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Cultural-Based Deviance on Islamic Law; Zakat *Tekke Wale'* Spending in Basala, Konawe, Southeast Sulawesi, Indonesia

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Abstract:

Owners of swallow's nest in Basala District, South Konawe Regency give *zakat* of *tekke wale'* (swallow's nest) using gold *zakat* rate. This implies deviation from Islamic law and striking difference from the provisions of *zakat* law formulated by most Muslim scholars. This research aims to reveal the business phenomenon and practice of *tekke wale'* *zakat* spending, the factors beyond preference to use *zakat* with gold rate as well as culture-based deviations on Islamic law regarding this specific practice of *zakat*. This research is qualitative with an empirical-normative approach which includes interviews with swallow nest owners, community leaders, and religious leaders. Besides,

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it involves literature review to gather the data. The research shows that swallow nest business is a relatively new livelihood for local people so they have no definite guidance on how to spend the *zakat*. Their preference using gold *zakat* rate are due to five factors, ranging from lack of knowledge, assumption that swallow's nest is not a part of agricultural business, easy calculation in giving *zakat* using gold rate, following the previous swallow's nest owners, to easiness to determine the *zakat* recipients and spending period. Meanwhile, three forms of deviation from Islamic law existing at the practice urges the specific legal product concerning this specific commodity.

Keywords:

Zakat; Tekke Wale'; Islamic Law

Introduction

The practice of *zakat* from *tekke wale'* (swallow's nest) business income in Basala District, South Konawe Regency is unique compared to other regions in Indonesia. Owners of swallow's nests pay *zakat* on their swallow's nest income based on 85 grams of gold *zakat* within one year. Meanwhile, *zakat* on swallow's nest income at other regions in Indonesia, such as Pasangkayu¹, Luwu Utara², and Wajo³ relies on minimum levels and limits assets (*niṣāb*) of agricultural *zakat*. The controversy in determining *zakat* amount and *niṣāb* then appears in this phenomenon. In common Islamic law, it is known that the amount of *zakat* from swallow's nests cannot be based on gold *zakat*. This is because gold is categorized as hidden treasure ownership and it does not wait for any results to pay the *zakat*. Meanwhile, the swallow's nest business is waiting for results like agriculture to pay its

¹ Ifal Arfandi, "Tinjauan Hukum Islam terhadap Zakat Sarang Burung Walet Bagi Peternak," *El-Iqtishadi* 4, no. 1 (2022): 56-65, <https://doi.org/https://doi.org/10.24252/el-iqthisady.vi.29687>.

² Hasdir Anwar, "Pertanian Sarang Burung Walet dalam Tinjauan Hukum Zakat," *Maddika* 03, no. 01 (2022): 21-34, <https://doi.org/10.24256/maddika.v3i1.2625>.

³ Sulmayani, Achmad Ruslan, and Ruslan Hambali, "Pemungutan Pajak Sarang Burung Walet: Telaah Kontekstual," *Al-Azhar* 2, no. 1 (January 2020): 36-46, <https://doi.org/https://doi.org/10.37146/ajie.v2i1.37>.

zakat.⁴ It should be equivalent to 653 kilograms of rice because the swallow's nest business has the same process as the agricultural business, namely waiting for the results of each harvest and is seasonal.⁵

On the other hand, swallow nest business also implies another specific problem. Theoretically, according to Syaikh Yūsuf al-Qarḍāwī, the conditions for assets which require the owners to pay *zakat* are full ownership, growing, fulfilling the minimum limit of *zakat*-able assets amount (*niṣāb*), exceeding basic needs, free from any debt, and completing a year period.⁶ Meanwhile, the majority of swallow nest owners use loans to construct the swallow nest building which means that actually, the assets they own are not fully owned due to the loan. Thus, this practice gives birth to culturally based deviation on Islamic law resulting from a lack of specific provision regarding the swallow's nest *zakat*.

Deviation from Islamic law is mentioned variably in academic discussion. Libesny, for instance, preferred to name it as a change, which he mentioned that daily life development and expanding culture requires adaptation of legal rules to new situation. He took an example of Ottoman *qānūn* which deviated from the *Syarī'ah* as it condified customary law instead of Islamic law. Another example of deviation that he named it as innovation is the Family Laws Ordinance Section 4 about inheritance *per stirpes*.⁷ It is clear that any change or innovation of Islamic law does not always come in a negative tone. Instead, it is a part of adaptation to the new situation as will be clear later at the discussion about this specific case.

Scholars have studied a lot about *zakat* in general or swallow nest *zakat* in particular. These studies are classified into three discussion themes. The first theme concerns the provisions of *zakat* and tax on swallow nest profits, such as the work of Ifal,⁸ Anwar,⁹ and

⁴ Bahrul Ulum Rusydi et al., "Telaah Kesyariahan Zakat Burung Walet di Kecamatan Dua Bocoe Kabupaten Gowa," *Al Amwal* 5, no. 1 (2020): 1-10, <https://doi.org/10.24256/alw.v5i1.1821>.

⁵ Anwar, "Pertanian Sarang Burung Walet dalam Tinjauan Hukum Zakat."

⁶ Yūsuf al-Qarḍāwī, *Fiqh Az-Zakāh (Al-Dirāsah al-Muqāranah li Ah-Kāmihā wa Falsafatihā fī Ḍau'i Al-Qur'ān wa as-Sunnah, Mu'assasah Ar-Risālah* (Beirut, 1997).

⁷ Herbert J Liebensy, "Stability and Change in Islamic Law," *Middle East Journal* 21, no. 1 (1967): 20.

⁸ Arfandi, "Tinjauan Hukum Islam terhadap Zakat Sarang Burung Walet Bagi Peternak."

Sulmayani et.al.¹⁰ The second theme concerns provisions and projections for *zakat* management, such as the work of Bastiar and Bahri,¹¹ Mahdi et.al,¹² Fuad,¹³ and Siectio.¹⁴ The third theme concerns with the modernization of *zakat* law, such as the work of Irfandi,¹⁵ Elimartati et.al,¹⁶ and Farah et.al.¹⁷

From these three themes, it was found that the study of *zakat* on swallow's nest income has not received maximum attention from scholars. In general, previous studies focused on the legal status and management of *zakat* from various perspectives. To complement existing research, this research is presented to reveal phenomenon of the practice of *zakat* swallow's nest spending, the factors that cause swallow nest owners to pay *zakat* on gold rate, and a review of Islamic law regarding the spending of swallow's nest *zakat* which slightly looks as deviation. The Basala District area of South Konawe Regency was used as a research location because the area has a distinctive swallow's nests *zakat* practice which is different from other areas in Indonesia. Thus, in the future, this research can be used as

⁹ Anwar, "Pertanian Sarang Burung Walet dalam Tinjauan Hukum Zakat."

¹⁰ Sulmayani, Ruslan, and Hambali, "Pemungutan Pajak Sarang Burung Walet: Telaah Kontekstual."

¹¹ Al-Qardāwī, *Fiqh Az-Zakāh (Al-Dirāsah al-Muqāranah li Ah-Kāmihā wa Falsafatihā fi Ḍau'i Al-Qur'an wa as-Sunnah)*.

¹² Mahdi Syahbandir et al., "State Authority for Management of Zakat, Infaq, and Sadaqah as Locally-Generated Revenue: A Case Study at Baitul Mal in Aceh," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, no. 2 (2022): 554-77, <https://doi.org/http://doi.org/10.19105/al-Ihkam.v17i2.7229>.

¹³ Muhammad bin Mutahir Fuad, "Issues and Challenges of *Zakāh al-Māl* Collection in Brunei Darussalam," *International Journal of Zakat* 8, no. 1 (2023): 64-76, <https://doi.org/https://doi.org/10.37706/ijaz.v8i1.400>.

¹⁴ Siectio Dicko Pratama, "The Role of Zakat in Alleviating Multidimensional Poverty," *IJIEF: International Journal of Islamic Economics and Finance (IJIEF)* 6, no. 1 (January 31, 2023): 125-42, <https://doi.org/https://doi.org/10.18196/ijief.v6i1.17006>.

¹⁵ Irfandi Irfandi, "Zakat Aset Produktif (*Mustagallāt*) dalam Tinjauan Fikih," *Sibatik Journal* 1, no. 6 (April 2022): 809-22, <https://doi.org/https://doi.org/10.54443/sibatik.v1i6.95>.

¹⁶ Elimartati, Rizal Fahlefi, and Liza Erniyanti, "Strengthening Family Resilience through the Tradition of Agricultural Zakat Payment in Nagari Lima Kaum in Tanah Datar District of West Sumatera," *Samarah* 5, no. 1 (June 2021): 496-513, <https://doi.org/10.22373/sjhk.v5i1.9147>.

¹⁷ Farah Arum Firdaus, Irham Zaki, and Sri Herianingrum, "The Role of Generation Z Through Online Platform in Optimizing of Zakat Literacy and Fundraising," *AZKA: International Journal of Zakat & Social Finance* 4, no. 1 (March 2023): 13-22, <https://doi.org/10.51377/azjaf.vol4no1.118>.

consideration in the formulation of legislative regulations regarding *zakat* law in Indonesia.

Method

This is a field research located in Basala District, South Konawe Regency. The primary data source for this research is based on the results of interviews and observation. The interview results were obtained by interviewing swallow nest owners, swallow nest developers, community leaders, and religious leaders. Table 1 shows the detail information about the subject in this research.

Table 1. The Informant Identity

No.	Informant	Position	Gender	Address
1	Latang	Owner of Swallow's Nest	Male	Polo-Pololi Village
2	H. Jamal	Owner of Swallow's Nest	Male	Tombekuku Village
3	Watinurung	Owner of Swallow's Nest	Female	Teporombua Village
4	Lamma	Owner of Swallow's Nest	Male	Lipu Masagena Village
5	Sukardi	Owner of Swallow's Nest	Male	Iwoimendoro Village
6	Rizal	Developer of Swallow's Nest	Male	Basala Village
7	Imam Boge	Religious Leaders	Male	Basala Village
8	Anas	Public figure	Male	Basala Village

Meanwhile, the secondary data is obtained from the literature review on *zakat* by Syaikh Yūsuf al-Qarḍāwī's¹⁸ theory concerning the conditions for assets which require the owners to pay *zakat*.

Result and Discussion

Business Phenomenon and Practice of Zakat *Tekke Wale'*

Tekke wale' (swallow's nest) has a value or price that is quite expensive.¹⁹ The increase in its price from year to year is quite

¹⁸ Al-Qarḍāwī, *Fiqh Az-Zakāh (Al-Dirāsah al-Muqāranah li Ah-Kāmihā wa Falsafatihā fī Ḍau'i Al-Qur'ān wa as-Sunnah)*.

promising. In fact, sometimes, only certain groups can afford to buy it due to its quite expensive price. However, people believe that swallow nests have advantages that cause their purchasing power remain high. Swallow's nests are processed into various dishes²⁰ but generally, they are cooked into something popular in Chinese restaurants. It is known as *yen-ou* and some people also cook it with a mixture of vegetables. It is said that in ancient times, in Chinese cuisine, it was a symbol of luxury that only nobles and palace residents could enjoy.

Swallows are cave-dwelling birds that are commonly found in Indonesia. They have small bodies with adult bird body sizes ranging from 10-16 cm. Male and female gender is difficult to distinguish, while the color of the swallow's feathers is blackish and less attractive. With the habit of swallows inhabiting caves as a place to live, Indonesia has in fact a bright future in this regard due to the existence of natural caves spreading throughout the country. Unfortunately, nowadays, the sustainability of its natural habitat in caves is threatened. The continuous picking of swallow nests and the location of the caves which are deemed unsafe have resulted in the number of swallows living in the caves decreasing. As a result, the bird's nests are becoming less and less.

Moreover, there are even some caves that are previously famous for its high number of swallows yet it is now left without a single swallow. The rapid acceleration of the times has made many caves in Indonesia become tourism objects, so that swallows fly away from the caves.²¹ Therefore, people are starting to look for ways to breed swallows by constructing tall buildings as replacements for caves for them to nest in,²² as is currently being done by the people of Basala District, South Konawe Regency.

¹⁹ Muliati and Bulan Dawiya, "Studi Usaha Sarang Burung Walet dalam Meningkatkan Pendapatan Desa," *Jurnal Mirai Management* 7, no. 1 (2022): 182-99, <https://doi.org/https://doi.org/10.37531/mirai.v7i1.2358>.

²⁰ Mega Endiana Dewi, "Benefit of Edible Bird Nest Consumption," *Jurnal Kedokteran Ibnu Nafis* 9, no. 1 (2020): 12-16, <https://doi.org/https://doi.org/10.30743/jkin.v9i1.43>.

²¹ Ananda Ramadani, Suhartini, and Mawarda Indo Anja, "Jurnal Kesehatan Yamasi Makassar," *Jurnal Kesehatan Yamasi Makasar* 7, no. 2 (2023): 91-101.

²² Bili Caesar and Bayu Nuswantara, "Kelayakan Finansial Budi Daya Sarang Burung Walet di Kecamatan Malinau Barat Kabupaten Malinau," *Jurnal Agristan* 2, no. 2 (2020): 102-8, <https://doi.org/10.37058/ja.v2i2.2354>.



Swallow nests are made from the saliva of apodidae bird species. The main producing countries for swallow's nests are Indonesia, Thailand, Malaysia, China, and the Philippines. Indonesia is the largest country producing swallow's nests, contributing 85% of the world market.²³ Swallow's nests are considered as a symbol of wealth, prestige, and power because the selling price per kilo is very expensive. The quality and price of swallow nests vary significantly depending on the geographic origin of the nest. In general, swallow nests produced by Indonesia have the highest prices compared to other countries.²⁴

In terms of income, the swallow's nest business is very promising. Therefore, the owners of swallow's nest willingly construct a tall building that resembled a multi-story shophouse without any glass with the windows left open to entice swallows to come. They typically use certain technological equipments to play audio that resemble the typical sound of swallows. Swallow nest cultivation buildings are represented in Figure 1 as follow.

²³ Dede Sri Wahyuni et al., "Ulasan: Sarang Burung Walet Sebagai Pangan Fungsional," *Acta Veterinaria Indonesiana* 9, no. 3 (2021): 201-14, <https://doi.org/10.29244/avi.9.3.201-214>.

²⁴ Ting Hun Lee et al., "Edible Bird's Nest: The Functional Values of the Prized Animal-Based Bioproduct from Southeast Asia-A Review," *Frontiers in Pharmacology* 12, no. April (2021): 1-16, <https://doi.org/10.3389/fphar.2021.626233>.

Figure 1. Swallow Bird Building

It can be seen that the building local citizens usually construct works well in inviting the swallow. Besides that building, during this cultivation activity, local people also use swallow attractor equipment to call or invite the swallows to come to the building. The equipment can be seen in Figure 2.



Figure 2. Swallow Caller Audio Placed in the Building

It can be seen in Figure 2 that swallow caller audio is really important to attract the swallow to come to the nest. The swallow nest business is different from keeping birds in cages that need to be cleaned and fed every day. Instead, the building is prepared for the swallows to fly in and out because they are free to come and go as they please. H. Jamal explains this unique process as follows;

“The owner of a swallow's nest does not have ownership over the swallows themselves as these birds are free to live and nest wherever they choose. As a result, entrepreneurs must invent strategies for designing swallow buildings that are attractive to nesting swallows. Success in this effort often depends on luck”.²⁵

In Basala District, owning a swallow's nest business isn't the only source of income for the owners. After constructing the swallow building, most owners lock it and resume their usual work. The progress of the swallow's nest business is checked after three to six months. Researchers found 51 swallow buildings in Basala Subdistrict spreading across 9 villages as can be seen in Table 2.

Table 2. List of Swallow Buildings in Basala District

No	Village	Number of Swallow Buildings
1	Basala	9 Building
2	Iwoimendoro	4 Building
3	Lere	4 Building
4	Lipu Masagena	10 Building
5	Polo-Pololi	17 Building
6	Tombekuku	3 Building
7	Teporombua	2 Building
8	Lambandi	1 Building
9	Epees	1 Building
	Total	51 Building

It can be seen from Table 2 that Polo-Pololi Village is the area that has the most swallow buildings in Basala District. The reason is the tropical characteristic of the village. Swallows really like tropical areas that have lots of trees and adequate springs because they not only like to find food, but also like to play in the water in damp places. According to Rizal; "*This is what makes Polo-poloi Village the largest contributor to the number of swallow buildings in Basala District*".²⁶

The construction of buildings and equipment for the swallow's nest business necessitates large sums of money. Therefore,

²⁵ H. Jamal, Interview excerpt, 12 December 2022 - Translated

²⁶ Rizal, Interview excerpt, 8 January 2023 - Translated

the swallow nest business cannot be run by all levels of society "A decent swallow building has at least a 2-story building which requires construction costs of around Rp. 100,000,000,- up to Rp. 150,000,000,-, not to mention if the building has 3 to 4 floors which can cost Rp. 350,000,000,- up to Rp. 500,000,000,-".²⁷ This figure is certainly large for people with a lower-middle-class economy.

Following is the data from various swallow nest owners in the Basala District including the year they started their swallow nest business, the harvest time, the income earned from each harvest, the selling price per kilogram, and the total income from the business over one year.

Table 3. Swallow's Nest Business Data

No	The Owner	YDF	HT (per month)	Prod (kg)	Price in million IDR (per kg)	Income in million IDR (per year)
1	Sukardi ²⁸	2021, 20 x 14 m ² , (Bank Funds)	1	2	8.5 - 11	204 to 264
2	Lamma ²⁹	2020, 4 x 12 m ² , (Personal Funds)	1	0.7 - 1	8.0 - 10.5	96 to 126
3	H. Jamal ³⁰	2018, 12 x 17 m ² (Bank Funds)	1	5	8.5 - 11	510 to 660
4	Watinurung ³¹	2019, 20 x 14 m ² (Bank Funds)		7	8.8 - 10.5	739 to 882
5	Latang ³²	2018, 5 x 11 m ² (Bank Funds)	2	1	8.8 - 10.5	192 to 252

Annotation:

YDF : year of the business started, dimension, and funding sources

HT : harvest time

Prod : production

It can be seen from Table 3 that there are variations in the price of swallow's nests. These price variations are caused by three things, namely; (1) the quality of swallow's nest that has been harvested. The

²⁷ Lamma, Interview excerpt, 2 Marc 2023 - Translated

²⁸ Sukardi, Interview excerpt, 11 February 2023 - Translated

²⁹ Lamma, Interview excerpt, 2 March 2023 - Translated

³⁰ H. Jamal, Interview excerpt, 12 December 2022 - Translated

³¹ Watinurung, Interview excerpt, 9 March 2023 - Translated

³² Latang, Interview excerpt, 22 December 2022 - Translated

quality itself is divided into five types, namely; bowl-shaped and clear, bowl-shaped and brownish, small clear nest, small brownish nest, and broken nest, (2) different traders who buy the swallow's nest, (3) time and season of sales.³³ The quality of bird nests greatly determines the selling price. The best quality is bowl-shaped and clear in color which can reach a price of Rp. 9,000,000,- up to Rp. 11,000,000,- per kilo gram. A bowl shape and brownish color can be sold for IDR. 8,000,000,- up to Rp. 9,000,000,- while clear small swallow nests can be sold for Rp. 8,500,000,- up to Rp. 10,000,000,-. The small brownish swift's nest ranges from Rp. 7,500,000 to Rp. 8,500,000,-. while cracked swiftlet nests can be sold for IDR. 7,000,000,- up to Rp. 8,000,000,-.³⁴

Based on the provided information, it is clear that the difference in the selling price of swallow nests in the Basala District is primarily determined by the quality of harvested nests. The cleaner the nest, meaning there are fewer feathers and bird droppings, the higher the selling price will be and vice versa.

Owners of swallow's nests do not sell the swallow's nests immediately after they have harvested them. Instead, they collect them until they reach a certain target weight and price. After the owners sell the swallow's nest, they will calculate and record the number of purchase to know the *zakāh* rate for their income. According to Latang,

"*Zakat* from swallow's nests is paid once every year following the gold *zakat* rate. The time for paying *zakat* is usually in the month of *Ẓūlqā'dah* in the Hijriyah calendar, and sometimes it is also paid one day after the Eid al-Fitr and Eid al-Adha holidays."³⁵

The practice of *zakat* on swallow's nests using the gold *zakat* rate is based on an understanding among fellow swallow's nest owners that the *zakat* on swallow's nests has been based on the gold *zakat* rate from the old time, so they have just followed the habit. The

³³ Rizal, Interview excerpt, 12 February 2023- Translated

³⁴ H. Jamal, Interview excerpt, 5 January 2023 - Translated

³⁵ Latang, Interview excerpt, 22 December 2022 - Translated

form of payment for swallow *zakat* was explained by H. Jamal in the interview as follow:

"Swallow's nest *zakat* is paid by giving a certain amount of money or sugar, rice, and other household necessities to the needy in their area. It is also given to people who are affected/disturbed by the noise of the audio sound calling the swallow. Several swallow nest owners also pay *zakat* to nearby mosques in the form of money, cement, stone, red stone, or other building equipments which of course is intended for building mosques."³⁶

In short, the practice of *zakat* on swallow's nests above is spent by each swallow's nest owner and paid individually once a year. Preference for *zakat* recipients is due to each consideration.

Factors beyond Paying Zakat Using Gold Rate

There found five factors beyond belief and practice of swallow nest *zakat* spending using the gold rate.

First, there is a lack of knowledge regarding the law on *zakat* for the swallow's nest income. Owners of swallow's nest businesses and people of Basala District generally do not know for certain about legal provisions regarding *zakat* for swallow's nests. This is because the business of swallow's nests is relatively a new livelihood among the community. Moreover, there is no socialization or insight sharing regarding the issue. As a result of this, people practice *zakat* in a deviant way. Imam Boge, one of the informants, added so:

"Since the development of the swallow's nest business in Basala District until now, there has never been any socialization or assistance regarding the regulation and provision of the *zakat* spending from government institutions or from the *zakat* management institution. In this way, the owners of the swallow's nest only continue the habit of giving *zakat* as the old owners did."³⁷

³⁶ H. Jamal, Interview excerpt, 12 December 2022 - Translated

³⁷ Imam Boge, Interview excerpt, 21 March 2023- Translated

Second, swallow nest owners consider the swallow nest business excluded from agricultural business category. This is proven in an interview with swallow nest owner who stated as follow;

"We use the gold *zakat* rate because the swallow's nest business is different from agricultural and livestock businesses. Swallows are not bred but only put up in a building. We simply let them fly into the building and nest in it. Thus, the most appropriate calculation of *zakat* is using gold rate."³⁸

It is clear from the aforementioned interview that owners of swallow nests do not consider that their enterprise falls under the purview of agriculture or livestock categories. They deduced from this supposition that gold *zakat* rate was the right one to use in calculating the swallow business *zakat*.

Third, *zakat* with gold rate makes it easier to calculate. This agrees with Anas who mentioned so;

"Gold *zakat* is used as a basis for calculating swallow's nest business *zakat* because the amount of 85 grams is easier to calculate. It only needs to multiply 85 and the price of gold per gram then the result of this multiplication becomes a reference for the minimum amount of swallow nest income whose owners need to pay *zakat* for it."³⁹

Therefore, when an owner of swallow's nests business gets annual sales equivalent to the price of 85 grams of gold, he/she must pay *zakat* numbering 2.5% of the price.

Fourth, the owners follow the habits of older swallow nest owners. Distribution of *zakat* using the calculation of gold rate as the minimum amount has been practiced by people of Basala District since 2000s when the swallow's nest business first started to become a livelihood. Anas explained that swallow nest business owners in Basala District have their way of giving *zakat*, namely;

³⁸ Sukardi, Interview excerpt, 28 February 2023- Translated

³⁹ Anas, Interview excerpt, 27 April 2023- Translated

"The owners of swallow's nest business give *zakat* by distributing a part of their swallow's nest income to mosques and people living adjacent to the swallow's building. The former is for building and renovating mosques, while the later serves as a sort of compensation for any disturbance from the swallow building".⁴⁰

Fifth, it is deemed easy to determine the *zakat* recipients and period. *Zakat* recipient of swallow nest, as mentioned above, is typically addressed to either mosques, the poor, or surrounding neighbors of the swallow building for specific consideration. This is as mentioned by Watinurung as follows:

"Zakat from swallow nests is also given to the owners of houses adjacent to the swallow building so that they do not feel disturbed by the audio sound of the swallow calling or what the Basala District community calls it *pallawa dauccili* (earplugs)".⁴¹

Meanwhile, the period of *zakat* spending is once a year. This annual period is considered far simpler than that of agricultural one where the spending is after every harvest.

Zakat Tekke Wale' as Culturally Based Deviations on Islamic Law

Islamic law is a set of regulations found in Islamic jurisprudence books derived from the Koran, Hadith, and the *ijtihād* of Islamic jurisprudence scholars. These regulations include those pertaining to *zakat*.⁴² Islamic law places a high value on the study of *zakat* law because, with its complexity, it can provide an alternative for societal welfare and increase governmental revenue streams.⁴³

⁴⁰ Anas, Interview excerpt, 27 April 2023- Translated

⁴¹ Watinurung, Interview excerpt, 9 March 2023 -Translated

⁴² Faisal Faisal et al., "Strengthening Zakat Rules in Indonesia: A Legal Study of the Law on Government of Aceh," *Samarah* 7, no. 1 (2023): 126-45, <https://doi.org/10.22373/sjhk.v7i1.13993>.

⁴³ U Sulia Sukmawati, Nurul Ariska, and Sri Wahyuni, "Analisis Literasi Zakat Perkebunan Jeruk di Desa Sebangun Kecamatan Sebawi," *Shar-E: Jurnal Kajian Ekonomi Hukum Syariah* 9, no. 1 (2023): 43-52, <https://doi.org/https://doi.org/10.37567/shar-e.v9i1.1761>.

Thus, *zakat* is not only a religious ritual, but also an effort to strengthen the state's economy and prevalent welfare. The potential sources of *zakat* in Indonesia are obtained from three parts, namely;⁴⁴ (1) Income of individuals, families, and community groups, (2), companies or industries, and (3) government agencies. In the context of swallow nests *zakat* in Basala District, it is only obtained from individual owners of swallow's nest businesses.

When considering the swallow's nests *zakat* practice in Basala District, one can view it as a culturally grounded deviation from the law. It also deviates significantly from the swallow's nest *zakat* provisions that Muslim scholars have determined in establishing the law of *zakat*. There are, furthermore, three types of deviations namely;

First, owners of swallow's nest business in Basala District give *zakat* for their business income even though the building for swallows to nest is not their full property and it is not free from debt because the majority of swallow's nest buildings are constructed using bank funds, such as the swallow's building owned by Sukardi, H. Jamal, Watinurung, and Latang in the previous discussion.

Apart of the provision, it is important to note that using bank loan is perhaps the only available choice they have when they want to construct a building as the very main part from swallow nest business. On the other hand, the income they get from the business is quite high so that they typically assume that they need to pay *zakat* from the swallow nest as a promising income source.

Second, according to most of Muslim scholars, *zakat* from swallow's nest business is supposed to be given based on agricultural rate. In contrast, owners of swallow's nest business in Basala District spend *zakat* based on the gold rate. The deviation from Islamic law in this section is regarding the *niṣāb* as well as period to spend the *zakat*. Like what discussed earlier, the rate used in calculating and spending the *zakat* influence the *nasab* as well as *zakat* spending period. Using agricultural rate will require them to spend *zakat* every harvest which is considered impractical, while using gold *zakat* only requires annual spending which is deemed far simpler and realistic.

⁴⁴ Riduawan, Hamim Ilyas, and Mufti Alam Adha, "Corporate Zakat in the Perspective of Stakeholder Theory: A Case Study of Islamic Rural Banks," *Afkaruna* 19, no. 1 (2023): 85-98, <https://doi.org/https://doi.org/10.18196/afkaruna.v19i1.16329>.

Third, owners of swallow's nest business pay *zakat* from the swallow's nest business income to mosques and the surrounding community as a form of apology. An apology is made because the audio sound of the swallow caller is loud enough to potentially disturb the activities of the people who live around the swallow building. In fact, this criteria is excude from people listed in QS. at-Taubah [9]: 60.⁴⁵

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَأَلْمَسَكِينِ وَأَلْعَمَلِينَ عَلَيَّهَا
وَأَلْمُؤَلَّفَةَ قُلُوبَهُمْ وَفِي الرِّقَابِ وَأَلْغَرَمِينَ وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ
فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ ..

Zakat expenditures are only for the poor and for the needy and for those employed to collect [zakāh] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and the cause of Allah and the [stranded] traveler - an obligation [imposed] by Allah. And Allah is Knowing and Wise.

This verse mentions eight groups of people entitled to receive zakat; (1) the very poors, people who do not have assets, (2) the poors, people who have income but it is not sufficient to meet their basic needs, (3) 'amil zakāh, people or bodies⁴⁶ that receive and distribute zakat to those who have the right to receive it as National Zakat Amil Agency (BAZNAS).⁴⁷ Meanwhile, the purpose of *zakat* in the management of the National Zakat Amil Agency (BAZNAS), (4) slaves, people who are allowed to liberate themselves by their masters, (5) converts, people whose inclination towards Islam

⁴⁵ Mazro'atus Sa'adah and Uswatun Hasanah, "The Common Goals of BAZNAS' Zakat and Sustainable Development Goals (SDGs) According to *Maqāshid asy-Syari'ah* Perspective," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 16, no. 2 (2021): 302-26, <https://doi.org/10.19105/AL-LHKAM.V16I2.4990>.

⁴⁶ Farkhah Farkhah, "Analysis of Strategies Zakat, Infaq, and Alms Collection at BAZNAS Semarang Regency," *IJIER; Indonesian Journal of Islamic Economics Research* 2, no. 1 (August 2020): 35-45, <https://doi.org/10.18326/ijier.v2i1.4214>.

⁴⁷ H Hamzah, H Khaeriyah, and S Sudirman, "The Empowerment of Zakat as Social Financial," *Jurnal Iqtisaduna*, 2019, 51-59, <https://doi.org/https://doi.org/10.24252/iqtisaduna.v1i1.11809>.

increases which will later be useful for defending and helping the Islamic religion from all bad things, (6) *al-Gārimūn*, people who are in debt and cannot pay their debts, (7) *fi sabīlillāh*, people who fight for the good of Islam and adhere to the Islamic religion, and (8) travelers, people who are traveling and do not have enough provisions to complete the journey.⁴⁸

Thus, giving *zakat* to people who feel disturbed by the audio sound of swallows calling is not included in the group of people who are entitled to receive *zakat*. However, according to Anas

"The culture of giving *zakat* to the community around the swallow building has two functions, namely as an apology for the noise produced by the audio sound of the swallow caller and it functions as *zakat* to the nearby community".

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The interview excerpt implies that despite the exclusion from the eight categories, it is deemed necessary to give *zakat* for surrounding people, no matter in which economic levels each is in, as a sort of disturbance compensation. This also implies that likely, owners consider many things before constructing the building, including the location which is considered desirable for swallows to nest within and people living around the building. If the neighbor can't cope with the disturbance, it will also affect on the smooth running business of the swallow nest. This last form deviation, on the other hand, seems as typical negotiation of local people in running their business while building good social interaction with fellows.

The discussion above indicates that developments over time have given rise to several contemporary problems,⁵⁰ such as *zakat* law which requires regulatory updates. *Zakat* on swallow's nest income has not been fully regulated so people have varying understandings of the applicable legal products. This phenomenon is evidence of relationship between sociology and law which pays attention to

⁴⁸ Arfandi, "Tinjauan Hukum Islam terhadap Zakat Sarang Burung Walet Bagi Peternak."

⁴⁹ Anas, Interview excerpt, 27 April 2023- Translated

⁵⁰ Ahmad Fikri Sabiq and Choirul Amirudin, "Pendayagunaan Zakat Sesuai Fatwa MUI Nomor 23 Tahun 2020 di LAZ Selama Pandemi Covid-19," *Jurnal Bimas Islam* 14, no. 1 (2021): 161-84, <https://doi.org/10.37302/jbi.v14i1.358>.

people's behavior. Therefore, the legal construction of swallow's nest *zakat* must be based on social phenomena.⁵¹

In line with it, the practice of swallow's nest *zakat* spending out of National Zakat Amil Agency (BAZNAS) scheme indicates a social reaction due to absence of specific law regarding the issue. Instead, they spend it individually targeting typical recipients as they prefer. This strengthens the notion that development of modern life requires society to have organic solidarity⁵² although in the other hand, this practice shows failure to achieve one of the *zakat* goals, namely that it can be used for the welfare of society at large.⁵³

Law of the Republic of Indonesia Number 23 of 2011 concerning *Zakāh* Management Article 2 letter e explains that the principle of *zakat* management must provide legal certainty to the public. Therefore, Indonesian legislation needs to pay attention to the needs of Indonesian Muslims by making regulations regarding property regulations and the amount of *zakat* so that people have legal certainty regarding *zakat* because there are several new livelihoods among the community, including the swallow's nest businesses which require legal certainty. Thus, the law does not only focus on managing *zakāh* as previously enacted focusing on old livelihoods, such as *zakāh* provisions for agriculture, trade, livestock, services, etc. Achieving effective rules for managing swallow's nest *zakat* will not only result in abundant legal productivity for the community but also legal certainty and guidance.⁵⁴ This accords to Endra et.al., mentioning that the availability of a complete set of rules is the first step in creating security, order, prosperity, and justice in society.⁵⁵

⁵¹ Sri Astuti A. Samad, "Kajian Hukum Keluarga Islam dalam Perspektif Sosiologis di Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (2021): 138-52, <https://doi.org/DOI: http://dx.doi.org/10.22373/ujhk.v4i1.9899>.

⁵² Rafik Patrajaya, "Tinjauan Sosiologi Hukum terhadap Zakat Sebagai Pengurang Penghasilan Pajak Undang-Undang Nomor 23 Tahun 2011," *El-Mashlahah* 9, no. 1 (2019): 44-61, <https://doi.org/10.23971/el-mas.v9i1.1342>.

⁵³ Indra Utama and Mugi Harsono, "Review of Zakat from The Perspective of Philosophy of Science" 12, no. 1 (2023): 92-98, <https://doi.org/10.15294/JEEC.V12I1.72770>.

⁵⁴ Elma Fadilah, Saparuddin Siregar, and Rahmat Daim Harahap, "Analisis Praktik Pendistribusian Zakat Produktif Menurut Undang-Undang Nomor 23 Tahun 2011 oleh Badan Amil Zakat Nasional Delli Serdang," *Eduonomika* 7, no. 2 (2023): 1-10, <https://doi.org/http://dx.doi.org/10.29040/jie.v7i2.9254>.

⁵⁵ Endra Wijaya et al., "Menjembatani Kesenjangan Antara Hukum dan Kebutuhan Masyarakat terhadap Hukum di Kelurahan Jatimulya, Depok, Jawa

Conclusion

Earning *tekke wale'* (swallow's nests) is relatively a new livelihood for the community, so the provisions regarding its *zakat* potentially leads to controversies. One of the triggers for this problem is the lack of specific regulation from both the state and the religion. The diversity of understandings regarding the *zakat* spending gives rise to interpretations for each individuals, mainly among swallow's nest business owners. A real evidence of this diversity is found in the opinions on minimum limit of assets (*niṣāb*) which require owners to pay for *zakat*, the recipients of *zakat*, and the purpose of *zakat* turning out to deviate from Islamic law. This research is only limited to the analysis of Islamic law and does not provide any comprehensive results regarding the study of swallow nest *zakat*. Based on these limitations, it is recommended that further research be carried out as an effort to accommodate broad comparative aspects and the discovery of varied data so that a more comprehensive understanding can be obtained.

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