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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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TAXES AND ALMS SEEN FROM ISLAMIC LAW

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ABSTRACT

State need expense to construction and welfare their people, for that the state revenue are needed. In Islamic law there are revenue that can be done through alms and taxes. But in the tax collection implementation, Islamic law had been giving a clear guidance either for Muslims or non Muslims. According to the scholars, the tax collection are allowed of it fulfill three criteria, that is: (1) taxes because to fund expenditure that are really needed to realized Maqasid Syariah; (2) the tax burden should not be to stiff to everyone capable to pay; (3) tax funds that has been collected are spent honestly for a good cause.

There is a responsibility for Muslims to pay taxes if the treasury fund need it or empty. Those responsibilities are as a devotion to *ulil amri*, as stated in An-Nisa letter verse 59, which means:

“O believer, obey Allah and obey his Prophets and ulil amri amongst you. Then if you different in opinions about something, then give him him back to Allah (Al quran) and Prophet (his Sunnah), if you truly faithful to Allah and for the next day. That is more important (to you) and better for it cause”

Keywords: Taxes, Alms, Islamic Law

I. INTRODUCTION

Generally, the establishment of a state is for the protection and welfare of its citizens. To realize the ideals, Indonesian government conducted a well-planned program in its development. Indonesia's ideals contained in the preamble of the Republic of Indonesia Year 1945 Constitution, which states:

"Then instead of it to form a government of Indonesia which shall protect all the Indonesian people who protect the entire Indonesian nation and the entire country of Indonesia and to promote the general welfare, the intellectual life of the nation, and participate in the establishment of world order"

In reviewing the tax issue, there are some principles that are known in the study of Islamic law that we need to make a reference in determining the law, namely:

1. If facing problems of its legal status has not been / is not clear by Al Quran and Sunnah regarding permissible and whether or not, it is known that there are rules

stating everything that is beneficial legal permissible or forbidden. While things that carry/cause harm basically haraam or should not be done.

2. Tax not literally described by the Qur'an and Sunnah, regarding its legal status. If we return to the rules above, then based on the above study Islamic law, tax law and can be justified by the permissible Islam. Because the tax is undoubtedly the huge benefits that can be achieved to improve social welfare and development in general.

Long before Islam came, the tax system has been recognized by a number of mankind, the history of taxation starts from the people who assume that the land belongs to the king. This belief has long been in effect since ancient times.

Abdul Khaliq al-Nawawi in his book *Al-Nidham al-Mali Fi al-Islam*, said that the King Ramsis II divided the land of Egypt to its citizens. Each member of the family acquire a plot of land in exchange or return worn Kharaj or taxes that must be paid each year. Then Ibn Khaldun mentions the words of King Anu Seirawan about taxes, the which reads: "the kingdom rests on the armed forces; armed forces bersangga to property; relies on property taxes; and taxes supported by development."¹

In Islamic law, the tax is often termed as the *adh-dharibah jama'nya is adh-Dharaib*. Scholars first call also with *al Max*. There are other terms that are similar to taxes or *adh-dharibah* are:

1. *Al-Jizyah* (tribute that must be paid by the scribes to Islamic government)
2. *Al-Kharaj* (taxes on land owned by the State);
3. *Al-Usyr* (customs for non-Muslim traders who entered the Islamic State).²

Imam Al-Baghawi said in his book *Sharh As-Sunnah*, which is referred to as *Shahibul Max*, is they who usually collecting taxes from the merchants who passed on their territory by giving the name *Al-Usyr*. As for the officers in charge of collecting *shadagah-shadagah* or *berhigas* levy tribute from the experts *dhimma* or who have had an agreement (with the Islamic government), then it does exist in the *Shari'ah* as long as they do not exceed the limits in that regard. If they exceed the limit then they are also sinners and wrongdoers do.³

Responding to the tax liability, there are some opinions among pro-Muslims and anti Muslims because it has no obligation of *zakat* on wealth and the income that has been

¹ Ibrahim Hosen, *Dalam Zakat dan Pajak*, (Jakarta: Bina Rena Pariwisata, 1991), hal 139.

²http://saga-islamicnet.blogspot.com/2010/06/hukum-pajak-dalam-islam.html#ixzz1z4JF_xcbS. Diunduh Tanggal 20 Desember 2015.

³<http://hukumislam.blogspot.com/2009/03/hukum-pajak-dalam-pandangan-islam.html>. Diunduh Tanggal 20 Desember 2015.

qualified. The pros and cons associated with this must be seen in the proportion that should enable the mutual understanding that brings benefit to the future of the welfare of the Muslims in particular and Indonesia in general. In that context, the authors will discuss the problem of how taxpayer who has paid zakat whether it is necessary to pay taxes when seen from the view of Islamic law ?.

II. DISCUSSION

A. Definition of Taxation

Government in running the wheels of government underwent a process of development as a result of the dynamic development of the country aligned its citizens. Government can be understood through two senses, on the one hand have the meaning governmental organization or group of units of government on the other have the meaning of government functions or activities of the government.

According to Philip M. Hadjon, the government functions that can be determined to some extent by placing it in relation to the function of legislation and judicial.⁴ But according to Sulaiman Abdullah, the function of government has four functions, namely⁵:

1. Maintaining order and tranquility,
2. Defense and security function,
3. Diplomatic function,
4. Taxation function.

Judging from the development of the current state administration not only as a Political State but has entered the stage as the administrative state, where the government is the servant of the people. Tax function should be run by the government for the benefit and the welfare of the people. Therefore, the administrative state is often associated with welfare state, where the government are official and responsible to improve the standard of living of the people.⁶

Indonesia as a modern state implementing both modern Political state and administrative state, as a function of taxation remains a function of government in a bid to finance its activities to improve the lives and welfare of the people. Basic tax

⁴ Phillipus M. Hadjon dan kawan-kawan, *Pengantar Hukum Administrasi Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2001)

⁵ Sulaiman Abdullah, *Sistem Perpajakan Modern Ditinjau dari Segi Ajaran Islam*, (Jakarta: Bina Rena Pariwara), hal 188.

⁶ Sondang SP Siagian, *Administrasi Pembangunan*, (Jakarta: Gunung Agung, 1972, hal 41

law contained in Section 23A of the Constitution the Republic of Indonesia Year 1945, which reads: "Tax and other levies coercive for the purposes of the State shall be regulated by law".

The tax definition can be seen from several expert opinions such as:

1. Rochmat Soemitro, stating, people's tax dues to the state treasury under the Act (which may be imposed) by not getting the services of lead (cons achievement) directly addressed and used to pay for general expenses⁷
2. Adriani, Tax is a levy to the State that can be imposed and payable by the taxpayer to pay him according to the rules, with no gain achievement that can instantly re-appointed and the point is to finance general expenses associated with the State's duty to govern.⁸
3. NJ. Feldmann in his book *De Overheidsmiddelen van Indonesie Heiden, 1949* state that: *Belastingen zyn aan de Overheid (volgens algemene, door haar vastgestelde normen) verschuldigde afdwingbare presties waar geen tegenprestatie tegenover staat en uitsluitend dienen tot dekking van publieke uitgaven.*⁹

B. Definition of Zakat

Zakat is a pillar of Islam which is directly in contact with social aspects, it was seen in the third pillar of Islam, which give charity. People who tithe well, with sincere hearth, God willing, he will become the pious. As contained in the Qur'an Ad-Zaariyah's letters paragraph 19, which means:¹⁰

"And in their wealth there is a right to ask the poor people and poor people who have no part"

Then also in the Qur'an At-Tauba's letters, verse 103, which means it is:¹¹

"Take Zakat from their wealth, the charity that you cleanse and purify them, and pray for them. Your prayer (become) a peace for their souls. And Allah is Hearing, Knowing".

Zakat is a worship related to possessions. Everyone who has qualified issuing required to remedy the issuing zakat. As defined in the Qur'an Surat Al-Baqarah verse 110, which means:¹²

"And Establish the prayer and charity and kindness exert whatever you try for yourself, you will find it reward on the side of God. Allah is All-Seer of what ye do"

⁷ R. Santoso Brotodihardjo, *Pengantar Ilmu Hukum*, (Bandung: Eresco, 1995), hal 5.

⁸ *Ibid*, hal. 3.

⁹ Rochma Soemitro, *Pengantar Sngkat Hukum Pajak*, (Bandung: Ersco, 1988), hal. 12.

¹⁰ *Al Quran dan Terjemahannya (Ayat Pojok Bergaris)*, (Semarang: CV Asy Syifa, Tanpa tahun), hal. 416.

¹¹ *Ibit*, hal. 162

¹² *Ibid*, hal. 14.

Later in the Qur'an Al-Baqarah's letters verse 43, also described the obligation of zakat, too, which means:¹³

"And Establish the prayer and pay alms and do ruku with those who bow".

If we notice deeply about zakat from the perspective of conventional science, it can be classified as a tax because it is a levy imposed (non-voluntary) by the Islamic State and was also used for equalization aspects of the society in which the tax levied. Zakat is also levied by the administration *haitul maal* (state financial institution), which has the power that state. In Islamic law, the level of power, then the rights of the country can be divided as follows:¹⁴

a. Haq al-Hashil

Namely right to collecting result from earnings derived by a citizen from their wealth.

b. Haq al-Nafi 'i

Namely, the right of government to take from the hands of individuals toward goods which become the property that can not be used by appropriate, to be cultivated for the benefit of the state and society.

c. Haq al-Milki

That is, the government have a right of a company that meets the people's livelihood, which includes this section are:

1. The nationalization of the wealth of the enemy country;
2. The nationalization of vital company;
3. Establishment of large companies.

C. Tax and Zakat In view of Islamic Law

Scholars differed in opinion as to whether there is an obligation of Muslims to property besides zakat. The majority of jurists argue that charity is the only obligation of the Muslims over the treasure. Those who have regular charity, then clean free his property and obligations. On the other hand there is the opinion of scholars that there is an obligation in the assets other than zakat.

The scholars who support the permissibility of levy taxes emphasize that what they mean is a fair taxation system, which is in harmony with the spirit of Islam. According to them, the tax system is fair if it meets three criteria:

1. Tax imposed to finance the expenditure really necessary to realize maqasid Sharia.

¹³ *Ibid*, hal. 7.

¹⁴ Rafi'I Nazori, *Dalam Zakat dan Pajak*, (Jakarta: Bina Rena Pariwisata, 1991), hal 102-104.

2. The tax burden should not be too rigid confronted with people's ability to bear and distributed evenly to all those who can afford to pay.
3. The taxes that are collected are spent honestly for a good cause, so that taxes are required.

Therefore, the tax should not be imposed by force and sheer power, but because there is an obligation of the Muslims who imposed to the State, such as giving a sense of security, medicine and education expenses such as living for the soldiers, salaries, judges, and others. Therefore, the tax is indeed an obligation of citizens in an Islamic state, but the state is also obliged to fulfill two conditions, namely:

1. Taxes result acceptance should be seen as trustworthy and spent honestly and efficiently to realize tax purposes.
2. The government should distribute the tax burden equitably among those obliged to pay.

State revenue can be sourced from anywhere, either from taxes, debt, natural resources, or from drawn zakat sources from Muslims. In the Arabic term, known as tax Adh-dharibah, which means: "Charges are drawn from the people by the tax collector." The collector called Shahibul Max or Al-Asysyar.

Acceptance of the state at the time of the Prophet Muhammad first is the charity that began in the second year after the Hijrah. The existing tax at the time of the Apostle to the power of the caliph is as follows:

1. **Al-Jizyah**, is a tax which is paid by non-Muslims, especially scribe who live in Islamic countries to comply with the legislation. In return for the protection afforded by the Islamic government to guarantee protection of life, safety, liberty, property or assets, free of values and not conscripts and their rights. In the days of the Apostle magnitude of the poll is one dinar per year for adults who are able to pay him. Payment does not have cash but can also be goods and services.
2. **AL-Kharaj** soil or earth or tax levied on non-Muslims when conquered Khaibar, alib land was taken by the Muslims and the old owner offered to cultivate the land as a substitute for the lease of land and are willing to give half of production to the state. Kharaj amount of land is fixed. Rasululullah usually send people who have knowledge Emitter this problem to estimate the amount of production. After reducing the excess-third as slightly its estimate, two-thirds are given and they are free to choose; accept or reject the division. The same procedure is applied in other

areas. Kharaj become an important source of revenue at the time.¹⁵

3. **Al-Usyr** (excise tax) imposed on non-Muslim traders because Muslim merchants must pay the same taxes on their land. Meanwhile, according to usyar Sabzwari is the import duties imposed on all merchants are paid once a year and only applies to goods worth more than 200 dirhams. Dllindungi duty rate of people who are 5% and 2.5% Muslim traders.¹⁶
4. **Al-Nawaib**, is a sufficiently large tax imposed on the Muslims who are rich in order to cover expenses during the state of emergency, and this never happened during the battle of Tabuk.
5. **AL-Khums**, is the proportional tax that the amount is not constant, this causes the price stability and lower inflation in a state of excess demand on offer. At the time of the Apostle most major state revenue is due, and usyr, because zakat and usyr is a religious duty and entered one of the pillars of Islam. Spending on both been set in the Quran Surat At-Repentance Verse 60, so spending zakat can not for general expenses.¹⁷

Tax is one form of state income and must be considered by the government is the management that should be directed to the welfare of society and the State. While tax under Article 23A of the Constitution the Republic of Indonesia Year 1945, is a government full authority to take it from the people and is managed its distribution, according to its use. The important principle that must be considered by the government in the management of taxes, used for:

1. The development of infrastructure and public facilities

Tax revenue that is used for state expenditure can be used to infrastructure division and public facilities that is used by the public extensively, to support growth, prosperity and economic development of society and the prosperity of society.

2. Law construction

With the development of society in the economic field and the public which is rapid, the need for the development of stronger laws and to organize the life and public order in a country, because with no rule of law in a State lead to destruction in all

¹⁵ Yusuf Qardawi, *Norma dan Etika Ekonomi Islam*, (Jakarta: Gema Insani Press, cetakan keempat, 2002). Hal. 32.

¹⁶ Khan, M, A, *Ajaran Nabi Muhammad SAW tentang Ekonomi*, (Jakarta: Bank Muamalat, 1996), hal. 16.

¹⁷ Muhammad MAG, *Kebijakan Fiskal dan Moneter dalam Ekonomi Islam*. (Jakarta: Salemba Empat, 2002), hal. 184.

aspects of life in society. Therefore, the Government must allocate state expenditure for the construction of the law.

3. Welfare their Society and Eradicate Poverty

The main task of the government according to the Constitution State RI 1945 Constitution is the welfare of society and the eradication of poverty by meeting the basic needs of living through income state expenditure. With the results obtained from the tax, the State must be able to prosper and eradicate poverty.

4. Defence and Security

The government must allocate state spending for defense and state security, which in the responsibility of the military, because one of the characteristics of a strong state is strong military sector and the high level of commitment in the defense and security of the State.

5. Education

Education as one of the factors to improve human resources need to be considered by the Government. The Government should give greater attention to the education sector, due to advanced education makes people can improve their knowledge and skills. As a form of attention can be seen from how much money the State expenditure for this sector interests.

Tax and zakat in Islam's view can be run in order to raise funds for the welfare and benefit of the people. Tax stipulation under the laws of the country where the obligations under determination or *ijtihad ulil amri* or government. While the charity based on religion or *shari'ah* through a few verses of the Quran and the Hadith of the Prophet. Taxation by the government must be obeyed by the people in line with the orders of religion to be obedient and submissive to *ulil amri*, contained in Surat an-Nisa verse 59, which means:

"O ye who believe, obey Allah and obey to His Messenger and *ulil amri* among you. Then if you differ on anything, then give it back it to God (Al-Quran) and the Messenger (his Sunnah), if you truly believe in Allah and the Last Day. that is (advantageous) and better in the end."

Scholars have argued about the obligation to obey this *ulil amri* are compulsory as long its not inviting to immoral or real infidelity. Taxes that are assigned in Islamic law is a tax that had been determined by the State. Because the state requires funding to fund the investment, management and build a healthy and strong economic system. Meanwhile, the fund that come from the charity is not sufficient, so that the

necessary funds from other sectors, namely taxes. Taxes are set to meet the funding requirements for the country. Injection of funds from tax revenues means that the distribution of wealth and repopulate in the community in a way that is fairer supervised and managed by the state.

III. CLOSING

The state's role is to defend the sovereignty of the country and to welfare its people (welfare state), this depends on state revenues, one of the state income is through the state income tax, besides that, the zakat acceptance can also be used for state revenue if it managed properly. Zakat and taxes are two types of collection of people who have some similarities, both are instrumental in carrying the improvement of economic, social, and public welfare.

The increased acceptance of taxes is a way to empower the state treasury. The increasing tax revenues must prioritizing the principle of fairness in the essence of government policy or tax collector apparatus (fiskus) should have a value of integrity in performing their duties. Islam also perform an important emphasis in the use of tax from being used on things that are mudhorot (useless and should not be issued) by the government, Islam provides enrichment (enrichment) in terms of how the process is done by the state tax extension.

Taxation in the view of Islam is permissible if the tax were used to encourage the growth of country's economy and to fill the empty state treasury. In the history of Islam, tax never imposed at the Prophet and the Caliph era, it was done after the Islamic rule in many developing very wide area. With the development of Islam in some areas of necessary supervision and handling of tax collection is good and right, as is done in the tax collection system Al-Jizya, Al-Kharaj, Al-Ushr, Al-Nawaib, and Al-Khums.

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