

Absolute Competence in the Fields of Alms in the Religious Courts

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Abstract

This research aims to investigate the absolute competence in the fields of alms in the Religious Court in Indonesia. The method used in this research is normative juridical research with the type of prescriptive analysis of research, namely studying the purpose of the law, the values of justice, the validity of the rule of law, legal concepts, and legal norms. This research found that the case of alms has never appeared. It can happen because alms cases are resolved through non-litigation. The settlement of alms disputes has likely been completed up to the zakat management institution's level, and alms has become part of Islam's teachings. It is necessary to cooperate with other institutions in resolving it legally. Besides that, there is a need for legislation that provides opportunities to solve alms' problem does not clash with its legal aspects.

Keywords: Absolute Competence, Alms, Law, Islamic Law, Religious Court

INTRODUCTION

The history of Religious Courts in Indonesia, starting with the Surambi Court, has existed since the time of Sultan Agung in the Kingdom of Mataram, Yogyakarta. At that time, the organizational structure was headed by a chief judge and assisted by four scholars called *Pathok Nagari*. The applied law used at that time was not only the Qur'an and the Sunnah of the Prophet Muhammad, but there were the Books of *Muharram*, *Mahali*, *Tuhfah*, *Pathu al-Mu'in*, and *Fathu al-Wahab*. In addition to the Surambi Court, there was also the Pradata Court dealing with criminal matters (X, 2007, pp. 15–16). In areas with strong Islamic acceptance, there are Islamic Courts that use Islamic Law. It's just that some regions in Indonesia are different from other regions. Some of these areas are Aceh, Jambi, South and East Kalimantan, South Sulawesi, etc. Local authorities appointed Islamic judges in the area. In Java, Islamic judges in the Religious Courts have been found in every district since the 16th century (Lev, 1972, pp. 10, 25; Mudzhar, 1993, p. 36).

Over time, applying Islamic law through constitutional protection is not as easy as what is done individually because it involves various interests. In its journey, it experienced many obstacles. The polemic barrier is focused on jurisprudence techniques and has touched on political aspects that are very vulnerable and sensitive. Islamic law can be aligned with customary law and Western law as a sub-system and law source for national law development. As a discourse that is a step forward for Indonesian people who are predominantly Muslim, the application of Islamic law in Indonesia is based on a theoretical framework concerning the fact that (1) the state guarantees freedom for Muslims to apply Islamic teachings, (2) the majority of Indonesia's population is adherents Islamic religion, and (3) the state constitution does not contradict Islamic principles even to some extent reflect the substance of the Islamic tenets.

The theoretical framework is a fact that cannot be denied that the majority of Indonesia's Muslim population will run their government following Islamic principles. Theoretically, the state will not apply laws and policies that conflict directly with Islamic teachings (Haryono, 1968, pp. 66–67). These factors

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gradually took place in Indonesia. Indonesia concerns the application and development of religious values, including Islamic law, without becoming a theocratic state. Constitutionally, based on formal religious institutions individual, in this context, religion provides a spiritual, ethical, and moral foundation for the development of national law, which includes Islamic law. This perspective becomes a robust philosophical foundation for the development of Islamic law and its application constitutionally and emerges with certain stages, although a bit sluggish. The other philosophical foundation recognizes the Jakarta Charter in the Presidential Decree of 1959, which can be interpreted. Even though the Republic of Indonesia is not referred to as a state of Islam, but constitutionally the Presidential Decree of the Republic of Indonesia in 1959 is the foundation that Islamic law applies to its adherents. The constitutional foundation becomes a firm root in the application of Islamic law in Indonesia.

Institutionally, the Religious Courts were born in 1882 based on that law 1882 No. 152 (Harahap, 1990, p. 32; Noeh & Adnan, 1983, pp. 33–34), and in the process of institutionalization, it became solid with the advent of the new order, namely the promulgation of Law No. 14 of 1970 concerning the introductory provisions of judicial power which emphasizes that judicial power is carried out by courts in the environment (Abdullah, 1991, p. 172): (a) General Courts, (b) Religious Courts, (c) Military Courts and (d) State Administrative Courts. Religious Courts have clear guidelines in deciding cases that become their authority for Muslim communities, so there is no confusion in the religious courts' decisions. The compilation of Islamic Law Compilation is to: systematically formulate Islamic law in Indonesia to be used as a basis for the application of Islamic law in the Religious Courts environment and at the same time be able to foster more diverse enforcement of legal certainty in Islamic societies (Harahap, 1992, p. 91). Based on Law Number 3 of 2006 concerning changes to Law Number 7 of 1989, the Religious Courts have full authority in matters of marriage, inheritance, wills, grants, endowments, and alms (*sadaqah*) (Ali, 2011, pp. 251–255; Badjeber & Saleeh, 1988, p. 22). Ratification of Law No. 7 of 1989 concerning Religious Courts by the House of Representatives followed the birth of the Compilation of Islamic Law based on Presidential Instruction No. 1 of 1991 concerning the dissemination of Islamic Law Compilation among Muslims Muslims. The Religious Courts position is parallel to the judicial body others but specifically has absolute competence in handling cases among people of the Muslim faith (Rosadi, 2015).

Previous researchers have not researched the absolute competence of the Religious Courts in the field of zakat, infaq, and *sadaqah*. However, there are a few previous studies related to the absolute competence of the Religious Courts, including:

1. Research that discusses the absolute authority of the Religious Court in the Field of Divorce, the reason for the granting of the lawsuit that the Judge of the Religious Court has the right to settle divorce cases over marriages where one of the parties converts to that reason is a reason following Law No. 7 of 1987 concerning Religious Court article 49 that divorce is the absolute authority of the Religious Court in addition to the material legal reasons that if one party converts to religion then can file for divorce to the Religious Court (Juhaeriyah, 1999);
2. Discussing Islamic economic disputes that become the Religious Court's authority based on Law No. 3/2006 but in its legal considerations, the Religious Courts judges include Law No. 21/2008 on Sharia Banking. Therefore, the dualism of the court's competence is apparent from the provision. The resolution returned to the agreement contained in the Sharia banking dispute agree to the parties. This dualism, according to the author, raises legal uncertainty, vertically related to the legal order in Indonesia, and horizontally between the Religious Court and the District Court has the same position so that the principle of *nasikhmansukh* or *lex posterior de rogatlegi priori* principle can be carried out (Kayati, 2010).

3. Property disputes that can become absolute competence of the Religious Courts are property disputes involving Muslim people. Property disputes have the same object as cases that become the Religious Courts' competence that does not stand alone or are interrelated. In the Supreme Court decision, the case of ownership was decided together with the joint property. The disputing people are of different religions. Both have been agreed in the Limboto District Court and the Limboto Religious Court, but the parties have taken legal action to the cassation level (Cahyadi & Harjono, 2017; Cahyadi, 2016).

The authority of a judicial institution to settle a marriage, inheritance, grant, endowment, *zakat*, *infaq*, *sadaqah*, and shari'ah economy, based on law and for the sake of law and justice, in Indonesia the Religious Courts are formed as the organizing agency authorized to handle cases Islamic civilization among Muslims. And the judiciary that exercises judicial authority to uphold law and justice is known as the Religious Courts. In principle, people as humans want to live in calm and peaceful conditions. These desires are not all following the situations that occur in the community. It is caused in a social life that is not in line and with different interests, often triggering society's conflicts at large and narrowly in the family. For this purpose, the judiciary is an institution of various forms of dispute resolution whose role is to settle cases that are the authority in civil matters for Muslim communities in Indonesia, known as the Religious Courts, namely a judicial process that ends in giving justice in a decision (Mukhlis, 2011, p. 2).

As executors of judicial authority following their authority, the Religious Courts are listed in Law Number 7 of 1989 concerning the Religious Courts Jo. Law Number 3 of 2006 is evidence of the transformation of Islamic law in Indonesia. In the Indonesian state, with most Muslim communities using Islamic law in their lives, Indonesia's legal stigma is divided into two; First, Islamic law applies in a formal juridical manner. That is the legislation that applies to national law. Second, Islamic law that applies normatively is Islamic law that is believed to have sanctions or legal equivalents for Muslim communities to implement it (Rosadi, 2016). The law on religious justice is a stigma of Islamic law in Indonesia, which applies formally.

The transformation of Islamic law in Indonesia consists of four factors, namely (Mudzhar, 1991): (1) Fiqh Scriptures, (2) Decisions of the Religious Courts. (3) laws and regulations in Muslim countries, (4) and religious edicts. It has become a factor in the normative implementation of Islamic law. There is continuity between the two stigmas of Islamic law in Indonesia. Only the formation of the Islamic law that applies legally must go through several stages until it finally becomes national law. This legal transformation is closely related to Legal Politics or can also be interpreted as legal development (Hatta, 2008; Sahid, 2016; Wahyuni, 2003). Legal politics explains the political influence on law or the political impact on legal development. The development of Islamic law's transformation into national law requires a relationship with the state power agency with the primary task and function as a drafter of the law, meaning that national legal legislation is formed on the executive, judicial, and legislative participation bodies. The government and the Parliament hold power in the formation of laws. In Article 5 paragraph (1) of the 1945 Constitution, the President can form laws with the House of Representatives' approval. In clarification, regarding this article, except for executive power, the President and the House of Representatives operate legislative power in the state (Attamimi, 1990, pp. 120–135).

The law established and determined must have goals that must be achieved for those who will obey and carry out the law, then the legal objectives emerge. The purpose of the law is public order (Syarifin, 1998, p. 52). Still, the purpose of law itself is divided into three theories (Syarifin, 1998, p. 53): (1) *Ethische Theory*. This theory explains that the purpose of the law is only to realize justice as much as possible in the public order. Meaningful justice is not the same as equality, but it means balance; (2) *Utilities Theory*, this

theory explains the purpose of the law is the benefit or happiness of the community or humans solely. His successors, J. Bentham, J. Austin, and J.S Mills motto: "the greatest happiness for the greatest number"; and (3) *Gemengde Theory* (combined theory), this theory combines the two theories above, namely the purpose of law not only justice but also expediency: Justice et utilities. As J. Schrasset said, if only the element of justice is considered, then the result is only the provisions that fulfill absolute justice but cannot fulfill the demands of daily intercourse. From the three theories above, the author can explain that the purpose of law can be achieved if there is a balance between legal justice and legal certainty formed predominantly in the order of laws and regulations in force in Indonesia. Legal transformation, legal politics, and legal objectives have their respective domains and are mutually sustainable.

As preliminary data, there are statistics on court proceedings that prove that cases of alms (*zakat*, *infaq*, and *sadaqah*) have never existed. The author's initial data is the amount of case data entered from 2015 to 2018 to the Religious Courts (especially in the West Java Religious High Court) annually. There are types of cases in detail. Of the many types of issues that come in, *zakat*, *infaq*, and *sadaqah* cases are not included. This fact explains the matter in question has never been in the West Java Religious High Court's Religious Courts. It is also supported by the Young Registrar of Law of the Bandung High Religion Court, stating that there has never been a dispute on *zakat* and *sadaqah* that has entered the Religious Court (Setiawan, 2018). Therefore, it is interested in examining the absolute competence of the Religious Courts in the field of *zakat*, *infaq*, and *sadaqah*, especially in the Religious Courts in the Legal District of the High Court of Religion in West Java, Indonesia.

RESEARCH METHOD

The method used in this research is normative juridical research. Juridical research is a study that examines the laws, legal theories, and opinions of scholars. Normative research is looking at various laws and regulations used as a basis for legal provisions to analyze the position of legislation in the Indonesian legal system (Muhammad, 2004, p. 43; Yani, 2018). The type of research used is the type of prescriptive analysis of research, namely, studying the law's purpose, the values of justice, the validity of the rule of law, legal concepts, and legal norms (Marzuki, 2017, p. 22). Besides, this research also uses a case study method to analyze an event or phenomenon to answer the research questions. The object under study is to obtain data relating to the problem discussed, in this case, the case file related to *zakat*, *infaq*, and *sadaqah*.

The data source in this study uses primary data sources and secondary data sources. Primary data sources are related to case data in the Religious Courts, mainly associated with *zakat*, *infaq*, and *sadaqah*. And secondary data sources are books and other literature related to the absolute authority case of the Religious Court, especially *zakat*, *infaq*, and *sadaqah*. This study's type of data uses the kind of qualitative data collected directly from the data source. It has coherence with the research theme Absolute Authority of the Religious Court regarding *Zakat*, *Infaq*, and *Sadaqah* after Law Number 7 of 1989 concerning Religious Courts.

To support the implementation of this research, researchers obtain the data and information needed regarding this research as follows: (1) Documentation, namely the collection of data by looking at related documents, as written evidence or documents, in this case, are the legislation and cases which become the absolute authority of the Religious Courts related to *zakat*, *infaq*, and *sadaqah*; (2) Interview, ask the judges directly in the Religious Courts, especially the High Judge and the Registrar in the Bandung High Religious Court (Bandung is the capital city of West Java Province, where Religious Courts in the Legal District of the High Court of Religion in West Java is located); and (3) Literature study that needed to

examine some of the literature relating to the problem to be concerned, the literature in question is the books and other literature that are related to the research conducted.

The data analysis is then conducted systematically by searching and compiling data obtained from interviews, field data, literature, and documentation, organizing data into categories, describing, synthesizing, organizing into patterns, choosing what is essential and what will be learned from making conclusions. So, it is easily understood by themselves and others. The steps in analyzing the data in this study are as follows: (1) Selecting data that has been collected is then classified according to specific categories according to the purpose of the study; (2) Interpret data that has been chosen using a framework; (3) Linking data obtained from the field from the results of interviews and research, with theories that have been determined in thought; then (4) The next step is to conclude from the results of data interpretation.

RESULT AND DISCUSSION

Result

Absolute Competence of the Religious Courts

Competence is the authority to try or court jurisdiction competence to determine which court has the authority to examine and decide a case. If the litigator submits, his claim can be accepted and not rejected because the court is not authorized to try it. Court competence can be classified as relative competence and absolute competence (Wahyudi, 2004, p. 87). Relative competence is power and authority between courts in the same court environment or authority that has to do with religion's interfaith jurisdiction in the Religious Courts environment. At the same time, the Religious Court's relative power is regulated in Law Number 7 of 1989 concerning Religious Courts article 4.

The absolute competence of the Religious Courts is the absolute authority for the Religious Courts. It also part of judicial authority that has to do judicial authority in the type of case or type of court or level of court, and the difference with the kind of case or type of court or other court levels. The court's power in a religious court environment is the power to examine, decide, and settle certain civil cases among certain groups of people, namely Muslim people (Asasriwarni & Nurhasnah, 2006, p. 151). Based on Law No. 3/2006 concerning Amendment to Law No. 7/1989, the absolute authority of the Religious Courts has been extended not only in the field of civil matters related to family law but also in civil cases in Islamic economic law that apply to Muslims, including *zakat*, *infaq*, and *sadaqah* (Wahyudi, 2004, p. 98).

The Concept of *Zakat*, *Infaq*, and *Sadaqah* as Absolute Competence of Religious Courts

Zakat, *infaq*, and *sadaqah* are acts of worship that have an essential role in the welfare of the people, establish brotherhood, and realize tolerance in social life. By doing charity, especially the *zakat* charity, Muslims have cleaned up their wealth to become a heavenly treasure. *Zakat*, according to the meaning of language, means increasing and purification, while demanding the term *zakat* is a predetermined measure of assets that must be distributed by the eight groups of recipients of *zakat* on certain conditions (Al-Muhsin, 2012, p. 7; Fathonih, Maylawati, & Ramdhani, 2019; Mansyur, 2014). *Infaq* is a word from *nafaqa*, which means to issue something (wealth) to benefit something (Endahwati, 2014; Qurratul Uyun, 2015). *Infaq* means to extract some of the assets or income for an interest following what is ordered in Islam and is issued by anyone who has faith whether the income is high or low, either in the field of prosperity or in a narrow situation, as explained in Qur'an, surah Al-Imran verse 134. While, *sadaqah* is all kinds of

goodness done by alms Muslims either in assets or non-assets issued by a person or business entity outside of zakat for public benefit (Endahwati, 2014; Qurratul Uyun, 2015). There is a difference between infaq and sadaqah in the given limits. Infaq is only limited to property practice, while alms have a broader scope, such as giving a smile, removing stones from the road, and so on.

Normatively, zakat has been regulated separately in Law Number 38 of 1999 State Gazette Number 164 of 1999 concerning Zakat Management. The contents of the act explain that the government deems it necessary to intervene in the field of zakat, which includes: protection, guidance, and service to muzakki(person who gives alms), mustahik(person who gets alms), and amilzakat (the officer who manages zakat), zakat management purposes, zakat management organizations, zakat collection, zakat utilization, supervision of zakat management, and sanctions against violations of zakat regulations. While infaq and sadaqah are nominally contained in the explanation of Law No. 3/2006, namely, the act of someone giving one to another to cover the needs of others, whether in the form of food, drinking, giving sustenance (gift), or spend something to others based on sincerity and because of God. As zakat for infaq and sadaqah, no normative regulations are governing further.

Zakat, Infaq, and Sadaqah as Social Institutions in the Community

Zakat, infaq, and sadaqah are part of the Islamic law developed and practiced by Indonesia's Islamic community. In certain areas, Islamic law has been merged with local culture and even used as a benchmark in implementing religious teachings before the colonial period, especially concerning worship matters, such as worship, prayer, fasting, and *zakat, infaq, sadaqah*, and hajj. The reality that *zakat, infaq, and sadaqah* constitute social institutions of the Muslim community in Indonesia as part of the enactment of Islamic law in Indonesia. It is realized with the appearance of the zakat collection law that applies to Muslims in Indonesia, even though *infaq* and *sadaqah* are not related legislation.

The issue of zakat, especially in terms of its management, has come to Muslims' attention. As one of Islam's pillars, zakat is considered the only Islamic rule that directly influences economic distribution. Even zakat is often considered a "panacea" to eradicate poverty. However, despite the religious impulse for Muslims to cure social ills, it is not automatic and then fulfilled because it involves how zakat is managed, especially concerning collection and distribution. The government concluded that institutionalized and robust management was possible to develop the function of zakat that was felt not only in the context of fulfilling a *muzakki's* religious obligations but also made a structural, strategic framework to improve the lives of those who were economically weak (Taufiqullah, 2000, pp. 61–62). Besides, the government has the *Badan Amil Zakat Infaq Sadaqah* (BAZIS), an official institution responsible for collecting and distributing zakat, infaq, and *sadaqah*. BAZIS has existed since 1968 regardless of the format, which is still fragmentary and based on the regional level.

However, realistically, the wider community's welfare is still sad, often considered an indication that zakat has not been applied intensively. The issue of zakat in Indonesia that the application of *zakat* in Indonesia has been going on for a long time but why social justice and the Muslim community's welfare have not yet been realized (Hasballah, 1991, pp. 51–53). *Zakat* began to get serious attention and was considered to have the potential to require laws on consideration of the 1945 Constitution article 5 paragraph (1), article 29 and article 34 and MPR Decree No X / MPR / 1998, Law No. 7 of 1989 and Law No. 22 of 1999 concerning Regional Government, Law No. 38 of 1999 concerning *zakat* management was made (Taufiqullah, 2000). While *infaq* and *sadaqah* have no legality rules as *zakat* management law, this institution has been institutionalized in various institutions that develop in the community. Its management is associated with *zakat* institutions.

Discussion

Zakat, Infaq and Sadaqah Dispute Cases in the Religious Courts of the Legal Territory of the West Java Religious Court

Objective Conditions of the West Java Religious High Court

The Bandung High Court of Religion is an appellate court that has the authority to adjudicate cases under the authority of the Religious Courts on appeal in the jurisdiction of West Java Province. The Bandung High Court of Religion was formed based on the Decree of the Governor-General of the Dutch East Indies Number 18 of 1937 on 12 November 1937 under the name "*Hoof VoorIslamietischeZaken*." Based on *Staatsblad* (The State Gazette of the Republic of Indonesia or LNRI (during the colonial period is called *Het Staatsblad van Nederlandsch-Indie* or the transition period is called *Het Staatsblad van Indonesia* with a brief mention of *Staatsblad*)) 1937 Number 610. The High Islamic Court based in Surakarta states that the Religious Courts of Appeal for Java and Madura are carried out. With the enactment of Law Number 1 of 1974 concerning marriage, the Surakarta High Islamic Court's workload increases.

Based on this and following the considerations of the Supreme Court in letter Number: MA / PA / 121 / IX / 1976 dated 23 September 1976, for the smooth implementation of the duties and guidance of religious courts in Java and Madura, it is deemed necessary to hold a new division of tasks administratively with formed High Islamic Courts Branches in Bandung and Surabaya (Anonymous, n.d.). On 16 December 1976, the Minister of Religion Decree No. 71 of 1976 regarding the Establishment of a Branch of the Islamic High Court in Bandung and Surabaya. The issuance of the Decree of the Minister of Religion of the Republic of Indonesia Number 71 of 1976 is the beginning of the formation of the Bandung High Court of Religion. The Bandung High Islamic Court Branch has the task to settle cases originating from the Religious Courts in all Level I regions of West Java Province and the Special Capital Region of Jakarta.

The Bandung High Islamic Court Branch is responsible to the Chairperson of the Surakarta Islamic High Court, led by a Deputy Chairperson of the High Islamic Court, at least two members judges assisted by a temporary clerk and several court clerks. The legal basis for the establishment of the Bandung High Court of Religion, among others: *Staatsblad* Year 1882 Number 152; *Staatsblad* Year 1937 Number 116 and 610; Law Number 4 of 2004 concerning Judicial Power; Law Number 5 of 2004 concerning the Supreme Court of the Republic of Indonesia; Law Number 3 of 2006 concerning Amendment to Law Number 7 of 1989 concerning Religious Courts; Decree of the Minister of Religion Number 18 of 1975 concerning the Organizational Structure and Working Procedure of the Indonesian Ministry of Religion; and Decree of the Minister of Religion No. 71 of 1976 concerning the Establishment of the High Islamic Court. The jurisdiction of the Bandung High Court of Religion generally covers all the jurisdictions of West Java Province, namely 27 Regencies / Cities with 27 Religious Courts domiciled in 27 Regency and City Capital.

Zakat, infaq, and sadaqah dispute cases in the Religious Courts of the Territory of the Bandung High Religion Court

After the birth of Law Number 3, the Year 2006 Jo Law Number 50 the Year 2009 Concerning Amendment to Law Number 7 the Year 1989 Concerning Religious Courts. In article 49, the intended law has included absolute competence regarding *zakat*, *sadaqah*, and *infaq* as part of the duties and powers of the Religious Court in exercising judicial power. However, based on data obtained from *zakat*, *sadaqah*,

and *infaq* disputes in the Religious Courts in the jurisdiction of the Bandung High Religious Court, there have never been disputed cases related to such cases since the birth of Law Number 3 the Year 2006. It can be seen from the case table that has been recapitulated by the Bandung High Court of Religion which has the jurisdiction or jurisdiction of the Religious Courts in West Java. Based on case data in the Religious Courts in the Bandung High Religious Court jurisdiction, *zakat*, *infaq*, and *sadaqah* cases were omitted because the dispute case had never occurred in the Religious Courts, especially the Religious Courts in the jurisdiction of the Bandung High Religious Court.

Background on *Zakat*, *Infaq*, and *Sadaqah* Disputes has Never been Entered in the Religious Courts of the Regional Territory of the West Java Religious Court

In the case data received, it appears that the cases of *zakat*, *infaq*, and *sadaqah* have never been entered into the Religious Courts in the jurisdiction/ law area of the Bandung High Religion Court. Other data are supported by interviews with several high judges serving in the Bandung High Religion Court. There are several underlying factors related to *zakat*, *infaq*, and *sadaqah* cases which have never been handled by a High Judge while serving as a judge both his experience while serving as a judge in the Religious Court and the Higher Religious Court after the birth of Law Number 3 Year In conjunction with Law Number 50 of 2009. Several possibilities can be concluded from the opinions of the judges, including (Ahfasy, Jasiruddin, & Effendy, 2019):

Possible cases of zakat, infaq, and sadaqah are resolved through non-litigation

In general, lawsuits to the Religious Courts are known as litigation, while non-litigation is resolving legal problems outside the court, known as alternative dispute resolution. The settlement of the case outside the court is recognized and regulated based on statutory regulations in Indonesia (Law 14 of 1970 concerning Basic Provisions for Judicial Power in article 3 and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, in article 1 number 10).

Furthermore, the article explains that what is meant by consultation is a personal action between certain parties with other parties, in this case, the consultant, and the consultant gives his opinion to his client as needed. What is meant by negotiation is an effort to settle disputes through the courts to reach a mutual agreement based on harmonious and creative cooperation. At the same time, mediation is the settlement of disputes through a negotiation process to obtain an agreement assisted by a mediator. Conciliation is a dispute resolution through the conciliator on the party's duties to endeavor for an acceptable solution. Finally, through an expert judgment, that is the experts' opinion for a matter that is technical and following their area of expertise (Winarta, 2012, p. 7).

Non-litigation is an effort to bargain or compromise to find a mutually beneficial solution. A neutral third party's presence is not to decide the disputed case, but the parties themselves make the final decision. In the Indonesian Encyclopedia, it is explained that non-litigation or compromise is classified in peaceful settlement (*ishlah*), which is a form of the problem between the parties concerned to carry out the settlement of disputes in a good and peaceful way and can be useful in the family, court, war, etc. (Sadily, 1982, p. 1496). That is why peace (*ishlâh*) can be valued as commendable human behavior (Lewis, van Donzel, & et al, 1990, p. 141). Subekti called it *dading* or *compromis*, an agreement in which two parties make peace to end a case, in which agreement each relinquishes its rights or demands (Subekti, 1987, p. 172).

The settlement of zakat, infaq, and sadaqah disputes has likely been completed up to the Amil Zakat Agency level both at the regional and central levels.

The *Amil Zakat* Agency has long been legally established. During the Dutch colonial era, it was regulated in an ordinance with Number 6200 dated 28 February 1909. Because *zakat*, *infaq*, and *sadaqah* were Islamic teachings, the implementation was handed over to the indigenous community, including its management and administration, to be entirely left to the Muslim community (Hidayat & Rosyadi, 2008, pp. 140–142). The management of *zakat* carried out by the *Amil Zakat* Agency established by the government from the start of the central and regional governments is based on faith, holiness, openness, and legal certainty based on *Pancasila* and the 1945 Constitution (article 4 of the intended law), and revisions in Law Number 23 of 2011 it is emphasized to be based on Islamic Sharia, trustworthiness, expediency, justice, legal certainty, integration, and accountability, to improve services for the community in performing *zakat* following religious demands; improving the function of religious institutions to realize community welfare and social justice; and increase the effectiveness and effectiveness of *zakat*. With this law's existence, what is meant by respondents (judges at the Bandung High Court of Religion) is significant with the presence of the law, namely *zakat*, *infaq*, and *sadaqah*, if a dispute has been resolved at the *Amil Zakat* Agency or other Zakat Institutions.

Zakat, infaq, and sadaqah are part of Islam's teachings in other worship.

Zakat, *infaq*, and *sadaqah* are Islamic teachings regulated in al-Qur'an and al-Sunnah and are part of Islamic law. Talking about Islamic law in Indonesia is closely related to Muslims' condition in Indonesia, an absolute part of the Indonesian people, even though they reflect the largest part of the Indonesian people. Because based on Islam's historical spread to Indonesia continues with a very peaceful and memorable, full of tolerance and constructive (*penetration fesifique, tolerante et constructive*), the population can accept Islam's idealism and belief. Many verses of the Qur'an illustrate that *zakat*, *infaq*, and *sadaqah* are Islamic teachings that Muslims must carry out as a practice in perfecting their religion. The obligation of *zakat* can be formulated as a characteristic of *muzak* and is part of *zakat* principles. According to the obligation to pay *zakat* is part of the principle of belief, namely the principle of belief in Islam because paying *zakat* is worship. Thus only believers are the ones who believe can carry it out in the real sense of the soul. There are at least six regulatory principles and provisions in carrying out the obligations of *zakat*, *infaq*, and *sadaqah*, which are used as a reference in formulating the characteristics of *muzakki* in carrying out their obligations as Muslims. From the aspect of worship, namely, the principle of belief, the principle of justice, the principle of productivity or up to time, the principle of reasoning (understanding), the principle of convenience, and freedom (Manan, 1995, p. 257).

Alms (Zakat, Infaq, and Sadaqah) as Conflict Resolution in Religious Courts

In Law Number 3 of 2006, in conjunction with Law Number 50 of 2009 concerning Religious Courts, article 49 explains the absolute authority of religious courts, an integral part of Indonesia's constitutionally exercising judicial power. This law is an amendment to the Law Law Number 7 of 1989 in article 49 describes absolute authority which includes, marriage, inheritance, wills, grants, endowments, *zakat*, *infaq*, *sadaqah*, and shari'ah economics. Strictly speaking, *sadaqah* is part of the absolute authority of the Religious Courts. However, the juridical reference is not equipped with statutory regulations such as *zakat* and *waqf*, which can provide legal certainty in the morning for justice seekers if they go to the Religious Court regarding the dispute of *sadaqah*.

However, since *sadaqah* is the scope of general worship, both mandatory and sunnah, *sadaqah* is like zakat and waqf, which legally has a reference to the application of the law for judges in resolving disputes raised by the plaintiff or defendant, juridically the Judge can make an analogy of *sadaqah*. With the settlement of zakat and waqf as part of compulsory worship (Sabiq, 1987, p. 422).

Sadaqah is sunnah worship as described in 49 Law Number 3 of 2006. *Sadaqah* is the act of someone who gives something to another person or institution / legal entity spontaneously and voluntarily without being limited by a specific time and amount by hoping for God's blessing and only expect a reward from Him. From this understanding, even though the gift is given voluntarily, there is a legal action between the person who gives and the person who is given it, either individually or by an institution or legal entity. Therefore, it does not rule out conflicts over mistakes made by the person giving *sadaqah* or the mistakes of the party who is given *sadaqah*, either individually or institution or legal entity, for example in the form of abuse of authority and/ or channeling not following the eight *ashnaf* as zakat. Because of this, *sadaqah* has legal elements that must be fulfilled, among others:

1. There is a person or institution that gives *sadaqah*
2. Objects that are spoken
3. There are people, institutions, or legal entities as recipients of *sadaqah*
4. The existence of *aqad* (handover) *sadaqah*

The existence of a person or institution that gives *sadaqah* must be sensible, have been mature by law not prevented from committing legal acts, and of their own accord without coercion from other parties. The objects conveyed must belong to themselves, or not items in dispute by other parties, or these objects are not objects prohibited by law. Persons, institutions, or legal entities that receive *sadaqah* must also be trustworthy or capable of being legally in need, not people who are categorized as not requiring the provision of *sadaqah* or persons or legal entities that are legally flawed. And the last *sadaqah* can be done by contract orally or in writing.

Management of *sadaqah* objects, either mandatory *sadaqah* or sunnah, if the above elements are not fulfilled, will be laden with the emergence of internal and external conflicts. For example, internal conflicts triggered by amylin or those entrusted by *sadaqah* lack transparency in their management, misuse of *sadaqah* funds by parties who are not responsible, or channeled to certain groups of people who are not evenly triggered by corruption, collusion, and nepotism.

According to its competence, the conflict phenomenon that may arise in the *sadaqah* problem above then the disputed authority becomes part of the judiciary jurisdiction. Suppose the settlement is through a litigation process, which places the parties in litigation opposite each other after the other alternative resolution process does not produce results (Hendra Winarta, 2012, pp. 1-2). So the criminal case is part of the authority of the District Court. Because *sadaqah* is a special civil case for Muslims, the dispute's settlement becomes the authority of the Religious Courts. As in Article 2 of Law No.3 of 2006, the Religious Courts are one of the actors of judicial power for the people who seek justice who are Muslims regarding some instances as referred to in this law.

Another alternative for *sadaqah* dispute resolution can be through a non-litigation process as contained in Law Number 30 of 1999 concerning Alternative Dispute Resolution in article 1 point 10. It is explained that dispute resolution can be carried out through other alternatives through agreed procedures outside the court through consultation, negotiation, mediation conciliation, or expert judgment. If the dispute is *sadaqah* from the civil aspect, the settlement method is based on an agreement made in writing by the disputing parties (Hendra Winarta, 2012, pp. 7-8). It is also reinforced by Rahmadi Usman's opinion that dispute resolution other than through court (litigation) dispute resolution can also be resolved out of

court (non-litigation), known as Alternative Dispute Resolution (ADR) or Alternative Dispute Resolution (Usman, 2012, p. 8).

The definitions of several institutions mentioned in Law Number 30 of 1999 are as follows (Hendra Winarta, 2012):

1. Consultation. It is an act that is personal between a certain party and another party who is a consultant. The consultant provides his opinion to the client according to the needs and needs of his client.
2. Negotiation. It is an effort to resolve disputes between the parties without going through court proceedings to reach a mutual agreement based on more harmonious and creative cooperation.
3. Mediation. It is a way of resolving disputes through the negotiation process to obtain an agreement between the parties, assisted by a mediator.
4. Conciliation. The mediator will act as a conciliator by agreement of the parties by working out an acceptable solution.
5. Expert Assessment. It is an expert opinion on something technical in nature and following their field of expertise.

If the dispute resolution is based on Law Number 30 outside the court (non-litigation), of course, this law applies to all Indonesian people regardless of religion. If the settlement dispute is carried out through a court, it is done in the Religious Court for Muslims according to their competence. For non-Islamic religions, the absolute competence of the district court. It will then be regulated according to the laws and regulations in force in their respective countries for other countries.

CONCLUSION

After the birth of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 regarding Religious Courts, zakat, infaq, and sadaqah cases have never been entered. Especially, in the Religious Courts in the jurisdiction of the High Court of the Religion of West Java, even in the list, the case entered does not record the type of case. The factors that cause zakat, infaq, and sadaqah cases have not yet been entered into the Religious Courts in the jurisdiction of the West Java Religious High Court after the birth of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989, among others: first, zakat, infaq, and sadaqah cases are settled by non-litigation; second, the possibility is also settled through zakat institutions; and third, zakat, infaq, and sadaqah are part of the teachings of Islam as prayers that fall into the category of worship that must be carried out for every Muslim as an increase in the real soul to achieve the degree of holiness. For further works, wider research can be done, not only in the area of West Java, because each court may have different causes, especially in terms of zakat, infaq, and sadaqah. There is a need for socialization to the public about the knowledge of solving zakat, infaq, and sadaqah cases conducted in the Religious Courts. It is the same as an obligation for academics and practitioners to widely introduce that such cases are also part of the Religious Courts' absolute competence areas. Such as the Religious Court's absolute authority concerning marriages, marriages, divorce, inheritance, and others.

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