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CASE STUDY

Who May Collect Zakat? The Constitutional Court and Zakat Institutions in Decision No 86/PUU-X/2012

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ABSTRACT

In 2012 five zakat foundations and others asked the Indonesian Constitutional Court to strike down parts of Law No 23 of 2011 on Zakat Management. They said the Law centralised zakat in a state body, made community zakat institutions subordinate to it, made licences hard to get and threatened traditional alms collectors with prison. This case study reads the Court's Decision No 86/PUU-X/2012, pronounced on 31 October 2013, and asks what it decided, on what reasoning, and what it teaches beyond the case. The Court rejected the attack on the state zakat agency (BAZNAS) and on the reporting duty of licensed institutions, and it accepted that the state may regulate the social side of worship. It granted the petition in part: community groups, individual Muslim leaders and mosque managers in places not reached by BAZNAS or licensed institutions need only notify the authorities, the sharia supervisor may be internal or external, and the criminal provisions do not reach those who have notified. The lessons are that state and community zakat bodies may co-exist, that licensing may differ with reach, and that criminal law should not reach traditional collectors. The case rests on the decision text alone.

Keywords: zakat; Constitutional Court; zakat institutions; licensing; Indonesia

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1. Introduction

Who may collect zakat in Indonesia? For a Muslim giver the question is practical: to whom may the zakat be paid so that the duty is discharged and the money reaches those entitled to it? For the state it is a question of order and accountability. For the zakat institutions that grew up in the community it is a question of whether they may continue to exist on their own terms.

Law No 23 of 2011 on Zakat Management answered it by setting up a national zakat agency (BAZNAS) and by allowing communities to form licensed zakat institutions (LAZ) that help it. Soon after the Law took effect, foundations that had run zakat institutions for years asked the Constitutional Court to strike down parts of it. This case study reads the Court's decision, No 86/PUU-X/2012, which it pronounced on 31 October 2013.[1] It asks what the Court decided, why, and what the case teaches that goes beyond it.

2. Method and Source

The case is the decision itself. The article uses the official copy of the decision (110 pages) and the official copy of the Law, both read on 2 November 2026. It reports the arguments of the petitioners and the government as the decision records them, and the reasoning of the Court as it states it. It does not use interviews, later practice, or commentary. It does not follow later changes in the law, and in particular it does not examine amendments made after 2013. The article does not give an opinion on whether the Court was right.

3. The Law and the Petition

Under Law No 23 of 2011, BAZNAS is formed by the Government, sits in the capital and is responsible to the President through the Minister; it is the body with authority to manage zakat nationally (Articles 5 to 7). Communities may form LAZ to help BAZNAS (Article 17). A LAZ needs a licence from the Minister, which is given only if it meets conditions that include registration as an Islamic community organisation that runs education, preaching and social work, the form of a legal entity, a recommendation from BAZNAS, a sharia supervisor, technical and financial ability, non-profit status and a programme, and willingness to be audited (Article 18(2)). It must report audited results to BAZNAS (Article 19). Anyone who acts as an amil of zakat without a licence commits an offence punishable by up to one year of confinement and a fine of up to Rp 50 million (Articles 38 and 41).[2]

The petitioners were foundations of the zakat sector, among them Dompet Dhuafa, Rumah Zakat Indonesia, Yatim Mandiri, Portal Infaq and Dana Sosial Al Falah Malang. They argued that the Law centralised zakat management under BAZNAS, put community institutions in a subordinate position, imposed licensing conditions that were hard to meet and could turn traditional collectors into criminals.[3] The Government answered that BAZNAS and LAZ were to work together and that the Law did not mean centralisation.

4. What the Court Decided

Table 1 sets out the provisions attacked and the outcome. The Court decided with nine judges and granted the petition in part.

[1]Constitutional Court of Indonesia, Decision No 86/PUU-X/2012 on the review of Law No 23 of 2011 on Zakat Management (pronounced 31 October 2013).

[2]Law No 23 of 2011 on Zakat Management, Articles 5–7, 17–19, 38 and 41.

[3]Decision No 86/PUU-X/2012, the summary of the petition and the statement of the Government (Government's position: BAZNAS does not mean centralisation, but synergy between community and state).

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Provision	The attack	The Court
Articles 5 to 7 (BAZNAS)	Centralisation of zakat in a state body	Rejected. The form of the body is a choice of legal policy; a national body that works with existing amil institutions does not hinder the rights claimed
Articles 17 and 19 (LAZ help BAZNAS; reporting)	Community institutions made subordinate	Rejected. Reporting is an administrative duty that does not interfere with collecting and distributing; lower performance of BAZNAS is not a constitutional issue
Article 18(2)(c) (recommendation of BAZNAS)	BAZNAS decides who may exist	Rejected. BAZNAS only advises; the Minister decides on the licence
Article 18(2)(a) and (b) (form and registration)	Foundations forced to change form	Granted conditionally. Organisations and legal entities need a licence, but groups of persons, individual Muslim leaders and mosque managers in places not reached by BAZNAS and LAZ need only notify
Article 18(2)(d) (sharia supervisor)	Unclear and burdensome	Granted conditionally. The supervisor may be internal or external
Article 18(2)(e) to (h) (ability, non-profit, programme, audit)	Burdensome	Rejected in the rest. The Court treats these as requirements that serve good management and accountability
Articles 38 and 41 (offence of acting as amil without licence)	Criminalises traditional collectors	Granted conditionally. "Any person" does not include the groups and persons above who have notified the authorities

Table 1. Provisions of Law No 23 of 2011 challenged in Decision No 86/PUU-X/2012 and the outcome. Source: the decision, summarised for this article.

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5. The Reasoning

On centralisation the Court said that the form of BAZNAS, its seat and its being non-structural and responsible to the President through the Minister are matters of legal policy, because the Constitution does not limit them. It read the creation of a national body as strengthening and linking the services already given by community institutions and individual amil, so that it did not obstruct the rights to associate, to build society and to hold beliefs.[4]

On licensing, the Court held that some conditions are in themselves proper for any body that distributes zakat: that it works in Islamic religious affairs, is non-profit, has a plan and has the ability to carry it out.[5] On the sharia supervisor, it accepted internal supervisors but stressed their independence, and it allowed

[4]Decision No 86/PUU-X/2012, considerations [3.15.3] and [3.15.4].
[5]Decision No 86/PUU-X/2012, consideration [3.17.1].

external supervisors for institutions without an internal one.[6] It also took account of a change that happened while the case was pending: a new law on community organisations (Law No 17 of 2013) altered the legal setting of the registration conditions in Article 18(2)(a) and (b).[7]

On criminal liability, the Court accepted that the state has authority to regulate worship where it touches the interests of society, and that the givers of zakat need protection for the certainty that their zakat reaches its recipients. It nevertheless held that "any person" was too wide, because it could reach groups and individuals who have collected zakat in their communities for generations.[8]

6. What the Case Teaches

Four lessons go beyond the case. First, state and community zakat bodies may exist side by side. The Court did not choose between them; it read the Law as linking them. Second, licensing may differ with reach: a formal licence for organisations, and a simple notice for traditional collectors in places the national system does not reach. Third, supervision of sharia compliance needs independence, whether the supervisor sits inside or outside the institution. Fourth, criminal law is held back where the activity is a long-standing community practice that the legislator did not mean to punish.

A question for further study arises from the decision's test of "places not reached by BAZNAS and LAZ". That test was written for mosque managers and community leaders. Whether and how it applies to a person who collects zakat through social media across the whole country is not addressed in the decision, and it deserves its own analysis.

7. Conclusion

The decision left the structure of the zakat law intact: a national agency, licensed institutions that report to it and a licence regime backed by criminal law. It narrowed that structure at its edges, by lowering the formal threshold for community groups and individuals who serve places the system does not reach and by limiting criminal liability. The case is a useful model for how a court can accept state regulation of religious giving while protecting community practice. Its limits are those of a decision read alone: a study of practice after 2013 would show whether the notice route has been used and what happened to the groups it was meant to protect.

References

Constitutional Court of Indonesia, Decision No 86/PUU-X/2012 (review of Law No 23 of 2011 on Zakat Management), pronounced 31 October 2013.

Law No 17 of 2013 on Community Organisations, as mentioned in the decision.

Law No 23 of 2011 on Zakat Management (State Gazette 2011 No 115).

[6]Decision No 86/PUU-X/2012, consideration [3.18.1].
[7]Decision No 86/PUU-X/2012, consideration [3.17.2].
[8]Decision No 86/PUU-X/2012, considerations [3.19.1] and [3.19.2].

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