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LEGAL CERTAINTY OF AUTHORITY OF LOCAL REGULATIONS CONCERNING ZAKAT MANAGEMENT IN STATE ADMINISTRATIVE LAW PERSPECTIVE

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ABSTRACT

This study wants to show a solution that the latest regulation on zakat, namely Law number 23 of 2011 concerning Zakat Management, can be the basis for the formation of regional regulations, through qualitative research methods, based on library research and emphasizing literature review. This study suggests that the formation of regional regulations on zakat management has strong legal certainty, because Indonesia is a state of law, and generally Indonesia uses state administrative law in carrying out its duties and responsibilities carried out by state administrators, in this case the government. Zakt is the main support for the life of the nation and society. Therefore, the law on zakat regulations from the legal aspect of state administration, the urgency of the formation of zakat regulations is important so that its legitimacy is regulated.

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INTRODUCTION

The constitutionality of Regional Regulations (hereinafter referred to as Perda) is the basis for the community's need to develop their region. Perda was born from the womb of people's thoughts through its actors, namely the regional government (hereinafter referred to as Pemda), this became part of the unifying component of the nation to strengthen diversity within the framework of the Unitary State of the Republic of Indonesia (NKRI). In addition, regional regulations are formed in order to create the widest possible opportunities for regions so that they can be independent and prosper

the people in the region according to the potential or capacity and characteristics of the regional community itself (Bungaran, 2012).

It is appropriate when local people want to be more organized and orderly, then they must follow the regulations that have been made by the local government itself, the regulations formed by the local government are regulating the wider community (public law), according to Gordon the rules governing the wider community are part of state administrative law In addition, the rules governing the wider community are drawn up by the government consisting of the executive, legislature and courts. In the regional context, there is no single party that has more authority than the local government itself which creates and exercises the power to regulate the local community, meaning that this has meaning that it is the government that creates the rules and the government is also the one who embodies these rules into government programs and or activities. Government programs and activities are regulated in the legal codification of regional regulations as part of state administrative law, this is for the sake of creating justice and order in local communities.

Departing from the basis of state law, in Article 18 paragraph 6 of the 1945 Constitution of the Republic of Indonesia, it is emphasized that regional governments have the full right to stipulate a regional regulation, this is in order to carry out autonomy and assistance tasks. Each regional head and the Regional People's Representative Council (DPRD) are given the same authority, namely the authority to form laws or legislative authority.

Generally, regional regulations formed by local governments are not small, often local regulations are made to meet various kinds of problems in very complex aspects of community life, and these problems are relegated to regional regulations in order to prioritize the interests of the people, problems that often arise in the community are aspects of the economy or growth. regional welfare development (Angkadai, 2020).

In building the economy, both at the central and regional levels, in principle, it has an open nature, meaning that the state provides the widest possible opportunities to anyone to help and develop the country's economy and for the welfare of the people. As a country that has citizens whose majority are Muslim, a well-known economic practice is carried out because of the nature of its obligations that must be carried out by each individual Muslim, namely the practice of carrying out zakat worship. The practice of zakat has an important role in the economy of citizens and the progress of the civilization of the Indonesian nation.

If you look at the potential for zakat in Indonesia in 2021 to reach 327.6 trillion, then the potential for zakat practice in Indonesia is very possible to help the country's economy (Lorensia, Canggih, & Wijaya, 2012). In the regulatory aspect, the fact is that it has not been in tune with the large potential of zakat and can be used by the

community to its full potential. Zakat regulation still needs to be reviewed, because Law Number 23 of 2011 concerning Zakat Management (hereinafter referred to as UUPZ) has not comprehensively accommodated regional interests.

Today, the zakat regulation is considered to be contrary to the higher laws and regulations, namely the law, the conflict is a problem that to this day has no solution. As a result, every local regulation that is made has no relevance to (Muhtada, 2017). Or with another meaning, the zakat regulation that was formed today is not in accordance with the concept of the hierarchical theory of laws and regulations, It is this discontinuity that ultimately requires the zakat regulation to have legal certainty. As a state of law and a country that has the largest Muslim community in the world. Legal certainty of regional regulations on zakat is an urgency that cannot be ruled out, because, without legal certainty, regional regulations on zakat which are very much needed by local people have no legitimacy.

Currently, the legal certainty of the formation of regional regulations on zakat cannot officially have legitimate legitimacy, because in the provisions of laws and regulations, religion is not an entity that may be regulated by the Regional Government, while the regional regulations on zakat which in fact talk about religion are the authority of the central government. this can be seen in Law 32 of 2014 concerning Regional Government. The starting point of this paper is to find out how legal certainty is regarding the formation of regional regulations on zakat. In principle, legal certainty is a form of protection for justice seekers against arbitrary actions by regulators, or in other contexts legal certainty can be addressed to the needs of citizens in carrying out activities so as not to get out of the state of law (legitimate) (Mertokusumo & Pitlo, 1993).

This means that a person can and is allowed to do something in a legal state because the actions and behavior of a citizen have been regulated in positive law. If it is concluded why legal certainty in the formation of regional regulations regarding zakat is important, namely to meet the needs of the community and the welfare of the people through legal aspects (Fakhrazi, 2017).

In state administrative law, not only people whose actions and behavior are regulated as Indonesian citizens, even the main principles of state administrative law regulate the actions and internal behavior of the government itself. The concept of government governing society.

METHOD

The method used in this research is a normative juridical law research method. Normative research that uses a statute approach by examining various legal rules (Efendi, 2016). This study uses a library research system to find legal materials relevant

to this research. The data sources used are primary data with primary, secondary, and tertiary legal materials. The analysis used is qualitative analysis, adhering to the characteristics of law as an applied science

RESULT AND DISCUSSION

1. Legal Certainty Regional regulations regarding Zakat Management

Regarding the principle of legal certainty, in fact the existence of this principle is interpreted as a condition where the law is certain because of the concrete power of the law in question. The existence of the principle of legal certainty is a form of protection for justice (seeking justice) against arbitrary actions, which means that a person will and can get something that is expected under certain circumstances. (Mertokusumo, 1993). This statement is in line with what Van Apeldoorn said that legal certainty has two aspects, namely that the law can be determined in concrete terms and legal security. This means that the party seeking justice wants to know what is the law in a particular case before starting a case and protection for justice seekers. From this view, it can be understood that without legal certainty, people do not know what to do and in the end, uncertainty arises which will eventually lead to chaos due to the indecisiveness of the legal system. Thus, legal certainty refers to the application of a clear, permanent and consistent law where its implementation cannot be influenced by subjective circumstances (Prayogo, 2016).

Although it is said that legal principles are the heart of legal regulations, they cannot be equated between legal principles and legal norms in the form of positive law. Legal principles only regulate and explain (explanation), where the aim is only to provide an overview and is not normative.9 Therefore, legal principles do not include positive law and certainly cannot be applied directly to resolve legal disputes. In this case, Van Eikema Hommes explicitly said that legal principles should not be considered as concrete legal norms, but should be viewed as general principles or guidelines for applicable law (Notohamidjojo, 1975).

One indicator of a country's economic development is the development of human capital (Uddin & Masih, 2015). Human capital in the form of health capital and education capital is realized as a form of joint investment in developing the economy. Both act as inputs in order to obtain higher incomes, and as outputs that affect the welfare of society as a whole (Todaro, Michael P., 2011).

Human development is defined as a process of increasing the capability of humans or populations to be able to participate in all areas of development, and to lead a healthy and productive life in society (Alkire, 2010); Hassan et al. 2017). Human development has a broader meaning than economic growth, more than just increasing income and the process of producing goods and capital accumulation.

The underlying reason why human development needs attention is that many developing countries including Indonesia have achieved economic growth, but have failed to reduce the poverty gap (Asmita & Ruslan, 2017).

Zakat according to terminology means, a certain amount of property that is required by Allah SWT. To be given to the mustahik who have been mentioned in the Qur'an. Zakat can also mean a number of assets given to certain people. Pronunciation of zakat zakat can mean a number of assets taken from the assets of those who pay zakat. Syukri Ghozali stated that zakat. is a certain part of the wealth that is given by a person as a right of Allah to those who are entitled to receive it, including the poor, according to Islamic religious provisions. As for the wealth that is distributed, it is called zaka, and the word zakat means to increase, to be holy, to change, because with the issuance of zakat, the property is expected to increase, be holy, and be a blessing to (Afifi & Ika, 2010).

Zakat has great virtue for those who pay it. The effects of zakat are very large and useful for individuals and the people, because zakat is worship for Allah, namely:

1. Get a high position; Zakat can increase the position of a servant to become a robbani. Humans will reach this level when they have been separated from the love of the world (especially the love of wealth) and become servants of Allah alone, not servants of dinars or dirhams. This is as conveyed by the prophet SAW:
2. Therapy of love of property; love of treasure is a dangerous and chronic disease. By slander, humans are created to love wealth. Humans cannot be separated from the love of wealth that makes them inhabit the bottom of hell except by issuing zakat every year

The wisdom of issuing zakat is as follows:

1. Cleanse the soul from the disease of miserly miserly if this disease overwhelms a person's soul, he is unable to escape from it. This disease brings the wrath and hatred of God. The treasure is not on the Day of Resurrection and will turn into sheets where the owner will be roasted in the Hellfire.
2. Happy world and hereafter; is in the form of increased wealth and blessings, because people who donate part of their wealth will be multiplied by Allah SWT. In addition to the happiness of the world, zakat is also a medicine for the sick and brings health and safety. As for the happiness of the hereafter, it is in the form of eradicating bad and increasing goodness, besides that zakat is a way to forgiveness and good luck reaching heaven. In fact, to reach the highest level in heaven.

3. Avoiding and holding grudges from the poor; The envy and envy of these poor people can turn into hostility, trying to steal and confiscate their property, even killing and stealing their property. But if the rich are gentle towards the poor, share with the poor, look at orphans and widows with a look of compassion and help those in need a helping hand, this attitude will make him loved by the poor. He also felt safe, calm, and peaceful.
4. Prayer for muzakki from people who receive zakat; It is recommended to pray for the person who gives zakat by saying good things so that he will be expanded his sustenance and be safe in the hereafter (Muhammad, 2012).

Sector in the economy is an important object in the discussion of zakat. Through this sector, it can be used as a barometer of progress and improvement of a country's economy. In other words, zakat can play an important role in reducing and eradicating the poor, with the management and use of zakat funds in a targeted and equitable manner, an increasing economy will certainly be achieved, and the poor will be eroded by themselves. A development can be said to be successful if the process is able to improve the community's economy in the long term. The economy is reflected in the excellent quality of the community's economy, an adequate level of education, along with a high level of per capita income. The obligation to issue zakat has a strong foundation as the achievement of a high-income country to create an economy for housing and other necessities of life (Hamid, 2006).

Positive relationship between zakat and human development in Indonesia. That is, by increasing or decreasing the nominal amount of zakat, it will affect the increase or decrease in health, education, and income of mustahik. Therefore, it can be concluded that zakat can play an important role in improving the welfare of the community, especially mustahik.

2. Zakat Regulations in The Perspective of State Administrative Law

The administration of government must also be based on rules or regulations in order to provide services and protection for the basic rights of the community, on the other hand the rules or regulations that serve as the basis for carrying out the duties or functions of the government are made by the government organs or institutions themselves so that This is something that the makers of the rules or regulations really need to pay attention to, so that it really accommodates the interests of the community. Autonomy in a narrow sense can be interpreted as "independent". While a broader meaning is defined as "powerful". Regional autonomy thus means the independence of a region in terms of making and making

decisions regarding the interests of its own region. If the region is able to achieve the conditions required by the region, it can be said that the region is empowered (capable) to do anything independently without pressure and coercion from outsiders and of course adapted to regional conditions and needs.

Various definitions of Regional Autonomy have been put forward by many experts, and it can be concluded that regional autonomy is the authority of an autonomous region to regulate and manage the interests of the local community according to its own initiative (initiative) based on community aspirations in accordance with statutory regulations. Meanwhile, the autonomous region itself is a legal community unit that has certain regional boundaries and is authorized to regulate and manage the interests of the local community according to its own initiative based on the aspirations of the community in the Unitary State of the Republic of Indonesia.

to change the governance of Indonesia which at that time was centralized to decentralized with regional autonomy. It also demands further reforms in which regional governments are given the authority to administer their regions as mandated by Article 18 of the 1945 Constitution of the Republic of Indonesia. Post-reformation with a decentralized and regional autonomy system provides a logical understanding that local government, especially DPRD in its position and function, has shifted from central coordination with a centralized system to a decentralized and regional autonomy system based on arrangements mandated by laws and regulations or clearly affirmed as part of the function. and the authority of the regional government, especially the DPRD as one of the regional government administration institutions.

In relation to that understanding, the use of legal language, in Article 18 paragraph (6) contains the phrase "has the right to stipulate Regional Regulations" and "Article 38 of Law Number 5 of 1974, it is stated that regional heads with the approval of the Regional People's Representative Council (DPRD) are authorized to stipulate local regulation" (Rosjidi, 1998).

Produk hukum merupakan hukum yang dihasilkan dari berbagai macam unsur dengan pengelompokan atau penghierarkian tertentu berdasarkan lingkup berlakunya. Produk hukum yang legal (Theo, 2005) dipahami sebagai hasil dari perumusan lembaga atau badan atau pejabat yang berwenang untuk itu.

In relation to the process of "forming" this regional regulation, there are important things that need to be stated so that it becomes a serious concern regarding how to produce or produce a regional regulation. Law No. 12 of 2011 concerning the Establishment of Legislation requires the existence of "openness" (see letter g of the Law). In the explanation of letter g, it is stated that:

"In the process of forming laws and regulations, starting from planning, drafting, discussing the ratification or stipulation and promulgation, it is transparent and open. Thus, all levels of society have the widest opportunity to provide input in the formation of laws and regulations

Related to that, in Article 96 of Law no. 12 of 2011 also states that: "The public has the right to provide input orally and/or in writing in the Formation of Legislation". In Article 237 paragraph (3) of Law no. 23 of 2014, states that "The community has the right to provide input orally and/or in writing in the formation of a regional regulation". Still in relation to that, the role of the community in the process of forming laws and regulations (Perda) is carried out by taking into account the principles of access to information and participation.

The function of formulating regional regulations is a right that is embodied in the formal power of the legislature granted by law, which is called authority. The concept of "right to formulate" local regulations is related to the meaning of "formation" of local regulations as stated in Article 96 paragraph (1) letter a, that "Provincial DPRD has the following functions: "formation of provincial regulations" and Article 149 paragraph (1) letter a, that "DPRD districts/cities have functions

establishment of district/city regulations", and "right to stipulate" local regulations, and based on article 18 paragraph (6) it is stated: "Local governments have the right to stipulate regional regulations and other regulations to carry out autonomy and assistance tasks". There is the word "set". Based on article 20 paragraph (1) it is stated that: "The House of Representatives holds the power to form laws". There is the word "form". The formal power to "form" regulations (laws) rests with the legislative body called the DPR but does not mention the executive (president), and the formal power to "stipulate" regulations (perda) rests with the Regional Government. There is no mention of the legislative (provincial/district/city DPRD) or executive (governor/regent/mayor).

Based on the 1945 Constitution, the formal power to "form" laws is left to the DPR, not to the President, let alone the DPRD. Based on the law related to regional autonomy, it is stated that the formal power of "formation" of regional regulations is by the DPRD, while the Governor, Regent/Mayor only participate in joint discussions (Widodo Ekatjahjana, 2008).

According to the author's analysis, the comparison of sentences in a series of articles contains similarities or even similarities in terminology used in legislative institutions at the central and regional levels, namely "forming" and "forming". Thus, the legal power of the DPR's "power" is the same as that of the DPRD because the powers of the two institutions are discussed with the term "form" as

the origin or basis of the word. Meanwhile, the 1945 Constitution states in the word "stipulate" regional regulations for the scope of the region.

Thus, in order not to have similar terminology and multiple interpretations, the law should have been revised, because if it is not revised it seems as if the legal powers or legal authorities of different levels become equal. The context of the 1945 Constitution regarding the powers of the DPR is clearly stated as a law-making institution while regional governments are stated to have the right to stipulate local regulations, so it is not the formation of local regulations as intended in the related law. To overcome the ambiguity of the legal meaning of the 1945 Constitution and other related laws, it is more like "the right to formulate or formulate" for the regional scope by the DPRD within the framework of "stipulation" as a harmonizing meaning related to "regulatory functions in the regional scope.

Based on these descriptions, the context of "formation of regional regulations" in the framework of regional autonomy requires the attachment of certain "authorities" to carry out the functioning of regional government. Therefore, regional governments are given certain "rights" in the division of affairs. Regarding that explanation, as stated by Abdul Latif that: "The Regional People's Representative Council is equipped with initiative rights and the right to make changes. Even the agreement itself contains the authority to determine (dicicive)".the other hand, there is a normative narrative that shows the concept of "determination" so that contradictory meanings are reflected in the normative link of the existing institutional functions. In the regulation it is stated that: "Regional regulations are stipulated by the Regional Head after obtaining joint approval from the Regional People's Representative Council." (UU 32 Tahun 2004) Based on the explanation above, a comparison of concepts appears in which the normative level of the concept of proposed legal structures leads to systematic structural problems regarding the existence of DPR and DPRD institutions in the context of central and regional affairs. The legal consequences that arise are none other than a kind of dualism of power in producing rules. Such legal consequences lead to the equalization of the power of the "legislative institution" because two legislative institutions with different scopes of function have the "same" power. handover of affairs from the center to the regions within the framework of implementing regional autonomy.

CONCLUSION

This study confirms that, even though local regulations do not have strong legitimacy in the law, currently zakat regulations are still very much needed by local

people. Not only is it needed in an economic context that can support the life and welfare of the community, zakat is also the backbone of social life to build the life of the nation, state to the smallest level of society as a guarantee of an orderly safe and prosperous. Departing from the perspective of State Administrative Law, the regional regulations concerning zakat management which were formed by the Regional Representatives Council together with the executives in the regions, should still be implemented, because the most important principles carried out by stakeholders in the regions are the general principles of good governance.

Therefore, regional regulations are principally the rights and authorities of local governments. And the community can only be reached effectively not at the central government, so it cannot be ruled out that the local government is obliged to provide space for regional formation regarding zakat management in the area if the area is first filled by Muslims, secondly zakat management is very much needed by the community, and thirdly zakat is zakat. one of the main elements in sustaining the economy in the area.

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