

Why Do Companies Pay Their Alms Tax (Zakat)?

Case Studies of Compliance with Corporate Zakat Obligation in Islamic Commercial Banks in Indonesia

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Abstract—Corporate zakat –obligatory alms giving payable by business entities– have been studied by some companies in Indonesia despite its ambiguous status in both Islamic jurisprudence and Indonesian law. This paper aims at exploring how the corporate community in Indonesia views the legitimacy of regulating corporate zakat. It will focus on compliance with corporate zakat in Indonesian Islamic Banks in. It will also identify whether ethical, religious or secular values that have prompted the banks comply with corporate zakat in order to find out how Islamic charity and corporate social responsibility may converge in sharia business sector in Indonesia. Using a case study as research method and thus multiple sources of evidence from structured interviews and archives (annual, financial, and good corporate governance reports) for triangulation, I will conduct detailed contextual analysis of each bank's experience when deciding to pay or not to pay their zakat. This study finds that the Islamic Commercial Banks' view on legitimacy of regulating corporate zakat in Indonesia is influenced by a combination of two to three factors: their type of business (i.e. as Sharia-related industry), their attitude toward the principles of zakat in Islam, their size (i.e. amount of profit considered eligible to pay zakat), and benchmarking to other competitors. A combination of factor number one and two become the most significant factors.

Keywords— Corporate Zakat; Religious Obligation; Legal Fiction; Individual Conscience

I. INTRODUCTION

There are no studies yet in Indonesia which specifically investigate factors influencing companies' observance of corporate zakat, let alone the behavior of the Islamic commercial banks. In Malaysia, an explanatory study on factors influencing companies towards zakat payment in Malaysia in 2011 concluded that there was a relationship between compliance of zakat on business and Muslims as Boards of Directors and the type of industry, that is, companies in the service industry and manufacturing have stronger responses towards zakat payment (Arif, et al., 2011, pp. 2519-20, 2522). Another study involving 158 entrepreneurs in Terengganu that included organization, attitudes and awareness, and level of knowledge found several factors proven to influence paying zakat on business activity. Attitudes and awareness are the significant factors influencing paying the zakat on business earning (Khamis, et al., 2011, p. 4).

Findings of previous studies from Malaysia are built on the fact that the legal status of corporate zakat as an obligation in

Islam was not debatable in Malaysia (Steiner, 2012, p. 374). One of the reasons is that zakat regulations in Malaysia was completed with sanctions and fines for zakat evasion. Regarding corporate zakat, certain businesses such as Islamic banks are required to pay zakat by statutory law. For other businesses, a zakat officer will look at official records of the company and decide whether the shareholders could be liable for zakat, e.g. Muslim names as indicators (Steiner, 2012, p. 374). Without regard to the status of corporate zakat in Malaysia, another study focused on compliance issues of Islamic commercial banks against corporate zakat obligation when its legal status in Islamic law in Indonesia (fatwā) and Indonesian law (Law of Zakat Management) is still debatable (Alfitri, 2015).

This paper hence aims at exploring how the corporate community in Indonesia views the legitimacy of corporate zakat and whether ethical, religious or secular values underlie them to do this newly mandated practice. It focuses on case of compliance with corporate zakat in Islamic Banks in Indonesia. There are eleven Islamic commercial banks, i.e. fully-pledged Islamic banks (Bank Umum Shari'a or BUS), as opposed to sharia windows owned by conventional banks (Unit Usaha Shari'a or UUS) per 2013.

Legal Status of Corporate Zakat Obligation (obligatory alms-giving) is a religious obligation imposed on individual Muslims because it is one form of mandatory worship in Islam. The duty of zakat only applies to natural persons; so, there is no precedent of applying the duty of zakat to a legal person like corporations in classical Islam. Confirmation of its mandatory status grew circa 1980s at the international level and 1990s in Indonesia, by means of fatāwā, i.e. interpretation of shari'a carried out by ulama to respond to the contemporary situation or to a question raised. The subject matter is so controversial as it is related to determination of the obligation to pay zakat on legal persons such as company. Consequently, there are different opinions on its status as an obligation in Islam: between not obligatory and obligatory with conditions (Alfitri, 2015).

The Council of Indonesian Ulama (hereinafter MUI) finally issued a decision in 2009 that considered its obligation but had yet to promulgate the decision as a fatwā. As per effective law in Indonesia, i.e. Law No. 23 of 2011, concerning Zakat Management, simply state that zakat is obligatory according to the teachings of Islam that must be accomplished by individuals and legal entities, as both are now considered as the subject of

zakat obligation in Islam. This is corroborated by the fact that both laws adopt voluntary payment in zakat administration in Indonesia, because the state sees itself not in the position to enforce any form of religious obligation in Indonesia. (Alfitri, 2015, p. 127)

So, why the corporate sectors of Islamic financial institutions, especially Islamic banking have voluntarily complied with this legal fiction? The concept of *sharī'a* is the key to understand compliance with a religious duty in Islam. *Sharī'a* is a whole body of Islamic doctrine, as well as law as it is understood as a modern concept, which is originally derived from the Qur'ān and Sunna (the examples of the Prophet Muhammad as preserved in authenticated reports about him and his disciples called *Hadīth*). The concept of *sharī'a* understood in this way implants a consciousness in Muslims that God has established a body of rules and recommendations on which human salvation depends on, as long as believers are able to identify and obey them.

II. LEGAL STATUS OF CORPORATE ZAKAT OBLIGATION

Zakat (obligatory alms-giving) is a religious obligation imposed on individual Muslims because it is one form of mandatory worship in Islam. The duty of zakat only applies to natural persons; so there is no precedent of applying the duty of zakat to a legal person like corporations in classical Islam. Confirmation of its mandatory status was developed late, circa 1980s at the international level and 1990s in Indonesia, by means of *fatāwā*, i.e. interpretation of *sharī'a* carried out by ulama to respond to the contemporary situation or to a question raised. The subject matter is so controversial as it is related to determination of the obligation to pay zakat on legal persons such company. Consequently, there are different opinions on its status as an obligation in Islam: between not requiring it and requiring it with conditions (Alfitri, 2015).

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III. COMPLIANCE WITH CORPORATE ZAKAT DUTY WITHIN ISLAMIC COMMERCIAL BANKS

Responding to this study, up until 2013 five Islamic banks (BMI, BSM, BMS, BNIS, BRIS) reported paying corporate zakat; while, six other Islamic commercial banks including BPS and BSB responded have not paid corporate zakat. The following table details eleven Islamic commercial banks' compliance with corporate zakat since its establishment. The data are compiled from interviews and archival records.

Table 1 Corporate Zakat Payments of Islamic Commercial Banks

Bank/Est	Compliance			Note
	2010	2011	2012	
BMI 1992	V	V	V	BMI has paid its zakat since the year after its operation in 1993; Both shareholders and the legal entity of BMI pay zakat.
	\$ 107,816.58	\$ 367,188.31	\$ 570,045.00	
BSM 1999	V	V	V	BSM has paid its zakat since the year after its operation in 2000; BSM's corporate zakat is the highest among BUS per 2013
	\$ 1,215,240.04	\$ 1,598,150.09	\$ 2,344,300.51	
BMS 2004	V	V	V	BMS has paid its zakat since 2008 after the change to management who opted in to corporate zakat
	\$ 180,241.75	\$ 153,968.33	\$ 527,166.66	
BRIS 2008	X	X	V	Zakat was paid in 2012 because according to the informant BRIS just could make profit in 2011
			\$ 186,583.33	
BNIS 2010	N/A	V	V	BNI paid its zakat in 2011 for profit made in 2010, the year when it became fully pledged Islamic commercial bank
		\$ 214,916.66	\$ 264,083.33	
BCAS 2010	N/A	X	X	Based on 2013 report to BI " Sources and Uses of ZIS Funds ", zakat is reported from bank but unclear whether they are zakat paid by employees or legal entity of the bank
BJBS 2010	N/A	X	X	
BPS 2009	X	X	X	Planned to pay corporate zakat in 2013

Bank/Est .	Compliance			Note
	2010	2011	2012	
BVS 2010	N/A	X	X	Based on 2011, 2012, and 2013 reports to BI "Sources and Uses of ZIS Funds", zakat is reported from bank but unclear whether they are zakat paid by employees or legal entity of the bank
BSMI 2010	N/A	X	X	

IV. ANALYSIS AND DISCUSSION

The system of zakat payment in Indonesia is voluntary, because the legal mandate is unclear and there is no sanction from the state to zakat evaders. Consequently, the payment of zakat is handed over to each zakat payer's moral and legal conscience. This condition is understood by Islamic commercial banks, either paying or not yet paying, because none of the banks (BMI, BSM, BMS) based their decision to pay zakat following the promulgation of Law No. 38 in 1999 on the provisions of this Law. Similarly, Islamic commercial banks that paid their zakat when the new Zakat Bill was being intensively discussed in 2010 and finally approved in 2011 (i.e. BRIS and BNIS) did not base their reasons for paying zakat on the provisions of this Law. The new Zakat Law, nevertheless, clearly states that zakat is the obligation of a Muslim and business entities. BNIS specifically explained that its decision-making process was preceded by a study in terms of the legal and regulatory aspects of zakat in Indonesia, it emphatically said that there is no provision that forces businesses to pay zakat.

Table 2 The reasons of Islamic Commercial Banks Pay Corporate Zakat

BANK	Why Pay (or Will Pay)?					
	Legitimacy		Other			
	Zakat Law	Fatwa / Sharia Option	Zakat Principles	Type Of Industry	Size	Benchmarking
BMI	N/A	Yes, internal fatwa	Yes	Yes	No	No
BSM	No	No	Yes	Yes	No	No
BMS	No	No	Yes	Yes	No	No
BRIS	No	No	Yes	Yes	Yes	No
BNIS	No	No	Yes	Yes	No	Yes
BPS	No	No	Yes	Yes	Yes	No
BSM	No	No	Yes	Yes	No	No
BSB	No	N/A	N/A	N/A	N/A	N/A

The other six Islamic commercial banks are not paying their zakat because there is no obligation to do so in terms of the laws and regulations in Indonesia. BPS and BSB emphatically said that there is no obligation to pay zakat for the corporate enterprise. BPS even said that many businessmen do not care about the provisions of corporate zakat in the Zakat Law because there is no issue there.

Many ulama of the MUI Fatwā Commission (and the MUI National Shari'a Board) sit as members of the Shari'a Supervisory Board in Islamic commercial banks. Even so, the decision of Islamic commercial banks to pay (or not to pay or not to pay yet) was not too affected, except for the case of BMI, by the shari'a opinions given by the shari'a Supervisory Board. (This occurs when the management brings this issue to the Board as in cases of BMS, BRIS, BNIS, and BPS).

When asked why they decided to pay (or will pay in future), all Islamic commercial banks in this case study (BMI, BSM, BMS, BRIS, BNIS, and BPS) connect their answers with the principles of zakat (i.e. to purify a Muslim's wealth) and the nature of their industry which closely relates to shari'a.

In addition to giving reasons of principle and relating payment of zakat to the nature of industry, two Islamic banks also associate the case with the amount of the profits earned by the banks that are considered 'eligible' to pay zakat (BRIS and BPS). When asked why they just planned to pay zakat in 2013, the BPS informant said "This is a new bank; we have just started the operation, so we can gain profit or loss for the period; we do not get profit [previously], so there is no zakat of course; the reasonable profit to [pay] corporate zakat is from profit of 2012; 400-500 million profits is not 'eligible' yet to pay zakat, let alone to cover the losses of last year."

Terms and conditions of corporate zakat are analogized to zakat on trading ('urūd al-tijāra). The niṣāb of zakat on trading, and therefore also corporate zakat, is 20 dinars (equivalent to 85 grams of pure gold). This means that if a company has a wealth at year-end (capital and profit) that is greater than or equal to 85 grams of gold, then it is obliged to pay zakat of 2.5% of the wealth. If we assume a gram of gold is equivalent to IDR 400,000.00 (\$ 33,33) then the niṣāb of corporate zakat is IDR 34,000,000.00 (\$ 2833.33). BRIS posted a profit before tax in 2010 (IDR 451,325,000.00 or \$ 37,610.42) and in 2011 (IDR 417,525,000.00 or \$ 34,793.75), while the BPS in 2011 (IDR 310,268,100.00 or \$ 25,855.675). If we follow the provisions of zakat on trading, there is the potential for corporate zakat on BRIS and BPS from the first year they officially operated as Islamic commercial bank.

One Islamic commercial bank (BNIS) also mentions 'benchmarking' to the practice of other Islamic commercial banks as one of the reasons why they pay corporate zakat. As mentioned earlier, BNIS' compliance with corporate zakat is also as a response to mass media queries.

Islamic religious ethics (factor number one and two) appear as the most salient reason for Islamic commercial banks' compliance with corporate zakat obligations and this confirms one of the characteristics of shari'a as self-executing norms. The self-executing norms of shari'a mean that mere injunction for zakat obligations in the Qur'an can be addressed directly,

without the intermediation of fatwā/sharī'a opinions or a legal and regulatory framework, to every believing individual. The novel obligation of corporate zakat is perceived by the management of Islamic commercial banks to fall under the general obligation of zakat imposed on Muslims. So, when the believing decision makers of the Islamic commercial banks are aware of a command of paying zakat in the Qur'ān and Hādith, they feel bound with it as if it were addressed directly to them. Consequently, even though the liability of corporations as a zakat payer is still debatable, the management of Islamic commercial banks adapts their moral conscience on zakat obligation into their corporate decisions.

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