



Islamic Law Legislation in Indonesia: Anomalies of the Relationship between Political Configuration and Zakat Legal Product during the Reform Era

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Submitted : 15-02-2023

Accepted : 24-05-2023

Revision : 11-05-2023

Publish : 29-05-2023

Abstract: This article discusses the anomaly of democratic political configuration relation that produces conservative zakat law product in Law Number 23 Year 2011 on Zakat Management. Zakat law has experienced the positivation of Islamic law through what is called the legislative process in the House of Representatives. Through its stipulation, it actually led to rejection from Muslim civil society groups. This rejection is an indication that the law is not responsive to civil society. This research is normative juridical with a political approach to law that places legislation as a political product. Edward W. Soja's spatial justice theory is used to analyze this issue. The findings of this research are, first, the anomaly of political configuration relations towards zakat law products occurs because of the still entrenched character of executive dominance in making zakat law in the DPR. Second, to produce a responsive law, it must provide space for spatial justice through the participation of Islamic civil society in making zakat law.

Keywords : anomaly; political configuration; zakat law; reform

Abstrak: Artikel ini mendiskusikan tentang anomali relasi konfigurasi politik demokratis menghasilkan produk hukum zakat konservatif pada Undang-Undang Nomor 23 Tahun 2011 tentang Pengelolaan Zakat. Hukum zakat telah mengalami positivisasi hukum Islam melalui apa yang dinamakan proses legislasi di DPR. Melalui penetapannya justru berujung penolakan dari kelompok masyarakat sipil Muslim. Penolakan ini menjadi indikasi bahwa undang-undang tersebut tidak responsif terhadap masyarakat sipil. Penelitian ini adalah yuridis normatif dengan pendekatan politik hukum yang menempatkan peraturan perundang-undangan sebagai produk politik. Teori keadilan spasial (spatial justice) dari Edward W. Soja dipakai untuk menganalisis persoalan ini. Temuan penelitian ini, pertama, anomali relasi konfigurasi politik terhadap produk hukum zakat terjadi karena masih bercokolnya karakter dominasi eksekutif dalam pembuatan hukum zakat di DPR. Kedua, untuk menghasilkan Undang-Undang yang responsif harus memberikan ruang keadilan spasial melalui partisipasi masyarakat sipil Islam dalam pembuatan hukum zakat.

Kata Kunci: anomali; konfigurasi politik; hukum zakat; reformasi

Introduction

The Indonesian state has positioned itself as the third most democratic country in the world after India and the United States following the fall of President Soeharto on May 21,¹ 1998. However, its journey has been full of ups and downs to this day. The implementation of democracy from one regime to another tends to stagnate² and even regress³, and *executive-heavy* governments are seen as the main cause, according to Azra. The government still dominates in the making of laws in the Reform era.⁴

This executive dominance can be said to be the cause of the emergence of conservative legal products during the Reform era. However, the Reform era has also produced responsive legal products. The Reformation provided a spirit of change from the authoritarianism of New Order era towards democracy.⁵ While democracy has triggered the birth of responsive laws through political configuration relations.

The birth of Law No. 23 of 2011 concerning Zakat Management (new UUPZ) during the Reform period is still a legal issue. This law is part of the legal products born during the Reformat period as a conservative-legal character. In addition to new UUPZ, there are several laws that are considered conservative in character, such as Law No. 3 of 2020 concerning Amendment to Law No. 4 of 2009 concerning Mineral and Coal Mining,⁶ which has harmed the public,⁷ Law No. 19 of 2019 concerning Corruption Eradication Commission,⁸ which ignores civil society participation,⁹ and Law No. 11 of 2020 concerning Job Creation,¹⁰ which is considered formally defective. All of these laws have undergone a *judicial review* at Constitutional Court [henceforth (MK)].¹¹ Such judicial-review efforts indicate that these legal products are not responsive to civil society aspirations.

In addition to producing conservative legal products, the Reform era has also produced responsive legal products, such as Law No. 38 of 1999 concerning Zakat Management, Law No. 21

¹ Azra Azyumardi, "Pengantar," in *Pendidikan Kewarganegaraan: Demokrasi, Hak Asasi Manusia, Dan Masyarakat Madani*, ed. Tim ICCE UIN Jakarta (Jakarta: Prenada Media, 2003), ix.

² "Bamsoet "Kuliti," Demokrasi RI yang Disebut Stagnan Usai Reformasi," *detiknews.com*, 20 May 2022, accessed 4 May 2023, <https://news.detik.com/berita/d-6087176/bamsoet-kuliti-demokrasi-ri-yang-disebut-stagnan-usai-reformasi>.

³ "Survey SMRC, : Selama 9 Tahun Pemerintahan Presiden Jokowi, Rapor Demokrasi Ternyata Memburuk Dibanding Zaman SBY," *FAJAR.co.id*, 11 May 2023, accessed 12 May 2023, <https://fajar.co.id/2023/05/11/survei-smrc-selama-9-tahun-pemerintahan-presiden-jokowi-rapor-demokrasi-ternyata-memburuk-dibanding-zaman-sby/>.

⁴ Currently, the role of DPR is only limited to being a rubber stamp, whereas in the early Reform era, DPR was very critical of this *executive heavy* behavior. See Hersubeno Point, "Prof Azyumardi About IKN: Saya Ingatkan Pak Jokowi Jangan Sampai Menyesal," YouTube, accessed 6 February 2022, <https://www.youtube.com/watch?v=WsdCjK2wRxQ>.

⁵ Afan Gaffar, *Politik Indonesia: Transisi Menuju Demokrasi*, ed. Kamdani, Ed.6 (Yogyakarta: Pustaka Jaya, 2006).

⁶ "Ahli: UU Minerba Cacat Formil," *MKRI.id*, 23 November 2020, accessed 4 May 2023, <https://www.mkri.id/index.php?page=web.Berita&id=16769&menu=2>.

⁷ "Menyoal 4 Masalah UU Minerba yang Merugikan Masyarakat Luas," *WALHI. Or.id*, 23 August 2021, accessed 4 May 2023, <https://www.walhi.or.id/menyoal-4-masalah-uu-minerba-yang-merugikan-masyarakat-luas>.

⁸ Faorick Pakpahan, "Revisi UU KPK Dinilai Langgar Asas Pembentukan Undang-Undang," *SINDOnews.com*, 24 June 2020, accessed 4 May 2023, <https://nasional.sindonews.com/read/80342/13/revisi-uu-kpk-dinilai-langgar-asas-pembentukan-undang-undang-1592996806>.

⁹ Rio Rizky Pangestu, "UU KPK Hasil Revisi Dinilai Gembosi Pemberantasan Korupsi, Koalisi Masyarakat Sipil Surati MK," *Pikiran Rakyat.com*, 4 May 2021, accessed 4 May 2023, <https://www.pikiran-rakyat.com/nasional/pr-011868944/uu-kpk-hasil-revisi-dinilai-gembosi-pemberantasan-korupsi-koalisi-masyarakat-sipil-surati-mk>.

¹⁰ "Proses Omnibus Law UU Ciptaker Dinilai Keliru," *Lampost.co*, 27 May 2022, accessed 4 May 2023, <https://m.lampost.co/berita-proses-omnibus-law-uu-ciptaker-dinilai-keliru.html>.

¹¹ "UU IKN Ingkari Konstitusi: Rakyat Minta Pembatalan Lewat Judicial Review," *WALHI.or.id*, 1 April 2022, accessed 4 May 2023, <https://www.walhi.or.id/uu-ikn-ingkari-konstitusi-rakyat-minta-pembatalan-lewat-judicial-review>.

of 2008 concerning Islamic Banking,¹² Law No. 13 of 2003 concerning Manpower,¹³ Law No. 3 of 2014 concerning Industry,¹⁴ Law No. 8 of 2019 concerning the Implementation of Hajj and Umrah Worship, Law No. 41 of 2004 concerning Waqf,¹⁵ and others. Thus, this article does not intend to generalize that the Reform era has produced conservative legal products, but rather to show that zakat law is one part of conservative law produced during the Reform era.

Studies on zakat law often relate to scopes of management,¹⁶ religious organization,¹⁷ politics,¹⁸ welfare,¹⁹ justice,²⁰ social piety,²¹ Sharia economics,²² democratization,²³ gender equality,²⁴ and even terrorism issues.²⁵ Unlike those studies, the focus of this study is to discuss zakat law in relation to the big scope of constitutional law, namely the anomaly of political-configuration relations towards zakat-law products during Reform era. Based on the issues mentioned, the questions proposed are: *first*, why is there an anomaly in configuration relations of politics towards zakat-law products during Reform era? *Second*, what is the pattern of forming zakat law towards the efforts of involving Islamic civil society participation?

This study applied a normative juridical. Secondary data from literature were used as data source, since providing a new perspective in constitutional-law field. The political-legal approach was used as a method by placing law as a political product. This study was analyzed through spatial justice theory by Edward W. Soja. This theory was used to present spatial justice in the creation of responsive zakat laws through civil society participation.

¹² A E Fitriani and R Pangestu, "Pengaruh Konfigurasi Politik Terhadap Produk Hukum Perbankan Syariah Di Indonesia," *Ijtihad* 38, no.1 (2022).

¹³ Ahmad Hunaeni Zulkarnaen, "Konfigurasi Politik Dan Karakter Hukum Dalam Perumusan Perjanjian Kerja Perorangan Dan Perjanjian Kerja Bersama," *Jurnal Hukum Mimbar Justitia* 4, no. 1 (2018): 89.

¹⁴ Kanti Rahayu Sanusi, Kus Rizkianto, "Hukum Yang Responsif Terhadap Revolusi Industri 4.0 Dalam Perspektif Pancasila ," *Prosiding Seminar Nasional Hukum Transendental*, No. 1 (2019): 10.

¹⁵ Widyawati, "Filantropi Islam Dan Kebijakan Negara Pasca-Orde Baru: Studi Tentang Undang-Undang Zakat Dan Undang-Undang Wakaf UIN Syarif Hidayatullah Jakarta" (UIN Syarif Hidayatullah Jakarta, 2011).

¹⁶ Syaikhu, Norwili, and Rabiatal Adawiyah, "The Zakat Management Legal Conflict of the Prismatic Society in Central Kalimantan," *Al-Manahij: Jurnal Kajian Hukum Islam* 16, no. 2 (2022): 209–22, <https://doi.org/10.24090/mnh.v16i2.6014>.

¹⁷ Zakiyuddin Baidhaw, Zakiyuddin Baidhaw, "Lazismu and Remaking the Muhammadiyah's New Way of Philanthropy," *Al-Jami'ah* 53, no. 2 (2015): 387–412, <https://doi.org/10.14421/ajis.2015.532.387-412>. See Amelia Fauzia, "Penolong Kesengsaraan Umum: The Charitable Activism of Muhammadiyah during the Colonial Period," *South East Asia Research* 25, No. 4 (2017): 379–394.

¹⁸ Ali Murtadho Emzaed, Kamsi Kamsi, and Ali Akhbar Abaib Mas Rabbani Lubis, Ali Murtadho Emzaed, Kamsi Kamsi, and Ali Akhbar Abaib Mas Rabbani Lubis, "The a Politics of Recognition: The Legislation of Zakat Law in a Transition of New Order and Reform Era," *Ulumuna* 24, no. 2 (December 31, 2020): 320–347.

¹⁹ Najib Kailani & Martin Slama, "Accelerating Islamic Charities in Indonesia: Zakat, Sedekah and the Immediacy of Social Media," *Southeast Asia Research* 28, no. 1 (2020): 70–86.

²⁰ Samiul Hasan, *Philantropi and Social Justice in Islam :Principles, Prospects and Practices*, Kuala Lumpur: AS Noordeen, 2007.

²¹ R.D. McChesney, *Waqf in Central Asia: Four Hundred Years in The History of a Muslim Shrine, 1480-1889*, Princeton: Princeton University Press, 1991.

²² Euis Nurlaelawati, Euis Nurlaelawati, "Zakat and the Concept of Ownership in Islam: Yusuf Qaradawi's Perspective on Islamic Economics," *Al-Jami'ah: Journal of Islamic Studies* 48, No. 2 (2010): 365–385. Harry Djatmiko, "Re-Formulation Zakat System as Tax Reduction in Indonesia," *Indonesian Journal of Islam and Muslim Societies* 9, No. 1 (2019): 135.

²³ Michael Buehler and Dani Muhtada, "Democratization and the Diffusion of Shari'a Law: Comparative Insights from Indonesia," *South East Asia Research* 24, No. 2 (2016): 261–282.

²⁴ Amelia Fauzia, Amelia Fauzia, "Religious Practices: Zakat (Almsgiving): Indonesia," BrillOnline Reference Works, 2018, 4.

²⁵ Evan F. Kohlmann, *Al-Qaida's Jihad in Europe: The Afghan-Bosnian Network*, Oxford: Berd, 2004.

The Enactment of Zakat Law as (Islamic) Positive Law through Legislation in DPR

Positivization is defined as a process of formalizing legal norms or rules,²⁶ which can derive from customary law, Islamic law, or Western law through institutionalization in DPR. The actors involved are DPR and government working together to discuss proposed bills [henceforth (RUU)] that have been scheduled. Initiators can be from DPR or the government. It can be said that no law is enforced without going through legislative process in DPR, including zakat law.

Legislation on Islamic law in a country is common because beliefs can influence human thinking and actions.²⁷ Since beliefs are considered to have a very important role in (Islamic) legal system.²⁸

The mention of zakat law in this study refers to new UUPZ enacted by President on November 25, 2011. It does not regulate the Shariah of zakat, but rather regulates the zakat management. However, the zakat management refers to Islamic law in the chapter on zakat. The management of zakat that is sourced from Islamic law has undergone positivization of Islamic law through the so-called legislative process in DPR. It is clearly stated that in the case of zakat management in Indonesia, it still refers to Islamic law (Islam Shariah).²⁹

Reform Era and Responsive Law

The occurrence of the Reform era cannot be separated from expectations of most society elements who desired changes in all life aspects. The demand for legal implementation that was responsive to civil society's wishes has found its relevance to achievements of reform movement marked by the downfall of authoritarianism and the transition towards democracy.³⁰ What B.J. Habibie did to amend the Constitution, implemented the 1999 election with multi-party system, provided press freedom, and improved *check and balance* function in DPR was a quick response to those demands.³¹

Legal positivism with a repressive legal pattern was the choice of the New Order regime. Law seemed powerless to face the strong political power³² at that time. Repressive law was often used by the authorities to run their government in an authoritarian way. The law should be interested in civil society, not for the benefit of the rulers.³³ In this context, the law has an urgency in maintaining a collective balance in the midst of its constituent society.³⁴

The typology of responsive law was very proper for Indonesia to enter the transition period towards democracy,³⁵ as happened in 1998.³⁶ Because a transition period has occurred, there has been a change in society due to the strong demand from civil society to reform the constitutional system.

²⁶ Kamsi, Kamsi, *Politik Hukum Dan Positivisasi Syariat Islam Di Indonesi*, 3rd Ed. (Yogyakarta: Graha Ilmu, 2020), 11.

²⁷ Jazuni, *Legislasi Hukum Islam Di Indonesia* (Bandung: PT Citra Aditya Bakti, 2005), 43.

²⁸ Michael Bogdan in Jazuni. *Ibid.*

²⁹ Pasal 2 and Pasal 4 Ayat (4) new UUPZ.

³⁰ Gaffar, *Politik Indonesia: Transisi Menuju Demokrasi*.

³¹ Azyumardi Azra, "Pengantar," ..., x.

³² Satjipto Rahardjo, *Beberapa Pemikiran Tentang Ancangan Antar Disiplin Dalam Pembinaan Hukum Nasional* (Bandung: Sinar Baru, 1985), 71.

³³ Sarifuddin Sudding, *Perselingkuhan Hukum Dan Politik Dalam Negara Demokrasi* (Yogyakarta: Rangkang Education-Republic Institute, 2014), 45.

³⁴ Fajlurrahman Jurdi, "Catatan Editor Postulat Hukum-Politik," dalam Sudding, *Perselingkuhan Hukum dan Politik*, xxiii.

³⁵ Philippe Nonet & Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (London & New York: Routledge, 2017).

³⁶ Salim, "Epilogue: Shari'ah in Indonesia's," 213.

Responsive law was introduced by John Henry Merryman as a law with a sensitive character to people's aspiration, with identification based on process of lawmaking, function of lawgivers, and the authority to interpret the law.³⁷ This concept was then developed by Nonet & Selznick through responsive law.³⁸ Responsive law has a special characteristic, namely to find hidden *values* in a rule.³⁹ This is where the importance of responsive law lies, which expands justice that is not procedural, then extends it to substantive justice.⁴⁰

The ability of the law to adapt⁴¹ flexibly⁴² to society's needs means that the law is responsive to society's participation. In this context, the purpose of the law is for sake of the society welfare, not just for the autonomous law. The purpose of the law is not just for the sake of the law itself (autonomy), but rather for society's welfare, as reflected in lives through fair implementation, which is the result of drafting and creation through a democratic-political configuration.⁴³

Anomaly of Political-Configuration Relation and Legal Products

The relationship between politics and law is very closely related. They influence each other. There is no definite formula that law is more powerful than politics, or even politics is more powerful than law. However, in practice, the law becomes powerless when confronted with politics, especially in the case of Indonesia.⁴⁴

As a constellation of political power, political configuration is used to provide a map of political power in a country in its democratic or authoritarian form.⁴⁵ The indicators can be seen from the party system, the government role, and the press/media role.⁴⁶ At a theoretical level, a democratic political configuration should produce responsive legal products. Meanwhile, an authoritarian political configuration produces conservative legal products.

Big Indonesian Dictionary defines "anomaly" as a deviation/abnormality from the norm.⁴⁷ The use of anomaly in this context is related to the political configuration of legal products. The relation between a democratic political configuration producing responsive legal products or an authoritarian political configuration producing conservative law is considered normal. The anomaly is that a democratic political configuration does produces conservative legal products.⁴⁸ However, proposals for changes to Draft of Zakat Management Law [henceforth (RUUPZ)] have always come from the Muslim civil society base through channels in DPR. Meanwhile, the discussion has taken a considerable amount of time, from 2003 to 2011.⁴⁹

³⁷ John Henry Merryman, *The Civil Law Tradition* (London & New York: Routledge, 2017), 205.

³⁸ Philippe Nonet & Philip Selznick, Philippe Nonet & Philip Selznick, *Hukum Responsif*, ed. Raisul Muttaqien, 2nd ed. (Bandung: Nusamedia, 2008).

³⁹ Selznick.

⁴⁰ *Ibid.*, 84.

⁴¹ Harry C. Bredemeier, Harry C. Bredemeier, "The and Adaptive Process," in *Sociology of Law*, ed. Vilhelm Aubert (Baltimore: Penguin Books, 1979).

⁴² A. Muktie Fadjar, *Teori-Teori Hukum Kontemporer* (Malang: Setara Press, 2013), 54.

⁴³ Mahfud MD, *Politik Hukum di Indonesia*, 31.

⁴⁴ 20-21 Sri Soemantri dalam Mahfud MD, *Ibid.*, 20-22.

⁴⁵ Mahfud MD, 3-4.

⁴⁶ Mahfud MD, 66.

⁴⁷ <https://kbbi.web.id/anomali>, accessed 8 April 2023.

⁴⁸ This statement is supported by Bambang Suherman, the Chairman of FOZ Center, Jakarta, on March 13, 2022. Although he did not explicitly state that the new UUPZ is not responsive, he believes that the new UUPZ urgently needs to be revised.

⁴⁹ Azyumardi Azra, "Filantropi Dalam Sejarah Islam Di Indonesia," in *Zakat Dan Peran Negara*, ed. Kuntarto Noor Aflah and Mohd Nasir Tajang (Jakarta: FOZ, 2006), 15-30.

a. Political Configuration in the Discussion of new RUUPZ

1. Party System and Legislative Role

The discussion of RUUPZ changes went through two phases of leadership of the Indonesian House of Representatives (DPR RI): the *first* phase was during the leadership of the DPR RI in 2004-2009 period, and the *second* phase was during the leadership of the DPR RI in 2009-2014 period. During this period, the RUUPZ initiated by House Commission VIII of RI⁵⁰ (or that refers to Commission VIII of House of Representative of Republic of Indonesia) was designated as a priority RUU in 2009.⁵¹ The members of the DPR RI were elected through a multi-party system, which is a part of democratic-implementation principles in a competitive political environment.⁵²

In 2009 election, there were 38 participating parties, but only 9 parties were able to send their representatives to DPR RI as they passed the parliamentary threshold of 2.5% of the vote.⁵³

The multi-party system in the election is an indication of the democracy level in a country.⁵⁴ It is an instrument that cannot be separated from the political life of a modern democratic country.⁵⁵

2. Differences in Views within FOZ

Changes in RUUPZ on FOZ proposals that were accommodated in 2008⁵⁶ have occurred. The reason for this was that there were sharp differences within the FOZ itself, particularly between the group with a revivalist-ideological background, such as: Erie Sudewo and Didin Hafidhudin, and the group with a modernist ideology. The revivalist group requested mandatory zakat norm to be included in the draft law, while the modernist group did not.⁵⁷ Although the modernist group was oriented towards Islamic revivalism, yet differing from political orientation. In this sense, the revivalist group demanded to involve the state fully for zakat management.

Differences of opinion within FOZ led to the formation of GEMAZ in 2010. It was zakat activist group that did not need the mandatory norm for zakat payment to be included in the RUUPZ. Finally, in July 2010, DPR tended to use the proposal put forward by GEMAZ⁵⁸ through the revision of the RUUPZ as development from House Commission VIII of RI draft 2004-2009 period.

The years of 2009-2010 were the beginning of heated discussions about RUUPZ changes, particularly among civil society, as indicated by the final choice of House Commission VIII of RI on the proposal to change the RUUPZ based on GEMAZ's recommendation, which was submitted on June 15, 2010.⁵⁹

There are three crucial points proposed by GEMAZ to adjust the RUUPZ proposal to House Commission VIII of RI.⁶⁰ *First*, zakat management must separate the functions of regulator,

⁵⁰ House Commission VIII is in charge of religion, social affairs, and disaster management. See DPR RI, Komisi VIII DPR RI, accessed 29 January 2023, <https://www.dpr.go.id/akd/index/id/Tentang-Komisi-VIII>.

⁵¹ Wibisono, *Mengelola Zakat Indonesia...*, 107.

⁵² Romli, *Pemilu Era Reformasi*, 60.

⁵³ Moch. Nurhasim, Moch. Nurhasim, "Dilema Sistem Pemilihan Umum 2009," *Jurnal Penelitian Politik LIPI* 6, no. 1 (2009): 5-20.

⁵⁴ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik* (Jakarta: PT Gramedia Pustaka Utama, 2007), 135.

⁵⁵ Lance Castles, Lance Castles, *Pemilu 2004 dalam Konteks Komparasi & Historis* (Yogyakarta: Pustaka Pelajar, 2004), 1.

⁵⁶ Aflah, *Arsitektur Zakat Indonesia*, 3.

⁵⁷ Fauzia mentioned that revivalist Islam had a political alliance with Islamist politics through the Prosperous Justice Party (PKS). Amelia Fauzia, *Filantropi Islam: Sejarah Dan Kontestasi Masyarakat Sipil Dan Negara Di Indonesia*, Ed. I (Yogyakarta: Gading, 2016), 250-251.

⁵⁸ *Ibid.*, 262.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

operator, coordinator, and supervisor. *Second*, sanctions should only be imposed on zakat-collection organizations that violate regulations, not on individual muzaki. *Third*, there must be a tax deduction for zakat payers and tax exemption for zakat organizations. The proposal from GEMAZ was then used by House Commission VIII as a proposal for RUUPZ changes in parliamentary session on August 31, 2010.⁶¹

It can be seen that GEMAZ's list of proposals has brought many changes to draft proposal of RUUPZ from DPR, particularly regarding the extent of state involvement in zakat management, which is limited to regulation and does not propose a mandatory zakat norm for muzakis.

3. Political Configuration

There were at least 9 factions from the winning party of the 2009 elections involved in the discussion of RUUPZ with a total of 26 members proposing changes to the former UUPZ. The nine faction members were: the Democratic Party faction with 4 members, the Golkar Party faction with 4 members, the PDIP faction with 5 members, the PKS faction with 2 members, the PAN faction with 2 members, the PPP faction with 1 member, the PKB faction with 1 member, the Gerindra Party faction with 1 member, and the Hanura faction with 1 member.⁶² They were members of House Commission VIII of RI, who were responsible for Religious and Social Welfare Affairs.

Meanwhile, the government was represented by Ministry of Religious Affairs, Ministry of Finance, Ministry of Social Affairs, and Ministry of Law and Human Rights.⁶³ Through Presidential appointment letter number R. 76/Pres/09/2010 dated September 29, 2010, they represented the government in discussion of RUUPZ with DPR RI.⁶⁴

The active role of Islamic-civil society was welcomed enthusiastically by House Commission VIII of RI. This enthusiasm was demonstrated through the submission of initiative rights in RUUPZ legislation process on changes to Law Number 38 of 1999 concerning Zakat Management (former UUPZ) to the government. This fact is an indication of democracy in conveying political aspirations.

b. The persistence of *executive heavy* character in government institutions is a cause of an anomaly in the configuration of relation towards zakat-law product

The amendments to the 1945 Constitution have resulted in a paradigm shift in relations among state institutions. For example a paradigm shift in the authority of legislators from executive domination (*executive heavy*) during the New Order era to legislative domination (*legislative heavy*) during the Reform era. This formulation was reflected in Article 20 paragraph (1) of 1945 Constitution, after the amendment stating: "The house of people's representative holds the power to form laws."⁶⁵ Meanwhile, Article 5 paragraph (1) stated, "The President has the right to propose a draft bill to house of people's representative." Article 20 paragraph (1) implies that DPR is the legislative body. Meanwhile, Article 5 paragraph (1) states that the President, as the representation of the government, only has the authority to propose a legal draft to DPR. The government is no longer a legislative body.

⁶¹ Wibisono, *Mengelola Zakat Indonesia*, 101.

⁶² Risalah Rapat Panja Komisi VIII DPR RI with Government on Wednesday, 19 October 2011.

⁶³ Risalah Rapat Panitia Kerja (Panja) Proses Pembahasan Rancangan Undang-Undang tentang Pengelolaan Zakat, Infak, dan Sedekah, Komisi VIII DPR RI, 25 May 2011, 4.

⁶⁴ Surat Penunjukan Presiden untuk mewakili pembahasan RUUPZIS on 29 September 2010.

⁶⁵ Pasal 20 ayat (1) UUD 1945 after amendment.

The dominance of executive institution has shifted the discussion of the draft RUUPZ towards the old UUPZ by imposing the RUUPZ draft based on government's version.⁶⁶ Whereas, the DPR had already their own RUUPZ draft, which was initiated with FOZ. This dominance has influenced the end of the working committee meeting until the plenary meeting's approval of the RUUPZ into the DPR's UUPZ with the government on October 27th, 2011.⁶⁷

The government dominance to make RUUPZ (government draft) as UU is more due to in the effort of zakat-management centralization through BAZNAS as a non-structural state institution.⁶⁸ Meanwhile, LAZNAS is made into a subordinate institution that assists BAZNAS.⁶⁹

The address on zakat-management centralization has been voiced by officials from the Ministry of Religious Affairs, such as H. Tulus, who served as Director of Zakat and Waqf Development from 2001 to 2006. He attended the 3rd MUNAS III FOZ (National Conference) in Balikpapan on April 25-28, 2003 and stated that the former UUPZ needed to be changed. His proposal focused on the discourse of centralizing zakat through organizational streamlining of zakat institutions in order to ensure the distribution of zakat and its benefits are targeted accurately.⁷⁰ In 2006, Nasrun Haroen, who served as Director of Zakat Empowerment (from October 6, 2006, to August 25, 2010) during the tenure of Maftuh Basyuni as Minister of Religious Affairs, advocated for centralizing zakat management through BAZNAS. Even LAZNAS had to be downgraded to UPZ and did not have the authority to distribute zakat.⁷¹

The *executive heavy* character has resulted a conservative on zakat-law product, which essentially represents the government's demand. As a working partner in the discussion of RUUPZ draft, the government should not use their executive dominance. Especially since executive dominance has shifted to legislative dominance after the amendment of 1945 Constitution.

The government's authoritarian character is shown through the power relations played in the planning process, starting from filling Issue Inventory List (DIM) as a response to RUUPZ draft submitted by DPR RI and discussions in various meetings, including working group meetings and plenary sessions. Although members of House Commission VIII initially dominated the discussions, government representatives dominated towards the end of the meetings, up to the plenary session.⁷² The UUPZ passed entirely adopted RUUPZ by government's, and the initial draft by DPR that accommodates civil society's aspirations has entirely lost. And that leads to UUPZ amendment process with defects and unusual ratification.⁷³

⁶⁶ At least, there are two versions of the Draft Law on Zakat Management (RUUPZ) submitted to the Indonesian House of Representatives (DPR RI): DPR RI version and the Government version.

⁶⁷ Keputusan Dewan Perwakilan Rakyat Republik Indonesia Nomor: 21/Dpr RI/112011-2012 tentang Persetujuan Dewan Perwakilan Rakyat Republik Indonesia terhadap Rancangan Undang-Undang Republik Indonesia tentang Pengelolaan Zakat 27 October 2011.

⁶⁸ Pasal 6 RUUPZ versi Pemerintah.

⁶⁹ Pasal 17 RUUPZ versi Pemerintah.

⁷⁰ H. Tulus, "Amandemen Undang-Undang No. 38 Tahun 1999 tentang Pengelolaan Zakat: Tinjauan Konstitusi Kaitannya dengan Badan Amil Zakat dan Lembaga Amil Zakat," The paper was presented at the 3rd Zakat Forum Congress (FOZ), 25-28 April 2003.

⁷¹ Nasrun Haroen, "Kami Tidak Berniat Membubarkan LAZ," Infoz+, Edisi 4 Tahun VI Tahun 2010, 8.

⁷² Fauzia, *Filantropi Islam.*, 264-265.

⁷³ Wibisono, *Mengelola Zakat Indonesia.*, 106-107.

The enactment of new UUPZ resulted in rejection by Islamic civil-society groups. For example, the rejection by KOMAZ (Indonesian Zakat Society Coalition),⁷⁴ GEMAZ (Zakat Awareness Movement),⁷⁵ and FOZ (Zakat Forum).⁷⁶ Eventually, KOMAZ filed a *judicial review* to MK,⁷⁷ although it later resulted in defeat. In addition to rejection, the new UUPZ also received sharp criticism that there has been a regression in the enactment of the law,⁷⁸ conflicts of interest between BAZNAS (National Amil Zakat Agency) and the government,⁷⁹ the need for adjustment of zakat regulations,⁸⁰ and the UUPZ urged to be amended.⁸¹ All of these were civil society objections to the enactment of new UUPZ.

c. Anomaly of Political-Configuration Relations on Islamic-Law Products during New Order and Early Reform Era

Findings on the anomaly of configuration-relations towards its legal products has also occurred during New Order and Early Reform Era. As Halim's study found there were several laws produced during New Order Era considered as responsive-legal products. Indeed, the configuration relations were clearly authoritarian. For example, Law No. 1 of 1974 concerning Marriage, Law No. 7 of 1989 concerning Religious Courts, Law No. 7 of 1996 concerning Food, and Law No. 3 of 1997 concerning Juvenile Courts. Law No. 17 of 1999 concerning Implementation of Hajj Worship, Law No. 38 of 1999 concerning Management of Zakat, and Law No. 39 of 1999 concerning Human Rights that emerged at the beginning of Reform era.⁸²

Furthermore, the latter three laws mentioned were born from an authoritarian political configuration chosen through General Election on May 29, 1997 during New Order Era, which were followed by three political parties, PPP, PDI, and Golkar. Golkar had won by garnering 74.51% of the vote, PPP obtained 22.43% of the vote, and PDI had to be satisfied with 3.06% of the total vote of 112.991.150 people.⁸³ Nevertheless, the legal products produced were considered as responsive legal products.⁸⁴ Meanwhile, besides those three laws, other laws were categorized as responsive legal products, even though they were born during the authoritarian political configuration of the New Order era.

⁷⁴ KOMAZ melakukan penolakan secara langsung melalui pengajuan *judicial review* di MK. Afriza Hanifa, "FOZ tak akan Uji Materi UU Zakat," *Republika.co.id.*, 19 April 2012, accessed 2 January 2023, <https://republika.co.id/berita/m2qger/foz-tak-akan-uji-materi-uu-zakat>.

⁷⁵ GEMAZ menolak negara sebagai pengelola zakat. "Indonesia - Regulations - GEMAZ UUPZ rejects new Zakah Law," 1 November 2011, accessed 2 January 2023, <http://islamicfinanceindonesia.blogspot.com/2011/11/indonesia-regulations-reject-gemaz-uupz.html?m=1>. See IMZ, *Kajian Empirik Zakat, dalam Penanggulangan Kemiskinan* (Jakarta: IMZ, 2010), 121.

⁷⁶ FOZ was born in 1997. Although the Zakat Forum (FOZ) did not file a *judicial review* with the Constitutional Court (MK), in principle, they reject the Zakat Management Law (UUPZ). Afriza Hanifa, "FOZ tak akan Uji Materi UU Zakat," *Republika.co.id.*, 19 April 2012, accessed 2 January 2023, <https://republika.co.id/berita/m2qger/foz-tak-akan-uji-materi-uu-zakat>.

⁷⁷ Aris Cahyadi, "UU Zakat Timbulkan Ketidakpastian Hukum Pengelolaan Zakat di Indonesia," *Beritasatu.com*, 18 July 2013, accessed 3 January 2023, <https://www.beritasatu.com/beritasatu/nasional/126727/uu-zakat-timbulkan-ketidakpastian-hukum-pengelolaan-zakat-di-indonesia>.

⁷⁸ Wibisono, *Mengelola Zakat Indonesia...*, 165.

⁷⁹ "Legislator Dukung Revisi UU Pengelolaan Zakat Masuk Prolegnas," *dpr.go.id*, 26 November 2019, accessed 24 April 2020, <http://www.dpr.go.id/berita/detail/id/26654/t/Legislator+Dukung+Revisi+UU+Pengelolaan+Zakat+Masuk+Prolegnas>.

⁸⁰ Syaikh, et.al., "The Zakat Management Legal.

⁸¹ Ibid.

⁸² Abdul Halim, "Membangun Teori Politik Hukum Islam Di Indonesia," *AHKAM: Jurnal Ilmu Syariah* 13, no. 2 (2013): 259–70, <https://doi.org/10.15408/ajis.v13i2.938>.

⁸³ "Pemilihan Umum Legislatif Indonesia 1997," *Wikipedia*, accessed 16 September 2021, https://id.wikipedia.org/wiki/Pemilihan_umum_legislatif_indonesia_1997.

⁸⁴ Halim, "Membangun Teori Politik Hukum."

Table 1. Anomaly of Political-Configuration Relation during President Soeharto’s Reign and Early Reform Era with Character of Islamic-Law Products Produced.

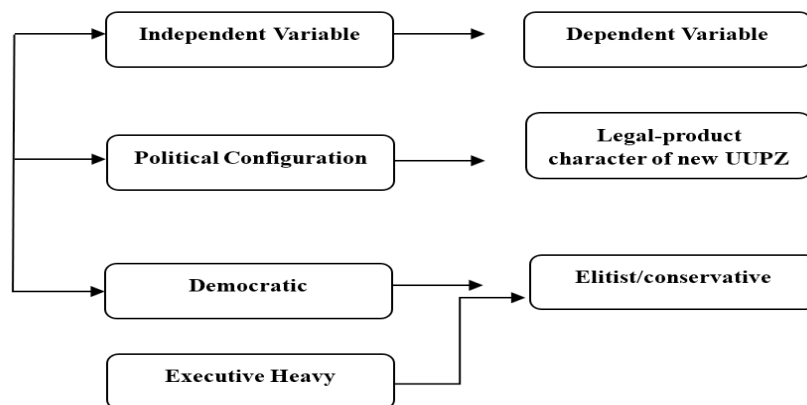
Islamic-Legal Name	Political Configuration	Legal-Product Character	Government Era	Legal Field
Law Number 1 of 1974 concerning Marriage	Authoritarian	Responsive	New Order	Private
Law Number 7 of 1989 concerning Religious Courts	Authoritarian	Responsive	New Order	Public
Law Number 7 of 1996 concerning Food	Authoritarian	Responsive	New Order	Public
Law Number 3 of 1997 concerning Juvenile Courts	Authoritarian	Responsive	New Order	Public
Law Number 17 of 1999 concerning Hajj Management	Authoritarian	Responsive	Reform	Public
Law Number 38 of 1999 concerning Zakat Management	Authoritarian	Responsive	Reform	Public
Law Number 39 of 1999 concerning Human Rights	Authoritarian	Responsive	Reform	Public
Law Number 23 of 2011 concerning Zakat Management	Democratic	Elite/Orthodox	Reform	Public

Source: Data processed from various sources.

Halim attempted to categorize all these laws. He categorized them as Islamic law. These laws contained legal material and substance that were responsive to aspirations of civil (Islamic) society. In other words, the laws could be supposed to be in accordance with Islamic law or, at least, their substances did not ignore the spirit of values contained within it.

To further clarify the relation of democratic political-configuration during Reform era that resulted in conservative character of zakat law through the enactment of new UUPZ, as shown in the following figure.

Figure 1. Anomaly of the Configuration Relations with Legal Products as Shown in New UUPZ during the Reform Era.⁸⁵



⁸⁵ Adopted from Mahfud MD, *Membangun Politik Hukum*, 66.

Spatial Justice for Participatory Zakat Law

The presence of a fair participation space for civil society's role is essential in the process of forming the Zakat Law. An anomaly in political-configuration relation towards zakat-legal products occurred due to neglecting participation spaces that should have been done. It should have been provided during the planning phase through academic papers, discussions in meetings between the government and House Commission VIII in DPR RI.

For Henri Lefebvre, space is not merely something static but possesses dynamic dimensions. Space can be produced,⁸⁶ and its creation should consider social functions, including civil Islamic society's participation space in forming laws.

Meanwhile, for Edward W. Soja, participation space will provide spatial justice.⁸⁷ As a development from spatial history,⁸⁸ space in the socio-political context functions as the third space. This space allows for the presence of an imaginative space that connects spatial practices, by involving civil society represented by DPR and the government in the discussion of the law. Soja pays serious attention to the role of stakeholders to bring about spatial justice.⁸⁹

There are three components in this third space.⁹⁰ *First*, spatial practice is the interaction of people who meet each other in and around a space. *Second*, space representation is a planned space designed by architects, bureaucrats, and investors, whose equipment is complete with models, layouts, pictures, and all its manual instructions. *Third*, representational space is a symbolic space that connects space representation with spatial practice so that spatial practice can proceed well.⁹¹

Participation space in the formation of Zakat Law was actually given by DPR RI through efforts of holding public hearings (RDPU) with FOZ. Although initially poorly responded, DPR RI then responded well and even exceeded its expectations.⁹²

The government, on the other hand, did not give spatial space for civil society participation in the discussion of RUUPZ with DPR RI. And even DPR then turned and did not defend the RUUPZ agreed with GEMAZ to fight for in the working committee meetings.

Spatial justice exists more due to the presence of inequality in a relation and interaction.⁹³ For Soja, spatial justice in making laws for civil society will not be obtained without giving spatial-participation space in DPR institution. Spatial injustice can be eliminated through fulfilling spatial justice spaces that bring together lawmaking elements in their political actions.⁹⁴

One way to avoid stuttering in facing the transition period of democracy is to establish laws involving the participation of civil society.⁹⁵ Responsive law has the nature of providing services for society's needs and interests.⁹⁶

⁸⁶ Henri Lefebvre, *The Production of Space* (Oxford: Blackwell, 1991).

⁸⁷ Edward W. Soja, *Seeking Spatial Justice* (Minneapolis: University of Minnesota Press, 2010).

⁸⁸ In the history of spatial studies, space consists of geography and time. Geography encompasses space, place, and interaction. Meanwhile, interaction itself includes representations of regions, patterns, communication, and behavior.

⁸⁹ Edward W. Soja, "The City and Spatial Justice (La Ville et La Justice Spatiale)," *Justice Spatiale Spatial Justice* 1 (2009): 56-72.

⁹⁰ Lefebvre, *The Production of Space*.

⁹¹ Break the Glass Production, "Politik Tata Ruang: Kaitan Sejarah Spasial dengan Eksistensi Ruang," YouTube, 22 December 2020, accessed 8 December 2021, <https://www.youtube.com/watch?v=nSCDYo2VBt8>.

⁹² Aflah, *Arsitektur Zakat Indonesia*, 9.

⁹³ Victor Imanuel W Nalle, Victor Imanuel W Nalle, "Pendekatan Geografi Hukum Kritis dalam Kajian Hukum Tata Ruang Indonesia: Sebuah Wacana Filsafat Hukum dan Interdisiplin," *JUSTITIA ET PAX: JURNAL HUKUM* 37, no. 1 (2021): 61-83.

⁹⁴ Soja, *Seeking Spatial Justice*.

⁹⁵ Sarifuddin Sudding, *Perselingkuhan Hukum dan Politik*, 48-49.

⁹⁶ *Ibid.*, 84.

Reform calls for a law that is in favor of civil society. Favoritism towards civil society can start from planning, formation, or changing the law of the old law that is considered no longer proper for society's needs to be replaced with new laws.

The presence of new UUPZ seems to use the methods employed by positivists in establishing a legal rule with an authoritarian-legal aspect. Law is understood as a command from the rulers who create and enforce legal rules (*law is a command of the lawgivers*).⁹⁷ The rulers have authoritative power to enforce the law, even if it means by using repressive methods to force it upon the people. Justice and wisdom embedded in law are not the objectives of the law.⁹⁸ In the perspective of Islamic civil society, especially those who work with zakat, the new UUPZ is seen as a form of hindrance to creativity of LAZ, which has played an important and effective role in the development of zakat management.⁹⁹

Thus, the provision of spatial justice for civil society is essential in the making of legislation through participatory spaces to produce responsive laws with the aim of substantive justice.¹⁰⁰ Spatial justice, as a reflection of the pattern of legal positivism that provides an aspirational and participatory spatial area, is essential in the formation of zakat laws during Reform era.

Conclusion

The positivization of Islamic law during Reform era has emerged zakat law through the enactment of Law Number 23 of 2011 on Zakat Management. This positivization is part of Islamic-legal legislation form in DPR institution. Though, this is considered a conservative zakat law, as this character is evidence of anomaly in political-configuration relation occurred; whilst the political configuration was democratic, formed through a multi-party election system, also the drafting of RUUPZ involved FOZ as representative of Muslim civil society. However, there were frictions within FOZ, which led to the birth of GEMAZ, which, somehow, was still a part of FOZ. Eventually, the DPR used RUUPZ formulation by GEMAZ that were discussed with the government.

The Muslim civil society group (a part of FOZ) had to, somehow, be satisfied after government and DPR passed the new UUPZ. However, KOMAZ, which was born from within FOZ, rejected the new UUPZ and attempted to file a *judicial review* to Constitutional Court.

The dominance of executive or so-called *executive heavy*, has become the cause of the anomaly in political-configuration relation regarding zakat-law product with conservative character. Whereas, the shift of dominance orientation from executive to legislative had occurred after the amendment of 1945 Constitution during Reform era. In this case, a legal product with responsive character should arise. Based on Edward W. Soja's perspective, the desired character of zakat law by societies was a law that provided spatial justice through the participation of civil society in process of making laws in DPR.

⁹⁷ The statement by John Austin, known as a figure of legal positivism, is that law is perceived as a command from the sovereign.. See Lili Rasyidi, *Pengantar Filsafat Hukum*, III (Bandung: CV Mandar Maju, 2002).

⁹⁸ Lysons, *Ethics and the Ride of Law* (Cambridge: Cambridge University Press, 1983), 7-8.

⁹⁹ Irfan Abubakar CSRC UIN Jakarta, "Membaca UU Pengelolaan Zakat dalam Multi-Perspektif: Konstitusi, Ekonomi, Sosiologis, dan Sejarah Bangsa," *Notulensi Roundtable Discussion UIN Syarif Hidayatullah Jakarta*, 22 November 2010.

¹⁰⁰ Satjipto Rahardjo, *Ilmu Hukum: Pencarian Pembebasan Dan Pencerahan*, ed. Khuzaifah Dimiyati (Surakarta: Muhammadiyah University Press, 2004), 18.

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