

THE TAXATION IN ISLAMIC LAW PERSPECTIVE

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ABSTRACT

The national legal policy on taxation is cited in Article 23, the 1945 Constitution of the Republic of Indonesia. It provides that taxes and other enforceable contribution for state purposes shall be regulated by act. Tax collection is part of a state economic activity that constitutes the study matter of Islamic law. The Islamic law aims to guide humans in a right path. There are various Islamic jurists' opinions on whether taxes the government collects are allowed or not. The taxes can be collected if the state is under certain conditions and with certain requirements by considering principles of justice, not burdening the people and spreading evenly. The taxes can be collected by the state to fund state expenditure. There is a binding goal why the tax collection is allowed, that is to fund the expenditure for which Muslims is responsible and to fill the empty baitul mal (state treasury). The taxes and zakat are an integral part in fulfilling both state and religious obligations. The Tax Director General Regulation Number PER-6/PJ/2011 regulates implementation of the payment of zakat or compulsory religious donations that can be deducted from gross income when they are paid to one of the bodies or institutions the government has approved.

Keywords: taxes, zakat, state, the 1945 Constitution, Baitul Mal

INTRODUCTION

Indonesia is based on rule of law (*rechtsstaat*), not based on rule by law (*machtsstaat*). It is asserted in some provisions such as: first, the explanation of the 1945 Constitution on the governance system; second, the assertion of rejecting absolute power; third, the substantial rule of law in Indonesia; fourth, the rule of law is compatible with democracy; fifth, the power of head of the state is not infinite, but limited; and sixth the 1945 Constitution regulates human rights. In welfare state, the tax collection should be based on act (Rochmat Soemitro and Kania Dewi Sugiharti, 2004: 16).

The national legal policy on taxation is mentioned in the 1945 Constitution of the Republic of Indonesia Chapter VII and Article 23A, states that "taxes and other enforceable contribution for state purposes shall be regulated by act" (Muhammad Saidi Djafar, 2007 : 5). Similarly, the developed countries use the slogan: "no taxation without representation", that no taxation without the approval of the House of Representatives or "taxation without representation is robbery". It means that taxation without the approval of the House of Representatives is thievery.

The taxes have vital and strategic function in executing the governance, regulating the economic field, spreading the income evenly and increasing the development so that every state needs the tax collection can be well done. Moreover, the state income from tax sector becomes one of the key indicators of the government's success. Whatever the tax system is implemented, the government's success will be measured by amount of tax collection to the state treasury (Mokhamad Khoirul Huda, 2005: 70).

The taxation concerns on citizens' obligations to the state as public institution that is formed and given an authority to manage state or public interests. The tax collection should be

approved by people through a legislation or an act the House of Representatives approve. Any tax collection which is not based on legislation is null; the people are not obliged to obey it. However, the taxation the law stipulates makes the government has the coercive right to collect taxes through authorized state apparatus.

A total income in the 2015 State Budget is planned to reach Rp.1.793.588,9 billion, upper 7.8% than the target in the 2014 State Budget. A tax revenue of such a total income is projected to reach Rp.1.379.991,6 billion, upper 10, 0 percent than the target of the 2014 Revised State Budget. The tax revenue reaches 77% of total state income. On the other hand, the amount of the 2015 State Budget is planned to reach Rp. 2.039.483,6 billion, upper 8.7% than the ceiling of the 2014 Revised State Budget. Thus, the 2015 State Budget is deficit of Rp.245.894,7 billion or 2.21 percent of the Gross Domestic Product. (Memorandum of Finance and the 2015 State Budget: 12). Therefore, the taxpayer participation, awareness and compliance to contribute in developing the country through paying the taxes should be also increased. Without the increased taxpayer compliance, there will be no cheap public facilities, no eradication of poverty, and no optimal implementation of the state functions. To reach the tax revenue target, the government has made various improvements of the national tax system. To secure the 2015 tax revenue targets, the government has decided to continue efforts of the tax reform.

According to Statistics in 2015, a population of Indonesia is 252,168.4 people, (Statistical Agency, 2015: 69), whereas in year 2010 the national population was 237,556,363 people that grew an average 1.4% every year. Meanwhile, the distribution of Indonesian population in 2010, based on their religion is that approximately 87.18% of them are Moslem; 6.96% are Protestant; 2.91% are Catholic; 1.69%, are Hindu; and 0.72% are Buddhist. Looking at the amount of the Indonesian population in 2015, it is a potential for both tax revenue quantity and quality. The most taxpayers are actually Moslems, since they are 87% of total Indonesian population i.e. 252,168.4 people. Furthermore, the Indonesian Moslems are the most population in the world i.e. 202 million; then followed by Pakistan where the Moslems reach 174 million.

The tax collection is a part of the state economic activity that also becomes a study matter of Islamic law as other fields of science and knowledge. The Islamic law aims to guide humans in a right path. The economic activity in Islam is a life demand that has divine dimension, as defined in Al-A'rah: 10: "And We have certainly established you upon the earth and made for you therein ways of livelihood. Little are you grateful". However, until now there is no legal certainty in Islamic law (Suhrawardi K. Lubis, 2004: 1) whether the tax collection is included as *halal* (lawful) or *haram* (unlawful). Moreover, the Indonesian Ulama Council has so far not stipulated a *fatwa* on the taxation (Jawa Pos, 2012: 3). If the tax collection is decided as *haram*, it will impact Indonesian people and state activity, as asserted in Surah Al-Baqarah (2) 168: "O mankind, eat from whatever is on earth [that is] lawful and good and do not follow the footsteps of Satan. Indeed, he is to you a clear enemy". Based on the background above, it is formulated to analyze the following issue: how the tax liability is in Islamic law perspective; and how the relationship between *zakat* liability and tax liability is according to positive law of Indonesia.

TAX LIABILITY IN ISLAMIC LAW

The state income (*Mawarid ad-Daulah*) in the economic system of Islam according to Imam Malik, Imam Shafi'i, Abu Ubaid, Imam Al Mawardi, Ibn Taymiyyah and Syyid Sabiq consist of three main classification, namely *ghanimah* (spoils of war), *fai'* (property) and

shadaqah/zakat (charity). The word *ghanimah* is cited in the Qur'an seven times; *fai'* is mentioned three times; and *shadaqah* is cited thirty four times (Gusfahmi, 2009: 8).

The government of Caliph Umar ibn al-Khattab (634-644 AD), Umar ibn Abdul Aziz (717-720 AD) and the Abbasid under Caliph Harun al-Rashid (786-803 AD) used Islamic economic system so that the country experienced a golden achievement, including surplus finance for people.

Baitul mal (the treasury) during the Islamic caliphate was able to fund arrangement and maintenance of useful affairs for people, so there was directly or indirectly no tax liability for the people. Islam has determined that financing for various purposes is underwritten by *baitul mal*. However, if *baitul mal* has no or less fund, Islam obligates entire Moslems to fund it. Allah has obliged to the state and the people to eliminate the danger that can be befall to the people as Hadis Rasulullah Muhammad from Malik and Ahmad Ibn Abbas says: "It should not harm others and yourself."

Along with the changing times and conditions, another collection appeared apart from *zakat*, i.e. taxation that is in Arabic terms called *al-usyr*, *al-maks* or *dharibah*. Currently, the taxation is an obligation for citizens in a country, because the government's funds are insufficient to finance various "expenditures either routine expenditure or development expenditure", so that if they are not funded, it will arise disadvantages. Meanwhile, preventing disadvantages is an obligation, so the state must also provide what people require to live. Imam Muslim narrates the Hadis: "Imam or the caliph is a protector and regulator towards people's affairs; and he will be held accountability for the people." Thus, the taxes can be collected if the state enters into certain conditions and certain requirements by considering principles of justice, not burdening the people and spreading evenly.

In Islamic law there are three taxation systems, such as: first, *jizya* known as individual tax that must be paid by *kafir zimmi*, i.e. non-Moslems who live in an Islamic state and obey the government regulations in protecting life, safety, liberty and other human rights; second, *kharaj* i.e. a land tax that is applied towards a land the Moslems obtain through the war and then it is returned to and worked by the owner; and third, *'usyur* i.e. a trade tax or customs including export and import (Widi Widodo: 2012).

The taxes can be collected by the state to fund the state expenditures. Thus, there is a binding goal why the tax collection is allowed, that is to fund the expenditure for which Muslims is responsible and to fill the empty *baitul mal* (the state treasury).

In detail there are four main causes that the taxation (*dharibah*) emerges in Islam. First, the *ghanimah* and *fay'i* diminish and even surcease at all. In Rasulullah Muhammad and friends era, the state budget sourced from *ghanimah* and *fay'i* also diminished, moreover it is recently off. It is a fact that various public interests are financed by both sources, *ghanimah* and *fay'*. Second, the target to distribute *zakat* is limited. Although the acceptance of *zakat* increases because of the growing number of Moslems, the target to accept *zakat* is limited. Allah in the Qur'an. (9): 60 says that the target to have the right to receive *zakat* is indigent, poor, *amil*, *mu'allaf*, *riqab*, *gharim fi sabilillah* and *ibn sabil*. Third, the taxation becomes a shortcut to encourage economic growth. Moslem countries have many natural resources but have little funds, so they have to borrow funds to abroad and they must consequently pay the debt and its taxes. Fourth, the taxation is decided as a solution for the Caliph who must fill the people's needs if the *Baitul Mal* is in lack financial condition (Gusfahmi, 2009: 9).

To this type of the collection apart from *zakat*, the *ulama* (the Moslem scholars) have called as *dharibah*. It is derived from the word *dharibah*, *dharaba*, *yadhribu*, *dharban* that equivalently means a tax. The taxation is additionally burdened to the Moslems after the first

burden, *zakat* or charity. Meanwhile, according to Inaya Gazy as mentioned in his book *Al-Iqtishad al-Islami wa az-Zakah ad-Dharibah* that is translated into *Bahasa Indonesia* by Zainudin Adnan, the tax means humiliation which is understood from the word *jizyah* (Surah At-Tawbah (9): 29). This humiliation is mainly burdened to *kafir*, and it is additionally burdened to Moslems as a part of righteous deeds and their *jihad* in the way of Allah because of specific condition. Therefore, the term *dharibah* is more appropriate to be translated as the additional burden the Moslems hold to meet their interests.

In Islamic literature, the Moslem scholars variously define the taxation as follows:

- a. Imam al-Ghazali and Iman al-Juwaini define the taxation as what the rulers obligate to rich people i.e. collecting what can make state and people interests fulfilled when there is no fund in *baitul mal* (the treasury);
- b. To Yusuf Qardhawi, the taxation is an obligation that taxpayers have and give it to the state as prevailing provisions without getting refund from the state to fund public expenditures and to implement economic, social and political goals and other goals the state wants to achieve;
- c. To Gazy Inayah, the taxation is an obligation to pay in cash and bindingly what the government or authorized official has stipulated without any refunding for the taxpayers. The government stipulation is accorded with the taxpayers' ability and allocated to meet the public food needs and government's financial demands;
- d. according to Abdul Karim, the taxation is a treasure Allah obligates to the Moslems to finance several needs and expenditures when the treasury has no fund or money.

The taxation regulates a relationship among human beings (*mu'amalah*); it is therefore is part of Islamic law (Mohammad Daud Ali, 2007: 45). If Islamic law does not regulate the taxation, the government will collect it as a means to oppress the people (Gusfahmi, 2011: 15). Without any *shari'a* provisions, the government will collect taxes and allocate them as he/she wants; the taxes are therefore defined as a tribute or a property of the king. Only should the Islamic law decide all cases whether a particular tax can be collected or not. Those who do not judge and decide the cases in the *Shari'a* provisions (the provisions Allah has stipulated), they are unjust (Surah Al-Maidah [5]: 45).

The nature of the taxation in Islamic law is: first, that the subject of the taxation (*dharibah*) is only Moslems, while non-Moslems are imposed *jizyah*; second, the taxpayers are only the rich people; third, the object of the taxation is only property (*al-Amwal*), not individual (*an-nafs*); fourth, it prevails in temporary period; fifth, the amount of the tax collection is limited according to the amount of required financing; and sixth, *zakat* should be able to deduce the taxes (tax credit), not just to deduce income (deductable cost) as recently applied in Indonesia (Gusfahmi, 2009: 11).

There is different opinion among Islamic jurists and Islamic economists on what the taxation is allowed or not. The first opinion states that the taxation should not be obliged to the Moslems, because they have been obliged to pay *zakat* or charity. This opinion is based on *shar'i* arguments as follow: (a) Allah said in the Holly Qur'an: "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent..." (Surah An-Nisa': 29); (b) Rasulullah Sallallahu 'Alaihi Wasallam said: "Do not do despotically. A Moslem's wealth is not actually *halal* unless it is suitable with the owner's willingness (Hadis from Iman Ahmad); (c) Hadis from Fathima bint Qais Radhiallahu 'Anha that she heard Rasulullah say: "There is no obligation towards the wealth but *zakat*"; (d) Hadis Buraidah Radhiyallah 'Anhu in the story of an adultery *Ghamidiyah* woman states that

Rasullullah said: "For the sake of the Divine who holds my soul, she has indeed repented. If a tax collector repented as her repentance, his sins would undoubtedly be forgiven (Hadis from Muslim); (e) Ibn Umar Radiyallah 'Anhu was ever asked whether Umar Ibn Khatab Radiyallah 'Anhu ever collected the taxes from the Moslems. He replied: "No, I never knew it"; and (f) Sheikh Abdul Aziz bin Baz Rahimahullah in his book *Huquq ar-Ra'yi wa ar-Ra'iyah* said: "The evil is like tax collection, we therefore expect that the government review the policy" (Muhammad Wasitho Abu Fawaz: 2011).

The second opinion states that the taxation can be the Moslems' duty when the state indeed requires the funds. The Islamic jurists, in this sense, argue that: first, the Prophet Muhammad said: "There is another obligation on your wealth apart from *zakat*." This argument is strengthened by a principle of *fiqh* which states that: "the smaller can be sacrificed to avoid the greater one"; and "everything that a duty or obligation can not be applied without it, is also obligatory."

b. Ibn Khaldun in his book *Muqqadimah* quoted from Tahir Ibn Husain's letter states: "Therefore, please spread the taxation fairly and equally to all people without treating everyone more important than anyone else because of his position in the community or of his wealth ..."

c. Ibn Taimiyah cited in *Majmuatul Fatawa* the ban to avoid the taxation even though that is unfair based on the argument that not paying the taxes for the taxpayers will impact the greater burden for others."

d. Izzuddin delivers a *fatwa* to King Shaykh al-Mushaffar in obligating the taxation to the people to prepare troops for combating Tatar, while he states: "If enemies enter into and attack Islamic state, the Moslems must resist the attacks, and they may collect from the people what can help them to do *jihad* against the enemies, but on the condition that there is no funds at all in *baitul mal* (the treasury), ..."

Based on the second opinion, it concludes that there is no duty to pay on the Moslems' properties and wealth but *zakat* or charity. However, if the force condition comes, an obligation to pay the taxes emerges. This allowed taxation is to implement the people's welfare, because government funds are insufficient to fund the routine and development expenditures. Thus, this is the shar'i argument that the government uses to collect the taxes to the people by considering that the main source to fund development is recently derived from the taxes sector.

RELATIONSHIP BETWEEN TAXATION AND ZAKAT IN INDONESIAN LEGAL SYSTEM

The taxation and *zakat* are two different terms in basic aspects to collect, but the same in natural aspects as an effort to take or collect the people's wealth for social purposes.

It is important to discuss the relationship between the taxation and *zakat*, because firstly, there is a compulsion and obligation to obtain the taxes and *zakat* (the charity) as well. If a Moslem is late to pay *zakat* because of his/her weak faith and Islam, the Islamic government can pay his/her *zakat* and even can fight those who are reluctant to pay *zakat*. Secondly, the taxes must be paid to public institutions (the state) or authorized institutions and *zakat* must be too. Basically, *zakat* must be submitted to the government (*amil zakat*). Thirdly, the taxpayers must receive compensation from the government, but neither does *zakat* payers. Fourth, the taxation in modern era has social, economic and political purposes; and *zakat* as well. Additionally, *zakat* also has added values for individual and public life (Siti Zulaikha, 2012: 6).

The taxation and *zakat* have differences. The first is about the recipient of both. *Zakat* is paid through the institution *amil zakat* and directly paid to the person who is entitled to receive *zakat*, while the taxes are directly paid to the tax office. The second is about the payment time. *Zakat fitrah* is paid only during Ramadhan; *zakat mal* is paid when the wealth has reached *nisab* and owned for a year, while the taxes are paid when it has reached a financial year. The third difference is about the object used as means of payment. The taxes are generally paid in cash, while *zakat fitrah* can be paid in cash or with staple food such as rice and wheat.

The taxation and *zakat* are an integral activity to carry out the obligations of state and religious life for individual or corporate entity. It is mainly for the individual, because there is still no united opinion among Indonesian *ulama* for the corporate. However, many companies that have paid *zakat* based on consciousness of sharing.

In principle, the taxation and *zakat* have the same goal, i.e. solving economic problems. Both has been regulated in order to be able to be well managed in an appropriate manner to achieve the purposes by depositing the payment to the official institution the government has approved. In addition, the collection of both is not obliged to all people, but it depends on the minimum threshold to be taxpayer and *zakat* payer. This threshold in the taxation is known as non taxable income, while in *zakat* this is called as *nishab*.

Since this country was established, *zakat* has been neglected to be cited in the state constitution. As the most legitimate institutions to manage *zakat*, the government realizes that during the recent period the opportunity has been wasted. Absolutely, *zakat* is very potential to enlarge the state revenue, but it is legally in weak position to overcome the poverty in this country. According to Act Number 23 of 2011 on the Management of *Zakat* in exchange for Act Number 38 of 1999, National Agency for *Amil Zakat* (the taxes accepting agency) is an authorized institution to manage *zakat* in Indonesia. National Agency for *Amil Zakat* means as not only established at the central level, but also at the provinces and regencies or cities throughout Indonesia based on the decision of the Minister of Religious Affairs or the appointed official. Article 2, Act Number 23 of 2011 asserts the principle of managing *zakat*, such as "integrated".

In the Government Regulation Number 60 of 2010 on *Zakat* or compulsorily Religious Donations that Can be deducted from Gross Income, the object of *zakat* covers:: (a) an income paid by an individual Taxpayer of Moslems and/or by a homeland corporate taxpayer the Moslem owns to *amil zakat* institution the government establishes or approves; or (b) a compulsorily religious donations paid by an individual taxpayer of non-Moslems and/or by a homeland corporate taxpayer, non-Moslems own which is recognized in Indonesia to religious institutions, the government establishes or approves.

Tax Director General Regulation Number PER-6/PJ/2011 regulates the paying *zakat* or compulsorily religious donations that can be deducted from gross income. This Regulation has been prevailed since March 21, 2011. When this regulation is prevailed, the Tax Director General Decree Number KEP-163/PJ/2003 is revoked and declared invalid. *Zakat* that can be deducted from gross income will be taxed. This *zakat* covers: (1) *zakat* paid by individual taxpayers of Moslems and/or by a homeland corporate taxpayer the Moslem owns to *amil zakat* institution the government establishes or approves; (2) a compulsorily religious donations paid by an individual taxpayer of non-Moslems and/or by a homeland corporate taxpayer, non-Moslems own which is recognized in Indonesia to religious institutions, the government establishes or approves.

To be able to reduce the tax liability, the taxpayer must fulfill requirements by enclosing a payment invoice copy of the Annual Notice of Income Tax in the Tax Year when *zakat* or compulsorily religious donations are reduced. The payment invoices via tax office or a bank or ATM must at least contain: (1) the full name and Taxpayer Identification Number of the payer; (2) total payments; (3) date of payment; (4) name of *amil zakat* agencies or religious institutions, the government establishes and approves; (5) officer signature of *amil zakat* agency or religious institutions, the government establishes and approves on the direct payment invoice; and (6) the bank officer has validated the via bank payment receipt.

Furthermore, in order that the taxes can be deducted from the gross income, (a) the reduction of *zakat* or compulsorily religious donations should be reported on the Annual Notice of the Taxpayer's Income Tax in the tax year when *zakat* or religious donations are paid; (b) In the Annual Notice of Income Tax, *zakat* or compulsorily religious donations should be reported to determine the net income. However, it is necessary to observe that there is a non deductible *zakat* or compulsorily religious donations from gross income when (1) the taxpayer does not pay to *amil zakat* agency or religious institutions, the government establishes or approves; (2) the payment invoice does not meet the requirement.

The statement that *zakat* deducts the taxes is so important, because the *zakat* potential in Indonesia reaches 84.49 trillion every year. In this sense, a survey conducted by the Public Interest Research and Advocacy Center towards 1.837 of Moslem respondents in 11 major cities of Indonesia in 2000 including Jakarta, Bandung, Semarang, Surabaya, Medan, Padang, Denpasar, Manado, Makassar, Pontianak and Balikpapan shows that the level of public *zakat* is in high rate; 94% of them declare as *muzaki* (*zakat* payer) which every *muzaki* to paid averages Rp 124.200,00 every year, and thus every *muzaki* pays approximately Rp. 44.000,00 to Rp. 339.000,00 every year (www.baznas.or.id).

The income taxation did not fully present a justice for many taxpayers, because the amount of is not based on the basic value of human needs. Determining the amount of taxable income based on the basic value of human needs is very useful to improve the people's welfare. Therefore, the people who are exempts have the right to obtain a subsidy in order that their needs can be decently fulfilled. Moreover, the population who are exempts can pay the taxes and *zakat*.

In the future it is necessary to implement a model of *zakat* and taxation that is in accordance with both the state law and the religious law. Synergic relationships between *zakat* and taxation should obtain special attention in the future. The efforts to integrate *zakat* and the taxation can be recently begun through the data exchange between the Taxpayer Identification Number (TIN) and the *Zakat* payer Identification Number (ZIN), integrated counseling of *zakat* and taxation, and opening a one-stop counter service between the Tax Office and *Amil Zakat* Agency.

CONCLUSION

Based on the review of the issues above, it can be concluded that the different opinion emerges among Islamic jurists in addressing the tax liability according to Islamic law. The opinion nowadays adopted in the taxation is that a tax can be collected if the state is in certain conditions and with certain requirements by considering the principle of justice, not burdening the people and spreading evenly. It is important to discuss the relationship between taxation and *zakat* particularly on the provisions that paying *zakat* or compulsorily religious donations can be deducted from gross income of which the taxes must be paid to the state.

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