

# Local Government Authority in The Field of Religion; A Study of Regional Regulation (Perda) on Zakat in Riau Province

*by* PASCASARJANA UIR

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**Local Government Authority in The Field of Religion; A Study of Regional Regulation (Perda) on Zakat in Riau Province**

<sup>23</sup>  
**Suparto**  
Universitas Islam Riau, Pekanbaru, Indonesia  
[suparto@law.uir.ac.id](mailto:suparto@law.uir.ac.id)

**Admiral**  
Universitas Islam Riau, Pekanbaru, Indonesia

**Deni Jaya Saputra**  
Universitas Islam Riau, Pekanbaru, Indonesia

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**Abstract:**

<sup>10</sup>  
Zakat as one of the five pillars of Islam is the obligation of every Muslim who can afford it and is reserved for those who have the right to receive it. With a proper management, zakat is a potential resource that can be utilized for the progress and prosperity of society. In 2018, The Government of Riau Province established a Regional Regulation (Perda) on zakat but did not obtain a Register Number from the Minister of Home Affairs, so that the Regional Regulations could not be enacted in regional papers. The purpose of this study was to determine the authority of the local government in making a Regional Regulation on zakat and the urgency of zakat management to be regulated by a Regional Regulation. This research is a normative juridical with a statutory approach. The data used is secondary data and analyzed qualitatively descriptive. Based on the discussion, it was found that the authority of the Regional Government in the Field of Religion; namely Zakat, is only limited to proposing the formation of the National Amil Zakat Agency (BAZNAS) to the Minister, while the regulation of Zakat through Regional Regulations violates statutory regulations considering that the mandate of the formation of Regional Regulations is only related to the implementation of regional autonomy in the context of concurrent affairs. On the other hand, the management of zakat which is regulated by Perda as in Bengkalis Regency managed to make the receipt of zakat has increased compared to before the existence of Perda. The government is not consistent in conducting executive previews of the Regional Regulation (Perda) on Zakat, because the Province of West Nusa Tenggara (NTB) has a Perda on Zakat, that is No. 9 of 2015 as well as Bengkalis Regency has a Perda on Zakat, No. 3 of 2018 and received a Register Number from the Governor as a Representative of the Central

Government. In the future, the Government must be consistent and equitable in conducting executive previews of the Regional Regulation on Zakat so that there are no disparities between regions in Indonesia.

**Keywords :** local government; zakat; regional regulation.

## Introduction

Indonesia is a Unitary State in the form of a Republic in its explanation which explains that it protects the entire Indonesian nation and all Indonesian bloodshed on the basis of unity by realizing social justice for all Indonesians<sup>1</sup>. As a constitutional state, Indonesia has a constitution known as the Constitution of 1945 the Republic of Indonesia (UUD 1945)<sup>2</sup>. The basics of the government of an Indonesian state lie in the Constitution of 1945. As in Article 18 paragraph (1), the Law of 1945, it is stipulated that "The Unitary State of the Republic of Indonesia is divided into provincial areas and the provincial areas are divided into regencies and cities that each province, district and city has a local government governed by law"<sup>3</sup>. Indonesia adheres to a regional autonomy system that has a wide range of government implementation and the presence of the Local Government is in desperate need of legislation that applies specifically to a region. As stipulated in the Constitution of 1945 Article 18 paragraph (6), it is mentioned that "The local government has the right to establish local regulations and other regulations to carry out autonomy and assistance duties"<sup>4</sup>.

Legislation that is and applies specifically to a region is very important because Indonesia has heterogeneity both social, economic, cultural, and diversity levels of public education so that decentralization of the power/authority of central government needs to have flowed to the autonomous regions<sup>5</sup>. The policy of regional autonomy and authority decentralization does not only concern the transfer of authority from top to bottom but essentially needs to be realized on the basis of initiatives from below to encourage the growth of local government creativity. Through the principles of decentralization and deconcentration, which are very important parts of the system of a democratic country and it is the task of Regional Regulations (Perda) that fill and regulate the heterogeneity conditions<sup>6</sup>. The authority to form a regional regulation is a form of regional independence in regulating regional household businesses or regional government affairs<sup>7</sup>. The Regional regulation (Perda) is basically a strategic instrument as a means towards

<sup>1</sup> Josef Riwo Kaho. *Prospects for Regional Autonomy in the Republic of Indonesia*, (Jakarta : Raja Grafindo Persada, 2002), 3

<sup>2</sup> T. Kansil. *Indonesian Government System*, (Jakarta : Bumi Aksara, 2002), 23

<sup>3</sup> Constitution of the Republic of Indonesia year 1945

<sup>4</sup> Constitution of the Republic of Indonesia year 1945

<sup>5</sup> Kaloh. *Finding the Regional Shape*, (Jakarta : Rineka Cipta, 2007), 1

<sup>6</sup> Moh. Mahfud MD. *Legal Politics in Indonesia*, (Jakarta : Rajawali Pers, 2009), 319

<sup>7</sup> Muhammad Suharjono, "Establishment of Responsive Regional Regulations in Support of Regional Autonomy", *Ilmu Hukum DiH*, Vol. 10, No.19, (2014) : 32



centralization<sup>8</sup>. It has a strategic position in the life of the nation and state, so they play a very important role in carrying out government affairs.

Perda is an instrument in the implementation of regional autonomy to determine the direction and policies of regional development and its supporting facilities. However, in the development of the practice of that regional autonomy, problems after problems arose regarding the stipulation and implementation of this Regional Regulation, until then the (Central) Government was overwhelmed to carry out supervision until it was annulled<sup>9</sup>. Perda is a unique regional product<sup>10</sup>, because it is produced from a process dominated by local political interests<sup>10</sup>. In Law no. 12 of 2011 concerning the Establishment of Legislation in Article 7 paragraph (1), the hierarchy of laws and regulations is regulated as follows: 1). Constitution of the Republic of Indonesia of 1945. 2) TAP MPR. 3) Law/PERPU. 4). Government regulations. 5). Presidential Regulation. 6). Provincial Regulations. 7). Regency/City Regional Regulation<sup>11</sup>.

A Regional Regulation functions as a further elaboration of higher laws and regulations and may not conflict with the public interest, other regional regulations, and higher laws and regulations. Regulatory regulations are promulgated by placing them in the regional gazette and thus have binding legal force<sup>12</sup>. The phenomenon that occurs in the field of religion, the government has taken over all these affairs and its implementation can only be delegated to vertical agencies and governors as representatives of the Central Government, of course in matters relating to religion this must be studied in depth regarding the role of Regional Governments in exercising authority in the field of religion, because the explanation of Article 10 of f says that the region can provide grants for the implementation of religious activities, so that the implementation of this authority in the field of religion does not violate what is ordered by law<sup>13</sup>.

Then the second problem is the formation of a Regional Regulation on Zakat which is problematic by the Regional Government. Zakat management in Indonesia has experienced dynamic developments in a very long period of time. Practiced since the beginning of the entry of Islam into Indonesia, Zakat has developed as an important and significant socio-religious institution in strengthening Muslim civil society. Over a long period of time, there has also been a tug of war of interest in the management of Zakat in the public domain<sup>14</sup>. In recent developments, the tug-of-war between the state and civil society has the potential to hinder the performance of the national zakat world and at the same time weaken the independent civil society movement<sup>15</sup>. The emergence of national and local regulations on zakat management

<sup>8</sup> Rawasita, et. al. *Assessing The Social Responsibility of Regional Regulations*, (Jakarta : Indonesian Center for Legal and Policy Studies, 2009), 60

<sup>9</sup> Husnu Abadi, Efendi Ibnuusilo & Rahdiansyah. "Review of Regional Policy in The Field of Religion which is the Absolute Authority of the Central Government", *Tadulako Law Review*, Vol. 3, No.1, (2018) : 93

<sup>10</sup> Rawasita, et al.. *Assessing The Social Responsibility of Regional Regulations*, *Op. Cit*, 63

<sup>11</sup> Law No. 12 of 2011 on the Establishment of Legislation

<sup>12</sup> Husnu Abadi. *From Plagiarism To Contempt Of Court*, (Pekanbaru : UIR Press, 2005), 2

<sup>13</sup> Husnu Abadi, Efendi Ibnuusilo & Rahdiansyah. *Review of Regional Policy*..., *Op. Cit.*, 92

<sup>14</sup> Irhas, "Decentralized Politics in the Establishment of Regional Regulations in the Field of Religion", *Thesis*, Faculty of Law, Universitas Islam Riau, (2017) : 110

<sup>15</sup> Yusuf Wibisono. *Managing Zakat Indonesia*, (Jakarta : Prenadamedia, 2015), 31





raises questions about the relevance and significance of the local regulation if the law regulates similar matters.<sup>15</sup>

Based on Law no. 23 of 2011 concerning management of zakat, that the organizations that have the right to manage zakat are divided into two parts; organizations that grow on the initiative of the community, called the Amil Zakat Institution (LAZ) and the organization formed by the Government, called the Amil Zakat Agency (BAZ)<sup>16</sup>. In this case the author assesses that zakat is included in one of the absolute governmental affairs in the field of religion which is the absolute authority of the Central Government. In 2018, the Governor of Riau the Head of Region submitted a Draft Regional Regulation (Ranperda) on zakat to the Minister of Home Affairs for a Register Number. However, Ranperda of Riau Province did not get a Register Number from the Minister of Home Affairs so that it is in accordance with the provisions of the Minister of Home Affairs Regulation No. 80 of 2015 concerning the Establishment of Regional Legal Products regulated in Article 103 that "Draft Regional Regulations that have not received a Register Number as referred to in Article 102 paragraph (1) have not been able to be assigned a Regional Head and cannot be promulgated in regional papers"<sup>17</sup>. However, several regencies/cities in Riau Province already have local regulations on zakat. As shown in the Table below:

Table 1. The Regencies/Cities in Riau Province that Have Local Regulations Regarding Management of Zakat

| No. | Regency / City    | Number Legislation and Regulation Title   |
|-----|-------------------|---|
| 1   | Kampar            | Regional Regulation Number 2 of 2006 concerning Management of Zakat, Infaq and Shadaqah |
| 2   | Dumai             | Regional Regulation Number 4 of 2008 concerning Management of Zakat                     |
| 3   | Rokan Hulu        | Regional Regulation Number 7 of 2012 concerning Management of Zakat                     |
| 4   | Siak              | Regional Regulation Number 6 of 2013 concerning Management of Zakat                     |
| 5   | Kepulauan Meranti | Regional Regulation Number 5 of 2015 concerning Zakat                                   |
| 6   | Bengkalis         | Regional Regulation Number 3 of 2018 concerning Management of Zakat, Infaq and Shadaqah |

Source: The Law Firm of Regional Secretariat of Riau Province

<sup>16</sup> Law No. 23 of 2011 on Zakat Management

<sup>17</sup> Regulation of the Minister of Home Affairs No. 80 of 2015 on the Establishment of Regional Legal Products



On data from the Table 1 above, the Local Government in Riau has formed as many as 6 perda and the most recent formed in 2018 is the regional regulation on zakat in Bengkalis Regency. Of course, this can be used as a comparison with Ranperda Riau Province which equally regulates zakat and the same year, but Ranperda Riau Province does not get register number from the Minister of Home Affairs while Ranperda Bengkalis about Zakat gets register number from the Governor as Representative of the Central Government so that Ranperda Bengkalis can be legalized in the regional sheet as Perda. In addition, in the scope of the province there is also a Perda that regulates zakat which is found in West Nusa Tenggara Province, Perda No. 9 of 2015 on the Implementation and Management of Zakat, Infak and Shadaqah<sup>18</sup>. Based on the above phenomenon, the author will review the authority of the Local Government in establishing a regional regulation on zakat in Riau Province according to Law 23 of 2014. The formulation of the problem in this study consists of How is the authority of local governments in making regional regulations regarding zakat and the urgency of zakat management is regulated by regional regulations?

## Result and Discussion

### The Authority of Local Governments in the Field of Religion and the Definition and Management of Zakat

Based on Law (UU) No. 23 of 2014 concerning Local Government, the classification of government affairs consists of 3 affairs, namely absolute government affairs, concurrent government affairs, and general government affairs. absolute government is a government affair that is fully under the authority of the Central Government. Concurrent government affairs are government that is divided between the Central and Regional Governments of provinces and districts/cities. If referring to Law no. 23 of 2014 Article 10 paragraph (1) which reads "Absolute government affairs as referred to in Article 9 paragraph (2) include: a. foreign policy; b. defense; c. security; d. justice; e. national monetary and fiscal; and f. religion"<sup>19</sup>.

In Article 10 paragraph (1) of Law no. 23 of 2014, it has been clearly stated that absolute government affairs in point f are one of them regarding religion. In carrying out government affairs, the Government organizes itself or may delegate part of government affairs to Government officials or representatives of the Government in the regions or may assign them to the Regional Government and/or Village Government. However, the governor as the representative of the Central Government in carrying out religious affairs which are the authority of the Central Government can exercise this authority with the transfer of authority from the Central Government, so that there is a fact of delegation of authority from the Central Government to the governor in accordance with the principle of decentralization.

Then, the Elucidation of Article 10 paragraph (1) letter f of Law no. 23 of 2014 explains that the purpose of absolute government affairs is in the form of "religious affairs" for example setting religious holidays that apply nationally, giving recognition to the existence of a religion, establishing policies in organizing religious life, and so on. Regions can provide grants for organizing religious activities as an

<sup>18</sup> Regional Regulation of West Nusa Tenggara No. 9 of 2015 on Zakat, Infaq and Shadaqah

<sup>19</sup> Law No. 23 of 2014 on Local Government



effort to increase regional participation in developing religious life, for example organizing *Musabaqah Tilawatil Qur'an* (MTQ), development of religious education, and so on<sup>20</sup>. According to Yusuf Qhardawi's opinion in his book *Fiqhuz Zakat*, the basic word zakat means to increase and grow, to grow, so it can be said that the plant is 'zaka' which means to grow, while anything that increases is called 'zaka' which means to increase. If a plant grows without defects, the word zakat here means clean. And it can also be interpreted to purify. If someone is given the nature of 'zaka' (good), it can be interpreted, that person has more good qualities. A person who 'zaki' means he has many qualities of a good person<sup>21</sup>. Zakat as one of the pillars of Islam is the obligation of every Muslim who is able to pay it and is intended for those who have the right to receive it. With a good management, zakat is a potential resource that can be utilized for the progress and general welfare of the entire community. Sociologically, zakat is a reflection of a deep sense of humanity, justice, faith, and devotion that must appear in the attitude of the rich<sup>22</sup>.

Zakat is a worship that contains two dimensions, that are *hablum minallah* and *minannas*. There are several goals to be achieved by Islam behind the obligation of zakat are as follows: a. Elevate the status of the poor and help him out of life's difficulties; b. Assist in solving problems faced by *gharim*, *ibnusabil*, and *mustahiq* and others; c. Expanding and fostering brotherly ties among Muslims and humans in general; d. Eliminate the miserly nature and or greed of property owners; e. Cleaning the nature of envy and envy (social jealousy) from the hearts of the poor; f. Bridging the gap between the rich and the poor in a society; g. Develop a sense of social responsibility in a person, especially for those who have property; h. Educate people to be disciplined in carrying out their obligations and surrendering the rights of others to them; i. Means of equal distribution of income (sustenance) to achieve social justice<sup>23</sup>.

The legislation mandates the management of zakat to the National Amil Zakat Agency (BAZNAS) and the Amil Zakat Institution (LAZ). BAZNAS is an institution that manages zakat. BAZNAS is a non-structural government institution that is independent and responsible to the president through the Minister of Religion<sup>24</sup>. Applicatively, the form of the role of the state is integrated towards zakat of amil with the stipulation of zakat regulations. Thus, the regulation of zakat has significance as an essential right or ability of amil in managing zakat by trying to make the purpose of the state in the Constitution of the Republic of Indonesia of 1945, that is prioritizing prosperity and the general benefit<sup>25</sup>.

#### The Authority of Local Governments in Making Local Regulations on Zakat in the Province of Riau

<sup>20</sup> Law No. 23 of 2014 on Local Government

<sup>21</sup> Gus Arifin, *The Arguments and Virtues of Zakat, Infaq, Shadaqah*, (Jakarta : Alex Media Komputindo, 2011),4

<sup>22</sup> Andri, "Centralization of Zakat Management in Indonesia", *An-Nahl*, Vol. 7, No.2,( 2020) : 148

<sup>23</sup> Nurfiana dan Sakinah, "Zakat and its Study in Indonesia", *Milkiyah*, Vol.1, No.1, (2022) : 24

<sup>24</sup> Widi Nopriardo, "Development of Regulations on Zakat in Indonesia", *Syari'ah (Juris)*, Vol. 18, No.1, (2019) : 73

<sup>25</sup> Suprima dan Holilur Rahman, "Regulation of Zakat Management in Indonesia", *Yuridis*, Vol. 6, No.1, (2019) : 140





The law in a broad sense covers the entire normative rule that governs and becomes a code of conduct in public and state life supported by a certain system of sanctions against any deviation against it. Such normative forms of rule grow themselves in the association of public and state life or are deliberately made according to the procedures specified in the organizational system of power in the society concerned. The more advanced and complex a society's life becomes, the more it develops on the demands of regularity in patterns of behavior in people's lives. The need for this rule then gave birth to an organizational system that developed into a kind of organizational imperative<sup>26</sup>.

The establishment of legislation should take into account the rules of its formation, as follows: a. The philosophical basis in the establishment of legislation is that the legislation can be said to have a philosophical basis if the formula or norms get justification after philosophical review; b. The sociological basis in the establishment of legislation is that a rule of law can be said to have a sociological basis when in accordance with public beliefs, public legal awareness, values and laws living in society; c. The juridical basis in the establishment of legislation is that the legislation can be said to have a judicial basis if there is a legal basis, legality or basis contained in the provision<sup>17</sup> of the law higher in degrees. d. Political Foundation is a political policy line that becomes the next basis for the policy and direction of the implementation of the State government<sup>21</sup>.

The laws and regulations in Indonesia are hierarchical as stipulated in Article<sup>35</sup> paragraph (1) Law No. 12 of 2011, i.e. : 1). Constitution 1945 2). TAP MPR 3). Law/Perpu 4). Government Regulation 5). Presidential Regulation 6). Provincial Regulation 7). District/City Regulations<sup>28</sup>. This type and hierarchy determines the legal power of the legislation, the higher the rule, the stronger the legal force, and vice versa<sup>14</sup>. The meaning is that the legislation below should not be contrary to the above laws and regulations. The authority to establish local regulations stems from the attribution of authority i.e. granting by the Constitution of 1945, Article 18 paragraph (6) states that the Local Government has the right to establish local regulation<sup>52</sup> and other regulations to carry out regional autonomy and auxiliary duties<sup>29</sup>. To carry out regional autonomy and co-administration tasks, local governments can make regional regulations (Perda) to help carry out the concurrent authority. Local regulations are all regulations made by the local government to implement other regulations of a higher degree<sup>30</sup>.<sup>4</sup>

Public participation in the implementation of local government is one manifestation of the implementation<sup>54</sup> of democratic principles and state law which one of the characteristics is recognition of human rights, in relation to the establishment of legislation, specifically the establishment of local regulations, a regional regulation is considered accountable and transparent when involving the community as stakeholders proportionately, let alone in the preparation of local regulations concerning the life of the people. This is in accordance with one of the

<sup>17</sup> Jimly Asshiddiqie. *Constitutional Law And Pillars of Democracy*, (Jakarta : Sinar Grafika, 2012), 296

<sup>27</sup> *Ibid.*, 297

<sup>28</sup> Law No. 12 of 2011 on the Establishment of Legislation

<sup>29</sup> Constitution of the Republic of Indonesia year 1945

<sup>30</sup> M.Jeffri Arlinades Chandra, "Regional Regulations (Perda) of Syari'ah and Regional Regulations with Syari'ah Nuance in the Context of State Administration in Indonesia", *Al Ijarah*, Vol. 3, No. 1, (2018) : 76





elements mentioned by Arend Lijphart which is that in the formulation of a policy the government must accommodate the wishes of the people. This shows that the public has the right to submit its aspirations to every decision. So that the material content in the local regulations in accordance with the aspirations of the people<sup>31</sup>.

If we refer to the content material of the regulation stipulated in Article 14 of Law No. 12 of 2011, it is mentioned that "The material of the content of provincial regulations and district/city regulations contains content materials in order to maintain regional autonomy and auxiliary duties and accommodate special conditions of the region or further elaboration of the laws and regulations"<sup>32</sup>. The material content of regional regulations is also stipulated in Article 236 paragraph (3) of Law No. 23 of 2014 that "Perda contains the content of material: a. Implementation of regional autonomy and auxiliary duties; b. Further description of the provisions of the higher Legislation<sup>33</sup>. The same provision is also found in Article 4 of the Minister of Home Affairs Regulation Number 80 of 2015 concerning the Formation of Regional Legal Products which states that "Perda contains the following contents: a. Implementation of regional autonomy and auxiliary duties; b. Further elaboration of the provisions of the higher legislation<sup>34</sup>.

The content material in the framework of the implementation of regional autonomy and the auxiliary duties means that the establishment of the government must be based on the division of affairs between the Government, provincial government and regency/city government as stipulated in Law No. 23 of 2014 and other sectoral legislation. The material of the local charge in order to accommodate the special conditions of the region, contains the meaning that the regulation as a regulation that abstracts the values of the community in the area containing the material of the content of values identified as special conditions of the region. Further elaboration of the provisions of higher legislation means that the juridical establishment of the regulation is sourced to higher legislation. In other words, the establishment of a government must be based on the delegation of higher legislation.

The provisions of Article 9 paragraph (4) of Law No. 23 of 2014 are mentioned that "The Affairs of the Concision Government submitted to the region form the basis of the implementation of regional autonomy"<sup>35</sup>. This means that the affairs of the concision government are carried out by the local government as a form of the implementation of autonomy in the region. Where the area reserves the right to regulate its own area. This provision is then linked to the content material of the Regulation itself both stipulated in Article 14 of Law No. 12 of 2011, Article 236 paragraph (3) of Law No. 23 of 2014 and Article 4 of the Regulation of the Minister of Home Affairs No. 80 of 2015 on the Establishment of Regional Legal Products.

Thus, the attribution authority of local government is the business of concurrent government which is a mandatory and the choice is exercised by the local

<sup>31</sup> Jimly Asshiddiqie. *Constitutional Law And Pillars of Democracy...*, *Op. Cit.*, 256.

<sup>32</sup> Law No. 12 of 2011 on the Establishment of Legislation

<sup>33</sup> Law No. 23 of 2014 on Local Government

<sup>34</sup> Regulation of the Minister of Home Affairs No. 80 of 2015 on the Establishment of Regional Legal Products

<sup>35</sup> Law No. 23 of 2014 on Local Government



government in the form of a Regional Regulation (Perda)<sup>36</sup>. Based on the above exposure, it is very clear that the authority of the local government in establishing Regional Regulations only for concurrent affairs, whether it is optional or mandatory. Meanwhile, absolute affairs and the general government of the local government is not authorized to form the Regional Regulations. Article 10 paragraph 1 of Law No. 23 of 2014 stated that absolute government affairs included foreign policy, defense, security, tax, monetary and fiscal national as well as religion. In the explanation of the chapter, it is also explained that "religious matters" include designating a nationally applicable religious holiday, recognizing the existence of a religion, establishing policies for religious life, and so on. Regions can provide grants for religious activities to increase the participation of Regions in developing religious life, such as the organization of the Musabaqah Tilawatil Qur'an (MTQ), the development of religious education, and so on.

So regarding the issue of Zakat according to the author, there is no legal loophole for local governments to regulate it in the form of Regional Regulations, because Zakat is an absolute government affair as stipulated in Article 10 paragraph 1 of Law No. 23 of 2014. Likewise, in the explanation of the article according to the author Zakat is included in religious life and it is not the authority of the local government. For that reason, if the Zakat issue is indeed going to be regulated by the local government, then the legal umbrella should not be in the form of a Regional Regulation but in the form of a Regulation of the Head of Regions (Rules of Governor, Mayor or Regent).

### **The Urgency of Zakat Management Regulated by Regional Regulations**

One of the most frequently discussed issues in Riau Province is related to zakat, this is none other than because the majority of the population are Muslim and the potential of zakat is great. Zakat as one of the pillars of Islam is the obligation of every Muslim who can afford it and is reserved for those who are entitled to receive it<sup>37</sup>. With proper management, zakat is a potential resource utilized for the advancement and general welfare of the whole community. Sociologically, zakat is a reflection of the sense of humanity, justice, faith, and deep dignity that must arise in the attitude of the rich<sup>38</sup>. This zakat regulation needs to be regulated by the State, in order to improve the effectiveness and efficiency of services in zakat management; and increase the benefits of zakat to realize public welfare and reduce poverty<sup>39</sup>, the question is whether the local government has the authority to make local regulations on zakat. The Province of Riau and the Regencies/Cities in Riau want that zakat can be regulated by a Regional Regulation (Perda), even though there are already laws governing it and the agency that manages it.

According to the author, the regional government is not legally authorized to make a regional regulation on zakat. Perda Zakat is not in the context of

<sup>36</sup> Dani Muhtada, "The Legal Umbrella of Zakat in the Era of Regional Autonomy: Considering the Relevance of the Post-Law Zakat Regional Regulation No. 23 of 2011", *Ziswaf*, Vol. 3, No. 1, (2016) : 78

<sup>37</sup> N. Oneng Nurul Bariyah, "The Dynamics of Zakat and Waqf in Indonesia", *Al Ahkam*, Vol. XVI, No.2, (2016) : 218

<sup>38</sup> Ahmad Wahyu Herdianto, "The Role of The State in Optimizing Zakat in Indonesia", *Jurisdictie*, Vol. 2, No. 1, (2011): 20

<sup>39</sup> Muhammad Azis, "Regulation of Zakat in Indonesia; Efforts Towards Professional Management of Zakat", *Al-Hikmah*, Vol.4, No.1, (2014): 36



implementing regional autonomy and assistance tasks, nor is it in the category of accommodating special regional conditions, let alone local content. Related to higher legislation and zakat policy regulations, there is no one article that delegates zakat regulatory authority to the Local Government. Thus, the Local Government is not authorized to establish the Perda of zakat as a shelter for specificity, diversity and distribution of people's aspirations in the region, but still in the corridors of the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of 1945<sup>40</sup>.

Riau Province is one of the provinces that has drafted a Draft Local Regulation on zakat, but was not given a Register Number by the Minister of Home Affairs. So to address the vacancy of regional legal products related to zakat for members of the State Civil Apparatus (ASN) of Riau Province, the Governor of Riau issued the Governor's Instruction. Based on an interview with the Head of the Law and Human Rights Bureau, Ms. Elly Wardhani, regarding the Governor's Instruction she stated that the authority of government under Law No. 30 of 2014 on Government Administration, is the power of government agencies and/or government officials or other state organizers to act in the realm of public law. Any decision and/or action shall be determined and/or made by an authorized body and/or government official. According to her, the authority in regulating zakat in every Local Government becomes a right and in addition, the instruction of Riau Governor Mr. Syamsuar is to carry out Riau Provincial Government No. 2 of 2009, on management of zakat, which has been judged to be less than maximum.

As it is known that the formation of Perda through a very long process before being enacted in a regional paper. Unlike the drafting of the Law, the Bill if it has been approved by the House of Representatives and the President then if the President does not sign within 30 days then it is valid to become a Law and must be passed into the statute book. After obtaining joint approval of the Regional House of Representatives (DPR) and Regional Heads, the Regional Regulation Draft can not be immediately validated into regional regulations and promulgated in regional papers but must pass through *an executive preview* mechanism by the Central Government through the Minister of Home Affairs, after being declared eligible, a Register Number will be obtained then it can be promulgated in regional papers.

After Law No. 38 of 1999 was replaced with Law No. 23 of 2011 on management of zakat, the determination of Perda zakat by the Local Government is still a trend, there is even a regulation of the regional head (Perkada) that also regulates the management of zakat, infak, shadaqah, waqf and other donations recognized and some are not recognized in the sense of not passing *executive preview*<sup>41</sup>. The draft local regulation on zakat that has been established by Riau Provincial Government does not get the Register Number so that in accordance with the Regulation of the Minister of Home Affairs No. 80 of 2015 on the Establishment of Regional Legal Products Article 103 paragraph (1) : "The draft regulation that has not

<sup>40</sup> N. Oneng Nurul Bariyah, "Study of Local Regulations (Perda) on Zakat Management in Indonesia", *Misykat Al Anwar*, Vol. 29, No. 1, (2018) : 18

<sup>41</sup> Mhd. Abduh Saf, "Effectiveness of Zakat Management Government in Mojokerto City and Sidoarjo Regency", *Al Daulah*, Vol. 5, No. 2, (2015) : 325





obtained the Register Number as referred to in Article 102 paragraph (1) cannot be determined by the Regional Head<sup>56</sup> and cannot yet be enacted in the regional sheet"<sup>42</sup>.

As for the reasons given by the Minister of Home Affairs related to the release of Register Number for Regional Regulation of Zakat of Riau Province, it is<sup>12</sup> clear according to the regulation stipulated in the Local Government<sup>48</sup> Law and Regulation of the Minister of Home Affairs that has been explained above the content material of the regional regulation shall contain the affairs of the government that becomes the local authority that is the concurrent affairs while zakat<sup>30</sup> enters into the category of religious fields that are the absolute authority that is<sup>28</sup> the absolute authority of the Central Government. Then the regulation of zakat in Law No. 23 of 2011 on zakat management along with various implementing regulations and policy regulations concerning Zakat is an attempt by the Central Government to unification of zakat management law without any delegation of authority for local government to regulate Zakat in local regulations<sup>68</sup>, especially in the regional head regulations.

The author considers that the Central Government<sup>5</sup> is inconsistent in conducting *executive preview* in order to carry out the mandate of<sup>32</sup> the Minister of Home Affairs Regulation No. 80 of 2015, it can be seen that; *First*, the Central Government in this case the Minister of Home Affairs does not issue the R<sup>63</sup> Register Number of Riau Province regional regulations on the grounds that it is not the authority of the local government to regulate absolute authority in the local regulations but in West Nusa Tenggara (NTB) Province has local regulations on Zakat, No.9 Year 2015<sup>43</sup>. As a comparison between the two, it is presented in the following table:

**Table 2.** Comparison of The Regional Regulations of West Nusa Tenggara (NTB) Province and The Draft Regional Regulations (Ranperda) of Riau Province

| No | Specifications            | Regional Regulation of West Nusa Tenggara Province No. 9 year 2015 on Zakat, Infaq and Shadaqah | Draft Regional Regulation of Riau Province 2018 on Zakat Management                |
|----|---------------------------|---|--|
| 1. | Forms                     | Regulation: Applying out in the sense of the local community of NTB Province is binding         | Regulation: Applying out in the sense that the people of Riau Province are binding |
| 2. | Agencies                  | Provincial Parliament and Regional Head <sup>61</sup>   | Provincial Parliament and Regional Head  |
| 3. | <i>Executive Previews</i> | Minister of Home Affairs  | Minister of Home Affairs   |
| 4. | Number of Articles        | 21 Articles   | 64 Articles  |

<sup>42</sup> Regulation of the Minister of Home Affairs No. 80 of 2015 on the Establishment of Regional Legal Products<sup>66</sup>

<sup>43</sup> Regional Regulation of West Nusa Tenggara No. 9 of 2015 on Zakat, Infaq and Shadaqah





|    |          |   |   |
|----|----------|---|---|
| 5. | Contents | Regulates the principles and objectives, BAZNAS and LAZ of Province, the Collection of Zakat, Mustahik, Muzaki, Utilization, Supervision, and Financing | Regulating the principles and objectives, objects and subjects of zakat, recipients of zakat, assets of zakat, BAZNAS and LAZ of Province, distribution of zakat, utilization, community participation, reporting, and administrative sanctions |
| 6. | Status   | Get a Register Number   | Did not get a Register Number   |

**Source :** Processed from Perda Zakat of West Nusa Tenggara (NTB) and Academic Manuscript of Ranperda Zakat Riau

According to Table 2 at point 5 above can be explained that there are no fundamental differences or principles in the Riau Provincial Government which is more and more complete than the West Nusa Tenggara Provincial Government (NTB) (Ranperda Riau contains 64 Articles while the NTB Regulation contains 21 Articles) by including is related to the distribution of Zakat, public participation, reporting, and administrative sanctions. It can thus be concluded that the two Regional Regulations are in substance the same. From this explanation, the executive implementation of the review in this case the domestic ministry should treat the two Regional Regulations, which are the same, not give a registration number. This is what shows the government's inconsistent attitude as the party to the *executive preview*.

From the above differences, it is not appropriate if still issued register number for perda NTB because zakat is in the scope of the field of religion in accordance with Law No. 23 of 2014 which is the religion included in absolute affairs, this means that it can only be bestowed by the President as head of government to vertical agencies or to the governor as a representative of the central government not to the local government. Considering the establishment of local regulations is the authority of the the Regional House of Representatives with the mutual approval of the Regional Head. It is very clear that the Central Government is inconsistent in conducting *executive previews*; *Second*, in the same year that is 2018 the central government through the Governor issued a Register Number for the Government of Bengkalis Regency on Zakat which is No.3 of 2018<sup>44</sup>. While the draft regional regulation of Riau Province on Zakat does not get register number. For more details on the comparison of bengkalis district regulations with the Draft regional regulations of Riau Province are presented in the following table:

**Table 3.** Comparison between The Regional Regulations of Bengkalis Regency and The Draft regional regulations of Riau Province

<sup>44</sup> Regional Regulation of Bengkalis No. 3 of 2018 on Zakat, Infaq and Shadaqah



| No. | Specification             | The Regional Regulation of Bengkalis Regency No. 3 of 2018 on Zakat, Infaq and Shadaqah   | The Draft Local Regulations Of Riau 2018 On Zakat Management  |
|-----|---------------------------|---|---|
| 1.  | Forms                     | Regulation: Applying out in the sense that the people of Bengkalis Regency are binding  | Regulation: Applying out in the sense that the people of Riau Province are binding  |
| 2.  | Agencies                  | District Parliament and Regional Head   | Provincial Parliament and Regional Head   |
| 3.  | <i>Executive Previews</i> | Governor as Representative of the Central Government  | Minister of Home Affairs  |
| 4.  | Articles                  | 39 Articles   | 64 Articles   |
| 5.  | Contents                  | Regulating the principles and objectives, subjects, types and objects of zakat, BAZNAS and LAZ of district, zakat collection units, guidance and supervision, zakat collection, mustahik, muzaki, zakat on trade and profession, distribution, utilization and reporting, financing, community participation , Administrative Sanctions and Criminal Provisions | Regulating the principles and objectives, objects and subjects of zakat, recipients of zakat, assets of zakat, BAZNAS and LAZ of Province, distribution of zakat, utilization, community participation, reporting, and administrative sanctions |
| 6.  | Status                    | Get a Register Number   | Did not get a Register Number   |

**Source:** Processed from Perda Zakat of Bengkalis Regency and Ranperda Zakat of Riau Province

From the comparison, there is a difference in terms of the number of articles, the regional regulation of zakat in Bengkalis Regency is more concise consisting of 12 articles which then this regional regulation is further regulated by The Regent's 47 regulation No. 2 of 2020 concerning The Instructions for Implementation of Regional Regulation of Bengkalis Regency No. 3 of 2018 concerning The



Management of Zakat, Infak and Shadaqah <sup>45</sup>. In terms of content, it is interesting that the regional regulations of zakat in Bengkalis Regency regulate about trade and profession zakat whereas the local regulations are binding to the public not just a certain group of people. Then, in terms of *executive preview* at first glance it does look different between the Governor as a representative of the central government and the Minister of Home Affairs but both remain one, under the auspices of the central government. Thus, there is a Perda of zakat given a Register Number and Ranperda of zakat which is not given a Register Number even though it is done by a different institution. Ideally it should be the same and in line with the disparity, this creates a confusion for the local government over the central government's inconsistency in implementing the mandate of local government legislation.

On the other hand, it is undeniable that the urgency of zakat management is regulated by local regulations is as an effort made so that zakat collection runs maximum because of its great potential. For example, in Bengkalis Regency, since the local regulation on zakat, the Local Government of Bengkalis Regency received more zakat income than the previous years. The improvement can be seen in the following table:

**Table 4.** The Acceptance of Zakat at Amil Zakat Agency in Bengkalis Regency

| No | Years | Total             |
|----|-------|-------------------|
| 1  | 2016  | Rp. 265.000.000   |
| 2  | 2017  | Rp. 811.727.027   |
| 3  | 2018  | Rp. 1.593.129.791 |
| 4  | 2019  | Rp. 2.138.549.372 |

**Source:** National Zakat Agency of Bengkalis

In addition to the increased income of zakat, the number of Muzaki also increased. By the increasing of income Muzaki also increased certainly brings blessings to Mustahik. The improvement can be seen in the following table:

**Table 5.** Recapitulation of Muzaki and Mustahik on National Zakat Agency of Bengkalis

| No | Years | Muzaki | Mustahik |
|----|-------|--------|----------|
| 1  | 2017  | 134    | 1327     |
| 2  | 2018  | 476    | 1068     |
| 3  | 2019  | 1156   | 1545     |

**Source:** National Zakat Agency of Bengkalis

Overall, the receipt of zakat in Riau Province on 2019 is fantastic. With the amount of income in zakat, it can help the Muslim community in terms of the economy so as to indirectly help the Local Government realize social welfare. The amount of receipt and expenditure of zakat in Riau Province can be seen in the table below:

<sup>45</sup> Regent Regulation of Bengkalis No. 2 of 2020 on Guidelines for Implementation of Bengkalis Regency Regulation No. 3 of 2018 on The Management of Zakat, Infak and Shadaqah



**Table 6.** Zakat Receipts and Expenditures for Riau Province 2019

| No               | LPZ                                  | Receipt                   | Expenditure               |
|------------------|--------------------------------------|---------------------------|---------------------------|
| 1.               | BAZNAS Riau                          | 12.650.479.972.00         | 9.132.129.518.00          |
| 2.               | BAZNAS Kampar                        | 10.238.430.406.00         | 10.460.536.357.00         |
| 3.               | BAZNAS Kuantan Singingi              | 7.322.990.609.00          | 8.191.024.776.00          |
| 4.               | BAZNAS Kabupaten Siak                | 15.974.957.947.00         | 11.942.548.229.00         |
| 5.               | BAZNAS Kota Dumai                    | 5.778.374.063.00          | 5.106.526.292.00          |
| 6.               | BAZNAS Bengkalis                     | 2.138.549.372.00          | 1.732.007.654.00          |
| 7.               | BAZNAS Indragiri Hulu                | 2.190.202.960.00          | 2.137.063.685.00          |
| 8.               | BAZNAS Rokan Hulu                    | 4.551.078.296.00          | 4.503.082.967.00          |
| 9.               | BAZNAS Kota Pekanbaru                | 6.828.266.132.00          | 5.848.393.800.00          |
| 10.              | BAZNAS Kep.Meranti                   | 1.801.755.997.00          | 1.828.767.158.68          |
| 11.              | BAZNAS Indragiri Hilir               | 4.653.324.383.00          | 4.770.971.546.00          |
| 12.              | BAZNAS Rokan Hilir                   | 4.662.268.600.00          | 1.829.734.600.00          |
| 13.              | BAZNAS Pelalawan                     | 6.250.292.668.00          | 5.674.731.610.00          |
| 14.              | LAZ Rumah Zakat Riau                 | 7.644.022.551.00          | 7.331.679.436.00          |
| 15.              | LAZ Ibadurrahman Bengkalis           | 4.428.698.122.50          | 4.989.407.485.13          |
| 16.              | LAZ Swadaya Ummah                    | 2.691.746.936.00          | 2.361.326.623.00          |
| 17.              | LAZ Madani Human Care Dumai          | 3.000.505.953.00          | 2.976.365.226.00          |
| 18.              | LAZ Izi Riau                         | 2.639.502.744.00          | 2.845.388.439.00          |
| 19.              | LAZ Dompot Dhuafa Riau               | 4.247.589.902.00          | 3.731.964.389.00          |
| 20.              | LAZ Dewan Da'wah Islamiyah Indonesia | 1.221.499.445.00          | 902.756.316.00            |
| 21.              | LAZ Rumah Yatim Ar Rohman Indonesia  | 2.434.399.985.39          | 2.435.932.409.00          |
| 22.              | LAZ Global Zakat                     | 5.656.197.041.00          | 5.656.197.041.00          |
| 23.              | LAZ Muhammadiyah Riau                | 2.672.730.978.00          | 2.553.670.750.00          |
| <b>The Total</b> |                                      | <b>121.677.865.062.89</b> | <b>108.942.106.306.00</b> |

**Source:** National Zakat Agency (BAZNAS) of Riau Province

Of course the question is where exactly the local regulation on zakat is regulated, while the local government is not authorized to regulate it even though the State Civil Apparatus (ASN) in the area is obliged to pay zakat profession, can it be regulated through the regulation of the Head of the region (Perkada)?. According to the author, zakat cannot be regulated through Perkada, in accordance with Hans Nawiasky's theory that the legislation is hierarchical whereby the lower legislation should not be contrary to the higher legislation, in the sense that the lower regulation is the implementer of higher regulations so that it cannot be regulated by perkada because Perkada is the implementing regulation of the local regulation (Perda) while the local government is not authorized to regulate zakat through Perda because it is





not a concurrent but absolute affairs<sup>46</sup>, because ASN has an obligation to pay zakat of the profession then it can be regulated through the Governor's Instruction, because the instruction is binding inwards instead of binding out to the public. This is as done by the Riau Provincial Government after the draft of regional regulation on zakat stipulated not to obtain register number from the Minister of Home Affairs, Governor of Riau through The Governor's Instruction No. 1 of 2019 governing the Collection of Zakat Income (Profession) of State Civil Apparatus (ASN) and Employees of Regional Owned Enterprises (BUMD) in Riau Provincial Government Environment<sup>47</sup>.

### Conclusion

Zakat is included in one of the absolute governmental affairs in the field of religion which is the absolute authority of the Central Government, that the local government is not authorized to regulate about zakat through Regional Regulation (Perda). The content of Regional Regulations in the context of implementing regional autonomy and assistance tasks and implies that the formation of regional regulations must be based on the division of affairs between provincial, district or governments in the sense of concurrent affairs. So, legally it is appropriate if the Central Government through the Minister of Home Affairs does not issue a Register Number for Provincial Zakat Regional Regulation 2018. Nevertheless, the Central Government must be consistent in conducting *executive previews*, because for West Nusa Tenggara (NTB) Province it turns out the Central Government issued Register Number against Perda No. 9 of 2015 on Zakat, Infaq and Shadaqah as well as Bengkalis Regency also obtained Register Number from the Governor as a Representative of the Central Government towards Regional Regulations (Perda) No. 3 of 2018. Zakat, Infaq and Shadaqah, this caused a confusion for the Local Government. On the other hand, the management of zakat regulated by Regional Regulations has a good impact. In Bengkalis regency, the receipt of zakat has increased significantly compared to before the existence of Regional Regulation on zakat.

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