

SANCTIONS ON MUZAKKI IN THE COMPILATION OF SHARIA ECONOMIC LAW IN THE REVIEW OF MAQASHID SYARIAH JASSER AUDA

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Abstract

This research is based on the existence of Article 684 of the Supreme Court Regulation (Perma) Number 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES) which regulates sanctions for muzakki who do not pay zakat, this provision is not implemented in practice. This condition indicates the incompleteness of the regulation of zakat sanctions resulting in its implementation in Indonesia tending to be understood as a voluntary moral obligation. This phenomenon is reviewed using the framework of the six elements of maqashid sharia proposed by Jasser Auda, namely cognitions, holism, openness and self-renewal, interrelated hierarchy, multi-dimensionality, and purposefulness which are the measures of benefit in Islamic law. The aim is to reveal the problems that exist in the regulation of sanctions for muzakki in Article 684 KHES so that the regulation is not implemented. The method used in this normative legal research is a statutory approach and analyzed descriptively analytically. The results of this study indicate that there are deficiencies in the rules of sanctions for muzakki who do not pay zakat in Article 684 of the KHES, so that the article cannot be implemented. Among them are the inconsistency of norms with fiqh, unfair imposition of sanctions, traditions of how to pay zakat which are factors in the inability of sanctions to be implemented, incomplete formal legal rules in enforcing zakat sanctions, inconsistencies with existing legal realities, ambiguity in the composition of articles which causes confusion in interpreting articles, as well as the non-recognition of KHES sanctions in the hierarchy of laws and regulations, and the unavailability of adequate formal law to realize the benefit.

Keyword: *Sanction, The Compilation Of Sharia Economic Law, The Review Of Maqashid Syariah Jasser Auda*

INTRODUCTION

The mention of sanctions for those who do not pay zakat in Indonesia is contained in Article 684 of the KHES (Compilation of Sharia Economic Law) which is regulated in the Supreme Court Regulation (PERMA) Number 2 of 2008 which states: "Anyone who violates the provisions of this zakat will be subject to sanctions as regulated as follows: (a) Anyone who does not pay zakat will be subject to a fine in an amount not exceeding the amount of zakat that must be paid. (b) The fine as referred to in number (1) is based on a court decision. (c) Anyone who avoids paying zakat will be subject to a fine in an amount not exceeding (20%) the amount of zakat that must be paid. (d) The zakat that must be paid plus the fine can be forcibly taken by a bailiff to be handed over to the district/city regional zakat collection agency." Explicitly contains provisions for sanctions for muzakki who do not fulfill their zakat obligations, starting from the imposition of a fine in an amount not exceeding the amount of zakat owed, to the forced collection of zakat through a bailiff based on a court decision. However, this norm has never been implemented in practice. According to Fitri Fa'aizah, the sanctions for Muslims who do not pay zakat in Indonesia in Article 684 of the KHES are not recognized by some people. Because KHES within the scope of PERMA is not included in the types and hierarchy of statutory regulations.¹ Furthermore, according to Fitri Wahyuni et al., the absence of sanctions for muzakki (Muslims who are obliged to pay zakat) who do not pay zakat has led to the Indonesian public's assessment of zakat as voluntary.²

¹ Fitri Faa'izah, "Criminal Sanctions for Muzakki Who Do Not Pay Zakat (Study of Islamic Law, Aceh Qanun, and Indonesian Positive Law: Efforts to Positivise Islamic Law)", (Thesis, IAIN Antasari, 2016), 182-185.

² Fitri Wahyuni et. al., "The Urgency of Criminal Sanctions for Muzakki Who Refuse to Pay Zakat in the Context of Developing Zakat Law in Indonesia", *Selodang Mayang* 9, No. 3 (2023): 247. <https://doi.org/10.47521/selodangmayang.v9i3.350>

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The voluntary nature of zakat in practice in Indonesia can be demonstrated based on the National Zakat Literacy Index data (2024) released by BAZNAS (National Zakat Agency) which states that there are still groups in society, especially the Millennial and Generation Z generations. In the Millennial generation, 1.55 percent do not know the obligation to pay zakat and 1.69 percent think they do not feel the need or do not yet have awareness of zakat. Meanwhile, in Generation Z, 1.29 percent do not know the obligation to pay zakat and 1.72 percent think they do not feel the need or do not yet have awareness of zakat.³ This fact is also supported by data from BAZNAS (2024) regarding the actual national zakat collection in 2024, which only reached 4.9 trillion rupiah.⁴ However, according to KH Nasaruddin Umar (2025), the potential zakat target in Indonesia is estimated to reach 300 trillion rupiah per year.⁵ This suggests that there is still a gap between the target and the actual zakat collection in Indonesia, with two possible causes: the number of Indonesians who do not pay zakat and the number of unrecorded zakat payments because they are distributed without going through official institutions.

This explanation demonstrates that Article 684 of the KHES, which provides sanctions for non-zakat payers, has not yet been implemented. Furthermore, it indicates that the government has not demonstrated seriousness in enforcing sanctions for non-zakat payers. Yet, enforcing sanctions plays a strategic role in encouraging Muslims to comply with zakat as a religious obligation. As zakat is related to *hifzh ad-din* (maintaining religion), as well as *hifzh al-mal* (maintaining wealth) in the perspective of maqashid sharia, the problem of sanctions in article 684 KHES can be explored more deeply with maqashid sharia. The theory of maqashid sharia used is the famous maqashid sharia of Jasser Auda which has six elements, namely Cognitions (Human Understanding) which contains fiqh and urf as the formation of qanun (rules), Holism (Wholeness), Openness and Self Renewal (openness and self-renewal), Interrelated Hierarchy (hierarchy that influences each other), Multi-Dimensionality (Multidimensionality), and Purposefulness (Full of Purpose). According to Jasser Auda (2015) these six elements are an assessment to measure the level of achievement of benefit in Islamic law.⁶ The review of Jasser Auda's maqashid sharia theory against Article 684 of the KHES was conducted to reveal the problems that exist in the regulation of sanctions for muzakki in Article 684 of the KHES so that the regulation is not implemented. Therefore, this paper discusses the sanctions for muzakki who do not pay zakat in Article 684 of the KHES reviewed with Jasser Auda's Maqashid Sharia.

RESEARCH METHODS

This research is a normative legal research with the approach used is a statutory approach because it focuses on the problem, namely Article 684 KHES. The research is analyzed descriptively analytically to analyze and explain the data narratively from the existing information. The source of information is done through literature study (study document). Thus, the sources of information in this study were obtained from laws and regulations, legal books, journals and other sources of information including the internet related to the issue of sanctions for muzakki who do not pay zakat in Article 684 KHES and regarding the theory of maqashid sharia Jasser Auda.

RESEARCH RESULTS AND DISCUSSION

The sanctions for zakat payers who do not pay zakat under the KHES are contained in Article 684, which states that those who do not pay zakat will be subject to a fine of a maximum of zakat, the amount of which is based on a court decision. Furthermore, those who avoid paying zakat will be fined a maximum of 20 percent of the zakat amount. This fine can be forcibly handed over to a zakat collection agency by bailiffs. These regulations are reviewed from the perspective of the maqashid sharia according to Jasser Auda. As explained in the literature review, this review utilizes six features of Maqashid Sharia: Cognition (Fiqh and Urf), Holism, Openness and Self-Renewal, Interrelated Hierarchy, Multi-Dimensionality, and Purposefulness.

Cognitions (Fiqh)

In understanding human cognition as one of the features of the maqashid sharia for observing Islamic law, Jasser Auda conceptualizes a cognitive character system related to the formation of qanun.⁷ According to him, the

³ National Zakat Collection Agency, *National Zakat Literacy Index 2024 Millennials and Generation Z*, (Jakarta: Puskas Baznas, 2024), 86.

⁴ National Zakat Agency, *National Zakat Management Report End of 2024*, 2024, 19.

⁵ Rista Rama Dhany, "Zakat Potential in Indonesia Could Collect Rp 300 T/Year," Detik Finance, 2025, <https://finance.detik.com/berita-ekonomi-bisnis/d-7829821/potensi-zakat-di-ri-bisa-terkumpul-rp-300-t-tahun>.

⁶ Jasser Auda, *Grounding Islamic Law through Maqasid Syariah*, trans. Rosidin and Ali Abd el-Mun'im (Bandung: Mizan, 2015), 98.

⁷ Jasser Auda, *Al-Maqasid*, trans. Ali Abdelmon'im (Yogyakarta: Suka-Press, 2013), 256.

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formation of qanun is a combination of urf and fiqh that best suits society and its cognition. As Article 684 of the KHES is one form of qanun or Islamic law that has been enacted, this article can be viewed in terms of its fiqh and urf. In the Islamic jurisprudence dimension, as explained previously, zakat is obligatory for every Muslim, as evidenced by both the Qur'an and the Sunnah. Therefore, the sanctions for failure to pay are strict, both in this world and the afterlife. This is also emphasized by Wahbah Az-Zuhaili (2017) in *Fiqh Islam wa adillatuhu* which is one of the references of KHES states that the punishment for those who do not want to pay zakat is punishment in this world and the hereafter. As the law of the hereafter is being thrown into hell and the threat of the Day of Judgment as stated in Surah At-Taubah verses 34 and 35. However, the punishment in this world is by taking his wealth and giving takzir in the form of a fine, and the ruler takes coercive measures by taking some of the money from him.⁸

The imposition of fines and coercive measures by the government can be seen in Article 684 KHES in letters a and b which read: "(a) Whoever does not pay zakat will be subject to a fine in an amount not exceeding the amount of zakat that must be paid." The explanation of this article can be explained more specifically from the book *Al-Mughni* by Ibn Qutamah. The wording of this article is in line with the opinion of the majority of fiqh experts such as Asy-Syafi'i, Imam Malik, and Imam Abu Hanifah that the imam/leader can take his zakat and add a fine as a sanction that does not exceed the zakat imposed. The agreement of the majority of scholars is also based on the obligation of zakat and the risks for those who do not pay it are absolute, which are sourced from the Qur'an and the Sunnah of the Prophet as categorized as sharia.⁹ Furthermore, in the current context, the imam is a government official with a duty. In point b of the article, the court, as the government agency authorized to issue its ruling, and point d, the bailiff is authorized to take coercive measures (collecting zakat and fines) to hand over to the zakat collection agency.

According to Ibn Qutamah, in cases of fraud or embezzlement of assets so that zakat can be avoided, there is a hadith which mentions this:¹⁰ "For every forty saimah camels (herded camels) there is zakat for one bintu labun camel (a camel that has a lifespan of two years), and the camel must not be separated from the count. Whoever pays zakat because he hopes for a reward, then he will be rewarded. And whoever is reluctant to pay it, then we will take it and (also take) half of his property; as an obligation among the obligations of Allah 'Azza wa Jalla. And Muhammad's family is not entitled to any of the zakat property." (HR. Abu Dawud no. 1575, An-Nasa'I no. 2444, Ahmad no. 220, Al-Hakim no. 398) The hadith is hasan, categorized as sunnah, requiring context for its application. Wahbah Zuhaili further supports this, stating that the confiscation of half one's wealth is a ta'zir punishment permitted by some Hanafi scholars.¹¹ Ta'zir is a punishment prescribed for a criminal offense, the determination of which is left to the competent government and is intended to educate the perpetrator.¹² Therefore, the confiscation of half one's wealth is not mandatory, but serves as a maximum benchmark for the amount that can be forcibly confiscated for those who commit fraud or avoid paying zakat.

Fraud or avoiding paying zakat in article 684 KHES is in letter C which reads: "Anyone who avoids paying zakat, will be subject to a fine in an amount not exceeding (20%) of the amount of zakat that must be paid". From the wording of the article there is a difference between the hadith and the KHES rules where the fine imposed according to the hadith above is 50 percent of the total assets, while in the article the maximum is 20 percent of the zakat that must be paid. However, because this punishment is ta'zir, the amount determined is the authority of the government, where this difference is the result of the cognition of Indonesian fuqaha. However, comparing the opinions of Islamic jurists with those of the Islamic Jurisprudence Council (KHES) regarding sanctions for those who do not pay zakat and avoid paying zakat seems contradictory. This is because the opinion of Islamic jurists states that those who do not pay zakat are given a maximum fine equal to the zakat imposed, while those who avoid paying zakat are fined half their assets. On the other hand, the Islamic Jurisprudence Council (KHES) provides a maximum fine equal to the zakat imposed for those who do not pay zakat but only 20% of the fine for those who avoid zakat. Thus, the Islamic Jurisprudence Council actually imposes a greater fine for those who do not pay zakat than for those who avoid it.

⁸Wahbah Az-Zuhaili, *Islamic Fiqh Wa Adillatuhu* (Jakarta: Gema Insani, 2017), 169.

⁹Ibn Qudamah, *Al-Mughni 3*, trans. Syarafuddin Khathab et al. (Jakarta: Pustaka Azzam, 2020), 435.

¹⁰Ibid.

¹¹ Qosim Khoiri Anwar, "Ta'zir Bil Mal Culture in the Perspective of Conventional Ulama," *Fikri* 1, no. 2 (2016): 382.

<https://doi.org/10.25217/jf.v1i2.19>

¹²Ibid., 362.

Cognitions (Urf)

Jasser Auda stated that urf is a good custom and habit approved by society.¹³ He also explained that there are two different opinions regarding urf. Maliki, Hanafi, and Altufi consider urf to be the same as textual evidence as long as it does not contradict the Qur'an and Sunnah. While other schools of thought consider urf a consideration in implementing law. The obligation of zakat also has urf as a supporting factor. For example, replacing dates and wheat with rice is customary in Indonesia. However, it is important to understand the urf aspect of zakat, which can be seen in how Indonesians pay zakat. Data from the Ministry of Religious Affairs in 2023 stated that Indonesians distribute zakat in various ways. The data shows that 11% of people distribute their zakat directly to mustahiq (recipients), 1.2% through religious leaders, 2% through foundations, 2% through Islamic boarding schools (pesantren), 22.6% through mosques and prayer rooms (musholla), 4.5% through UPZ (zakat collection units), 7.2% through Amil Zakat Institutions, and 49.4% through BAZNAS (National Zakat Agency), which accounts for almost half of the various methods of zakat distribution.¹⁴ Urf in Indonesia regarding how to pay zakat has various ways to and through whom the zakat is paid.

Zakat and tax (Ushr) have similarities: the collection of a portion of each individual's wealth for collective and social needs. However, unlike taxes, zakat differs from taxes, where only the Directorate General of Taxes, under the Ministry of Finance, has the authority to collect taxes. However, because the Directorate has the authority, it can monitor which parties are compliant with tax laws and impose administrative sanctions on those who fail to comply, following specific procedures. Not only the Directorate General of Taxes, but also the police can conduct investigations into tax crimes.¹⁵ The advantages of this tax system in Indonesia are actually reflected in the weaknesses in enforcing zakat sanctions, where it has become customary among the public to pay zakat through any means. This freedom of zakat payment is a weakness, indicating the absence of an authorized institution to conduct inspections, monitoring, investigations, or prosecutions for zakat defaulters, assisted by the police.¹⁶ Therefore, this factor is one of the reasons why Article 684 of the KHES is not effectively implemented.

Holism

Holism, in essence, is a comprehensive approach that broadens understanding and examines the causes and effects of the process of forming and enacting law. The goal is for the law to provide concrete answers to real-world problems. Jasser Auda's holism aligns with Gustav Radbruch's legal certainty, stating that law is fundamentally derived from existing reality and formulated for application to that reality.¹⁷ Article 684 of the KHES, as previously explained, has not been a concrete solution to prevent Muslims in Indonesia from failing to pay zakat. This is because the article is not implemented in practice. In her research, Fitri Fa'aizah stated that Article 684 of the KHES, concerning fines for muzakki who fail to pay zakat, which is considered a criminal offense, is considered merely a complement to the shortcomings of Law Number 23 of 2011 concerning zakat management.¹⁸ Article 684 KHES is a material criminal law that has a weakness, namely the lack of complete formal law or even an explanation of the article itself. Indeed, the formal law in the article is explained only at the court stage and coercive efforts (execution). However, the process of investigation, inquiry, prosecution as the formal criminal law stage before entering the court, where it becomes a 'reality' of the law enforcement process which is not mentioned in the rules of sanctions for muzakki who do not pay zakat. Therefore, the element of holism in Article 684 KHES is not fulfilled so it has not been implemented because it has not become a reality in the law enforcement process, which is also interpreted as not having legal certainty in Article 684 KHES.

Openness and Self-Renewal

An open and non-antipathetic attitude toward other environments and global developments is a prerequisite for Islamic law. Furthermore, this openness also entails self-correction, allowing it to adapt to all developments and challenges in Islamic law, ultimately achieving the common good, as evidenced by the wisdom behind its rules.

¹³Auda, *Grounding Islamic Law*, 102.

¹⁴Kamaruddin Amin, "Optimism in Managing Islamic Philanthropy," Ministry of Religious Affairs of the Republic of Indonesia, 2023, <https://kemenag.go.id/kolom/optimisme-pengelolaan-filantropi-islam-3sF5B>.

¹⁵ The legal basis can be seen in the Minister of Finance Regulation Number 15 of 2025, Law Number 6 of 1983, and Law Number 7 of 2021.

¹⁶Regulation of the Minister of Finance Number 15 of 2025, concerning Tax Audits.

¹⁷Eduard Awang Maha Putra, *Policy Regulations (Beleidsregel) in Indonesian Positive Law* (Bantul: Samudra Biru, 2024), 15.

¹⁸Faa'izah, *Criminal Sanctions for Muzakki*, 184.

In this element, Jasser Auda explains two aspects of Islamic law: changing the traditions of Islamic jurisprudence scholars and opening up to philosophy within the context of Islamic jurisprudence, taking into account a competent worldview.¹⁹ Fiqh is a factor in the formation of qanun, as explained in the Cognitions element. However, this element assesses whether Article 684 of the KHES has adapted to the competent world. Article 684 of the KHES, which is a form of qanun (enacted regulation) in Indonesia, has a difference in letter (c) regarding the avoidance of zakat. On the other hand, letter (a) regarding not paying zakat, letter (b) regarding the amount of the fine is determined by a court decision, and letter (d) regarding the execution of the court decision comes from fiqh which has been widely agreed upon by the majority of fiqh experts as explained in the book *Al-Mughni*. From the letters in the article, it is necessary to see it from a review of the competent worldview which according to Jasser Auda (2015) is built on a scientific basis and in accordance with its reality.²⁰ In letter (a) where the fine penalty does not exceed the principal value of zakat has shown the nature of proportionality which has been agreed upon by the majority of fiqh scholars, also has a limit that is not excessive, namely the maximum principal value of zakat, but the amount of the fine depends on the judge in imposing the amount of the fine. In letter (b) it is also in accordance with the competent worldview or its reality where the determination of the sanction depends on the judge's decision as with other criminal penalties, while letter (d) regarding the execution carried out by the bailiff has been in accordance with its reality where the execution of civil cases is carried out by the court through the bailiff. As the function of the bailiff is as the implementer of court decisions as in Article 54 number (2) of Law Number 48 of 2009 concerning Judicial Power, also enforcer of coercive measures as in civil regulations in Indonesia.

The difference is in letter (c) in article 684 KHES where only a maximum of 20 percent or one fifth of the zakat must be paid for those who avoid paying zakat or in other words commit fraud. In this case the hadith that is used as a reference comes from the hadith of Abu Dawud no. 1575 where in essence, those who are reluctant to pay zakat will have half their wealth taken by the authorities. Of course, this is burdensome, so according to Wahbah Zuhaili the sanction takes the form of a ta'zir which can be determined by the authorities on the level of the fine that has been determined. However, as explained in Cognitions, parties who avoid paying zakat are fined lower than those who do not pay zakat, where the imposition of sanctions is contrary to fiqh. This contradictory view also contradicts a competent worldview, which requires a realistic approach to legal decision-making. The reality of criminal law in Indonesia is also determined by the mens rea (criminal intent) of the perpetrator. This mens rea also influences the court's decision on whether to impose a sentence. If there is a greater element of intent, the penalty imposed will also be greater.²¹ As evasion and fraud are intentional, Article 684 (c) should carry a more severe penalty than Article 684 (a). Furthermore, there is a risk of multiple interpretations regarding article (c) regarding whether it is enforced through a court decision or not. Even Article 684 of the KHES lacks an explanation, which also raises the risk of multiple interpretations. If the regulation is understood textually, the imposition of fines for those who avoid paying zakat is not specified in a court decision. This is unlike those who fail to pay zakat who are fined through a court decision, as in Article (b).

However, the words "zakat that must be paid" in letters (c) and (d) have the same words so that it can be interpreted that if there is evasion in paying zakat, it can be taken by force by a bailiff which is not in accordance with the competent world in the field of procedural law. Because the bailiff carries out the implementation based on a court decision as in Article 54 number (2) of Law Number 48 of 2009. If there is no court decision, then the execution effort in the form of forced seizure cannot be carried out. Due to the conflicting nature of Article 684 of the KHES with Islamic jurisprudence and its inconsistency with reality, this regulation requires transparency and reform so that sanctions for those who do not pay zakat or who avoid it can be implemented properly and in accordance with reality.

Interrelated Hierarchy

In the mutually influencing hierarchy explained by Jasser Auda, each separate entity or part has a mutually influencing relationship as categorized based on concepts, so that these entities are included in a structured and interconnected framework, not differentiated and stand alone.²²

Each section of the letters in Article 684 of the KHES should influence and be interconnected with each other, ensuring a well-structured article. This can be seen from the following text:

¹⁹Auda, *Grounding Islamic Law*, 266.

²⁰Ibid .

²¹ Aris Munandar Ar. et al., "The Role of Intention (Mens rea) in Criminal Responsibility in Indonesia," *JIMMI* 1, no. 3 (2024): 240–52. <https://doi.org/10.71153/jimmi.v1i3.140>

²²Auda, *Grounding Islamic Law*, 90-91.

Anyone who violates these zakat provisions will be subject to sanctions as regulated below:

- (a) Anyone who does not pay zakat will be subject to a fine in an amount not exceeding the amount of zakat that must be paid.
- (b) The fines referred to in point (1) are based on a court decision.
- (c) Anyone who avoids paying zakat will be subject to a fine of an amount not exceeding (20%) of the amount of zakat that must be paid.
- (d) Zakat that must be paid plus a fine can be forcibly confiscated by a bailiff to be handed over to the district/city zakat collection agency."

In article letter (b) which reads: "The fines referred to in number (1) are based on a court decision." However, the use of letters in this article is not based on numbers. So if the interpretation of the regulation is taken textually, of course there are no sanctions for zakat violators based on a court decision. Thus, there is no influence of letter (b) on the articles on sanctions for zakat violators, namely in letters (a) and (c).

However, if it is considered that number (1) referred to in letter (a) in the article can be justified, there are also other problems in the context of the interrelated hierarchy in Article 684 KHES. In article letter (a) there is a connection and cause and effect with letters (b) and letter (d), where the party who does not pay zakat will be fined the maximum amount of zakat that has been imposed by him as in letter (a) and the provisions of the amount are determined by a court decision as in letter (b), then the execution of the fine that has been processed in court can be carried out by the bailiff to be given to the zakat collection agency. From the explanation, the articles in the letters are interconnected and related in cause and effect.

However, this differs from letter (c), which does not mention the determination of a court decision, so that article (c) has no connection to or influence from letter (b). This contradicts the hierarchical, mutually influencing nature of the formation of ideal Islamic law. In addition to not being connected to the substance of the article, Article 684 of the KHES is also not connected to the hierarchy of legislation in Indonesia, so that the article which contains criminal sanctions in the form of fines is also not in accordance with reality. In reality, criminal regulations in Indonesia which are based on Law Number 12 of 2011 Article 15 number (1) states that the material content regarding criminal provisions can only be included in Laws, Provincial Regulations, and Regency/City Regulations. However, the sanctions regulations in the KHES which contain criminal regulations in the form of fines are not included in the regulations that can contain criminal regulations that can be implemented. Therefore, legally, the criminal regulations in the KHES are not recognized.

Multi-Dimensionality

According to Jasser Auda, analyzing something, including within the field of Islamic law, requires incorporating other dimensions to avoid a monodimensional analysis.²³ Article 684 of the KHES, as a form of Islamic law, also has dimensions for discussion and analysis. These dimensions are fiqh (philosophical), tradition/urf (sociological), and statutory regulations (juridical).²⁴

First, the Fiqh (Philosophical) Dimension. Jasser Auda's discussion of multidimensionality exemplifies the case of establishing arguments. This case presents problems, such as the seemingly contradictory arguments (Ta'arud Al Adillah). This problem requires a broader perspective and multiple dimensions to find the answer.²⁵

In the context of the arguments explaining zakat, there are arguments that appear to conflict between the authority of the authorities to impose sanctions and consume the wealth of fellow Muslims. The argument underlying the authority/government's ability to impose sanctions is in the hadith from Bahz bin Hakim and narrated by Abu Dawud no. 1575, An-Nasa'I no. 2444, Ahmad no. 220, Al-Hakim no. 398 which reads: "For every forty saimah camels (pastored camels) there is zakat for one bintu labun camel (a camel that has a lifespan of two years), and the camel must not be separated from the count. Whoever pays zakat because he hopes for a reward, then he will be rewarded. And whoever is reluctant to pay it, then we will take it and (also take) half of his property; as an obligation among the obligations of Allah 'Azza wa Jalla. And Muhammad's family is not entitled to any of it. the zakat assets." However, this hadith seems to contradict the following propositions: "O you who believe, do not consume your neighbor's wealth in a false (false) manner, unless it is in the form of commerce based on mutual consent between

²³Ibid., 85.

²⁴ Muhammad Miftakhul Huda, "The Seimbangan (Larian) Tradition in the Proposal of the Lampung Pepadun Indigenous Community from the perspective of Maqasid Al-Syariah Jasser Auda" (Thesis, UIN Malang, 2023), 130-34.

²⁵ H. Alivermana Wiguna, *Understanding Maqashid Al-Syari'ah Perspective Khaled M. Abou El Fadl & Jasser Auda* (Sleman: Deepublish, 2021), 46.

you. Do not kill yourselves. Indeed, Allah is Most Merciful towards you." (QS Annisa: 28) and there is a hadith that reads: "Do not do wrongdoing. Indeed, it is not halal for a Muslim's property unless it is with the consent of its owner" (HR Imam Ahmad) Both of these verses mention the prohibition of taking other people's property which seems to contradict the hadith which permits taking property. However, with a multidimensional approach, the verse regarding the permissibility of taking property with the prohibition of taking property has a different context. Taking property in the context of imposing sanctions on those who do not pay zakat is permitted because zakat is an obligation and carries the risk of major sins such as the verse that reads: "And those who hoard gold and silver and do not spend it in the way of Allah, then give them notice (that they will receive) a painful punishment. On the day when it will be heated in the Fire of Hell, then their foreheads, sides, and backs will be ironed with it (and it will be said): 'This is your property which you kept for yourselves, so taste (the consequences of) what you kept.'" (QS At-Taubah: 34-35) Even people who do not want to pay zakat, then that person has become a *kufr* which is permissible to be killed as an apostate. Because the act of not paying zakat is included in lying to Allah SWT and the Messenger. During *Khulafaur Rashidin's* time, even groups that disobeyed and did not pay zakat were among those who were fighting. This has been done since the leadership of Abu Bakar Ash-Sidiq.

As written by Wahbah Az-Zuhaili (2017), these things also make the *ulama* agree that if a person or group of people does not pay zakat, then the authorities are obliged to fight them because of their disbelief. If one does not pay zakat due to ignorance, then the person is not said to be *kufr*.²⁶ The serious risk of not paying zakat means that there is the possibility of forcibly taking property from a party who is reluctant to pay zakat, as based on the hadith narrated from Bahz bin Hakim, but not more than half of his property. If you take more than what is determined by the hadith, then this is unjust.

Second Dimension of Tradition/Urf (Sociological) The problem with the provisions of Article 684 KHES is shown by the existence of traditions/urf of Indonesian society which have various ways of paying zakat as explained in the Cognitions element. This element also explains that because the urf of Indonesian society has various ways of paying zakat, this indicates the absence of an authorized institution in monitoring muzakki who do not pay zakat. In fact, with the prohibition of muzakki not paying zakat in the article, there should be an authorized institution to monitor and investigate the actions of muzakki who do not pay zakat.

Third, in the dimension of Legislation (Juridical), the provisions of Article 684 of the KHES relating to this dimension have been explained as in the elements of holism and interrelated hierarchy elements, where the regulation has two problems in the dimension of legislation. First, there is still a gap in formal law at the pre-trial stage, so that the regulation cannot be enforced. Second, Article 684 of the KHES which contains sanctions is not a regulation that can contain sanctions in the hierarchy of legislation in Indonesia, because the regulations that can contain sanctions are only Laws and Regional Regulations.

Of these three dimensions, only the *fiqh* dimension is unproblematic, as there are essentially no contradictory arguments underlying the sanctions for non-payers of zakat. However, the tradition/urf and statutory dimensions still face issues, as previously explained in the elements of cognition, holism, and interrelated hierarchy.

Purposefulness

Islamic law has a wisdom or purpose behind it. The purpose, or in other words, *maqashid*, in Islamic law is to achieve public benefit. This benefit is the sanctioning of those who do not pay zakat to avoid major sins, disbelief, and punishment in the afterlife. Furthermore, these sanctions are also a preventative measure against the benefits of zakat itself. The wisdom of zakat, based on the verses of the Quran, includes eliminating stinginess, creating peace, reducing economic inequality, and more.²⁷ From the wisdom above, it can be concluded that zakat can preserve religion (*hifz ad-din*), preserve the soul (*hifz an-nafs*), and preserve wealth (*hifz al-mal*). As explained above, the purpose of Article 684 of the KHES is clear: to encourage the Muslim community to pay zakat and to discourage non-payment, thereby achieving public welfare. However, it is important to understand that achieving public welfare requires the existence of law as a means (*wasa'il*). Jasser Auda emphasized that the greater the goodness of a law's purpose, the greater the obligation to have its means (*wasa'il*). Just as zakat possesses great goodness, the legal means of zakat are even more obligatory. Article 684 of the KHES, which regulates sanctions and procedures for those who fail to pay zakat and those who avoid paying it, is an example of the legal means (*wasa'il*) of zakat. However, the formal law as a means is still incomplete, so it is not implemented properly, as explained in the element of holism. Therefore, the purposefulness element in Article 684 of the KHES has not been achieved.

²⁶Az-Zuhaili, *Islamic Fiqh*, 170.

²⁷Khoirul Abror, *Fiqh of Zakat and Waqf*, Permata, Bandar Lampung, 2019, pp. 37-38.

CLOSING

Based on the six elements of the maqashid sharia according to Jasser Auda, Article 684 of the KHES still contains several shortcomings. These shortcomings lie in the content of the article, which is not in accordance with Islamic jurisprudence (fiqh) and its ambiguity. From a formal perspective, the article also shows a lack of enforcement and is inconsistent with existing legal realities. Furthermore, the shortcomings of the article also emphasize that the system of sanctions for muzakki who do not pay zakat still needs to be reviewed and strengthened by the Government. The review and strengthening of the sanctions for muzakki who do not pay zakat in Article 684 of the KHES need to be adjusted to Islamic jurisprudence, values of justice, and existing legal realities, and there is a need for implementing regulations to enforce sanctions for muzakki who do not pay zakat.

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