

The Constitutional Court Decision and Islamic Philanthropy Movements: Analysis of Zakat Organizations Legality in Samarinda

Bambang Iswanto^{1*}, Miftah Faried Hadinatha²

^{1&2} Universitas Islam Negeri Sultan Aji Muhammad Idris Samarinda, Indonesia

Abstract

As the capital of East Kalimantan province, Samarinda city government has adequate access to ensure the Legality of zakat management organizations in its jurisdiction. However, many community-based zakat agencies still carry out their activities without state license. Otherwise, the Constitutional Court Decision Number 86/ PUU-X/2012 obliges these zakat agencies to get the Ministry of Religious Affairs permit based on the National Amil Zakat Agency (BAZNAS) recommendation, in this case, the BAZNAS of Samarinda. This article focuses first on the legal implication of the Court's decision which confirms the constitutionality of the zakat agencies' licensing requirement in Indonesian Zakat Law. Second, it probes the Samarinda community-based zakat agencies' stance on unlicensed activities and factors affecting their compliance with the Court's decision. Using socio-legal method, this article finds that the Court has established a norm that every zakat management organization must obtain the state's license as long as they operate within the jurisdiction of BAZNAS. Hence, it is considered illegal when community-based zakat agencies in Samarinda manage zakat unlicensed because every corner of the city is arguably within reach of BAZNAS Samarinda operation. Nevertheless, the Court's ruling is not observed by the society in Samarinda because they build their own social construction in implementing the Islamic teaching of zakat. Their stance is mainly influenced by religious motives instead of legal compliance, as well as the hereditary obedience to religious figures. Although many zakat agencies are not licensed, the society always feels benefited and facilitated by their work of collecting and distributing zakat in their region.

Keywords: Amil zakat, legality, Constitutional Court, Samarinda

* Corresponding author, email: bambangiswanto@uinsi.ac.id

Introduction

Studies on philanthropic movements have become a serious concern - particularly for researchers. This concern, of other things, is determined by a belief that philanthropy¹ - especially Islam² - is able to contribute to the people's welfare. For instance, the research by Azwar Iskandar concluded that the growth of Islamic philanthropy could reduce the poverty rate in the short and long term.³ Mazro'atus Sa'adah's research, using *maqashid sharia* analysis to understand Islamic philanthropy, showed a correlation between zakat and the Sustainable Development Goals (SDGs).⁴ In addition, referring to Tika Widiastuti's research, zakat has been used in several countries to cope with any social and economic issues at the national level.⁵ From this point, it

¹ As stated in Merriam Webster, philanthropy is an action to actively improve the welfare of the members by distributing or setting aside certain fund. "Merriam Webster Dictionary," n.d., <https://www.merriam-webster.com/dictionary/philanthropy>. While Hilman considered, philanthropy is a social activity that has a broad impact, and aims to promote social change or collective change for the short and long term. Hilman Latief, "Agama dan Pelayanan Sosial: Interpretasi dan Aksi Filantropi dalam Tradisi Muslim dan Kristen di Indonesia," *Religi* 9, no. 2 (2013): 181.

² Asep Saepudin Jahar, "Developing Islamic Philanthropy Fo Human Rightse: The Indonesia Experience," *Advances in Social Science, Education and Humanites Research* 162 (2017): 1.

³ Azwar Iskandar et al, "Islamic Philanthropy and Poverty Reduction in Indonesia: The Role of Integrated Islamic Social and Commercial Finance Institution," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 2 (2021): 297, <https://doi.org/http://doi.org/10.19105/al-ihkam.v16i2.5026>.

⁴ Mazro'atus Sa'adah dan Uswatun Hasan, "The Common Goals of BAZNAS' Zakat and Sustainable Development Goals (SDGs) According to Maqashid Al-Sharia Perspective," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 2 (2021): 312-23, <https://doi.org/http://doi.org/10.19105/al-ihkam.v16i2.4990>.

⁵ Tika Widiastuti et al, "Developing an Integrated Model of Islamic Social Finance: Toward an Effective Governance Framework," *Heliyon* 8, no. 9 (2022): 3, <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e10383>.

can be stated that zakat can be used as an instrument to support and encourage the realization of better community life.

Many foundations, institutions, and associations, having realized the highly positive effect of zakat, are interested in being actively involved in its utilization. Referring to data released by the Coordinating Ministry for Human Development and Culture of the Republic of Indonesia, until 2020, there have been 549 BAZNAS (the National Amil Zakat Agency) and 587 zakat institutions.⁶ Regardless of the highly growing number of Amil zakat institutions, the Constitutional Court (hereinafter written *Mahkamah Konstitusi* or MK) Decision Number 86/PUU-X/2012 has a certain effect on the existence of *Amil zakat* institutions. The MK's decision provides several limitations, including a group of people may act as *amil* without a permit providing that Baznas is unable to reach certain areas; and for *amil zakat* association not as an Islamic community organization and not legally incorporated, the government is obliged to guide *amil* to help them to have a permit and to be professional in carrying out their activities in future.

Theoretically, all parties, both state – particularly the executive and structural and non-structural institutions – and citizens in general, should obey the MK's decision. Such understanding cannot be apart from the philosophical basis of the MK adoption. Referring to modern constitutional democracies, the reason to present a constitutional judiciary - in addition to ensuring checks and balances and that laws do not conflict with the basic

⁶ Kementerian Koordinator Bidang Pembangunan Manusia dan Kebudayaan Republik Indonesia, "Lembaga Zakat Berkontibusi Dalam Pengentasan Kemiskinan Dan Mewujudkan SDM Unggul," 2020, [https://www.kemenkopmk.go.id/lembaga-zakat-berkontibusi-dalam-pengentasan-kemiskinan-dan-mewujudkan-sdm-unggul#:~:text=Saat ini diketahui telah ada,Nasional dan 587 Lembaga Zakat.](https://www.kemenkopmk.go.id/lembaga-zakat-berkontibusi-dalam-pengentasan-kemiskinan-dan-mewujudkan-sdm-unggul#:~:text=Saat%20ini%20diketahui%20telah%20ada,Nasional%20dan%20587%20Lembaga%20Zakat.)

law - is to protect the freedom of human rights.⁷ In Indonesia, based on the facts recorded during the f the 1945 Constitution, the institutionalization of the MK aims to evaluate any political products (laws), and create the state administration permanently based upon the principles provided for⁸ Thus, rationally, obedience to the MK's decision has two meanings: respect for human rights and ensuring the work of the state based upon the highest law.

Through the MK's decision above, two thesis statements at least can be proposed. First, any *amil zakat* agencies in the area that Baznas can cover are obliged to have a permit. Second, before obtaining the permit, *amil zakat* agencies have the right to be guided by the government. In this case, there are two resulting effects: the first, is a ban on *amil zakat* agencies in areas Baznas can reach. Second, Baznas and the Ministry of Religious Affairs in regional areas are obligated to provide guidance to *amil zakat* institutions or agencies that are not a part of Islamic social organizations and have no legal entity.

In fact, on a national scale, many *amil zakat* institutions still have not received permits for their activities. The latest data from the Ministry of Religion, there are 91 licensed *amil zakat* institutions.⁹ In Samarinda, many *amil zakat* institutions have no legality

⁷ Pan Mohamad Faiz and M. Lutfi Chakim, *Peradilan Konstitusi: Perbandingan Kelembagaan Dan Kewenangan Konstitusioanal Di Asia* (Depok: Rajawali Pers, 2020), 9.

⁸ People's Consultative Assembly, *Minutes of Amendments to the 1945 Constitution of the Republic of Indonesia 2011 Third Book*, Revised (Jakarta: Secretariate General of the People's Consultative Assembly of the Republic of Indonesia, 2010), 317-18.

⁹ CNN Indonesia, "Kemenag Umumkan Daftar 91 Lembaga Amil Zakat Yang Sah Kantongi Izin," 2021, <https://www.cnnindonesia.com/nasional/20211123154302-20-725011/kemenag-umumkan-daftar-91-lembaga-amil-zakat-yang-sah-kantongi-izin>.

in collecting zakat.¹⁰ Referring to the information from Badan Amil Zakat (Baznas) Samarinda City, there have been approximately 1000 *amil zakat* agencies in the form of institutions, foundations, or associations spread in mosques, *Langgar*, and *Mushalla*. Unfortunately, until 2021, only 102 zakat agencies have obtained permits. In fact, Samarinda is the capital of East Kalimantan Province. Apparently, in urban areas like Samarinda with easy range access, the presence of *amil zakat* without a permit will be difficult to find. The elementary questions are: why is there still an *amil zakat* association that does not have a permit in the capital city of east Kalimantan province (Samarinda) with adequate infrastructure? What is the primary motivation for the unlicensed *amil* associations to carry out their actions? Why do groups of people becoming *amil* continue collecting and distributing zakat without a license? Is there a certain social construction that makes the people of Samarinda ignore MK's decision? In addition, dealing with this question, how is the local government's response to this phenomenon? Is there any guidance given as mandated by the MK's decision? Is there a special policy from the Baznas of Samarinda City to complete their obligations and act against the zakat collectors without a permit? This article will focus on these issues by tracing the effectiveness of MK's decision in social reality.

Looking at the questions above, it seems inadequate to only doctrinally trace them to gain more detailed information. Another approach is then required to answer them. It aims to make the potential of zakat, which is based upon calculation, reach 217 trillion, able to be well collected, managed, and distributed.¹¹ Within this framework, a sociological approach is needed. So far, research on philanthropy, particularly zakat, has led to

¹⁰ Based upon the interview with Habibie, Human Resources, Finance and General Affairs of the Amil Zakat Institution, Samarinda.

¹¹ Clarashinta Canggi et al, "Potensi Dan Realisasi Dana Zakat Indonesia," *Al-Uqud: Journal of Islamic Economics* 1, no. 1 (2017): 16.

efforts to alter the utilization of zakat funds from traditional to professional in nature.¹² Research showed the contribution of modernization in triggering the growth of philanthropic movements; however, at the same time, it was unable to develop social justice.¹³ In other academic discourses, there is an effort to design how the philanthropic movement can produce an advanced and civilized Islamic society, particularly in Indonesia.¹⁴ Another research attempted to formulate a national economic recovery during the downturn of the Indonesian economy due to the Covid-19 pandemic by combining Islamic philanthropy with the National Domestic Economic Auto-Sustainability Model (NDEAS).¹⁵ Regarding the distribution of zakat, especially corporate zakat, Alfitri's research concluded that the state, through BAZNAS, is the only place for companies to distribute their zakat. According to Alfitri, this condition has consequences on companies' difficulty in distributing their zakat to beneficiaries because it is limited by bureaucracy.¹⁶

¹² Ariza Fuadi, "Towards the Discourse of Islamic Philanthropy for Social Justice in Indonesia," *Jurnal Ilmu-Ilmu Keislaman Afkaruna* 8, no. 2 (2012): 98–100, <https://doi.org/DOI.10.18196/AIJIS.2012.0008.92-102>.

¹³ Amelia Fauzia, "Islamic Philanthropy in Indonesia: Modernization, Islamization, and Social Justice," *Austrian Journal of South-East Asian Studies* 10, no. 2 (2017): 223, <https://doi.org/doi.10.14764/10.ASEAS-2017.2-6>.

¹⁴ Dzulkipli Hadi Imawan et al, "Islamic Philanthropy and Civil Society Development Solution in Indonesia," *Advances in Economic, Business and Management Research* 168 (2018): 416.

¹⁵ Yulia Puspitasari Gobel, "Pemulihan Ekonomi Indonesia Pasca Pandemi Covid-19 Dengan Mengkombinasikan Model Filantropi Islam Dan Ndeas Model," *Jurnal Tabaru': Islamic Banking and Finance* 3, no. 3 (2020): 212.

¹⁶ Alfitri, *Islamic Law and Society in Indonesia: Corporate Zakat Norms and Practices in Islamic Banks, Islamic Law and Society in Indonesia*, Islam and (New York: Routledge, 2022), 163, <https://doi.org/10.4324/9781003183112>.

Discussion of the philanthropic movement in Samarinda - especially the amil zakat association, which also becomes the addressee of the MK's decision to seek its social construction - becomes quite important for the discourse on developing the zakat utilization. In the context of obedience to court decisions, some sociological conditions make a law work in reality. Also, as stated by Herlambang P. Wiratraman, the analysis of legal issues, which in this article refers to the MK's decision, must be supported by the context and situation to obtain precise knowledge.¹⁷ Based on the reasons mentioned earlier, this article will consecutively explain the MK's decision in detail, including its impacts on legal subjects. Then, it is followed by an investigation of how the MK's decision is enforced in Samarinda society, either as a government (Baznas, Samarinda City) or not. Then, what factors determine the existence of amil zakat associations in Samarinda? However, before starting these matters, it is necessary to describe the theoretical framework as material for analysis. In order to avoid misunderstandings, there is one thing that needs to be emphasized: in this article, later, the amil zakat agencies refer to the zakat committees (*panitia zakat*) formed by the community in mosques, *musholla*, or *langgar* without obtaining an operating permit from the Samarinda Baznas.

This research was conducted in Samarinda region, specifically in Samarinda Seberang. This region was related to the resources (infrastructure, accessible information, logistics, and other facilities) that are easy to obtain in order to question and trace the enforceability of the MK's decision. It is social-legal research considering the nature of the aforementioned questions. In addition to legal studies, this research was also focused on how community members and the government (Baznas of Samarinda City) acting as amil zakat understood the MK's

¹⁷ Herlambang P. Wiratraman and Widodo D. Putro, "Tantangan Metode Penelitian Interdisipliner Dalam Pendidikan Hukum Indonesia," *Mimbar Hukum* 31, no. 3 (2019): 403.

decision. The data was sourced from doctrinal matters and the interviews with various parties—both Baznas in Samarinda City and the community as *amil zakat* were processed qualitatively. The analysis was carried out descriptively and explanatorily. Legal materials and facts recorded were analyzed logically before being evaluated and described to find the conformity that can be a conclusion.

Sociological Approach: A Theoretical Basis

As previously explained, this article presents socio-legal research that attempted to examine the law doctrinally and analyze it using another disciplinary approach.¹⁸ Herlambang P. Wirtaraman, a scholar in legal studies from Gadjah Mada University that always focuses on socio-legal research, explained that the benefit of socio-legal is to assist in understanding and providing the social configuration context that influences the law and its implementation.¹⁹ For instance, a socio-legal research not only explains the term of justice from a normative perspective but also tracks justice built in the social construction, which is influenced by various factors, such as economics, culture, politics, or social stratification. Following this point of view, the context of this research is to trace the MK's decision on zakat (doctrinaire) and subsequently to examine whether the court's decision has worked in accordance with the social context in society (other disciplines).

In this case, the MK's decision on zakat was seen in the context of the sociology discipline that has developed in Samarinda society. For example, has the law of MK's

¹⁸ Fachrizal Afandi, "Penelitian Hukum Interdisipliner Reza Banakar: Urgensi Dan Desain Penelitian Sosio-Legal," *Undang: Jurnal Hukum* 5, no. 1 (2022): 235, <https://doi.org/DOI: 10.22437/ujh.5.1.231-255>.

¹⁹ Herlambang P. Wiratraman, "Penelitian Sosio-Legal dan Konsekuensi Metodologisnya" (Surabaya, 2016), 4.

decision already benefited society, – especially in Samarinda – how has it been? Concerning this legal reasoning, this article explicitly uses an interdisciplinary approach. For the above interests, the first and essential thing is to provide some theoretical framework of sociology. In general and broadly, sociology aims to show and study any symptoms or social behaviors arising from human interactions.²⁰

In sociology, an approach emerged to explain those symptoms and behavior of the community: exchange theory. It was George C. Homans that popularized exchange theory through his essay entitled "*Social Behavior: Its Elementary Forms*" in 1961. In his writings, Homans introduced the term social exchange theory. Homans explained that a person's actions would affect the condition of the surrounding environment.²¹ How much sacrifice he has made determines someone who wants to expect high rewards.²² The greater the person's sacrifice (action), the greater the reward (environmental conditions).

The process of social exchange conceptually begins when a particular environment provides a positive or negative response to individuals or groups of people.²³ Following this perspective, the environment has provided a special "reward" to anyone who performs actions deemed appropriate to their environment. For this reason, as Homans previously stated, one's activity significantly impacts the response from the surrounding environment.

²⁰ Trisni Andayani et al, *Pengantar Sosiologi*, 1st ed. (Yayasan Kita Menulis, 2020), 15.

²¹ Taha Enayat et al, "A Computational Approach to Homans Social Exchange Theory," *Physica A*, no. 597 (2022): 1, <https://doi.org/https://doi.org/10.1016/j.physa.2022.127263>.

²² Shokhibul Mighfar, "Social Exchange Theory: Konsep George C. Homans Tentang Teori Pertukaran Sosial," *Lisan Al-Hal* 9, no. 2 (2015): 268.

²³ Russell Cropanzano et al, "Social Exchange Theory: A Critical Review with Theoretical Remedies," *Academy of Management Annals* 11, no. 1 (2017): 2, <https://doi.org/https://doi.org/10.5465/annals.2015.0099>.

Positive "rewards" are obtained from the support of the surrounding environment for one's actions, whereas adverse effects can lead to acts of rejection from the surrounding environment.²⁴ In other words, the response of the surrounding environment will be determined by positive or good actions from a person or society.

Furthermore, to complete his thesis, Homans formulated six propositions (known as Homans' propositions), including success; stimulus, value, saturation, approval; and rationality.²⁵ The first proposition assumes that the more often a person's actions are valued by the surrounding environment, the more likely these actions affect the future. The second proposition describes that if a stimulus or encouragement can make people do something, then that person's action will be valued by the surrounding environment. Later on, when a similar stimulus appears, that person's action will reappear. Furthermore, the third proposition imagines that the more valuable the result caused by a particular behavior, the greater the desire to perform that behavior again.

The fourth proposition explains that the more often someone received a certain gift in the past, the less valuable the same reward will be given. The fifth proposition assumes that when a person receives a reward that has been a hope for so long, they will be the one who easily agrees to something when someone asks for help. For the last proposition, if someone is asked to choose between two alternatives, a person's action tends to decide which alternative - by the environment - has the most excellent value. In the context of this study, Homans' approach will be relevant and applicable, say, when exploring whether the actions of an *amil* association in

²⁴ Russell Cropanzano et al, 2.

²⁵ Taha Enayat et al, "A Computational Approach to Homans Social Exchange Theory," 2.

Samarinda, even without any permit, have received a positive response from the surrounding environment.

In addition to Homans' concept, another valuable approach to help analyze the mechanism of law (the MK's decision) is combining it with the sociology of law. Regardless of the differences of opinion, whether the sociology of law is included in the discipline of law or sociology,²⁶ this branch of knowledge is believed to be valuable in seeing how the law is projected in society, both by the public and by those given certain positions in government. In this sense, the perspective of sociology of law seeks to examine a set of rules or norms needed in society.²⁷ Adhering to such a perspective reminds us of one of the doctrines or theories in law: *legal realism*. The theory of legal realism states that the study of law must be seen as something truly applied in society, not just referring to doctrine alone.²⁸ Therefore, separating the law from the social condition becomes difficult to realize.²⁹

Principally, sociology of law rejects law tracking only through the instrument of statutory regulations, judges' decisions, and legal principles. This branch of science attempts to include social elements in its analysis. Hence, referring to the investigation by Zainal Arifin Mochtar and Eddy O.S. Hiariej, the sociology of law is defined as a science that studies the reciprocal relationship between law and society, where the approach is from society to law.³⁰ Thus, in this context, knowledge about community

²⁶ For searching, it can be seen: Fithriatus Shalihah, *Sosiologi Hukum* (Depok: Rajawali Pers, 2017); Soerjono Soekanto, *Pengantar Sosiologi* (Jakarta: Raja Grafindo Persada, 2007); Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum* (Jakarta: Rajawali Pers, 1988).

²⁷ Fithriatus Shalihah, *Sosiologi Hukum*, 6.

²⁸ Mahrus Ali, "Pemetaan Tesis Dalam Aliran-Aliran Filsafat Hukum Dan Konsekuensi Metodologisnya," *Jurnal Hukum Ius Quia Iustum* 24, no. 2 (2017): 219.

²⁹ Fithriatus Shalihah, *Sosiologi Hukum*, 120.

³⁰ Zainal Arifin Mochtar and Eddy O.S. Hiariej, *Dasar-Dasar Ilmu Hukum* (Jakarta: Red and white Publishing, 2021), 302.

interaction is important to be presented before a legal analysis.

As previously explained, realizing that the sociology of law starts its analysis from society, it is interesting to adopt the theory of Talcott Parsons. Parsons presents the social system concept by referring to four main components: goal achievement, adaptation, integration, and pattern maintenance.³¹ The first sub-system refers to a condition in society that must determine the vision and mission for the future to guarantee the sustainability of the relationship that has been built. In achieving the predetermined goals, it sometimes encounters circumstances or situations that demand an adjustment in society. At this point, flexible action and adaptation are required then.

Furthermore, integration or cooperation with society is urgently needed to accelerate the ideal social order. The main goal is to make various interests remain harmonious, not separate. Lastly, having obtained an integration, there must be a strong will from the community to maintain patterns considered good. The fulfillment of the four elements referred to is believed to create a social system.

Further, Parsons continued the idea to make the social system that has been created remain strong. He said:

*"If the social system is to constitute a persistent order or undergo an orderly developmental change process, certain functional prerequisites must be met."*³²

Through this idea, Parsons, with his social system theory, developed what he then called functional

³¹ Filoppo Reale, "Governing Innovation System: A Parsionian Social System Perpspective," *Technology in Society*, no. 59 (2019): 3, <https://doi.org/https://doi.org/10.1016/j.techsoc.2019.101174>.

³² Richard Ormerd, "The History and Ideas of Sociolocal Functionalism: Talcot Parsons, Modern Sociological Theory, and the Relevance for OR," *Journal of the Operational Research Society* 71, no. 12 (2021): 1876, <https://doi.org/https://doi.org/10.1080/01605682.2019.1640590>.

structuralism. This term refers to the conception of society as a network of groups whose movements are organized based on rules and norms that all members of society accept.³³ This idea, in essence, explains that society is a unit that is highly dependent on one factor and another. For instance, every action of society depends on the presence or absence of norms explaining what should and should not to do.

Furthermore, Parsons also required certain structures required in society. First, there must be a kinship structure, such as family relationships; second, there must be an achievement structure encouraging people to get shared welfare; third, there must be the possession of territory, power, and integration of power, which function to facilitate groups in a conflict; and fourth, there must be an adherence to a particular religion purposely to form beliefs and behavior based upon religious teachings.³⁴ If correlating this study, Parsons' conception will help when, for example, tracing what kind of social system will be realized if zakat collection is through *amil* agencies not have a license.

Constitutional Court Decision on Zakat

Along with the growth and interest in Islamic economic activities, Indonesia's House of Representatives (DPR, *Dewan Perwakilan Rakyat*) and the President - through the authority of the legislative function - agreed to carry out zakat management based on law. At this point, Law Number 23 of 2011 concerning Zakat Management

³³ Arezoo Izadi et al, "Structuralism Functionalism, Social Sustainability and the Historic Environment: A Role for Theory in Urban Regeneration," *The Historic Environment: Policy and Practice* 11, no. 2 (2020): 160, <https://doi.org/https://doi.org/10.1080/17567505.2020.1723248>.

³⁴ Nanang Fahrudin and Sri Hastjarjo, "Analysis of Social Harmonization Process in the Inter-Religion Relation from the Perspective Cultural Communcation: An Approach Using Relation Dialectics and Structural Functionalism," *Advances in Social Science, Education and Humanites Research* 260 (2018): 132–33.

(hereinafter written Law 23/2011) emerged. In addition, Law 23/2011 revoked Law Number 38 of 1999 concerning Zakat Management (hereinafter written Law 38/1999). In comparative looks, Law 23/2011 is far more comprehensive in regulating the zakat management than Law 38/1999. For example, the issue of community supervision and the imposition of sanctions against amil zakat has been explained in more detail. In addition, in the preamble considering the matter of Law 23/2011, there is an emphasis on zakat management, which must be institutionally managed to maximize the use of zakat.

Even though the zakat management is more comprehensive than Law 38/1999, some parties found a constitutional problem surrounding Law 23/2011. In response, some people and groups reviewed the constitutionality of Law 23/2011 in Indonesia Constitutional Courts (MK). A step to take the court route, in this case, the MK, came from the reasoning that this institution established at the momentum of the constitutional change in 1999-2002 holds the function of judicial review, specifically questioning legislative products to make them remain in line with the fundamental law (Constitution).³⁵ Constitutionally, one of the fundamental authorities of the MK is to try at the first and final levels whose decisions are final to review laws against the constitution.³⁶

In order to adjudicate the constitutionality of Law 23/2011, the MK has considered it in Decision Number 86/PUU-X/2012. Before explaining the judges' considerations, initially stating the case was deemed important. The applicants consisted of several amil zakat institutions with legal entities in the form of foundations, institutions, and individuals (*muzakki*). In this case, the

³⁵ Seyla Benhabib, "Dialogic Constitutionalism and Judicial Review," *Global Constitutionalism*, 2020, 512, <https://doi.org/10.1017/S204538172000012X>.

³⁶ Article 24C verse (1) Constitution of the Republic Indonesia

applicants questioned the issue of constitutionality in several parts. First, the applicant considered that Law 23/2011 had created a centralization of zakat management in Indonesian territory by establishing the National Amil Zakat Agency (Baznas) at the central, provincial, and district/city levels of the government. According to the applicants, this centralization has marginalized the *amil zakat* institutions established before Law 23/2011's arrival.³⁷ In fact, the *amil zakat* institutions formed by civil society have successfully utilized zakat optimally. Also, the applicants believed that centralizing the zakat utilization under BAZNAS would potentially make the existing *amil zakat* institutions eliminated.

Second, Law 23/2011 strictly regulates licensing requirements for civil society to establish *amil zakat* institutions. The provisions then referred to include: being registered as an Islamic social organization managing education, da'wah, and social sectors; possessing a legal entity; obtaining the recommendation from Baznas; having a sharia supervisor; having the technical, administrative, and financial capabilities to carry out its activities; being non-profit; having a program to utilize zakat for the people welfare; and willing to be periodically audited by sharia and finance.³⁸ For the applicants, the requirements referred to are a form of arbitrariness. In addition to being burdensome, undemocratic, and discriminatory, it also weakens and potentially eliminates the existing *amil zakat* institutions. In addition to this provision, the position of the *amil zakat* institution as an assistant to BAZNAS, so that it is charged with the obligation to regularly report the implementation of the collection and distribution of zakat that has been audited to BAZNAS³⁹ is also seen by the applicants to have subordinated the *amil zakat* institution formed by civil society.

³⁷ See the provision of Article 5, 6, 7, Law 23/2011.

³⁸ Article 18 of Law 23/2011

³⁹ Article 19 of Law 23/2011

Third, additionally, Law 23/2011 drafts a prohibition for anyone acting as *amil zakat* without a permit of an authorized official.⁴⁰ Again, if the prohibition is neglected, there is a penalty in the form of criminal sanctions threatening every *amil* agency.⁴¹ According to the applicants, these articles have caused anyone (individuals) who act as *amil zakat* to be criminalized. Further, the provisions mentioned above are discriminatory on the one hand; it has given special privileges to BAZNAS on the other hand. These prohibitions and criminal provisions also narrow the access for *mustahiq* (*people who deserve to receive zakat*) in obtaining zakat's benefits.

After the applicants were allowed to express the constitutionality issue of several articles in Law 23/2011, the MK gave several legal considerations. First, the MK assessed that the *amil zakat* institutions formed by civil society were not sufficiently capable of comprehensively providing zakat services, considering the vast territory of the Unitary State of the Republic of Indonesia (NKRI).⁴² MK added that the collection and distribution of zakat by *amil* institutions from the community has limited operations.⁴³ If Baznas, designed to have reliable and sufficient resources and spread throughout Indonesia, are not formed, the effect of zakat in the form of welfare cannot be maximized. In addition, as added by MK, the establishment of Baznas is an open legal policy, i.e., as a state (government) responsibility to ascertain that each Muslim can carry out the obligation to pay zakat.

Furthermore, the establishment of *amil zakat* institutions by the government must be interpreted as an effort to strengthen zakat services carried out by *amil zakat* institutions formed by the community and individuals. At this point, the constitutionality issues being

⁴⁰ Article 38 Law 23/2011.

⁴¹ Article 41 Law 23/2011.

⁴² Decision Number 86/PUU-X/2012, 93.

⁴³ Decision Number 86/PUU-X/2012, 93.

questioned by the participants were seen not to have a legal basis. Hence, the provision of *amil zakat* agencies written in the law must be rejected.

Second, regarding the position of *amil zakat* institutions formed by the community or individuals, which in this case are seen only as the assistant of BAZNAS, for MK, it cannot be interpreted to have marginalized any existing zakat institutions but must be understood as the way to assist BAZNAS in assisting the state in zakat management.⁴⁴ Following this construction, it means that the position of the *amil zakat* institution from the community – as designed by Law 23/2011 as an assistant of BAZNAS – cannot be narrowly interpreted as helping BAZNAS, but contributing to assisting the state in managing zakat. Thus, as added by MK, the obligation of *amil zakat* institutions from the community to report all their activities to Baznas, must be interpreted to ascertain that the zakat utilization has been in accordance with statutory regulations.⁴⁵ By so doing, the community, as *muzakki* will not be apprehensive about the zakat assets utilized appropriately.

Furthermore, it must be interpreted on a limited basis in terms of the requirements of the permit to operate *amil zakat* institutions from civil society, which must be in the form of Islamic social organizations managing education, da'wah, and social sectors. The conditions to issue a permit to establish an *amil zakat* institution, based upon the rationale of MK, do not necessarily must be in the form of an Islamic organization managing such sectors mentioned above.⁴⁶ This condition refers to the law of social organizations stating that a social organization can be in the form of a foundation or association. By referring to the constitution, the MK argued that the fundamental law guarantees anyone to form an association, and gather to struggle the collective rights. More specifically, the

⁴⁴ Decision Number 86/PUU-X/2012, 96.

⁴⁵ Decision Number 86/PUU-X/2012, 96.

⁴⁶ Decision Number 86/PUU-X/2012, 99.

requirement for amil zakat institutions to obtain permits that must be in the form of Islamic organizations is a form of injustice and has denied the existence of institutions or individuals who act as amil zakat.⁴⁷ In short, the permits given to amil zakat institutions formed by the community do not have to be in the form of a mass organization: foundations or associations engaged in collecting and distributing zakat can be granted permits.

The MK has an interesting opinion - particularly in terms of gatherings of people: say, mosque administrators (locally called *takmir*), *langgar* (small building for prayer, Mushala, or associations of Ulama that have no legal entities stating that the association of people who have no legal entities is still permitted to carry out the utilization of zakat. This logic is obtained from the reasoning that the constitution does not limit who has the right to collect and distribute zakat.⁴⁸ Even so, the MK has given another confirmation that the gathering of people must have basic requirements: engaged in the Islamic religious field; non-profit, having a program or plan; and capable of conducting a program or plan. In addition, the MK imposes an obligation on the state (Baznas) to guide *amil zakat* of groups⁴⁹ to lead the gathering of people to turn into an amil zakat institution in the future.

Third, regarding the applicant's request questioning the penalty for anyone who acts as an amil, the MK provides an interesting reason stating that the phrase "everyone" in Article 38 of Law 23/2011 is very broad. So associations, individuals, or mosque administrators (*takmir*) who do not get permits can be penalized if they act as amil zakat.⁵⁰ Given this broad meaning, the MK narrowed the meaning of "everyone" into an area not covered by BAZNAS. In short, if Baznas have not covered

⁴⁷ Decision Number 86/PUU-X/2012, 100.

⁴⁸ Decision Number 86/PUU-X/2012, 100.

⁴⁹ Decision Number 86/PUU-X/2012, 101.

⁵⁰ Decision Number 86/PUU-X/2012, 105.

an area, then everyone may act as an *amil*; conversely, if in an area Baznas is able to issue a permit, the act of an *amil* will be prohibited and punishable. Such a decision is derived from logic:⁵¹ first, the government has not been able to establish Baznas or its units throughout Indonesia, which has a vast territory; second, the unavailability of Baznas to reach remote areas has caused Muzakki to be prevented from paying zakat; third, the considerable distance for *muzakki* to take to pay zakat will be a burden, and such coercion is considered unreasonable; and fourth, to overcome this situation everyone in the village, for instance, is allowed to act as an *amil* to serve the muzakki's obligations. The necessity to provide licensed zakat collectors, in Alfitri's view, is a form of state intervention to restrict everyone from practicing their religion, in this case, zakat. Because zakat has a horizontal effect: ensuring zakat is received and distributed properly and accountably.⁵² Therefore, it is very reasonable for the court to consider that zakat collectors who can reach BAZ and are not licensed can be sanctioned.

The implication of the Constitutional Court Decision on Zakat

Referring to the MK's decision above, there are several essential points as implications to be experienced by legal subjects, which here refers to anyone who acts as *amil* zakat either as an institution, foundation, association, or association. **First**, not everyone is allowed to act as an *amil*. If everyone forces himself to carry out the act of collecting and distributing zakat, there will be threatening criminal sanctions. For areas where Baznas – both at the provincial and district/city levels – are possible to reach, everyone must obtain a permit before utilizing zakat.

⁵¹ Decision Number 86/PUU-X/2012, 104-106.

⁵² Alfitri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?," *Asian Journal of Comparative Law* 13, no. 2 (2018): 406, <https://doi.org/10.1017/asjcl.2018.20>.

Besides, in the areas where BAZNAS is not able to reach, it is permissible for someone in that area to collect zakat funds, even if they have no permit.

In facing the development of times, particularly the advanced information technology media, there is no reason for Baznas not to be able to reach certain regions. The latest data showed that Indonesia occupies fourth place in the world's smartphone ownership and use. In total, 170.4 million Indonesians have smartphones.⁵³ 89% of Indonesia's population, referring to the Ministry of Communication and Information, uses smartphones and the internet as a medium of communication and activities.⁵⁴ In the context of philanthropic movements, the use of smartphones has come to the area of digital zakat collection. At least until 2021, BAZNAS has created a program and attempted to encourage zakat distribution through a number of digital platforms.⁵⁵ Such digitalization services have undermined the argument that BAZNAS cannot expand its operations to the regions.

Moreover, many people in Indonesia have recently been interested in using digital zakat.⁵⁶ Thus, the actions

⁵³ Databoks, "Daftar Negara Pengguna Smartphone Terbanyak, Indonesia Urutan Berapa?," 2021, <https://databoks.katadata.co.id/datapublish/2021/07/01/daftar-negara-pengguna-smartphone-terbanyak-indonesia-urutan-berapa>.

⁵⁴ Media Indonesia, "Kemenkominfo: 89% Penduduk Indonesia Gunakan Smartphone Sumber: <https://mediaindonesia.com/humaniora/389057/kemenkominfo-89-penduduk-indonesia-gunakan-smartphone>," 2021, <https://mediaindonesia.com/humaniora/389057/kemenkominfo-89-penduduk-indonesia-gunakan-smartphone>.

⁵⁵<https://baznas.go.id/layananpembayaran>.
https://baznas.go.id/Press_Release/baca/BAZNAS_Dorong_Pemanfaatan_Digitalisasi_Zakat_Secara_Optimal/887.

⁵⁶ Rahmatina Awalia Kasri and Adela Miranti Yuniar, "Determinants of Digital Zakat Payments: Lessons from Indonesia Experience," *Journal of Islamic Accounting and Business Research* 12, no. 3 (2021): 374–75, <https://doi.org/DOI.10.1108/JIABR-08-2020-0258>.

of anyone becoming an *amil* in an area not covered by BAZNAS and having no permit can be questioned.

Even though Baznas has utilized a digital platform to collect *zakat*, it is important to note that the service is only in money-based *zakat* payment. Meanwhile, rice-based *zakat* payments, mostly collected during Ramadan, cannot be digitally collected. Therefore, it is necessary to rethink what types of *zakat* assets should be collected. In short, anyone who acts as *amil zakat* (without a permit) in areas where BAZNAS cannot reach them must be limited when the *muzakki* distributes their wealth in the form of rice (conventional). Meanwhile, when the *muzakki* decides to distribute *zakat* with money, the act of the *amil* who receives it can be categorized as not in line with the MK's decision. Therefore, such actions can be punishable by crime.

Second, after the MK's decision, the foundations, institutions, and associations engaged in the *zakat* utilization are positioned as the parties that support the works of BAZNAS. Administratively, they must periodically report on the collection and distribution of *zakat*. They do not have any hierarchical relationship (not supervising each other) with BAZNAS, but act as the work partners. Relations between foundations, institutions, associations, and Baznas are to support each other to obtain and utilize the enormous potential of *zakat*. In short, the presence of Baznas is not the only party that is allowed to collect and distribute *zakat*. Other *amil zakat* institutions, especially those that existed before the issuance of Law 23/2011, are still allowed to carry out their activities. In addition, for a foundation, institution, or association to obtain an operational permit, it is no longer necessary to first act as a social organization engaged in da'wah, education, and social affairs, and to be legally incorporated. It means that under the MK's decision, the permit requirements for existing *amil zakat* institutions are no longer strict.

Third, specifically, the government - both the Ministry of Religion and Baznas - has an additional

obligation to guide groups of people who act as *amil zakat*. This obligation is to ensure that in the future, the gathering of people will be turned into *amil zakat* agencies managed by the government and to maintain the professionalism of the transparency of the zakat utilization. Therefore, in this context, the government must pursue special programs that are prioritized to provide guidance and education on the excellent performance of *amil*.

In addition, referring to Alfitri's statement, there are at least three consequences due to the MK's decision above, including:⁵⁷ first, the status of BAZNAS not only as an institution that manages zakat but also as a national coordinator for *amil zakat* throughout Indonesia. Second, the court partially enforced sanctions against unauthorized zakat collectors from mosque administrators and *kyai* in pesantren. Because of transparency, the state needs to be involved in limiting who can act as zakat collectors so its management is more accountable. Third, as a continuation of the previous consequences, the state has restricted religious freedom. Even though religious rights are one of the fundamental rights written in the Indonesian Constitution, the state can intervene because zakat (as a religious practice) has public interest issues (society). The final note, the state has built administrative aspects in the management of zakat in Indonesia, namely integrating it and supervision into the BAZNAS.⁵⁸

The Enforceability of Constitutional Court Decisions and Religion as Main Factors

⁵⁷ Alfitri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?," 406.

⁵⁸ Alfitri, *Islamic Law and Society in Indonesia: Corporate Zakat Norms and Practices in Islamic Banks*, 106.

Applying a law in an area under certain circumstances is not similar from one point to another but depends upon the surrounding context. The reasoning reminds us of legal system theory, which is divided into three legal sub-systems: legal substance, legal structure, and legal culture.⁵⁹ In reality, these three sub-systems affect the performance of law. The effectiveness of law prerequisites complete material on what norms will be used as a guide. Also, to ensure that the law is consistently implemented, the legal structure related to law enforcement institutions must also provide good performance. Finally, people's cultural attitudes cannot be negated whether they accept the law. It is possible that the substance and legal structure have been complete but not supported by legal culture. In such conditions, it becomes difficult to realize the legal system.

When correlated to this article, the legal substance will refer to the MK's decision, and the legal structure will refer to Baznas or the Ministry of Religion. Meanwhile, the legal culture is based on the community's response to the court's decision. Theoretically, the MK's decision is constitutive declaratory, meaning that the judge only states what the law should be, creating new legal conditions.⁶⁰ Through the MK's decision, there are at least two new legal norms that have been created: the obligation of BAZNAS to provide guidance to *amil zakat*, which is not an Islamic community organization and has no legal entities form; the prohibition against acting and becoming *amil zakat* in areas, in this case, remote areas that are reachable by BAZNAS.

⁵⁹ Rokhmatun Hanifah et al, "Tantangan Hukum Peer to Peer Lending Dalam Mendorong Pertumbuhan Industri Financial Technology," *Pandecta* 16, no. 2 (2021): 200, <https://doi.org/http://dx.doi.org/10.15294/pandecta.v16i2.25712>

⁶⁰ Zainal Arifin Mochtar, *Kekuasaan Kehakiman: Mahkamah Konstitusi Dan Diskursus Judicial Activism Vs Judicial Restraint* (Depok: Rajawali Pers, 2021), 71.

The obligation of Baznas (in the following paragraph, "Baznas" here is addressed to Baznas in Samarinda city) to foster *amil zakat* associations without a permit, especially in Samarinda, has not been consistently programmed.⁶¹ The management of Baznas in Samarinda year 2016-2021 only occasionally conducted (even not yet) coaching and socialization. In contrast to the 2021-2026 management (new one), new technical guidance coaching will be programmed on a term. It means that nine years after the MK's decision, other development programs will be carried out by Baznas. In addition to tiered coaching, there are two techniques used by the new management Baznas to encourage *amil zakat* associations to obtain permits: first, *da'wah* advocacy, i.e., delegating *ustadz* when asked to fill in recitations at mosques, *langgar*, prayer rooms to socialize zakat from a sharia perspective and statutory regulations and second involving stakeholders from ten sub-districts throughout Samarinda for socialization. The second method is carried out by sending circular letters to each sub-district. From the sub-district, it is conveyed to the Head of the Village and from the village to the neighborhood association and the mosque.

The two methods above have gradually grown and increased the public's trust in issuing zakat to BAZNAS and managing permit administration. Regarding permits, regarding existing practices, BAZNAS will only issue licenses if an *amil* association applies. After being submitted, examined, and researched, if deemed to meet the requirements, a Decree (SK, *Surat Keputusan*) is issued on the management of *amil zakat* associations in mosques, *Mushala*, and *langgar*. Until 2021, of approximately 1,000 *amil zakat* associations, only 102 *amil* had submitted

⁶¹ This detailed description is based on the researchers' interview with Habibie, Human Resources, Finance and General Affairs of the Amil Zakat Agency, Samarinda City. Subsequent descriptions are based on the researchers' search in field (law in action)

decrees to obtain permits. The rest included those who still had a decrees from the former BAZNAS management, while others were undetected. In other words, of approximately 900 zakat collectors, it was not certain they had a decree. However, when asked for detailed data on how many amil associations had a decree from the former Baznas management and how many of them did not submit the decree, the current Baznas has no exact data as they admitted that the data from the former management was not properly stored and many of the decrees have lost. In addition, Baznas does not take any measures or threats to anyone who acts as an *amil*. This decision is based upon Baznas' own belief that there is a social culture that is difficult to be manipulated.

Furthermore, in the social aspect, religion plays a major important role in the existence of amil zakat in Samarinda. Generally, they are scattered in mosques, *langgar*, and *mushalla*. Based on the observation, the motivation and spirit of obedience to Islamic religious teachings have encouraged the community to take the initiative, work together, and be independent to establish amil zakat.⁶² If broken down, there are two religious motivations that they mean, firstly because zakat is one of the pillars of Islam, and secondly, based on religious leaders (such as *kyai* and *ustadz*) of the mosque, *langgar*, and *musholla* who died earlier. For management legality, usually, *amil zakat* agencies obtain a decree not from Baznas, but from the head foundation of the mosque, *langgar*, or *mushalla*. If placed within the legal framework described earlier, the decree of the amil zakat association from the mosque administrators, *langgar*, and *musholla* cannot be interpreted that they have obtained a permit. Getting a permit for the actions of amil zakat is only a decree from Baznas. In addition, they admitted that they had not received guidance from Baznas for so long. This condition is a minor factor affecting the lack of desire to obtain a permit from Baznas.

⁶² In general, they call themselves as the Zakat Committee

The religious factor that causes amil zakat in Samarinda to continue to carry out its operations even without the permit can be juxtaposed with the motivation of a company (Islamic bank) to issue corporate zakat. In Indonesia, legally, there is no information that companies are required to pay zakat.⁶³ In classical Islamic jurisprudence (*fiqh*), the burden of zakat is only on individual Muslims, but contemporary scholars' *ijtihad* argues that zakat is also imposed on companies.⁶⁴ Therefore, some Islamic banks in Indonesia argue that their companies are obliged to pay zakat, while others consider it not an obligation to them.⁶⁵ For companies that consider corporate zakat mandatory, the reason lies in that the act is solely to comply with *sharia* and seek to benefit the surrounding community.⁶⁶ In addition, Islamic banks reason because their business is engaged in *sharia* while zakat is believed to clean up the property, it does not matter whether the person who has the burden of zakat is an individual or a company. Plus, the company makes no small profit and distinguishes between Islamic and conventional banks.⁶⁷ So, in this case, the religious spirit prompted the company to issue its zakat.

Looking at the *amil zakat* agencies above, they do not want and do not need to get a permit to collect zakat assets from Baznas because they are picky balling. As previously explained, it is the community that proposes the SK. Amil associations, generally working as daily workers, do not have a fixed source of income and find it challenging to manage the issuance of a decree to Baznas as this activity for them threatens to eliminate jobs. They even suggested that it would be better if Baznas came to

⁶³ Alfitri, *Islamic Law and Society in Indonesia: Corporate Zakat Norms and Practices in Islamic Banks*, 132.

⁶⁴ Alfitri, 133.

⁶⁵ Alfitri, 135.

⁶⁶ Alfitri, 136.

⁶⁷ Alfitri, 140.

the field, not the people that had to go to the Baznas office to have a permit. Therefore, for them, administering a decree to Baznas is wasting time. On the one hand, applying for a decree from a *langgar* (a smaller building for prayer) is more accessible.

Technically, the establishment of the zakat committee has the same pattern carried out every month of Ramadan. Next, two weeks before Eid al-Fitr, administrators of mosques, *langgar*, *musholla*, neighborhood associations (RT, *Rukun Tetangga*), and religious leaders deliberated to choose whoever served as chairman, coordinator of zakat collection and distribution. The committee is in the range of nine to fifteen people. After the committee is formed, zakat collection activities are conducted ten days before Eid al-Fitr. After zakat is collected, distribution is carried out two days before Eid al-Fitr. The distribution is actually in two ways. First, the committee gives coupons, and then people come to the mosque to show the coupons before receiving zakat. Second, the committee itself distributes it directly to people in need. Regarding the data on zakat recipients, the committee refers to the data provided by the heads of the *Rukun Tetangga*.

Though they did not receive a permit from Baznas, the community's interest in issuing their zakat to this amil association has not decreased. This statement can be seen from two indicators: simplicity in paying the zakat; and a large number of zakat receipts. The first thing, the community considers the presence of the zakat committee as a facility from the mosque, *langgar*, *musholla* so that it is not difficult to issue the zakat. Regarding the second case, the amount of zakat received once in Ramadan, on average, produces 800-1000 kilos of rice, and an average of 15 to 20 million Rupiah in cash. Based on the investigation researchers conducted, this quantitative number did not only come from one neighborhood unit but also from people traveling long. The amount received from this zakat is then distributed to the neighborhood unit

where the mosque, *langgar*, and *musholla* are located. If there is excess, it will be distributed to orphans and Islamic boarding schools. This kind of activity has been conducted for decades. At that time, the committee admitted they had no problems; even the local community supported the zakat committee being formed yearly. Thus, the existence of amil zakat, without a permit, will bring great trust from the community.

In this case, the MK's decision does not apply to the people of Samarinda Seberang because they have built their own social construction and feel satisfied, safe, and profitable. When connected with sociological theory, society has carried out social exchanges in which the surrounding community has obtained the benefits as promised.⁶⁸ In this case, though the amil zakat association in Samarinda acted illegally (no official permit from Baznas), the community responded positively. If put from a prescription perspective, the MK's decision should be enforced anywhere, as long as the area is within the scope of Indonesia. However, it must be noted that the MK's decision lives in a social space that upholds its reality and social context.

In Samarinda, religion has indeed been upheld in social life. The people of Samarinda respect the messages from *Habib*, *Tuan Guru*, *Kyai*, and *Ustadz* as those authorized to talk about religion. Under these social conditions, the way of life for the people of Samarinda cannot be separated from the advice of many religious leaders. Anything related to administration, especially amil zakat, can be negated. Most importantly, how religious teachings remain firmly implemented. Such construction confirms Hilman Latif's research that philanthropy in

⁶⁸ Sagitus Urbonavicius et al, "From Social Networking to Willingness to Disclose Personal Data When Shopping Online: Modelling in the Kontekxt of Social Exchange Theory," *Journal of Business Research*, no. 136 (2021): 77, <https://doi.org/https://doi.org/10.1016/j.jbusres.2021.07.031>.

Indonesia is dominated by a religious spirit.⁶⁹ This rationale is reminded of structural functionalism that the actions of a society or group depend on what norms are deemed valuable and correct in a particular territory.

Conclusion

The obtained conclusions include first, the MK's decision has formulated that the existence of Baznas nationally is to ensure the maximum acquisition and utilization of zakat, and *amil zakat* institutions established before Law 23/2011 are considered as the assistants to BAZNAS, and *amil zakat* associations are required to obtain permits unless those in areas unreachable by Baznas. The MK's decision also obliges Baznas to foster *amil zakat* agencies without permits. It implies that not everyone can become an *amil* or *amil zakat* private institution. Such *amil zakat* institutions are only as an agency, and they are tasked to support Baznas' work. There is a need for Baznas to provide guidance to *amil* associations that have not received or do not receive zakat. *Second*, the MK's decision and its legal implications in Samarinda do not apply in several areas because the community has built its social construction to implement Islamic teachings. This condition is mainly determined by religion. Religious indicators come from the teachings of the pillars of Islam and the "orders" passed down from generations of community leaders around them. Even though this *amil* association has no permit from the government authority, the community still feels benefited and facilitated when distributing zakat.

⁶⁹ Hilman Latief, "Agama dan Pelayanan Sosial: Interpretasi dan Aksi Filantropi dalam Tradisi Muslim dan Kristen di Indonesia," 171.

BIBLIOGRAPHY

- Afandi, Fachrizal. "Penelitian Hukum Interdisipliner Reza Banakar: Urgensi Dan Desain Penelitian Sosio-Legal." *Undang: Jurnal Hukum* 5, no. 1 (2022), <https://doi.org/DOI: 10.22437/ujh.5.1.231-255>.
- Ali, Mahrus. "Pemetaan Tesis Dalam Aliran-Aliran Filsafat Hukum Dan Konsekuensi Metodologisnya." *Jurnal Hukum Ius Quia Iustum* 24, no. 2 (2017),
- Alfitri, *Islamic Law and Society in Indonesia: Corporate Zakat Norms and Practices in Islamic Banks, Islamic Law and Society in Indonesia*, Islam and (New York: Routledge, 2022), <https://doi.org/10.4324/9781003183112>.
- Alfitri, "Religion and Constitutional Practices in Indonesia: How Far Should the State Intervene in the Administration of Islam?," *Asian Journal of Comparative Law* 13, no. 2 (2018), <https://doi.org/10.1017/asjcl.2018.20>.
- Andayani, Trisni et al. *Pengantar Sosiologi*. 1st ed. Yayasan Kita Menulis, 2020.
- Baznas, <https://baznas.go.id/layananpembayaran>. https://baznas.go.id/Press_Release/baca/BAZNAS_Dorong_Pemanfaatan_Digitalisasi_Zakat_Secara_Optima/887.
- Benhabib, Seyla. "Dialogic Constitutionalism and Judicial Review." *Global Constitutionalism*, 2020, <https://doi.org/10.1017/S204538172000012X>.
- Canggih, Clarashinta et al. "Potensi Dan Realisasi Dana Zakat Indonesia." *Al-Uqud: Journal of Islamic Economics* 1, no. 1 (2017).
- CNN Indonesia. "Kemenag Umumkan Daftar 91 Lembaga Amil Zakat Yang Sah Kantongi Izin," 2021. <https://www.cnnindonesia.com/nasional/20211123154302-20-725011/kemenag-umumkan-daftar-91-lembaga-amil-zakat-yang-sah-kantongi-izin>.
- Cropanzano, Russell, et al. "Social Exchange Theory: A

- Critical Review with Theoretical Remedies." *Academy of Management Annals* 11, no. 1 (2017), <https://doi.org/https://doi.org/10.5465/annals.2015.0099>.
- Databoks. "Daftar Negara Pengguna Smartphone Terbanyak, Indonesia Urutan Berapa?," 2021. <https://databoks.katadata.co.id/datapublish/2021/07/01/daftar-negara-pengguna-smartphone-terbanyak-indonesia-urutan-berapa>.
- Enayat, Taha, et al. "A Computational Approach to Homans Social Exchange Theory." *Physica A*, no. 597 (2022), <https://doi.org/https://doi.org/10.1016/j.physa.2022.127263>.
- Faiz, Pan Mohamad dan M. Lutfi Chakim. *Peradilan Konstitusi: Perbandingan Kelembagaan Dan Kewenangan Konstitusioanal Di Asia*. Depok: Rajawali Pers, 2020.
- Faiz, Pan Mohamad dan M. Lutfi Chakim. *Peradilan Konstitusi: Perbandingan Kelembagaan Dan Kewenangan Konstitusioanal Di Asia*. Depok: Rajawali Pers, 2020.
- Fahrudin, Nanang dan Sri Hastjarjo. "Analysis of Social Harmonization Process in the Inter-Religion Relation from the Perspective Cultural Communication: An Approach Using Relation Dialectics and Structural Functionalism." *Advances in Social Science, Education, and Humanities Research* 260 (2018).
- Fauzia, Amelia. "Islamic Philanthropy in Indonesia: Modernization, Islamization, and Social Justice." *Austrian Journal of South-East Asian Studies* 10, no. 2 (2017): 223–36. <https://doi.org/doi.10.14764/10.ASEAS-2017.2-6>.
- Fuadi, Ariza. "Towards the Discourse of Islamic Philanthropy for Social Justice in Indonesia." *Jurnal Ilmu-Ilmu Keislaman Afkaruna* 8, no. 2 (2012), <https://doi.org/DOI.10.18196/AIJIS.2012.0008>.
- Gobel, Yulia Puspitasari. "Pemulihan Ekonomi Indonesia

- Pasca Pandemi Covid-19 Dengan Mengkombinasikan Model Filantropi Islam Dan Ndeas Model.” *Jurnal Tabaru’: Islamic Banking and Finance* 3, no. 3 (2020).
- Hanifah, Rokhmatun et al. “Tantangan Hukum Peer to Peer Lending Dalam Mendorong Pertumbuhan Industri Financial Technology.” *Pandecta* 16, no. 2 (2021), <https://doi.org/http://dx.doi.org/10.15294/pandecta.v16i2.25712>.
- Izadi, Arezoo et al. “Structuralism Functionalism, Social Sustainability and the Historic Environment: A Role for Theory in Urban Regeneration.” *The Historic Environment: Policy and Practice* 11, no. 2 (2020), <https://doi.org/https://doi.org/10.1080/17567505.2020.1723248>.
- Imawan, Dzulkifli Hadi, et al. "Islamic Philanthropy and Civil Society Development Solution in Indonesia." *Advances in Economic, Business and Management Research* 168 (2018).
- Iskandar, Azwar, et al. "Islamic Philanthropy and Poverty Reduction in Indonesia: The Role of Integrated Islamic Social and Commercial Finance Institution." *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 2 (2021), <https://doi.org/http://doi.org/10.19105/al-ihkam.v16i2.5026>.
- Jahar, Asep Saepudin. "Developing Islamic Philanthropy For Human Rights: The Indonesia Experience." *Advances in Social Science, Education, and Humanities Research* 162 (2017).
- Kasri, Rahmatina Awalia and Adela Miranti Yuniar. "Determinants of Digilat Zakat Payments: Lessons from Indonesia Experience." *Journal of Islamic Accounting and Business Research* 12, no. 3 (2021), <https://doi.org/DOI 10.1108/JIABR-08-2020-0258>.
- Kementerian Koordinator Bidang Pembangunan Manusia dan Kebudayaan Republik Indonesia. “Lembaga Zakat Berkontibusi Dalam Pengentasan Kemiskinan Dan Mewujudkan SDM Unggul,” 2020.

- <https://www.kemenkopmk.go.id/lembaga-zakat-berkontibusi-dalam-pengentasan-kemiskinan-dan-mewujudkan-sdm-unggul#:~:text=Saat ini diketahui telah ada,Nasional dan 587 Lembaga Zakat.>
- Latief, Hilman, "Agama dan Pelayanan Sosial: Interpretasi dan Aksi Filantropi dalam Tradisi Muslim dan Kristen di Indonesia," *Religi* 9, no. 2 (2013).
- Mighfar, Shokhibul. "Social Exchange Theory: Konsep George C. Homans Tentang Teori Pertukaran Sosial." *Lisan Al-Hal* 9, no. 2 (2015).
- Media Indonesia. "Kemenkominfo: 89% Penduduk Indonesia Gunakan Smartphone Sumber: [https://Mediaindonesia.Com/Humaniora/389057/Ke-menkominfo-89-Penduduk-Indonesia-Gunakan-Smartphone,](https://mediaindonesia.com/Humaniora/389057/Ke-menkominfo-89-Penduduk-Indonesia-Gunakan-Smartphone)" 2021. [https://mediaindonesia.com/humaniora/389057/ke-menkominfo-89-penduduk-indonesia-gunakan-smartphone.](https://mediaindonesia.com/humaniora/389057/ke-menkominfo-89-penduduk-indonesia-gunakan-smartphone)
- "Merriam Webster Dictionary," n.d. [https://www.merriam-webster.com/dictionary/philanthropy.](https://www.merriam-webster.com/dictionary/philanthropy)
- Mochtar, Zainal Arifin. *Kekuasaan Kehakiman: Mahkamah Konstitusi Dan Diskursus Judicial Activism Vs Judicial Restraint*. Depok: Rajawali Pers, 2021.
- Mochtar, Zainal Arifin dan Eddy O.S. Hiariej. *Dasar-Dasar Ilmu Hukum*. Jakarta: Red and White Publishing, 2021.
- Ormerod, Richard. "The History and Ideas of Sociological Functionalism: Talcott Parsons, Modern Sociological Theory, and the Relevance for OR." *Journal of the Operational Research Society* 71, no. 12 (2021), [https://doi.org/https://doi.org/10.1080/01605682.2019.1640590.](https://doi.org/https://doi.org/10.1080/01605682.2019.1640590)
- People's Consultative Assembly. *Minutes of Amendments to the 1945 Constitution of the Republic of Indonesia 2011 Third Book*. Revised. Jakarta: Secretariate General of the People's Consultative Assembly of the Republic of Indonesia, 2010.
- Reale, Filippo. "Governing Innovation System: A Parsionian

- Social System Perspective." *Technology in Society*, no. 59 (2019), <https://doi.org/https://doi.org/10.1016/j.techsoc.2019.101174>.
- Sa'adah, Mazro'atus dan Uswatun Hasan. "The Common Goals of B.A.Z.N.A.S.' Zakat and Sustainable Development Goals (SDGs) According to Maqashid Al-Sharia Perspective." *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 2 (2021), <https://doi.org/http://doi.org/10.19105/al-lhkam.v16i2.4990>.
- Soekanto, Soerjono. *Pengantar Sosiologi*. Jakarta: Raja Grafindo Persada, 2007.
- . *Pokok-Pokok Sosiologi Hukum*. Jakarta: Rajawali Pers, 1988.
- Shalihah, Fithriatus. *Sosiologi Hukum*. Depok: Rajawali Pers, 2017.
- Urbonavicius, Sagitus, et al. "From Social Networking to Willingness to Disclose Personal Data When Shopping Online: Modelling in the Context of Social Exchange Theory." *Journal of Business Research*, no. 136 (2021), <https://doi.org/https://doi.org/10.1016/j.jbusres.2021.07.031>.
- Wiratraman, Herlambang P. "Penelitian Sosio-Legal Dan Konsekuensi Metodologisnya." Surabaya, 2016.
- Wiratraman, Herlambang P dan Widodo D. Putro. "Tantangan Metode Penelitian Interdisipliner Dalam Pendidikan Hukum Indonesia." *Mimbar Hukum* 31, no. 3 (2019).
- Widiastuti, Tika, et al. "Developing an Integrated Model of Islamic Social Finance: Toward an Effective Governance Framework." *Heliyon* 8, no. 9 (2022), <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e10383>.

Laws and Court Decisions

Law Number 23 of 2011 concerning Zakat Management
The Decision of the Constitutional Court (MK) Number
86/PUU-X/2012.

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