

# INCONSISTENCY OF LEGAL NORMS FOR THE CRIMINAL ACTION OF ZAKAT AS A SOURCE OF REGIONAL ORIGINAL INCOME IN ACEH

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**Abstract** - This study aims to explain the existence of Aceh Qanun Number 10 of 2018 concerning Baitul Mal as the implementing regulation of Article 180 paragraph (1) letter d, Article 191 paragraph (1), and paragraph (2) of Law Number 11 of 2006 concerning the Government of Aceh. It shows the existence of vertical inconsistencies in Indonesia's hierarchy of laws and regulations through a statutory and conceptual approach. The object is the arrangement of zakat management as a source of Regional Original Revenue in Law Number 11 of 2006 concerning the Aceh Government and on the "Uqubat Provisions" in Aceh Qanun Number 10 of 2018 concerning Baitul Mal. The results indicate that there was an error or ignorance of the makers of the qanun when compiling the norms of the criminal act of zakat in the "Uqubat Provisions" in Article 157 paragraph (1) as an act of "embezzlement." This is viewed as a "corruption crime" because the zakat becomes a criminal act of corruption. The implication is legal uncertainty, a violation of the hierarchy of laws and regulations, and legal disorder. This study concludes that the substance regulated in the two regulations is inconsistent following the failure of the Aceh government to adjust the norms set by the Central Government and the absence of preventive supervision on the making of qanuns. The provisions of Article 157 paragraph (1) need to be revised to maintain the harmony/order of the legal building system.

**Keywords:** Legal norm; Zakat; Criminal Action

## INTRODUCTION

One of the cornerstones of Islam is zakat, which has a sound legal foundation based on the Al-Qur'an and the Sunnah (Annah et al., 2021). It is property given to the needy by a Muslim or business organization in accordance with Islamic law. In accordance with Law Number 23 of 2011 concerning Zakat Management, cash collected from zakat must be given to the proper beneficiaries in the form of programs that combine consumptive- and productive-based initiatives. Distribution is the legal term used to describe consumption-based programs, whereas utilization is used to describe programs with a productive focus (Beik & Arsyianti, 2016).

With the approval of Qanun Aceh Number 10 of 2018 regarding Baitul Mal, the Aceh Province has established its own legislative guidelines for the administration of zakat. The Law on Zakat Management and the Baitul Mal differ not only from an institutional standpoint but also in the facets of each institution's authority. According to Article 1 number 31 Aceh Qanun Number 10 of 2018 concerning Baitul Mal, "Zakat is property submitted by muzakki and collected by BMA or BMK or BMG as an obligation on assets and income under the provisions of the Shari'a to be distributed to the needy." The scholars agreed that issuing zakat is obligatory for every Muslim who meets the requirements for zakat obligation (Zulhilmi et al., 2022).

Baitul Mal Aceh Commissioner, A Rani Usman stated that the potential for zakat in Aceh province reaches Rp. 2 to 4 trillion per year (Usman, 2021). Aceh has been recognized as one of the poorest provinces in Indonesia, but when zakat's potential is fully utilized, it will undoubtedly be able to lessen or relieve poverty. According to data from the Central Statistics Agency, in 2021, the poor population in Aceh will increase to 15.53%. This increase makes Tanah Rencong survive as the poorest area in Sumatra and is included in the five poorest provinces in Indonesia. The number of poor people in Aceh in September 2021 was 850,260. Zakat correlates with poverty to increase the standard of living or reduce poverty in Aceh (Setyadi, 2022).

Based on the provisions of Article 180 paragraph (1) letter d, Article 191 paragraph (1), and paragraph (2) of Law Number 11 of 2006 concerning the Government of Aceh, zakat is declared as

Regional Original Income (PAD) managed by Baitul Mal and the provisions regulated by qanun. The implementing regulations are in Aceh Qanun Number 10 of 2018 concerning Baitul Mal. Furthermore, zakat is one of the sources of Regional Original Income (PAD) in Article 97, paragraphs (1) and (2). The statement of zakat norms as a source of PAD certainly has consequences or impacts on other norm arrangements, such as zakat crimes or jarimah (Armia, 2017).

Therefore, the zakat collected from muzakki by Baitul Mal is regional finance managed by state/regional management principles. The collected zakat as regional finance may be stolen or misused by civil servants willing to get rich by any means. These acts can be categorized as criminal acts of corruption, because these actions can cause state/regional financial losses (Akbar et al., 2021; Bustami et al., 2021).

Muhammad Syukri Salleh (2016) said political conception is a system that regulated interaction among human beings, covering the government system, economics system, social system, education system, penalty or judiciary system, and foreign policy (Dariah et al., 2016). In the regulation of zakat crime in Article 157 paragraph (1) of Aceh Qanun Number 10 of 2018 concerning Baitul Mal, "Baitul Mal officers who commit, participate in or assist in embezzling zakat, Infaq, Waqf or other Religious Assets should be sentenced for embezzlement, with 'Uqubat ta'zir in the form of whipping in public at least 10 (ten) times, maximum 30 (thirty) times or imprisonment for a minimum of 10 (ten) months and a maximum of 30 (thirty) months." The crime is a criminal act of embezzlement, not corruption since the funds are State/Regional finances. Therefore, the legislators think there is an inconsistency (inconsistency Norm) in the regulation of zakat as a source of District income (PAD) (Musa et al., 2021). Article 153 stated that the authority to adjudicate the case is in the Syar'iyah Court, not the District Court. Meanwhile, this qanun does not explain the meaning of embezzlement and qanun jinayah. This will make it harder to prove the case for investigators and prosecutors in court, and there is no specific term for "embezzlement" in Islam. There are similarities between embezzlement and criminal acts regulated in Islam, namely: ghulul, ghasab, sariqah, treason (Armia, 2019).

The inconsistency in the hierarchy and material of the qanun is regulated in Law Number 11 of 2006 concerning the Aceh Government. In connection with the inconsistency between the Aceh Qanun Number 10 of 2018 and Law Number 11 of 2006, the Aceh Qanun, as delegated or secondary legislation of law, further regulates the material in the law.

As an illustration, the situation that occurred in Baitul Mal, North Aceh District, shows the connection between the management of zakat and corruption. Regarding the suspected crime of corruption in the building of the Senif Fakir House and the Senif Poor House at the Baitul Mal Secretariat of North Aceh Regency for the Fiscal Year 2021. The suspect was found to have violated Article 2 Paragraph (1) Jo, Article 18 Paragraph (1) letter b, Paragraph (2), and Paragraph (3) of Law of the Republic of Indonesia Number 31 of 1999 as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 in this case. According to the investigation's findings, Job managed his own affairs and had a budget of Rp. 11,295,000,000 (eleven billion two hundred and ninety-five million rupiah). This money came from the North Aceh Regency's Special Regional Original Revenue, which was obtained from the Zakat Fund (Kadarman, 2022).

The objectives of this study are 1). To examine and analyze why there is an inconsistency in the legal regulation of the Criminal Act of Zakat as PAD contained in Aceh Qanun Number 10 of 2006 concerning Baitul Mal. 2). To examine and analyze the implications of Inconsistency of Zakat Crime Norms as PAD in Aceh Qanun Number 10 of 2018 concerning Baitul Mal.

## LITERATURE REVIEW

### 1. Concept and management of Zakat

Islam differs from other ideologies in its systems and ideas. Islam has a sense of justice when it comes to commerce and economics. In economic and business endeavors, the fundamental ideals and general principles found in the Al-Qur'an and the Sunnah are employed as guides. These

principles include social duty, halal living, and honesty. Liberal capitalism ignores moral and ethical considerations (value-free) (Setiawan, 2020).

Formally, the allocation of resources determines not only what must be produced from the available resources but also how this production is distributed (Gunawan, 2015). Efficiency here is defined in the sense of Pareto optimality where no one can be made better off without making any other worse off. Perfect competition requires that all sellers and buyers have no influence on prices and take market prices as given (Ng, 2015).

The Arabic phrase *az-zakaah*, which is the masdar version of *Zakaa*, is where the word *zakat* originates. The word "*zakaa*" itself is a version of the verb "to grow," or "to grow and develop." *Zakat*, on the other hand, is a gift that Muslims are obligated to provide to specific organizations within a set period of time (Fathoni et al., 2020).

*Zakat* is the Islamic duty to donate a portion of one's material possessions to the community, primarily to help those in need. Even while *zakat* administration is generally successful these days, there are still hitches that prevent *zakat* accomplishment from going smoothly (Salleh, 2014). As the third pillar of Islam, *zakat* refers to a part of the wealth of the able-bodied who reach the obligatory *nisab* to be distributed to eligible recipients according to the rates set in Islam (Azme Matali et al., 2018).

Initially, *zakat* was intended as the main tool for eradicating poverty and erasing the gap between the rich and the poor (Sitepu, 2018). Fundamentally, *zakat* seeks to promote prosperity, safety, and peace. Similarly, taxes serve a variety of similar functions to those listed above, particularly when it comes to funding state development initiatives to improve the welfare of the populace as a whole (Zaki 'ulya, 2015).

In contrast to the logic drawn from the nation-state paradigm, informal *zakat* (religious alms) collection and re-distribution practices suggest the exact opposite. Widespread opposition has been shown to initiatives by the government to control and legislate *zakat*. Informal *zakat*, which has been reclaimed from the state, expressly criticizes the nation-state at the level of corruption, failure, and illegitimacy and answers to the current political crisis in opposition to the nation state framework's logic, far from indicating the de-politicization of Islamism.

*Zakat* was a sign that Islam cared about the underprivileged and the destitute. *Zakat* aids them in leading honorable lives. In the absence of the state, the *zakat* shields them from the bad things (Ibrahim & Mardian, 2018). As Allah said in Q.S. Al-Anbiya' (21): 73:

وَجَعَلْنَاهُمْ أَيْمَةً يَهْتَدُونَ بِأَمْرِنَا وَأَوْحَيْنَا إِلَيْهِمْ فِعْلَ الْخَيْرَاتِ وَإِقَامَ الصَّلَاةِ وَإِيتَاءَ الزَّكَاةِ وَكَانُوا لَنَا غُلَبِينَ

"We have made them leaders who guide with Our orders and We have revealed to them, they do good, establish prayers, pay *zakat*, and only to Us do they always worship".

As Allah SWT said in QS. At-Taubah (9) : 11:

فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَءَاتَوْا الزَّكَاةَ فَإِخْوَانُكُمْ فِي الدِّينِ وَنُفَصِّلُ الْآيَاتِ لِقَوْمٍ يَعْلَمُونَ

"If they repent, establish prayer and pay *zakat*, then (they) are your brothers in the same religion. And We made clear the verses for a people who know."

In the time of Prophet and the Caliphate, the state controlled the *zakat* system. They were the ruler of an Islamic nation. According to recorded history, the state assumed control of the *zakat* after three years of migration to Medina. Prophet made straight *zakat* payments as an example for others (Ibrahim & Mardian, 2018).

## 2. Relations Zakat and State Finance

For all Muslims who meet the required standards of wealth, *zakat* is a religious requirement. *Zakat* has not yet been incorporated into Indonesian public finances. In the meanwhile, the *zakat* has enormous potential to improve societal wellbeing (Subekan, 2016).



Since ancient times, historians, sociologists, and economists have been preoccupied with the issue of poverty. Its root causes have been determined, and they range from shortcomings in the administration of income support to inequity in the social and economic system (Rano & Aliyu, 2017). The reform of social security systems and alterations to socioeconomic systems are just two examples of the many solutions that have been proposed. Due to the complexity of the issue of poverty, effective solutions necessitate a wide range of well-coordinated actions (Nasim Shah, 2006).

In Islamic law and throughout the Muslim world, the term "zakat" refers to a type of tax or almsgiving (Rini et al., 2021). The customary payment of 2.5% of one's complete wealth beyond a predetermined sum known as *nisab* is a religious requirement for all Muslims who meet the necessary financial requirements, depending on income and the worth of one's entire belongings (Altawyan, 2020).

One of the public financial instruments that cannot be divided into zakat as an instrument of income and zakat as an instrument of expenditure is zakat. The zakat on trade, agriculture, and livestock, which was only meant for *mustahik* during the reign of the caliph Harun ar Rasyid, became a fixed income in the governmental revenue structure, according to Abu Yusuf's explanation in the Book of Al Kharaj (Hunter, 2019).

On the other side, zakat has long been promoted as a tool for fiscal policy that the government or fiscal authority can use at their discretion to stabilize the economy. Depending on the state of the economy, spending zakat monies may differ from zakat funds obtained in this case. The amount of zakat funds collected rises while the economy is growing because the zakat base expands. The number of zakat recipients will, however, decline concurrently because of the thriving economy (Aqbar & Iskandar, 2019).

## METHOD

This is a normative legal (normative legal research), or doctrinal research, whose object is a document of legislation and library materials. The main subject of the study is the law conceptualized as a norm or rule in society and becomes a reference for everyone's behavior. Furthermore, the statutory, concept, and comparative research approaches were used (Angkasa et al., 2019).

The data processed in normative legal research are secondary data obtained from library sources, which consist of Primary legal materials, such as authoritative legal materials. Secondary legal materials, namely unofficial publications on law (Bachtiar, 2018), include Literature books, results research, expert opinions, and writings from experts related to zakat as the local revenue source in Aceh; and Tertiary legal materials: They provide additional instructions and explanations for primary and secondary legal materials, such as legal dictionaries, Indonesian language dictionaries, and encyclopaedias.

The collection techniques are used according to the data source to obtain valid information as follows: Eexploring the normative framework of legal materials discussing the problems, and conducting interviews with competent parties to complete legal materials (Leavy, 2017).

The data from the literature study were processed deductively to conclude a concrete problem (Soren, 2021). Furthermore, the existing legal materials were analyzed to determine the consistency of the sanctions for the criminal act of zakat as PAD in Aceh Qanun Number 10 of 2018 concerning Baitul Mal in Aceh.

## RESULTS AND ANALYSIS

### IV.1. Inconsistency in the legal regulation of the crime of zakat as Original Regional Revenue (PAD) in Aceh Qanun Number 10 of 2018 concerning Baitul Mal

The provision of zakat as PAD began with the enactment of Law Number 18 of 2001 concerning Special Autonomy for Aceh. Subsequently, it was replaced and reaffirmed by Law Number 11 of



2006 concerning the Government of Aceh, in Article 180 paragraph (1) letter d. The source of income for the Original Regional Revenue (PAD) and Regency/City PAD, as in Article 179, consists of Regional Taxes, Regional Retributions, Separated results of wealth management, Zakat, and other legitimate Aceh/Regency/City PAD.

PAD is a financial source obtained by the region based on regional and statutory regulations. The results are used to implement government tasks and development activities in the context of filling autonomy independence. Furthermore, it is the amount of money received from the community or sources within its territory (Fuadi, 2014).

The determination of zakat as PAD is intended to strengthen autonomy to improve people's welfare further. According to Amrullah, the former head of the Aceh Baitul Mal in Aceh Province, the potential for receipts is greater than the source of local taxes and regional levies. The determination implies that the management of zakat in Aceh is fully under the authority of the Regency/City Governments. The requirements for zakat are submitted and managed by Baitul Mal as an independent body regulated in Article 98 paragraph (1) letter b, letter c, and letter d of Aceh Qanun Number 10 of 2018. The types of zakat mal include: a. gold, b. silver, c. other precious metals, d. money and securities, e. uncultivated land used as an investment, f. other assets that are used as savings.

Income zakat, as referred to in paragraph (1) letter c, includes: a. Trading business, b. agricultural business, c. livestock business, d. mining business, e. industrial, plantation, fishery, and all kinds of businesses whose business results have economic value and become trading commodities, f. professional service business, and g. salaries and other services.

Then Zakat rikaz, referred to in paragraph (1) letter d, is a treasure. According to Article 98, paragraph (7) and paragraph (8) of zakat fitrah, the zakat mal is not submitted to Baitul Mal but Baitul Mal Gampong.

Furthermore, Article 24 paragraph (2) states that "all zakat receipts managed by Baitul Mal Aceh are a source of PAD which should be deposited into the Regional General Treasury." According to paragraph (3), "Aceh PAD is stored in a separate account for the Aceh Regional General Treasurer (BUD) appointed by the Governor." Additionally, Article 25, paragraph (2) reports that "all zakat receipts managed by the Regency/City Baitul Mal should be deposited to the District/City Regional General Treasury. "

Based on the explanation above, zakat as PAD submitted by *muzakki* is regional finance whose withdrawal and use are consistent with the designation stipulated in the legislation under Islamic Shari'ah. Zakat has been determined in line with the statement of the Chairman of the Baitul Mal Aceh Sharia Advisory Council (DPS), Al Yasa' Abubakar, where "the provision of zakat can reduce the income tax payable (Article 192 of the UUPA)". The zakat handed over by *muzzaki* to Baitul Mal as PAD be equated with state finances because it relates to the criminal act in Islamic criminal law (*jinayah*) or corruption. It is similar to the state finances in formulating corruption in Article 3 of Law Number 31 of 1999, where the elements of a criminal act are 1) Everyone, 2) To benefit oneself or another person or a corporation, 3) Abusing authority, opportunity, or means, and 4) harm to the state finances or the economy (Husen, 2022).

Experts understand state finance as a quantitative activity plan with the figures manifested in several currencies for the future (Anggara, 2016). According to Geodhart, state finance laws give the government the power to carry out expenditures for a certain period and indicate the financing tools needed to cover these expenditures (Soeriaatmadja, 2010).

Based on this understanding, the elements of State finances are: a. Periodic, b. Government, as a budget implementer, c. The implementation of the budget includes two powers, namely, the authority to spend and explore sources of financing to cover the expenditures concerned, and d. The form of the state budget





Arifin P. Soeria Atmadja describes the dualism of state finances in a broad and narrow sense (Arifin P., 2005). The definition of state finance in the broadest sense originates from the APBN, APBD, and Finance of State Business Units, or state-owned companies. In contrast, the definition comes from the state budget only in a narrow sense.

According to Van der Kemp, state finances are all rights valued in money and property (Enas et al., 2021). Otto Ekstein reported that it studies the effects of the budget on the economy, especially the result of achieving the main economic goals of growth, justice, and efficiency (Mustaqiem, 2017).

The definition is contained in Law Number 30 of 1999 concerning the Eradication of Criminal Acts of Corruption, amended by Law Number 20 of 2001. The definition of state finances according to the UUPTPK is:

All state assets, in any form, including rights and obligations, are from: 1. Being in the control, management, and accountability of state agency officials at the central and regional levels. 2. Being in the control, management, and accountability of state-owned/regional-owned enterprises, foundations, legal entities, and companies that include third-party capital based on agreements with the State.

The zakat management system as PAD aligns with Aceh's regional financial management principles (Fuadi, 2014). According to Article 1 number 20 of Law Number 1 of 2022 concerning Financial Relations between the Central and Regional Governments, "Regional Original Revenue is obtained from taxes, levies, wealth management, and other legitimate original income in line with the statutory regulations." Therefore, regional finance can be sourced from taxes, levies, wealth management, and zakat.

Law Number 11 of 2006 concerning the Government of Aceh has regulated zakat as PAD which is part of regional finance. The regulations are regulated by Aceh Qanun Number 10 of 2018 concerning Baitul Mal. However, in the regulation of the criminal act of fraudulent zakat by unscrupulous Baitul Mal officers, it is stated that they have committed embezzlement, not acts of corruption. Article 157, paragraph (1) reports the following: Baitul Mal officers who commit, participate in or assist in embezzling zakat, infaq, waqf, or other religious assets are punished for **embezzlement**, with '*Uqubat ta'zir* in the form of whips for a minimum and maximum of 10 (ten) and 30 (thirty) times or imprisonment for a minimum and maximum of 10 (ten) and 30 (thirty) months.

There are legal problems, namely the inconsistency of the norms regulated regarding zakat as PAD which is regional finance. However, the criminal act of tyranny is said to be embezzlement, not corruption. The word consistency in the Big Indonesian Dictionary is determination and stability in action. In contrast, the word inconsistency is contradictory and not appropriate. Legal inconsistency is a discrepancy or contradiction between the applicable legal rules to become vague or ambiguous.

This inconsistency in the qanun can confuse the public in understanding the regulation. The confusion resulted in the Qanun Baitul Mal not being optimal in solving a problem. Inconsistency can also affect the legal balance in society because of the different interpretations of law enforcement against qanun, which are inconsistent with other laws and regulations.

Inconsistent regulations can affect the legal system in Indonesia. Legislation is a legal substance that provides regulations regarding individual rights and obligations. The consistency of regulation can be seen from the existing laws and regulations hierarchy. According to the principle, it is clear that regulations having a lower order should not conflict with regulations of a higher position. This is under Article 7, paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation.



Based on the hierarchy of laws and regulations, the position of Aceh Qanun Number 10 of 2018 is under the law or equal/parallel to the Provincial Regulations. Therefore, the norms for criminal acts of article 157 paragraph (1) need to be synchronized with the law on the Eradication of Corruption Crimes. Synchronization is used to harmonize drafted existing laws and regulations. This synchronization aims to determine the alignment of each existing regulation. It can be conducted horizontally or vertically between the above regulations (Cintia et al., 2018).

It is necessary to carry out vertical synchronization to analyze the material regulations of Aceh's qanun from a higher position in the regulatory order. The lower legal product cannot be applied because a higher line is used. According to Bambang Sunggono, vertical synchronization analysis aims to determine the conflict between two laws when seen in a vertical orientation following their hierarchical order (Mukhlis et al., 2015). In dealing with conflicts between legal norms, according to Sudikno Mertokusumo, the resolution principles (principle of preference) include *Lex superiori derogat lex inferiori* (Asshiddiqie & Safa'at, 2016).

From the hierarchical position of the legislation, the Aceh Qanun Number 10 of 2018, especially regarding the legal norms of Article 157 paragraph (1) its position is under the UUPTPK. The principle to solve legal problems is using the *Lex superiori derogat lex inferiori*. Therefore, Baitul Mal's elements deviate, and Baitul Mal will be subjected to Articles of criminal acts of corruption as regulated in UUPTPK.

The determination of the type of criminal act is important to determine the type of punishment sanction giving a deterrent effect on the perpetrators of the act of two different types of criminal acts. Embezzlement is included in general crime, whose sanctions are lighter than special criminal acts in the form of corruption.

#### **IV.2. The legal implications of inconsistency in the regulation of zakat crime norms as a source of PAD in Aceh Qanun Number 10 of 2018 concerning Baitul Mal**

The discussion focuses on the legal implications of regulating the criminal act of zakat as PAD in Aceh Qanun Number 10 of 2018 by using several theories of statutory law. According to the Big Indonesian Dictionary (KBBI), the meaning of implication/*im·pli·ka·si/n* is "involvement or the state of being involved" (Anonymous, 2008). In connection with the focus, the meaning of the legal implications is the involvement or linkage of several legal aspects due to the regulation of legal sanctions against criminal acts of funds misuses regulated in the form of Aceh Qanun Number 10 of 2018

A legal norm in the regulatory system Legislation can be prohibitions, orders, exemptions, and permits. The formulation of legal norms and paying attention to legal principles (*rechtsbeginsel*) will provide the general purpose (*ratio legis*) of a statutory provision (Daci, 2010).

Legislation is regulating and forcing community members to obey the law, causing a balance in every public relationship. Every law violator will be penalized for violation, which guarantees legal certainty based on principles of justice from the community (Kusriyah, 2019)

Worldwide, corruption is a complicated and pervasive phenomena that has implications for the economy, culture, society, psychology, politics, administration, and even religion. As a result, the phenomena is being defined and studied using the broadest range of conceptual frameworks available in the specialized literature, including economic, social-cultural, political, administrative, and religious (Mutaşcu & Dănuleşiu, 2010).

The established legal system in Indonesia is based on the tradition of Continental Europe, often known as Civil Law, which has undeniably impacted the significance of legislation as a source of law for people. One of the characteristics of civil law is the importance of legislation as the main source of *statutory law* compared to judges' decisions or jurisprudence (Sudirman, 2007).



Therefore, the lack of clarity or inconsistency in regulating the crime of zakat as PAD can lead to “embezzlement” in Article 157 paragraph (1) of Aceh Qanun Number 10 of 2018 concerning Baitul Mal. In the qanun, the general provisions do not explain or provide an understanding of “embezzlement” associated with zakat in its management as a PAD source.

The legal implications of regulating criminal acts against the misuse of zakat funds as PAD in the form of the Aceh Qanun on Baitul Mal based on the results of this study are as follows:

#### A. Legal Uncertainty (*Lex certa*).

Aceh Qanun Number 10 of 2018 concerning Baitul Mal is an implementing regulation of Article 180 paragraph (1) letter d, Article 191 paragraph (1) and paragraph (2) of Law Number 11 of 2006 concerning the Government of Aceh. The regulation is in Law no. 11/2006 in Article 1 number 21, which defines Aceh Qanun as a statutory regulation similar to regional regulation that controls government administration and the lives of the Acehnese people. This is reaffirmed in the Elucidation of Article 7 paragraph (1) letter f of Law Number 12 of 2011, namely *qanun Provincial Regulations (Perdasi) in Papua Province*. Regional Regulations are also regulated in Law Number 23 of 2014 concerning Regional Government. According to Law Number 23 of 2014, Regional Regulations were formed in the context of implementing autonomy and assistance tasks at the Provincial and Regency/City levels.

The provisions of zakat as a source of PAD have been stated or equated with regional finance, and the regulation of Article 157 paragraph (1) Aceh Qanun Number 10 of 2018 reads:

Baitul Mal officers who commit or assist in embezzling zakat, Infak, Waqf, or other Religious Assets are punished with ‘Uqubat ta’zir in the form of whipping in public at least 10 (ten) times, at most 30 (thirty) times or imprisonment for a minimum and maximum of 10 (thirty) to 30 (thirty) months times.

The article states that embezzling zakat managed by Baitul Mal as a criminal act is not under the definition of corruption as regulated in Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 on Eradication of Corruption Crimes. The formulation of Article 157 paragraph (1) limiting the perpetrators to be directed to “Baitul Mal officers” is also inaccurate. Therefore, the sentence “whoever” should increase the meaning, including Baitul Mal officers.

Concerning Article 157, law enforcers cannot use this article because of the inconsistency with the Corruption Crime Act as an example of the case in North Aceh reported by CNN Indonesia. The head of Baitul Mal, North Aceh Regency, with the initial YI (43), has been named a suspect in the case of corruption in the construction of houses for the poor or needy homes for the 2021 fiscal year. YI is not only the head of Baitul Mal but also the implementation team’s director. There were four other suspects, each of whom was the implementing team’s coordinator with the initials Z (39) and the Head of the Baitul Mal Secretariat ZZ (46). The prosecutor also named the PPTK with the initials M (49) and the head of the hospital implementation team (36). The Investigating Prosecutor’s Team of the North Aceh District Attorney has named five suspects related to allegations of corruption in constructing houses for the poor and poor at the Baitul Mal Secretariat. The alleged corruption began when there was a project to build 251 poor housing units across various sub-districts in North Aceh through the local Baitul Mal Secretariat with a budget of Rp 11.2 billion. The budget is sourced from local revenue and taken from zakat funds.

#### *Violation of the Hierarchy of Laws and Regulations*

According to Law Number 12 of 2011 concerning the Establishment of Legislations, the types and hierarchy of legislation consist of: 1. The 1945 Constitution of the Republic of Indonesia; 2. Decree of the People’s Consultative Assembly; 3. Laws/Government Regulations in Lieu of Laws; 4. Government Regulations; 5. Presidential Regulation; 6. Provincial Regulations; and 7. Regency/City Regional Regulations.





In line with the Stufenbau theory, Hans Kelsen suggested that Stufenbaudenotes a multi-story building or stairs, and the legal system is a continuous process from the abstract. According to Hans Kelsen, all legal norms are integral to a pyramid structure, and the basis is at a higher level. In this case, the highest is Ursprungsnorm or Grundnorm, which is relative or abstract (Asshiddiqie & Safa'at, 2016). Furthermore, it is derived into positive norms, known as Generalnorm. The Generalnorm is individualized into a concrete norm or Concretenorm. Based on these findings, the lower-level norm should not conflict with the higher-level . Therefore, the highest level of law is derived based on the legislation (Faiz, 2009).

Pancasila is the State Fundamental Norm which is the highest legal norm followed by the body of the Constitution, the Decree of the People's Consultative Assembly (TAP MPR), and the basic unwritten law or Constitutional Convention as the basic state rules (Staatsgrundgesetz), Laws and Government Regulations ( Formel gesetz ) as well as implementing autonomous regulations (Verordnung and autonome Satzungs) from Government, Presidential, Provincial Regulations and Regional Regulation (Anonymous, 2015).

Based on the theoretical review, the norms regulated in Article 97 paragraph (1) Juncto Article 157 paragraph (1) Aceh Qanun Number 10 of 2018 are contrary to the norms stipulated in Law Number 20 of 2021 concerning Amendments to Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption.

## B. Legal

According to A. Hamid S. Attamimi, the notion of legal order (*rechtsordnung*) as an objective legal entity that does not depend on other laws and determines all legal formations within the order unit. This formulation is crucial in determining the presence or absence of juridical unity in a legal order (Duminică, 2014). Meanwhile, Soehino stated that legal order consists of various laws and regulations arranged hierarchically, from the highest to the lowest level (Ismail, 2017).

JHA Logemann stated that social order, an interrelated and positive law determined by abstracting from a relation of norms, is a legal order. In positive law, there are no conflicting norms to realize legal order (*rechtsorde*), ensure the rule of law, and achieve legal objectives in the form of justice and certainty (Asshiddiqie, 2006).

Aceh Qanun Number 10 of 2018 is a Legislative Regulation established by the People's Representative Council with the mutual consent of the Governor, which is a Provincial Regulation. In Law Number 12 of 2011 concerning the Establishment of Legislations, Article 5 states that statutory regulation should be formed based on establishing a good regulation. These principles include clarity of purpose, the appropriate institution or official, suitability between types, hierarchies, and content materials, usability and effectiveness, clarity of formulation, and openness (Kusriyah, 2019).

The function of the Regional Regulation is an attribution function and is also a delegate function of the Presidential Decree. The functions of Regional Regulations are as follows: a) Organizing arrangements that do not conflict with the public interest. b) Organizing arrangements that do not conflict with higher laws and regulations. c) Organizing arrangements that do not conflict with higher Regional Regulations. d) Organizing arrangements for unregulated matters by higher laws and regulations (Jumadi, 2018).

The existence of Aceh Qanun Number 10 of 2018 is needed as an implementing regulation of Article 180 paragraph (1) letter d, Article 191 paragraph (1), and paragraph (2) of Law Number 11 of 2006 concerning the Aceh Government. However, it is not consistent with the definition of corruption in regulating sanctions and zakat as a criminal act of embezzlement. These are some of the legal impacts or implications caused by the inconsistent norms regulated in Article 157 paragraph (1) of Aceh Qanun Number 10 of 2018 concerning Baitul Mal, which cannot be applied

## CONCLUSION AND RECOMMENDATION

Government Policies stipulated in Law Number 11 of 2006 concerning the Aceh Government, which are not harmonized through policies established through Aceh Qanun Number 10 of 2018 on Baitul Mal. This occurs due to the lack of preventive supervision in harmonizing and synchronizing with the laws and regulations.

There are legal implications of the inconsistency of norms regulated in Article 157 paragraph (1) of Aceh Qanun Number 10 of 2018. This includes legal uncertainty, violations of the vertical hierarchy of laws and regulations, and irregularities. The Aceh Provincial Government, which regulates the criminal act of zakat, should not conflict with the understanding of corruption in the Eradication Act.

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