

# **Juridical Review of Zakat Sharia Mutual Funds in Indonesia (Study at the National Amil Zakat Agency-BAZNAS)**

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## **ABSTRACT**

BAZNAS (National Amil Zakat Agency) provides new innovations in the form of payment of Islamic mutual fund zakat in cooperation with PT Nusantara Sejahtera Investama. Payment of sharia mutual fund zakat is questionable whether it has fulfilled the requirements and compulsory of zakat law such as nishab and haul and halal of zakat sharia mutual funds. Investment Managers as managers of Islamic mutual fund products must provide halal guarantees so that there are no fears of a mixture of halal and non-halal assets and must have a good operational system in terms of complying with sharia principles. In Indonesia, rules regarding zakat mutual funds have not been regulated in detail and still raise legal questions. This research is to find out and analyze whether zakat sharia mutual funds in Indonesia at BAZNAS have fulfilled the legal requirements and zakat compulsory requirements as well as how to regulate sharia mutual fund zakat in Indonesia. This type of research is a type of library research. The results of this study conclude that sharia mutual fund zakat in Indonesia conducted by BAZNAS has fulfilled the legal requirements and zakat compulsory requirements and there are no detailed regulations governing sharia mutual fund zakat in Indonesia.

**Keywords:** *zakat, sharia mutual fund, juridical review*

## **1. INTRODUCTION**

Zakat in Indonesia has experienced significant development in the last few decades. This can be seen from the increase in the amount of zakat collected at the end of 2019 collected by the National Amil Zakat Agency. (1) This fact cannot be separated from the renewal of the concept of zakat from the legal aspect and the expansion of zakat assets. Since the revelation of the obligatory zakat, the mujtahids conducted various studies on the object of zakat itself which was previously limited to gold, silver, animal husbandry and agriculture. (2) Like Yusuf Al-Qaradhawi who gave the idea that zakat is also imposed on various types of investments that nothing in the time of the Apostle, like deposits and shares. The latest development is the sharia mutual fund zakat. Sharia Mutual Funds is a type of zakat that has not long been the object of zakat by BAZNAS. (3) Zakat is a commodity that can collect money quickly from various lines of Muslim society. The increased potential for the acquisition of zakat funds was strengthened by the development or expansion of zakat objects in the modern world. In this case, the government has provided restrictions set forth in its regulations, namely Law Number 23 of 2011 concerning Management of Zakat. In this law, it is regulated who has the authority to collect zakat funds from the public. The National Amil Zakat Board has very

strong authority in collecting, managing and distributing zakat funds. In addition, the Amil-listed is also allowed to manage with accountability report. Indonesia does not regulate zakat law from Islamic law (fiqh) but rather the management of funds. In this paper the focus is on how the renewal of zakat fiqh in terms of its object is then continued in terms of legal jurisprudence. Zakah is basically in the form of valuable assets that exceed nishab and must meet certain conditions. (4) There are several categories of assets that must be tithed. Not all assets must be issued zakat. Among the terms and categories are halal. Halal is one of the forms of responsibility for property ownership. Baznas is an Amil organization in Indonesia which was first recorded as making mutual funds a zakat compulsory asset. The basis for them to do this is the International Ulema Convention.

Recently, the commodity of zakat objects is widely developed. One of the compulsory commodities of zakat that has just developed is zakat mutual funds. Mutual funds are a container used to raise funds from the community of investors to be subsequently invested in the Securities Portfolio by the Investment Manager and its implementing regulations whose management does not conflict with Sharia Principles in the Capital Market. (5) PT Nusantara Sejahtera Investama is the first mutual fund company to work together in the zakat project this mutual fund. There are several basic mutual funds owned by PT Nusantara Swelfare Investama to be the object of zakat when viewed

from the terms and conditions of the obligatory zakat property. First, mutual funds are valuable assets, second, mutual funds types of assets are growing in value from time to time because they are an investment type, while the third type of mutual funds is already fulfilling the halal element because part of sharia mutual funds whose operational systems are overseen by DPS that have obtained certification from the Indonesian Ulema Council. Sharia mutual funds have been regulated in the National Sharia Council Fatwa (DSN) No. 20 / DSN-MUI / IV of 2001 concerning Investment Implementation Guidelines for Sharia Mutual Funds, in the eleventh article it is explained that Investment Managers as investment fund managers from customers / investors must really pay attention to the halal nature of the benefits provided to investors. The Investment Manager is responsible for the halalness of his products which is assisted by the Sharia supervisory board. The next problem I will examine in this paper, is how the baznas system can accommodate the needs of zakat from the subject of obligatory zakat. Or can it not be categorized as zakat and instead it is categorized as alms. Basically the Amil Zakat Agency cooperates with PT Nusantara Sejahtera Investama (Invissee) to facilitate consumers paying their zakat. PT Nusantara Sejahtera Investama has various types of mutual funds which are divided into sharia mutual funds and conventional mutual funds. Each of these mutual funds is further divided into various types of investments managed by investment managers both money market mutual funds, bonds, mixtures, stocks and so on. The reality of the development of zakat studies is forcing to dissect whether the acquisition of Baznas assets is in accordance with fiqh law or whether it only imposes the acquisition of zakat assets as much as possible from all aspects of the economy. 2 big questions that are presented in this paper: 1. How is the sharia mutual fund zakat law carried out by Baznas? And its application?

### **1.2. Our Contribution**

This paper explains how zakat in Indonesia has developed very rapidly as seen from BAZNAS managing and maximizing the potential of zakat in terms of zakat investment. The study on the suitability of Jurisprudence with sharia mutual fund zakat payment practices is also written. In addition, this paper also provides an overview of how jurisprudential law in Indonesia provides the flexibility and legal uncertainty regarding the possibility of widening the object of zakat. Thus this paper will become a reading that can be considered by scholars and jurists as well as policy makers. 1.2 Paper Structure This paper is organized as follows. Section 2. 1 introduces the introduction used in this paper, which covers Zakat in fiqh and Indonesian law. Section 2.2 presents Sharia Mutual Fund Zakat in the National Amil Zakat Board. Then Section 2.3 summarizes the paper and provides direction for future research.

### **1.3. Paper Structure**

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## **2. BACKGROUND**

### **2.1. Zakat in Jurisprudence and Indonesian Law**

The views on zakat are very diverse among Muslims and scholars. Muhammad Syahrur's definition of zakat - more suitable for now if viewed from a socio-economic perspective that zakat is a form of minimal alms (innamâ ash-shadaqâtu) or a minimum limit of the amount of assets owned by a person that must be offered to others who are liable in Islam. (6) There are several things that must be considered in zakat law because it is very closely related to Islamic law itself. In Indonesian regulations the law does not regulate that far. Among which must be considered are the legal and obligatory requirements of zakat. First, Merdeka, This is related to the condition of Muslims at that time in the Arabian jazeera area who still knew slavery. At that time, zakat was not required for a slave, (7) while the obligation of zakat was only for free people whose wealth exceeded the threshold (8) Second, Islam was part of the conditions that were obligatory when someone was Muslim and his wealth was given to Muslims who were poor or (9) Although recently new ideas about zakat for non-Muslims have begun to be heard, but the mainstream opinion still maintains that zakat should only be given to Muslims. Third, Baligh- Intellect. In the sense of legal responsibility in general that someone who has no sense and is not old enough does not have the legal obligation to pay zakat. (10) Fourth is the condition of assets that are possible to develop, not assets that are only stagnant. The potential for this development is seen if the asset can grow and develop in business activities. (11) Fifth, As explained at the beginning of this article, it is not compulsory for an asset to be zoned if it does not meet the specified threshold level. He must also meet the primary needs of humans in general. (12) The sixth requirement is to rule over his property in the sense that he has full possession (13) Seventh, he must pass for one year, (14) and also the owner of the property does not own debt, so every nishab owned must be free of debt. (15)

After the obligatory zakat requirements there are legal requirements that must be met before muzakki (the person who pays zakat) performs their obligations. That is intention and giving. (16) Intention is part of the legal requirements and becomes the agreement of fiqh experts. Intentions are intended to differentiate between types of actions from one another. In Islam there are several kinds of practices that are almost similar to alms such as paying for

expiation, infaq, sadaqah, giving gifts and so on. Giving possessions to mustahik is also part of the legal requirements for the value of the validity of zakat itself. While zakat arrangements in Indonesia have a very long history. Indonesia first had the Zakat Act in 1999, namely Law No. 38 of 1999. Along with this was born several regional regulations governing zakat management in Indonesia. Subsequently the Act was revised to Act Number 23 of 2011 concerning Management of Zakat, which provides more mandate to the National Amil Agency to manage zakat in Indonesia. Some local regulations in Indonesia have even provided zakat obligations to civil servants in the area, such as the Garut Regency Regulation No. 6 of 2014 concerning Management of Zakat, Infaq and Shodaqoh. (17)

### **2.1 Legal Review of Zakat Sharia Mutual Funds at the National Amil Zakat Agency**

Based on an interview with Ms. Hafidza, one of the fundraising staff of the National Amil Zakat Agency in Jakarta. He said that this was an effort to raise public awareness to invest and make it easier for people to pay their zakat in mutual fund assets. (18) There were several things that were the source of the baznas zakat fund from Invissee. First - comes from creating your own Invissee account which is done on the Invissee website. Baznas only provides a platform and Baznas will get a commission from each account creation from Baznas advertisements. Second, every sharia mutual fund account holder who has entered the haul and nishab count will get an offer from the invissee to set aside a minimum of 2.5% or more of the mutual fund to be zoned. Third, originating from the owner of an invissee account who voluntarily set aside some of his mutual funds to be offered. Of the three forms of acquisition of Baznas above, it is certain that each category is different. The first part that is obtained by the National Bureau of Invissee Fee is included in the category of infaq / alms. The second category is zakat and the third is the same as the first, namely infaq / alms. When viewed from the perspective of mutual funds, how mutual fund studies can be classified as investment assets that can be tapped. Pursuant to Law Number 8 of 1995 Article 1 Paragraph 27 states that a mutual fund is a container used to collect funds from the community of investors to subsequently be invested in a securities portfolio by the investment manager. Investment in mutual funds is quite easy and has the opportunity to get very large profits because there are various choices of investment products and are managed by investment managers. The amount of funds in mutual funds, the access to diversify investments is greater as well as the risks faced will be smaller. (19) Mutual funds that are part of sharia mutual funds have fulfilled the previous fatwa, MUI No. NWA Fatwa (National Sharia Council). 20 / DSN-MUI / IX / 2000 concerning Investment Implementation Guidelines for Sharia Mutual Funds define sharia mutual funds as mutual funds that operate according to Islamic sharia principles and principles, both in the form of inter-investor agreements as property, (shahib al-mal / rabb al-mall ) with

Investment Manager as representative of shahib al-mal, and between Investment Manager as representative of shahib al-mal and investment users. (20) MUI Fatwa Considerations for issuing Islamic mutual funds include: because in conventional mutual funds there are still elements that conflict with Islam, both in terms of the contract, the implementation of investment and in terms of profit sharing. Jurisprudence and Islamic economists are of the opinion that investment can only be carried out in business categories that do not conflict with sharia. The type of issuer's business must be in accordance with Islamic sharia, among others, may not conduct gambling and the like, business in RIBA financial institutions, business of producing, distributing and trading illicit food and beverages as well as goods or services that damage morale and bring harm.

The selection and implementation of investments must be carried out with the precautionary principle and there must be no obscure elements (gharar). Among them may not make fake offers, sale of goods that are not yet owned, insider trading or spreading misinformation and using insider information to profit from prohibited transactions, as well as investing in companies whose debt levels are more dominant than capital. Issuers are declared unfit to invest in sharia mutual funds if the debt-to-capital structure is highly dependent on financing from debt, which is essentially financing that contains elements of usury, the issuer has a debt to capital ratio of more than 82% (45% debt. 55% capital), Issuer's management is known to act in violation of sharia-compliant business principles. The operational mechanism of sharia mutual funds consists of a wakalah agreement between investment managers and financiers, and mudaraba between investment managers and investment users. The characteristics of mudharabah are as follows: (1) profit sharing between investors (represented by investment managers) and investment users based on the proportions specified in the contract that have been determined together and there are no guarantees for certain investment returns to the investor, (2) investors bear the risk as much as and that is given, (3) investment managers as representatives of investors do not bear the risk of loss on investments made as long as not because of negligence. In addition to fulfilling the conditions stated above, in Article 7 paragraph (4) of the Financial Services Authority Regulation Number 19 / POJK.04/2015 regarding the issuance and requirements of Sharia Mutual Funds, as a company that runs sharia principles, the company must have a Supervisory Board Sharia. The Sharia Supervisory Board is responsible for the supervision of Sharia Mutual Funds in order to fulfill Sharia Principles in the Capital Market on an ongoing basis. (21) Supervision conducted by the National Sharia Board has a positive goal. It also received support from a legal expert in Islamic Economics, an Islamic Development Bank consultant who stated that Islamic financial institutions should not cause harm because if the existence of an Islamic financial institution would only bring harm, then the financial institution should not need to use the Islamic label. (22) The public can conduct a separate assessment of a financial institution that is based on sharia principles or not (23) In

the organizational structure, the National Sharia Board also has a Daily Executing Board and Sharia Supervisory Board. (24)

Mutual funds need to be managed properly by people who are considered capable of managing them. This is because in the mutual fund contained the following things: (25)1. Funds obtained from the public are invested in securities portfolios.2. The portfolio of securities varies greatly, so that each instrument has a different rate of return.3. Changing cash flow.4. The investment manager's expertise in managing a portfolio that is able to generate risk from the portfolio and the certainty of return. Investment Managers are expected to be understanding, assertive, open, and willing to consult in their decision making. Factors related to investment managers are: a. asset allocation (asset allocation); b. investment instruments (stock selection); c. the ability to assess the time of buying and selling in the market (market timing). Basically Sharia Mutual Funds have disadvantages compared to conventional mutual funds, namely: (26)1) Sharia Mutual Funds are managed in a Risk Managable manner. In this management concept, the level of risk of loss or profit will be managed optimally.2) Meet the market segmentation for sharia-based investors. With the advent of Sharia Mutual Funds, it means that the needs of some Investors have been fulfilled. The potential of the Investor segment in the Capital Market and Islamic Banking in Indonesia is estimated to have quite a large amount. This is a marketing target for Sharia Mutual Fund products which is expected to develop rapidly. After seeing how sharia mutual funds actually are, BAZNAS should take the opportunity to increase the potential of zakat in Indonesia. The flow of Islamic spirit in Indonesia and philanthropic spirit is seen by BAZNS as a great opportunity to get more maximum zakat funds. BAZNAS here can be said to carry out zakat as its function, namely as a pillar with socio-economic character in order to have a greater impact in helping the economy of the Indonesian people. The author agrees that the word zakat as a sign of worship of *Māliyah ijtimā'iyah* is very appropriate because it has a very significant position, both from the teachings of Islam and the welfare of the people. [Didin Hafidhuddin, *Zakat in Modern Economy*, (Jakarta: Gema Insani, 2002), p. 15] Then, what about the juridical review aspects of zakat mutual funds sharia. According to the Financial Services Authority Regulation (hereinafter referred to as POJK) Number 19 / POJK.04 / 2015 concerning Issuance and Requirements of Sharia Mutual Funds Article 1 paragraph (1), states that Islamic mutual funds are mutual funds as referred to in the Capital Market Law and its implementing regulations. its management does not conflict with the Sharia Principles in the Capital Market. If we look at the rules of zakat in Law Number 23 of 2011, in article 2 of Law Number 23 of 2011 it is stated that the object of written zakat is only the amount .. []. Furthermore, the development of zakat / zakat compulsory objects has not been regulated. That means it is possible for the development of compulsory zakat assets in line with the times. This zakat management law views that sharia mutual funds are defined as other valuable assets in the form of securities.

### 3. CONCLUSION

1. Zakat sharia mutual funds in Indonesia have fulfilled the legal and mandatory requirements of zakat. While the mutual funds that are paid zakat are sharia mutual funds whose management is based on sharia principles and overseen by the Sharia Supervisory Board and the Financial Services Authority so as to avoid non-halal elements.2. Sharia zakat mutual fund payment at BAZNAS is in accordance with zakat law because the zakat mandatory requirements have been fulfilled both in terms of the object and subject of zakat. The reason is because of two things. First, the zakat mutual fund is a type of sharia mutual fund that has clear halal status. Secondly, mutual funds which are subject to zakat are fully the responsibility of investors so that investors who have reached nisab and haul can pay their zakat mutual funds by first confirming it to PT Nusantara Sejahtera Investama.

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