

Conflict Setting Between Zakat as a Deduction of Income Tax (Taxes Credit) and Zakat as Deduction of Taxable Income (Taxes Deductable) (A Research in Aceh Province, Indonesia)

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Abstract: Article 192 of Law No. 11 Year 2006 concerning Aceh Government declared "zakat as a deduction of income taxes payable (taxes-credit)", while Article 22 of Law No. 23 of 2011 on Zakat Management stated "zakat as a deduction of taxable income (taxes deductible)". Thus there has been disharmony between these two provisions and until now, the provisions of zakat as a deduction of income tax payable (taxes-credit) in Aceh cannot be implemented. The purpose of this study was to investigate the implementation of the provisions of "zakat as a tax deduction payable in Aceh and the solutions to the disharmony of provisions of Article 192 of Law No. 11 of 2006 with legislation governing income tax must be understood as a form of special treatment or comply with legal principle "Lex specialis derogat legi generalis". The central government in this case the Ministry of Finance shall issue regulations implementing Section 192 regulating zakat as a deduction of income taxes payable that only applies in Aceh; or the Government of Aceh to apply for judicial review of Article 192 of Law No. 11 of 2006 to the Constitutional Court.

Keywords: Conflict Setting of Zakat, Income Taxes.

I. Introduction

Aceh as special territory and autonomy has the authority to apply the implementation of Shari'a. The authority contained in Article 4 paragraph (1) of Law No. 44 of 1999 on the Special Status of the Province of Aceh and Article 125 of Law No. 11 Year 2006 regarding the Government of Aceh, the authority gives considerable autonomy to the Aceh government both at provincial and district / city if compared to other regions in Indonesia. The implementation syari`a Islam in public life is for the realization safe, peaceful, prosperous, and just society to achieve the blessing of Allah.

One of the implementation of Shari'a in Aceh is in the field of zakat (charity) management under the authority of local governments both at the provincial and district / city level. Then zakat is established as one of the sources of regional revenue,¹ and zakat is defined as a reduction of income taxes² payable (taxes-credit).³ Juridical fact shows that the arrangement is contrary to zakat settings specified in Article 14 paragraph (3) of Law No. 38 of 1999 on the Management of Zakat which is then replaced by Act No. 23 of 2011 on the Management of Zakat, which defined zakat as a deduction of taxable income (taxes deductible).⁴ The purpose of this reduction is described in the explanation of Article 14 paragraph (3) of Law No. 38 of 1999 on Zakat Management that zakat reduction from profit / residual taxable income that the taxpayer is not double-burdened, namely the obligation to pay zakat and taxation. This provision, then still under Article 22 of Law No. 23 of 2011 on Zakat Management in lieu of Law No. 38 of 1999: "Zakat paid by muzaki (payer) to BAZNAS⁵ or LAIZ⁶ is deducted from taxable income."

This is also confirmed in Law No. 36 Year 2000 on Third Amendment Act No. 7 of 1983 on Income Tax (UU.No.36 / 2000), which is regulated in Article 4 paragraph (3) letter a number 1 reads : "what is not included as taxable income is: aid donations, including alms received by the agency zakat or amil zakat institutions established or approved by the Government and the recipients are entitled."

In the provision of the new article it is stipulated explicitly that the object does not include taxes is zakat. Meanwhile, the tax deductibility of the obligatory donations to other religions was not set yet. It is indeed

¹ See article 180 chapter (1) letter d Legislation No 11 Tahun 2006 on Aceh Governance

² Income tax is tax incurred to individual or body for income they receive or gain in one fiscal year. Income is is every additional economical derive from Indonesian or overseas used for consumption or added value to wealth in any name or form. Thus, it can be in the form of profit, salary, honorarium, give or other kind.

³ See article 192 Legislation No 11 year 2006

⁴ See article 192 Legislation No 23 year 2011

⁵ BAZNAS (Badan Amil Zakat Nasional) national body of zakat. See chapter 11 number 7 Legislation No 23 year 2011

⁶ LAZ (Lembaga Amil Zakat) a body form by the community to manage zakat. It helps collect and distribute zakat. See chapter 11 number 8 Legislation No 23 year 2011

the potential to cause jealousy of other religions recognized in Indonesia. To avoid this, Law No. 36 Year 2008 regarding Fourth Amendment of Act No. 7 of 1983 on Income Tax was issued, the article amended to read:

Exempted from the tax object is:

assistance or donations, including alms received by the zakat agency or amil zakat institutions established or approved by the government and received by recipients who are entitled or compulsory religious donations for recognized religions in Indonesia, which is accepted by religious institutions established and approved by the government and received by the rightful beneficiary, the provisions set by or under Government Regulation. "

Furthermore, the government issued Government Regulation No. 60 Year 2010 on Zakat or compulsory religious donations are deductible from gross income, in Article 1 (1) states that:

Zakat or compulsory religious donations that can be deducted from gross income include:

- a. zakat on income paid by an Moslem individual taxpayer and / or by a corporate taxpayer in the country owned by Moslems to the body zakat or amil zakat institutions established or approved by the Government; or
- b. compulsory religious donations for an individual taxpayer other than Islam and / or by a corporate taxpayer in the country owned by religion other than Islam, which is recognized in Indonesia are paid to religious institutions established or approved by the Government .

Based on the description above shows that there is a conflict settings contained in the different laws. Due to the conflict settings, since the enactment UU.No.11 / 2006 dated August 1, 2006 until the present provisions of zakat as a reduction of income taxes payable (taxes credit) does not run at all in Aceh, because there is no rule of implementation, because income tax is the authority of the central government. Zakat and tax in Aceh are two duties of every citizen to the state (Local Government) that must be fulfilled. The existence of two obligations to pay tax and zakat cause problems for Moslem taxpayers. On one side as Muslims are obliged to pay zakat a religious order and one of the pillars of Islam are ordered directly by God and command UU.No.11 / 2006. On the other hand as a good citizen, a taxpayer must meet their financial obligations as one of the obligations of a citizen of the country. Community questioned government why a ratified Laws cannot be applied. Aceh government has sought to implement Article 192, the Governor of Aceh has sent a letter to the Director General of Taxation Ministry of Finance in his letter No. 188.34 / 8765 dated 12 April 2007, regarding: Treatment Zakat on Income Tax in Aceh. The letter was rejected by the Director General tax his letter No. S-605 / Pj03 / 2007 dated July 25, 2007 regarding: treatment of Zakat in income tax provisions. He reasoned it is in accordance with national taxation and it binds everyone without exception, namely Act No. 7 of 1983 as amended by Act No. 17 of 2000 article 9, paragraph (1) letter g, and article 1, paragraph (1), and paragraph (2) Decision of the Director General of Taxation No. KEP-163 / Pj / 2003 on the treatment of Zakat on income in the calculation of taxable income stated: "zakat can be deducted from taxable income of 2.5% of the total income subject to tax is the taxable income that is not final." In fact, UU.No.11 / 2006 is an Act of special or Lex Specialis, which only applies to Aceh.⁷This problem is slowly seems to be forgotten, even in some of the meetings that discuss the implementation UU.No.11 / 2006, almost missed this article in the discussion. If this sustained, surely this article will be merely decoration, without any implementation.⁸ Zeal to enforce Sharia Law with the support of Act No. 11 of 2006 was a very special day for Acehnese. This seems to only be a mere promise without any sincerity from the Central Government and the seriousness of the Government of Aceh to implement, particularly the issue of Zakat as a deduction income taxes payable (taxes credit).

Based on the above description, there are two problems studied in this paper, namely First: How is the implementation of Article 192 UUPA 11/2006 stating that paid Zakat is deducted into the amount of income tax payable of the taxpayer in Aceh?. Secondly, How to resolve the disharmony of Article 192 of Law No. 11 of 2006 with Article 22 of Law No. 23 of 2011 and Article 9 paragraph (1) of Law No. 36 of 2008 in conjunction with Article 1, paragraph (1) of Government Regulation No. 60 Year 2010 in Aceh?

II. Research Method

The research method used in this paper is the juridical-normative, ie legal research that laid the law as a system of norms laid on the principles, norms, rules and regulations, court decisions, agreements and doctrines (teachings).⁹ On the normative juridical research using secondary data that using library research materials. Normative legal research includes the study of the inventory of positive law, a study of the principles of law,

⁷ Amirullah, Hubungan antara Pajak dan Zakat, Majalah Baitul Mal Aceh, Edisi Ke II/Juli-Agustus 2009, hlm. 9

⁸ Hendra Saputra, MA., Zakat dalam Undang-Undang Pemerintahan Aceh, <http://www.gemabaiturrahman.com/2010/05/zakat-dalam-uu-pa.html>, downloaded in 10 September 2014

⁹ Mukti Fajar ND & Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, (Yogyakarta : Pustaka Pelajar, 2010), pg.34

legal research to find in concreto, systematic research on law, legal research on the extent of vertical and horizontal synchronization, comparative study of positive law.¹⁰

This study was prescriptive that offer concepts to solve a problem (problem solving) and not merely descriptive (just to describe something as it is).¹¹ Or prescriptive nature of the study is to highlight something (an object) aspiring or as it is.¹² That is to describe the problems that zakat that implementation of article 192 of Law No. 11 of 2006 which states that paid zakat is deducted to total income tax payable of the taxpayer; which does not work at all in Aceh, and how to settle it.

Besides, it also uses qualitative research methods.¹³ Result analysis does not depend on data in terms of quantity, but the existing data in the analysis of various angles in depth (holistic). Nawawi,¹⁴ stated that qualitative research as an overall concept (holistic) to reveal something done by collecting data in reasonable circumstances (natural settings) in a systematic way, focused, and can be qualitatively accounted, so it does not lose its scientific nature.

Legal Materials used in this study consists of:

- a. The primary legal materials which constitute the main legal materials and binding. These include, among others: the Qur'an and the Hadith; Constitution of the Republic of Indonesia Year 1945; Act No. 44 of 1999 on the Special Status of Special Region Aceh, Law No. 11 Year 2006 concerning Aceh Government, Law No. 38 of 1999 on Zakat Management, Law No. 23 of 2011 on Zakat Management, Law Law No. 36 Year 2008 regarding Fourth Amendment of Act No. 7 of 1983 on Income Tax, Government Regulation No. 60 Year 2010 on Zakat or compulsory religious donations are deductible from gross income and Aceh Qanun No. 10 of 2007 on the Baitul Mal.
- b. Secondary legal materials, ie materials that law can give an explanation of the primary legal materials, such as books, the results of previous research on management of zakat, scientific writings of Islamic law in general.
- c. Tertiary legal material is legal materials that provide meaningful guidance or explanation of the primary and secondary legal materials, such as dictionaries, encyclopedias and others.

Analysis of the data, the data collected are sorted and processed, analyzed and interpreted normatively, logically and systematically inductively and deductively.

III. Research Results And Discussion

1. Implementation of zakat as deduction of taxable income payable from taxpayer in Aceh

If on the Inventory, the basic law of charity as a deduction from income tax in the national legislation, can be found at least in:

- a. Act No. 38 of 1999 on Zakat Management.
- b. Law No. 17 of 2000 concerning Third Amendment Act No. 7 of 1983 on Income Tax.
- c. Law No. 36 Year 2008 regarding Fourth Amendment of Act No. 7 of 1983 on Income Tax.
- d. Act No. 23 of 2011 on Zakat Management.
- e. Government Regulation No. 60 Year 2010 on Zakat or compulsory religious donations are deductible from gross income.
- f. Director General of Taxation Regulation No. PER-6 / PJ / 2011 of 2011 on the Implementation of Evidence Making Payments and Payment of Zakat or compulsory religious contribution to deductible from gross income.
- g. Department of Taxation Regulation No. PER-33 / PJ / 2011 on the Agency / Organization established or approved by the Government defined as receiver Zakat or compulsory religious donations to deductible from gross income.
- h. Department General of Taxation (DGT) Regulation No. PER-15 / PJ / 2012 on the Amendment DGT Regulation No. PER-33 / PJ / 2011 on the Agency / Organization established or approved by the Government defined as zakat receiver or compulsory religious donations to deductible from gross income.

Zakat reduce tax payments in this case the income tax, has been set since the Act No. 38 of 1999, and then further confirmed by Act No. 23 of 2011 as a replacement of Act No. 38 of 1999. Article 14 paragraph (3) Act No. 38 of 1999 which states: "zakat deduction of earnings / income taxable rest is intended that the taxpayer is not affected by the double burden, namely the obligation to pay zakat and taxation". Likewise, after a change

¹⁰ Ronni Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, (Jakarta : Ghalia Indonesia, 1990), hlm. 12-13; lihat juga : Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif*, (Jakarta: Rajawali, 1985), pg. 15

¹¹ M. Solly Lubis, *Filsafat Ilmu dan Penelitian*, (Jakarta : PT.Softmedia, 2012), pg.107

¹² *Ibid*, pg. 3

¹³ Sri Gambir Melati Hatta, *Beli Sewa sebagai Perjanjian Tak Bernama, Pandangan Masyarakat dan Sikap Mahkamah Agung Indonesia*, (Bandung : Alumnii, 1999), pg. 20.

¹⁴ H. Hadari Nawawi dan Himi Martini, *Penelitian Terapan*, (Yogyakarta : Gajah Mada University Press), 1996, pg 175.

in the law by Law No. 23 of 2011, this provision is maintained, as specified in Article 22 that, "Zakat paid by muzakis (taxpayer) to BAZNAS or LAZ deducted from taxable income."

Conditions of zakat as a tax deduction was claimed in the tax regulations since the enactment of Law No. 17 Year 2000 on Third Amendment Act No. 7 of 1983 on Income Tax, which is set out in Article 4 paragraph (3) letter a number 1, which reads: "what is not included as taxable income is: aid donations, including zakat received by the zakat agency or amil zakat institutions established or approved by the Government and the recipients are entitled."

Conditions of zakat as a deduction from income tax under the Income Tax Law No. 17/2000 amended once issued Law No. 36 Year 2008 concerning the Fourth Amendment of Act No. 7 of 1983 on Income Tax. Article 4 paragraph (3) letter a is:

What are exempted from the tax object is: aid or donations, including zakat received by the zakat agency or amil zakat institutions established or approved by the government and received by recipients who are entitled or compulsory religious donations for recognized religions in Indonesia, which is accepted by religious institutions established or approved by the government and received by the rightful beneficiary, the provisions set by or under Government Regulation.

The same provision stated in Article 9 paragraph (1) letter g of the Income Tax Act No. 36 of 2008, which reads:

property donated, aid or donations, and inheritance as referred to in Article 4 paragraph (3) letters a and b, except donations referred to in Article 6 paragraph (1) letter i to letter m and zakat received by the zakat agency or amil zakat institutions established or approved by the government or religious donation mandatory for recognized religions in Indonesia, which is accepted by religious institutions established or approved by the government, the provisions set by or under Government Regulation.

Zakat as a deduction from gross income tax is also specified in Article 1 (1) of Government Regulation No. No. 60 of 2010 on Zakat or compulsory religious donations are deductible from gross income, which reads:

Zakat or compulsory religious donations that can be deducted from gross income include:

- a. zakat on income paid by an individual Moslem taxpayer and / or by a corporate taxpayer in the country owned by Moslems to the zakat body or amil zakat institutions established or approved by the Government; or
- b. compulsory religious donations for an individual non-Moslem taxpayer and / or by a corporate taxpayer in the country owned by religions other than Islam, which is recognized in Indonesia are paid to religious institutions established or approved by the Government .

Agency / Organization designated as recipients or compulsory religious donations that can be deducted from gross income stipulated in DGT Regulation No. PER-15 / PJ / 2012 with effect from the date of June 11, 2012 that were previously regulated by the Director General of Taxation No. . PER-33 / PJ / 2011, which include: National Zakat Agency, Zakat Institutions Dompot Dhuafa Republika, and the Zakat Foundation Institute Rumah Zakat Indonesia.

The mechanism of zakat deduction from gross income stipulated in the DGT No. PER-6 / PJ / 2011 of 2011 on the implementation of payment, payment evidence making of zakat or compulsory religious contribution to be deductible from gross income as follows:

Article 2 of DGT Regulation No. PER-6 / PJ / 2011 In 2011:

1. Taxpayers who do zakat reduction or compulsory religious donations referred to in Article 1, shall attach a copy of proof of payment in the Notice (SPT) Annual Income Tax Tax the year when zakat deduction was done.
2. Proof of payment referred to in paragraph (1):
 - a. may be evidence of direct payment or through bank account transfers, or payments through the Automated Teller Machine (ATM), and
 - b. b at least:
 1. Full name Taxpayers and Taxpayer Identification Number (NPWP);
 2. The amount of the payment;
 3. The date of payment;
 4. Name of zakat body; amil zakat institutions; or religious institutions established or approved by the Government; and
 5. Signature of zakat agency officers; amil zakat institutions; or religious institutions, established and approved the Government, in the proof of payment, if payment directly; or
 6. Validation of a bank officer on receipt of payment if payment by bank account transfer.

Article 3 of DGT Regulation No. PER-6 / PJ / 2011 In 2011.

Zakat or religious donation shall not be deducted from gross income if:

- a. is not paid by the taxpayer to the zakat body; amil zakat institutions; or religious institutions, established or approved by the Government; and / or
 - b. proof of payment does not comply with the provisions referred to in Article 2 paragraph (2).
- Article 4 of Regulation Directorate General of Tax No. PER-6 / PJ / 2011 In 2011
1. Reduction of zakat or compulsory religious donations referred to in Article 1 are reported in the Annual Income Tax Taxpayers concerned in the taxable year is paid zakat or religious donation mandatory.
 2. In the Notice of Annual Income Tax, charity or religious donation required under paragraph (1) is reported to determine the net income

Zakat giving can reduce taxes, because zakat is exempted from tax objects. This tax reduction also applies to religious compulsory contributions for other recognized religions in Indonesia, which is accepted by religious institutions established or approved by the government and received by eligible recipients.

Each muzaki (zakat payer) who make zakat payments through Amil Zakat or by Act No. 23 of 2011 turned into BAZNAS, Provincial BAZNAS, District/ municipal BAZNAS, and Lembaga Amil Zakat (LAZ) registered an incentive in relation to the payment of income tax, which is evidence Proof of payment of zakat or called zakat Amount calculated as a cost component into taxable income deduction or deduction is called gross income.

Payment of zakat on payroll through ministry/ agency zakat collectors unit and state owned enterprises either be made in cash or payroll system also accommodated as a reduction of taxable income, provided that the Zakat Collectors Unit deposit funds collected from zakat to BAZNAS and on that basis BAZNAS issue receipts evidence of payment of zakat. According to Law No. 23 of 2011, that Amil Zakat Body or Zakat Institutions are required to provide proof of payment of zakat to every muzakis (zakat payer). Evidence of payment of zakat is used as a deduction from gross income in the annual tax return filling.

The government made an exception on zakat income only and does not apply to other types of zakat. This is related to the calculation of income tax itself, where only payments or expenses associated with the procurement, collecting and maintaining the taxable income which is recognized as a tax deduction. While zakat maal (wealth) and zakat fitrah (end of Ramadhan) are not related to income, but rather associated with wealth or property owned by a Muslim and a Muslim self and soul.

In the Income Tax Act, zakat that can be recognized as a reduction of income tax must meet several requirements that are cumulative and must be reported in the annual income tax is:

1. Zakat must obviously be paid by an Moslem individual taxpayer and corporate taxpayers in the country owned by Moslems
2. Zakat Payable to zakat body or amil zakat institutions established or approved by the government.
3. Zakat Zakat paid is associated with the income tax that becomes the object.¹⁵

Besides these requirements are met, it does not mean that zakat income paid automatically be recognized as a reduction of income tax. To be able to calculate zakat deduction of income as income tax, income tax payers must report income paid zakat to the year-end income tax return, as the condition can make year-end income tax return. Tax payers (individuals or entities) be registered as a taxpayer in the tax office where zakat payer domiciled, and given NPWP (Taxpayer Identification Number) by the local Tax Office.¹⁶ So that zakat is paid in the current year can only be recognized as a reduction of income tax at the end of the tax year. The reality is that the majority of tax payers not registered as a taxpayer or it can be concluded that the zakat as a tax deduction only applies to people who already have a Taxpayer Identification Number (NPWP).

akat payments as a deduction from taxable income (gross income) as stated above, which has been arranged in a variety of regulations have been in effect since 2001. However, until now many Moslem individual taxpayer or zakat payer (muzakis) who do not take advantage of the reduction in gross income on the income tax. For that zakat and tax officials in all offices are expected to provide information and explanations to the taxpayer and muzakis they serve.

It is important that a deduction from gross income actually not only zakat on income paid by an Moslem individual taxpayer, but also applies to charity paid by a resident entity in the country owned by Moslems to the zakat agency or institution established or authorized by the government.

In the tax regulations, particularly with regard to income tax is Act No. 7 of 1983 on Income Tax as amended by Act No. 36 of 2008 and further regulated by Government Regulation No. 60 of 2010 that zakat or

¹⁵ Bambang Widarno, Zakat Sebagai Pengurang Penghasilan Kena Pajak, Jurnal Akuntansi dan Sistem Teknologi Informasi Vol. 5, No. 1, April 2006, pg 83

¹⁶ Ibid

compulsory religious donations deducted from gross income, similarly, DGT stipulates that for an individual taxpayer when delivering their SPT stating income Tax overpayment (including overpayments due to zakat cut off). Their overpayment will undoubtedly be returned without going through inspection. Tax official review would be enough.

Efforts to socialize zakat as a deduction from gross income is not sufficient if done by BAZNAS and the Ministry of Religious Affair only. But it requires coordination, cooperation and synergy with relevant agencies, particularly members of the Directorate General of Taxation. Coordination, cooperation and synergy is what needs to be built in the future at the institutional level. Because for Muslims, zakat and taxes are two in line and parallel obligations.

One thing to note is that the zakat and taxation should be managed in a trustworthy and transparent. Honesty is not only required from the muzakis and taxpayer when calculating its own obligation of zakat and income taxes, but also from zakat and tax collectors. Dishonesty would undermine and weaken public confidence, awareness and consciousness to pay zakat through body and to pay taxes honestly and correctly. It is inevitable that zakat which only accounted for as a deduction from gross income, does not meet up to the expectations of the muzakis and zakat organizations in the country, especially areas of Aceh province that has been regulated in Law Number 11 of 2006, that zakat is a deduction from income tax payable. However, according to the rules of Islamic jurisprudence, لا يترك له لا يترك له لا يترك له لا يترك له (What cannot be done as a whole, do not be left out entirely).

Muslims, especially in Aceh province, have set it but yet managed to fight for zakat as a deduction of income tax payable. Then zakat as a deduction from taxable income should not be wasted. As has been disclosed that the Act No. 23 of 2011, which applies nationally, it was mentioned that zakat payment can only reduce the amount of taxable income (taxes deductible) whose implementation is regulated by Decree No. DGT No. KEP-163 / PJ / 2003, while the Number 11 Act of 2006, the payment of taxes can reduce income taxes payable (taxes-credit).

In contrast to Aceh, obligations issued Zakat based on the Quran Surat Al Baqarah verse 267 which determines that any honest labor income generation, as calculated for one year the results reached Nisab (worth 85 grams of gold) it shall be issued zakat of 2.5 %. This obligation was later adopted by the Law No. 11 of 2006, Article 180 paragraph (1) letter d said: "Zakat is one of the sources of Local Revenue and Revenue Aceh Regency / City; Article 192 states that zakat as a deduction to the amount of income tax payable is considered a remarkable progress for Muslims in Aceh. The provision has been championed by some Islamic organizations nationwide in a long time, but the government has not been able to agree. This means that the payment of zakat in Aceh, is recognized by the tax level, as both a source of income regions / countries that are used to improve the welfare of the people though in a different portion.

According to Al-Yasa 'Abubakar, provision of zakat as the original income as "complementary" zakat provisions can reduce the income tax payable.¹⁷ If zakat has been recognized as a reduction of income tax and it means the country / region will be reduced, then to balance the scale to state income, zakat will be categorized as Regional Original Income.¹⁸

Differences in treatment of zakat as a tax deduction of taxable income with zakat as a reduction of income taxes payable (tax credits) can be explained as follows:

a. Zakat as income deduction taxable (Taxes Deductable)

Pasal 6 ayat (1) Undang-Undang Nomor 36 Tahun 2008, menjelaskan bahwa suatu beban dapat diperlakukan sebagai pengurang penghasilan kena pajak jika beban tersebut terkait dengan kegiatan untuk mendapatkan, menagih, dan memelihara penghasilan.

a. Reducing treatment Zakat as Taxable Income (Taxes Deductable)

Article 6 paragraph (1) of Law No. 36 of 2008, explain that a load can be treated as a deduction from taxable income if the burden associated with activities to obtain, collect, and maintain income.

Zakat income does not meet the criteria as expenses associated with activities to obtain, collect, and maintain income. If a taxpayer pays zakat payment income is not associated with the income, particularly in terms of obtaining, collecting and maintaining all of the income that will significantly increase revenue. Paying zakat even will reduce earnings.

Basically both zakat income and income tax levied on the same object, namely the income received by an Moslem individual. The existence of two obligations towards the same object can be regarded as a double duty. By classifying zakat income as taxable income, then the avoidance of double imposition effective only at a maximum of 30% (income tax). This means that Moslem taxpayers must bear the double burden by 60%.

¹⁷ See article 192 Legislation No 11 year 2006.

¹⁸ Interview with Al Yasa' Abubakar, Head of Syariah Consideration Board, Baitul Mal Aceh/Professor at UIN Ar-Raniry di Banda Aceh, in 25 December 2013.

Policies that have been implemented by the government and did not eliminate the double obligation they must borne, but only reduce the burden of tax payable.

b. Zakat as deduction of income tax payable (Taxes Credit)

In theory, to calculate the tax that must be paid in advance shall be deducted the tax credits against the tax due. As noted above, the non-fulfillment of the criteria zakat income as expenses related to the activities to obtain, collect, and maintain income then zakat treatment of income as a reduction of taxable income is not right. Philosophical equality between zakat and income tax revenue which creates aspects of congruence, then certainly for the citizens especially Muslim taxpayers will give rise to a double burden. To align the philosophical aspects and avoid the double burden and create justice then zakat treatment of income as a direct deduction from income tax (tax credit), as specified in Article 192 of Law No. 2006 is a very precise 11Tahun and sense of fairness.

Alyasa' also hope that zakat should be a deduction component to tax because in practice so far, zakat is calculated outside the tax to be paid by the person to the government. He gave an example, a government employee must pay income tax at 15 per cent plus 2.5 per cent of his salary. A total of 17.5 percent of the government withheld from the employee's salary for the original income. "That is, zakat of 2.5 percent was included in the tax imposed. Tax of 15 per cent taken are inclusive of 2.5 percent zakat," said Alyasa'.¹⁹

But so far, Acehnese are disappointed because implementing of zakat as a deduction for income tax of as stated by Directorate General of Taxation, Ministry of Finance has not issued implementing regulations. Therefore zakat paid by residents of Aceh still be an additional burden on the tax because it is non-functioning as a tax deduction, regardless it's 8 years of law enactment No. 11 of 2006.

Aceh residents who have paid (withheld) zakat have contributed (required to donate for) 2.5% of their income to the provincial original income, regional, or districts / cities revenue as a result of special autonomy. People of Aceh who have paid zakat should be reduced from income tax of 2.5% of the applicable national provisions, because of the privilege of Aceh and special autonomy. Thereby providing relief or convenience to the residents of Aceh, as expected initiators, the implementation of special autonomy in the field of charity today turned out to be a heavy burden to the Muslim population of Aceh.

Based on the description of the regulatory or zaakt system as a tax deduction adopted by Act No. 23 of 2011, Act No. 36 of 2008 and Act No. 11 of 2006 can be illustrated as follows:

Table Zakat Setting As A Tax Deductive

TYPE OF REVENUE/ CUT	TREATMENT I UUPZ NO.23/2011 & UU NO.36/2008	TREATMENT II UUPA NO.11/2006
- Gross income	Rp. 50.000.000,00	Rp.50.000.000,00
- Not taxable income (K/0)	(Rp.24.300.000,00) ²⁰	(Rp.24.300.00,00)
- Taxable income	Rp. 25.700.000,00	RP. 25.700.000,00
- Zakat 2,5% from gross income	Rp. 1.250.000,00	Rp -
- Taxable income after zakat	Rp. 24.450.000,00	Rp. -
- Income tax payable (15%)	Rp. 3.667.500,00	Rp. 3.667.500,00
- Zakat (2,5% from gross income	Rp. -	Rp. 1.250.000,00
- Taxable income after zakat	Rp. -	Rp. 2.417.500,00
- Religious and Country obligation	Rp. 4.917.500,00	Rp. 3.667.500,00

According to the first treatment, as regulated in Act No. 36 of 2008 and Act No. 23 of 2011, zakat that must be removed is by Rp1.250.000,00 and income tax payable is to be borne by taxpayer is Rp.3.667.500,00. So total zakat and tax to be issued is Rp.4.917.500,00. The impact on treatment I was a person will be exposed to two types of obligations at the same time. This has not been reflected justice. Justice can be seen if zakat directly used as a tax deduction (tax credit), as in the second treatment and this provision has been applied in Malaysia.

In Malaysian state tax laws, the Income Tax Act 1967, last revised in 2006, the Malaysian government zakat uses Treatment II of imposition and General Characteristics The Tax at the Section 6A Subsection (3) which contains Tax Rebate. In principle, the taxation laws in Malaysia, noted that zakat is a discount or a deduction of income tax payable, even including zakat fitrah and other obligations are paid by Muslims, as long as there is evidence issued by legitimate institutions that specifically deal about zakat.²¹

¹⁹ http://mpu.acehprov.go.id/index.php?option=com_content&view=article&id=78:zakat-pengurang-pajak-kapan-berlaku&catid=42:opini-islam, accessed in 12 July 2013

²⁰ Non taxable income through Ministry of Finance No: PMK-162/PMK.011/2012 in 22 October 2012 effective since 1 January 2013. Minimum non-taxable income which was Rp 15.840.000,00 now becomes Rp 24.300.000,00 per year or Rp. 2.025.000,00 per month for every single tax payer. Meanwhile, for married individual, from Rp 1.320.000 now becomes Rp. 2.025.000,00.

²¹ Gusfahmi, *Pajak Menurut Syari'ah*, Revision edition, (Jakarta : Rajawali Pers,2010), pg 201-2013

According to the second treatment, the outstanding tax liability to be incurred after deducted from zakat obligation. Tax liability can be reduced in the amount of Rp. 2,417,500.00 so that the amount of zakat and tax burden to be incurred is only Rp. 3,667,500.00.

Muslim community generally requires treatment II (zakat as a deduction from the tax payable) as stipulated in Law No. 11 of 2006. It is very reasonable considering the general public does not want a double levy. But with zakat as a deduction from the income tax, people can avoid double payments; zakat and taxes.

2. Disharmony settlement Article 192 of Law No. 11 of 2006 with Article 22 of Law No. 23 of 2011 and Article 9 paragraph (1) of Law No. 36 of 2008 in conjunction with Article 1, paragraph (1) of Government Regulation Number 60 Year 2010 in Aceh

In constitutional theory of Islam, zakat management handed over to Al-Waliyul Amri; the government. This derives from Islamic scholars and Al-Qur'an in the Qur'an Surat At-Tawbah paragraph 103 "khudz min amwalihim" (Take alms/ zakat of their wealth). It means that the government has the authority to take zakat.²² Imam Qurtubi when interpreting these verses (Al-Quran, Sura 9: 60) states that 'amil is the people assigned or sent by Imam/ government to take, write, count and record zakat from muzakki (zakat payer). Later it will be distributed to those who entitled to receive them.²³ Zakat is an Islamic form of government guarantees on the fate of the poor. It is the right of the poor from the have.²⁴ Based on the history of Islam, almost all of the Caliphates perform the functions and duties that raise and distribute zakat to those who deserve it in accordance with the different levels of implementation.²⁵

Thus the pattern of zakat management in Aceh are conducted by the local government (Baitul Mal) after the enactment of Law No. 44 of 1999 and Act No. 11 of 2006 which authorizes the local government of Aceh as privileged and special autonomy which impose shariah Islam. This is strengthened the legal position of Islam in Indonesia, particularly in Aceh as ever proposed by the late Prof. Hazarin. According Prof. Hazarin, the fundamental rule in Article 29 paragraph (1) can be interpreted in six ways, three of which are relevant to this discussion, the point is:

1. Indonesia should not have nor apply laws that are contrary to the rules that apply to religious faiths in our homeland.
2. The country shall perform all religious law applicable in Indonesia, when state power is needed to apply religious law. This means that the state is obliged to carry out religious laws for the benefit of the recognized religions in Republic Indonesia.
3. Religion application does not require the state power because it can run by each respective faiths (such as prayer and fasting for Muslims) are individual obligation to perform in accordance with their respective religions.²⁶

When the government enacted Law No. 11 of 2006 which contains the provisions of Article 192 would have done in-depth assessment, including the harmonization of the various other legislations so that there is no contradiction. Harmonization bill implemented carefully and professionally will result in quality bill. There are 8 (eight) criteria for good law by Lon Fuller as follows:²⁷

1. The law must be obeyed by everyone, including by state authorities;
2. The law should be published;
3. The law should apply to the future, not retroactive;
4. The rule of law must be written clearly, so it can be identified and implemented correctly;
5. The law should avoid self of contradictions;
6. The law should not require something that cannot be met;
7. The law should be constant to have legal certainty. But the law must be amended if the political and social situation has changed;
8. The actions of government officials and law enforcement must be consistent with the applicable law.

²² Banu Muhammad H, Upaya Pengintegrasian Zakat dalam Sistem Fiskal Nasional, Jurnal Syari'ah, Edition II January-June 2010, (Jakarta: LKIH-FHUI), pg. 40

²³ Al-Qurthubi, Al-Jami' Li Ahkam al-Qur'an, 1993 7-8 pg. 112-113 as explained by Didin Hafidhuddin, Zakat dalam Perekonomian Modern, (Jakarta : Gema Insani Press, 2002), pg 125

²⁴ Sabahuddin Azmi, Islamic Economics; Public Finance in Early Islamic Thought, (Goodword Books, New Delhi, 2002), translated edition by. Widyawati, Ekonomi Islam, Keuangan Publik dalam Pemikiran Islam Awal, (Bandung : Nuansa, 2005), pg. 93

²⁵ Abdullah bin As-Sa'dy said : I was elected amil zakat by Omar. After I completed my work I came to him, Omar gave me salary. I said to him : I did this because of Allah. Hearing that, Omar said to me : During the prophet time, I was often assigned as amil myself. And I told him what you have told me. Rasulullah replied : If you are handed out something, take it and give it for donation. (H.R. Bukhari Muslim).

²⁶ See Prof. Dr. Hazairin, Prof. at Law Faculty University of Indonesia, that Republic Indonesia is responsible to help run the application of every religion that serves one God. If the religion has regulation, then the country will help apply it.

²⁷ Munir Fuady, Teori Negara Hukum Moderen (Rechstaat), (Bandung : Refika Aditama, 2009), pg. 9.

However, if there is a conflict (disharmony) as occurs between Article 192 of Law No. 11 of 2006 with Article 22 of Law - Law No. 23 of 2011 and Act No. 36 of 2008, this is probably due to:

- a. Law formation was carried out by different institutions and often in different time periods;
- b. Authorities who establish legislation always change either because of office term, mutations, or replacement;
- c. Sectoral approach in the formation of legislation is more powerful than the systems approach;
- d. Lack of coordination in the process of establishing legislation that involve multiple institutions and disciplines of law;
- e. Limited public access to participate in the process of formation of the legislation;
- f. Not solid ways and methods, standardized and binding all agencies authorized to make regulations.²⁸

Next is how to solve the case. Rule of law must be applied and actualized in the reality of life, both Islamic law and positive law. Regulatory disharmony on zakat management in Aceh, especially with regard to the provisions of "zakat can reduce taxes", there are some propositions that need to be done, namely:

- a. Change / repeal part of or in a whole disharmony article.
- b. Apply for judicial review to the Constitutional Court.
- c. Applying the principles of law / legal doctrine of "Lex specialis derogat legi generalist". This principle implies that the rule of law which specifically will take aside common law rule. There are several principles that should be considered in principle Lex specialis derogat legi generalist.²⁹
- d. The regulation found in the common law rule remains in effect, unless specifically stipulated in the special legal regulation.
- e. The regulations of lex specialis must be equal to the regulation of lex generalis (legislation with legislation).
- f. The regulations of lex specialis must be in similar legal environment (regime) with lex generalis. Code of Commercial Law and the Code of Civil equally including environmental civil law.

The central government represented by the Ministry of Finance should review these provisions and acknowledge it as lex specialist, because zakat management in Aceh is different from other regions in Indonesia. The Government of Aceh has been given the authority to manage zakat and zakat has been incorporated into one of the sources of regional revenue.³⁰ While outside Aceh Zakat is managed by institutions established by the community with the consent or permission of the government and zakat is not included as a source of regional revenue.

Based on the principle of Equality before the law. Equality before the law is one of the most important principles of modern law. This principle became one of the joint doctrines of the Rule of Law which also spread to developing countries, including Indonesia.³¹ The principle of equality before the law is one of the manifestations of State law (rechtsstaat) so everyone should have equal treatment before the law (gelijkheid van ieder voor de wet).³² Thus, an inherent element implies equal protection before the law (equal justice under the law) and gets equal justice before the law.

Based on the illustration noted above, we will layout how non-Muslim citizens pay taxes. If their one year income is Rp.50.000.000, - as illustrated above table, then he has an obligation to pay a tax of 15% x Rp.25.700.000, - = Rp. 3.855 million, - Then when compared with the obligations of Muslims to pay zakat and tax pursuant to Law No. 23/2011 jo. Act No. 36 of 2008 of Rp. 4.9175 million, - it is a national requirement for Moslem citizens. And when compared to the provisions of Article 192 of Law No. 11 of 2006, specifically for Moslem population in Aceh, they are obliged to pay zakat and tax amounted to Rp. 3.6675 million, -. This concept of payment seems to be fairer, especially for Muslims.

Based on the illustration above, seemingly the government is losing potential income tax. However, the impact is obvious and immediate to the to the state and society. Zakat distribution will increase the income of those who deserve it (mustahiq). The public will be alert to the collection and distribution.

Manipulation is expected to be smaller as the responsibility is directly connected to the God. Until now, treatment of zakat as expenses is still maintained even re-confirmed by Act No. 36 of 2008 on article 4, paragraph (3) letter a, Article 9, paragraph (1) letter g. It can be concluded that zakat is still treated as liability (expenses) which reduces the gross income.

As a solution to this problem, the Aceh government is expected to fight for it to the central government, in this case the Minister of Finance, to issue application regulations of zakat as a deduction to the

²⁸ A.A. Oka Mahendra, Harmonisasi Peraturan Perundang-Undangan, <http://ditjenpp.kemenkumham.go.id/htn-dan-puu/421-harmonisasi-peraturan-perundang-undangan.html>, downloaded in 21 October 2014

²⁹ Bagir Manan, Hukum Positif Indonesia, (Yogyakarta: 2004), pg 58. Also see explanation article 7 chapter (5) legislation No 12 year 2011 on the formation of regulation as follows: "what it meant by "hierarchy" is the steps in all types of regulations based on lower aspects of regulations cannot go against a higher regulations ", pg. 58

³⁰ See article 180 chapter (1) letter d regulations No 11 year 2006 on Aceh governance.

³¹ See article 27 chapter (1) legislation of Republic of Indonesia year 1945

³² Lilik Mulyadi, Hukum Acara Pidana, (Jakarta :Citra Aditya Bakti, 2007), pg. 20.

amount of income tax payable under Article 192 of Law No. 11 of 2006. The central government should be responsible for any legislation implemented. Special autonomy in the field of zakat as part of the implementation of Islamic law in the national legal system really gives grace and not a heavy burden for the people of Aceh.

IV. Conclusion

Based on the description above can be concluded that:

1. Implementation of the provisions of Zakat as a deduction from the amount of Income Tax Payable from the taxpayer in Aceh as stipulated in Article 192 of Law No. 11 Year 2006 cannot be executed because there is no implementing regulation and the central government rejected the application of such provision as contrary to the Act Income Tax.
2. As a solution to conflict settlement / disharmony provisions of Article 192 of Law No. 11 of 2006 with legislation governing income tax must be understood as a form of special treatment or comply with legal principle "Lex specialis derogat legi generalist". The central government in this case the Ministry of Finance shall issue regulations implementing Section 192 of the regulating zakat as a reduction of income taxes payable that only applies in Aceh; or the Government of Aceh filed Filing for judicial review of Article 192 of Law No. 11 of 2006 to the Constitutional Court.

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