

The Shariah Governance Framework For Strengthening Zakat Management in Indonesia: a Critical Review of Zakat Regulations

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Abstract—Good governance is a crucial issue in the context of strengthening the performance of zakat institutions. As a public organization, the performance of zakat institutions especially in management and service is the benchmark for the growth of public trust. Conceptually, zakat institutions are a pivotal instrument especially in redistributing wealth from the rich (*muzakki*) to the poor (*dhuafa*). However, the distributive economic impact of zakat depends on how it is administered, especially with regard to collection and distribution. Unfortunately, the administration of zakat in Indonesia is not adequate, and therefore the full potential of zakat has not yet been realized. The study, in turn, aims at developing and proposing a conceptual model to formulate the sharia governance of zakat management in Indonesia. To this end, it synthesizes relevant literatures on governance, analyzes zakat regulations especially the Law No. 23/2011 and interviews some experts in term of zakat management in Indonesia. As the result, the good governance on zakat institutions as a public organization needs to be placed within the framework of meeting the values of Sharia. The finding also proves the good governance in zakat institutions in Indonesia has been well applied in some aspects of zakat regulations. Yet, in some other aspects, it is not comprehensively implemented. There are some problems in the zakat regulations including limited guidelines and standardization in term of zakat collection, distribution, supervision, and audit. At last, this study shows its contribution as reading material on zakat learning and a reference to formulate policies and guidelines regarding the standardization of sharia governance in zakat institutions.

Keywords—Good Governance; Sharia Governance Framework; Zakat Management Regulations;

I. INTRODUCTION

Good governance is a crucial issue in the context of strengthening the performance of zakat institutions. As a public organization, the performance of zakat institutions especially in management and service is the benchmark for the growth of public trust. Conceptually, zakat institutions are a pivotal instrument especially in redistributing wealth from the rich (*muzakki*) to the poor (*dhuafa*). Zakat differs from act of giving alms, such as *shadaqah* and *infaq* in Islam or tithing in Christians churches. It is a religious obligation that employs a

form of taxation with very specific rules (Alfitri, 2006). As have argued, however, the distributive economic impact of zakat depends on how it is administered, especially with regard to collection and distribution. Unfortunately, the administration of zakat in Indonesia is not adequate, and therefore the full potential of zakat has not yet been realized (Effendi, 2003). A research conducted by the Centre for Strategic Studies of the National Zakat Management Board (*Badan Amil Zakat Nasional/BAZNAS*) in 2011 shows that the potential of zakat in Indonesia has reached 217 trillion Rupiah or 16 Billion USD approximately (Firdaus at.al, 2012; Beik, 2015). Unfortunately, such potential does not look as it seems to be. In fact, the zakat which is annually collected at the national level only ranges from 3 to 5 Trillion IDR or 230 to 384 Million USD (1 USD = 13000 IDR) (Baznas Statistics, 2016). Here, a huge gap between the potential of zakat fund and its actual collection occurs.

In the context of zakat management, Islamic values have been incorporated into a specific law. In Indonesia, zakat institutions are regulated by the Indonesian government under the Law No. 23/2011 regarding zakat Management. Given the relatively supportive legal-institutional development, new zakat organizations have emerged all over Indonesia (Salim, 2008; Muhtada, 2014). In 2016, a National Zakat Management Board (BAZNAS), 34 provincial zakat organizations (BAZDAs), and 514 BAZDAs at the district/regency level were initiated. In addition, the number of non-governmental zakat institutions (LAZ) at the national, province, and regency level reached 16, 9, and 11 institutions respectively. Until now, there have even been more than 300 non-governmental zakat institutions in Indonesia (Tim Baznas, 2017: iv). According to the law, zakat in Indonesia is supposed to be professionally managed by instilling values and principles of good governance.

The common problem is the lack of credibility of these institutions, which hinder effective zakat management (Zainal at.al, 2017; Beik, 2015). To solve such problem, the regulatory framework should require any zakat management institution to have good understanding of zakat regulations in accordance with Sharia principles and to apply adequate internal control, financial and Sharia audits. Basically, to anticipate various risks in both financial risk and reputation, Good Corporate

Governance (GCG) is considered as an important pillar to apply to create an excellent and resilient financial institution (Chapra and Ahmed: 2002). As social institutions, zakat institutions are described as a body to trade for social or environmental interests. They are established to meet two goals, social or environmental and commercial goals (Spear at al., 2007, 2009). Professional management is expected to improve the performance of zakat institutions and to excel their potential for enhancing poverty alleviation (Kasri, 2016; Husein, 2015). As the result, the economy of Muslim communities could increase and sustain in the long run. Irfan Syauqi Beik (2015) argues that a number of government policies do not effectively realize the full potential of zakat value. There are some problems in the zakat regulations including limited guidelines and standardization in term of zakat collection, distribution, supervision, and audit. Different zakat management institutions even have different understanding on good governance, especially due to the different indicators they have applied. The study, in turn, aims at developing and proposing a conceptual model to formulate the Sharia governance standards of zakat institutions in Indonesia. To this end, it synthesizes relevant literatures on governance, analyzes Zakat regulations especially the Law No. 23/2011 and interviews some experts in term of zakat management in Indonesia.

II. LITERATURE REVIEW

Several studies regarding good corporate governance have been conducted according to Islamic perspective. In details, the studies include: 1) studies on good governance in Islamic perspective conceptually offered by Lewis (2005: 5-29), Bhatti (2009:67-91), and Hasan (2009: 277-293). They say Islamic corporate governance has its own unique features and presents distinctive characteristics in comparison with the western concept. It combines the element of *Tauhid*, *Shura*, *Shari'ah* principles and maintains private goal without neglecting social welfare duty; 2) studies on Corporate Governance in Islamic Financial Institutions conducted by Samra (2016), Chapra and Ahmed (2002), Wafiq and Pellegrin (2006). Their studies show corporate governance has become a major issue Islamic Financial Institutions due to their failure to implement GCG; and 3) studies on Islamic governance in social organizations carried out by Issyam at.all (2016) in Sharia Governance framework for Islamic Co-Operatives, Ramli and Muhammad (2013) in Good Governance Framework for Corporate Waqf, Wahab and Rahman (2016) in Governance of Zakat Institutions in Malaysia. The previous studies show Sharia governance is essential to enhance the performance of Islamic institutions management. Unlike other studies, this study analyzes the implementation of good governance in zakat management regulation in Indonesian. It also develops and proposes a conceptual model to formulate the Sharia governance standard of zakat institutions.

III. METHODS

The study uses a qualitative approach by reviewing and synthesizing relevant literatures on good corporate governance and Sharia governance, and analyzing some regulations especially the Law No. 23/2011. In addition, it conducts an in-depth interview with some experts in term of zakat management in Indonesia.

IV. SHARIA GOVERNANCE FRAMEWORK IN ISLAMIC INSTITUTIONS

Experts differ in defining GCG that can accommodate various interests and contribute to an efficient organization (OECD, 2004 :11; Spear, 2004, 2009, Pillai, 2017); Corporate Governance term introduced by the Cadbury Committee in 1992 in a report which known as Cadbury Report (Sugiarto, 2017: 37-45). The United Nations Economic and Social Commission for Asia and the Pacific (2008) defines governance as the process of decision making and the process by which decisions are implemented. Iqbal and Mirakhor (2004: 43-63) argued Sharia Governance is different from conventional Corporate Governance. Sharia Governance targets to comply with Sharia principles as the main objective (Abdullah, 2012; Bhatti, 2010; Mirakhor, 2017). Such principles are concerned about the rights of all stakeholders. Typically, there are two unique features of Sharia Governance; 1) it is governed by Islamic law or Sharia which regulates all aspects of an individual's life such as ethical standards on what is fair and just, the nature of corporate responsibilities and governance standards; 2) it applies Sharia law and certain Islamic economics and financial principles in corporate practices and policies (Rapanjeh, 2008). Practically, the decision making in corporate governance extends beyond the conventional approach to include obligations to suppliers, customers, competitors and employees (Lewis, 2005). In Sharia governance, spiritual and worldly needs of Muslim communities are both met (Lewis, 2006). Essentially, the ultimate goal of Islamic corporate governance is *Maqasid Shari'ah* (Hasan, 2008).

According to Bhatti (2009, 2010), the basic principles adopted from Islamic values to support this framework include the concept of *hisbah*, *shura* (shuratic decision-making process), disclosure and transparency, book keeping and final account, and religious audit. Such values apply to formulate policies and regulations for Islamic institutions. Like Bhatti, Lewis (2005: 5-29) states Islamic SG is different from conventional CG, where it has wider responsibilities and obligations towards suppliers, customers, competitors and employees, and embraces spiritual and worldly needs of Muslim communities.

V. RESULTS AND DISCUSSION

Based on the before mentioned Sharia governance framework, consisting of Islamic morality and ethics, shuratic decision-making or *shura* mechanism, *hisbah* concept, disclosure and transparency, book keeping and final account, and religious audit (Batthi, 2009; Lewis, 2005), the implementation of Sharia governance in zakat management regulation in Indonesia especially the Law No. 23 of 2011 is

analyzed. There are several important and crucial issues to outline as shown in the following table:

Table 1 The Implementation of Sharia Governance Framework in Zakat Management Regulation

No.	Dimension of Sharia Governance Framework	The Implementation of Sharia Governance in Zakat Regulations
01	Islamic Moral Ethics	The Core Principles of Sharia Governance
		The Law No. 23/2011, article 2: "Management of zakat is based on sharia, trust, benefit, justice, legal certainty, integrality, and accountability."
		The Law No. 23/2011, article 25: "Zakat must be distributed to mustahik according to Sharia."
		The Law No. 23/2011, article 26: "The distribution of zakat, as referred to article 25, is organized under a priority scale applying the principle of equity, justice and territoriality."
02	Decision Making Process (Shura Mechanism)	The Functions of Coordination, Collection and Supervision
		The Law No. 23/2011, article 6 : "BAZNAS is an institution authorized to manage zakat at national scale."
		The Law No. 23/2011, article 7: "In performing its duties as referred to article 6, BAZNAS serves the following duties: a) planning the collection, distribution and utilization of zakat; b) implementing the collection, distribution and utilization of zakat; c) controlling the collection, distribution and utilization of zakat; and d) conducting accountability report of zakat management. "
		The Law No. 23/2011, article 34: (1) The Minister shall conduct guidance and supervision on BAZNAS and LAZ at the national, provincial and district levels; (2) The governor and regent/mayor shall conduct guidance and supervision on BAZNAS and LAZ at the provincial and district levels according to their respective authorities. "
03	hisbah concept and disclosure and transparency	Sharia Supervision: The Role of Sharia Supervisory Boards
		The Law No. 23/2011, the necessity of supervisor in BAZNAS is not specifically regulated. In the structure of BAZNAS, the duty supervision is taken into account by

		one of BAZNAS commissioner members.
		The Law No. 23/2011, article 18 regulates that LAZ is required to have Sharia supervisor (point d) and periodic Sharia financial audit (point h). In the Government Regulation No. 14/2014 on the Implementation of Law No. 23 of 2011 on the Management of Zakat, the requirement is stated in article 58, point e and f.
04	Book Keeping and Final Account	Reporting
		The Law No. 23/2011, article 7, paragraph 3 states: "BAZNAS reports the results of their duties to the President through the Minister and the House of Representatives of the Republic of Indonesia at least once in a year."
		The Law No. 23/2011, article 19: "LAZ shall report the implementation, collection, distribution and utilization of zakat which has been audited by BAZNAS periodically."
		The report is made public as regulated under the Law, article 7, paragraph 5 which says: "the results of the implementation, collection, distribution and utilization of zakat are announced publicly through print or electronic media"
05	Religious Audit	Sharia and Financial Audits
		The Government Regulation No. 14/2014, article 72-74. "The requirement of reporting the implementation of zakat management is regulated in details by the Government"

The table shows the principles of Sharia governance have been overall applied in zakat management regulations in Indonesia; the Law No. 23/2011 and the Government Regulation No. 14/2014. However, there are some very crucial issues that cause such governance to not be fully implemented. The analysis of the Sharia governance framework is described as follows:

First, the Core Principles of Good Governance. The regulation indicates the obligation of zakat institutions to comply with the principles of good corporate governance in accordance with Sharia provisions. Unfortunately, such provisions can neither give further details nor be elaborated in other regulations. The Government policy that specifically regulates the standard of good corporate governance in zakat institutions is also unavailable (Beik, 2017). Consequently, standard guideline with clear indicators in the implementation of good corporate governance in zakat institution framework in Indonesia is not constructed. This leads to low performance of zakat management in Indonesia which in turn causes the interests of all stakeholders not accommodated.

Second, Decision-Making Process. According to the institutional point of view, the implementation, control and management of zakat is nationally mandated to the National Zakat Management Board (BAZNAS). On the other hand, the guidance and supervision addressed to BAZNAS and LAZ is conducted by the government, the Ministry of Religious Affairs, in this case. Here, they criticize the task of BAZNAS is considered ambiguous. In one side, LAZ as non-governmental zakat management institution is assigned to collect and distribute zakat, but on the other side BAZNAS also must coordinate with it and control as well as audit it. This condition creates a “conflict of interest” between control and management functions. In addition, it also leads LAZ to mistrust BAZNAS and brings an unhealthy competition between both institutions. Juwaini (2017) argues:

“a partial distrust by LAZ on BAZNAS in collecting data and managing zakat may arise, considering BAZNAS, at the same time, also collect zakat. This condition can trigger confiscation and provoke unhealthy competition between Zakat institutions.”

Juwaini further says this double role interrupts the concentration of BAZNAS. Here, the management role is more dominant. Many BAZNAS standard operating procedures have not been performed due to the concentration to the role. Kushardanto (2017) has expressed similar thought:

“Zakat is not optimally organized due to the lack of zakat management system in Indonesia. Actually, BAZNAS is supposed to serve the management role rather than coordination and control role.”

The rejection of Act No 23 year 2011 come from Zakat Non Government Organization (LAZ) and from the grassroots societies particularly those who have manage zakat in village (Akbar 2012). The private organization have played a big role in the society in term of zakat funds, LAZ managers expect Baznas to focus more on coordination, control and supervision roles (Noor Aziz, 2017; Saad at.all, 2014:508-515). Here, BAZNAS receives zakat management reports from all zakat managers in Indonesia. As the result, it can have all data from those institutions. In this case, it can serve as the manager. In fact, it has currently played more dominant role in management aspect instead of supervision. According to the Law, BAZNAS is not a regulator but an institution that helps the government in terms of coordinating and managing zakat at national scale and is responsible to the Minister and the Legislative Council. However, different views are presented by Irfan Syauqi Beik (2017):

“BAZNAS and LAZ do not compete with each other. With its authority, BAZNAS, for example, is able to access and collect zakat from big companies including State Owned Enterprises (SOEs). This is very important to increase the collection of zakat funds. The Law has authorized it to reach wider potential of zakat collection which is difficult to carry out by state-owned zakat institutions. In addition, the idea assuming that LAZ and BAZNAS compete with each other is groundless as zakat institutions are not an industry such as banking or financial institution.”

In view of BAZNAS, Arifin Purwakananta (2017) clarifies:

“BAZNAS only serves as a coordinator for zakat institutions in Indonesia. Regulatory and supervisory roles are

played by the ministry of religious affairs through the directors in charge of zakat affairs. BAZNAS is only responsible for creating coordination and management guidelines for zakat institutions in Indonesia. Here, the rules and guidelines related to monitoring and auditing are conducted by the ministry of religious affairs.”

It is clear that BAZNAS only serves as the coordinator and the Ministry of Religious Affairs as a regulator that makes regulation, guidance and supervision respectively. BAZNAS is expected to develop standards and guidelines in terms of collection, distribution and report. In the meantime, the Ministry of Religious Affairs needs to develop standards and guidelines for monitoring mechanisms and financial and Sharia audits. In the end, such guidelines should be legally approved by the decree of the Minister of Religious Affairs to require the basis of enforcement.

Third, Sharia Supervision. One of significant aspects in zakat management is the role of Sharia supervisor who is assigned to ensure that the principles and provisions of Sharia are implemented in the management. Regarding the existence of Sharia supervisors, both BAZNAS and LAZ have a difference. The Law No. 23/2011 does not specifically regulate the necessity of a Sharia supervisor in BAZNAS. However, in the organization structure of BAZNAS, according to Arifin Purwakananta, the role of Sharia supervision is taken into account by one of the BAZNAS commissioner members. In contrast, LAZ has been required to have Sharia supervisor since the beginning. Here, the role of Sharia Supervisory Boards includes directing, reviewing, and supervising the activities of Islamic Financial Institution (AAOIFI, 1999:1; Arifin, 2005: 16). This is intended to ensure that the supervised institutions work in accordance with the provisions of Sharia (DSN, 2000; Muhammad, 2011:18). The members of the Board are comprised of experts in *fiqh muamalah* who know the general knowledge of sharia business management, finance and other capabilities relevant to their daily tasks.

Fourth, Reporting and Sharia Audit. An important aspect of the Sharia governance framework is disclosure, transparency, and accountability (Bhatti (2009); Lewis (2005); Saad at.all, 2014:508-515). This can be seen from the provisions on the necessity of reporting and Sharia audit according to the law, article 7, paragraph 3. Further, the reporting of zakat should be made public as regulated by the Law, article 7, paragraph 5. The requirement for the implementation of zakat report management is also regulated in details by the Government Regulation No. 14/2014, article 72-74. In the end, the Government Regulation Article 75 in particular states the reports should be audited by Sharia and financial audit.

Based on these provisions, the Sharia audit is carried out by the Ministry of Religious Affairs, whereas Financial Audit is conducted by a Public Accountant. The existing issues include whether the guidelines, standards, and instruments related to Sharia audits have been completed by the Ministry of Religious Affairs; If the guidelines are available, are they socialized and carried out consistently? and does the report and Sharia audit also refer to the provisions set by the National Sharia Council’s fatwa as practiced in all Islamic financial institutions? Such issues are formulated and resolved by involving various parties. These problems show the corporate

governance or sharia governance is not comprehensively implemented in zakat management in Indonesia.

VI. CONCLUSION

This study aims at providing a conceptual framework to formulate the standards of Sharia governance in strengthening zakat institutions in Indonesia. In analyzing the research finding, the study applies a qualitative approach to conducts content analysis, critical review of regulations, and in-dept. interview with some experts in term of zakat management in Indonesia.

The result shows that Sharia governance is different from good corporate governance in conventional concept. It is proved that good governance in zakat institutions in Indonesia has been well applied in some aspects of zakat regulations. However, in some other aspects, it's not comprehensively implemented. This can be seen in the following cases: a) the application of the principles of Sharia governance has been clearly stated in the Law, but guidelines, standard operating procedures, and instruments governing the implementation of Sharia governance in zakat institutions are not elaborated; b) the existence of double roles by the National Zakat Management Board (BAZNAS) serving as both manager and coordinator in controlling all zakat institutions in Indonesia causes confusion. On the other hand, the regulatory and supervisory roles that must be played by the government, the ministry of religious affairs in this case, do not run well; d) in regard to the role of Sharia supervisor, there is a distinction between Baznas and LAZ. Structurally, the role of Sharia supervisor in BAZNAS is taken into account by one of the commissioner members, whereas LAZ has its own Sharia supervisory body; e) legally, all zakat institutions must undertake accountability report, financial and Sharia audits. However, clear guidelines, standard operating procedures and instruments have not been constructed so far.

In view of the findings and analysis, several policy implications and recommendations are highlighted: 1) the government should develop Sharia governance standards for zakat institutions in Indonesia; 2) it is required to design guidelines and standardization of reporting system, financial and Sharia supervision system, and financial and Sharia audits system; 3) it needs to maintain the standards of human resource competence in zakat management (*Amil* Certification); 4) it is expected to maintain its role in developing, controlling, and supervising the management of zakat in Indonesia. At last, this study shows its contribution as reading material on zakat learning and a reference to formulate policies and guidelines regarding the standardization of sharia governance in zakat institutions in order to improve their performance.

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