zakat agents in Indonesia. His opposition was to the way most of the zakat agents campaign for zakat awareness among zakat payers; that is it is more

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<sup>58</sup> Interview with Secretary BAZNAS, October 4, 2013 The informant stated that the moratorium was created in early 2009 due to: 1) the government wants to review the effectiveness of current LAZ; there are many LAZ now; consequently, welfare beneficiaries are at stake because zakat is used to run a charity organization; 2) changes in charity legislation that is being proposed; 3) many social organizations build charity organizations but for political purposes.

about selling elements of the beneficiary suffering than it is an obligation in Islam. the table below is summary of where eight Islamic commercial banks channel their corporate zakat. Data are compiled from interviews and archival records.

**Table 8. Channels for Islamic Commercial Banks' Corporate Zakat**

No	Bank	Zakat Collector Status	Channel	Appropriate State Role	
				StateBAZNAS as the InterventionCoordinator	
1	BMI	LAZ	BMM (mostly) and other zakat agencies	Yes	N/A
2	BSM	LAZ	LAZ BSM (mostly) and other zakat agencies	Yes	N/A
3	BMS	None	LAZ and BAZNAS	Yes	N/A
4	BRIS	UPZ	BAZNAS	Yes	Yes, with notes
5	BNIS	UPZ		Yes	Yes, with notes
6	BPS	UPZ	N/A	Yes	No, including LAZ
7	BSB	UPZ	N/A	Yes	Yes, receive more than channeled to BAZNAS (in case zakat in general)

This pattern has been studied by Retsikas: 2014, who maintains that zakat should be comprehended as the right of *mustahiq* (zakat beneficiaries) and a debt owed by the *muzakki* (zakat payers) pursuant to the literatures on zakat doctrines.<sup>59</sup> In practice, however, the beneficiary of zakat is considered to be a recipient, but not a person entitled to that wealth. This is so especially since zakat agencies set the trend of having their staff consistently delivering the obligation of zakat through using English loan words and particularly through the distinction between charity (Indonesian: *cariti*) and philanthropy (Indonesian: *filantropi*). According to Retsikas, *cariti* anthropologically denotes immediate relief or a short term project having limited impact on poverty alleviation. *Filantropi* is a longer term endeavor, designed to have lasting impact on poverty reduction. The LAZs thus orient to community development and empowerment. The deployment of *filantropi* has a far reaching consequence, i.e. it aligns Islamic

<sup>59</sup> Konstantinos Retsikas, "Reconceptualising Zakat in Indonesia: Worship, Philanthropy, and Rights," *Indonesia and the Malay World*, vol. 42, no. 142 (2014), 348-349.

zakat practice with standards and values that are assumed to be universal and shared by all humanity. This effort is also to counter stereotypes of Islam in the era of the war on terror. This thus marks a new phase in the zakat movement as part of the social life of Indonesia since the 2000s, i.e. Islamic appeals to justice that have been inflected by empowerment-oriented social work discourses that promote democracy, good governance, and strong civil society. <sup>60</sup>Retsikas, however, criticizes the trend as showing a lack of understanding of the concepts of philanthropy and zakat. The former has strong volunteerism and connotes benevolence of the rich in an era of free will and extreme inequality which gives birth to responsibilities of the few; the concept was born through the conception of property as individual rights, which entails the forfeit of the object given. Meanwhile the latter is obligatory and established on the basis of a conception of property and rights to it. The beneficiary of zakat is not a recipient, but a person entitled to that wealth. A wealthy person in Islam can proceed to enjoy rights of possession and disposal of wealth in a legitimate manner only after a set of portion of it has been duly transferred to its rightful owner.<sup>61</sup>

On a practical level, this misperception of corporate zakat funds as the payers' own may have been shaped by lack of accounting standards for corporate zakat within Islamic commercial banks in Indonesia. Existing accounting standards for corporate zakat adopted by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) or the Malaysian Accounting Standards Board (MASB), however, are not compatible with the true concept of zakat in Islam. Both accounting standards have treated zakat assets and zakat paid by business organizations as one of a number of "expenses" in a company income statement.<sup>62</sup> Even though

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<sup>60</sup> *Ibid.*, 350-351.

<sup>61</sup> *Ibid.*, 350-351, 355.

<sup>62</sup>Muhammad Akhyar Adnan and Nur Barizah Abu Bakar, "Accounting Treatment for Corporate Zakat: A Critical Review", *International Journal of Islamic and Middle Eastern Finance and Management*, vol. 2, no. 1 (2009): 40.

Islamic commercial banks as it turns out, do not follow any given accounting standard in calculating their corporate zakat due, each bank has classified corporate zakat as non-operational expenses in their report to the Central Bank.<sup>63</sup>

According to Adnan and Bakar, treating zakat as expenses is against the concept of ownership in Islam by which the obligation of zakat is laid down. The absolute owner of property is Allah; the zakat payer is simply entrusted with the property because of his/her fruitful labor, and in that property there is a right of the poor. Hence, zakat payments should be treated as a dividend, instead of as a non-operating expense because “dividend” is the closest category of item available in the present financial statement which conveys the purpose of zakat payment, i.e. “to fulfill one’s obligation towards the real owner of wealth by delivering the trusted wealth to the designated categories of people”.<sup>64</sup> No wonder we see in the case studies, some Islamic commercial banks (BRIS, BNIS and BPS) showing their apprehension about the BAZNAS rejection of their proposal for their corporate zakat fund utilization because they feel that the zakat paid is theirs.

## **E. Conclusion**

The main issue addressed in this chapter is where the Islamic commercial banks pay their corporate zakat: do they directly distribute it to the zakat beneficiaries or channel their zakat payment through zakat collector agents? The observation began with the exposition of the zakat management platform according to the effective law and regulation in Indonesia. To balance the demand of state intervention in zakat administration and the shared power with the society in zakat administration, the state implements a dual platform in zakat collection and distribution in

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<sup>63</sup> Eric Nurcahyo Atmahadi, “Analisis Perlakuan Akuntansi Zakat Perusahaan pada Bank Syariah di Indonesia,” Unpublished Undergraduate Final Paper, Faculty of Economics, Universitas Indonesia, (2013), 58-63.

<sup>64</sup>Adnan and Bakar, “Accounting,” 40.

Indonesia, namely the National Zakat Agency (BAZNAS) and non-governmental zakat agents (LAZ).

Islamic commercial banks have to channel their corporate zakat funds either to the National Zakat Agency (BAZNAS) or to a non-governmental zakat agency (LAZ). An Islamic commercial bank cannot distribute its own corporate zakat funds directly since the BAZNAS and the LAZs are the official platforms for zakat collection and distribution in Indonesia pursuant to the Zakat Law No. 23 of 2011. An Islamic commercial bank must use this zakat intermediary so as not to conflate zakat with its core business as a financial intermediary, as per the Islamic Banking Law No. 21 of 2008.

There are reservations, however, among some Islamic commercial banks which do not have their own LAZ with regards to the BAZNAS's role as the collector of zakat (BRIS, BNIS and BPS). This reservation perpetuates the perennial debate on the extent of state intervention in zakat administration in Indonesia. This is because the BAZNAS requires that all corporate zakat funds should be transferred to the BAZNAS's account first, prior to being utilized by the banks for their social programs. From the case studies, it turns out that the ideal method of corporate zakat collection for Islamic commercial banks which do not have a LAZ is that the banks retain the proceeds and simply report the amount of proceeds for the given year to the BAZNAS. This finding thus provides empirical data on the subjects of corporate zakat's concerns of government domination in zakat administration in Indonesia. It then suggests the government should act as regulator, instead of regulator plus collector of zakat in Indonesia.

*Chapter VII*

**COMPLYING WITH CORPORATE ZAKAT III: WHAT IS ISLAMIC COMMERCIAL  
BANKS' STAND TOWARD CORPORATE ZAKAT AS CSR?**

**A. Introduction**

This chapter looks at the approach adopted by Islamic commercial banks when it comes to financing their Corporate Social Responsibility (CSR) programs. In Chapter 5 we saw that religious factors (zakat as an obligation in Islam, as well as the part of business for a *sharī'a* related industry) have influenced most Islamic commercial banks in complying with their corporate zakat duty, despite its ambiguous status in Islamic law in Indonesia. There was anecdotal evidence of some overlap between corporate zakat funds and CSR funds in the *sharī'a* financial service industry. This also relates to debate that surfaced following the promulgation of new business law reforms in 2007, which introduced the concept of mandatory CSR in Indonesia.

The idea of Corporate Social Responsibility has become popular among corporations in Indonesia recently. Based on the survey on corporate giving conducted by Public Research and Advocacy Center (PIRAC) in 2002, 57% out of 226 corporations surveyed in 10 major cities in Indonesia recognized that corporations do have a social responsibility.<sup>1</sup> However, CSR is still often viewed as a set of philanthropic acts or cause-related marketing or public relations. In fact,

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<sup>1</sup> See Chrysanti Hasibuan-Sedyono, "Corporate Social Responsibility (CSR) in Indonesia," *Economy Paper: Indonesia – Asia-Pacific Economic Cooperation* (October 2005), 1. Hasibuan-Sedyono did not detail the research subject, but her paper mentions slightly about the classification of corporations investigated in this study that includes multi-national companies and nationally owned; public and private companies, see *ibid.*, 1. From the PIRAC research paper itself is mentioned that those multinational companies include General Electric, Unilever and Citibank. See Public Research Interest and Advocacy (PIRAC), *Investing in Ourselves: Giving and Fundraising in Indonesia* (Philippine: Asian Development Bank, 2002), 15-16.

one out of five companies surveyed do CSR as part of the company or their products' promotion activities.<sup>2</sup>

In 2013, PIRAC again conducted research on "Corporate Philanthropy Trends in Indonesia" by analyzing the content of corporate philanthropy activities published by fourteen newspapers and fourteen online media outlets during 2013. The research reveals that corporate philanthropy has been growing considerably in the last year of that study, with recorded donations by PIRAC and Dompot Dhuafa amounting to 8.6 trillion IDR or approximately 718 billion IDR per month. These contributions were made by 455 companies in order to support 1856 social programs. Unlike the earlier 2001 and 2002 studies, this significant development is influenced by an increasing awareness among corporations in implementing corporate social responsibility programs; and the CSR becoming a core part of business activities. In fact, publications on donations made are always tied in to companies' CSR activities. As with previous studies, many corporations do not own a sustainable CSR program because most contributions made were incidental and in response to requests (61%), while routine programs comprised only 38% of CSR activities and contributions.<sup>3</sup>

The popularity of CSR among corporations in Indonesia is partly triggered by the inclusion of CSR provisions in Indonesia laws and regulations. Law No. 40 of 2007 concerning Limited Liability Companies introduced a mandatory Corporate Social and Environmental Responsibility (CSER) concept. The CSER provision is stipulated in article 74(1-3) of Law No 40 of 2007:

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<sup>2</sup> *Ibid*, 2.

<sup>3</sup> Maifil Eka Putra, "Sumbangan Perusahaan Mencapai Rp. 8,6 Triliun," *PIRAC – News*, <http://pirac.org/2014/06/19/sumbangan-perusahaan-mencapai-rp-86-triliun/> accessed 31 December 2014. Similarly, there is no detail information about which corporations became the research subject. Comparing to the 2002 study and looking at news featured in the charitable organizations' websites about corporate donations made to e.g. Dompot Dhuafa, Rumah Zakat and so forth, the research subject are also such group of companies as multi-national companies and nationally owned, public and private companies.

- (1) Companies running their business activities in the field and/or associated with the natural resources are required to implement the Social and Environmental Responsibility;
- (2) Social and Environmental Responsibility as referred to in paragraph (1) is liabilities of the Company that are budgeted and accounted for as expenses of the Company and its implementation is done with due regard to decency and fairness;
- (3) Company which does not carry out the obligations referred to in paragraph (1) shall get sanctions in accordance with the provisions of the law.”

Earlier the government has introduced a concept of mandatory CSR when promulgating Law No. 25 of 2007 concerning Capital Investment. Article 15(b) of Law No. 25 of 2007 stipulates that every investor has an obligation to carry out CSR.

Prior to the enactment of the laws, there were debates in Indonesia about whether the nature of CSR is merely voluntary, or whether it could be mandatory through legal enforcement. The government finally adopted the mandatory concept of Corporate Social and Environmental Responsibility (CSER) when enacting Law No. 40 of 2007. Those who opposed the mandatory concept mainly came from business associations led by the Indonesian Chamber of Commerce and Industry (KADIN), and then submitted a petition to the Constitutional Court on the constitutionality of mandatory CSER in article 74(1-3). The Constitutional Court, however, turned down their petition arguing that mandating CSER is the legal policy of legislators to prevent further social and environmental damage caused by corporations' work in natural resources exploration but ignoring the social and environmental aspects of their work.<sup>4</sup> This thus has caused a loss, especially for local communities and the environment in general. Setting CSER as a legal obligation is also a way of government encouraging companies to participate in the economic development of the people. This legal policy is consistent with the Constitution,

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<sup>4</sup> The Constitutional Court Decision No. 53/PUU/VI/2008: *Kadin vs. the State*, p. 98.

especially article 33(3)-(4) concerning natural resources management controlled by the state and used for the greatest prosperity of the people, based on a principle of fairness and efficiency.<sup>5</sup>

Even though mandatory CSER is only required for companies that run their business in the field of natural resources exploration/exploitation in Indonesia, and that are also state owned enterprises (*Badan Usaha Milik Negara*, hereinafter BUMN), now there are partnership programs between BUMNs and small enterprises, as well as BUMNs' environmental development programs. These programs are usually reported and communicated to the public as part of BUMN's CSR. None of the Islamic commercial banks are state owned enterprises; although three of them are majority owned by state owned enterprise banks (namely BM owns BSM; BNI owns BNIS, and BRI owns BRIS). Is it then the case that, corporate zakat absent, Islamic commercial banks will not commit to run CSR programs?

As part of their *sharī'a* corporate governance, Islamic commercial banks have to report the sources of their non halal funds, *qard al-ḥasan* as well as zakat and Islamic charity (*Zakat, Infak dan Sedekah* or ZIS) funds. These funds are utilized for social activities and are usually reported in Good Corporate Governance reports in the section concerning social funds or in the CSR report itself. Thus, Islamic commercial banks actually have fixed sources of funds for their CSR program. The amount of these funds (the ZIS funds, non halal funds and *qard al-ḥasan* (some banks combine the last two into *qard al-ḥasan* funds)) will depend on the size of the banks and their performance. This means that not all Islamic commercial banks have large fixed sources of funds for their CSR program. The questions are, then, since five Islamic commercial banks have paid their corporate zakat, do they deem the zakat paid to be a source of their CSR funds or do they budget for a CSR fund separately? What are the reasons for their stand on this

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<sup>5</sup> *Ibid*, 99, 100.

issue? To this end, I firstly describe below Islamic principles, if any, in the implementation of CSR.

### **B. What does the Literature Say on Islamic principles in implementing CSR?**

Some conceptual studies have shown that the status of CSR is not alien to Islamic teaching. Rather, CSR is actually already integrated within the doctrine of Islamic business ethics. Williams and Zinkin<sup>6</sup> and Javed Akhtar Mohamed<sup>7</sup> agree that the idea of CSR is deeply inscribed in *shari'ah* and thus not alien to Islam. William and Zinkin, for example, argue that there is no divergence between the tenets of Islam and the principles of the UN Global Compact.<sup>8</sup> The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption.<sup>9</sup> It was first outlined at the World Economic Forum on January 31, 1999, and its operational phases were launched on July 26, 2000. As at June 2012 there were more than 10,000 signatories, based in 145 countries.<sup>10</sup> This voluntary process is accepted by the participating businesses as a driver of globalization in order to ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere.<sup>11</sup>

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<sup>6</sup> Geoffrey Williams and John Zinkin, "Islam and CSR: A Study of the Compatibility between the Tenets of Islam and the UN Global Compact," *Journal of Business Ethics*, vo. 91, no. 4 (2010). 519-533.

<sup>7</sup>Javed Akhtar Mohammed, "Corporate Social Responsibility in Islam," (PhD Diss., Auckland University of Technology, 2007).

<sup>8</sup>Williams and Zinkin, "Islam," 519, 528-529.

<sup>9</sup>"Corporate Sustainability in the World Economy – United Nations Global Compact," *Brochure published by the UN Global Compact Office* (January 2014).

<sup>10</sup>See "Annual Review of Business Policies and Actions to Advance Sustainability," *2011 Global Compact Implementation Survey*, 3; see also William and Zinkin, "Islam," 520.

<sup>11</sup>"Corporate Sustainability in the World Economy."

Williams and Zinkin, then, compare the ten principles of the UN Global Compact with Islamic tenets. A case in point is the principle of human rights,<sup>12</sup> which are deduced from the Universal Declaration of Human Rights' economic, social and cultural rights and freedoms, that are juxtaposed with the concept of zakat in Islam. According to Williams and Zinkin, the concept of zakat makes it clear that Muslims liable for a zakat obligation are required to provide a minimum social safety net to fellow Muslims. In addition to zakat, *infak* and *sedekah* (the concept of Islamic charity) also encourage Muslims to make provision for the deprived and needy of all religions and races as the Qur'ān, 51 :19 states, "And in their wealth there is a due share for the needy and deprived."<sup>13</sup> Another case in point is the principle of environmental protection;<sup>14</sup> according to Islam, humans are the stewards of the natural environment, acting as Allah's viceregent, and their responsibility is to take care and protect it (The Qur'ān, 6 : 165 "It is He who made you the inheritors of the earth. He hath raised you in ranks, some above others that he may try you in the gifts He hath given to you – for thy Lord is quick in punishment, yet He is indeed Oft-for-giving, Most Merciful").<sup>15</sup> Man is answerable to Allah for his stewardship and will be punished if he abuses this role by not protecting nature because nature belongs to Allah and not to Man (The Qur'ān, 4: 126 "But to Allah belongs all things in the heavens and on the earth and it is He that encompasseth all things").<sup>16</sup>

CSR as a concept is a framework for the role of business in society and for setting standards of behavior to which a corporation must subscribe in order to impact society in a positive and a productive manner. Corporations therefore are no longer defined as entities with a

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<sup>12</sup> Principle 1 "Business should support and respect the protection of internationally proclaimed human rights;" and Principle 2 "make sure that they are not complicit in human rights abuses." See *ibid*.

<sup>13</sup>Williams and Zinkin, "Islam," 526, 531.

<sup>14</sup>Principle 7 "Businesses should support a precautionary approach to environmental challenges;" Principle 8 "undertake initiatives to promote greater environmental responsibility;" and Principle 9 "encourage the development and diffusion of environmentally friendly technologies." See "Corporate Sustainability in the World Economy."

<sup>15</sup>Williams and Zinkin, "Islam," 527-528, 531.

<sup>16</sup>  
*Ibid*, 528, 531.

mandate to pursue profit and power relentlessly, regardless of the potential harmful consequences. They are expected to use their extensive resources to soften their self-interest image by presenting themselves as humane, benevolent, and socially responsible.<sup>17</sup> In practice, however, CSR is critiqued as being unable to run effectively and efficiently, especially when corporations use CSR as trade-offs for social and environmental damages caused by their business operations. There will be a conflict of interests and expectations among the corporation, its shareholders, society and government that further prevents CSR initiatives.<sup>18</sup> According to Dusuki and Abdullah, obstacles to CSR initiatives are generated by the lack of moral and ethical grounding for CSR in the case of trade-off.<sup>19</sup>

Dusuki and Abdullah, thus, propose an Islamic perspective on the implementation of CSR which is guided by *maqāsid al-sharī'a* (the objectives of *sharī'a* revelation) and *al-maslaḥa al-mursala* (considerations of public welfare) as the foundation. In Islam, human reasoning alone cannot determine what is beneficial and harmful; it can play a role only in a framework guided by *sharī'a*.<sup>20</sup> The considerations of public welfare in Islamic jurisprudence are known as the concept of *al-maslaḥa al-mursala*. The *maslaḥa* is divided into three types, namely the essentials (*ḍaruriyyā*) which constitutes the core objective of the *sharī'a* being revealed in Islam (also known as the *maqāsid al-sharī'a*); the complementary (*ḥajiyā*), and the embellishments (*taḥsiniyyā*).<sup>21</sup> The *maslaḥa-cum-maqāsid al-sharī'a* consists of five essentials, namely to

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<sup>17</sup> Asyrah Wajdi Dusuki and Nurdianawati Irwani Abdullah, "Maqāsid al-Sharī'ah, Maslahah, and Corporate Social Responsibility," *The American Journal of Islamic Social Sciences*, vol. 24, no. 1 (2012). 26.

<sup>18</sup> *Ibid.*, 29-30.

<sup>19</sup> *Ibid.*

<sup>20</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence (Usul al-Fikh)*, (Islamabad: Islamic Research Institute Press, 2000).

<sup>21</sup> See Asy-Syatibi, *al-Muwafaqat fi Usul asy-Syari'ah* (Beirut: Dar al-Kutub al-'Ilmiyyah, t. t.) II : 3-6.

safeguard the faith of people, their lives, their intellect, their posterity and their wealth.<sup>22</sup> All of these five core objectives are intended to promote the welfare of human beings.<sup>23</sup>

*Maslahah* is framework for making decisions and a mechanism for adapting to change. It also offers guidelines for moral judgment on the part of managers and other stakeholders when solving conflicts that may arise when pursuing CSR. With regards to *sharī'a* as a guide for the implementation of CSR, Williams and Zinkin conclude that *sharī'a* has a clear codification defining what is permissible (ḥalāl) and what is forbidden (ḥarām). *Sharī'a* also has a self-enforcing mechanism (see Vogel, Chapter 1) by individuals and the community, by which the final sanction of accountability for individual unethical behaviors will be given on the Day of Judgement (The Qur'ān, 17: 13 "Everyman's fate we have fastened to his neck: On the Day of Judgement we shall bring out for him a scroll, which he will see spread open").<sup>24</sup>

Dusuki and Abdullah, then, offer pyramid-like priorities to implement CSR in the framework of *maslahah*. The pyramid-like priorities are designed by means of the classical concepts of *maslahah* and *maqāsid al-sharī'a* developed by Al-Ghazali and Al-Shatibi.<sup>25</sup> The pyramid-like priorities move upward; and a corporation will strive for the next level as soon as the previous one has been fulfilled. The three parts of the pyramid, however, are not mutually exclusive; they are inter-related and so result in flexibility in the decision making process, but still should be confined within the *sharī'a* framework.<sup>26</sup>

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<sup>22</sup> See Al-Ghazali, *al-Mustasfa* (Cairo: al-Maktabah at-Tijariyyah al-Kubra, 1937) I: 139-140.

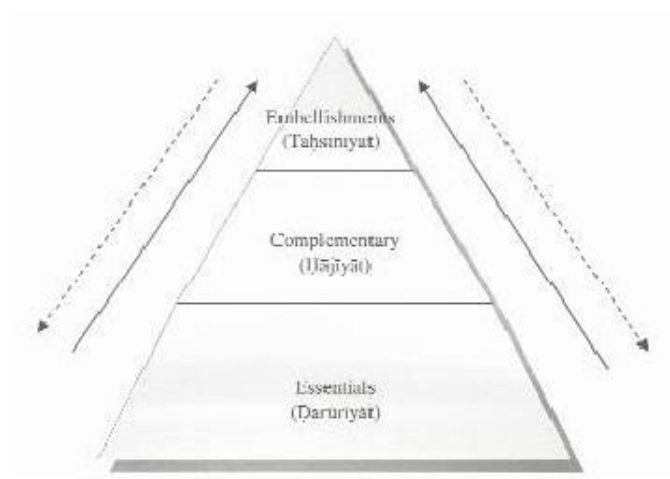
<sup>23</sup> *Ibid.*

<sup>24</sup> Williams and Zinkin, "Islam," 528-529.

<sup>25</sup> See Mohammad Hashim Kamali, "Have We Neglected the Shari'ah-Law Doctrine of Maslahah?" *Islamic Studies*, vol. 27, no. 4 (1988), 287-303; Mohammad Hashim Kamali, "Maqasid al-Shari'ah: The Objectives of Islamic Law," *Islamic Studies*, vol. 38, no. 2 (1999), 193-208.

<sup>26</sup> Dusuki and Abdullah, "Maqasid," 35-36.

**Figure 2. The *Maslaḥa* Pyramid<sup>27</sup>**



So the mechanism goes as follow: at the bottom of pyramid is the first priority called *ḍaruriyyā* or essentials, namely “those on which the lives of the people depend and their neglect leads to total disruption and chaos”.<sup>28</sup> In its implementation, CSR is intended for stakeholders’ essential needs especially to safeguard five elements of *maqāsid al-sharī‘a* (religion, life, intellect, posterity/lineage, and property) and the public good in general.<sup>29</sup> Such CSR programs include prayer rooms or protecting employees’ safety and health in workplace.<sup>30</sup>

When fulfilled, then the corporation strives for the second level, i.e. complementary or *ḥajīyyā* obligations. It is “the whole supplementary to the five essential values and they refer to interests whose neglect leads to hardship in the life of the community, although not to its collapse.”<sup>31</sup> At this level, CSR is intended to remove difficulties that may pose to a threat to

<sup>27</sup> *Ibid.*, 35.

<sup>28</sup> Kamali, “Have,” 292; see also Kamali, “Maqasid,” 195.

<sup>29</sup> *Ibid.*

<sup>30</sup> Dusuki and Abdullah, “Maqasid,” 35.

<sup>31</sup> Kamali, “Have,” 292; see also Kamali, “Maqasid,” 195.

survival of the normal order.<sup>32</sup> This includes such CSR programs as safe workplace, fair pay, continuous training and enhanced human quality programs.<sup>33</sup>

The highest level, is embellishment or *tahsiniyyā*, namely “interests whose realization leads to improvement and the attainment of that which is desirable”.<sup>34</sup> This is when a corporation engages in activities or programs leading to improving and attaining perfection of public life. These include giving charity to the poor and needy, scholarships to poor students and so forth.<sup>35</sup> All in all, Islam perceives CSR in a holistic and dynamic way, taking into consideration reality and ever-changing circumstances and *maslaḥa* as a framework for conflict resolution while implementing CSR.<sup>36</sup>

Below I describe the stand of Islamic commercial banks on corporate zakat as CSR in financing their social programs in Indonesia, and then comprehended in the light of the concept of *maslaḥa* and *maqāsid al-ṣharī‘a*.

### C. Case Studies

#### 1. Case Study of Bank Muamalat Indonesia (BMI)

In my interview with two senior officers of BMI’s Finance and Strategy Division, I learned that BMI implements its CSR programs in cooperation with its zakat agency and CSR operator, viz. BMM. <sup>37</sup> According to the informants, CSR was once managed by BMI’s corporate secretary division, but 2-3 years ago CSR was transferred to BMM. The Corporate secretary now is assigned to support BMI’s CSR implementation (Annual Report and GCG Report of 2012). <sup>38</sup>

<sup>32</sup> About *hajiyyat* see Kamali, “Have,” 292; Kamali, “Maqasid,” 196.

<sup>33</sup> Dusuki and Abdullah, “Maqasid,” 35-36.

<sup>34</sup> About *tahsiniyyat* see Kamali, “Have,” 292-293; Kamali, “Maqasid,” 196.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, 26-27.

<sup>37</sup> Interview with BMI *Finance and Strategy Division*, in Jakarta, on October 10, 2013.

<sup>38</sup> *Ibid.*

According to the informants, BMI previously budgeted for its CSR.<sup>39</sup> The CSR Report of 2010 indeed mentioned that BMI has allocated 2.5% of company's profit for a CSR fund, viz. USD 129,909.97 (CSR Report 2010, pp. 2, 16-17). Now, zakat and Islamic charities (ZIS funds) as well as non ZIS funds (non-halal incomes) become sources of BMI's CSR. In 2012, BMI received non-halal incomes totaling \$ 417,814.55 which comprise interest (\$ 190,102.05) and penalties (\$ 227,712.5).

The informants said zakat funds including corporate zakat are utilized just for the *asnāf*, while CSR funds are for social activities in general.<sup>40</sup> According to archives, non-ZIS funds are utilized under the *sharī'a* principles for social programs beneficial to the community at large without distinction of race, religion, ethnicity or class. BMI does not use Non-ZIS funds for religious-related activities and educational purposes. They are used merely for the development and improvement of social facilities. For examples in 2012, CSR funds originating from non-halal incomes were used for: 1) Construction of toilets (\$ 333.33); 2) Clean water in Brebes, East Java (\$ 16,021,57); 3) Muamalat Green Village in Bengkulu (\$ 435.416); 4) Construction of a hospital in Solo (\$ 5,000.00); 5) Other programs (\$ 4,412.5); 6) Administrative and Account fees (\$ 57.708); in total \$ 46,080.783 were spent.

BMI focuses its CSR activities through BMM in various programs under the aegis of community development, micro financing, and social charity. The annual report and GCG report of 2012, categorize the CSR programs into: first, cooperation between BMI's CSR and BMM; second, routine programs of BMM; third, special program of BMM in 2012.

The first category includes such social charity programs as "Cataract Surgery for the Poor". Another is a community development program for Assistance to orphans in *Jakarta*

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<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

*Bogor Depok Tangerang and Bekasi* launched on September 18, 2012. Assistance was given in the form of an entrepreneurial franchise for “Sabana Fried Chicken”. Assistance is worth \$ 12,500 for 10 booths of Sabana Fried Chicken. Both programs are part of BMI’s CSR flagship “Muamalat Share Sustenance Program” (Program *Muamalat Berbagi Rezeki*).

The second category has three prime programs for community development; first, a Mosque-based Muamalat Micro Business Community (KUM3). It is a revolving fund for productive micro businesses run by poor families who are in the mosques’ congregation. Since 2006, the program has assisted 597 micro business groups comprising 7,552 beneficiaries in 18 provinces. Second is the Cooperative Operation of Islamic Financial Services (KJKS)-KUM3. It is a follow up to the KUM3 program targeted at successful KUM3 groups. Third, the Islamic Micro Finance Institute (LKMS); in this program BMM cooperates with the Ministry of Cooperative and Small-Medium Enterprises to grow and empower Islamic micro finance in Indonesia through provision of capital, mentoring, trainings, and technology support.

The last category is programs for Tsunami victims in Aceh: the Orphan Kafala Program. It is a community empowerment program especially for orphans and victims of the Aceh Tsunami. This program is jointly run with the Islamic Development Bank and some other Zakat Agencies (LAZ). In 2012, the program realized \$ 908,333.33 for assistance of Islamic Solidarity School (ISS); an integrated educational facility established for Aceh Tsunami orphans. The school was established by the Islamic Development Program in cooperation with the Greater Aceh Government, and managed and supervised by BMM with support from BMI. Another beneficiary school is Madinah Al Munawaroh Solidarity School (MMS); a graphic design vocational school built by the Islamic Development Bank and managed by BMM.

## 2. Case Study of Bank Syariah Mandiri (BSM)

In its Annual Report and GCG Report of 2012, BSM opened the CSR section by saying that BSM wants to give benefits not only to shareholders but also to stakeholders. Hence, the triple bottom line policy is adopted for CSR, namely economic indicators, environmental indicators, and social indicators, or profit, people, and planet.<sup>41</sup> As a *sharī'a* business institution, BSM also adopts the fourth mission, i.e. to grow *sharī'a* universal values.

Based on my interview with BSM Head Division Corporate Secretary and Legal, and the archives, there are three sources of CSR funds in BSM. First are benevolence funds (*qard al-hasan*). In 2012, benevolence funds are made up of penalties (USD 69,222.3005), donations/gifts (USD 706.045), interest (USD 37,800.9475), and other social funds e.g. commission, fees and so forth (USD 40,135.6945). In total, they are worth USD 147,864.9876 in 2012. Benevolence funds are channeled through LAZ BSM as its partner institution, amounting to USD 130,102.787 and all distributed by the LAZ BSM. The informant said: “Because they are non halal, they are not acknowledged as Islamic Bank revenue; they are used for CSR programs of non-consumptive and public facilities.”<sup>42</sup>

Second are zakat, Islamic charities, and *waqf* (Islamic trusts). In 2012, zakat consists of BSM corporate zakat (USD 2,344,300.5188), BSM employees' zakat (USD 523,405.02675), and BSM customers' zakat (USD 239,089.8890).

Third are social funds (the informant called it ‘budgeted CSR’). In 2012, BSM has distributed USD 69,324.5425 for the social funds. The thing that distinguishes social funds from two other sources of CSR is that social funds are distributed directly by BSM to beneficiaries. The informant said that these come from BSM pocket as part of promotional fund; it can be used

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<sup>41</sup> (This is also stated by the informant from the corporate secretary and legal division when explained CSR paradigm adopted by BSM).

<sup>42</sup> Interviews with BSM *Head Division Corporate Secretary and Legal*, in Jakarta, on September 30, 2013.

for consumptive programs, e.g. every year there are requests from BAPEKIS (BSM's Administering Agency of Islamic Spirituality) for *kurban* (sacrificed animals), or *pegawai dasar* (drivers, office boys) requests for *kurban*. Or, from time to time BSM hold an event and there is a need for an operational organizing committee such as printing flyers, promotion and so forth, and we use this fund for that. "Principally, we try to put each fund into its category and use it accordingly."<sup>43</sup>

As mentioned earlier, BSM's CSR programs are carried out in cooperation with LAZ BSM in three categories. LAZ BSM has three major programs: 1) *mitra umat* or micro finance program 2) *didik umat* or educational program 3) *simpati umat* or social assistance program. LAZ BSM makes programs based on these three categorizations. The programs are proposed to the BSM Corporate Secretary which later examines them. Here the informant mentioned the CSR theory of people, planet and profit, and then went on saying:

We want BSM sustain and so does the LAZ BSM, whether the program synergize with BSM core values but still within eight *asnāf* that in line with BSM business. BSM want to build positive image in the community through corporate zakat and the operator is LAZ BSM, and LAZ BSM has a *Sharī'a* Advisory Board to make sure its program comply with *sharī'a*. eight *asnāf* are LAZ working area but we give marks on what aspects so that our corporate zakat funds is not channeled in vain (*jangan asal buang*).<sup>44</sup>

### 3. Case Study of Bank Mega Syariah (BMS)

In my interview with the BMS Corporate Affairs Head, it was suggested that corporate zakat is part of CSR in the bank. BMS also allocates specific funds for CSR called promotional funds.<sup>45</sup> The archives, however, tells that CSR is financed with social funds. After triangulating between the interview and other archives, it became clear that the social funds actually come from the BMS corporate zakat. Thus, BMS does not integrate its non-halal income into its CSR

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> Interview with BMS *Corporate Affairs Head*, in Jakarta, on September 17, 2013.

report. In 2012, BMS received non-halal income from its checking service (USD 4377.5833) and other sources (not specified, USD 2,166,66). Non halal income from the checking service is utilized together with *qard al-hasan* (benevolence) funds. In 2012, *qard al-hasan* was utilized for donations (not specified, USD 250) and other social programs (not specified, USD 833.33).

In 2012, BMS channeled its corporate zakat a.k.a. its social funds USD 187,301.39975 in the following ways: 1) channeling to other institutions, viz. zakat agencies, Islamic social and mass organizations, Islamic foundations; and 2) self-channeling in the form of scholarship for children of office boys and drivers of BMS managed by BMS' Islamic Spirituality unit or *Rohis* (USD 16,666.6666).

In its annual report, CSR is implemented in three major programs: first, channeling BMS corporate zakat to LAZ: LAZIS Muhammadiyah, LAZIS NU, Rohis BMS (for scholarship programs), and other LAZ outside Java island; education allowance programs for 200 employees' children who meet the criteria. Second is blood drives every four month in cooperation with the Indonesian Red Cross. Third is a "Mega Syariah Berbagi" Program. In 2012, 5,078 orphans in some parts of Indonesia received aid in the amount of \$ 27,083.3333. The informant's response regarding corporate zakat and CSR was: "We purify our company's wealth, we channel through LAZs, we believe they have programs according to *asnāf*, so we let the LAZs do the distribution; later, we'll think of the brand image for BMS"<sup>46</sup>

#### 4. Case Study of Bank Rakyat Indonesia Syariah (BRIS)

Based on my interview with a BRIS Senior Officer for CSR, I was told that to BRIS, corporate zakat is not the same as CSR and thus it cannot be CSR. BRIS, thus, supports its CSR from *qard al-hasan* and non halal incomes, namely, interest, fines (*ta'zīr*) in contract of

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<sup>46</sup> *Ibid.*

financing intended for *sedekah* (charity), and charity from third parties.<sup>47</sup> Information from the archives, however, reveals that all zakat, Islamic charity, *qard al-ḥasan* and non halal incomes become sources of CSR in the bank. In the GCG report, non halal income is stated as not a BRIS entitlement, thus, all funds go to social activities (not specified) together with *qard al-ḥasan* (both reported under *qard al-ḥasan* post). In 2012, *qard al-ḥasan* funds reached USD 113,000.00, Islamic charities USD 29,416.66, penalties USD 79,666.66, and interest USD 3,916.66. BRIS corporate zakat, based on BRIS Financial Report per September 2013, amounted to USD 186,583.33. Meanwhile, the total collection of zakat from employees, customers, and public was USD 257,750.

In 2012, BRIS distributed USD 131,666.66 to finance CSR programs that are focused on six areas: educational aid, health aid, economic development aid, aid for houses of prayer and *da`wah* (propagation) support, environmental preservation aid and revitalization of public facilities, natural disaster and catastrophe aids. When I asked whether the utilization of corporate zakat is also intended to strengthen the BRIS brand in the community, the informant repudiates this. He then told me that this is the reason why BRIS' proposal to the BAZNAS to fund one of BRIS' social programs was rejected. The BAZNAS might have evaluated the proposed program and seen that it did not fit into one of eight groups of zakat beneficiaries (*asnāf*). The informant went on to say:

We hold the *Shari'a* Advisory Board's opinion that zakat is religion, thus [there is] no branding. CSR has campaign element, but we do not deny the need for campaign. CSR is CSR, and corporate zakat is on the other end. When the convergence happen [between CSR and corporate zakat], that is not something made up. For example, when BRIS assists social activity and people know that it is from BRIS, which is not because of us. When it is zakat funds, we are not setting up the [people's perception]. But if we use CSR funds, we are designing [people's perception]; a case in point, during the opening of

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<sup>47</sup> Interview with BRIS *Senior Officer CSR*, in Jakarta, on October 23, 2013.

BRIS new branches and we conduct free medical treatment or provide basic food ... we are setting up people to know that BRIS organizes such activities.<sup>48</sup>

##### 5. Case Study of Bank Negara Indonesia Syariah (BNIS)

BNIS' Good Corporate Governance (GCG) report of 2012 states that the sources of CSR funds are the CSR budget (USD 221,166.66) and BNIS' employees donation (USD 68,833.33), totaling USD 290,000.00. In 2012, BNIS designed and implemented the CSR program involving employees through the BNIS worker union and zakat collector unit (UPZ) as follow: 1) UPZ BNIS: Sacrificed animals (*Qurban Amanah*) for 2012 Eid-ul-Adha festival; aid for Islamic schools and for the Qur'ānic studies facilities and infrastructure, production machine aid for micro business; allowance for orphans; 2) Communication division of BNIS: scholarships for college students; disaster relief; aid for Islamic schools. The total CSR fund expended in 2012 was USD 165,750.00.

It is not clear from the report whether the CSR budget comprises BNIS corporate zakat, and the donations comprise the employees' zakat as well. In my interview with the Head of Legal, Compliance and Secretariat Division, and a staff member from the Legal Compliance and Secretariat Division, I learned that BNIS has a budget for CSR beyond corporate zakat.<sup>49</sup> The informant said that the Annual Shareholders General Meeting decided both the corporate zakat and CSR expenditure; zakat is from profit before tax and CSR from profit after tax. CSR funds are focused on education and the programs are implemented by the UPZ. Meanwhile, corporate zakat funds which have been channeled to the UPZ are specifically for the *asnāf*. The UPZ has a

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<sup>48</sup> *Ibid.*

<sup>49</sup> Interview with BNIS Head of Legal, Compliance and Secretariat Division, and Staff of Legal Compliance and Secretariat Division, in Jakarta, on September 17, 2013.

*sharī'a* advisor who will make sure that the utilization of zakat is pursuant to the Islamic doctrine, viz. *asnāf*.<sup>50</sup>

Based on the Annual Report of 2012, BNIS arguably does distinguish its CSR and corporate zakat. BNIS' corporate zakat in 2012 amounted to USD 264,083.33. Meanwhile, zakat from outside BNIS (not specified whether from employees, costumers, or public) was USD 192,166.66, totaling USD 456,250.00. These zakat funds were utilized as much as USD 378,166.66 through the UPZ. (Unfortunately there are no details on their utilization in either the annual report or the GCG report).

If zakat funds (both corporate and individual) are excluded from the CSR report, the non halal incomes are reported under social activities. BNIS thus is similar to BMS in that both do not integrate one of their sources for funding social programs into their CSR report (BMS excluded non-halal income qua *qard al-ḥasan*; BNIS excluded corporate zakat). In 2012, sources of non halal incomes were penalties (USD 5,340.13), and accounts closing before the maturity period (USD 21,159.55), totaling (USD 26,499.69). These funds were utilized, together with ZIS funds managed by BNIS' zakat collection unit (UPZ), for social activities that included: social services organized by local branches (programs not specified); aid for educational institutions; aid for worship place construction; clean water programs, medical bill assistance; aid for internal employees (marriage cost assistance); and so forth. In 2012, \$ 32,316.06 was expended for these social activities.

#### **D. Discussion and Analysis**

Within the growing discourse about corporate zakat in Indonesia, there is an impression that corporate zakat funds could be a source of CSR funds for a Muslim-owned company.

Examples include a statement by one of the experts of *sharī'a* economics to business people who

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<sup>50</sup> *Ibid.*

raised objections in Indonesia to the concept of mandatory CSER (especially for businesses whose activities affect the environment) when this requirement was introduced by the Limited Liability Company Law and the Investment Law circa 2007.<sup>51</sup> He criticized this group of entrepreneurs who think that they just want the good of the corporation itself and neglect other functions (read social functions) which should also be performed by the company. He then compared the concept of mandatory CSR in the law with the concept of corporate zakat which had gained attention among stakeholders of zakat at that time (around 2006-2009). In addition to paying tax, companies also have a financial responsibility and obligation to pay zakat as current zakat law in Indonesia already lists legal persons such as companies as zakat payers. Thus, companies should become zakat payers based on the aforementioned arguments.<sup>52</sup>

Is there a rule saying that the corporate zakat funds cannot be used as a source of CSR funds for *sharī'a* banks? Laws and regulations related to Islamic banking have no provisions on this matter. According to Law No. 21 of 2008 concerning *sharī'a* Banking, an Islamic (commercial) bank and the *sharī'a* business unit of a conventional bank can perform a social function in the form of *Baitu-l-Māl*, which receives funds from zakat, Islamic charity, grants, or other social funds and channel them to the zakat agents (Article 4 (2)). Meanwhile, the Central Bank of Indonesia regulations only require Islamic banks to report on the use of social funds and non-halal income allocated by the bank. According to Article 62 (2n-o) of the Central Bank Regulation No. 11/33/PBI/2009 dated December 7, 2009 and Circular Letter of the Central Bank

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<sup>51</sup> Art. 74(1-3) of Law No. 40 of 2007 concerning Limited Liability Companies: “(1) Companies running their business activities in the field and/or associated with the natural resources are required to implement the Social and Environmental Responsibility”; “(2) Social and Environmental Responsibility as referred to in paragraph (1) is liabilities of the Company that are budgeted and accounted for as expenses of the Company and its implementation is done with due regard to decency and fairness;” “(3) Company which does not carry out the obligations referred to in paragraph (1) shall get sanctions in accordance with the provisions of the law,” and Art. 15(b) of Law No. 25 of 2007 concerning Capital Investment: “Every investor has an obligation to carry out CSR.”

<sup>52</sup>See Surahman Hidayat, Director of *Sharī'a* Consulting Center, as quoted by Noor Aflah, *Arsitektur Zakat Indonesia* (Jakarta: UI Press, 2009), 93.

No. 12/13/DPbS dated 30 April 2010 on the implementation of good corporate governance in Islamic commercial banks and the *sharī'a* business unit of a conventional bank, the social fund and the non-halal income distribution should be disclosed in the annual report of Good Corporate Governance. For Islamic commercial banks, non-halal income may be derived from interest, funds derived from the placement of Islamic banks in conventional banks, and penalties (*ta'zīr*) such as penalties for deliberate late payment.

Based on existing accounting report guidelines for Islamic banking, Islamic commercial banks have to report the sources and the use of zakat funds that they manage in the form of *Laporan SPDZ* or *Laporan SPD-ZIS* as per the *Sharī'a* Entities Accounting Standards 101 (PSAK 101) and Circular Letter of the Central Bank No. 7/56/DPbS of 2005. In the PSAK 101, to complete their financial reports, Islamic commercial banks must present a Report on Sources and the Utilization of Zakat Funds (*Laporan SPDZ*). In this report, there is a segment of zakat fund sources where one of the sources is the company (corporate zakat). The Circular Letter of the Central Bank No. 7/56/DPbS of 2005 is not an accounting standard, but this circular letter is intended to be the financial report standard for *sharī'a* banks in general in Indonesia. There is an additional statement that must be reported by *sharī'a* banks about zakat funds managed by the banks, i.e. the Report on Sources and the Utilization of Zakat and Islamic Charity (*Laporan SPD-ZIS*). The *Laporan SPD-ZIS* lists zakat paid by a *sharī'a* banks (corporate zakat) as one of the source of zakat funds.

Theoretically, therefore, there is a room for Islamic commercial banks to maximize their CSR programs through mobilizing their corporate zakat funds. In a pragmatic approach of this kind, the 'obligation' of religion will be met and eventually it will sustain the business of the bank as well, because the banks would then have additional funds for social programs. From the

previous chapter we know that one of the main reasons that Islamic commercial banks pay corporate zakat is their attitude towards the principles of zakat as an obligation in Islam to purify a Muslim's property. For them, the issue is not whether the subject of zakat is an individual or a legal entity. They are further motivated by the fact that their type of business is a *sharī'a-related* industry that must abide by *sharī'a* moral and legal values, as well as do public good (*maslaḥa*). From the case studies above, we can see that all Islamic commercial banks' CSR programs have covered three types of *maslaḥa*: the essentials or *ḍaruriyyā* and the complementary or *ḥajjiyyā* through programs that benefit their stakeholders (employees and families), as well as the embellishments or *tahsiniyyā* through programs for the community at large. Conflicts of interest in deciding which programs should be prioritized, arguably, do not appear because each Islamic commercial bank has a wide array of social programs that benefit their direct stakeholders (employees and their families) as well as the community at large. The interviews reveal that there is a belief on the management side that the well-being of employees and community will impact on the corporation's business. The informant of BPS, for instance, said that other benefits from CSR equate to corporate zakat of Islamic banks are it will add the loyalty of their employees and tranquility in the workplace, because the funds can be used for a scholarship program for employees' children and health insurance for lower grade employees.

Informants from BPS agreed with this pragmatic approach by saying that as the caretaker of zakat and instigator of corporate zakat payment in BPS, they want the company to pay corporate zakat together with CSR because CSR is the corporate zakat of Islamic banks: "This is certain, in the future CSR will be corporate zakat, many other Islamic banks treat it that way ... some banks to my knowledge, if not why?" Informants from BSM also confirmed this pragmatic approach in the way that BSM treats corporate zakat as a way to strengthen corporate branding

and the image of BSM in the community (of course, in accordance with the vision and mission of BSM). Other Islamic banks (BRIS and BMS) were somewhat 'shy' to justify the use of this pragmatic approach, while BNIS expressly rejected it, because BNIS specifically budgeted its own funds for CSR.

The five banks report their sources and uses of corporate zakat, Islamic charity, CSR funds as well as non-halal income under the rubric of 'Sources and Uses of Social Funds' in their CSR report (except BMS and BNIS which distinguish between the report of 'Sources and Uses of Social Funds' and the report of 'Sources and Uses of Non-Halal Funds'). Despite this, the five Islamic commercial banks have used both social funds and non-halal funds for financing their social activities or programs. At the same time, they agree that there should not be a mixing of the corporate zakat funds (and zakat in general) as well as CSR funds in their utilization, due to the underlying different values between zakat and CSR. Zakat is motivated by Islamic religious ethics, while CSR is generated by secular ethics. As a result, there is a distinction in the uses of corporate zakat and CSR funds in Islamic commercial banks' social activities. Zakat funds, therefore, are reserved for the *asnāf*: the poor (al-fuqārā'); the indigent (al-masākin); those whose hearts have been reconciled to the truth, such as new converts to Islam (al-mu'allaf); those in bondage (ar-riqāb); debtors (al-ghārimīn); those in the cause of God (fi *sabīlillah*); and wayfarers (ibn *as-sabīl*). Meanwhile, CSR funds are for social activities in general, for example: disaster relief, clean water and sanitation programs, and so forth. Since the funds for social activities in Islamic commercial banks are also derived from non-halal income, ultimately they determine its use. The non-halal incomes are not to be used for e.g. programs involving consumption (food or cash assistance) and supporting related-religious activities such as building Islamic schools or funding Islamic propagation (dakwah). So if I summarize the stance of five

Islamic commercial banks that have paid corporate zakat about the overlap between corporate zakat and CSR funds, they range across a continuum of affirmative, ambivalent, and negative stances. Where a bank sits on this continuum will depend on their responses to following signifiers, as well as their practice in implementing or CSR programs.

**Table 9. Islamic Commercial Banks' Stance on Corporate Zakat and CSR**

Bank	BSM	BRIS	BMS	BMI	BNIS
Signifiers					
Budgeted CSR along with Corporate Zakat?	Yes	No	No	Yes	Yes
Integrating Zakat and Islamic Charity (ZIS) funds into CSR Report?	Yes ZIS+non ZIS (qarḍ al-ḥasan+budgeted CSR = sources of CSR	Yes ZIS+non ZIS = sources of CSR	Yes social funds are a.k.a corporate zakat	Yes ZIS+non ZIS = sources of CSR	No CSR ≠ Corporate Zakat
Distinction between zakat funds and non zakat funds utilization?	Yes ❖ Zakat: <i>asnāf</i> ; ❖ <i>Qarḍ al-ḥasan</i> : non-consumptive & public facilities; ❖ Budgeted CSR: promotional & consumptive.	Yes ❖ Zakat: <i>asnāf</i> ; ❖ <i>Qarḍ al-ḥasan</i> : general social activities.	Yes ❖ Zakat: <i>asnāf</i> ; ❖ <i>Qarḍ al-ḥasan</i> : general social activities.	Yes ❖ Zakat: <i>asnāf</i> ; ❖ Budgeted CSR: general social activities; ❖ Non ZIS: not for religious related activities & educational purposes.	Yes ❖ Zakat: <i>asnāf</i> ; ❖ Budgeted CSR: education & social activities implemented through its UPZ & worker union; ❖ Non halal income: as above.
Who manages social activities or CSR?	❖ ZIS funds: LAZ BSM but 'controlled by BSM'; ❖ Non-ZIS funds: BSM	❖ BRIS, but controlled by BAZNAS in case of corporate zakat funds	❖ BMS, but completely believe in BAZNAS and LAZ management for utilization of zakat funds	❖ BMM supported by BMI corporate secretary	❖ BNIS' worker union and UPZ, but controlled by BAZNAS in case of corporate zakat funds

White = Affirmative

Grey = Ambivalent

Black = Negative

From the table, we can see that BNIS mostly is negative towards the notion of corporate zakat is their CSR, because they do have a different budget for CSR and corporate zakat. They do not integrate their zakat and Islamic charity utilization into their CSR report; and they distinguish the uses of zakat funds and non-zakat funds when funding their social activities as well. However, there was an incident when they complained about the National Zakat Agency's (BAZNAS) role in controlling how the zakat funds and corporate zakat funds should be used, and this suggests that they still consider the zakat paid as their own money, not the right of zakat beneficiaries to whom it is owed. This is, to some extent, just like the way they approach the utilization of their CSR funds, namely, maintaining the right to control its use based on their corporate policy. (This is also the case with BRIS). Meanwhile, BSM clearly declares that they use corporate zakat as a source of CSR funds, and, thus, uses them to further their vision and mission by aligning them with their CSR programs. This eventually will strengthen the BSM brand image in the community. However, BSM still budgets its own CSR funds and distinguishes between the utilization of zakat funds and CSR funds.

Being persistent in distinguishing the origins and utilization of their social activities' funds is the most striking feature of Islamic commercial banks' stance on the overlap between corporate zakat and CSR. All of the banks have a negative position on this signifier. Why are they so persistent in distinguishing the utilization of zakat funds and non-zakat funds? Although informants did not specifically refer to the concept of *maslaḥa* and *maqāsid al-sharī'a* when dealing with the question of where the social funds originate, and where to spend them, I argue that the decisions that they made are guided by the concept of *maslaḥa-cum-maqāsid al-sharī'a*. Under this concept, Muslims are required by *sharī'a* to make sure that the five elements of *maqāsid al-sharī'a* (religion, life, intellect, posterity/lineage, and property) are taken into

account in every action or decision to act they take. These five elements sit hierarchically, meaning that safeguarding one's religion takes precedence over safeguarding one's life, and so forth.<sup>53</sup> Consequently, in order for the zakat paid to be legitimate according to *sharī'a*, the payers have to follow the doctrine of zakat that includes its terms and condition (e.g. the minimum threshold and rate of zakat) and its distribution (*asnāf*). Failure to fulfil these requirements will invalidate their zakat payments and, thus, turn the payment into mere charity (*infak* or *sedekah*). This situation is considered as jeopardizing one's religion because one has failed to perform one of the Islamic obligations, i.e. paying zakat.

### **E. Conclusion**

The main issue addressed in this chapter is the stance of Islamic commercial banks towards the issue of corporate zakat, when concurrently considered with the banks' Corporate Social Responsibility (CSR). The chapter began with an exposition of the status and definition of CSR in Indonesian business law. It then continued with the discussion on possible convergence or overlap between *sharī'a*, in particular the Islamic tenets on business ethics, and the UN Global Compact as a global ethics for CSR.

This study finds that just as there is ambiguity about the legal status of corporate zakat according to Islamic law and business law in Indonesia (*fatwā/sharī'a* opinions or zakat, Islamic banking, and corporate laws), these sources are also silent on the overlap between corporate zakat and CSR. Meanwhile, the practice of CSR is becoming more common in Indonesia including in the Islamic financial service sector. This can be seen from Islamic commercial banks' good corporate governance reports (or CSR reports). From the case studies, Islamic commercial banks' stance on corporate zakat as a, (or the) source of CSR is a continuum of affirmative, ambivalent, and negative position. In terms of concept, some of the banks are

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<sup>53</sup> See Kamali, "Have," 292; see also Kamali, "Maqasid," 195.

hesitant to affirm corporate zakat as their CSR, because of different values underlying zakat and CSR. To the banks, zakat is motivated by Islamic religious ethics, while CSR is generated by secular ethics. In practice, however, corporate zakat funds have become an integrated source for all Islamic commercial banks when financing their social activities or programs in Indonesia. Despite this fact, the Islamic commercial banks do not mix the use of corporate zakat funds with CSR funds because they believe that zakat should only be for the traditional group of beneficiaries (*asnāf*), whereas CSR can be used for general social purposes, especially when the CSR funds are derived from non-halal income, such as interest or penalties. This stance, I argue, is guided by the principle of *maslahah-cum-maqāsid al-sharīʿa*, an intention to achieve public utility within the boundaries of *sharīʿa*.

### Chapter VIII

## CONCLUSION

This study has asked who has the authority to interpret and impose corporate zakat in Indonesia, and whether the creation of this corporate obligation is viewed as legitimate by the regulatory actors involved and by the corporations that are the target of the new regulation. Further, it has inquired whether the corporations' views on corporate zakat as a duty in Islam have prompted them to comply with it.

This study finds that even though multiple Islamic legal authorities, both actors and textual sources, still prevail in Indonesia, we see that the Council of Indonesian Ulama (MUI) increasingly shows its independence from state control and asserts itself as the institution to be consulted by the government so far as Islamic law in Indonesia concerned. The MUI has been more confident to assert itself as the authority of Islamic law in Indonesia following the regulatory changes since Soeharto's fall in 1998. Since that time, the MUI's formal role in the state system for the administration of Islamic legal traditions in Indonesia has expanded, especially into the field of *sharī'a* economy (*mu'āmalāt*). These changes have intensified the MUI's influence and the legal authority of its *fatāwā* (singular: *fatwā*).

As its institutional role has grown in scope, the MUI continue to expand its authority in *fatwā* production in Indonesia. This is done by making the *Fatwā* Commission of MUI the 'single door' for *fatwā* production in Indonesia. The MUI seeks to further intensify the acceptance of its *fatwā* among Muslim communities in Indonesia. This is done by engaging as many *fatwā* commissions and Islamic organization as possible in the *fatwā* production. For this purpose, the MUI organizes the biannual-collective *ijthād* forum called *Ijtima Ulama* where contemporary problems faced by Indonesian Muslims are sought to be resolved. Theoretically,

resolutions reached by the *Ijtima Ulama* have the quality of more valid *fatwā* because they are produced by involving almost all ulama in Indonesia.

In exercising and maintaining its status as the most authoritative institution in *fatwā* production, the *Fatwā* Commission of MUI thus acts as the reviewer of the *Ijtima Ulama* resolutions prior to promulgating them as a *fatwā*. Some *Ijtima Ulama* resolutions which do not pass the review, therefore, cannot or are not promulgated as a *fatwā*, such as in the case of the obligation of corporate zakat in Islamic law. The Council was reluctant to promulgate a resolution on corporate zakat status reached in the 2009 *Ijtima Ulama* as a *fatwā*, considering its inconclusive arguments and the controversial subject matter. Thus no such *fatwā* currently exists. Meanwhile, ulama members of the MUI (and ulama of Indonesia specializing on zakat issues) are torn by dissensions on the legal status of corporate zakat. The MUI has tried creating a balance between meeting social and legal changes, and remaining within the boundaries of *sharī'a*. The MUI increases the efficacy of its *fatāwā* issued because it provides legal determinacy in the matter sought for answer through collective *ijtihād* of all *fatwā* bodies in Indonesia. This arguably substantiates my thesis that the MUI's intent is to be the authority for Islamic law in Indonesia and that the MUI has, in fact, achieved this status.

Despite the MUI's reluctance to issue a *fatwā* on corporate zakat in Indonesia, the zakat law of 1999 proceeded without controversy. It also occurred prior to the decision of the MUI in 2009 which considered this obligation, but did not result in a promulgated *fatwā*. The government then re-imposed corporate zakat in the new Zakat Law of 2011. Meanwhile, the provisions regarding corporate zakat in the zakat law say that the imposition of a corporate zakat duty in Indonesian law is a duty imposed by Islam, not the state. The state does not see itself in

the position to enforce any form of religious obligation in Indonesia and, hence, adopts the approach of voluntary payments in the zakat administration in Indonesia.

The major issue that emerged during the deliberation of the zakat bills in 1999 was not the subject of zakat as such. Rather it was the nature of zakat collection (whether it should be mandatory or voluntary); rivalry between zakat collector agencies; and tax deductibility of zakat payments. Legal persons did appear as one of the zakat payers in the Zakat Law of 1999 but the origin of the concept of corporate zakat and the meaning is unclear. As for the new Zakat Law of 2011, corporate zakat status has been an issue in drafting at the Ministry of Religious Affairs (MORA) and during deliberation process in the Parliament. This is so because corporate zakat has become a public discourse among the stakeholders in zakat (ulama, government, zakat agents, and zakat payers) thanks to socialization done by zakat agencies, especially the Dompet Dhuafa and the BAZNAS. The socialization was implemented through a series of seminars on corporate zakat and tax treatment for companies, as well as call letters to corporations to pay their corporate zakat. The discussion on corporate zakat then peaked in the *Ijtima Ulama* of 2009, when the ulama tried to clarify the status of corporate zakat in Indonesia.

From the process tracing of the imposition of this obligation, we can see that ulama who are proponents of corporate zakat (some affiliated with the Council of Indonesian Ulama and the BAZNAS) were involved in the drafting process of zakat bills proposed by the government (the MORA), as well as in the deliberation process in the Parliament. Although the issue of whether legal entities are subject to zakat is not settled yet in Indonesia due to the MUI's reluctance to promulgate the decision of the 2009 *Ijtima Ulama* as an MUI *fatwā*, the provisions regarding corporate zakat were accepted by the Parliament and thus remain in the new zakat law management system. The reason why corporate zakat provisions were included by the

government during the drafting process was because the ulama provided information that business entities have been considered as *syakhsyia i'tibariyya* (legal persons) and thus subject to the obligation of zakat, just like natural persons. The legal status of corporate zakat was also decided at the national level by the MUI during the *Ijtima Ulama* of 2009 and by the councils of ulama at the international level. We see this in the *fatāwā* of Al-Azhar University's Jurists in 1965 and the First International Conference of Zakat in 1984. The government thus confirmed the authority of ulama as the interpreters of Islamic law, as well as accepting their product of interpretation (*fatāwā*) as one of the authoritative sources for formulating statutes in Indonesia. The same explanation also applies during the deliberation process, although here we see more elaboration of the reasons i.e. the potency of zakat needs to be maximized and corporate zakat funds have enormous potency in Indonesia for social welfare. This is so if it is regulated by a zakat law, so that there is a legal basis for collecting corporate zakat. Thus, among other ways to realize this social policy goal, introducing progressive interpretations of the zakat concept in Indonesia is effective and includes making legal entities subject to zakat duty.

The findings of the process tracing in this study of corporate zakat imposition, therefore, reveal another perspective on the politics of state policy in the implementation of *sharī'a* in Indonesia. The politics of *sharī'a* implementation in Indonesia, I argue, are not all about the adoption of the Dutch legacy of reception theory by which the government developed *adat* (customary) law more intensively than Islamic law because, as far as Indonesian Muslims practices, *adat* law was preferred than Islamic law; Islamic law was only effective after being assimilated by *adat* law. Contemporary Indonesian legal historians, then, explain state policy on the implementation of *sharī'a* in Indonesia in those terms, i.e. *sharī'a* is officially legitimate only if it has been ratified as national positive law. If we take into account the perspectives of the

subjects of zakat and corporate zakat obligations in Indonesia, the ratification of *sharī'a* to be a national positive law does not affect their perspectives on the legitimacy of *sharī'a* as a doctrine that must be observed by Muslims. To them, the meaning of *sharī'a* as moral guidance, instead of law, have motivated them to comply with zakat obligations in Indonesia, including its novel interpretation in the form of mandating business entities such as corporations to pay zakat.

Furthermore, there are subtle political and religious nuances in the process of imposing corporate zakat in Indonesia. In every measure taken by the state, either at the stage of drafting and deliberating the (Islamic state) law in the government office (MORA) or in the Parliament or in the judicial review process of the Constitutional Court, the deliberators have been advised by, or have taken into account, opinions of ulama. In the Zakat Laws, the inclusion of corporate zakat provisions as well as the state's further intervention in zakat implementation by means of the institution of the National Zakat Agency (BAZNAS) and prioritizing official zakat agents in channeling zakat, are justified through, *inter alia*, *maslahā* (public utility) and *sadd al-dharī'a* (blocking means) arguments. These arguments emphasize maximizing the potency of zakat for realizing social welfare in Indonesia, and maintaining transparency, accountability and, thus, security of public money. This kind of policy of recognizing certain aspects of Islamic law including its interpretation,<sup>1</sup> but excluding others,<sup>2</sup> is still within the framework of Islamic legal argument known as *siyāsa shar'īyya* or *sharī'a-oriented* policy or regulatory authority of the state as recognized by *sharī'a*.

Some contemporary Islamic legal scholars believe that *siyāsa shar'īyya* is one of the solutions to the conflict of authority in lawmaking in Muslim countries because ulama and the

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<sup>1</sup> Namely: corporations are subject to zakat obligation, or the government holds the authority in zakat management in Indonesia.

<sup>2</sup> Namely: corporations cannot be subject to zakat obligation, or the state cannot enforce the obligation of zakat by penalizing the zakat evaders.

government create and share a vision of Islamic law. Following the demise of the caliphate system and the colonialization by the western countries, Muslim countries have experienced a rupture of Islamic authority because there are traditional Islamic jurists (ulama) who hold the authority in interpreting *sharī'a*, and the state which holds the authority to promulgate Islamic law (legislation/codification or *qānūn*). Mainstream studies on this theme, thus, discover that most Muslim countries have replaced the old structure of *sharī'a* authority with new legal institutions. Muslims are seen by researchers to trust the new legal institutions more than the old structures of *sharī'a* authority in law and governance because important legal decisions are mostly made by office holders of state instead of ulama. My scrutiny into the legislative and regulatory process in Indonesia, however, reveals a different narrative, especially on how the ulama's opinions (fatwā and admonition) are taken into account in formulating public policy, such as in the case of the MUI in Indonesia. This fact substantiates my thesis that ulama in Indonesia (in this case represented by the MUI) have regained their relevance in the development of Islamic law in Indonesia.

Making legal entities subject to zakat in the new zakat law could have triggered resistance from the business sector because the very concept of corporate zakat itself is controversial in Islamic jurisprudence. The major sources of *sharī'a* state that only natural persons are subject to zakat. Meanwhile, the government has been challenged when it tried to impose ethics-based taxes on the business sector, such as in the case of mandatory Corporate Social and Environmental Responsibility (CSER) enshrined in the Limited Liability Company Law No. 40 of 2007 and the Investment Law No. 25 of 2007. Despite this, corporate zakat imposition in the new Zakat Law No. 23 of 2011 has not triggered controversy within the business sector; many are unfamiliar with the provisions, and the voluntary nature of zakat

collection in Indonesia may offset negative reactions. There is no enforcement from the government toward zakat evaders, either as individuals or corporate payers. The lack of enforcement by the government reinforces 'ignorance' towards the concept of corporate zakat. Although the Law defines zakat as a (religious) duty imposed on individuals and legal entities, and mentions both as the subjects of zakat, its implementation becomes a personal matter and usually depends on the moral and legal consciousness of each zakat payer.

With regards to the phenomena of corporate zakat payments by Islamic commercial banks in Indonesia, the fact is that many ulama members of the MUI who serve as superintendents of *sharī'a* in Islamic financial services, turn out to have little effect on the banks' decision to pay their zakat. This is because the status of corporate zakat as an obligation in Islamic law in Indonesia is still ambiguous. As a result, the existence of the Zakat Law and *sharī'a* opinions of the *Sharī'a* Supervisory Board, have little, if any, influence on the Islamic commercial banks' compliance with corporate zakat (except in the case of BMI). From the banking sector case study, it was found that the views of Islamic commercial banks about the legitimacy of provisions of corporate zakat in Indonesia are affected by a combination of two or three factors: (1) the type of business (i.e. as *sharī'a-related* industries that must abide by *sharī'a* moral and legal values as well as must do public good); (2) their attitudes towards the principles of zakat (i.e. an obligation in Islam to purify a Muslim's property, so that the issue is not whether the subject of zakat is individual or legal entity); (3) the size of the company (i.e. the amount of profit that is deemed to be eligible to pay zakat); and (4) benchmarking with other competitors. A combination of factors number one and two becomes the most significant drivers for paying corporate zakat.

Islamic religious ethics (factor number one and two) appear as the most salient reason for Islamic commercial banks' compliance with corporate zakat obligations and this confirms one of the characteristics of *sharī'a* as self-executing norms. The self-executing norms of *sharī'a* mean that mere injunctions about zakat obligations in the Qur'ān apply of their own force and can be addressed directly, without the intermediation of *fatwā/sharī'a* opinions or a legal and regulatory framework, to every believing individual. The novel obligation of corporate zakat is perceived by the management of Islamic commercial banks to fall under the general obligation of zakat imposed on Muslims. So when the believing decision makers of the Islamic commercial banks are aware of a command about paying zakat in the Qur'ān and Hādith, they feel bound by that command as if it were addressed directly to them. Consequently, even though the liability of corporations as a zakat payer is still debated, the management of Islamic commercial banks adapts their moral conscience on zakat obligation into their corporate decisions.

If the observance of corporate zakat made by Islamic commercial bank requires no intermediary law, its implementation (channeling and distributing of corporate zakat funds) prompts the banks to abide by the rules of the state. Islamic commercial banks (have to) acknowledge the state authority in regulating and overseeing zakat administration in Indonesia which is imposed through the Zakat Law and Islamic banking regulations for the sake of good corporate governance. Islamic commercial banks, therefore, must channel their corporate zakat funds either to the National Zakat Agency (BAZNAS) or a non-governmental zakat agency (LAZ). As a bank, an Islamic commercial bank cannot distribute directly its own corporate zakat funds since the BAZNAS and the LAZs are the official platforms of zakat collection and distribution in Indonesia pursuant to the Zakat Law No. 23 of 2011. An Islamic commercial bank

must make use of this zakat intermediary so as not to conflate zakat with its core business as a financial intermediary, as per the Islamic Banking Law No. 21 of 2008.

Despite the Islamic commercial banks' observance of the legal and regulatory framework of zakat, there are reservations from some Islamic commercial banks which do not have their own LAZ with regards to the BAZNAS's role as the collector of zakat. This reservation perpetuates the perennial debate on the extent of state intervention in zakat administration in Indonesia. The BAZNAS sets a method of collection for corporate zakat that requires all corporate zakat funds to be transferred to the BAZNAS's account first before being utilized by the banks for their social programs. From the case studies, it turns out that the ideal method of corporate zakat collection for Islamic commercial banks which do not have a LAZ is that the banks retain the proceeds and simply report the amounts of proceeds for the given year to the BAZNAS. My study thus provides empirical data on the subjects of corporate zakat's concerns of government domination in zakat administration in Indonesia. It then suggests the government should act as regulator, instead of regulator plus collector of zakat in Indonesia.

Investigation into the views of corporations about the target of corporate zakat obligations also prompts further examination of other motives of Islamic commercial banks when complying with this obligation. There were anecdotes on the overlapping of corporate zakat funds and corporate social responsibility (CSR) funds found during the data collection. Just like the ambiguity surrounding its legal status, Islamic laws in Indonesia (fatwā/sharī'a opinions or zakat, Islamic banking, and corporate laws) are also silent on the appropriate uses of corporate zakat. Meanwhile the practice of CSR is becoming common in Indonesia including within the Islamic financial service sector. This can be shown from Islamic commercial banks' good corporate governance reports or CSR reports. From the case studies, the Islamic commercial

banks' stand on corporate zakat as a source of CSR is like a continuum of affirmative, ambivalent, and negative position. As a concept, some of the banks hesitate to affirm that corporate zakat is their CSR, because of different values underlying zakat and CSR. Zakat is motivated by Islamic religious ethics, while CSR is generated by secular ethics. In practice, however, corporate zakat funds have become an integral part of Islamic commercial banks' CSR in Indonesia. Despite this, the Islamic commercial banks do not mix the use of corporate zakat funds with CSR funds because they believe that zakat should only be for the traditional group of beneficiaries,<sup>3</sup> whereas CSR can be used for social purposes in general, especially when the CSR funds derived from non-halal income such as interest or penalties. Therefore, religious ethics that motivate Muslims to pay zakat have also been instrumental in the provision of social practices undertaken by the *sharī'a-related* business entities and, at the same time, go beyond the concept of CSR in the conventional sense. This means that the implementation of CSR in Islamic commercial banks, with corporate zakat and Islamic charity funds as part of it, is not only the internalization of CSR in the conventional sense as core values of their business, but also is inspired by the *sharī'a* embodiment of welfare value (*maslaḥa*), which is guided by the objective of *sharī'a* (*maqāsid al-sharī'a*), to mankind.

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<sup>3</sup> Eight *asnāf* that include: the poor (*al-fuqārā'*); the indigent (*al-masākin*); those whose hearts have been reconciled to the truth, such as new converts to Islam (*al-mu'allaf*); those in bondage (*ar-riqāb*); debtors (*al-ghārimīn*); those in the cause of God (*fī sabīlillāh*); and wayfarers (*ibn as-sabīl*).

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**ANNEX I Decisions of *Ijtima Ulama* and their Status until 2011<sup>1</sup>**

No	Subject Matters	Rulings	Promulgated as Fatwa	Comments by Alfitri
1 <sup>st</sup> <i>Ijtima Ulama</i> , 2003, Jakarta				
1	Bank Interest	<p>1) It is <i>ribā</i>, thus Yes, prohibited (<i>ḥarām</i>); No. 1 Year 2004</p> <p>2) Muslims, in whose concerning Bank area is available a Interest (Bunga). branch of Islamic bank, The same rulings are not allowed to make as the 2003 transactions based on decision interest. If not available, Muslims are allowed to do business with conventional banks based on necessity/need (<i>ḍarurah/ḥajah</i>)</p>		<p>a. FC-MUI met to further discuss this 2003 decision on January 3, 2004, January 17, 2004, and January 24, 2004. The promulgation of fatwa was signed on January 24, 2004.</p>
2	The Determination of the First day of Ramadan, Shawwal, and Dhulhijjah	<p>1) The determination is done by means of moonsighting (<i>ru`yah</i>) and astronomical calculation (<i>hisab</i>)</p> <p>2) all Muslims in Indonesia are obliged to abide by the decision of government with regards to the determination</p> <p>3) To determine the first day of Ramadan, Shawwal and Dhulhijjah, the Minister of Religious Affairs is obliged to consult MUI, Islamic social organizations and concern institutions</p>	<p>Yes, No. 2 Year 2004 concerning the determination of the first day of Ramadan, Shawal, and Dhulhijjah. The same rulings as the 2003 decision. Yet, the fatwa adds "... by the government qua the Minister of Religious Affairs and the determination is effective nationally"; And point 4) "the result of moonsighting from area outside Indonesian</p>	<p>a. FC-MUI met on January 24, 2004 and signed the promulgation of fatwa on the date.</p> <p>b. in 1980, the FC-MUI has issued a fatwa on this matter. The rulings were: 1) regarding the determination of first Ramadan and Shawal, Muslims should follow the majority opinion in <i>fiqh</i>, i.e. using <i>matla`</i> as the point of reference; 2) unlike the determination of the first day of Ramadan and Shawal, the first day of Dhulhijjah is determined based on <i>matla`</i> of each country; hence, Indonesia cannot</p>

<sup>1</sup> When the compilation of fatwa from 1975 published in 2011 by the secretariat of MUI, see Majelis Ulama Indonesia. *Himpunan Fatwa Majelis Ulama Indonesia Sejak 1975*. Jakarta: Sekretariat MUI – Penerbit Erlangga, 2011.

			territory but with follow the same <i>matla`</i> in determining the Eid (the position of the al-Adha festival day rising and setting sun) can be used by the Minister as a reference”	other countries
3	Terrorism	1) Committing an act of terror, either perpetrated by individual, group, or state, is prohibited (haram). 2) Performing jihad is obligatory (wajib)	Yes, No. 3 Year 2004 concerning Terrorism. The same rulings as the 2003 decision	a. FC-MUI met on January 24, 2004 and signed the promulgation of a fatwa on the date. b. the fatwa was also signed by the Board of Director c. Like other Islamic organizations, e.g. Organization of Islamic Conference, the MUI want to clarify that the concept jihad is not the same terrorism
<i>2<sup>nd</sup> Ijtima Ulama, 2006, Ponogoro, East Java</i>				
4	Commission A - Issues of Nationalism ( <i>Masā'il Aṣāsiyya Waṭāniyya</i> )			
	4.a. strengthening the form and existence of Unitary State of Republic of Indonesia	... (point 1-2 simply No statements) 3) Since the territory of the unitary state of Indonesian republic (NKRI) is populated mostly by Muslims, Muslims are obliged to maintain the integrity of NKRI, including from any form of treasons and separatist movements 4) the state is obliged to take any necessary measures to prevent treason and separatist movements such as creating justice, security,		It is a common practice in MUI to respond to the current socio-political situation in Indonesia by issuing a fatwa or admonition. The background of this decision was separatist movements in the Moluccas and Papua.

		prosperity, and raising awareness to the perpetrators. 5) any form of treason and separatist movements fall under the category of <i>bughat</i> (treason) crime; and <i>bughat</i> is prohibited and must be eradicated by the state		
	4.b. Harmonization of religious frame of thoughts in nationalism context	... (point 1-2 simplyNo statements) 3) values brought by modernization and globalization which accord to Islamic doctrines and bring virtues may be accepted as Islamic universal values 4) Conversely, those against Islamic doctrines and that bring corruption to society (mafsadat) must be rejected 5) in the national life, religion should be utilized as source of inspiration and guidance; hence, there should not be conflicts between religious frames of thoughts and nationalism frames of thought		This sounds more like an admonition or recommendation than a fatwa because of the lack of normative points.
	4.c. equating mindset in religious issues	... (point 1-2 simply statements) 3) difference of opinion is recognized in Islam but it should not be understood as freedom with no boundary 4) difference of opinion	No	As above.

		<p>can be tolerated as long as it is still within <i>majal al-ikhtilaf</i> (matters susceptible to difference in Islam); beyond that is categorized as heretical</p> <p>5) in dealing with <i>majal al-ikhtilaf</i>, Muslims should find the meeting point at maximum efforts. ... (point 6 simply a statement)</p>		
	4.d. coordinating strategic steps in dealing with religious issues	<p>1) Muslims need to streamline their movements.</p> <p>2) effective movements are characterized to be rehabilitative, coordinated, synergized, mutual supportive, and productive.</p> <p>3) in order to achieve that, the MUI is expected to coordinate, synchronize and synergize Muslim movements</p>	No	<p>As above.</p> <p>There is a point in the decision where the MUI positions itself as the coordinator of Islamic organizations in Indonesia.</p> <p>Process tracing of MUI's role in Indonesia reveals that it has actively performed a role as an initiator and coordinator of socio-economic, socio-cultural and socio-political programs for Muslims.</p>
5	Issues of Contemporary Events ( <i>Masā'il Waqi'iyah Mu'āshirah</i> ):			
	<p>5.a. Short1) SMS Prizes are Message Service prohibited (haram) (SMS) Prizes because they contain elements of gambling (maysir), wasting money (tabdzir), deceitful (gharar), harmful (dlarar), <i>Ighra'</i>, <i>Ishraf</i> (redundant). There is an exception to SMS prizes which provide prizes not from the participants.</p> <p>2) Prohibited SMS</p>	<p>Yes,</p> <p>No. 9 Year 2008 concerning Short Message Service Prizes.</p> <p>The same rulings as the 2006 decision with different redaction: point 3 is included in point 1; point 2 is taken out and</p>	<p>No further meeting by FC-MUI; the promulgation of fatwa was signed on September 17, 2008.</p> <p>The fatwa also takes into account in its consideration research finding by the Advisory and Supervisory Task Force for Free Lottery set up by the</p>	

	<p>Prizes can be in the form of contest, quiz, sport, games, competition, and so forth, which promise prizes drawn among SMS senders.</p> <p>3) Prizes of prohibited SMS are those coming from premium charges of SMS sent by participants in which the charges way beyond normal rate of a text message</p> <p>4) the sprohibited status of SMS prizes generally applies to event organizers, telecommunication providers, participants, and other sponsors</p>	<p>changed to “SMS Prizes which do not contain elements mentioned in point 1 are considered neutral/permissible (mubah).</p>	<p>Indonesian Telecommunication Regulation Agency (BRTI). The research finds that SMS Prizes have made big losses on the side of society, because they encourage people to send SMS as frequently as possible, while the mechanism to draw winners and quantity of prizes cannot be detected by participants. Hence, the BRTI has instructed telecommunication providers to stop the SMS Prizes features in their services.</p>
5.b. unregistered marriage (nikah <i>bawah tangan</i> )	<p>1) the participants of <i>Ijtima Ulama</i> agree that a marriage must be registered by the government office, in order to prevent negative impacts that may arise from non-registration (<i>sad adh-dharia</i>)</p> <p>2) Yet, unregistered marriage (nikah <i>bawah tangan</i>) is valid according to Islamic law (fiqh) because it fulfills the requirements of marriage in Islam; if there are harmful effects from such marriage, then it is prohibited (haram).</p>	<p>Yes, No. 10 Year 2008 concerning unregistered marriage. The same rulings with different redaction.</p>	<p>No further meeting by the FC-MUI, the promulgation of fatwa was signed on September 17, 2008.</p> <p>The fatwa is a response to proposal to criminalize perpetrators invoked by the draft bill of the substantive marriage law for the religious courts</p>
5.c. financing national development	<p>It is permissible if theNo internal funding sources are insufficient, and with</p>		

<p>with foreign loans</p>	<p>conditions:</p> <ul style="list-style-type: none"> <li>a. the foreign loan is utilized to achieve self-financing state later and to sustain the national development;</li> <li>b. the foreign loan is utilized effectively and efficiently for the interest of people at large. Hence, it is prohibited to embezzle it;</li> <li>c. the foreign loan is acquired through the financial scheme free from interest;</li> <li>d. if not possible, conventional financial scheme is allowed on the ground of necessity (dlarurat);</li> <li>e. the foreign loan does not contain inequitable terms and conditions;</li> <li>f. the government must seek for alternative sources beyond debt such as direct investment, issuing sharia bond, voluntary sector funds (zakat, <i>wakf</i>, and grant), and other sources which not contradict with Sharia</li> </ul>		
<p>5.d. managing1) ... natural resources 2)</p>	<p>(simply statement) No natural resources especially those affect the life of people at large [the decision mentioned the categories of natural resources cited in classical <i>fiqh</i>: water, fire, grassland, forest, and minerals] must be</p>		<p>New institute established by MUI concerning the improvement of natural resources.</p> <p>This sounds more like an admonition or recommendation than a fatwa because it lacks</p>

	<p>managed by the state and their benefits must be returned to the people in the form of basic need services.</p> <p>3) sustainable development must be adopted in exploring and exploiting natural resources.</p> <p>4) the use of environmental-friendly technology to achieve Eco-efficiency.</p> <p>5) law enforcement is necessary to avoid environmental damage and pollution.</p>		of normative point.
5.e. transferring embryo to surrogate womb	<p>1) It is prohibited (haram) if the transfer happens from an embryo generated from a husband's sperm and his wife's ovum to a surrogate womb.</p> <p>2) idem, if it happens from embryo generated from a husband's sperm and his wife's ovum to his other wife's surrogate womb.</p> <p>3) idem point 1, if the reason is the husband and wife do not want the pregnancy</p> <p>4) the legal status of a child born from point 1-3 situation is "child born outside wedlock", thus, the child is only have legal relationship to his/her mother.</p>		
5.f. alternative medicine	Alternative medicines are medical treatment	No	The central MUI will institute a task force to

		sought from other than medical practitioners (doctors or nurses). It is prohibited if the practices of alternative medicine contain <i>syirik</i> (association of God with others) and <i>sihir</i> (black magic). If free from both elements it is permissible. Medical treatment with prohibited things is unlawful.		further study criteria of <i>syirik</i> in medical treatment.
	5.g. critical problems in auditing halal products	<p>1) stunning the animals before slaughtering them is permissible (mubah) on the grounds of easing the process, especially on a big scale farm; yet, the MUI recommends use of this method as the last resort</p> <p>2) the use of human flesh for drugs and cosmetics is prohibited (haram); likewise, the use of human hair for food products.</p> <p>3) the use of microbes originating from a baby's stool, after several times of culturing process, is permissible for food processing</p> <p>4) the use of alcohol and ethanol is referred to under an existing MUI fatwa</p>	<p>1) No</p> <p>2) No, but the subject matter was already promulgated as a fatwa through the MUI National Meeting VI (Munas) No. 2/Munas VI/MUI/2000 concerning the use of human flesh, placenta, and human urines for drugs and cosmetics making;</p> <p>3) No</p> <p>4) There are already several fatwa on the subject matter</p>	<p>3) The FC-MUI, however, issued a fatwa No 1 Year 2010 concerning the Use of Microbe and Microbial Products in Food Products</p> <p>4) for example MUI's fatwa concerning the legal status of alcohol in beverages promulgated on October 1, 1993 but it is not numbered. MUI's Fatwa No 11 Year 2009 concerning the legal status of Alcohol</p>
6	Issues on legislation (Masail <i>Qanuniah</i> )	Recommendation on drafting bills, e.g. in bill of zakat law amendment:	N/A	The MUI always issues recommendations concerning zakat (administration) law in

		<p>1) change title from zakat administration law to zakat law</p> <p>2) BAZNAS as the coordinator of existing zakat agencies</p> <p>3) sanction for infringement not only imposed on zakat agencies and zakat evaders, but also upon the beneficiaries</p> <p>4) zakat should also become a tax credit</p> <p>5) amendment to zakat law should be followed</p>		<p>each of its national events: national meeting, national workshop, and <i>ijtima ulama</i>; either before the issuance of regulations related to the institution of zakat agencies (BAZIS), zakat law No. 38/1999 and after their issuance.</p> <p>The recommendations revolve around the issue: channeling zakat payments to zakat agencies instead of direct payments to beneficiaries; the state acting as the zakat collector; the obligation of zakat should be enforced with sanctions for the evaders; tax treatment for zakat payers.</p>
3 <sup>rd</sup> <i>Ijtima Ulama</i> , 2009, Padang Panjang, West Sumatera				
7	Issues of Nationalism ( <i>Masā'il Aṣāṣiyya Waṭāniyya</i> )			
	7.a. Inter-religious of relationship among people	Idem 4.a.	No	It is more like admonition than fatwa because it lacks of normative points.
	7.b. Role of religion in developing moral character	N/A	No	It is more like admonition than fatwa because it lacks of normative points.
	7.c. Implementation of Islam as mercy for universe	N/A	No	It is more like admonition than fatwa because it lacks of normative points.
	7.d. Voting	1) ... (simply a	No	Similar to every other

	rights in the general election	<p>statement)</p> <p>2) electing a leader in Islam is an obligation</p> <p>3) ... (simply a statement)</p> <p>4) It is an obligation to elect a leader whose character is as follows: a man of faith, honest, trustworthy, active and attentive, capable and fighting for the interests of the Islamic community</p> <p>5) to elect a leader who does not have the aforementioned characters or not give one's vote at all while there is candidate with the above characteristics is prohibited (haram)</p>		<p>election post after the fall of authoritarian New Order Regime, the MUI always issues an admonition encouraging Muslims to vote for candidates who will care about Muslims' interests in Indonesia.</p>
8	Issues of Contemporary <i>Fiqh</i> (Commission B-1)			
	8.a. Problems related to Wakf (Islamic trust)	<p>1) Changing the object of wakf is permissible on the ground to realize public benefits</p> <p>2) Changing cash wakf (<i>wakaf uang</i>) to commodity wakf, and vice versa, is permissible because of public benefit and necessity</p> <p>3) the object of wakf can be sold on the ground of need, and the proceeds of such sale must be used to buy other commodities as substitute wakf</p> <p>4) the implementation of point 1-4 can only be done after the permit of</p>		<p>A fatwa (without numbering) concerning the permissibility of Cash Wakf has been issued earlier by the FC-MUI on May 11, 2002.</p>

		<p>Minister of Religious Affairs and MUI's advice</p> <p>5) Trustees must understand their duty and responsibility, including understanding of investment.</p>		
	<p>8.b. Problems related to Zakat (`Amil, expenses incurred from zakat management, and Corporate Zakat)</p>	<p>1) `Amil (individual or No zakat agency appointed by or authorized by the government) is entitled to maximally 12.5% of zakat proceeds given its status as one of eight beneficiaries.</p> <p>2) `Amil is not allowed to ask for commission beyond its right above, and to receive any gift from zakat payers</p> <p>3) `Amil is not allowed to give any gift bought or made with zakat proceeds to zakat payers</p> <p>4) `Amil is not allowed to receive any gift from zakat payers in relation to its duty as zakat collectors</p> <p>5) direct or indirect expenses incurred from zakat distribution must be paid with the `Amil share of the zakat proceeds; if insufficient, it can be paid from other charity fund beyond zakat proceeds</p> <p>6) Corporations/companies, which fulfill terms and conditions of zakat payers, are obliged to pay zakat in their</p>		<p>As far as the problems related to `Amil is a concern, however, the FC MUI then issued a fatwa No. 8 Year 2011 concerning `Amil Zakat (Zakat Agency). The fatwa does not make any reference to the decision of 2009 <i>Ijtima Ulama</i> concerning zakat problems. Yet, the rulings are basically the same as the 2009 decision with different redaction. They are:</p> <ul style="list-style-type: none"> <li>- operational costs of an `Amil are basically provided by the government</li> <li>- in case of absence or lack of government funding, the operational costs may be taken from `Amil's share of zakat proceeds [yet, the fatwa does not mention 12.5% share]</li> <li>- `Amil who receive salary from the government or private NPO are not entitled to their share of zakat proceeds.</li> </ul>

		capacity as legal entities (shakhsiyah <i>i`tibariyah</i> ) and representative (wakil) of the shareholders		
	8.c. Legal status of smoking	1) the participants agree that there is a difference of opinion regarding the legal status of smoking: between disapproved (makruh) and prohibited (haram) 2) the participant agree that smoking prohibited if it is done in: public spaces, by children, by pregnant women	No	
9	Issues of Contemporary <i>Fiqh</i> (Commission B-2)			
	9.a. Vasectomy	Vasectomy is prohibited because the recanalization cannot guarantee that the person's fertility will return to normal	No This is because the FC MUI has issued a fatwa on the prohibition of vasectomy and tubectomy back in 1979	This decision further confirms the previous fatwa on vasectomy. The background of the decision was new developments in vasectomy recanalization.
	9.b. Yoga	1) The practice of Yoga which is pure manifestation of other religious ritual and spiritual is prohibited for Muslims 2) the proof of Sharia for that is <i>sad adh dhariah</i> (blocking means, in this regards from <i>syirik</i> or association of God with others) 3) Practice of Yoga which is simply a form of respiratory exercise is permissible (mubah)	No	The background of this decision is a fatwa on the prohibition of yoga issued by the fatwa committee of Kelantan, Malaysia

	9.c. Eye Bank and other Human Flesh	<p>1) cornea transplantation No is permissible on the ground of necessity</p> <p>2) organ transplantation is permissible based on his/her will</p> <p>3) donating one's cornea or organs during his/her life is prohibited</p> <p>4) point 2 is done voluntarily not commercially</p> <p>5) Eye Bank is permissible if the process (taking it from donor and transplanting it to beneficiary) accord with Sharia</p>		The FC-MUI has issued a fatwa on the permissibility to donate one's cornea based on his/her will
	9.d. Minor marriage	<p>1) basically Islam does not give a minimum age of marriage definitively; eligibility of marriage is marked by the age where one is capable to act and to receive rights</p> <p>2) minor marriage thus is valid as long as it fulfills the marriage terms and conditions; but it is prohibited if it inflicts harm upon the minor</p> <p>3) to realize the benefit of marriage; the minimum age of marriage is based on the standardized age outlined by the Marriage Law (19 years for men and 16 years for women)</p>		The background of this decision was the marriage of a 12 year old girl with a businessman in central Java
	9.e. Consuming Halal Food	<p>1) Halal food security is Muslims' right</p> <p>2) food products, medicines, and</p>	No	The FC-MUI has issued several fatwas related to food and its processing and whether

		<p>cosmetics which cannot be verified as halal must be avoided until their status clear</p> <p>3) to guarantee that consumer products used by Muslims are halal, producers are called to immediately certify their products</p> <p>4) halal certification must be carried out by the authoritative institute, viz. LP POM MUI; producers who gained the halal certificate have to maintain the halal status by implementing the Halal Warranty System of LP POM MUI</p> <p>5) the government must supervise the halal status of consumer products</p>		<p>this complies with sharia, as well as chemical ingredients used in food, medicines, and cosmetics.</p> <p>This decision is more concerned with making the LP-POM MUI the authority in halal food auditing and certification.</p>
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ANNEX II Corporate Zakat Payment in Dompot Dhuafa 2000 - 2010

No	ID	Name of Companies	00	01	02	03	04	05	06	07	08	09	10	Note
1	03DDZ	KARYAWAN REPUBLIKA	v	x	x	x	x	x	x	x	x	x	x	ZAKAT PAID BY EMPLOYEES RECEIVING ZAKAT CHANNELLING FROM A ZAKAT AGENCY
2	03FUM	BAZIS TUGU MANDIRI	v	x	x	x	x	x	x	x	x	x	x	
3	03KYD	PT. MITSUI MARINE	v	x	x	x	x	x	x	x	x	x	x	
4	03KYL	PT. ANUGRAH SEJATI	v	v	v	x	v	v	x	x	x	x	x	ID CONFLICT: 03RLV PT. ANUGERAH SEJATI?
5	03KYP	PT. ADHIREKSA INTICOR PT. DWISATU MUSTIKA BUMI (DMB)	v	x	v	x	x	x	x	x	x	x	x	
6	03KZH	PT. GLOBAL MITRA	v	x	v	x	x	x	x	x	x	x	x	
7	03KZQ		v	x	x	x	x	x	x	x	x	x	x	
8	03KZT	PT. GRID RIKA SASMATA	v	v	v	x	x	x	x	x	x	x	x	ID CONFLICT: 03KXX PT GRID REKSA SATMATA?
9	03LBH	PT. UFAR	v	x	x	x	x	v	x	x	x	x	v	
10	03LBX	PT. VISI BERSAMA-SERANTAU	v	x	x	x	x	x	x	x	x	x	x	
11	03BOJ	IKATAN MUSLIM ABN AMRO	x	v	x	x	x	x	x	x	x	x	x	
12	03CQQ	JAMAAH MTXL	x	v	x	x	x	x	x	x	x	x	x	ZAKAT PAID BY MUSLIM EMPLOYEES
13	03CZE	KOPEGTEL RAJAWALI	x	v	x	x	x	x	x	x	x	x	x	ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
14	03EMS	PT. GLOMEBI SETIA (AC GLOBAL) BAAROQA FILM (HARYO A. SOENHARJO)	x	v	v	v	v	v	v	v	v	v	v	
15	03FQJ	CV. ORISOL INDONESIA	x	v	v	v	v	v	x	x	x	x	x	
16	03GHO	MUSHOLLA AL-MUHAJIRIN (GRAHA UNILEVER)	x	v	x	x	x	x	x	x	x	x	x	
17	03IML	MASJID NURUL HAQ PT. ERASAKA MITRA/PRATA	x	v	x	x	x	x	x	x	x	x	x	ZAKAT COLLECTED IN THE MOSQUE
18	03JBG	MANDIRI PT.SUCOFINDO	x	v	x	x	x	x	x	x	x	x	x	ZAKAT COLLECTED IN THE MOSQUE
19	03KXU	PT. TREND INTERNUSA BUANA	x	v	v	v	v	v	v	v	v	x	x	
20	03LAZ	PT. BITAMA KRIDA INDONESIA	x	v	x	x	x	x	x	x	x	x	x	
21	03LBE	UD. SRIWEDARI	x	v	x	x	x	x	x	x	x	x	x	
22	03LBM	YAYASAN PURNA NINDYA	x	v	x	v	x	x	x	x	x	x	x	
23	03PKQ	SEJAHTERA	x	v	x	x	x	x	x	x	x	x	x	
24	03QAF		x	v	x	x	x	x	x	x	x	x	x	

25	03DEL	KANAKA PURADIREJA & REKAN KARY. MUSLIM PT ASTRA AGRO LESTARI TBK	x	x	v	v	v	v	v	x	x	x	x	
26	03DEP	PT. ASURANSI ASTRA-BUANA	x	x	v	x	x	x	x	x	x	x	x	ZAKAT PAID BY MUSLIM EMPLOYEES
27	03DER	CV. MULIA ELEKTRIKA	x	x	v	v	v	x	v	v	v	v	v	
28	03GHM	MAJLIS TAKLIM PENG MUSLIMAH LAND MARK	x	x	v	x	x	x	x	x	x	x	x	
29	03IVB		x	x	v	x	x	x	x	x	x	x	x	ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
30	03IVF	MAJLIS TAKLIM NURUL HIKMAH	x	x	v	x	x	x	x	x	x	x	x	ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION ID CONFLICT: 03KZT PT. GRID RIKA SASMATA?
31	03KXX	PT. GRID REKSA SATMATA	x	x	v	x	v	x	x	x	x	x	x	
32	03KYM	PT. RIZQITA PRIMA BUSANA	x	x	v	x	x	x	x	x	x	x	x	
33	03KYN	PT. ADHI-KARYA	x	x	v	x	x	x	x	x	x	x	x	
34	03LAM	PT. MULTI EKA KARMA	x	x	v	x	v	v	x	v	v	x	x	
35	03PAR	PT. TOKO BUKU WALISONGO	x	x	v	x	v	x	x	x	x	x	v	
36	04GP	PT. ICTINDO MITRA SOLUSI JAMAAH MAJELIS TAKLIM IMTAQ BPPN	x	x	v	x	x	x	x	v	v	v	v	ID CONFLICT: 2007 PT. SUMBER DAYA KOMTELINDO
37	03CPV		x	x	x	v	x	x	x	x	x	x	x	ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
38	03CPZ	JAMAAH MASJID AL IMAN	x	x	x	v	x	x	x	x	x	x	x	ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
39	03FLO	ALUMNI SMP PERGURUAN CIKINI	x	x	x	v	x	x	x	x	x	x	x	ZAKAT PAID BY MEMBERS OF AN ASSOCIATION
40	03FST	BANK SYARIAH WAKALUMI BDI-CHEVRON GEOTHERMAL INDONESIA	x	x	x	v	x	x	x	x	x	x	x	
41	03FUP	KARYAWAN KONDUR PETROLEUM	x	x	x	v	x	x	x	x	v	v	v	
42	03FUR	DARA (PT. JARING LINTAS USAHA)	x	x	x	v	x	v	x	x	x	x	x	ZAKAT PAID BY MUSLIM EMPLOYEES
43	03HJH	MUSHOLLAH NURUL ROZAK	x	x	x	v	v	x	x	x	x	x	x	
44	03IMI		x	x	x	v	x	x	x	x	x	x	x	ZAKAT COLLECTED IN THE MOSQUE ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
45	03IUT	MAJELIS TA`LIM QUROTUL `AIN MASJID NURUL IMAN	x	x	x	v	v	x	x	x	x	x	v	
46	03JBH	DEPARTEMEN PERTANIAN	x	x	x	v	x	x	x	x	x	x	x	ZAKAT COLLECTED IN THE MOSQUE
47	03KXF	PT. AHAD NET INTERNASIONAL	x	x	x	v	x	x	x	x	x	x	x	
48	03KXM	PT. CARGO LINTAS SAMUDRA PT. CIRCLEOM NUSANTARA INDONESIA	x	x	x	v	x	x	x	x	x	x	x	
49	03KXO		x	x	x	v	x	x	x	x	x	x	x	

50	03KZM	PT. FORTUNE INDONESIA	x	x	x	v	x	x	x	x	x	x	x	
51	03LBQ	PT. GHITA INDOTRANS SENTOSA	x	x	x	v	x	x	x	x	v	x	v	ID CONFLICT: PT. SENATOR?
52	03MGU	RM. AYAM BAKAR WONG SOLO	x	x	x	v	x	x	v	x	x	x	x	
53	03QTG	PT. FARABI KITA MUSIKA	x	x	x	v	x	x	x	x	x	x	x	
54	03QTN	KARYAWAN ERICSON INDONESIA	x	x	x	v	x	x	x	x	x	x	x	
55	03QUB	KOPERASI KOPDA KARYA	x	x	x	v	x	x	x	x	x	x	x	ZAKAT PAID BY MUSLIM EMPLOYEES
56	03QYS	CV. PANCA KARYA PRATAMA ALUMNI TEKNO EKONOMI ITB ANG. 99 PT. BSS	x	x	x	v	v	x	x	x	x	x	x	ZAKAT PAID BY MEMBERS OF AN ASSOCIATION
57	03RFM		x	x	x	v	x	x	x	x	x	x	x	
58	03RLS		x	x	x	v	x	x	x	x	x	x	x	
59	03RLV	PT. ANUGERAH SEJATI	x	x	x	v	v	v	v	x	x	x	x	ID CONFLICT: 03KYL PT. ANUGRAH SEJATI? ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
60	03ROZ	MAJELIS TA`LIM TRANS TV	x	x	x	v	x	x	x	x	x	x	x	
61	03RZR	PT. INFINITI MEDIA PROMOSINDO PT. CITRA-DUTA-MITRA	x	x	x	v	x	x	x	x	x	x	x	
62	03CZC	PELITA/KOMSENI RUDI ANTORO	x	x	x	x	v	x	x	x	x	x	x	
63	03MKM		x	x	x	x	v	x	x	x	x	x	x	INDIVIDUAL? ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
64	03RLI	PENGAJIAN CHAIRUNNISA	x	x	x	x	v	x	x	x	x	x	x	
65	04AAH	CV. SANGKIL	x	x	x	x	v	v	x	x	x	x	x	
66	04ACD	PT. ENER GASINDO HEKSA KARYA	x	x	x	x	v	x	x	x	x	v	v	
67	04AJK	PT. ARKADE ADHI KREASI	x	x	x	x	v	x	x	x	v	x	v	
68	04AQO	ARIFIN LAMBAGA	x	x	x	x	v	v	v	v	x	v	x	ID CONFLICT: 2009 04AQO PT. MUTUAGUNG LESTARI?
69	04BBL	PT. INDOSUCI BARAKA PERDANA PT. SARI ASIH (MARSUDI & SITI ROHAYAH)	x	x	x	x	v	x	x	x	x	x	x	
70	04BFX	PT. TULADA KONSULA	x	x	x	x	v	v	x	v	x	v	v	
71	04BGT	PT. CIPTA TANTRAMA	x	x	x	x	v	x	x	x	v	x	v	
72	04BMB	AL FIRA JATIWARINGIN	x	x	x	x	v	x	x	x	v	x	x	
73	04BRU	PT. MAENA EXPRESS	x	x	x	x	v	x	x	x	x	x	x	
74	04EZ	PT. INTERMODA TRANS	x	x	x	x	v	x	x	x	x	x	x	
75	04FA		x	x	x	x	v	x	v	x	x	x	x	
76	04KU	PT. PRIMA SARANA EKSPRES	x	x	x	x	v	x	x	x	x	x	x	ID CONFLICT: 05ASY PT. PRIMA SARANA EXPRESS?
77	04QL	PT. PACIFIC TIMUR ENERGINDO	x	x	x	x	v	x	x	x	x	x	x	

78	04TU	PT. NUSANTARA CARD SEMESTA (NCS)	x	x	x	x	v	v	v	v	v	v	v	
79	04ADM	PT. INDONESIA POWER	x	x	x	x	x	v	x	x	x	x	x	
80	04CGG	TIP TOP CAB RAWAMANGUN PELANGGAN TIP TOP CABANG	x	x	x	x	x	v	x	x	x	x	x	
81	04CGH	PONDOK BAMBUI PELANGGAN TIP TOP CABANG DEPOK	x	x	x	x	x	v	x	x	x	x	x	ZAKAT PAID BY CUSTOMERS
82	04CGI	BIRO PSIKOLOGI PERSONA PT. TRANSFERA	x	x	x	x	x	v	x	x	x	x	x	ZAKAT PAID BY CUSTOMERS
83	05ALV	PELANGGAN TIP TOP CABANG	x	x	x	x	x	v	x	x	x	x	x	
84	05A0X	CIPUTAT	x	x	x	x	x	v	x	x	x	x	x	
85	05APJ		x	x	x	x	x	v	x	x	x	x	x	ZAKAT PAID BY CUSTOMERS
86	05ASY	PT. PRIMA SARANA EXPRESS	x	x	x	x	x	v	x	x	x	x	x	ID CONFLICT: 04KU PT. PRIMA SARANA EKSPRESS?
87	05AUS	KARYAWAN CMS TRAVEL SERVICES	x	x	x	x	x	v	x	x	x	x	x	ZAKAT PAID BY MUSLIM EMPLOYEES
88	05AJY	RESTO MINANG TARAZZO'S	x	x	x	x	x	v	x	x	x	x	x	
89	05BEC	IBU-IBU TK AL AZHAR BINTARO PELANGGAN TIP TOP CAB	x	x	x	x	x	v	x	x	x	x	x	ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
90	05BPI	CIMONE	x	x	x	x	x	v	x	x	x	x	x	ZAKAT PAID BY CUSTOMERS
91	05BYI	PT. HANDARU ADHIPUTRA	x	x	x	x	x	v	x	x	x	x	v	
92	05CBX	PT. ARIBIMO WIBAWA SAKTI	x	x	x	x	x	v	x	v	x	x	x	
93	05CFG	PT. INTRA ASIA/WQA	x	x	x	x	x	v	x	v	x	x	x	
94	05CGQ	BMT NUR ARBAIN	x	x	x	x	x	v	x	x	x	x	x	
95	05CGR	MUSHOLLA DARUL MUTA ALIMIN	x	x	x	x	x	v	x	x	x	x	x	
96	05CLB	PT. WAHANA MITRA UTAMA	x	x	x	x	x	v	v	x	x	x	x	
97	05CLD	PT. EMDECA	x	x	x	x	x	v	x	x	x	x	x	ZAKAT COLLECTED IN THE MOSQUE
		PT. EURO MANAGEMENT INDONESIA												
		PT. WISMA KOSGORO												
98	05GG	AIR MINUM ISI ULANG "AQUARIUS"												
99	03LBK	PT. ASURANSI ADIRA DINAMIKA	x	x	x	x	x	v	x	x	x	x	x	
		PT. DELPRINDO	x	x	x	x	x	v	v	v	v	v	v	
100	05CVE	PT. SAPTA ROMLI PROPERTINDO	x	x	x	x	x	v	x	x	x	x	x	
101	06ACK	PT. HESMINKO NUSANTARA	x	x	x	x	x	v	v	v	v	v	v	
102	06AEL	PT. RANU SHAKTI EXPORTS	x	x	x	x	x	v	x	x	x	x	x	
103	06AJA		x	x	x	x	x	v	x	v	x	x	x	
104	06CUS		x	x	x	x	x	v	x	x	x	x	x	
105	06CZI		x	x	x	x	x	v	x	x	x	x	x	
														ID CONFLICT: 06ERP HESMINCO?



134	07IWI	PT. BESTARI BUANA MURNI	x	x	x	x	x	x	x	v	x	x	x	2009 09ADTI PT. BESTARI BUANA?
135	07JBI	PT. LAUTAN ANUGRAH KHALIK PT. UNGGUL DAWENANG SENTOSA	x	x	x	x	x	x	x	v	x	x	x	
136	07JNP	PT. UNGGARAN PERKASA TEHNIK	x	x	x	x	x	x	x	v	x	x	x	
137	07KAA		x	x	x	x	x	x	x	v	v	x	x	
138	07MEQ	PT. SINERGI PANCA KREASI	x	x	x	x	x	x	x	v	x	v	x	2009 07HLU PT. SINERGI PANCA KREASI?
139	03GHL	CV. ANUGRAH RAYA	x	x	x	x	x	x	x	v	v	v	v	
140	03KYH	PT. REKAYASA INDUSTRI	x	x	x	x	x	x	x	v	v	v	v	
141	03NTB	PT. REPUBLIKA	x	x	x	x	x	x	x	v	x	x	v	
142	04GP	PT. SUMBER DAYA KOMTELINDO	x	x	v	x	x	x	x	v	v	v	v	ID CONFLICT: 04GP PT. ICTINDO MITRA SOLUSI? ID CONFLICT: 2008 PT. MEDCO INTIDINAMIKA?
143	05DJ	MEDCO INTI DINA KARYAWAN PT. SATATA NEKATAMA	x	x	x	x	x	x	x	v	x	v	x	
144	07AAKZ	PT. PRIMA CAHAYA MANDIRI	x	x	x	x	x	x	x	v	v	v	v	ZAKAT PAID BY MUSLIM EMPLOYEES
145	07AALB	PT. SENTRA TEKNIKA PRIMA	x	x	x	x	x	x	x	v	x	x	x	
146	07MNX	PT. DAYA CITRA	x	x	x	x	x	x	x	v	x	x	x	
147	08AA	CALTEX PACIFIC IND	x	x	x	x	x	x	x	v	x	x	x	
148	08CWD		x	x	x	x	x	x	x	v	v	x	x	
149	08DLQ	PT. MITRA GUNA	x	x	x	x	x	x	x	v	v	v	v	ID CONFLICT: 2008 PT MITRA GUNA ADIKARYA?
150	08LP	TRIM SYARIAH BERIM TRF	x	x	x	x	x	x	x	v	x	x	x	
151		PT. PRIMA C M	x	x	x	x	x	x	x	v	x	x	x	
152		PT. LETTERIX MAJU BERSAMA	x	x	x	x	x	x	x	v	v	x	x	ID?
153		KBRI YANGOON MYANMAR	x	x	x	x	x	x	x	v	x	x	x	ID?
154		PT. GEOSINDO BOGOR	x	x	x	x	x	x	x	v	x	x	x	ID?
155		PT. MI	x	x	x	x	x	x	x	v	x	x	x	ID?
156		PT. VISION03	x	x	x	x	x	x	x	v	x	x	x	ID?
														ID? ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
157	03CQJ	JAMAAH MASJID BAITURRAHMAN	x	x	x	x	x	x	x	x	v	x	x	ZAKAT PAID BY MUSLIM EMPLOYEES
158	03DDV	KARY/I PT. NCS	x	x	x	x	x	x	x	x	v	v	x	
159	03EQB	A. MOEHAMMAD & ASSOCIATES	x	x	x	x	x	x	x	x	v	x	x	
160	07JIQ	CUSTOMER TREND SHOP BEKASI	x	x	x	x	x	x	x	x	v	v	v	
161	08AAP	PT. INFIGO KOMUNIKA UTAMA	x	x	x	x	x	x	x	x	v	v	x	ZAKAT PAID BY CUSTOMERS
162	08AEJ	PT. CITRA CATRA PERSADA	x	x	x	x	x	x	x	x	v	x	x	

163	08ALF	KARYAWAN/TI PT. AETRA	x	x	x	x	x	x	x	x	v	v	v	ZAKAT PAID BY MUSLIM EMPLOYEES
164	08CLL	FITNESS EARTH LIVING	x	x	x	x	x	x	x	x	v	x	x	
165	08CLM	SPA EARTH LIVING	x	x	x	x	x	x	x	x	v	x	x	
166	08EJY	PT. PATRA DINAMIKA	x	x	x	x	x	x	x	x	v	x	x	
167	08EOR	PT. DELTA SINDO DWIDAYA	x	x	x	x	x	x	x	x	v	v	x	
168	08EXP	PT. CHEMTRADE INDONESIA	x	x	x	x	x	x	x	x	v	x	x	
169	08FGL	PT. CICERO INDONESIA	x	x	x	x	x	x	x	x	v	v	x	
170	08FIN	PT. PRAVIGA LINDRA MATA BUMI	x	x	x	x	x	x	x	x	v	x	x	
171	08FNP	PT. MALOKA MITRA ABADI	x	x	x	x	x	x	x	x	v	x	x	
172	08FOR	PT. ILHAM TREDIA INDUSTRI	x	x	x	x	x	x	x	x	v	v	x	
173	08GFK	PT. ALAM JAYA USAHA	x	x	x	x	x	x	x	x	v	v	v	
174	08GQU	CARREFOUR ITC DEPOK	x	x	x	x	x	x	x	x	v	x	x	
175	08IWM	HARIAN EKONOMI NERACA	x	x	x	x	x	x	x	x	v	x	x	
176	08IZ	PT. WASTU GATRA ARTISTIKA KARYAWAN PT. PGN-DIVISI AKUNTANSI	x	x	x	x	x	x	x	x	v	x	x	
		PT. THAMES PAM JAYA/PT. AETRA												
177	08JMI	PT. CITRA-BUSANA INDONESIA (RANTI) PT. PRIMA CITRA KARSA	x	x	x	x	x	x	x	x	v	v	v	ZAKAT PAID BY MUSLIM EMPLOYEES
178	08JW	PT. NIROMUKTI KENCANA TEKNIKA	x	x	x	x	x	x	x	x	v	v	v	
179	08LG	PT. RADIO PESONA INDAH FM BR KEBUMEN DARAT	x	x	x	x	x	x	x	x	v	v	v	
180	08TZ	PT. ANDALAN FLUID SISTEM PT. SARASWATI INDRA TRIANA	x	x	x	x	x	x	x	x	v	x	x	
181		PURNA PT. SPRING SURYA NURPATRIA	x	x	x	x	x	x	x	x	v	x	x	ID?
182		NU BSMI	x	x	x	x	x	x	x	x	v	x	x	ID?
183		PT. MULTI LINTAS EXP UNLIMITED CIPTA SI	x	x	x	x	x	x	x	x	v	x	x	ID?
184		PT. CBI CV. MEUTIA CIPTA SARANA PT. GROWIT SEJAHTERA	x	x	x	x	x	x	x	x	v	x	x	ID?
185			x	x	x	x	x	x	x	x	v	x	x	ID?
186			x	x	x	x	x	x	x	x	v	x	x	ID? Bank Syariah Mandiri Indonesia?
187			x	x	x	x	x	x	x	x	v	x	x	ID?
188			x	x	x	x	x	x	x	x	v	x	x	ID?
189			x	x	x	x	x	x	x	x	v	v	x	ID CONFLICT: CBI?
190	08LG		x	x	x	x	x	x	x	x	v	x	v	ID?
191			x	x	x	x	x	x	x	x	v	x	x	ID = 03F?
	03F													



224	02-09DY	CC DESIGN	x	x	x	x	x	x	x	x	x	v	v	
225	05TH	BINTAL ISLAM DIRJEN ANGGARAN	x	x	x	x	x	x	x	x	x	v	x	ZAKAT PAID BY MUSLIM EMPLOYEES
226	07HLU	PT. SINERGI PANCA KREASI	x	x	x	x	x	x	x	v	x	v	x	ID CONFLICT: 2007 07MEQ PT. SINERGI
227	07KER	PT. MONAKO MANUNGGAL JAMA'AH IBADAH SHOLAT JUMAT	x	x	x	x	x	x	x	x	x	v	x	PANCA KREASI
228	08AMC	INDOFOOD TOWER DONASI PELANGGAN RANTI	x	x	x	x	x	x	x	x	x	v	v	ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
229	08TE	PT. GRAKALA	x	x	x	x	x	x	x	x	x	v	x	ZAKAT PAID BY CUSTOMERS
230	09AAAT	DJENE BATIK	x	x	x	x	x	x	x	x	x	v	x	ID?
231	09FCV	PT. KAROMA BUMI-WASESA	x	x	x	x	x	x	x	x	x	v	x	
232	09HM	BADAN DAKWAH ISLAM	x	x	x	x	x	x	x	x	x	v	x	
233	09VWD	ARISAN PENSIUNAN PT. PUSRI	x	x	x	x	x	x	x	x	x	v	x	
234	09XEO	PT. MAP RESOURCES INDONESIA	x	x	x	x	x	x	x	x	x	v	x	
235	09XFI	PT. NOKIA SIEMENS NETWORKS	x	x	x	x	x	x	x	x	x	v	x	
236	09XJD	PT. DUTA MEDIA SEJAHTERA MAKMUR	x	x	x	x	x	x	x	x	x	v	x	
		PT. INVIGO KOMUNIKA UTAMA SEKOLAH ISLAM TERPADU AL-												
237	09XKN	MUFTI SD ISLAM DARUNNAJAH	x	x	x	x	x	x	x	x	x	v	x	
238	09YRH	PT. MARUTI UNGGUL PT. DMM ???	x	x	x	x	x	x	x	x	x	v	x	
239	09ZEM	PT. WIJAYA PERDANA	x	x	x	x	x	x	x	x	x	v	x	
240	09ZHS	???	x	x	x	x	x	x	x	x	x	v	x	
241	09ZQH	???	x	x	x	x	x	x	x	x	x	v	x	
242		???	x	x	x	x	x	x	x	x	x	v	x	
243		PT. SAMPOERNA	x	x	x	x	x	x	x	x	x	v	x	ID? DMM?
244	010BCU	TELEKOMUNIKASI INDONESIA	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
245	0100H	PUSAKA TRADISI IBU	x	x	x	x	x	x	x	x	x	v	x	
246	03AQR 03IMO	??? PT. SARANA LINTAS CARAKA	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME? COMPANY NAME?
247	03KYE		x	x	x	x	x	x	x	x	x	v	v	
248	03KYG		x	x	x	x	x	x	x	x	x	v	v	
249	03KYJ		x	x	x	x	x	x	x	x	x	v	x	
250	04AB		x	x	x	x	x	x	x	x	x	v	v	COMPANY NAME?
251	04AQO	PT. MUTUAGUNG LESTARI	x	x	x	x	x	x	x	x	x	v	x	ID CONFLICT: 04AQO ARIFIN
252	05ATR	PT. ALFA KREASITAMA	x	x	x	x	x	x	x	x	x	v	v	LAMBAGA?
253	05BJ	???	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?

254	05FF	PT. INTRALAB EKATAMA BOGOR	x	x	x	x	x	x	x	x	x	v	v	
255	07NU	???	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
		MAJELIS TALIM PEMBINAAN												ZAKAT PAID BY CONGREGATION OF
		PENDIDIKAN												ISLAMIC RECITATION
256	07PKK	???	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
257	07PO	PT. ASKRIDA SYARIAH	x	x	x	x	x	x	x	x	x	v	x	
258	07TSI	???	x	x	x	x	x	x	x	x	x	v	v	
259	08AGC	???	x	x	x	x	x	x	x	x	x	v	x	
260	08DUQ	???	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
261	08TE	PT. SENATAMA	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
262	08XG	???	x	x	x	x	x	x	x	x	x	v	v	COMPANY NAME?
263	09ACTJ	PT. ANDIARTA-DEWATA	x	x	x	x	x	x	x	x	x	v	x	
264	09ADKL	PT. JAMSOSTEK CAB BEKASI	x	x	x	x	x	x	x	x	x	v	x	
265	09ADSI	PT. MITRA SOLUSI DINA	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
266	09ADTH		x	x	x	x	x	x	x	x	x	v	x	
267	09ADTI	PT. BESTARI BUANA	x	x	x	x	x	x	x	x	x	v	x	ID CONFLICT: 2007 07IWI PT. BESTARI
268	09IJB	???	x	x	x	x	x	x	x	x	x	v	x	BUANA MURNI?
269	09KDB	???	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
270	09KDQ	???	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
271	09KEL	SALON GEULIS CIBUBUR	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
272	09NCM	???	x	x	x	x	x	x	x	x	x	v	x	
273	09OPC	PT. OIL TRACORINDO	x	x	x	x	x	x	x	x	x	v	v	
274	09PLZ	???	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
275	09QCS	PT. PERMODALAN BMT VENTURA	x	x	x	x	x	x	x	x	x	v	v	
276	09TFG	PT. SEMBERANI PERSADA OIL	x	x	x	x	x	x	x	x	x	v	v	COMPANY NAME?
277	09VHR	FOREMOST-MARITIME PTE. LTD	x	x	x	x	x	x	x	x	x	v	x	
278	09VIG	PRIMASOURCE ASIA PRP	x	x	x	x	x	x	x	x	x	v	x	
279	09YAZ	???	x	x	x	x	x	x	x	x	x	v	x	
280		PERMATA SYARIAH PD INDAH	x	x	x	x	x	x	x	x	x	v	x	
281		PT. NOBI	x	x	x	x	x	x	x	x	x	v	v	
282		PT. SOLUSI	x	x	x	x	x	x	x	x	x	v	x	
283		PT. QUAP TOTAL SERVI	x	x	x	x	x	x	x	x	x	v	x	COMPANY NAME?
		YAYASAN BINTANG TIARA												ID?
		SEJAHTERA												ID?
		PT. MIZAN DIAN SEMESTA												ID?
														ID?
														ID CONFLICT: 010AMQ KARY
														REFCONIND?
284	010AMQ		x	x	x	x	x	x	x	x	x	x	v	
285	010CDS		x	x	x	x	x	x	x	x	x	x	v	

286	010DMW	PT. ASPIRASI INDONESIA RESEARCH INSTITUTE	x	x	x	x	x	x	x	x	x	x	v	
287	010EN	CASTROL INDONESIA	x	x	x	x	x	x	x	x	x	x	v	
288	010OJ	PERTAMINA UBEP LIMAU MAJELIS TA' LIM ULUL ALBAB REKIN	x	x	x	x	x	x	x	x	x	x	v	
289	010QB	CV. CIPTA INSAN MANDIRI	x	x	x	x	x	x	x	x	x	x	v	ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
290	010WL	MAJELIS TA' LIM-REKAYASA INDUSTRI	x	x	x	x	x	x	x	x	x	x	v	
291	06IUI	PT. WASECO TIRTA												
292	090OI	PT. MORA ADVERTISING CONTENTS	x	x	x	x	x	x	x	x	x	x	v	ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
		SARANA PRIMA TELEMATIKA PT. ASURANSI JASINDO TAKAFUL												
293	010ABK		x	x	x	x	x	x	x	x	x	x	v	
294	010 ACQ		x	x	x	x	x	x	x	x	x	x	v	
295			x	x	x	x	x	x	x	x	x	x	v	ID? ID CONFLICT: 010AMQ YAYASAN BINTANG TIARA SEJAHTERA ID? GRSYN?
296	010AMQ	KARY REFCONIND	x	x	x	x	x	x	x	x	x	x	v	
297		GRSYN KNTR-PENGACARA PROF. OEMARD SENO ADJI SH	x	x	x	x	x	x	x	x	x	x	v	
298		CURMIT TEKNOLOGI INDONESIA	x	x	x	x	x	x	x	x	x	x	v	ID?
299		PT. MAS LOGISTICS	x	x	x	x	x	x	x	x	x	x	v	ID?
300		PPAKP HUKUM HAKIM DAN REKAN	x	x	x	x	x	x	x	x	x	x	v	ID?
301		KARYAWAN SMART TELECOM	x	x	x	x	x	x	x	x	x	x	v	ID?
302		JO SONY SUGEMA COLLEGE	x	x	x	x	x	x	x	x	x	x	v	ZAKAT PAID BY MUSLIM EMPLOYEES
303		ASS SINARMAS SY	x	x	x	x	x	x	x	x	x	x	v	ID?
304		PT. INDAH BINA PERTIWI	x	x	x	x	x	x	x	x	x	x	v	ID?
305		PT. TRIBUWAN	x	x	x	x	x	x	x	x	x	x	v	ID?
306	011F	PT. DAYA CONSUMER GOODS (DD WATERS)	x	x	x	x	x	x	x	x	x	x	v	ID?
		PT. HALUAN UTAMA MAJU GABUNGAN KELOMPOK PENGAJIAN PD INDAH CV. HERBAL INSANI	x	x	x	x	x	x	x	x	x	x	v	ID? ID?
307		YARSI	x	x	x	x	x	x	x	x	x	x	v	ID? ZAKAT PAID BY CONGREGATION OF ISLAMIC RECITATION
308		PT. PILAR IDEATAMA EXPO PT. BAJA KENCANA MANDIRI	x	x	x	x	x	x	x	x	x	x	v	ID?
309			x	x	x	x	x	x	x	x	x	x	v	ID?
310			x	x	x	x	x	x	x	x	x	x	v	ID?
311			x	x	x	x	x	x	x	x	x	x	v	ID?
312			x	x	x	x	x	x	x	x	x	x	v	ID?
313			x	x	x	x	x	x	x	x	x	x	v	

314	ADONARA BAKTI B	x	x	x	x	x	x	x	x	x	x	x	v	ID? COMPANY NAME?
315	BANK SYARIAH MEGA INDONESIA	x	x	x	x	x	x	x	x	x	x	x	v	ID?

ANNEX III Corporate Zakat Payment in BAZNAS 2000-2010

No	Name of Companies	Address	00	01	02	03	04	05	06	07	08	09	10	Note
1	BNI MULTIFINANCE	Jakarta Pusat						v	?	?	?	?	?	NO INFORMATION: CONTINUATION OF PAYMENT?
2	PT. TUNAS RIZKI SEMESTA	Jakarta Selatan						v	?	?	?	?	?	IDEM??
3	PT. VISI MEDIA VISUALINDO	Jakarta Selatan						v	?	?	?	?	?	IDEM??
4	BNI	?						v	?	?	?	?	?	IDEM??
5	PT. PLN	?						v	?	?	?	?	?	IDEM??
6	PT. MILA SARI BOGA	Jakarta						v	?	?	?	?	?	IDEM??
7	PT. ARTHALOKA INDONESIA	Jakarta Pusat						v	?	?	?	?	?	IDEM??
8	PT. PRAKARYA ENGINEERING & SERVICE	Jakarta Pusat						v	?	?	?	?	?	IDEM??
9	RAMAKO MAGIC 106.15 FM	Jakarta						v	?	?	?	?	?	IDEM??
10	AIR PUTIH PRODACTION	Jakarta Selatan						v	?	?	?	?	?	IDEM??
11	PT. NOEL-RC	Jakarta						v	?	?	?	?	?	IDEM??
12	PAPA RON'S PIZZA	Jakarta Pusat						v	?	?	?	?	?	IDEM??
13	BANK MANDIRI	Jakarta						v	?	?	?	?	?	IDEM??
14	SENTRA MEDIA PARIWARA	Jakarta Timur						v	?	?	?	?	?	IDEM??
15	PT. ARSHEY	Jakarta Pusat						v	?	?	?	?	?	IDEM??
16	PT. TIP TOP	Jakarta Selatan						v	?	?	?	?	?	IDEM??
17	KLIK SILATUN KARIMAH	Jakarta Pusat						v	?	?	?	?	?	IDEM??
18	PT. PP (PERSERO)	Bandung						v	?	?	?	?	?	IDEM??
19	PT. KREASI RANCANG IMAJI							v	?	?	?	?	?	IDEM??
20	BANK SYARIAH MANDIRI							v	?	?	?	?	?	IDEM??
21	BANK JABAR							v	?	?	?	?	?	IDEM??

22	BUKOPIN / BAITUL MAAL BUKOPIN	Jakarta Pusat							v	?	?	?	?	?	IDEM??
23	PT. BANK BRI	Jakarta Selatan							v	?	?	?	?	?	IDEM??
24	BANK MEGA SYARIAH INDONESIA	Jakarta Selatan							v	?	?	?	?	?	IDEM??
25	BANK NIAGA	Jakarta Selatan							v	?	?	?	?	?	IDEM??
26	BANK BII SYARIAH	Tangerang Pusat							v	?	?	?	?	?	IDEM??
27	PT. BANK PERMATA SYARIAH	Jakarta Selatan							v	?	?	?	?	?	IDEM??
28	PT. BANK DANAMON SYARIAH	Jakarta Pusat							v	?	?	?	?	?	IDEM??
29	PT. BANK NEGARA INDONESIA SYARIAH KAMPUS-STIE STMIK JAYAKARTA	Jakarta Pusat Bekasi							v	?	?	?	?	?	IDEM??
30	PT. NAFINDO MITRA SEMESTA	Jakarta								v	?	?	?	?	NO INFORMATION: CONTINUATION OF PAYMENT?
31	USAHA JAYA FICO OPR	Jakarta							v	?	?	?	?	?	IDEM??
32	WISMA MULIA	Jakarta Selatan							v	?	?	?	?	?	IDEM??
33		Jakarta Selatan							v	?	?	?	?	?	IDEM??
34	PT. GENDHIS	Jakarta Selatan							v	?	?	?	?	?	IDEM??
35	PT. PUNDI ARTHA SETIA	Jakarta Selatan							v	?	?	?	?	?	IDEM??
36	PT. BANGUN SEGARA	Jakarta Pusat							v	?	?	?	?	?	IDEM??
37	PT. FORTUNE PR PT. (PERSERO) BIRO KLASIFIKASI INDONESIA	Jakarta Selatan							v	?	?	?	?	?	IDEM??
38		Jakarta Pusat							v	?	?	?	?	?	IDEM??
39	PT. INTER NUSA HASTA BUANA PT. REKA MITRAYASA KOMUNIKATAMA	Jakarta Selatan							v	?	?	?	?	?	IDEM??
40									v	?	?	?	?	?	IDEM??
41	PT. AGRA DWAYAGA VISUAL								v	?	?	?	?	?	IDEM??
42	PT. BHANDA GHARA REKSA									v	?	?	?	?	NO INFORMATION: CONTINUATION OF PAYMENT?

43	PT. KERTAJAYA UTAMA	?									v	?	?	?	IDEM??
44	PT. FADJARPURNAMA PRATAMA INTI	Jakarta									v	?	?	?	IDEM??
	PT. DIRGABHAKTI	Jakarta													
45	GIRIPERSADA	Timur Jakarta									v	?	?	?	IDEM??
46	PT. ANISBI NUNGGAL BHAKTI	Timur ?									v	?	?	?	IDEM??
47	PT. MOLEX	Tangerang									v	?	?	?	IDEM??
48	KHOLAM PUBLISHING	?									v	?	?	?	IDEM??
49	IHA CORPORATION	Jakarta									v	?	?	?	IDEM??
	PT. SENYUM WARALABA	Selatan													
	INDONESIA	Jakarta													
50		Barat Jakarta										v	?	?	STILL PAID IN 2009?
51	PT. TETRA DUA SISI	Pusat Jakarta										v	?	?	IDEM??
52	PT. REINDO UNIT USAHA SYARIAH	Pusat Jakarta										v	?	?	IDEM??
	PT. REASURANSI NASIONAL INDONESIA	Barat Jakarta													
53		Timur Jakarta										v	?	?	IDEM??
54	PT. CATURMUKTI PRATAMA	Jakarta Jakarta										v	?	?	IDEM??
	PT. ADANI WICAKSANA	Pusat													
55	MANDIRI SEJAHTERA	?										v	?	?	IDEM??
56	PT. BSP	Jakarta Selatan										v	?	?	IDEM??
		Jakarta													
57	PT. STACO JASA PRATAMA	Pusat										v	?	?	IDEM??
58	WISMA ETHIKA NUSAS	Jakarta										v	?	?	IDEM??
		Pusat													
59	PT. DARMA BUANA GEMILANG	Jakarta Selatan										v	?	?	IDEM??
60	PERUM PEGADAIAN	Jakarta Utara										v	?	?	IDEM??
		Jakarta													
61	ISKA GROUP	Barat										v	?	?	IDEM??
62	PT. SURVEYOR INDONESIA											v	?	?	IDEM??
63	PT. BANGUN PUTRA PESAKA											v	?	?	IDEM??
64	PT. BINTANG INOYA CITRA											v	?	?	IDEM??

65	SJAHNAZ NOERDIN SARI LAW FIRM	Jakarta Selatan																		v	?	?	IDEM??	
66	PT. MITRA INT MANAJEMEN CONSULTING	Jakarta Selatan																			v	?	?	IDEM??
67	INTI KARSA DINAMIK	?																				v	?	NO INFORMATION: CONTINUATION OF PAYMENT?
68	AL AZHAR ASY-SYARIF INDONESIA	Jakarta Selatan																				v	?	IDEM??
69	PT. BAKRIE SUMAT	?																				v	?	IDEM??
70	PRO ENGLISH	?																				v	?	IDEM??
71	PT. PNM PERSERO	Jakarta Pusat																				v	?	IDEM??
72	QUANTUM HEALING	Jakarta Pusat																				v	?	IDEM??
73	PT. PERTAMINA	Jakarta Pusat																				v	?	IDEM??
74	PT. TISTAMA ARGA RAYA	Jakarta Pusat Bandung																				v	?	IDEM??
75	PT. PUPUK KALTIM	Jakarta Pusat																				v	?	IDEM??
76	PT. TELKOM	Jakarta Selatan																				v	?	IDEM??
77	PT. SCOREINDO KONSULTAMA	Jakarta Selatan Bogor																				v	?	IDEM??
78	PT. LAKEMBA CITRA INDONESIA																					v	?	IDEM??
79	MASTER KOMPUTER																					v	?	IDEM??
80	RUMAH MAKAN WONG SOLO DEPOK	Depok																				v	?	IDEM??
81	PT. MITRAMAS INFOSYS GLOBAL	?																				v	?	IDEM??
82	PT. PNM INVESTMENT MANAGEMENT	Jakarta Pusat																				v	?	IDEM??
83	PT. PRIMA HANDANU BHAKTI	Jakarta Selatan																				v	?	IDEM??
84	UNIVERSITAS INDRAPRASTA PGRI	Jakarta Selatan																				v	?	IDEM??
85	PT. GASWARA INTERNATIONAL	Jakarta Pusat																				v	?	IDEM??
86	PT. DANA USAHA MAKMUR																					v	?	IDEM??





