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## **Contesting sharia : state law, decentralization and Minangkabau custom**

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## CHAPTER 5

### ZAKĀT IN TRANSITION: THE INVOLVEMENT OF GOVERNMENT

#### 5.1 Introduction

The involvement of the government of Indonesia in *zakāt* matters has gradually increased over the last decade. This shift occurred after central government passed law 38/1999 on *zakāt* management on 23 September 1999. The government revised this legislation with law 23/2011 on 25 November 2011. These laws have contributed to the growth of a number of *zakāt* institutions managed by regional governments, generally known as semi-government *zakāt* institutions (*Badan Amil Zakāt Daerah/BAZDA*). These institutions have appeared since the implementation of decentralization and local autonomy in 2000. Regional governments have attempted to justify their involvement by legislating on *zakāt* in provincial or regional/municipal law. Consequently, central government has not passed any rules to implement law 38/1999. A number of Muslim scholars see this development as a sign of the increasing achievements of Indonesian Muslims in terms of legislating Sharia in state law. Others, by contrast, see it as state interference in the practice of religious beliefs.

In a broader account, the contemporary development of Muslim society shows that charitable practices, including matters of *zakāt*, have shaped various institutions and structures in Muslim society. This developing situation cannot be removed from the political, social, and economic context as all of these elements are

involved in the growth of *zakāt* institutions. There are a number of motives at play behind this practice, including a desire to relieve suffering or to end need, a desire for personal salvation, the struggle for political power or social standing, the wish to honor, a hope for beneficial gain and advantages, as well as a desire to assert social control (Bonner 2003:2).

This chapter presents the issues concerning government involvement in *zakāt* matters. I attempt to answer two main questions in this chapter: to what extent has the government codified rules on *zakāt* in national and local law? And, what are the actual practices of local government in terms of managing BAZDA. This chapter presents the following topics: 1) *zakāt* rules and a new interpretation of *zakāt*; 2) roles of *zakāt* institutions in the Muslim world; 3) changes and regulations relating to *zakāt* made by the government of Indonesia; 4) provincial and regional/municipal laws on *zakāt*; 5) actual practices of local government for managing BAZDA conducted by the municipal government of Padang; 6) resistance; and 7) conclusions.

## **5.2 Rules on *zakāt* and a new interpretation**

This section presents the rules on *zakāt*, which consist of two interconnected subtopics. The first deals with the rules on *zakāt* as mentioned in the Quran, ḥadīth and by Muslim scholars. The second concerns new interpretations by a number of Indonesian scholars who have attempted to offer a set of new rules aimed at contextualizing *zakāt* matters in accordance with the current Indonesian situation. The distinction between these two approaches is that the first set of rules emphasizes *zakāt* as a religious obligation, while the second entwines this subject with economic factors.

### 5.2.1 Rules on *zakāt*

The payment of *zakāt* is at the very heart of Islamic teachings. Indeed, it is one of the five pillars of Islam. It widely defines one's status as a Muslim, along with the confession of faith, obligatory prayers, fasting during Ramadan and the pilgrimage to Mecca for those who can afford the trip. The word *zakāt* is derived from the verb *zakā*, which means, among other things, 'to thrive; to grow, increase; to be pure at heart, be just, righteous, good; to be fit, suitable' (Wehr 1979:441). Based on these meanings, *zakāt* is commonly seen as function of increasing, i.e. blessing, the property from which it is taken and purifying from sin those who give it or their property. The word is also linked to another word, *ṣadāqa*, which is commonly used for voluntarily giving alms. Both words are used interchangeably in the Quran. Although *zakāt* and *ṣadāqa* are not distinguished from each other in the Quran, certain verses clearly imply two kinds of donations, as is mentioned in *al-Baqara*/the Cow (2):177. The word *zakāt* appears 32 times in the Quran, always in the singular, and the command to give *zakāt* is frequently joined with the command to offer prayer (*ṣalāt*).

According to Muslim tradition, failure to pay *zakāt* is a sign of hypocrisy and the prayers of those who do not pay *zakāt* will not be accepted. The purpose of *zakāt* is, as its meaning in the Quran suggests, to cleanse both the payer's wealth and himself. By relinquishing some of his wealth, the payer purifies what remains; he also limits his greed, thus soothing his conscience. This interpretation draws support from two sayings attributed to the Prophet: 'Goods on which one has paid *zakāt* cease being part of one's treasure', and 'Allah instituted *zakāt* so that you can enjoy the rest of your wealth with a clear conscience'. Even more important is that the payers give without expecting anything in return; they are solely an expression of pious generosity. This means that the act of paying *zakāt* forms its own reward. Further, modern proponents of *zakāt* have emphasized different dimensions,

including the reduction of inequality and its fairness to payers and recipients (Kuran 2003:283).

According to Muslim tradition, *zakāt* matters consist of *zakāt* for property (*zakāt al-māl*) and *zakāt* for individuals (*zakāt al-fitr*). The following paragraphs deal briefly with the rules of these two types of *zakāt*. It should be noted, however, that it is confined to the rules that the majority of Muslim scholars concur with.

#### 5.2.1.1 *Zakāt* on property

The discourse dealing with *zakāt* on property covers five issues: They are the person for whom it is obligatory (*muzakkī*), the kinds of property on which it is imposed, the rates and amount at which it is levied (*niṣāb*), the periods during which it is levied (*ḥawl*) and the recipients (*mustaḥiqq*).

Muslim scholars agree that the person for whom *zakāt* is obligatory means any Muslim who is free, sane (*balīgh*) and who has complete ownership of property equal to the minimum prescribed scale (*niṣāb*). However, there is disagreement about its obligation upon orphans, the insane, slaves, the *ahl-al-dhimma* (non-Muslims), and people without sufficient ownership, i.e. someone who is in debt or when the capital of the property is held in a trust (al-Jazīriy 1990:590; Ibn Rushd 1994:225).

So there is agreement about some of the categories for which *zakāt* is obligatory and disagreement about others. They refer to the Quran reference to *zakāt al-māl* relating to two types of minerals – gold and silver – that are not molded into jewelry; three kinds of animals – camels, cows and sheep; two categories of grains – wheat or barley; and two categories of fruit – dates and raisins. There is some dispute about whether olives are also included (Ibn Rushd 1994:226).<sup>67</sup> In addition, *zakāt* applies almost exclusively to

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<sup>67</sup> The Quran mentions these categories in a number of verses; *al-Baqara*:267, *al-Nisā'*:14, *al-Tawba*:34, *al-Dhāriyāt*:19, *al-Ma'ārij*:24).

the property of private individuals. The property of a government, as well as property owned by the public treasury is not subject to *zakāt*.

Subsequently, the rules deal with the rate of *zakāt* (*niṣāb*) for each category of property in which *zakāt* is levied and the quantities for which *zakāt* is charged on those items reaching the *niṣāb*. For example, the *niṣāb* of silver is five *awqiyā* (ounces). This amount of silver is based on an authentic saying by the Prophet, 'there is no *ṣadāqa* in what is less than five *awqiyā* (ounces) of silver'. According to Muslim scholars, an *awqiyā* is equal to five *dirhams* by weight and they agree that the amount due on this is one quarter of a tenth. The rule for gold is that its *zakāt* is one-fortieth, as long as it remains in its mineral state. The rule for *zakāt* on animals is that a person who owns up to 24 camels must pay one goat for every five camels; for cows, the *zakāt* is a one-year old cow for every thirty cows; for goats the *zakāt* is one sheep for every forty goats. The rate for farm output depends on whether or not the land is irrigated. The obligation of *zakāt* for crops on rain-fed land is one-tenth (*ushr*) and the *zakāt* for a crop on irrigated land is a half of one-tenth, as established by the Prophet. In addition, the *niṣāb* for goods (*urūd*) is derived from goods acquired for sale, and in particular it is based on goods held prior to the payment of *zakāt*. The *niṣāb* of these goods is based on commodities, as it are these that present the value of consumable things and capital as well as the *ḥawl* for goods according to those who impose *zakāt* on goods (al-Jazīriy 1990:593-5; Ibn Rushd 1994:234-45).

The beneficiaries of *zakāt* enumerated in *al-Tawba*/the Repentance (9):60 fall into eight broad and flexible categories: 1) the poor (*fuqarā'*); 2) indigent (*masākīn*), 3) collecting agents (*āmilūn 'alayhā*); 4) those whose hearts are won over (*al-mu'allafa qulūbuhum*); 5) slaves (*riqāb*); 6) debtors (*ghārimūn*) who lack the means to repay their debts; 7) those in the 'path of God' (*fī sabīl Allāh*). The most common interpretation of this is that these are volunteers engaged in *jihad*; and 8) travelers (*ibn al-sabīl*) who in

the course of their journey find themselves without immediate available assets to meet their expenses. However, the Quran is silent on the enforcement of the *zakāt* obligation and the disbursement of *zakāt* revenue.

#### 5.2.1.2 *Zakāt* for individuals (*zakāt al-ḥiṭr*)

The discussion on *zakāt* for individuals deals with five issues. They concern the identification of whether or not it is obligatory, the person for whom it is obligatory, the amount that is due and for what kinds of commodities, the time when it is due and the people entitled to receive it.

The majority of Muslim scholars maintain that paying *zakāt al ḥiṭr* is an obligation for all Muslims whether they are male or female, infant, child or adult, slave or freeman. The parent pays this obligation for their infant or child and the master pays for his slave. This obligation does not require the *niṣāb* of property. However, Muslim scholars stipulate that *zakāt al ḥiṭr* is obligated for those who have a surplus of food for himself and for his family members. Further, one group of scholars agree that the category of food includes wheat, dates, barley or *aqiṭ* (cheese made from sour milk). Another group believes that this obligation is levied on staple foods from the land or the food of Muslims. The quantity of food is not to be less than one *ṣāʿ* (a specified measure of contents) of wheat shared by two people or a *ṣāʿ* of barley or one of dates for each person (al-Jazīriy 1990:627-30; Ibn Rushd 1994:254-5).

*Zakāt al-ḥiṭr* becomes obligatory at the end of Ramadan and Muslims are permitted to pay it from the beginning of the fasting month. Muslim scholars agree that the revenue should go purely to the poor. However, they disagree on whether the poor non-Muslims should be included as recipients. The disagreement is about whether the basis for *zakāt al-ḥiṭr* is poverty alone or whether it is about poverty and about being a Muslim. Those who maintain that it is about poverty as well as being Muslim do not believe non-Muslims should receive payments, while those who maintain that



it is purely about poverty alone believe it is permissible for non-Muslims to be recipients.

Lastly, most Muslims believe that it is the obligation of Muslim rulers to send out officials (*āmil*) to collect *zakāt* and to assist property owners in fulfilling their *zakāt* duties. This belief is justified by the practices of the Prophet and the early caliphate. According to Islamic sources, the collection of *zakāt* revenue was already in full force during the lifetime of the Prophet and his companions. While the Muslim community was based in Mecca, the Prophet's fledgling government was not yet regulating assistance to the poor. Only with the relocation of the rapidly growing community to Medina did *zakāt* become a formal and compulsory transfer system. Muslims were required to make periodic payments to the public treasury (*bayt al-māl*) that financed the new state's activities. After the Prophet passed away, there was a challenge to *zakāt*. Some of the tribes that had joined Islam under the Prophet challenged Abu Bakr, the first caliph. One sign of this challenge was their refusal to pay *zakāt*, which they claimed was a purely personal obligation to the Prophet. Subsequently, the Prophet's companions, 'Umar, 'Uthmān and 'Ālī, conducted the collection of *zakāt*. During the Umayyad period, zeal for the collection of *zakāt* grew. The Ummayyads, the first dynasty of Muslim caliphs invested further energy in organizing *zakāt* collection and toward the end of the Umayyad period a government office for *zakāt* (*diwān al-ṣadāqa*) was established. A similar institution existed under the successor dynasty of the Abbasid caliphs, which set up an office of good works and *zakāt* (*diwān al-birr wa al-ṣadāqa*) (Zysow 2002:409).

### 5.2.2 New interpretation of the rules on *zakāt*

A number of Indonesian Muslim scholars challenge the above mentioned classical rules on *zakāt*. Among this group are Jusuf Wibisono (1950), Hazairin (1950) T.M. Hasbi Ash-Shiddieqy (1969), Amien Rais (1987), Dawam Rahardjo (1988), Masdar F.Masudi

(1991), Permono (1992) and Hafidhuddin (2002). These scholars primarily argue that the basis for the rules on *zakāt* is a particular social and economic structure of the society that existed when the rules were formulated. In addition, this obligation mainly centers on the religious obligation of the payers (*muzakkī*) and gives less attention to whether *zakāt* revenue has actually improved the lives of recipients. Thus, they advocate comprehending *zakāt* in terms of modern realities. Their challenge to the classical interpretation of *zakāt* deals with six themes: 1) who is obliged to pay *zakāt*; 2) the kinds of wealth on which it is imposed; 3) the rates and the amount at which it is levied (*nisāb*); 4) the role of Indonesian government in *zakāt*, i.e. whether its role is *‘āmil* (collector), whether it should be a regulator, or whether its role should be both regulator and *‘āmil* (collector); 5) who is entitled to receive *zakāt* revenue; and 6) whether *zakāt* is similar to tax. The following paragraphs present a brief summary of these themes.

The obligation to pay *zakāt* is no longer just for an individual; it is also levied on institutions that own property valued at an amount that reaches a minimum rate of *nisāb*. It is confined to Islamic institutions. Under the new interpretation, the kinds of wealth on which *zakāt* is due is extended to any property that results from business in the fields of mining, fisheries, plantations, export-import, housing, farming and salaried employment (Ash-Shiddieqy 1969:21-41; Hazairin 1971:107-8; Mas’udi 1991:137-42). The recipients of *zakāt* revenue are still limited to the eight groups of recipients regulated by the verse of *al-Tawba*/the Repentance (9):60; however, their meanings have been extended to meet modern realities. Accordingly, *zakāt* revenue may be utilized for fulfilling the needs of the community, including for financing public facilities such as hospitals, schools, paying the health costs of the poor, constructing orphanage facilities, paying the debts of the needy, to finance the government’s program to eliminate poverty, to fund rehabilitation centers, empowering society, and to provide facilities for the state

army (cf. Ash-Shiddieqy 1969:13; Rahardjo 1988:43; Mas'ud 1991:147-162).

The standard *nisāb* of property must be based on rates that are fixed in accordance with the sense of justice of the society (Rais 1987:60-1; Mas'udi 1991:142). For example, Amien Rais, who has written on the issue of *zakāt* on income among professionals, including bankers, consultants, auditors, brokers, exporters and importers and accountants, suggests that *zakāt* should be paid at a rate ranging from five to 25 per cent of their monthly income (Rais 1987:61).

Muslims scholars dispute the role of the Indonesian government as the collector (*āmil*) of *zakāt*. Some scholars believe the government's role as *āmil* is legally justified because it is an important task of the government to provide services for people who are the recipients of *zakāt*. For this purpose, the government may establish a *zakāt* institution such as a public treasury (*bayt al-māl*) (cf. Ali 1988:35; Ash-Shiddieqy 1969; Mas'udi 1991; Permono 1992). For others, *zakāt* is a matter of religion and *zakāt* revenue flows from the *zakāt* payers (*muzakkī*) directly to the recipients (*mustahiqq*) and there should be no interference between the two parties (Rais 1987:64). According to this opinion, the government may only be involved in *zakāt* matters as a regulator.

Another dispute has arisen over the matter of whether or not *zakāt* is the same thing as tax. In this regard, Mas'udi advocates that tax is the same as *zakāt*. According to him, those who have paid tax have no need to pay *zakāt* as well. As was the case during the Prophet's time, tax is *zakāt* for Muslims. However, it is still necessary to make a vow regarding the intention to pay *zakāt* (Mas'udi 1991:34). According to other scholars, there is a significant distinction between *zakāt* and tax, with the former being a religious obligation and the latter an obligation to the government (Rahardjo 1988:41).

Despite the fact that there are disputes between Muslim scholars about certain aspects of *zakāt*, these new rules for *zakāt*

have created the possibility for the government and NGOs to become involved in managing *zakāt* institutions. This development began in the 1980s when a number of NGOs activists and local governments established *zakāt* institutions aimed at collecting and distributing *zakāt* and other forms of Islamic charity. This development also links to the growth of Islamic finance, such as Islamic banking, insurances, mortgages, and other micro finance institutions.

### 5.3 Roles of *zakāt* in the Muslim world

The involvement of the government in collecting *zakāt* ceased with the advent of colonialism and the introduction of systems of government that excluded religious doctrine. Indeed, authorities in most Muslim countries largely renounced Islamic codes of law, including *zakāt* (Kuran 2008:285). However, since the second half of the twentieth century there has been renewed interest by government to become involved in this religious matter. The discussions surrounding this theme are not only religious, but have also extended into economics, a field that advocates developing a *zakāt* law appropriate for modern conditions.

Besides attempts to revive *zakāt* institutions, the government has also convened numerous conferences, and published several manuals and pamphlets instructing Muslims on how to fulfill their obligations regarding *zakāt*. In addition, various private *zakāt* organizations have been formed. This reinterpretation of the rules of *zakāt* has been challenged by the ulama, such as Rashīd Riḍā in his interpretation of the Quran and Yūsuf Qaraḍāwī in his prominent work, *fiqh al-zakāt*. Contemporary development of *zakāt* shows that *zakāt* is enforceable by law in Saudi Arabia (1951), Libya (1971), Yemen (1975), Malaysia (1980s), Pakistan (1980), and Sudan (1984).<sup>68</sup> However, there has also been a

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<sup>68</sup>Collection of *zakāt* in Saudi Arabia is based on Royal Decree No. 17/2/28/8634, dated 29 Djumādā thāny 1370/7 April 1951. In Libya it is Law no. 89 of 1971. In

movement across the Muslim world to create new intermediaries to receive voluntary payments of *zakāt*. Among these are quasi-governmental agencies (set up by the government) in places such as Jordan (1979), Bahrain (1979), Kuwait (1982), Egypt (1977), as well as Indonesia (1999) (Zysow:418-420).

## 5.4 Changes and regulations in Indonesia

This section briefly provides details of the shifting attitude of the government and the regulations it has passed concerning *zakāt*, from the beginning of independence to the most current situation and law 32/2011 on *zakāt* management.

### 5.4.1 Changing attitude of the government

*Zakāt* matters have been the responsibility of the Ministry of Religious Affairs and are regulated under the government regulation no.5/SD/1946, issued on 25 March 1946, concerning the tasks of the Ministry of Religious Affairs. This regulation elucidated that religious matters previously dealt with by the Ministry of Home Affairs, the Ministry of Justice and the Ministry of Education and Culture, would now be dealt with by the Ministry of Religious Affairs. For example, the tasks of *zakāt*, *waqf* (endowment) and *ibadah sosial* (social donation), commonly abbreviated as *zawaibsos*, came under the Ministry of Home Affairs but were now transferred to the Ministry of Religious Affairs. On 8 December 1951, the Minister of Religious Affairs issued the circular letter (*Surat Edaran*) no. A/VVII/17367 aimed at encouraging Muslims to pay *zakāt*. This circular was followed up with a manual stating that *zakāt* and social donation were tasks of the Office of Religious Affairs (*Jawatan*

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Malaysia the collection of *zakāt* is separately administered in each state by the Religious Affairs Council. Pakistan has enacted the *Zakāt and Ushr Ordinance of 1980*. Meanwhile, Sudan introduced *Qanūn al-zakāt wa-al-ḍarā'ib of 1984*.

*Urusan Agama*) (Ikhwan 2006:188-9). However, the Ministry of Religious Affairs finally decided not to issue any further policy to develop *zakāt* institutions, giving the reason that it wanted to avoid being accused of restoring the spirit of the Djakarta Charter, which stated that Muslims are obligated to follow Sharia. During the 1950s, any attempts to advocate Sharia being part of the government's concern could be politically perceived as a move towards an Islamic state (Zarkasyi 2010:1). Accordingly, matters of *zakāt* escaped the attention of the Old Order government.

The New Order regime did not believe that matters of *zakāt* should be the concern of the government; rather, it believed it was the individual concern of Muslims. However, Muslim leaders and bureaucrats have advocated that it be the state's concern since the beginning of the New Order government. In 1967, the Ministry of Religious Affairs prepared a draft *zakāt* law and proposed it to the parliament, also sending copies to the Ministry for Social Affairs and the Ministry of Finance in Letter No.MA/099/67, dated 14 July 1967. In response to the draft, the Minister of Finance suggested that it would be better if *zakāt* was subject to ministerial regulation rather than state law. The Ministry of Religious Affairs agreed to the suggestion. On 15 July 1968, K.H. Moh. Dahlan, as the Minister of Religious Affairs, passed the ministerial decrees No.4/1968 and 5/1968. The first decree concerns the establishment of a Muslim treasury (*bayt al-māl*) in villages and the latter deals with the establishment of a national *zakāt* committee. In addition, the Ministry of Religious Affairs also considered suggestions on this subject made at a conference in Sukabumi in 1952 (Ichwan 2006:190). In contrast, the president did not accept that this subject was the concern of the government and instructed the Minister of Religious Affairs to cancel the two ministerial decrees. In response to this rebuttal, the minister immediately passed instruction No.1/1969 to cancel the implementation of the decrees (Zarkasyi 2010:2).

Despite the failure of the Ministry of Religious Affairs, a number of ulama approached the president directly about *zakāt* matters. Before meeting with the president on 24 September 1968, eleven ulama<sup>69</sup> held a meeting to prepare a draft recommendation. They agreed to propose that Indonesian Muslims, particularly those living in Jakarta, establish an institution of *zakāt* to intensify the collection and distribution of *zakāt* revenue. They also suggested that the president, as a Muslim, should be a pioneer in paying *zakāt* (Fadlullah 1993:100-103).

The president took the suggestions on board and on 26 October, during the commemoration of the *isrā' wa-al-mi'rāj* of the Prophet, he said:

As we know, *zakāt* is a religious obligation for those who are rich. Ninety per cent of the Indonesian population is Muslim. If ten million of them are willing to pay *zakāt*, and each of them pay Rp. 10,000, the revenue collected annually will be Rp. 2.5 billion. This amount of money could be used to construct mosques, hospitals and orphanages, to help elderly people, to provide work for the needy, social and religious facilities [...]. As the first step, I announce to all Indonesian Muslims that as a private citizen I agree to manage and collect *zakāt* revenue. Let us together as Indonesian Muslims be united and become Muslim who dedicate our activities to improve the welfare of Indonesian Muslims in particular and the entire Indonesian population in general. As a private citizen, I will devote myself to receiving *zakāt* revenue in cash or in other forms from all Muslims in this homeland. God willing, I will regularly publicize to all citizens how much money I receive and I will be responsible its usage. I really expect that this appeal will receive public attention and will receive support

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<sup>69</sup>These ulama are Prof. Dr. Hamka, K.H. Ahmad Azhari, K.H.M. Sjukri Ghazali, K.H. Muhammad Sodry, K.H. Taufiqurrahman, K.H. M. Saleh su'aidi, Ustadh. M. Ali Alhamidy, Ustadh Muchtar Luthfy, K.H. A. Malik Ahmad, Abdul Kadir, R.H. and M.A. Zawawy (Fadlullah 1993:102).

and feedback from the leaders and all Muslims (Effendi, et al. 1981:259-260).

This speech reveals that the president intended to emphasize *zakāt* matters as a private concern rather than the state's. However, four days after delivering the speech, the president passed a letter no.07/Pres/1968 instructing three officers – Major-General Alamsyah Ratu Perwiranegara, Colonel Inf. Drs. M. Azwar Hamid and Colonel Inf. Ali Afandi – to make all necessary preparations for a nationwide *zakāt* collection. Subsequently, on 28 November 1968, the president also passed another letter no.B.133/Press/11/1968 instructing institutions of the government to be involved in *zakāt* matters.

On 29 May 1969, the president announced the amount of collected revenue when he was delivering a speech at the commemoration of the birth of the Prophet (*maulud Nabi*). The collected revenue had reached more than 20 million rupiah and almost 1500 dollars, collected from more than 1100 Muslims<sup>70</sup> (Department 1969a:11-12). On 9 October 1969, at the commemoration of the *isra' mi'rāj* of the Prophet, the president again announced the collected revenue, which had now reached almost 21 million in rupiah and a further 1400 dollars. More than 16 million had been distributed to the recipients in several regions, including West Irian<sup>71</sup> (Departement 1969b:9). Nevertheless, the president only included issue of *zakāt* in his official speeches on these two occasions. That said, the president was still concerned with this subject and tried to establish a *zakāt* institution under the Ministry of Public Welfare, not under the Ministry of Religious

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<sup>70</sup>Amount of revenue collected was Rp.20,448,196.30 and US\$1,378.01 collected from 1,170 payers (Departement 1969a:12).

<sup>71</sup>Amount of revenue collected revenue was Rp.20,817,885.07 and US\$1,374,01. Rp.16.200.000.00 of this revenue was distributed (Departement 1969b:9).



Affairs. For this purpose, he passed decree No.44/1969, dated 21 May 1969 on the establishment of a committee for the utilization of *zakāt*, but with the possibility of the collected revenue being transferred to the president's own account No. A.10.000 (Ichwan 2006). Furthermore, in 1970 the president established a body, the President's Socio-Religious Fund (*Dana Sosial Kerohanian Presiden*), to collect revenue for social donation and religious affairs. But, the government failed to announce the development of this fund adequately. Similar concerns emerged in 1982 when the president, together with Alamsyah Ratu Perwiranegara (the Minister of Religious Affairs from 1978-1983, d. 1998), Widjojo Nitisastro (the coordinating Minister for economy, finance and industry from 1973-1983, d. 9 March 2012) and Sudharmono (the vice president from 1988-1993, d.2006) established *Yayasan Amal bahakti Muslim Pancasila*. This foundation collected charity from Muslim civil servants and military staff. The collected revenue was mainly used to fund the establishment of new mosques throughout the archipelago.<sup>72</sup> By 2009, the money from this fund had built almost one thousand mosques ([www.yamp.co.id](http://www.yamp.co.id), accessed in 6/04/2012).

Despite the personal involvement of the president in matters of *zakāt*, the provincial governments also felt the need to take political steps towards this issue. The governor of Jakarta, Ali Sadikin, established a semi-autonomous *zakāt* agency, *Badan Amil Zakāt* (BAZ), in December 1968. Ali Sadikin passed several provincial regulations dealing with the issue of collecting and distributing *zakāt* revenue. Since then, this institution has become a model for other provincial governments who have set up their own *zakāt* institutions: East Kalimantan (1972), West Sumatra (1973), West Java (1974), South Kalimantan (1974), South Sumatra

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<sup>72</sup>Revenue is deducted from the monthly wage of the civil servants and military officers. Civil servants who belong to the first four categories pay Rp.50.00, Rp.100.00, Rp.500.00, and Rp.1.000.00, respectively; and for military officers, it is Rp.50.00, Rp.100.00, Rp.500.00, and Rp.2.000.00, respectively ([www.yamp.co.id](http://www.yamp.co.id)).

(1975), Lampung (1975), Irian Jaya (1978), North Sulawesi and South Sulawesi (1985) (Abdullah 1991:60). These provincial governments established their quasi-governmental *zakāt* agencies with difference names.

In 1991, the Ministry of Home Affairs and the Ministry of Religious Affairs passed a joint decree, No.29 and 47 of 1991, concerning the establishment of institutions of *zakāt*, *infāq* and *ṣadāqa*. Again, the president denied the notion that an institution of *zakāt* was the concern of the government. The government treats the institution of *zakāt* as a purely public organization. For this purpose, its role is as a counselor and it does not get involved in managing the institution. The government maintained this position until the fall of the New Order Regime in 1998. However, the new government took a different stance on this issue. The shift was revealed on 23 September 1999 when the president passed the codification of rules on *zakāt*: law 38/1999.

#### **5.4.2 Regulations on *zakāt***

Although the government passed a law on *zakāt* in 1999, it does not directly mean that the institution of *zakāt* becomes a state concern. Despite having implemented law 38/1999, the parliament and government decided to revise it. The president passed the revision as law 32/2011, promulgated on 25 November 2011. The following paragraphs briefly present these two laws.

##### **5.4.2.1 Law 38/1999**

The Ministry of Religious Affairs has advocated that *zakāt* matters have been a state concern since the beginning of the New Order regime, but it received no support from the president. When the new government came to power, the Ministry of Religious Affairs prepared a draft proposal on this subject. On 4 February 1999, the Minister of Religious Affairs presented this draft to the president. On 30 April 1999, the State Secretary signaled the agreement of the

president on this issue and suggested the establishment of a committee to improve the draft. On 20 May 1999, the committee finished preparing the draft entitled Collecting, Zakāt, *Infaq* and *Sadaqa*. On 25 May 1999, the Minister of Religious Affairs proposed the draft to the president. Subsequently, the president approved a letter, No. R.31/PU/VI/1999, on 24 June 1999 to table the draft to parliament. Within three months, the parliament and president agreed to approve the draft as law. On 23 September 1999, the government promulgated the draft as law 38/1999 on *zakāt* management.

Law 38/1999 consists of ten chapters and 25 sections. The basis of this law is the 1945 constitution that guarantees the citizens the right to adhere to their religious teachings. This law further specifies that *zakāt* revenue is a latent financial source for the improvement of social welfare. This law elucidates a number of themes concerning *zakāt* matters: For example, it states that *zakāt* is obligatory for any Muslim and institution belonging to Islam that possesses property on which *zakāt* is due (Section 2). The obligation of Muslim institutions to pay *zakāt* is a new discourse in Muslim tradition. The shift of the government's position is regulated in Section 3, which states that the government has the obligation to protect, supervise and provide services to *zakāt* payers (*muzakkī*), the recipients (*mustahiqq*) and *āmil* (collectors) of *zakāt*. This section clearly justifies the role of the government in managing the institution of *zakāt*. For this purpose, the government may establish an institution of *zakāt*, in this case the *Badan 'Āmil Zakāt* (BAZ), in line with the governmental structure, i.e. at national, provincial, regional and sub-regional levels (Section 6). Muslim organizations are also permitted to establish a similar institution, namely *Lembaga 'Āmil Zakāt* (LAZ), but this institution must be under the authorization of the government (Section 7). These regulations show an important shift in the government's position concerning *zakāt* matters and illustrate the government's intention to control the institutions of *zakāt*.

The kind of wealth on which *zakāt* is imposed deals with *zakāt* on property as well as *zakāt al-fiṭr*. The kinds of property include: 1) gold, silver and money; 2) businesses and companies; 3) income from crops, gardening and fisheries; 4) income from mining; 5) livestock; 6) wages; and 7) *rikāz* (buried treasures of the earth) (Section 11). Besides these properties, the institution of *zakāt* may also receive revenue from other forms of Islamic charity (Section 13). This law presents a new discourse dealing with *zakāt* in which the amount of *zakāt* is deducted from the tax of the *zakāt* payer. However, this deduction is only possible if the revenue is distributed to a *zakāt* institution managed by the government or a private institution (LAZ) that has been authorized by the government (Section 14 (3)). This law does not specify the person entitled to receive the revenue, but does mention that, 'the revenue is distributed to the recipients in accordance with Islamic rules' (Section 16). Those who do not pay the *zakāt* are not penalized; rather, it is the *āmil* who can be punished for not managing *zakāt* revenue in a proper way. The penalty for such a breach is a maximum of three months in jail or a fine of a maximum of three million rupiah (Section 21).

The contents of law 38/1999 regulate a number of new rules on *zakāt*. This change is in line with the innovative rules advocated by Indonesian Muslim scholars. It is important to note that this law reveals that the intention of the government is to monopolize and control the institution of *zakāt*. Nevertheless, this law shows that the obligation of paying *zakāt* is not in the form of an imperative. Paying *zakāt* is still voluntary. It only elucidates that there is a penalty for those *āmil* who does not manage the revenue properly. This law has affected the growth of institutions concerning *zakāt* matters, within both government institutions and in the wider Muslim society. In 2001, the president passed the Presidential Decision No.8 of 2001 on the establishment of the national *zakāt* board, namely BAZNAS (*Badan Amil Zakat Nasional*). The Minister for Religious Affairs passed the Ministerial Decision No. 581/1999 on

the implementation of the *zakāt* law. Subsequently, the Director of the Bureau of Muslim and Pilgrimage Affairs of the Ministry of Religious Affairs has issued the decision No. D.291/2000, which is a manual on *zakāt*. In 2001, the Ministry of Religious Affairs also set up the Directorate Zakāt and Waqf. In addition, a number of local governments have been attempting to establish institutions of *zakāt*, such as BAZDA (*Badan Amil Zakat Daerah*).

In connection with the issue of *zakāt* and other forms of charity, the president passed the government regulation No.60/2010 concerning *zakāt* and other forms of obligated religious donations that may be deducted from an individual's gross income. However, this regulation does not refer to law 38/1999, but solely to law 7/1983 concerning income tax. Section 1 elucidates that any *zakāt* that has been paid by a Muslim or an institution belonging to Muslims, or other obligated charity practiced by non-Muslims, may be deducted from the gross income. Income tax cannot be counted as *zakāt* as the *zakāt* law suggests. This deduction is only possible if the revenue is paid to institutions organized by the government or LAZ, which has authorization from the government. If this is not the case, the revenue cannot be deducted from the gross income (Section 2).

#### **5.4.2.2 Law 23/2011**

Members of the DPRD prepared a draft amendment to law 38/1999, which had been put forward by the Ministry of Religious Affairs. They argued that the rules on *zakāt* regulated under law 38/1999 were no longer in accordance with the current situation regarding matters of *zakāt*. Departing from public debate and discussion concerning a number of rules regulated by *zakāt* law, the DPRD and the government agreed to put the amendment to law 38/1999 on the national legislation program (*Program legislasi nasional, Prolegnas*) in 2010. The DPRD and the president finally approved the amendment, which became law 23/2011 on *zakāt* management.

This law consists of eleven chapters and 47 sections. It provides comprehensive rules on *zakāt* matters and authorizes the

government to play a more central role compared to the previous law. This law elucidates more detailed regulations concerning the principles of *zakāt*: Sharia, trusteeship, utility, justice, law and order, integration and accountability (Section 2). This law also extends the kinds of property to which *zakāt* is obligated. It now includes: 1) gold, silver and other precious metal; 2) money and other forms of valuable documents; 3) income from business; 4) income from crops, gardening and forestry; 5) livestock; 6) mining; 7) industry; 8) wages and services; 9) *rikāz* (Section 4).

Further, this law allows for the institutions of *zakāt* to be organized by both the government and society. The government may establish a non-structural national *zakāt* board, namely BAZNAS (*Badan Amil Zakāt Nasional*) for the national, provincial, regional, and sub-regional levels (Sections 5-15). Muslim society is allowed to establish a *zakāt* institution, namely LAZ (*Lembaga Amil Zakat*), albeit under some restrictions, including that LAZ must belong to a Muslim organization that has been established for educational, *da'wa* and social purposes (Sections 17 and 18). This law also obligates the government to provide financial support to BAZNAS, although it may retain a certain amount from the collected revenue (Section 30).

An important new aspect of law 23/2011 concerns the potential to penalize the LAZ, *āmil* and *zakāt* payer (*muzakkī*) who do not follow the necessary procedures. The license of LAZ may be revoked if this institution does not regularly report to the authorized institutions concerning its collected and distributed revenues (Section 36). Any *āmil* who does not distribute the revenue to recipients may be punished with a maximum of five years in jail or pay a fine to the maximum of 500 million rupiah (Section 40). A *zakāt* payer (*muzakkī*) who intentionally does not pay *zakāt* may be punished with a maximum of five years in jail or a fine of a maximum of 500 million rupiah (Section 39). In addition, any *āmil* or LAZ without a license from the government that collects and distributes *zakāt* revenue and other forms of Islamic

charity may be punished with a maximum of one year in jail or pay a fine of a maximum of 50 million rupiah.

This section reveals the most current developments regarding the institution of *zakāt* as a state concern. This changing attitude of the government has developed over a relatively long period. A number of interconnected factors may account for this shift. As Hooker suggests, the government must demonstrate its Islamic credentials because the majority of the population is Muslim. Hooker also acknowledges that the involvement of the government in this issue has financial implications. However, he says, 'whether or not they make any impact on the state budget is irrelevant; symbolic importance is everything' (Hooker 2008:31). Other factors also play a role in this situation. The new rules on *zakāt* produced by Indonesian Muslim scholars have created the possibility for government involvement in this issue. Included in these rules is the fact that *zakāt* is apparently no longer a purely religious obligation; it has now also become an economic issue. The accumulation of *zakāt* and other forms of Islamic charities revenue is a latent financial source for the government. In addition, the growing number of *zakāt* institutions managed by Muslim activists have, to some extent, influenced the interest of the government in this subject. Among these institutions are: BAMUIS BNI, BAZIS DKI, BAZMA, BMM, *Dompot Duafa* (DD), *Dompot Peduli Ummat Daarut Tauhid* (DPU-DT), *Pos Keadilan Peduli Ummat* (PKPU), *Yaysan Baitul Maal BRI* (YBM BRI). These institutions have gained a respectable public reputation. This reputation has had both economic and political implications for Muslims and for the government. Lastly, this shift also shows that the power of the state over society is growing significantly.

### **5.5. Provincial, regional/municipal laws on *zakāt***

This section presents the local laws concerning *zakāt*. The provincial authorities have had little involvement in this matter, but it is considered to be a concern of regional government.

### 5.5.1 Provincial law

Members of the provincial parliament and the governor have shown no support for *zakāt* being the concern of the provincial government. This raises the question, why are matters of *zakāt* not on the agenda of the provincial authorities?

A short explanation is that these authorities have simply shown no political interest in this subject. There is considerable evidence to support this claim. In 2007, the governor of West Sumatra stated that the government should not interfere with the practices of *zakāt* in society (*Padang Ekspres*, 29/09/07). In March 2009, the governor also showed his reluctance to get involved with *zakāt* matters. He called on ulama to come to a consensus concerning a number of disputed rules on *zakāt* before the government would get involved in this subject. He went on to admit that it was not easy to gain this consensus among the ulama. The implication is that the provincial government would not get involved in this issue. In addition, in 2010 the newly elected governor excluded *zakāt* matters from the provincial government's remit. One explanation for this is that the governor belongs to the PKS political party, which maintains a charity institution, PKPU. He is also a member of the Muhammadiyah Organization that relies heavily on the Muslim charitable tradition for its finance.

### 5.5.2 Regional/Municipal law

This subsection presents six regional laws on the rules of *zakāt*. These regional laws originate from the region of Pesisir Selatan, the region of Solok, the Municipality of Bukittinggi, the Region of Agam, the Municipality of Padanpanjang and the Municipality of Padang. These six have been chosen because the first three passed the earliest regional laws on this subject, while the last three are the latest laws to be passed on *zakāt*, approved during the first decade of the decentralization era. This selection seeks to show



whether there are any differences in the content of the regional laws.

The titles of these regional laws vary from region to region. The regional law of Solok is called *Pengelolaan zakāt, infaq dan ṣadaqah* (Zakāt, Infāq, and Ṣadāqa Management), whereas the laws from the other five regions are copied from the national law entitled *Pengelolaan Zakāt* (Zakāt Management). This last name implies that the regulations are mainly concentrated on *zakāt* matters and that other forms of Islamic charity are less important. The former is concerned with all forms of Islamic charity. While the structures of these regional laws are varied, their scopes deal with similar topics: consideration; legal bases; general terms; principles and objectives; the structure of *zakāt* institutions; *zakāt* payers (*muzakkī*), properties on which *zakāt* is due and the people entitled to receive the revenue (*mustahiqq*); ways of collecting and distributing the revenue; controlling institutions of *zakāt*; and the penalties. These contents are the same as those of law 38/1999. Nevertheless, the differences occur in the detail of both regulations.

Regional authorities have similar intentions in terms of codifying *zakāt*. The intention is to implement *zakāt* as an important Islamic teaching and it is meant as a financial source that may be used by the local government. This implies that local governments are interested in the advantages to be had from *zakāt* revenue and other forms of Islamic charity. The next part of the regulations deals with the legal basis. Five out of the six regional laws mention a number of state laws that justify codifying *zakāt* rules in regional law. In contrast, the regional law of Pesisir Selatan refers to the Quran, as follows:

[this regulation is based on] what has been stated in the Quran in the verse of *al-Tawba*:103 on the obligation of an institution to collect *zakāt* from the *zakāt* payers (*muzakkī*) and also in the verse of *al-Baqara*: 267, which deals with the kinds of properties on

which *zakāt* is obligated if its value has reached a maximum amount (*niiāb*) (regional law 31/2003).

This phrase shows that this regulation is not in accordance with the Indonesian legislation system norm under which it is only justified to mention the national law for legal reference as is regulated under law 24/2004.

These six regional laws vary in terms of whether paying *zakāt* is obligatory only for Muslims. The regional laws of Solok, Bukittinggi and Padang do not deal with this issue at all. Meanwhile, the regional law of Agam and the municipal law of Padang Panjang acknowledge that paying *zakāt* is an obligation for all Muslims. For example, the regional law of Agam states, ‘every Indonesian Muslim or an institution that is owned by a Muslim has an obligation to pay *zakāt* from their properties that have fulfilled the *zakāt* requirements’. The mention of Indonesian Muslims in this clause is odd, because the regional law is only for Muslims who live in the region. This section is obviously copied from law 38/1999. The regional law of the Municipality of Padangpanjang modifies the section with, ‘every Muslim who lives in the Municipality of Padangpanjang or an institution that belongs to Muslims has an obligation to pay *zakāt* from their properties which have fulfilled the *zakāt* requirements’. This clause shows that it is not an imperative, but merely a statement that considers *zakāt* to be an obligation for all Muslims. The regional law of Pesisir Selatan takes a different position and clearly obligates Muslims to pay *zakāt* and also suggests that they should also pay other forms of Islamic charity. This imperative statement is located in Section two: ‘(1) every *zakāt* payer (*muzakkī*) who lives in the Region of Pesisir Selatan is required to pay *zakāt*; (2) Besides paying *zakāt* they are also encouraged to pay *infāq* (charitable gift), *ṣadāqa* (almsgiving), *waqf* (endowment), *waṣīya* (will), *warisan* (inheritance) and *kifarat* (expiatory gifts)’. Thus, these three different positions

of the regional laws may indicate those regions where Islamic teachings have intensified.

Another issue to examine here deals with the role of the Indonesian Constitution and the philosophy of the state, *Pancasila*, as well as Islam or Islamic teachings in the text of the regional laws. These factors are not present in the regional laws of Agam and the Municipality of Bukittingi. Meanwhile, the regional law of Solok clearly mentions that, 'the legal principles of the management of *zakāt* are *iman* (belief) and *taqwa* (devotion to God), and openness, rules of law which are in accordance with the *Pancasila* and the Constitution of 1945'. This section of the legislation is a repetition of clause 4 in law 38/1999. The regional law of the Municipality of Padangpanjang explicitly includes Sharia as its legal principle alongside *Pancasila* and the 1945 constitution. As can be seen in Section 4, 'the legal principle of *zakāt* management is Sharia that is based on *iman* (belief) and *taqwa* (devotion to God), openness and the rule of law which are in line with *Pancasila* and the Constitution of 1945'. The regional law of Pesisir Selatan explicitly posits Islamic teachings as its legal base without referring to Indonesian legal principles. Section 4 mentions, 'the legal principle of *zakāt* management is Islamic teachings that are based on *iman* (belief), devotion to Allah, openness and rules of law which are in line with valid regulations'. By mentioning Islamic teachings and devotion to Allah, this regional law puts greater emphasis on Islamic teachings rather than Indonesian legal principles. Consequently, this is often used as an argument for opponents who say that the regional law goes against *Pancasila* and the 1945 constitution.

The objectives of the regional law are similar to those of law 38/1999. They are:

1. Regional law is to provide some services for Muslims who practice *zakāt* in accordance with Islamic teachings.

2. Regional law is to improve the function and role of Islamic institutions in order to achieve social welfare and justice.
3. Regional law is to improve the effectiveness, efficiency and accountability of *zakāt* practices.

These objectives suggest that the presence of the regional law on *zakāt* may provide a way to utilize *zakāt* revenue. In order to achieve the above objectives, these laws provide for institutions of *zakāt* managed by local government, namely BAZDA (*Badan Amil Zakat*), and those managed by Muslim organizations or individuals, namely LAZ (*Lembaga Amil Zakāt*). However, these laws do not specify how these institutions are attached to the government structure.

The structure of the BAZDA varies from region to region. In Agam, for example, the government has established BAZDA in line with the local government structures, ranging from regional (*kabupaten*), sub-regional (*kecamatan*), to village level (*nagari*). In other regions, this institution is established only at the regional and sub-regional level. This structure implies that the purpose of *zakāt* institutions is primarily collecting *zakāt* revenue from Muslims who work for government institutions.

The kinds of property on which *zakāt* is due is another important aspect of the regional laws. This issue emerges in different clauses of the regional law, but they are all in line with Section 11 of law 38/1999.<sup>73</sup> This classification still remains in general terms and only the regional law of the Municipality of Padang attempts to elaborate on it. In addition, the issue of whether *zakāt* may be deducted from income tax also emerged, though it lacked further detail.

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<sup>73</sup> They consist of: 1) gold, silver, money; 2) production from trading and companies; 3) agricultural production; 4) mines; 5) livestock; 6) production of goods and services; and 7) treasures.

The issue of who is entitled to receive *zakāt* is another important aspect of the regional law. None of the above mentioned regional laws defines the recipients in detail. For example, the regional laws of Pesisir Selatan and the Municipality of Padangpanjang define it with the phrase 'recipients who are regulated under the Islamic teachings'. Only the regional law of the Municipality of Padang adds to this, stating: 'Muslims who are not able to pay medical costs are defined as poor and indigent'. This implies that the groups of recipients still conform to what is laid out in the Quran in the chapter of *al-Tawba*/the Repentance: 60. This is also the case with law 38/1999. The last issue with regards to regional law deals with punishment. All the regional laws examined only prescribe punishment for an *āmil* who wrongly administrates *zakāt* revenue. The punishment is jail for a maximum of three months or a fine to a maximum of 3 million rupiah. Muslims who do not want to pay *zakāt* are excluded from these laws.

Most of the regional laws show that there is no single section indicating a shift of *zakāt* from a voluntarily to an obligatory practice, with the exception of the regional law of Pesisir Selatan. Few elements of the current understanding of *zakāt* matters have been adopted into these regional laws. Most of the rules prescribed are written in general terms and are mentioned in various sources of Islamic legal texts. The texts also show that most of the regulations in these regional laws are copied from law 38/1999. In addition, there is little difference between the regional laws passed in the early period of decentralization compared to those passed recently. This evidence suggests that the local authorities were motivated to pass regional law on this subject in response to a popular demand to adopt elements of Sharia, to provide a legal basis for their interest in establishing alternative financial sources, *zakāt* revenue; and perhaps also by the need to gain the political interest of the rulers. However, most members of the local parliament belonged to Islamic political parties and most were reluctant to support the regional law on *zakāt*. This

reluctance is caused by a fact that they also belonged to social organizations that rely financially on Muslim charity revenue.

### 5.6 The practices in the Municipality of Padang

This section provides details of the actual practices and the involvement of the mayor of the Municipality of Padang in managing BAZDA. It seeks to discover how the mayor maintained BAZDA within the framework of his authority as the local ruler, including organizing the board of BAZDA, and how money flows from *zakāt* payers (*muzakki*) to BAZDA through *‘amil* of *zakāt*, as well as how it subsequently flows from BAZDA to the recipients. I will argue here that the people involved in managing BAZDA and the people to whom the *zakāt* revenue is flowing are often linked to the mayor as a person and as a local ruler.

DRPD appointed Fauzi Bahar as the mayor in 2004 and he regained the position through the public elections held in October 2008. He was born in the sub-region (*Kecamatan*) of Koto Tengah, in the Padang regency on 6 August 1962. During his childhood, he received religious teaching from his parents and via his involvement in mosque activities. He enrolled for tertiary education (undergraduate level) at the sport's department of the State University of Padang (IKIP) in Padang in 1986 and he gained a degree on the magister management at the University of Indonesia in 2002. After finishing his undergraduate studies, he worked in the navy and in 2004 he became a politician. His success as the mayor obviously contributed to his win in the direct election in October 2008. Most Muslims believed that he had a good public reputation, not least because he had been involved in setting up programs to promote Sharia as a concern of the municipality.

When the mayor turned his attention to managing BAZDA in 2006, he justified his plan with Islamic teachings. He repeatedly argued that Islamic teaching regulated that his position as the mayor meant he was an *ulil amr* (ruler) obligated to implement

Sharia. He further claimed that he had the religious authority to collect *zakāt* revenue from *zakāt* payers (*muzakkī*) who live in the region. However, he admitted that this authority was confined to *muzakkī* who are working in the institutions that are under his authority, i.e. civil servants. To support this argument, the mayor often quoted the verse of *al-Tawba*/the Repentance (9):103, *khudh min amwālihim ṣadāqatan tuṭahhiruhum wa tuzakkīhim bihā wa ṣalli ‘alayhim*. (Of their goods, take alms, so that thou mightiest purify and sanctify them; and pray on their behalf). He further argued that this verse clearly commands any leader to take *zakāt* from *muzakkī*. In addition, he often quoted legal opinions among Muslim scholars that *zakāt* is only legitimate if it is distributed through *‘āmil*; otherwise, it will be qualified as other forms of charity. He repeatedly maintained the policy with religious arguments; for instance, those *muzakkī* who refused to pay *zakāt* would experience a misfortune or disaster and this attitude was characterized as *zalīm*. He further argued that nobody would become poor after paying *zakāt*. On the contrary, the *muzakkī* would receive a blessing from God (*Singgalang*, 18/02/2007; 27/03/2007, *Haluan*, 03/02/2007).

Besides these religious notions, the mayor repeatedly mentioned a hypothetical calculation of a potential source of *zakāt* revenue. According to him, if 40 per cent, that is one hundred Muslim families in the municipality, pay 25,000 rupiah of *zakāt* per month, derived from 2.5 per cent of their monthly income, there would be an annual revenue of at least 30 million rupiah collected. This collected revenue would be more than sufficient to fund the government programs for eliminating poverty (*Singgalang*, 27/03/2007). His campaigns were not only aimed at convincing the civil servants under his authority to pay *zakāt*, but he also attempted to approach civil servants who were not working for the municipality.

### 5.6.1 Establishment of BAZDA

This section briefly examines the ways the mayor appointed people to BAZDA between 2006 and 2011. On 11 April 2006, the mayor passed decision No.43 of 2006 for the establishment of BAZDA (which had previously been called BAZ). On 9 May 2011, the mayor passed decision No. 80 of 2011 for the establishment of BAZDA for the period 2011 to 2014.

Section 6 of Law 38/1999 regulates the procedure for the establishment of BAZDA. Its structure consists of consultative, advisory and executive boards. According to this section, the head of the Ministry of Religious Affairs in the municipality proposes candidates for the boards and subsequently it is the mayor who makes the final decisions. The mayor did not apply this procedure in 2006, but he did follow these rules in 2011. In 2006, the mayor appointed four people – to protect their anonymity we will call them Aman, Amin, Amir and Hamid – to carry out the selection of candidates for the boards. After these people had completed their assignment, the mayor passed decision No.43 of 2006 on the establishment of BAZDA. Sixty people were appointed to the boards of BAZDA, which comprise consultative, advisory and executive boards and sections for collecting, distributing, empowering, developing and publishing *muzakkī* and *mustahiqq*. Aman, Amin, Amir and Hamid were appointed to the executive board that was tasked with running BAZDA. Aman was appointed as the Chair, Amin and Amir were the Vice-Chairs, and Hamid became Secretary of the board. However, the day to day activities revealed Amin to be the central figure at BAZDA.

In 2011, the mayor applied the procedure regulated under the law 38/1999 for appointing the boards for BAZDA. He encouraged the head of the Ministry of Religious Affairs in the Municipality to get involved in organizing the new boards for the period 2011-2014. On 16 February 2011, a meeting was held to discuss these new appointments. The participants at the meeting, including the head of the Ministry of Religious Affairs and MUI, as



well as the representatives of Muslim organizations, agreed to reappoint the same executive boards, i.e. Aman, Amin and Amir, to exactly the same positions, for the simple reason that these people had succeeded in managing BAZDA since 2006. On 9 May 2011, the mayor passed decision No.80 of 2011 to create the new boards of BAZDA for 2011-2012. Consequently, 58 people were appointed to the boards of BAZDA. The mayor reappointed Aman, Amin and Amir to the executive boards together with five other board members. Aman is the Chair, Amin and Amir hold the position of Vice-Chair; however, it is Amin who remains the key figure in managing BAZDA day to day, despite only being the Vice-Chair. This information raises questions about Amin's role since 2006. The answer would appear to be that he has gained his position simply because he belongs to the mayor's network.<sup>74</sup>

Initially, the mayor provided BAZDA with an office situated in the building of the Nurul Iman mosque. After few months it moved to a larger office in the Bagindo Azizchan Building, situated in Bagindo Azizchan Street. A year later, the mayor facilitated BAZDA with yet another new office, this time situated at Jalan Ujung Gurun No. 7B in Padang. Soon after, the city was hit by an earthquake on 30 September 2009, and BAZDA was forced to move its office back to the Nurul Iman mosque.

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<sup>74</sup> I arrive at this conclusion after applying social network analysis to uncover the relationship between Aman, Amin, Amir and the mayor. Amin has more common connections with the mayor and both of them are members of the same political party, namely PAN and Muhammadiyah. Amin was the head of DPRD of Padang 1999-2004 and has positions in other social organizations that directly link to the mayor. Amir is rather isolated in the network of the mayor, because he only has links with Aman as they are both teaching at the IAIN and both of them held the position of Dean when BAZDA established in 2006. Although, Aman does not have any overlap in terms of contacts with the mayor, he is a well-known ulama, professor and on the board of the Tarbiyah Islamiyah organization. Aman's social reputation may be used to justify why the mayor trusts him to be the chair of the executive board of BAZDA, although it is not Aman who runs the day-to-day activities of BAZDA.

The mayor established branches of BAZDA at the *kecamatan* (sub-regional) and *kelurahan* (village) levels. However, they have different names: BAZ (*Badan Amil Zakāt*) for the *kecamatan* level, and UPZ (*Unit Pengumpul Zakāt*), which literally means a unit for *zakāt* collection, at the *kelurahan* level. There are a total of twelve BAZ and 104 UPZ offices. The executive boards initially designed the annual programs for these agencies. This included the procedures for collecting and distributing *zakāt* revenues, improving the services system, publicizing the programs of BAZDA, assisting BAZDA in collecting *zakāt* revenue, improving the linkage with other *zakāt* agencies, and improving the accountability of BAZDA.

On 11 January 2007, the executive boards passed decision No.2 of 2007 concerning a standard operational procedure for BAZDA. There are a number of principles applied by BAZDA, BAZ and LAZ. Firstly, the boards of BAZDA will not get involved in any debate concerning *zakāt* matters that are disputed by the ulama (*khilāfiya*). Secondly, the collection and distribution of *zakāt* and other forms of Islamic charity will take place within the area where the agency is located. Thirdly, the recipients are determined under the following procedure: UPZ proposes names of recipients to BAZ, then BAZ proposes them to BAZDA. The executive boards of BAZDA, BAZ and UPZ hold a meeting to determine the recipients. BAZDA then passes this decision to the mayor for approval. Then the mayor will pass the municipal decision concerning the recipients of *zakāt* revenue. Fourthly, BAZDA expects *muzakkī* to be any Muslim who owns property that has fulfilled *nisāb*. The kinds of property covered include income from farming, livestock, gold, silver, money, professional income, business, mining and investment. The types of property outlined remain in general terms and mostly refer to law 38/1999 with the addition of income earned by professionals, a particular concern for BAZDA. However, BAZDA has no any authority to force any *muzakkī* to pay their *zakāt* to BAZDA. Subsequently, the mayor approaches *muzakkī* who are civil servants working at various

institutions of the municipality to pay their *zakāt* to BAZDA. It is clear that the mayor has an influence over the civil servants. How the mayor uses his political power in relation to matters of *zakāt* will be further examined in the context of collecting and distributing *zakāt* revenue from civil servants.

### 5.6.2 Collecting *zakāt*

The two most important issues concerning the collection of *zakāt* revenue are determining who the *zakāt* payers are and on what kind of wealth *zakāt* is levied. The answer to these questions is simply that the *zakāt* payers and the kinds of property covered relate to those areas over which the mayor has authority. It is clear to Muslim civil servants, for example, that their monthly income is a target. Consequently, the method for collecting *zakāt* relates to the power mechanism employed by the mayor. Thus, the treasurers of municipal institutions directly deduct 2.5 per cent from the monthly income of civil servants. Subsequently, the same treasurers deposit the collected revenue in the bank account of BAZDA.<sup>75</sup> Besides this method of collection, since March 2007, Bank Nagari has provided a transfer facility system at its ATMs for those who want to transfer their *zakāt* directly from their account into BAZDA's.

Before applying this mechanism, the mayor claimed that he consulted with the Ulama Council of the municipality, his staff experts, and a number of Muslim scholars about whether the salary of civil servants was liable for *zakāt*. According to MUI, any civil servant who has a gross monthly income equal to 83 grams of gold is obligated to pay 2.5 per cent of this income in *zakāt*. This means that a civil servant who earns more than 1 million rupiah

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<sup>75</sup>BAZDA has accounts with several banks: Bank Nagari, Bank BNI branch of Padang, Bank Syariah Mandiri, BRI, Muamalah Bank, BCA, BTPN, BII, Bukopin, Danamon, Permata, BTN, Mega Bank, LIPPO Bank and Mandiri Bank.

per month is obliged to pay *zakāt*. Meanwhile, civil servants who earn less than one million gross per month are obligated to pay *ṣadāqa* or *infaq*.

However, a number of civil servants resisted the mayor's policy, which on paper was voluntary but in practice was obligatory. This resistance was channeled to the head of MUI West Sumatra, which has a different opinion from MUI in the municipality concerning how to calculate the *zakāt* due on the income of civil servants. On 19 December 2006, the head of MUI in West Sumatra, who is also the Director of the Zakāt Empowering of the Ministry of Religious Affairs, talked to the media about this matter. His statement appeared in the *Daily Singgalang* over the following two days. He characterized a regional government, without directly mentioning the name of the region, which was deducting 2.5 per cent of the income from those civil servants earning less than 2 million rupiah per month as *ẓālim* (unjust). He argued that *zakāt* was only obligatory for those civil servants whose monthly income fulfilled *nisāb*. As long as the income does not fulfill this basic requirement, a civil servant has no obligation to pay *zakāt*. (*Singgalang*, 20/12/2006).

The head of BAZDA's executive board reacted immediately to the statement. On 20 December 2006, he called other executive board members to a meeting at the office of BAZDA in order to respond to the head of MUI's statements. They reached an agreement that they would hold a press conference. Their reaction appeared in two local daily newspapers, the daily *Singgalang* and *Padang Ekspres*. The daily *Padang Ekspres* printed it under the headline *Kewajiban zakāt jangan diperdebatkan* (No need to debate on the obligation of *zakāt*). Meanwhile, the daily *Singgalang* printed the story under the more straightforward headline, *Soal pungutan zakāt, Salmadanis: Nasrun [Haroen] 'kencingi dapur'* (With regards to the collection of *zakāt*, Salmadanis: Nasrun 'Peeing in his own kitchen'). According to the head of BAZDA, as the Director of Zakāt Empowering of the Ministry of Religious Affairs, the head of MUI in

West Sumatra should not be accusing the regional government of being *zālim*, but rather be supporting the attempt by the regional government to manage BAZDA. The head of BAZDA further characterized the head of MUI by using a Minangkabau language expression for those who demonstrate inappropriate attitudes as someone peeing in his own kitchen’.

The head of BAZDA went on to argue that if *zakāt* was based on the take home pay of civil servants, there would be few who actually had the obligation to pay *zakāt*. Consequently, the attempt to manage BAZDA is rife with difficulties (*Singgalang*, 21/12/2006). In addition, another board member of BAZDA added that the way *zakāt* was calculated by BAZDA in Padang was different from the opinion of the head of MUI. He further acknowledged that there were different opinions among ulama concerning the way to calculate *zakāt* (*Padang Ekspres*, 21/12/2006). However, the head of MUI gave no response to the reaction by the executive boards of BAZDA Padang. This brought the public debate to an end.<sup>76</sup>

The mayor decided to continue to collect *zakāt* from civil servants and he actively took part in serial campaigns promoting his policy for managing BAZDA. Although, the collection of *zakāt* revenue was in theory voluntary, in actual practice it had become obligatory. These current developments reveal that the mayor has acknowledged his decision to obligate civil servants to pay *zakāt* from their monthly salaries. Indeed, he often publicly threatened to punish those who disobeyed this obligation (*Singgalang*, 26/02/09).

The amount of *zakāt* revenue collected has gradually been increasing since 2006 up to 2011. In 2006, the collected revenue

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<sup>76</sup>According to the vice-chair of the board of BAZDA, the mayor prevented the executive boards of BAZDA from becoming involved further in the debate about these matters, because it would result in a negative impact on the efforts to manage *zakāt*. The mayor argued that the different views on the matter could not be reconciled and that he would continue his policy on *zakāt* collection (*Correspondence* via email with the vice executive board, 10/6/210).

was less than 1 billion rupiah and it increased to more than 1.5 billion rupiah in 2007. A significant amount of revenue was collected in 2008 when the revenue doubled compared to that in 2006. In the next three years, the annual revenue increased significantly. In 2009, it reached more than 10 billion rupiah and subsequently increased to almost 12 billion rupiah in 2010. In 2011, the collected revenue amounted to almost 15 billion rupiah, which meant that it had gained more than a billion rupiah per month and exceeded the annual collected revenue in 2006 when the government began managing BAZDA (*Annual Report 2006-2011*). The details of annual collected revenue are presented in *appendix 8*.

### 5.6.3 Distribution of the collected revenue

The issues concerning the distribution of *zakāt* revenue include the people entitled to receive *zakāt* revenue, how to select them, how and when to distribute the revenue to them. According to the decision of BAZDA No. 02 of 2007 dated 11 January 2007, the recipients of *zakāt* revenue cover the usual eight categories.

BAZDA puts the recipients into six of its programs. First, is *Padang religious*. This is a *da'wa* program that includes special activities during Ramadan. Second is *Padang sehat* (health). This program funds the costs of medical treatment for the poor or the needy. Third is *Padang sejahtera* (prosperous). This is designed to fund small-scale businesses run by the poor or the needy. In conducting this program, BAZDA has cooperation with other small-scale financial institutions that employ a Sharia system, including *BMT Rangkiang Basamo* (starting from 2009), *Bank Muamalah* (2011), and *BTN* (2011). Fourth is *Padang Makmur* (welfare). This funds the renovation of houses belonging to the poor and needy as well as public facilities. Five is *Padang Peduli* (care). This fund provides aid in the wake of any catastrophes and helps homeless people. Six is *Padang cerdas* (smart). This program provides financial support for students from primary schools to universities.

The distribution of annually collected revenue varies from year to year. Table 5.1 shows the distribution of the collected revenue in 2009, 2010 and 2011. The last three years shows that the highest share of the revenue went to providing financial support for students. This amount reached 58.99% (Rp.4,669,269,000.00) in 2009, 32.06% (Rp.4,808,250,00.00) in 2010 and 32.92% (Rp.4,778,231,000.00) in 2011. The lowest share of the revenue went to the Padang welfare program, which received 2.91% (Rp.292,177,000.00) in 2009, decreasing to 1.1% (Rp.165,000,000.00) in 2010 and increasing again to 3.45% (196.113,000.00) in 2011. The share of revenue that went to the Padang prosperous program increased by less than 1% (Rp.1,500,000.00) in 2009 and significantly increased in the next two years: 26,70% (Rp.4,004,000,000.00) in 2010 and 25,79% (Rp.3.742,892,500.00) in 2011.

**Table 5.1: Distribution of *zakāt* revenue in 2009 to 2011**

No	Programs	Percentage of the distribution of the <i>zakāt</i> revenue		
		2009	2010	2011
01	Padang Smart	58.99 %	32.06 %	32.92 %
02	Padang Health	9.64 %	24.96 %	16.37 %
03	Padang Prosperous	0.02 %	26.70 %	25.79 %
04	Padang Welfare	3.69 %	1.10 %	1.35 %
05	Padang Care*	8.70 %	2.66 %	3.45 %
06	Padang Religious*		7.35 %	7.76 %

Source: Calculated from annual report 2009, 2010, and 2011

Notes: \* in 2009 Padang care and religious came under the same program

This distribution reveals that BAZDA focuses its support on the programs of the municipal government, i.e., those of the mayor, in three main sectors: education, healthcare and providing financial resources to the poor and the needy to run their small-scale businesses. This evidence also reveals that most of the collected revenue is distributed to the recipients in the form of charity, rather than in the form of finance to improve the economic life of the recipients. This situation also means that the boards of BAZDA as well as the mayor have not yet conformed to the new rules of *zakāt*, which treat the revenue as an economic factor. However, their attitude to this new paradigm has been shifting since 2010 when they spent more than 4 billion on funding small-scale businesses belonging to the poor and needy. In other words, the repeated intention of the mayor to diminish poverty in the city finally got started in 2010. In addition, it is undeniable that the mayor has gained political advantage from actively managing BAZDA and maintaining political power as the local ruler. The involvement of the government in managing BAZDA has also benefited the poor and the needy that now have an alternative financial solution besides what Muslim organizations have been providing.

### 5.7 Resistance

This section briefly presents forms of resistance to the involvement of the local government in managing BAZDA, and to the coercion used to get civil servants to pay *zakāt* from their monthly wages, and to the way BAZDA selects the recipients. Any resistance is rooted in a conflict of values as well as a conflict of interests among the parties involved, and every struggle is also a struggle over value (Scott 1985:1). Thus, resistance to government involvement in *zakāt* matters is caused by the different values and interests embraced by the different parties in this matter.



A number of bureaucrats, members of parliament, civil servants, Muslim organizations and individuals have shown their reluctance to support the involvement of the local government in *zakāt* matters. The governor of West Sumatra publicly expressed his resistance during a meeting on 28 October 2007. The meeting aimed at evaluating the management and effectiveness of disaster relief and emergency aid was hosted by the governor. Since the tsunami in Aceh on 26 December 2004, several catastrophes have touched the area including earthquakes and floods that caused serious damage in West Sumatra. In a meeting, the mayor of the Municipality of Padang suggested to the governor that he should take a political decision to collect *zakāt fiṭr* from the members of the *Pesantren Ramaḍan* in order to provide financial support for sufferers of natural disaster. According to the mayor, *zakāt fiṭr* revenue could reach approximately 1.3 billion rupiah. This amount of revenue was sufficient to support the victims. The governor refused to accept the suggestion. He argued that the decision about whether or not to pay *zakāt fiṭr* rests solely with the participants of the *Pesantren Ramaḍan* as the *zakāt* payers, as well as their parents. He further argued that the government did not have the authority to decide how the *zakāt* must be paid. He stated that if the government decided to collect the *zakāt fiṭr*, the government would receive protests from the parents as well as the students. The mayor gave no reaction to the response of the governor (*Padang Ekspres*, 29/09/07).

The disagreement concerning the collection of *zakāt* from the civil servants was also publicly expressed during a speech by the governor at the opening ceremony of a meeting of all BAZDA in West Sumatra on 6 March 2009. According to the governor, the core of the problem behind the refusal to collect *zakāt* derived from the disagreement among ulama on how *zakāt* should be calculated for civil servants. For example, he asked, should civil servants who have a debt still be obligated to pay *zakāt*? Thus, he challenged the ulama to reach a consensus (*ijma*) on the matter in

order to implement some fixed rules. Nevertheless, the governor seemed to realize that such a consensus was no easy gain.

Members of the local parliaments, who were mostly members of PKS, PAN or other Islamic parties, also showed their resistance to this matter. This came in the form of a reluctance to approve the draft regional law concerning *zakāt* matters. PAN and PKS members of parliament in the municipality of Padangpanjang were reluctant to approve the draft proposed by mayor on July 2007 (*Padang Ekspres*, 30/07/2007). PKS members were also reluctant to give their consent to the draft regional law proposed by the head of Pasaman region (*Padang Ekspres*, 17/02/2007). A similar situation also occurred in Solok when the members of the parliament were examining the draft of the regional law on *zakāt* matters in 2003. The explanation is simple and lies in the different interests of the members of parliament. For example, members of PAN were mostly members of Muhammadiyah whose activities are supported by *zakāt* and other forms of Muslim charity. PKS also has a charity organization, PKPU, although officially this political party is not affiliated to it. In practice, however, the cooperation between PKS and PKPU continues.

Resistance also emerged among teachers in a number of state schools in the municipality of Padang. However, this resistance was not directly addressed to the mayor; but rather channeled through the bureaucracy of the municipality. They mainly argued that their monthly salary should not be subject to *zakāt*. In response, the mayor reaffirmed his commitment to deducting *zakāt* from the salary of civil servants. He threatened the civil servants who disagreed with the policy of an administrative punishment including a transfer to other schools that do not have good reputations. Further, the mayor instructed the principals of the schools to take any decision to force the civil servants to pay the *zakāt* to BAZDA. The head of the Bureau of Junior and Senior High Schools at the Ministry of Education of the municipality acknowledged that there were a number of teachers who were still

unwilling to pay *zakāt* to BAZDA. This does not mean that they did not pay *zakāt*, but they preferred to pay it directly to recipients. In a bid to handle such resistance, the principals were given wider authority and could take any decision necessary to force the teachers to paying their *zakāt* to BAZDA (*Singgalang*. 16/02/09). The refusal of these civil servants was rooted in their beliefs about whether or not their salary fulfilled the minimum income requirement. According to them, their salary did not fulfill the *haul* (*Correspondence*, with a teacher, 30/08/09).

Since August 2006, the executive boards of BAZDA have been busy responding to a series of protests from the poor and needy who argue that they should be recipients of *zakāt* revenue. They protested that they had fulfilled the requirements defined by BAZDA (*singgalang* 14/08/2006). For instance, Harimiati, a needy mother of three children, challenged the boards of BAZDA by asking why she did not qualify as a beneficiary of the revenue. She argued that she had fulfilled the requirements for a recipient. Her case was published in the Daily *Singgalang* (*Singgalang*, 22/10/06). Harimiati succeeded in gaining the right to be a recipient and she finally received *zakāt* revenue to support the school fees of her children.

By contrast to the case of Herimiati, there are a number of different types of resistance conducted by the poor or needy who are excluded from the recipients of *zakāt* revenue. This form of resistance is known as daily resistance and is a common weapon for relatively powerless people. Their resistance is conducted in several forms, including foot dragging, dissimulation, desertion, false compliance and feigned ignorance. According to Scott, this resistance has the following characteristics: it requires little or no coordination or planning, it exploits an implicit understanding and informal networks, they more often represent a form of individual self-help and they typically avoid any direct, symbolic confrontation with authority. This type of resistance is commonly

found among the poor families in villages, schools teachers, students, and among low-ranking civil servants.

However, the reason why these groups are excluded from those receiving *zakāt* revenue is because they do not have a good reputation. The poor or needy or any person who is entitled to receive *zakāt* revenue should have a good reputation or a good name (Bailey 1972:2). Scott suggests the ways of maintaining a good name include devoting time and labor to village projects, cooking at feasts, and taking care of the village prayer house (*mosque*, *surau*) and assembly hall (*balai*). It also requires swallowing a lot of pride and feigning a respect for social betters that one does not always feel. However, a good reputation pays dividends in terms of employment, *zakāt* gifts, help when ill and public shows of respect and consideration (Scott 1985:24-25).

## 5.8 Conclusions

Until the last two decades, the ideas and practices of *zakāt* were absent from the historical dimension of Islamic societies, despite the fact that they permeate the experience of Muslim past and present. The current concern for *zakāt* matters entwines religious matters, economic factors and the political history of Islamic society. This development has gradually resulted in a shifting attitude among Muslims, including scholars, intellectuals, and ulama, as well as government or ruling figures.

Currently, the issue of *zakāt* is experiencing a transition from the implementation of piety towards an economic phenomenon. The shift towards economic aspects may ultimately lead to *zakāt* becoming a political concern. This shifting situation is revealed in the attitude of the government toward this subject since the 1960s, into the present day when the government passed law 38/1999 and 23/2011 on *zakāt* management, the codification of the rules of *zakāt* in regional laws and the actual practices of the local government in managing BAZDA. The contents of the

national and regional laws show that they embrace both old and new rules on *zakāt*. It is undeniable that the local ruler, the mayor, has gained a political advantage from his involvement in the management of BAZDA. This involvement has increased his political power over his political rivals and provided him with a financial source for financing government programs. The flow of money shows that it mainly flows within the government structures or institutions.

Support for the government's involvement relies on whether the local government is able to show its credibility and accountability in managing BAZDA. Furthermore, it requires the application of the principles of transparency, not only in managing the collection and distribution of revenues, but also to demonstrate the improvements in the social-economic lives of beneficiaries. The resistance to the involvement of the government in managing *zakāt* institutions results from a desire by some *zakāt* payers to pay the revenue directly to the recipients, or because *zakāt* payers belong to a *zakāt* institution managed by political parties or social organizations.

The institution of *zakāt* is now in a phase of transition, from being a purely religious matter to becoming a social-political institution managed by the government. The future development of *zakāt* is worthy of further study, particularly in connection with the new *zakāt* law 23/2011, which shows the strengthening role of government in this area. By contrast, the awareness of Muslims of the significance of *zakāt* institutions has also been increasing significantly.