

Taxes in the Perspective of Islamic Law

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Abstract

Taxes are essential for the growth of a country because they are a source of funds to facilitate development. However, there is a polemic regarding taxes from the perspective of Islamic law. Some scholars allow taxes, while others prohibit them. Ulama who allow taxes are of the opinion that taxes are a means of achieving *mashlahah* in *maqashid sharia*, namely achieving the common good. They see taxes as a tool to fund public needs, which is in line with *sharia* principles in advancing the welfare of the people. On the other hand, scholars who do not allow taxes argue that the law regarding taxes is not explicitly mentioned in the Koran. They argue that the only economic obligation that is clearly regulated in the Koran is *zakat*. *Zakat* is considered the only form of financial contribution required for Muslims, and therefore, taxes do not have a strong legal basis in *sharia*. This debate reflects various scholarly interpretations of religious texts and their application in modern contexts. Even though there are differences of opinion, both groups of *ulama* agree that the main goal is the benefit of the people, whether through taxes or *zakat*. The role of taxes in supporting development and public welfare remains an important issue that requires in-depth consideration in order to achieve a balance between religious law and the practical needs of the state.

1. Introduction

Tax is the transfer of some of the community's wealth assets to the state treasury to fund general state activities (social interests). The state intends to facilitate the goals and aspirations of its nation, taxes are one instrument to finance shared needs and development. Taxes also play a role in regulating incentive and disincentive policies. Tax collection is a form of community obedience to the government. The state also collects taxes because there is a formal juridical basis in accordance with the rules or norms that apply in a country. (Fauziah Aqmarina, 2020).

Taxes are essential for the growth of a country. There are two roles of tax in a country, namely the budgetary role and the regulatory role. As a budgetary role, taxes function as a source of state income originating from the extensification and intensification of various types of taxes. As a regulatory role, this means that taxes are a tool for regulating or implementing government policies in the social and economic fields, as well as achieving certain goals outside the financial sector (M. Hanifah, 2021).

From an Islamic legal perspective, tax is called *dharibah*, which in the field of *muamalah* *dharibah* is defined as a medium for fulfilling the needs of the state and society to facilitate various common (collective) needs. Sources of Islamic law (the Qur'an and Hadith) do not explicitly convey the issue of *dharibah* (tax) which has implications for differences in legal opinion regarding *dharibah* (tax). There are pros and cons to *dharibah* (tax) law in Islamic law with arguments that strengthen both. Those who support it argue that there are legitimate rights of other people apart from the prescribed *zakat* obligations. Meanwhile, those who oppose argue that there is no legal obligation other than collecting *zakat* because there is no definite text (Gusfahmi Arifin, 2024).

Islamic law applies the basis of the welfare of the people to matters related to society. This *mashlahatan* is related to *Maqashid Syari'ah*. The implementation of *Maqashid Syariah* involves a number of human activities related to protecting religion, protecting the soul, protecting the mind, protecting property, and protecting offspring. According to Ar-Risuni, the goal of *Maqashid*

Syariah is the good or benefit of humanity. Meanwhile, the principle of ushul fiqhi states that general benefit is more important than specific benefit. Taxes can be a common benefit if they facilitate society towards equitable justice and prosperity. The mashlahah of the tax system depends on the goodness of society. The best tax system is a system that has an impact on the welfare of its people.

Talking about taxes in Indonesia, taxes are influenced by socialist capitalism which is different from sharia values and principles. The MUI itself, as the Indonesian Ulema Council, has not yet issued a fatwa regarding cigarettes, instant noodles, the Ahmadiyah cult, etc. This causes a dilemma for Muslims to be able to pay taxes because of legal uncertainty regarding this matter. Uncertainty regarding Islamic law regarding taxes creates its own problems for Muslims in Indonesia. Muslims as devout Indonesian citizens must fulfill their obligation to pay taxes, while on the other hand, a Muslim must know whether taxes are in accordance with Islamic law.

Much research has been carried out on taxes, including; research by Eka Sriwahyuni (2022), the title of the research is the Role and Function of Taxes According to Islam. Research by Hilmi Delphino Arrighi, Sarah Fadillah, Dafa Fatih Trislianto, Fadhli Suko Wiryanto, (2022) with the title State Revenue in the Form of Taxes in an Islamic Perspective). Research from Erwin Bahtiar Sihar Tambunan (2019) research title The Influence of Understanding Tax Functions and Tax Benefits on Nationalist Attitudes and Their Impact on Intentions to Become a Compliant Taxpayer. Arvie Johan (2018) with the title Justification of Islamic Law for Taxes from a Legal and Economic Perspective, Research from Muhammad Turmudi (2018) with the title The Role of Taxes in an Islamic Law Perspective. Research by Maman Surahman and Fadilahilah (2018) entitled Tax Concepts in Islamic Law. Gazali's research (2017) entitled Taxes from the Perspective of Islamic Law and Positive Law.

2. Literature Review

2.1 Tax Concepts in Islamic Law

Taxes in Islamic law are considered a temporary obligation, ordered by Ulil Amri as dharibah, due to the lack of baitul mall, and can be removed if the conditions of baitul mall have been fulfilled. Taxes are only necessary for rich Muslims and should be used for their benefit, not for the public good, as a form of Muslim jihad to prevent greater harm if not done.

2.2 Review of Islamic Law on Taxes in Indonesia

Taxes in Indonesia are considered a citizen's obligation that must be paid for the public interest. However, some groups view taxes as haram or prohibited, because they are considered a form of oppression and are not in accordance with Islamic values. Therefore, it is necessary to carry out further analysis on how Islamic law views tax in Indonesia and how it is implemented in the national tax system.

2.3 Analysis and Recommendations

Analysis of taxes in Indonesia from the perspective of Islamic law shows that taxes are considered a citizen's obligation that must be paid for the public interest. However, it is necessary to disseminate more information about how taxes are used and managed by the government, as well as increasing transparency and accountability in the use of tax funds. In this way, it can increase public awareness about the importance of taxes and improve the quality of public services.

3. Research Methods

This research uses qualitative research with a normative juridical approach by collecting secondary legal data. Normative juridical research is studying and analyzing source data in the form of secondary legal materials. The nature of this research is analytical descriptive, namely; illustrate current (actual) problems by collecting data, compiling, classifying, analyzing and interpreting. Data collection techniques using

library research. The data analysis technique is normative qualitative.

4. Results and Discussion

4.1 Tax Concept

Taxes are a withdrawal of people's funds that are specifically allocated to the state to support the development of a nation. According to Soemitro, tax is a fee charged to the state treasury which is an obligation of citizens based on the law and does not receive reciprocal service compensation (contra-performance) which is used for the needs of the general public (Devi Alia Rahmadan, 2022). Meanwhile, according to Soemahadidjaja: Tax is a mandatory contribution in the form of investment of money or assets which is charged by the state based on legal norms on its people, in order to facilitate collective assets and services for shared prosperity (Wina Febiana, 2022).

According to Law no. 27 of 2007, Tax is a mandatory contribution to the state owed by individuals or business entities that is coercive based on law without receiving direct compensation and is used for state needs and as much as possible for the prosperity of the people (Della Fitriah, 2023).

From the definition above, it can be concluded that the meaning of tax is:

1. Taxes are collected based on statutory regulations which are mandatory.
2. Tax compliance is not due to individual reciprocal interests (kontraprestas)
3. The country has the obligation to execute taxes, both central and regional governments
4. The purpose of tax is to facilitate the government's needs, which if there is still a surplus from its income, is used to finance public investment.
5. Taxes can also have a purpose other than budgetary, namely regulating.

There are 2 tax classifications in Indonesia, namely direct taxes and indirect taxes. What is meant by direct tax is tax imposed on the taxpayer's personality directly, which is borne by himself without being

represented by anyone else. The rights and obligations are inherent in the taxpayer and cannot be transferred to anyone else. Examples of direct taxes are income tax (PPh), land and building tax (PBB), motor vehicle tax (Vebrina Hania Cholily, 2023).

Meanwhile, indirect taxes are; Taxes whose payment settlement process allows through other parties. So the fulfillment of the obligation to pay taxes can be represented by someone else. This transfer of authority must be based on an event that allows the taxpayer to transfer their obligation to pay taxes. The designation of transfer can be in the form of an individual or entity being transferred to pay a certain amount of tax. So, unlike direct taxes, indirect taxes have an uncertain type of collection, the application for taxes is not carried out periodically like direct taxes, but depends on the event that causes the obligation to pay the tax. (Duwi Riningsih, et al, 2032)

According to their nature, taxes are divided into; Subjective taxes and objective taxes. Subjective tax is a personal and personal tax on a person who is a taxpayer who has been determined by law and has a Taxpayer Identification Number (NPWP) as an administrative requirement to carry out their tax rights and obligations. If a person fails to pay taxes, this person is determined to have violated legal provisions and may be subject to a fine in accordance with applicable regulations. An example of a subjective tax is Income Tax (PPh). Objective tax is a tax that originates or is based on the object without taking into account the taxpayer's condition. Examples of Value Added Tax and Sales Tax on Luxury Goods (Duwi Riningsih, et al, 2032)

Based on its function, there are 4 tax functions, namely the first is the revenue (budgetary) function. Taxes in this case function as a source of tax funds to facilitate government needs and development needs. Both functions are regulating (regular). Taxes are a medium for regulating and executing policies in the interests of the state. Third, the redistribution function, namely taxes function as equality and justice in society. Fourth; tax

implementation of mutual cooperation and togetherness in realizing the development goals of a nation (Bina Yumanto, 2022).

The value of taxes according to Adam Smith is;

- a. Equality, tax collection must be fair and equitable, that is, taxes are imposed on individuals which must be proportional to their ability to pay taxes and in accordance with the benefits received. Fair means that each taxpayer contributes money for government expenditure in proportion to his interests and the benefits requested.
- b. Certainty Tax determination is not determined arbitrarily. Therefore, taxpayers must know clearly and precisely the amount of tax owed, when it must be paid, and the payment deadline.
- c. Convenience When taxpayers have to pay taxes should be in accordance with times that do not make it difficult for taxpayers (Pay as You Earn)
- d. Economy Economically, the costs of collecting and fulfilling tax obligations for taxpayers are expected to be as minimal as possible (Rafiq Wahyu Novianto, 2023).

As for the collection system, First, the Official Assessment System. This system gives the government the authority to determine the amount of tax. This system is characterized by authority being given to the government, the taxpayer is passive, there is a tax assessment letter by the tax authority which creates a debt. Second; Self Assessment System This system gives authority, trust and responsibility to Taxpayers to calculate, calculate, pay and report the amount of tax that must be paid themselves. Third; Withholding System This system authorizes a third party to deduct or collect the amount of tax owed by the Taxpayer (Imron Rizki A., 2018).

4.2 Rationality of Tax Needs

As explained previously, it can be understood that taxes are a method used to pay for public services. These public services require costs, without costs there is no protection of individual or group interests

through state instruments. On a broad scale, the country needs income to finance the nation's goals and aspirations. For example, the objectives of the Indonesian State as formulated in Paragraph IV of the Preamble to the 1945 Constitution,

State financing is funds included in state savings. The state has an urgent function for a country's economic growth. A country's commitment is to make all its people prosperous (in accordance with the mandate of the law), and to realize this requires large funds which are carried out in stages. In this case, the government must regulate its financing in order to equalize the welfare of its citizens. Sources of state funding come from taxes and non-taxes, while non-tax sources come from production fees, fixed fees, exploration fees and information data compensation. Apart from that, regional income consists of regional taxes, levies, production fees, fixed fees, exploration fees and information data compensation. Apart from that, regional income consists of regional taxes, regional levies and other legal income based on the provisions of statutory regulations (Imam Hidayat, 2024)

As explained above, the function of the tax is one; The function of the budget is as a source of state cash income to be used for routine government financing. Second; Taxes also act as incentive and disincentive policies. In this case, taxes facilitate long-term development goals such as providing facilities and infrastructure. If there is a remainder or surplus, it will be used as government investment. Third; The function of democracy means that in tax collection activities there is a spirit of mutual cooperation, the people also contribute to efforts to develop their nation. Fourth; The distribution function, namely tax payments, functions to regulate equal distribution of national development which is carried out by looking at the amount of revenue that is evenly distributed. (Cindy, 2023)

So what if there are free-riders (individuals who refuse to pay taxes, but

receive public services like taxpayers). If it is found that taxpayers do not carry out their obligations to pay taxes, the state can enforce them using violence such as forced letters and confiscation. Taxes are levied on citizens (individuals and private and state business entities) which are used to finance various public expenditures which are certainly useful for society. Therefore, tax payments should be based on laws that have been made by the government (generally applicable). Where the law regarding taxation is discussed and drafted jointly between the DPR and the government so that it can be ensured that taxes are provisions based on the will of the people, not just the will of the rulers alone. Tax is a contribution/obligation of the community to hand over part of their income (wealth) to the state (Cindy, 2023)

4.3 Taxes in Islamic Law Perspective

In Islamic law, tax is defined by the term *dharibah*. The scholars use the word *dharibah* to refer to the community's obligation to levy property. There are several words in Islamic legal literature whose meaning is almost the same as *dharibah* which means tax. In Islamic law there are the words *jizyah*, *kharja* and *ushr* which some opinions state that the terms mean tax, but if we look deeper these words are actually different. each other in terms of subject and object (Faisal Muttaqin, 2023)

Jizyah is a tax levy on non-Muslims as a form of protection, for example, as the Prophet said, "*Jizyah* is not subject to Muslims. Meanwhile, *kharja* is a levy on land owned by non-Muslims. In determining *kharja*, the type of land, type of plant and crop yield must be taken into account. *Ushr* is a tax imposed on goods imported into or originating from Muslim countries (Faisal Muttaqin, 2023).

From the definition above, it is clear that there are differences between the three, different from taxes. The meaning that corresponds to the words tax is *dharibah*, namely assets that are collected compulsorily from the people for state financing purposes. Meanwhile, *kharja*, *jizyah* and *ushr* are

different from the meaning of tax in terms of subject and object. *Kharaj* for land tax for non-Muslims, *jizyah* for tax for the security of the lives of non-Muslims and *ushr* for tax for export and import of non-Muslim goods.

The question that is often asked is the permissibility of collecting taxes in Islamic law, on the other hand, there is the obligation to pay *zakat* which is regulated in the Al-Qur'an and Hadith sources. Can there be a tax levy while the law is *zhanni* or unclear? There are differences of opinion among scholars on this matter, which will be discussed specifically in the next sub-chapter.

Tax levies are not mentioned in the Qur'an and Hadith as a source of state income. The discourse regarding taxes is a *muamalah* issue that develops through *ijtihad* whose development is pragmatic. This is a result of developments over time and the complexity of society which requires taxes for the development of a nation. *Dharibah* or tax is permitted if *Zakat* is no longer sufficient for state funding but of course with several very strict provisions & decided by the expert *halli wal aqdi* (Hilmi Delphino Arrighi, 2022)

The objective of tax from the perspective of Islamic law scholars that allows it is to finance state expenditure items which are a necessity for Muslims when the state treasury is insufficient. So there is a binding provision to pay contributions when the state treasury is insufficient, from this it is permissible to collect taxes and from this the collection of taxes cannot be said to be haram.

Tax collection from an Islamic legal perspective must of course be in accordance with the teachings and principles of Islamic law. Taxes should aim at *maqashidul syari'ah*, namely protecting religion (*al-din*), protecting the soul (*al-nafs*), protecting the mind (*al-aql*), protecting property (*al-mal*) and protecting the descendants of *al-nasl*). When talking about *maqashidul* Islamic sharia directs to fulfill primary needs (*hajat*) first, namely the needs for food, security, health and education. According to Al-Maliki, taxes are a mandate from the people and should be spent honestly

and efficiently. Taxes should be organized and allocated in such a way that the state can realize its development goals (Gusfahmi Arifin, 2024).

There are types of taxes in Indonesia according to the perspective of Islamic law.

1. Income tax, according to the perspective of Islamic law, should be levied on taxpayers because they have excess income, which should be taken into account; one, distinguish between Muslim and non-Muslim taxpayers, (give a tax identification number code to each), Second; tax collection is not on business entities but on individuals because the Islamic economic system does not require zakat or tax on bodies because the profits of business entities are given to individual shares/ Third; The use of tax cash (dharibah) is specifically for expenses that are really needed, not for things that are subhat or even haram.
2. Value Added Tax (VAT), VAT is charged to residents for consuming certain goods or services. In fact, in Islamic law there are no arguments from the sources of the Koran, Hadith, Ijma and Qiyas. Consuming haram food or drink is clearly prohibited by the text, but imposing tax on the consumption of halal goods such as drinks and food in malls does not have clear text regulations in Islamic law. If VAT is said to be almost the same as customs excise (ushr), in fact the character is different, according to Islamic law customs duties are not merchandise but are a compensation for infidels entering Muslim countries. VAT is syubhat (the law is not clear) because; One; This tax makes it difficult to differentiate between the rich and the poor when it comes to the poor, this does not lead to maslahat (goodness). Second; VAT will burden the economy (in-efficiency), because this causes the prices of goods and services to be above reasonable prices.
3. Land and building tax (PBB), actually land and building tax in Islamic law is regulated in the Zakat law. Zakat on land and

buildings in Zakat law is said to be 'Usyuriyah' land for which zakat is required, as well as agricultural produce that grows on it, is required by zakat law. When connected with Kharaj, this is clearly different. Kharaj is conquered land (kharajiyah), therefore the infidels who own the land must pay taxes and if it is sold to Muslims, they are subject to zakat instead of tax (Abd. Kholik Khoerulloh, 2020)

Islamic law only recognizes two types of taxes, namely taxes on land (kharaj) and taxes on lives (jizya). The permissibility of taxes according to Islamic law is provided that the state treasury is sufficient to achieve its objectives. As for the collection of taxes that are large and burdensome to the public, their collection is haram. There should be a correlation between the amount of tax revenue and the reduction in the number of poor people in Indonesia (Deny Setiawan, 2010).

4.4 Taxes in Mashlahah

Ijtihad in Islamic law aims to realize Mashlahah. The mashlahah of taxes is their benefits to a country. Mashlahah in Islamic law has an identical meaning to the words al-khair (goodness), an-naf' (benefit), and al-husn (virtue). Mashlahah is the opposite of mafsadah or evil. Abu Hamid al-Ghazālī defines maṣlaḥah as an effort to determine the law while still adhering to the objectives of the syāra' (al-muḥāfaẓah 'alā maqṣūd as-syāri'). The aim in question is to realize benefits (maṣlaḥah) and get rid of damage (mafsadah). (Nur Asiah, 2020)

The principle of maṣlaḥah in the context of making rules and policies is that there is no aim (maqāṣid) in making legal policies other than to realize the benefit of all mankind (maṣālih an-naṣṣ). The strategy to realize this goal is to seek benefits for them (jalb nafin lahum) or eliminate danger (ḍarar) and anxiety (ḥaraj) from them (daf' al-ḍarar wa al-ḥaraj lahum). The character of benefit in this principle is contextual.

Looking at it from a mashlahah perspective, taxes can provide great benefits for society and the country. The principle of benefit as the basis of tax policy is in accordance with Islamic legal philosophy which states that benefit (maşlahah) is the main principle of law. The benefits of taxes are encouraging national development, increasing state funding sources, increasing the tax ratio and a sustainable APBN which will indirectly have an impact on implementing better infrastructure development, reducing unemployment which will lead to efforts to grow the national economy and improve the welfare of the people.

In Indonesia, practically taxes have benefits in at least two ways. First, in the short term it can increase state revenues; and second, it can obtain more systematic taxpayer data so that the orientation is to expand the tax database nationally. The first benefit is obtained from the ransom money paid by taxpayers in lieu of unpaid/unpaid taxes and the elimination of sanctions, while the second can be used as data for determining taxes for the coming year. This second benefit in the long term can increase state revenue from the tax sector so that it can increase the tax ratio.

4.5 Scholars' Opinions About Taxes

Scholars have different opinions about taxes, there are scholars who allow it and there are also scholars who do not allow taxes. There are scholars who allow it and their respective reasons.

1. Abu Yusuf's opinion, in his book *al-Kharaj* states; Almost all Rasyidin Khulafaur, especially Umar bin Khattab, Ali bin Abi Talib and Umar bin Abdil Azis, collected taxes with the principles of justice and prosperity. Taxes must be carried out according to the people's capabilities, prioritizing the fulfillment of their basic needs. Abu Yusuf in this case supports the government in increasing and reducing taxes according to the people's capabilities (Khulaelatudil Azzah, 2024).

2. Ibn Khaldum in his book *Muqaddimah*; Taxes are permitted on condition that they prioritize justice and equality. Treatment of all people is the same without differentiating one from another and not levying taxes beyond a person's ability (Moh. Asep Zakariya Ansori, 2024)
3. Marghinani in his book *Al-Hidayah* argues that if state funding sources do not meet the needs of citizens, the state should collect cash from taxes to meet public needs. If public facilities are enjoyed by residents then it is their obligation to be able to pay the costs (Aisya Rahmawati, 2023)
4. M. Umer Chapra, in *Islam and The Economic Challenge* states: The Fuqaha have preached the state's right to maximize resources through zakat and taxes. In principle, zakat and taxes are used for the welfare of the poor, the state needs other resources besides zakat to be sufficient to carry out the allocation, distribution and stabilization functions effectively. This right is defended by the jurists based on the hadith, "There are other obligations on your property besides zakat (Khoirul Umam, 2023)
5. Ibn Taimiyah, in *Majmuatul Fatawa*, said: There is injustice because the group that pays taxes experiences a greater burden due to the prohibition on paying taxes for other groups while public facilities are used jointly (Chapra, 2000).
6. Hasan al-Bana, in his book *Majmuatur Rasail*, says: Looking at the goals of social justice and equal distribution of income, a progressive tax system seems to be in line with Islamic goals. (Chapra, 2000).

From the opinion above, several scholars allow taxes because of the benefits of taxes in realizing the development of a country. In taxes there are values of justice and togetherness that provide benefits to a nation. Besides there being scholars who allow taxes, there are also scholars who reject taxes in a country, including Dr. Hasan Turabi from Sudan, in his

book Principle of Governance, Freedom, and Responsibility in Islam, states: "in general it is not legal". Because of this, the jurists were worried that if they were allowed to collect taxes, it would be misused and become a tool of oppression. (Fuad Riyadi, 2015).

5. Closing

From an Islamic legal perspective, tax is called dharibah, which in the field of muamalah dharibah is defined as a medium for fulfilling the needs of the state and society to facilitate various common (collective) needs. Taxes can be a common benefit if they facilitate society towards equitable justice and prosperity. The mashlahah of the tax system depends on the goodness of society. The best tax system is a system that has an impact on the welfare of its people.

Some scholars allow taxes because of the benefits of taxes in realizing the development of a country. In taxes there are values of justice and togetherness that provide benefits to a nation. Some ulama do not allow taxes because they fear it will be misused as a tool of oppression.

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