

# THE INFLUENTIAL LEGACY OF DUTCH ISLAMIC POLICY ON THE FORMATION OF ZAKAT (ALMS) LAW IN MODERN INDONESIA

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*Abstract:* This article attempts to trace the influence of the colonial legacy in the formation of zakat (alms) policy in modern Indonesia. The article argues that the influence of the Dutch Islamic policy has gradually diminished as the process of Islamization of Indonesia has deepened. As early as the 19th century, Snouck Hurgronje played a key role in developing the Dutch zakat policy, which focused on the colonial government preventing the payment of zakat from being compulsory.

During the first two decades after Indonesia's independence in 1945, the zakat policy as derived from colonial times continued without much change. However, by the late 1960s, the New Order regime was leaning to familiarize and manipulate the institution of zakat. In contrast to an assessment made by some scholars that President Soeharto's policy on Islam was consistent with Snouck Hurgronje's advice on Islamic affairs, this paper contends that Soeharto was not a skilled disciple of Snouck Hurgronje at all. While Snouck Hurgronje attempted to prevent the colonial apparatus from being involved in encouraging Muslims to pay zakat, Soeharto, on the contrary, engaged himself in the task of zakat collection and thus made himself religiously responsible for organizing it properly. Indeed, the level of Muslim devotion regarding their zakat obligation increased overall during the time of the New Order era, indicating an opposite effect to that advocated by Snouck Hurgronje.

## I. INTRODUCTION

The Dutch Islamic policy on Indonesia throughout colonialization was largely shaped by the advice of one individual, Christian Snouck Hurgronje (1857-1936). Snouck Hurgronje was considered an architect of the Dutch colonial efforts to manage Islamic developments in its East Indies colony. As pointed out by Harry J. Benda, Snouck Hurgronje distinguished the religious features from the political character of Islam.<sup>1</sup> Snouck Hurgronje believed a policy of tolerance would best manage the growth of Islam in Indonesia, and would result in a measure of stability within the colony. Such a tolerant attitude would also ensure that the principle of religious freedom enshrined

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<sup>1</sup> Harry J. Benda, *Christian Snouck Hurgronje and the Foundations of Dutch Islamic Policy in Indonesia*, J. MODERN HIST., Dec. 1958, at 338, 342.

in the Dutch Constitution would be upheld. Snouck Hurgronje, however, did not extend this tolerant attitude to those utilizing religion for political means and purposes. In contrast, he suggested that the colonial government take tough measures aimed at preventing the development of politico-religious endeavors. In view of this, there were at least three objectives of the Dutch Islamic policy. The first was to maintain security and order in the colony; the second was to ensure personal liberty concerning religious practices of Indonesian Muslims; and the third was to block the growth of Islam as a political movement as well as a predominate culture.<sup>2</sup>

The independent Indonesian government was certainly affected by the colonial Islamic policy. The question, however, is to what extent the government of Indonesia was influenced by colonial policy. Despite conventional wisdom that Indonesia was strongly influenced by Hurgronje's Islamic colonial policy, this study contends the contrary. I will argue here that President Soeharto, who ruled from 1966 to 1998 (popularly known as the New Order regime) was not really the skilled disciple of Snouck Hurgronje.<sup>3</sup> While the effect of the Dutch policy was to discourage religious practice, the effect of Soeharto's policy was to encourage greater religiosity. This contrast is evidenced by the respective zakat policies of the colonial and the New Order era.

This article seeks to demonstrate that the colonial and the New Order policies on zakat had different motives. These significant policy differences support the argument that Dutch Islamic policy had only a minor influence on the independent Indonesian government. Official government policy toward zakat since the New Order era has changed significantly. If the colonial policy on zakat was relatively successful in maintaining the low level of Muslim piety regarding their zakat obligation, a strong case can be made that the New Order's zakat policy enhanced the level of Muslim devotion to pay the zakat.<sup>4</sup> Unlike Snouck Hurgronje, who attempted to prevent the government apparatus from being involved in encouraging Muslims to pay zakat, President Soeharto engaged himself personally in the task of zakat collection and thus set a standard for many Indonesian Muslim citizens about exemplary Islamic piety. Indeed, as a result of a more pronounced Islamization of Indonesia, the effect of the Dutch Islamic policy

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<sup>2</sup> See Aqib Suminto, *POLITIK ISLAM HINDIA BELANDA* (LP3ES, 1985).

<sup>3</sup> See, e.g., W.F. Wertheim, *INDONESIE VAN VORSTENRIJK TOT NEOKOLONIE*, as quoted in Karel Steenbrink, *DUTCH COLONIALISM AND INDONESIAN ISLAM: CONTACTS AND CONFLICTS 1596-1950* 145, (Rodopi B.V., 1993).

<sup>4</sup> See Taufik Abdullah, *Zakat Collection and Distribution in Indonesia*, in *THE ISLAMIC VOLUNTARY SECTOR IN SOUTHEAST ASIA* (Mohammed Ariff ed., 1991).

gradually diminished on the administration of zakat in particular. A number of Islamic policies on zakat practice were developed in the late New Order era and became consolidated after the downfall of the Soeharto regime.

The focus of this study is the involvement of state officials in the zakat administration during the colonial period and under an independent Indonesia. It will examine the legacy of Dutch Islamic policy on the Indonesian government in its efforts to manage the zakat payments. To this end, the second section will provide a brief overview of the practice of zakat in Islam and its incorporation into legal systems of some Muslim countries. The third section will discuss the Islamic practice of zakat during the colonial period while the fourth section will present the New Order's policy on zakat. The fifth section will not only identify the differences between the colonial and the New Order policies on zakat, but will also evaluate to what extent the impact of colonial policy is observable in the era of the Soeharto government. The sixth section will assess whether the colonial legacy remains influential over the current practice of zakat in post-Soeharto Indonesia.

## II. ZAKAT: ITS DEFINITION AND PRACTICE

The lexicological meaning of zakat is "to purify." It also comes with the connotation of "growth" or "increase." Technically, zakat means to give up a fixed proportion of one's wealth to certain determined recipients.<sup>5</sup> The accumulation of wealth is meant to be purified; thus zakat is both a kind of tax on wealth as well as a pious act (*ibadah*). Every Muslim who possesses or keeps certain liable assets such as gold, silver, jewelry, cash, livestock, or agricultural produce is to pay zakat for each one-year period of ownership of the asset. The required duty amounts to 2.5 percent of the asset annually. The exception to this is for agricultural produce, which is levied as a tithe.<sup>6</sup>

In spite of its position as one of the five pillars of Islam, zakat perhaps is the religious duty least complied with by Muslim people. This is due to the fact that there has been no consensus over the practice of zakat among Muslims anywhere and any time. This is at least partially due to the fact that

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<sup>5</sup> Those entitled to receive zakat are listed in Q.S. 9:60 "The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and the cause of Allah, and (for) the wayfarers: a duty imposed by Allah. Allah is All-knowing, Wise."

<sup>6</sup> For further details see, for example, Farishta G. de Zayas, *THE LAW AND PHILOSOPHY OF ZAKAT; THE ISLAMIC SOCIAL WELFARE SYSTEM* (al-Jadidah Printing Press, 1960); Abdul Rehman Ansari, *ZAKAAT, THE RELIGIOUS TAX OF ISLAM* (Premier Press, 1973); Mahmoud Abu-Saud, *FIQH AL-ZAKAT AL-MU`ASIR*, (Oxford Publishing, 1989).

the Qur'an does not comprehensively arrange the issue of administration and enforcement of zakat. In fact, there is no clear directive given as to whether to centralize, decentralize, institutionalize or personalize the application of zakat. Although the Qur'an mentions eight recipients of zakat—of which a zakat agency (*al-`amilin `alayha*) is one<sup>7</sup>—there are no further instructions on how zakat should be collected, whether Muslims are obliged to pay their zakat to this agency, or whether they can voluntarily give their zakat directly to the poor and the needy.

The collection of zakat differs substantially from one Muslim country to another. While some countries have established a complete incorporation of zakat as a regular tax of the Islamic state (Pakistan, Sudan, Saudi Arabia), others utilize intermediary financial institutions to receive voluntary payments of zakat (Jordan, Egypt, Bahrain, Kuwait, Indonesia), and still others marginalize zakat to the individual's private conscience (Morocco, Oman).<sup>8</sup> Six Muslim countries—Saudi Arabia, Libya, Yemen, Malaysia, Pakistan, and Sudan—regularly enforce the implementation of zakat. Three of these have made a clear reference to the responsibility of the state for the implementation of zakat in their Constitutions.<sup>9</sup>

### III. ZAKAT DURING THE DUTCH COLONIAL ERA

There is little information available to us regarding the Dutch colonial policy on zakat. Most of this information is restricted to the island of Java and relies heavily on Snouck Hurgronje's advisory correspondence<sup>10</sup> regarding the problems with zakat. As an official advisor to the Office for Indigenous Affairs (*Het Kantoor voor Inlandsche zaken*) from 1889 to 1906, Snouck Hurgronje advised the government of the Netherlands East Indies in various parts of Java on the zakat issue.

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<sup>7</sup> Q.S.9:60. See *supra* note 5.

<sup>8</sup> See Jonathan Benthall, *Financial Worship: The Qur'anic Injunction to Almsgiving*, J. ROYAL ANTHROPOLOGICAL INST. (Mar. 1999), at 29; cf. A. Zysow, *Zakat*, in THE ENCYCLOPAEDIA OF ISLAM (2002), at 420.

<sup>9</sup> Article 10 of the Sudanese Constitution, Article 21 of the Yemeni Constitution and Article 31 of the Pakistani Constitution. See Zysow, *supra* note 8, at 419.

<sup>10</sup> These letters were compiled and edited by E. Gobe and C. Adriannse, *AMBTELIJK ADVIEZEN VAN C. SNOUCK HURGRONJE 1889-1936*, (1957) vol. II, chapter XXVIII on *djakat en pitrah*. In this article, I am referring to its Indonesian version translated by Sukarsi, *NASIHAT-NASIHAT C. SNOUCK HURGRONJE SEMASA KEPEGAWAIANNYA KEPADA PEMERINTAH HINDIA BELANDA 1880-1936*, (INIS, 1992), at 1323-79 (hereinafter *NASIHAT-NASIHAT*).

Some scholars have referred to this correspondence when discussing the collection and distribution of zakat in the colonial period.<sup>11</sup> However, their discussions are limited and do not clearly illustrate how the Dutch zakat policy was implemented. Despite a number of pages written by Hisyam to explain how zakat was managed under colonial rule, his focus was primarily the manner in which religious officials collected zakat in selected parts of Java rather than on the Dutch colonial policy in general. Likewise, it is surprising that although the work of Aqib Suminto dealt with the colonial policy on Islam, his brief discussion of zakat was confined to the issue of the funding of mosques.<sup>12</sup>

Before delving into the Dutch policy on zakat, the following section will discuss the practice of zakat in early years of Islam in Indonesia, focusing on Java in particular.

#### A. *The Practice of Zakat in the Early Years of Islam in Indonesia*

Evidence of the institutionalization of zakat upon the arrival of Islam to Indonesia is sparse. There is no indication that the institution of zakat was formally transformed into an official tax, regularly collected by a political entity of the Muslim kingdoms. On the contrary, it appears that the practice of zakat was voluntary. Snouck Hurgronje explained this situation by referring to the unique process of Islamization in Indonesia, where the religion of Islam was not forced upon the population by Arab conquest. If Islam had been brought to the country by conquest, zakat likely would have become a political payment as a form of recognition for Arab rulers taking control of the territory.<sup>13</sup>

Given the fact that mostly Arab traders and *sufi* travelers brought Islam to Indonesia through peaceful means, there was almost no Arabic kingdom founded as a result of this spread of Islam.<sup>14</sup> Thus, it is unlikely that zakat was ever considered a form of Islamic taxation or levied for political payment in Indonesia. More likely zakat payment was left to Muslims to hand over individually and voluntarily. This would have meant that those who mastered Islamic knowledge, such as religious officials (*lebe'*, *kaum*, *amil* and *modin* at the village level, and *penghulu* and *naib* at

<sup>11</sup> Steenbrink, *supra* note 3, at 227-28; Abdullah, *supra* note 4, at 57; Muhammad Hisyam, CAUGHT BETWEEN THREE FIRES: THE JAVANESE PANGULU UNDER THE DUTCH COLONIAL ADMINISTRATION 1882-1942 111-20 (INIS, 2001).

<sup>12</sup> Suminto, *supra* note 2.

<sup>13</sup> NASIHAT-NASIHAT, *supra* note 10 at 1324-25.

<sup>14</sup> Cf. Merle Ricklefs, HISTORY OF MODERN INDONESIA SINCE C. 1200 36-58 (Stanford University Press, 2001). It must be noted, however, that there were some Arabs and other foreign individuals who served in the local Sultanate.

the higher level) and informal religious leaders (*kiai*, *`ulama*', *ajengan*, etc.), were charged with collecting zakat.<sup>15</sup> It is no wonder then that once a local Islamic kingdom was established, such jobs were left in the hands of those persons.

Over time, as the local rulers became Muslim, they began to supervise and become involved in religious affairs such as the collection of zakat. The intervention was merely to help religious officials collect the zakat payments from Muslim people.<sup>16</sup> It is unlikely, however, that Muslim kingdoms in Java ever intended to establish official institutions to collect and to distribute zakat, let alone to force people to pay zakat. There remains little, if any, evidence regarding how often the local Muslim rulers themselves paid zakat. As the zakat payments were irregularly practiced by the Muslim kings, it is plausible to state that they paid no special attention to the establishment of official institutions to collect zakat. In fact, the records that are available to us are too obscure to make any initial judgments on the practice of zakat by the Muslim kings. It is suspected that "at the time of the first organizing of Mataramese land under Senopati (c. 1590) or more probably under Sultan Agung (c. 1625), of each 25 *cacahs* (units) of land, one was reserved for the religious people, as *waqf* [endowment], *perdikan*-land, (thus) as a sort of zakat on behalf of the king [sic]."<sup>17</sup> This vague information is still problematic, as the land itself is not liable to zakat. Why then did the Mataram kings reserve land for zakat? What kind of wealth did the Mataram kings seek to purify by giving such land as zakat? Based on this, it might be said that the practice of zakat under the Muslim kingdoms in Java in particular was not officially organized in accordance with Islamic legal rules.

Given the lack of an official administration of zakat by the Muslim political entity, it is probably safe to speculate that most shares of zakat fell to those *`amil* who were directly involved in collecting zakat (*`amil* were usually mosque organizers, or *modin*, *naib* or *penghulu*) and Qur'anic village teachers. As the collected zakat gradually and mostly became the regular income of the local religious officials,<sup>18</sup> only a small portion of it was given to those religiously entitled to a legitimate share, such the poor and the needy. This was justified by the fact that, as appointed religious

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<sup>15</sup> NASIHAT-NASIHAT, *supra* note 10, at 1325.

<sup>16</sup> *Id.*

<sup>17</sup> G.P. Rouffaer, *Vorstenlanden*, in ADATRECHTBUNDELS, (1931), at 309. I thank Merle Ricklefs for pointing out to me this particular piece of information and translating it from Dutch to be used here.

<sup>18</sup> NASIHAT-NASIHAT, *supra* note 10, at 1325, 1347; Hisyam, *supra* note 11, at 117. See also Steenbrink, *supra* note 3, at 227-28.

officials, the *amil* did not receive a salary from the ruler. Some amounts of zakat funds, therefore, were claimed as their portions.<sup>19</sup> The local rulers, such as heads of villages, also enjoyed a share of zakat measurable to the extent to which they helped with the collection of zakat.<sup>20</sup> This practice continued up to the Dutch colonial times.

### B. Colonial Policy on the Practice of Zakat

The Dutch Islamic policy of religious neutrality has not been free of criticism. Aqib Suminto suggested that the colonial Islamic policy was biased and inconsistent, as the demarcation between toleration and interference was frequently vague and confusing.<sup>21</sup> As early as 1882, the colonial government was closely involved in administrating the religious practices of Indonesian Muslims by facilitating the establishment of the Religious Court in Java.<sup>22</sup> From this time, the colonial policy towards Islam as a religion was ambiguous at best. In Suminto's view it was unclear whether colonial interference was designed to assist or to impede the religious practices of Indonesian Muslims. Indeed, as argued by Suminto, it appeared that implicit in this Islamic policy was an agenda of de-Islamization; that is, a desire to impede the growing religious awareness among Indonesian Muslims.<sup>23</sup>

Although the Dutch government allowed most Islamic worship and family matters to be practiced unencumbered, it sought to impede such practices which related to increasing Islamic awareness and those which had the political potential for Islamic fanaticism. The Dutch did so by putting limitations and controls on certain religious institutions.<sup>24</sup> In the case of zakat, the Dutch Islamic policy allowed Muslims to partake, and in fact issued regulations, but these regulations were not for the purpose of promoting religious awareness among Muslims. As discussed below, the policy was issued instead to eliminate the abuse of zakat distribution by colonial officials and to ensure that the personal liberty of any Muslim was not disturbed by compelling an individual to do his/her religious duty. With this policy, a low level of Muslim piety regarding the zakat obligation could be engineered and maintained.

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<sup>19</sup> NASIHAT-NASIHAT, *supra* note 10, at 1335-36. Hisyam, *supra* note 11, at 117.

<sup>20</sup> NASIHAT-NASIHAT, *supra* note 10 1347, 1369, 1371.

<sup>21</sup> Suminto, *supra* note 2, at 4.

<sup>22</sup> *Id.* at 29-30.

<sup>23</sup> *Id.* at 4, 13.

<sup>24</sup> *Id.* at 29-30. Suminto noted that the Dutch rule made continuous inspections over religious court, marriage and divorce, education, mosque funds, and pilgrimage to Mecca.

The fact that some native officials such as the regent (*bupati*), district chief (*wedana*), and head of the village (*kepala desa*) misused the zakat funds for their personal benefit created a bad impression in the eyes of the Netherlands East Indies government. Realizing that such abuse by its own appointed officials might be a disincentive to political stability in the colony, the Netherlands East Indies government issued a regulation in 1866 prohibiting those officials from involvement in the collection and distribution of zakat.<sup>25</sup> However, this regulation was only applicable in Central Java, East Java, and Banten. In Priangan and Cirebon, such regulations could not be imposed due to the existing vow of the Dutch government commissioner to not interfere with the earnings of *penghulu* (religious judges) in both regencies.<sup>26</sup> With the support of native officials at their respective levels of government, the preceding condition in Priangan and Cirebon remained unchanged: the *penghulu*, *naib*, and *lebe'* (who were mostly Indonesian and not necessarily Dutch appointees) went on collecting zakat from the people.

As the impact of the 1866 regulation spread, the collection of zakat in Java divided into two primary methods. In Priangan and Cirebon, there was active involvement of the *penghulu*, supported by native local officials, in the management of zakat. In these regions, more zakat could be collected and more abuses by officials were consequently reported. A contrary practice was evident however, in Banten, Central Java, and East Java. In these areas, there was no longer any official zakat agency (*amil* or *penghulu amil*) which collected zakat from Indonesian Muslims. As a result, zakat payment was low, as it was paid only by devout Muslims and mostly to non-official agencies, such as religious teachers or Qur'anic village teachers.<sup>27</sup> The low amount of zakat collected in these areas had the effect of reducing the instances of abuse by zakat officials.<sup>28</sup> The misuse of zakat funds was still evident, but government officials were no longer involved. It is surmised that local religious officials or, more likely, informal religious leaders who were asked to distribute the zakat funds were probably claiming the largest proportion of zakat funds.

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<sup>25</sup> NASIHAT-NASIHA, *supra* note 10, at 1364, 1376; Steenbrink, *supra* note 3, at 230; Abdullah, *supra* note 4, at 57.

<sup>26</sup> This vow was conveyed at the moment that the reorganization of Priangan residency was planned. The commissioner was afraid that there would be opposition to the plan of reorganization from religious officials if it would affect the existing practice of zakat collection in that region. See NASIHAT-NASIHA, *supra* note 10, at 1348-49.

<sup>27</sup> NASIHAT-NASIHA, *supra* note 10, at 1330-31; Abdullah, *supra* note 4, at 57. In some cases, a little share of zakat was handed over to Muslim students (*santri*), the needy, and even sometimes to new converted Muslims (*mu'allaf*).

<sup>28</sup> NASIHAT-NASIHA, *supra* note 10, at 1368-70.

C. *Snouck Hurgronje's Advice on Zakat Policy*

Although the diversion of a large portion of zakat to the zakat agency was considered a deviation from Islamic teachings, Snouck Hurgronje, who commenced his duty as a counselor for native affairs in 1889, advised the colonial government to treat it as a tolerable abuse. For him, the meaning of "abuse" was defined in bureaucratic ethics rather than based on specific religious criteria.<sup>29</sup> The misuse of zakat funds alone was acceptable<sup>30</sup> so long as such misuse did not correspond with abuses of power, such as native bureaucrats or religious officials politically pressuring or threatening people to pay zakat.<sup>31</sup> Only under such circumstances would formal abuse in the practice of zakat collection be considered to have taken place. Snouck Hurgronje recognized that this kind of abuse could create major problems for many people and threaten political stability, and thus the colonial authorities had to prevent officials from using pressure or threats to force people to pay zakat. It was for this reason that, so long as no government officials engaged in formal abuses, and no religious officials used threats to intimidate people into paying zakat, abuse in the collection of zakat per se remained more or less untouched.

According to Snouck Hurgronje, the colonial government's main goal was to prevent zakat payment from being compulsory, even though its religious nature was obligatory. He stressed however that any Muslim who desired to make zakat payments should not be prohibited from doing so.<sup>32</sup> For Snouck Hurgronje, it would be a mistake on the part of the colonial government to prohibit Muslims from making voluntary zakat payments. He summarized the colonial policy on zakat as follows:

To acknowledge and to protect religious practices wherever possible provided that [such] practices are considered indigenous, not because they are Islamic[.]<sup>33</sup> . . . [Such regulation was necessary] to protect individual autonomy from any pressure in collecting zakat and *fitrah*, [in determining] their amount, or in choosing the agency that will allocate those religious funds.<sup>34</sup>

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<sup>29</sup> NASIHAT-NASIHAT, *supra* note 10, at 1355.

<sup>30</sup> *Id.* at 1335.

<sup>31</sup> One threat often used was, "If you do not pay me zakat, I will not be responsible for your funeral rites or those of your family, or assist when you marry." See Hisyam, *supra* note 11, at 117.

<sup>32</sup> NASIHAT-NASIHAT, *supra* note 10, at 1323, 1348, 1359.

<sup>33</sup> *See id.* at 1348.

<sup>34</sup> *See id.* at 1377.

In Snouck Hurgronje's view, the religious burdens of Muslims, such as praying five times daily, fasting during Ramadhan, and making zakat payments, would eventually be rejected as overly strict and conservative and lead Muslims to disregard them. For this reason, Snouck Hurgronje felt that to prohibit these religious practices would only result in strengthening religious fervor, and thus slow down the ongoing vanishing process of the observance of religious duties.<sup>35</sup>

If Snouck Hurgronje did not propose the prohibition of zakat, how then did he advise the colonial government as to how to manage zakat? It seemed that Snouck Hurgronje endorsed neither the prohibition nor the management of zakat. In the case of zakat management by the state apparatus, Snouck Hurgronje was, in fact, against it. An illustration from Purwokerto may elaborate his stance. In 1901, Snouck Hurgronje was asked to give advice regarding the proposal to include zakat funds in municipal revenue (*dana kotapraja*), which could be used for broad social benefits such as the improvement of public utilities. The expenditure of zakat funds for such a purpose was initially legalized in Purwokerto in 1897 in order to solve the problem of abuse in the collection of zakat by native local officials. Some Dutch officials, such as De Wollf van Westerrode, considered the idea brilliant and suggested its extensive application in other areas.<sup>36</sup>

Snouck Hurgronje had six objections to the proposal. His first objection was that such an approach was beyond the government's responsibility.<sup>37</sup> He added in his next letter that regulations such as Purwokerto's contravened Islamic shari`a as well as Javanese custom.<sup>38</sup> The second was the proposal would create a "new hidden tax," and indirectly generate compulsion, via more political pressures on the people, to pay zakat. The proposal could therefore provoke an accusation that the colonial government had arbitrarily changed Islamic Javanese institutions. Snouck Hurgronje's third objection was that the local officials would put more political pressure on communities to increase zakat collection from the people. The fourth objection was that Snouck Hurgronje believed there was not enough evidence of the misuse of zakat funds to legitimize intervention by the local government in the management of zakat. The fifth objection was that Muslims traditionally regarded zakat as a contribution given to appointed recipients; allowing zakat for other expenditures would contravene this tradition. His sixth and final objection was that the proposal

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<sup>35</sup> SUMINTO, *supra* note 2, at 13-14.

<sup>36</sup> NASIHAT-NASIHAT, *supra* note 10, at 1346-54.

<sup>37</sup> *Id.* at 1352.

<sup>38</sup> *Id.* at 1360.

contradicted existing Dutch policy, religious law, and local indigenous custom.<sup>39</sup> By offering these objections, Snouck Hurgronje not only intended to prevent government officials from being labeled as officials of religion, but he was also clearly concerned with preventing the corruption of zakat funds.

It appears on the surface Snouck Hurgronje intended merely to create an atmosphere of freedom of action. Whilst elements of this are accurate, if we look carefully, we find that his ultimate objective was not only to eradicate the corruption of religious funds by government officials (either Dutch or native) and promote individual autonomy, but also, with the lack of official intervention into zakat collection, to prevent the growth of religious awareness among Muslims. Snouck Hurgronje felt that Muslims would forgo zakat payments if not coerced to make them, because he realized that the religious reasons for paying zakat were not strongly embedded in the minds of Indonesian Muslims.<sup>40</sup> By withdrawing the governmental apparatus for collecting zakat, Snouck Hurgronje's long-term goal, and the effect of his policies, was to ensure that the zakat obligation did not enable a growing religious consciousness amongst Muslims. As discussed below, the policies of later governments did not follow, but significantly diverged from that of the colonial era.

#### IV. THE NEW ORDER'S POLICY ON ZAKAT

Newly independent Indonesia adopted the previous Dutch colonial strategy on zakat collection. The Ministry of Religious Affairs (MORA), which took the place of the Office for Indigenous Affairs, was established in January 1946 and set out to continue the colonial policy on the practice of zakat. The task of this Ministry, among others, was to guarantee the freedom of people to observe their respective religious duties.<sup>41</sup> With regard to zakat, MORA issued a circular letter stating that the Ministry would not interfere with its administration.<sup>42</sup> MORA's task was simply to let people freely observe their obligation to pay zakat and ensure that it was distributed properly, in accordance with religious teachings.<sup>43</sup> This circular was the first sign of the Indonesian government's stance towards zakat, which was simply a continuation of the policy of the previous colonial government. It shows

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<sup>39</sup> *Id.* at 1374-75.

<sup>40</sup> *See id.* at 1351.

<sup>41</sup> B.J. BOLAND, *THE STRUGGLE OF ISLAM IN MODERN INDONESIA* 9-10 (1982).

<sup>42</sup> SURAT EDARAN, no. A/VVII/17367, December 8, 1951.

<sup>43</sup> Andi Lolo Tonang, *Beberapa Pemikiran tentang Mekanisme Badan Amil Zakat*, in *ZAKAT DAN PAJAK* at 262 (B. Wiwoho, ed., 1992).

that, at the outset, the government never intended to initiate the establishment of an official institution to centrally manage zakat in Indonesia, but rather to leave zakat administration in the hands of Muslim society.

This inherited colonial policy was apparently adopted by the Sukarno government (the Old Order), but by the early years of the New Order a growing desire to make the Indonesian government responsible for the administration of zakat was apparent. During the years of political transition (1966-1968) from the Old Order to the New Order regime, there was a re-emerging demand for the legalization of the Jakarta Charter<sup>44</sup> as an integral part of the preamble to the 1945 Constitution. This attempt to amend the Constitution in the MPRS sessions during 1966, 1967, and 1968 again failed.<sup>45</sup> In spite of this, the Jakarta Charter was still believed to have a great influence over the preamble of the 1945 Constitution as well as Article 29 of the same document, which would serve as a foundation for legislating shari`a law for Indonesian Muslims. This belief is based on the Presidential Decree of July 5, 1959, that acknowledged the Jakarta Charter as a historical document of Indonesia, which inspired, and was linked in unity with, the 1945 Constitution.<sup>46</sup>

The belief that the Jakarta Charter continued to underpin Indonesian religious life led some Muslim leaders to call for the administration of zakat by the government apparatus. Some prominent Muslim figures as well as Muslim leaders, who had key governmental positions (MORA in particular) formally proposed the legislation of zakat. In July 1967, Saefuddin Zuhri, the then Minister of Religious Affairs, presented a draft Zakat Law to the legislature (DPRGR). The draft was also sent to both the Ministry of Finance and the Ministry of Social Affairs for feedback. Although the latter never responded, the Minister of Finance did reply with a suggestion that the zakat management would be better regulated by ministerial regulations

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<sup>44</sup> Piagam Jakarta is the deleted seven words “*dengan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluknya* [with the obligation of carrying out Islamic shari`a for its [Islam’s] adherents]” in the draft of the 1945 Indonesian Constitution. See, e.g., ENDANG SAEFUDDIN ANSHARI, PIAGAM JAKARTA 22 JUNI 1945 (1986).

<sup>45</sup> BOLAND, *supra* note 41, at 159. Earlier, from 1957-1959, there had been a debate in the Constituent Assembly whether to adopt Islam or Pancasila as the state ideology into the Indonesian Constitution. The proposal of Islamic parties to make Islam the basis of the state, or even to give a shari`a a constitutional status, however, was unsuccessful. See ADNAN BUYUNG NASUTION, THE ASPIRATION FOR CONSTITUTIONAL GOVERNMENT IN INDONESIA: A SOCIO-LEGAL STUDY OF THE INDONESIAN KONSTITUANTE 1956-1959 (1992).

<sup>46</sup> See SYAFI’I MA’ARIF, ISLAM DAN MASALAH KENEGARAAN: STUDI TENTANG PERCATURAN DALAM KONSTITUANTE, (1985); ANSHARI, *supra* note 44.

instead of by a statute.<sup>47</sup> It was perhaps because of this suggestion that the legislature (DPRGR) chose not to pursue discussion of the draft Zakat Law that was presented by MORA. This suggestion may have also inspired MORA a year later, under the leadership of Mohammad Dachlan, to issue a ministerial decree concerning the foundation of the *Badan Amil Zakat* (the zakat agency).<sup>48</sup> This decree, which was issued in July 1968, arranged for a governmental zakat committee to be established at all administrative levels (both district and subdistrict) across the country.

MORA's ministerial regulation on zakat did not last long. It was indirectly annulled three months after it was issued by President Soeharto's speech at the *Isra' Mi'raj* (the Prophet's Ascension) celebration on October 26, 1968. Instead of endorsing the establishment of official zakat agencies throughout the cities and towns of Indonesia, President Soeharto took over the administration of zakat by taking responsibility for the collection and distribution of zakat on a personal basis as a private citizen.<sup>49</sup> In his official speech, President Soeharto stated:

As the first step, I would like here to announce to all Indonesian Muslims that as a private citizen I am prepared to take charge of the massive national effort of zakat collection. . . . From now on, I am *personally* willing to receive zakat payments made in the form of money orders from every single Muslim in the country. God willing, I will regularly publicize to all citizens how much money I receive and I will be responsible for its expenditure. I do really expect that this appeal will be fully paid attention and will have a positive feedback from the leaders and all Muslims.<sup>50</sup>

Five days later, President Soeharto issued an instruction (*surat perintah*) assigning three high military officers to make all necessary preparations for a nationwide zakat collection drive.<sup>51</sup> In addition, he sent a circular letter (*surat edaran*) to all public offices and local governments suggesting that

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<sup>47</sup> See Tonang, *supra* note 43, at 264.

<sup>48</sup> See Dec. of Minister of Religion 4/1968. With regard to the zakat collection, another Ministerial Decree 5/1968 on the Foundation of *Baitul Mal* (Islamic Treasury) was released. This institution was responsible to organize the zakat paid by Muslim citizens.

<sup>49</sup> See President Haji Mohammad Soeharto, Address at the *Isra' Mi'raj* (Prophet's Ascension) Celebration (Oct. 26, 1968) (full text available in PEDOMAN ZAKAT 403-09 (1992/1993)).

<sup>50</sup> *Id.*

<sup>51</sup> Pres. Dec. No. 07/PRIN/10/1968 (Oct. 31, 1968). The three military officers were Major-General Alamsyah, Colonel Azwar Hamid, and Colonel Ali Afandi. See Abdullah, *supra* note 4, at 51.

organizational apparatuses for zakat collection should be established in their respective workplaces.<sup>52</sup>

The Minister initially assumed that Soeharto's speech was consistent with the Ministerial Decree on zakat. His reaction was to draft further, detailed rules for zakat collection that implemented Soeharto's speech.<sup>53</sup> MORA only came to the realization that Soeharto objected to the Ministerial Decree on zakat after receiving a letter, dated December 16, 1968, from the Cabinet Secretary (*Setkab*). As a result, in January 1969, compliant with the Cabinet Secretary's letter, the Minister of Religion issued a ministerial instruction (No. 1 of 1969) for the deferment, or more precisely the revocation, of the ministerial decree on the zakat agency. Following that ministerial instruction, MORA then circulated a letter (No. 3 of 1969) supporting President Soeharto's scheme on the collection of zakat. This letter announced that all results of zakat collection, instead of being sent to the *Baitul Mal* (Islamic Treasury) of the MORA, would be deposited in President Soeharto's account at post offices throughout Indonesia.

President Soeharto's "offer" to create "a personally centralized system" was nothing more than a roundabout way of announcing impending changes to the mechanism already put in place by the Ministry of Religious Affairs. His speech changed the nature of zakat administration from an official, institutionalized procedure under the ministerial regulation, to an informal practice, concentrated on one individual.

The operation of the zakat agency under the personal auspices of President Soeharto was maintained for only a few years. In 1974, President Soeharto concluded his role as a national personal *amil*. The last report of the President on zakat was delivered in his *Idul Fitri* (the breaking of the fast of Ramadan) speech on November 30, 1970. The President reported that the collected zakat for the duration of two years amounted to Rp. 39.5 million in domestic currency and USD 2,473 in foreign currency.<sup>54</sup> This meant that on average no more than Rp. 20 million per year was collected from *muzakki* (zakat payers) since the inception of the new system in 1968. In President Soeharto's eyes, this figure was certainly a small amount compared to the number of Muslims in Indonesia.

President Soeharto justified his resignation from the *amil* position on this low response to his appeal for zakat collection. This justification however probably camouflaged his true reasons for discontinuing his

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<sup>52</sup> Letter from President Soeharto (Nov. 28, 1968) (Pres. Letter No. B.133/Pres/11/1969).

<sup>53</sup> See Ministerial Instruction from Minister of Religion No. 16/1968 (October 28, 1968) (Indonesia).

<sup>54</sup> ABDULLAH, *supra* note 4 at 69.

obligations as *amil*. Soeharto's ultimate goal was a political one: to thwart MORA's implementation of the Jakarta Charter. As his real objective was achieved, there was no need for President Soeharto to continue collecting zakat.

President Soeharto was aware that prohibiting the establishment of an official zakat agency would create the impression that his regime was opposing Islam as a religion, and thus generate resistance from Muslim citizens. On the other hand, Soeharto was in agreement with Snouck Hurgronje that forcing zakat payment could lead to political unrest. For this reason, instead of wholeheartedly facilitating zakat payments, President Soeharto manipulated the administration of zakat by taking it over himself as a private citizen, thus making it casual and unofficial. In doing so, President Soeharto sought to offer his moral support rather than actual structural assistance for the payment of zakat.

Although President Soeharto ceased to be a national personal *amil*, his circular letter suggesting the foundation of an organizational apparatus to collect zakat in the respective host institutions of zakat agencies remained the legal basis for several government-sponsored or semi-autonomous zakat agencies in existence. Despite the lack of judicial foundation or clear national guidance, a number of provincial zakat agencies continued to thrive during the New Order period. In fact, with the exemplary model of President Soeharto as *amil*, a number of provincial administrations established government-sponsored zakat agencies or BAZIS (*Badan Amil Zakat, Infak dan Sedekah*). The amount of provincial zakat agencies, in fact, increased during this time.<sup>55</sup> Apart from the provincial government zakat agency (BAZ), a new type of private, community sponsored zakat organization (LAZ or the Non-Government Zakat Agency) emerged after 1986 (e.g., the Bontang LNG Company, Pertamina).<sup>56</sup> Zakat agencies created by Muslim community organizations (e.g., Dompot Dhuafa Republika, Pos Keadilan Peduli Umat, Yayasan Dana Sosial Al Falah, Muhammadiyah, Persatuan Islam) began to appear in the early 1990s.

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<sup>55</sup> The emergence of the provincial zakat agency in Indonesia began in 1968 when the province of Jakarta founded a new institution responsible for collecting zakat. Several years later, other provinces followed suit, including the provinces of East Kalimantan (1972), West Sumatra (1973), West Java (1974), South Kalimantan (1974), South Sumatra (1975), Lampung (1975), Irian Jaya (1978), North Sulawesi (1985), and South Sulawesi (1985). *See id.* at 60.

<sup>56</sup> *Id.* at 61.

V. THE DIFFERENCE BETWEEN SNOUCK HURGRONJE'S AND SOEHARTO'S APPROACH TO ZAKAT

As discussed above, Snouck Hurgronje's colonial policy had the effect of indirectly making Muslims indifferent to their zakat obligation. The colonial Islamic policy was designed to protect individual autonomy by allowing Muslims to individually determine the recipients of their zakat and to decide whether to pay zakat at all. By bestowing upon Muslims such freedom of choice, Snouck Hurgronje assumed that they would overlook their religious duties. In his eyes, Muslim religious obligations merely burdened Muslim life in the modern world. He felt that zakat payments were primarily motivated by the belief that a failure to comply with the zakat obligation would result in receiving a punishment in the Hereafter. Because this motive was not strongly embedded in the minds of Indonesian Muslims,<sup>57</sup> Snouck Hurgronje's minimal intervention approach seemed to impede a growing religious awareness among Indonesian Muslims.

On the contrary, Soeharto's government actively managed zakat collection by involving various state officials, including himself, in its collection. Soeharto's government also used techniques such as promoting voluntary zakat payment, establishing an official agency to collect and distribute the zakat funds, managing its distribution amongst the beneficiaries, and releasing an instruction manual on zakat for Muslims.

Although President Soeharto sought to adopt some of Snouck Hurgronje's advice on zakat policy (initially, Soeharto viewed zakat as a religious duty over which the state should have no managerial duties), Soeharto failed to completely embrace Snouck Hurgronje's policies. Soeharto's and Snouck Hurgronje's approaches to zakat policy were clearly different. Although both shared the same goal of maintaining security and order in Islamic policy, Soeharto proactively promoted the practice of zakat by offering himself as a national *amil*, while Snouck Hurgronje downplayed it by removing any governmental infrastructure for its collection. Soeharto's willingness to personally manage the collection of zakat during the early years of his regime was seen as a symbolic example of his piety as a Muslim, and thus popularized both the practice of zakat and the zakat agency among Muslim citizens. Assuming the promotion of zakat practice is some indication of support for Islamization, Soeharto's approach strongly contradicted that of the colonial government.

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<sup>57</sup> See NASIHAT-NASIHAT, *supra* note 10, at 1351.

Although Soeharto's personal stance on Islamization was somewhat ambiguous (he refused the request of the MORA and the Indonesian Ulama Council (MUI) to once again act as an official national *amil*,<sup>58</sup> but allowed the facilitation of zakat management by Ministerial Decrees<sup>59</sup>), his strategy had perhaps the unintended consequence of increasing the consciousness of many Muslims about their zakat obligation. This growing devoutness coincided with the leaning of the New Order regime toward greater Islamization in the early 1990s. In light of this, Soeharto was not a worthy disciple of Snouck Hurgronje, particularly on zakat policy.

## VI. THE LEGACY OF DUTCH COLONIAL POLICY IN THE POST-NEW ORDER ERA

While some features of the colonial legacy are still observable in current Indonesia, much has changed. This section will briefly describe the rivalry between different types of zakat agencies. This rivalry is an example of the colonial legacy that still remains practiced in current Indonesia. In addition, this section will discuss the differences between current-day Indonesia and the colonial era.

It is clear that some remnants of the colonial Islamic policy continue to influence the independent Indonesian government. Current Law 38/1999 on the Administration of Zakat, which was passed by the Habibie government, is not focused on the religious nature of zakat. Rather, it is present to facilitate the official establishment of both the Badan Amil Zakat (BAZ or the government sponsored zakat agency) and the Lembaga Amil Zakat (LAZ or the private zakat agency), and to supervise and oversee the correct use of zakat funds. With this kind of policy, the Indonesian government has followed colonial practices on the management of zakat by putting a high priority on maintaining security and order.

The presence of the various types of zakat agencies, or precisely the rivalry between different zakat agencies, is perhaps the most obvious feature of the colonial legacy that is still observable in the practice of zakat in current Indonesia. Consistent with colonial rule, Muslims still have available many options of institutions to which they can voluntarily pay zakat; no single entity claims the absolute religious right to be the sole

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<sup>58</sup> See PEDOMAN PEMBINAAN BAZIS: HASIL PERTEMUAN NASIONAL I BAZIS SE-INDONESIA TANGGAL 3-4 MARET 1992 (1992).

<sup>59</sup> Joint Decree of Minister of Home Affairs (No. 29/1991) and Minister of Religious Affairs (No. 47/1991) (Indonesia).

collector of zakat from Muslim people. Rivalries between zakat agencies exist today, similar to those that existed in the colonial era.

The first rivalry existed during colonial times between religious officials (*penghulu, lebe, or modin*) on the one hand and the informal religious leaders (*kiyai, ajengan, head of tarekat* or Qur'anic teachers) on the other hand.<sup>60</sup> The contest was over which agency was the legitimate *amil* or zakat agency. The same contest can be seen, though in slightly different ways, between the BAZ and the LAZ. The most salient case indicating this rivalry is worth mentioning here. It was related to the preparation of the Zakat Bill, which was proposed by the MORA in 1999. This Bill was designed to provide the BAZ with full legal arrangements, while the LAZ was not mentioned at all in such arrangements. In so doing, the formal administration of zakat would be centralized into a single institution (i.e., the BAZ). However, there was a strong criticism from the LAZ that its existence should be lawfully acknowledged. Although the Zakat Law mentioned the existence of LAZ,<sup>61</sup> its capacity was restricted. In fact, of the thirty-three Articles mentioned in the Decree No. 581/1999 by the Minister of Religious Affairs, only four dealt with the LAZ. It seemed that the MORA did not want to empower the role of LAZ, but rather sought to subordinate it into the lower structure of the BAZ as the *Unit Pengumpulan Zakat* (UPZ or Zakat Collection Unit).

Despite the existence of some similarities, much has changed since colonial times. The protection of religious liberty, one of the foremost objectives of the colonial Islamic policy, has been gradually lessened in recent decades, since Indonesia's independence. Current developments of zakat practice in post-Soeharto Indonesia show the enhancement of religious awareness in Indonesia towards the obligation of zakat payment. Although no punishment is given for zakat evasion, the implementation of zakat policy in some situations has been compulsory. The personal liberty in the practice of zakat previously enjoyed by Indonesian Muslims is no longer available in some circumstances. A number of state offices and private companies, for example, have unilaterally levied zakat payments from their employees on a monthly basis. This practice has become much more prevalent in certain regions of Indonesia where provincial or district governments have enacted compulsory regulations regarding the practice of zakat.

Additionally, there have been efforts to further reverse the de-Islamization agenda that was intrinsic to colonial Islamic policy. The

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<sup>60</sup> NASIHAT-NASIHAT, *supra* note 10, at 1323-24, 1349-50.

<sup>61</sup> See Administration of Zakat, 38/1999, art 6 & 7 (Indonesia).

enactment of the Law on Zakat Management in 1999, the establishment of the National Board of Zakat Agency (BAZNAS) in 2000, and other technical regulations issued by MORA concerning zakat payments are evidence that the Islamization of Indonesia through zakat payments is on the rise. Many zakat agencies, both government supported and privately sponsored, are intent on amending the current Zakat Law in order to make the payment of zakat obligatory.<sup>62</sup> Although this process is still far from complete, current developments in the post-Soeharto era reveal that modern-day Indonesian policy has slowly diverged from the colonial policy.

## VII. CONCLUSION

This article has demonstrated that the Dutch Islamic policy had only minor influence on the administration of zakat. It reveals how the Dutch Islamic policy, which was largely designed by Snouck Hurgronje and emphasized the protection of religious liberty, has slowly faded. The minimum state intervention into religious affairs during the colonial era has transformed dramatically. The Indonesian government from time to time moved away from colonial policies. The Dutch Islamic policy, which was religiously neutral in nature, has significantly changed, especially since the New Order era. Through the Ministry of Religious Affairs, the Indonesian government increased its role in managing matters related to Islam and Muslim society, including the payment of zakat. Indeed, President Soeharto himself, who was purportedly practicing Snouck Hurgronje's advice on Islamic policy, actively facilitated the collection of zakat. This certainly contradicted the Dutch Islamic policy, which underscored non-government engagement into the administration of zakat.

What is more, since the fall of the New Order regime, the practice of zakat in Indonesia has gradually shifted from merely being an act of religious piety to being a means for establishing an Islamic socio-political and economic system in Indonesia. The present condition of the voluntary and decentralized practice of zakat in Indonesia could easily give way to a compulsory and centralized form of zakat collection, where the government-sponsored zakat agency would be the sole zakat collector and where the government would not leave zakat payments up to the conscience of Muslim individuals. If these projected developments occur, the legacy of colonial policy over the practice of zakat in Indonesia would be virtually eliminated.

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<sup>62</sup> See HASIL RUMUSAN MUSYAWARAH NASIONAL III FORUM ZAKAT (2003) (describing how the Third Congress of the Forum Zakat, the Association of Indonesian zakat Agencies, in Balikpapan emphasized the need to amend the Zakat Law).