

# The Bank of *Alm* (Zakat): Ideas, Structure, and the Implementation of the Integrated *Alm* Management

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## Abstract

Managing charity is not easy. Difficulty in managing zakat charity is caused by the complexity of issues such as political, theoretical, juridical, and even sociological issues. Indonesia as the largest muslim country in the world, experiencing difficulty in managing those social funds of the religious potential.

One of the alternative solutions of effective and efficient *alm* (zakat) management is through integrated *alm* (zakat) management institutions. The institution of unified of integrated management of zakat which effective, efficient and accountable is the Islamic banking institutions through which has two main functions, namely as intermediary funding of the business profit and as a religious social intermediary institutions or charity fund institution such as *alm* (zakat) the specialty of the function of Islamic banking as intermediary of social fund (religious) such as the *alm* (zakat) is the rational basis of the formation of the charity or *alm* bank.

The bank of *alm* is formed based on philosophical aspect that *alm* (zakat) as the religious economic instrument realizes the justice of *alm* economy based on the principles of maqasid al-syaria (the goals of Islamic law) which ensure the maintenance of religion is zakat, guaranteed circulation of zakat and the safety of the receiver of the *alm*. The bank of *alms* (zakat) is formed based on juridical aspect that the implementation of the *alm* should be integrated based on the regulation to ensure legal certainty in managing the *Alm*. An integrated legal certainty puts the position of the basis of social finance intermediation and social enterprise in the regulation of *sharia* finance which is harmoniously related to the legislation of OJK, BPK, PPK, KPK and Income tax. The bank of *alm* (*zakat*) is formed based on the sociological aspects that the implementation of the *alm* (zakat) system is built based on the principle of trust. The bank of *alm* (*zakat*) as a special bank managing *alm* (zakat) as a trust fund, puts the trust fund as the trust of the givers that should be handed over and be used in accord with the Sharia that based on donation to those who have the rights to receive it.

**Keywords:** The Bank of *Alm* (Zakat), Integrated *Alm* Management.

## 1. Introduction

Countries with the Muslim majority's population seek to resolve the country's economic problems through charity. However, those efforts have not yielded maximum results in utilizing zakat in the world that reached Rp. 6,000 trillion every year. It is backed by the complexity of the problems in the management of *alm* (*zakat*) either as political issues, theoretical or juridical, and even sociological.

Predominantly Muslim countries such as Indonesia, seems to have the same difficulty in managing that potential religious social funds. Indonesia is one of the largest Muslim countries in the world. According to the data of the growth which is released by the World Bank in 2012, that the total population of Indonesia amounted to 244.775.796 people and 88 % are Muslims or it are about 182.57 million people.<sup>5</sup> The number of the very large Muslim population is an asset that can be utilized by the government to alleviate poverty and social inequality that is currently sweeping the nation of Indonesia, one of them is through religious economic instruments, namely religious charity or the *Alm* (zakat). The research being conducted by the National Zakat Agency (BAZNAS) and the Faculty of Economics and Management (The Institute of Farm Bogor (IPB) in 2011 showed

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<sup>5</sup> The Forum on Religion & Public Life, "Mapping the Global Muslim Population," Jakarta: Republika, Number 268, 2010, 9 October 2009, p. 12.

that the potency of the *alm (zakat)* in Indonesia reached to 3.4 % of the total GDP. It is based on these percentages, thus, the potency of the *alm (zakat)* in Indonesia is not less than Rp. 217 billion every year.<sup>6</sup> That such huge asset of the *alm (zakat)* will become a strategic economic source if it can be managed in a professional and modern way.<sup>7</sup>

Therefore, to realize that enormous potency of the *alm (zakat)*, it must be supported by spirit and cooperative commitment from all parties, either from policy makers, political direction of legislation, the role of business or society in general, especially the Muslim community in Indonesia. According to the author, the fundamental problem of the utilization of zakat in Indonesia which is not optimal is due to the implementation of the *alm (zakat)* system issue that has not been integrated yet. Integrated system of the implementation of the *alm (zakat)* can be traced from the implementation of the *alm (zakat)* management system,<sup>8</sup> to the system of the *alm (zakat)* control.<sup>9</sup> The *Alm (zakat)* management system covers the collection, distribution and utilization of *zakat* funds. At this stage, the management of zakat appears has not to be integrated yet at the time of the collection, distribution and utilization of the *Alm (zakat)* funds. This can be seen from the presence of many institutions of the Alms collectors being formed by the government and community initiatives.

In 2014, the government of Indonesia has one of the National Zakat Agency, 34 Agencies at the Provincial level, 93 Zakat Board at the City level, and 398 Zakat Board at the District level. While the community has 22 Zakat Institutions that have earned the legality of law and 52 Zakat Institutions that have not got the legality of law both at provincial level and at district/ city level.<sup>10</sup> The agency of the public for the implementation of that charity initiative has not included zakat management which is conducted by religious leaders such as foundations, religious scholars, preachers, and others.<sup>11</sup> Many institutions and the manager of the *alm (zakat)* in managing *zakat*, turned out to cause major problems related to the accountability of the zakat funds. The *Alm (zakat)* funds that can be converted into money, requires accountability system in the surveillance system through the administration, accounting and the accountability of the *alm (zakat)* funds. Multi agency issues in the implementation of zakat as to give the impression that the management of each charity works alone which makes difficult for the systems of administration, accounting and accountability of the *alm (zakat)* funds.

Because the implementation of management system of the *alm (zakat)* and charity surveillance system has not been integrated yet, thus, theoretical framework is needed to analyze the problem. Theoretical framework used is the theory of *maqasid al-shariah*, (the goal or objective of the *shariah*), Sharia enterprise theory, and the theory of law, and political theory of law. The approaches used are philosophical approach, the approach of the concept, the approach of legislation, as well as legal political approach. The materials in this study originated from the primary material in the form of norms in the Law on the Management of Zakat and Islamic Banking, Discussion paper and Academic Paper of the Draft of Law on the Management of Zakat and Islamic Banking, Dissertation and Books on zakat management. This study uses prescriptive analysis techniques that emphasize analytical techniques to express the meaning of the text and the implied intent of a principle, norm and articles in legal materials.

## 2. Results and Discussion

### 2.1 Bank of the Alm (Zakat): Ideas, Structure and the Implementation of the Integrated Management of the Alm (Zakat)

The idea in the Aspects Philosophy

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<sup>6</sup> Muhammad Nizarul Alim, *Muhasabah Islamic Finance*, (Solo: Aqwam, 2011), p. 150-152.

<sup>7</sup> <http://www.republikaonline.co.id>. "Fantastic: Potential Zakat World Rp. 6000 Trillion." Tuesday Edition, 19 July 2011. Accessed on 4 April 2013.

<sup>8</sup> The management of the *alm (zakat)* according to Article 1 alphabet a The Regulation of the Republik of Indonesia Number 23, year of 2011 concerning the Management of the *alm (zakat)* is the planning, the implementation and the coordination activities in collecting, distributing and using the *alm (zakat)*. The management of the *alm (zakat)* in the implementation covers the implementation of collecting, distributing and using the *alm (zakat)*. The management of the *alm (zakat)* in the coordination aspect covers the coordination in collecting, distributing and using the *alm (zakat)*. The management of the *alm (zakat)* also means to do the report and the responsibility of the implementation of the management of the *alm (zakat)*.

<sup>9</sup> The controlling of the *alm (zakat)* according to the Article 34 and Article 35 of the Regulation of the Republik Indonesia Number 23, year 2011 concerning the management of the *alm (zakat)* is conducted by the Minister of Religious Affairs of the Republic of Indonesia, governor, Major, Regent and society. The object or the target of the controlling of the *alm (zakat)* covers the controlling of the *alm (zakat)* in collecting, distributing and utilizing the *alm (zakat)*.

<sup>10</sup> Noor Aflah, *Architecture Zakat Indonesia*, (Jakarta: Universitas Indonesia-Press, 2009), p. iii.

<sup>11</sup> Directorate of Zakat and the Islamic Community Guidance Directorate General of the Indonesian Ministry of Religious Affairs, *Zakat Guidelines*, (Jakarta: Ministry of Religious Affairs of the Republic of Indonesia, 2009), p. 21.

In the perspective of philosophy, law has two basic objectives. First, the law aims to create the sense of justice (*tahqiq al-'adl*) to all mankind. Second, the law aims to realize the benefit and the advantages (*al-maslahah*) to all mankind. The Values of legal purposes in religious perspective is nothing but a derivative from the value of *maqasid al-sharia* (The Goal or Objective of Islamic Law) based on the principle of *rahmatan li al-'alamin* (the Bless for all Universes). In the effort to bring about justice and the benefit, legal acts to create the balance of the entire universe and in various areas, natural, political, social, cultural or economic.

One of the objectives in the field of economic law is to realize economic justice to the communities whose economy is weak. Indonesia as a State Law that upholds human rights in the field of economy shall encourage and empower people whose economy is weak economy, especially in fulfilling the rights of the necessities of life. It is stipulated in Article 34 of the Constitution of 1945, which states:

The poor and abandoned children are taken care by the State.

Zakat as a source of economic funds for the finance of the state economy can be a solution to alleviate poverty and poverty in Indonesia.<sup>12</sup> Politically, the State has an important role in meeting the needs of clothing, food and housing to the people. This role is a fundamental policy in an Islamic economy. State must be able to guarantee the distribution of wealth based on the values of fairness, transparency (transparent) and honesty.<sup>13</sup> Allah says in the Qur'an Al-Hashr verse 7:

So that the treasure was not circulated among the wealthy among you.

Realizing the importance of justice (fairness) and the effort for the empowerment of society's economic business, Islam puts justice (*al-'adl*) as the basis of economic relations. Justice positions each party, group or individual to get the appropriate portion in accord with their willingness and desire to develop as well as to prevent the act of wrongdoing to the weaker party. In the Qur'an, it is explicitly found that the principal value of justice which is universal is inherent in humankind.<sup>14</sup> Based on the basic values of justice, economic activity in the Islamic economy could limit the power of a person who has been indicated of doing injustice to others.

Zakat is one of economic resources and economic instruments to cope with economic problems based on Sharia principles,<sup>15</sup> requires government support and institutionalization of good management. Indonesia as a state of law places the *alms* (zakat) as an instrument of legal norms based on *Pancasila* and the 1945 Constitution. The legislation of the obligation of the *alms* (*zakat*) for the able Muslims in Indonesia is reflected from the realization of the first principle of embodiment that is the One God and Article 29 UUD 1945 which states:

- a. Nation is based upon belief in one Supreme God.
- b. State guarantees freedom of each citizen to adhere their own religion and to worship according to his or her religion or belief.

MA says that the first principle of *Pancasila* and Article 29 UUD 1945 own some of the principles in the management of zakat,<sup>16</sup> such as the principle of faith, the principle of equity and that of justice. These principles

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<sup>12</sup> According Djafar Mohammed Saidi, the type of revenue of the state as a source of the country's financial and economic resources, are: 1. Consisting of state tax income, value added tax for goods and services, sales tax on luxurious goods, property tax, fees for acquisition of land and buildings, and stamp duty. 2. Customs and excise consisting of import duty, sugar excise, tobacco excise. 3. Non-tax revenue which consists of revenue derived from the management of government funds, acceptance of the use of natural resources, acceptance of the results of the country's wealth management activities which are separated, acceptance of service activities undertaken by the government, acceptance based on court decisions and receipts derived of the imposition of an administrative fine which is the acceptance of a grant in the form of government rights, and other receipts set forth in the Regulation itself. Zakat is the fund from the last point that is derived from other revenues stipulated in the Regulation. Djafar Mohammad Saidi, *the State Finance Law*, (New York: Eagle Press, 2008), p. 12.

<sup>13</sup> Muhammad, *Principles of Islamic Economics*, (Yogyakarta: Graha Ilmu, 2007), p. 11.

<sup>14</sup> Q.S The meaning of Al-Maidah verse 8 is as follow: "O ye who believe you ought to be the people who always uphold the truth as God, to witness the fair. And let not the hatred of a group, encouraging you to act unfairly. Be fair, because it is closer to piety. And fear Allah, surely Allah is Aware of what you do."

<sup>15</sup> Special character of Sharia economic systems based on *Shari'ah* principles are as follows: 1. Islamic economics is divine in character based on the Qur'an and *Sunnah*. 2. Islamic economy has a dimension of creed or binding obligations in the form of the creed. 3. To have the character of obedience to God and this has the value of worship. 4. Closely related to the character so that there is no separation between morality and economy, also never charted economic development of Islam that without the protection to morals. 5. Elastic. 6. Objective. 7. To have target or a higher purpose. 8. The economy is stable or sturdy (*iqtishadun bina'un*). 9. To have balance economy. 10. Realistic. 11. Wealth that is essentially belong to God, or the accountability of mandate. 12. To have skills in managing assets. Summarized in Ibn U.S. Elmi. Pelu, *The idea, Tatanana and Application Perspective of Islamic Economics in Political Law*, (Malang: SetaraPress, 2008), pp. 81-90.

<sup>16</sup> M.A. Mannan, *Islamic Economies: Theory and Practice*, (Lahore: 1970), p.285.

as Abdul Ghafur Anshori,<sup>17</sup> explains that the principle of religious belief (faith) states that people who pay the alms (zakat) are sure that the payment is one of the manifestations of religious beliefs (creed), so people who do not practice regular alms (zakat) yet will feel not being perfect in their worship. Principles to be considered in the management of zakat are the principles of equity and justice that the purpose of the alms (zakat) realizes equity in the fair distribution of wealth as a trust God to those who deserve to receive it.

Bagir Manan asserts that to realize justice, will only be achieved in a manner that is fair. Those means are taken as parameters that cover the elements of rules certainty, institutional certainty, assurance mechanisms, time and predictive certainty,<sup>18</sup> as follows:

The certainty of the system rules of the implementation of the *alms (zakat)* through banking in Indonesia firstly was set in the Article 12 paragraph (2) of the Regulation of the Republic of Indonesia Number 38 of 1999 on *Zakat Management*. Article 12 paragraph (2) states:

(2). *Zakat Agency* may cooperate with the bank in collecting the alms (*Zakat*) of property from the one who obliged to pay (*muzakki*) which is in the bank at the request of the *muzakki*.

The role of common bank as partners of the Zakat Board not optimally runs when the Government and the Parliament imposed Article 4 paragraph (2) of Act No. 21 of 2011 on Islamic Banking stated that:

(2). Islamic Bank and Islamic Business Unit could run the social functions in the form of *Baitul Mal* institution, which receives funds from the *alms (zakat)*, charity, grants, or other social funds and channel them to the organization which manages the *alms (zakat)*.

The shifting of the paradigm from the conventional bank to the bank with the principle of *Sharia* has put the position of Islamic Bank and UUS to be the partner for managing the *alms (zakat)*. However, the principle of conformity is not enough to make the *Sharia* Islamic Bank and UUS as partner agencies of the National Zakat Collector, because in 2011 the Government and the Parliament do not mention Islamic Bank and UUS as Zakat Agency partners. This is in accord with Article 7 (2) of the Regulation of the Republic of Indonesia Number 23 Year 2011 concerning the new management of the *alms (zakat)* which states:

(2) In carrying out its duties and functions, BAZNAS can cooperate with related parties in accord with the provisions of the legislation.

The tug of the Articles on the *alms (zakat)* management institutions through the banking system as mentioned above, lead to a void norm in the implementation of *zakat* through the banking system. The vacancy of norm caused legal uncertainty in the implementation of *zakat* through the banking.

The vacancy of Institutional norms of the management of the *Alms (zakat)* causes uncertainty to get justice within legal certainty, because rationally, because certainty is the main character in a modern legal positivism paradigm.<sup>19</sup> The impact of rationality is characterized by the nature of the procedural laws, so that, in the modern legal concept, the procedural aspects become an important legal basis for justice. Even sometimes in discussing the justice or fairness, procedural fairness becomes more important than that of substantive justice or substantive justice it.<sup>20</sup> Fairness and certainty rules of the *Alms (zakat)* management institutions through various zakat collectors, rationally is the realization that there is uncertainty of the rules. Normatively, this resulted in the overlapping of the roles and inter-agency task o the zakat collectors. The position of Islamic banking as an institution of *Baitul Mal* in Article 4 paragraph (2) of Regulation No. 21 of the Banking of the *alms (Zakat)* is also a manifestation of the uncertainty of the rule, because the role of banking with the presence of the Act No. 23 of 2011 concerning the management of the alms (*Zakat*) has been erased completely. Therefore, to realize the fairness through certainty of the rule, the making of law is needed to make the Islamic banking become more accountable institution for managing the *alms (zakat)* and more integrated to the system of the management of *Zakat* property which is at present can be converted into cash.

Furthermore, one of the ways to create a parameter of justice is to realize the institutional certainty which runs the legal certainty for the sake of justice. The analysis of the management of the *alms (Zakat)* through institutional certainty becomes very relevant, because the object is under the authority of the management of the *alms (Zakat)* in the form of money or property that requires treatment and accountable administration in particular.

<sup>17</sup> Abdul Ghafur Anshori, *Zakat Law and Development*, (Yogyakarta: Pilar Media, 2006), p.20.

<sup>18</sup> Bagir Manan, *Authoritative Legal System: A Search*, (Yogyakarta: FH-UUI, 2005), ed to I, p.12.

<sup>19</sup> Ibnu Elmi AS.Pelu, *Links point Authority and Religious Courts in general Legislation in Indonesia*, Dissertation, (Malang: Doctoral Program of Legal Studies, 2010), p.89.

<sup>20</sup> *Ibid*.p.89.



BAZNAS as *zakat* collector institution is a national organization that manages the *alms* (*zakat*) at the national level. When BAZNAS perform *zakat* management in the form of money, it is of course leading to the uncertainty of the status of the institution. Therefore, BAZNAS save the funds of *zakat* in collaboration with the banking system, except in the management of *Zakat* that can be directly distributed to those who deserve to receive it. Likewise with other *zakat* collector an institution which uses the banking services as storage of their *zakat* funds. Based on this analysis, the *zakat* management institutions in the perspective of institutional certainty lead to the inaccuracies role and other *Zakat* collector institutional task in the financial management of *zakat*. Based on this, it can be concluded that the *zakat* management institution that exist today have not experienced the touch of a fundamental reform agenda as well as the principles of good governance, effective and efficient in managing *zakat* institutions in Indonesia.

Furthermore, Bagir Manan asserted that justice can be achieved, one of which is through the elements of assurance mechanisms. The procedure (mechanism) to implement the management of *zakat* is one of the crucial sub-systems or even the most important in the overall system of the management of *zakat*.

In connection with the arrangement of the management of *zakat* that have not been integrated through Islamic banking and social function void norms of Islamic banking in managing *zakat* as Article 4 paragraph (2) of Act No. 2 of 2008 of the norms of Islamic banking in the absence of BAZNAS cooperation with Islamic banking in the Act No. 23 of 2011 concerning *zakat* is related to the certainty of mechanism that is based on the principle of integrated and accountable in the management of *zakat* Regulation and *Sharia* principles in social function in the Islamic banking, thus, the management mechanism of *zakat* through Islamic Banking does not reflect the value of justice for the realization of the purpose and nature of *zakat*.

As in the effort to achieve justice, elements that need to be considered in the justice is the element of certainty and prediction time. It is closely related to the management of *zakat* management institutions, because management is needed as the system of arrangement to achieve the goals of the organization in efficient, effective and productive ways.

Certainty of time and prediction as one element to realize justice, if it is related to the disintegration of the arrangement and management of *zakat* through Islamic banking and social function void norms of Islamic banking in managing *zakat* as Article 4 paragraph (2) of Act No. 2 of 2008 on Islamic Banking and the void of cooperation norms with BAZNAS and Islamic banking in the regulation No. 23 of 2011 concerning the management of *zakat*, it can be concluded that the management of *zakat* has so far not experienced the touch of a fundamental reform agenda in the perspective of efficient and effective.

## 2.2 Orders in the Juridical Aspects

The role of Islamic banking institutions in the system of *zakat* management in Indonesia stated in Article 4 paragraph (2) of Act No. 21 of 2008 concerning Islamic Banking as follow:

- (2). Islamic banks and Islamic business units can perform a social function in the form of institution of *bait al-mal*, which receives funds from the alms, donation, charity, grants, or other social and distribute them to the *zakat* organizations.

Basically the main function of the banking is to carry out the collection and distribution of funds to those in need of funds. The Function of accumulation and distribution of funds by the bank is the mandate of the Regulation. Such bank function is called the intermediation function.<sup>21</sup> Bank intermediation function can be defined as an activity transferring funds from the customers who have excess funds (savers/depositors) as savers to the customers who require funds (of borrowers) as a borrower.<sup>22</sup> Based on the definition above, the bank function as an intermediary institution is the main function of bank as intermediary to accept even has the authority to collect, to transfer or to distribute funds.<sup>23</sup> J.H.P. Bellefroid stated that the rules of law which are generally

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<sup>21</sup> The function of the banks as intermediary institution as in the Article 1, verse 2 of the Regulation of the Republic of Indonesia number 10, 1998 on the amendment of the Regulation of the Republic of Indonesia number 7, 1992 on the banking can be categorized into three, the first is that bank as the institution which collects funds from society and or the receivers of the credit. Second, bank is the institution which gives the credit. Third, bank is as the institution which performs trade transaction and money payment. Apart from those functions, the function of intermediation by the bank is the activity of the bank to collect and distribute the funds to the weak society, little entrepreneurs and medium entrepreneurs to develop their life. I Gede Mastra, "As Fungsi setting Bank Intermediation Institutions In Order To Increase Welfare Through Small And Medium Enterprise Credit," Dissertation, (Malang: Brawijaya University, 2012), p.29.

<sup>22</sup> Triandaru Sigit dan Totok B., *Banks and Other Financial Institutions*, (Jakarta: Salemba Empat, 2008), p.12.

<sup>23</sup> Arthesa Ade dan Edia Handiman, *Banks and Non-Bank Financial Institutions*, (Jakarta: PT.Indeks, 2006), p.79.

applied can be tested by the principal rules. It is these principal rules which are called the principle or principles of law.<sup>24</sup>

According to the researchers the function of intermediation for banking is the principle of banking law. The principle of law has significance meaning for the establishment of legal, law enforcement and the development of legal science. The principle of intermediation in banking becomes the idea and spirit of the law for the establishment, implementation and development of the science of banking law. Legal principles provide a foundation outlines the provisions that need to be set forth in the rule of law. For law enforcement, the legal principle is very helpful for the interpretation and the use of the invention or analogous laws. As for the development of the science of law, principles of law have utility to see the universality of the regulation at the level of ideas and values which have a unity.<sup>25</sup> The principle of law has the duty to dig and read the meaning of the language, to dig a pedestal base that become the basis of thinking and believing, the basic of the ideals, and basic laws and regulations.<sup>26</sup> In addition to the principles of law, other element of legal philosophy is the aspect of legal purpose.

Banks function as an intermediary institution as has been described above, it also becomes the duty of Islamic banking. Such term is defined in Article 4 paragraph (1) of the Law of the Republic of Indonesia Number 21 Year 2008 on Islamic Banking, Islamic banking both Islamic banks and Islamic business units within conventional banking are obliged to do the function to collect and distribute public funds.<sup>27</sup>

As a business entity, Islamic banking does not only do business activities as the function of intermediation, Islamic banking also active in social activities. The role of Islamic banking and social function is to collect social funds of the people like the alms, charity, grants and endowments and distribute it to organizations designated as zakat management as the objectives of zakat management is stipulated in the regulated No. 23 of 2011 concerning Zakat management.

Digging and reading the meaning of the rules regarding social functioning of Islamic banking as Article paragraph 4 paragraph (2) of Regulation No. 21 concerning Islamic Banking is related with the phrase "could run", the word "*bait al-mal*", the word "receive", the phrase "the organization of zakat management".

The phrase "could run" in the editorial of Article 4 paragraph (2) of Regulation No. 21 of the Islamic Banking reflects that Islamic banking has additional duties to apart from its main task, namely the intermediary function as Article 4 paragraph (1). The additional task is the function as an institution of "*bait al-mal*". Additional task of Islamic banking institutions is reflected in the editorial "can run" show that the banking functions only as social function, not as its main function that is as an intermediary in Article 4 paragraph (1) which uses the phrase "must run".

Further is the word "*bait al-mal*". Normatively, the meaning of *bait al-mal* is not defined in the Regulation of the Republic of Indonesia Number 21 of 2008 on Islamic Banking. The mention of *bait al-mal* is only mentioned in the Regulation, namely in the elucidation of Article 15 paragraph (1) of Regulation No. 23 of 2011 concerning Zakat which states:

- (1). In the province of Aceh, the mention of BAZNAS at the provincial level or the mention of BAZNAS at the districts/cities level may use the term *bait al-mal*.

The conceptual explanation of *bait al-mal* has not been found in the laws and regulations in Indonesia. The absence of a comprehensive meaning of *Baitul Mal* suggests that the definition of the word "*bait al-mal*" is still not explained theoretically in Regulation No. 21 of 2008 on Islamic Banking. This is in the normative perspective is called the vacuum of emptiness norm. As a result of the void norms, that would lead to legal uncertainty, because one of the parameters of legal uncertainty begun with the uncertainty of rules.

The weak role of Islamic banking in running its function in the management of *zakat* is seen from the word "receive". The word "receive" puts the position of Islamic banking institution in as the passive institution to accept *Zakat*. This is different, if it is compared to the intermediary function of the banks as Article 4 paragraph (1) which uses the word "collect". The word "collect" that begins with the insertion "me" positions Islamic banking as an active institution to plan, pick up, mobilize, and others in terms of raising public funds.

Uncertainty rules also seen in the editorial "*zakat* management organization". While Article 4 paragraph (2) of Regulation No. 21 of 2008 concerning the distribution declared the distribution of the alms (*zakat*) and other

<sup>24</sup> Peter Mahmud Marzuki, *Legal Research*, (Jakarta: Kencana, 2008), ed 8. p.78.

<sup>25</sup> *Ibid.* p. 79.

<sup>26</sup> Editorial Team Big Indonesian Dictionary, *Dictionary of Indonesian*, (Jakarta: Balai Pustaka, 2001). p.70.

<sup>27</sup> Article 4 verse (1) Regulation numbers 21 of 2008 on Shariah banking states that *Shariah* banking and the *Shariah* business unit are obliged to collect and distribute public funds.

public social funds to the organization of zakat management, then the organization meant is the organization of *zakat* management which is belonged to the government BAZ and public *zakat* management such as the institution of *zakat* collectors. Distribution of Zakat through the organization of the *zakat* management is not problematic when the distribution is carried out before the year 2011, because there has been no confirmation of *zakat* institution decided by the government. However, since the enactment of Regulation No. 23 of 2011 concerning *Zakat* management, the government decided that national organization to manage the zakat is BAZNAS and LAZ as the helper of BAZNAS. When the Regulation No. 21 of 2008, concerning Banking mentions the distribution of the alms to the organization of zakat management, then in theoretical perspective of legislation and legal certainty, the principle cause conflict, norms and rules of zakat distribution between Article 4 paragraph (2) of Regulation No. 21 2008 on the banking with the function and role of BAZNAS in Regulation No. 23 of 2011 on zakat Management.

Therefore, the management of *zakat* in the form of money should be built based on an integrated management of zakat. The Formulation of integrated management of zakat normative framework is built based on the principles of social intermediation of zakat funds and the theory of legal certainty in the management of *zakat*. The system of Legal order of zakat management integrates the principle of intermediation of zakat social fund and connects normative framework of the *zakat* management with related rules such as the Regulation of the Financial Services Authority which has the authority to supervise all financial institutions, especially financial institution such as banks associated with the Regulation of the Income Tax which sets zakat that can be a tax deduction, and associated with the Islamic Banking Regulation which has a dual function namely intermediation of business funds and the function of intermediary for social-religious fund such as zakat.

### 2.3 Application of the Sociological Aspects

The phenomenon of the management of zakat that has not been integrated socially can trigger social unrest. Some facts show, that *zakat* management system is still not optimal in changing the one who deserves to get the *zakat* (*mustahiq*) to be the one who is obliged to pay the alms (*zakat*) (*muzakki*) from year to year. The phenomenon of zakat management and public social funds which is very sad was the case of *zakat* in Pasuruan tragedy on September 15th in 2008 which led to the deaths of 21 people. Not only is that, inaccuracy of *zakat* management, especially in the distribution of *zakat* still happening in the distribution of zakat both consumptive and productive.<sup>28</sup> The phenomenon of *zakat* management issues are also faced with the formation of many *zakat* institutions either by the government and society as well as the collection of *zakat* funds which are still conservative through religious leaders and so on.

The number of zakat institutions collector that have not been integrated is the biggest problem in the world of the alms. The number of organizations and institutions of zakat organization collector are supposed to be able to be the force to solicit social public funds,<sup>29</sup> when those organizations such as BAZNAS and other parties can work together to build more accountable, professional, effective and efficient system of zakat management.

Weak surveillance system in the management of the property and *zakat* funds also adds the complexity of *zakat* problem. Those phenomena have brought chronic implications in sociological aspect, which led to the vulnerability of misappropriation of zakat funds and foster a sense of distrust to the system of zakat fund management. In addition, the strengthening of public culture that are used to paying the alms (*zakat*) directly, also adds to the problem of *zakat*.

The application of the bank of *zakat* in transforming the implementation of *zakat* can be a solution to the implementation of zakat in Indonesia. The concept of bank of *zakat* which prioritize the aspects of social enterprise and serves as a social institution for financial intermediation has realized an integrated system of *zakat* management. The meaning of an integrated management is positioning the implementation of collection of the alms (*zakat*) which is connected with either organization formed by the government or by society in managing zakat funds. Bank of zakat plays as the last treasure house or (*bait al-mal*) for the collection of zakat and becomes first property house in zakat funds.

<sup>28</sup> *Tragedy Deaths Due to Lack of Oxygen Zakat* in “<http://www.republika.co.id>, Tuesday Edition, 16 September 2008. Accessed on 4 April, 2013.

<sup>29</sup> The number of social funds that can be collected by the *Al-Falah* social Funding Institution in December 2012 is Rp. 6.653.432.793 for the aid of education, Rp. 5.873.511.406 for humanity aid, Rp. 2.191.552.405 for the Mosque building and Rp. 4.311.046.609 for Preaching aid, then the total number until December 2012, *Al-Falah* Foundation could collect public social funds including the alms (*zakat*) for Rp. 19.029.533.213 or 19,05 Billion every year. Whereas LAZISNU until December 2011 could collect public social funds reaching at RP. 159 billion, whereas *Dompot Du'afa Republika* could collect the public social funds reaching at Rp. 159 Billion until November 2013. See [http://www.republikaonline.co.id/statistik\\_jumlah\\_zakat\\_nasional](http://www.republikaonline.co.id/statistik_jumlah_zakat_nasional). Accessed. on 26 November 2013.

The presence of the bank in the integrated management of zakat can build public confidence in the management of zakat, because the banking system is built with the the form with a system of integrated that integrates institution zakat products government, institution zakat products of society and monitoring system by Authority Financial Services (OJK), Supreme Audit Board (BPK), Report Center and Analysis Financial Transactions (PPATK), Corruption Eradication Commission (KPK) and income tax. Issues of control and supervision of zakat funds, including funds in an ideal perspective has been put the role of OJK in the future to supervise financial institutions including zakat, hajj funds and other funds. The development of Islamic economic institutions such as bank of zakat will become the breakthrough of the most sophisticated accountable system which can be trusted in the management of zakat that ensure appropriate distribution of the property from the rich to the poor.

Integrated management of zakat which guarantees through the concept of zakat funds administration bank zakat is inevitability. This is in accordance with the rules of *Usul fiqh* which reads: *مَا لَا يَنْبَغُ الْوَأَجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ* which means that: duties that can't be performed perfectly except with means (*wasilah*), then instrumentalities (*wasilah*) it his law must also to be implemented.<sup>30</sup> A means of (*wasilah*) is the way or road leading to the attainment of legal purposes. *Wasilah* according to al-Qurafy quoted by H. A. Djazuli is:

A way or means which convey to the purpose of preeminently is a tool preeminently, and which convey to the purpose of which is most bad is a tool which is most bad, and which convey to the purpose that is midway between is a tool that is midway between also.<sup>31</sup>

Based on rule of the importance of *zakat* which so large as of one obligation muslims can't be executed through the management of available. *Zakat* required to management is organized, accountable, modern, neat and trusted. Therefore, the management of *zakat* must be placed as *amanah* that required be a kind of a means or institutions who trusted. It means the embodiment of an institution or institution the management of *zakat* same compulsive as an obligation *zakat* itself.

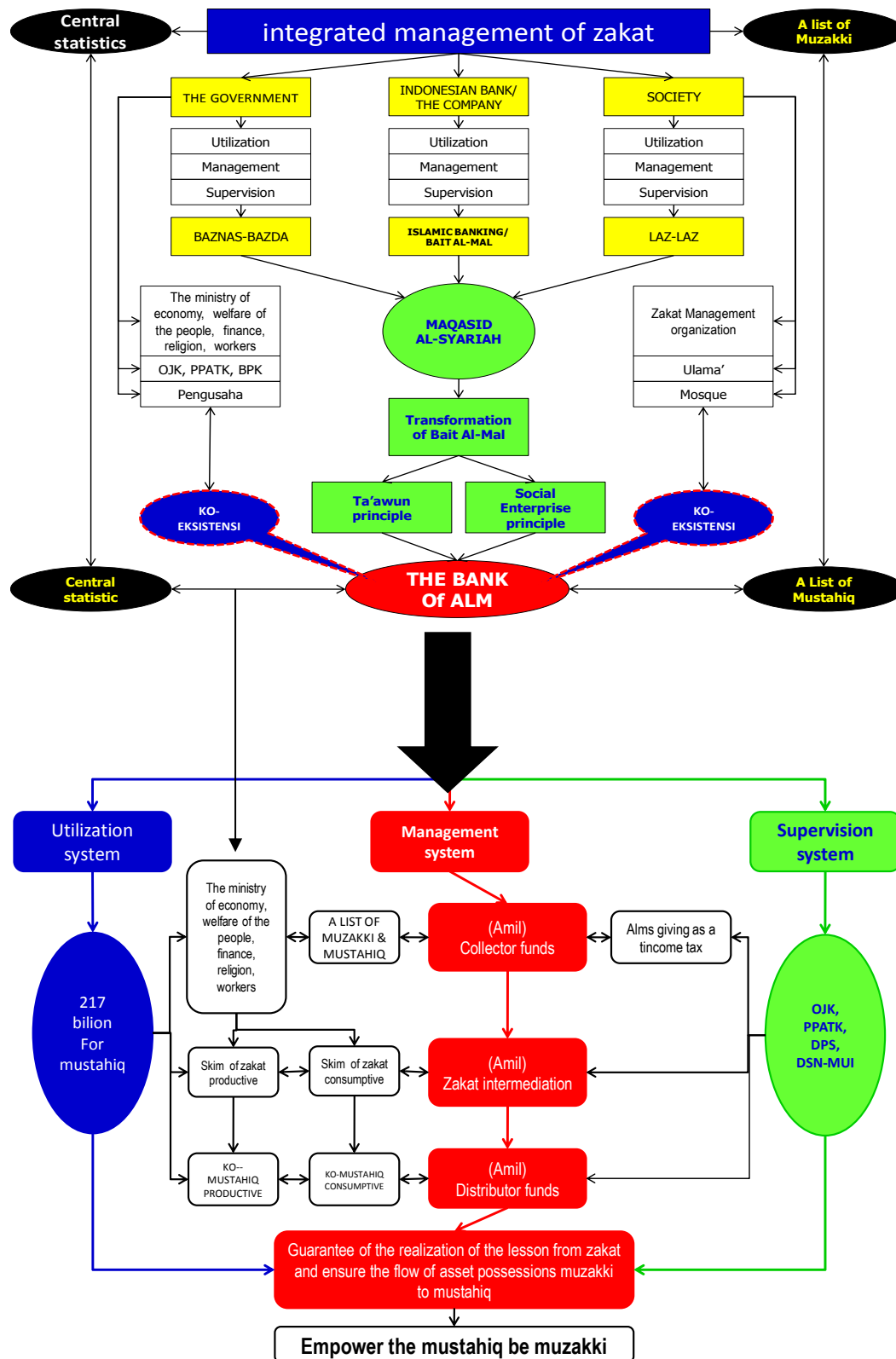
To clarify the flow management of integrated concept of the bank of alm can be viewed on construction modeled on 1 diagram below.

<sup>30</sup> H. A. Djazuli, *Ushul Fiqh: Methodology of Islamic Law, Edition I*, (Jakarta: PT. RajaGrafindo Persada, 2000), p. 217.

<sup>31</sup> *Ibid.*, hlm. 218.



Diagram 1. Integrated construction management model of Zakah



### 3. Conclusion

The alternative solutions of effective and efficient *alm* (*zakah*) management is through integrated *alm* (*zakah*) management institutions. The institution of unified of integrated management of zakat which effective, efficient

and accountable is the Islamic banking institutions through which has two main functions, namely as intermediary funding of the business profit and as a religious social intermediary institutions or charity fund institution such as *alm (zakat)* the specialty of the function of Islamic banking as intermediary of social fund (religious) such as the *alm (zakat)* is the rational basis of the formation of the charity or *alm* bank.

The bank of *alm* is formed based on philosophical aspect that *alm (zakat)* as the religious economic instrument realizes the justice of *alm* economy based on the principles of *maqasid al-syaria* (the goals of Islamic law) which ensure the maintenance of religion is *zakat*, guaranteed circulation of *zakat* and the safety of the receiver of the *alm*. The bank of *alms (zakat)* is formed based on juridical aspect that the implementation of the *alm* should be integrated based on the regulation to ensure legal certainty in managing the *Alm*. An integrated legal certainty puts the position of the basis of social finance intermediation and social enterprise in the regulation of *sharia* finance which is harmoniously related to the legislation of OJK, BPK, PPATK, KPK and Income tax. The bank of *alm (zakat)* is formed based on the sociological aspects that the implementation of the *alm (zakat)* system is built based on the principle of trust. The bank of *alm (zakat)* as a special bank managing *alm (zakat)* as a trust fund puts the trust fund as the trust of the givers that should be handed over and be used in accord with the *Sharia* that based on donation to those who have the rights to receive it.

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