

## COLLECTION OF MONEY OR GOODS: LEGAL CERTAINTY and STATE RESPONSIBILITY

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### Abstract

This research aims to analyze the legal certainty of collecting money or goods in the midst of society, as well as the responsibility of the state that must be carried out in accordance with regulatory provisions. The type of research used is Normative Empirical legal research. The results obtained through literature studies and empirical data are then analyzed by the Normative Empirical method. The results showed that: 1). Legal certainty for the collection of money and goods in the community and the responsibility of the state which is tasked with overseeing the development of the collection of money and goods in Indonesia. 2) The fact of the development of philanthropic institutions in Indonesia is reviewed in the concept of philanthropy in Indonesia. Then the process of collecting money and goods must be in line with regulations.

**Keywords:** Collection of Money and Goods, Legal Certainty, State Responsibility

## INTRODUCTION

Philanthropy is an activity that is engaged in the social field and provides services to help others who need help. This movement is a form of expression of love that comes out of volunteers who want to help each other. So in philanthropy it is often referred to as generosity, which arises from generosity, implemented in social forms that illustrate a sense of care and love for fellow human beings. The presence of the Philanthropic Institutions movement is a concept that has long existed in the teachings of Islam itself, which aims for goodness in Arabic called Al-birr. From the description described earlier that all goodness arises due to social conditions that arise and have an impact in several aspects, one of the aspects affected is the economy of the community itself where each region or region, and urban or district is different.

Philanthropic organizations are growing rapidly in the modern era, especially in Muslim-majority countries, and many non-Muslim countries are also taking part in the establishment of philanthropic organizations. The hope of the presence of this Philanthropic Institution or Social Institution, can provide very broad benefits. In accordance with the hope of improving the welfare of society in all aspects, especially in economic improvement.

The development of philanthropic institutions or more familiarly called institutions, or more commonly, Philanthropic Institutions, engaged in the field of Economic Improvement, Disaster Emergency, Education Crisis, Health Improvement, and Religious Syiar (Da'wah). It is very widespread to emerge from a small scale, meaning that it only focuses on the scope of the region that there are those who spread kindness or benefit to countries that really need it such as conflict countries.

Indonesia is a country that prioritizes the welfare of its people with the goal of building a just and prosperous society. This is outlined in the preamble of the 1945 Constitution of the Republic of Indonesia (UUD 1945), precisely in the fourth paragraph regarding the purpose of the establishment of the Government of the Republic of Indonesia, namely: "To protect the entire Indonesian nation and the entire Indonesian homeland and to advance the general welfare, educate the nation's life, and participate in carrying out world order based on independence, lasting peace and social justice".

The important role of a State and all elements of society in upholding welfare, collaborating and cooperating in the same goal will definitely form a concept that can provide very broad benefits to the surrounding community. So that is the hope of the State and the ideals of the Organization can be achieved by fulfilling community rights and reducing poverty so that jobs will open up for its people. The picture above shows that cooperation between the government and elements of society has great potential to achieve what is hoped for and the desired target.

Indonesia is known as a country with the largest Muslim majority population in the world.# Where one of the potentials that can be explored, developed, and utilized is zakat, Infaq and Sadaqah. Indonesia has been named the most generous country in the world, where this award is given by the Charities Aid Foundation or CAF based on the World Giving Index (WGI). In the survey, Indonesia won an award with a weighted value of 68 percent. When compared, this value is higher than the global generosity weighted at 62 percent.

**Table 1.** 10 Most Generous Countries in the World

Country
Indonesia
Nigeria
Australia
New Zealand
Kosovo
Kenya
Myanmar
Ghana
Uganda
Thailand

*Sumber: CAF World Giving Index 2021*

From the explanation above that zakat infak and sadaqah is one of the alternative solutions in eradicating poverty where poverty is still a problem in this country. The collection of money and goods is a source of funds that is utilized for the welfare of the community, especially in reducing poverty and eliminating social inequality, it needs professional management. Therefore, the central government, up to the Province and Regency / City will carry out community empowerment. To realize all of that the government issued the Republic of Indonesia Law Number 9 of 1961 concerning the Collection of Money and Goods. In 2011 the government issued Law Number 23 of 2011 concerning Zakat

Management with the hope that zakat management can be managed properly in accordance with what is expected by the community.

When this is managed properly, what is expected in the Constitution and the ideals of all elements of society can be achieved. It is certain that Zakat, Infaq and Sadaqah have enormous potential and impact on society. One of the things is that it can reduce poverty levels. The Zakat Infaq and Sadaqah Management System was already carried out in the era of the Prophet Muhammad at that time in Medina, where Zakat Management was managed optimally and this had a positive impact on the economy in the country where the economy became more stable.

We all know that the creation of social welfare in the midst of society is a task and obligation carried out by the state, Social Welfare must be realized by the government solely for the benefit of the community. The government in terms of realizing this is assisted by the community by forming businesses engaged in the social sector, so the Government in this case only oversees and issues policies to protect and ensure that community rights have reached the community itself. As stated in Article 3 Paragraph 1 of Law of the Republic of Indonesia Number 6 of 1974 concerning Basic Provisions for Social Welfare, stating that: "The Government's Task is to Determine the Policy Lines needed to maintain, Guide, and Improve Social Welfare efforts"

The government in this case is the spearhead of the movement of social activities by issuing policies that favor the community so that the rights of the community itself are fulfilled. When the policy is running well, it is certain that the rights of the community in the social sector will be fulfilled.

Over time, many Philanthropic Institutions have sprung up which were formed by the community in terms of helping the government in overcoming social gaps as stated in Article 1 of the Law of the Republic of Indonesia Number 6 of 1974 concerning Basic Provisions for Social Welfare that every citizen has the right to participate in social welfare efforts.

However, in the development of so many philanthropic institutions and can be seen with the regulations issued, it is not directly proportional. The existing regulations have not been able to ensure that the rights of the community are truly their rights. Such as the problems that arise in the Aksi Cepat Tanggap Philanthropy Organization that was frozen by the Government, where there are many people's rights to humanitarian funds collected by the Aksi Cepat Tanggap Philanthropy Organization. Where these funds are needed by the community for their survival needs. Maybe when people who still have money or have more income, surely they will not depend on the funds collected by the Philanthropic Institution. However, this is very different according to the researcher, this is very important and urgent to fulfill because it involves community rights and this needs the role of the government through government policy in overcoming this.

The Government Regulation states that in Paragraph 3, Article 8 of Law of the Republic of Indonesia Number 9 of 1961 concerning the Collection of Money and Goods states that money or goods obtained as a result of criminal acts as referred to in this article are confiscated and used as far as possible to finance similar welfare efforts.

The Government Regulation has not explained in detail about the direction of the funds of the Philanthropy Institution when it is frozen by the Government, the regulations used by the Government are old and there is no replacement law made by the government. Rationally, the Law of the Republic of Indonesia Number 9 of 1961 concerning the Collection of Money and Goods is no longer relevant to current developments, so it is necessary for the Government to clarify so that what is the right of the community can be fulfilled in accordance with what is the ideal of the 1945 Constitution to promote prosperity.

## RESEARCH METHOD

This research discusses and analyzes using doctrinal legal research methodology. Doctrinal legal research methodology that looks at the opinions of experts related to the development of philanthropic institutions. The basis of this research comes from a case that arises in the midst of philanthropic institutions with the rapid development of the times. So it is necessary for philanthropic organizations to be independent and no longer raise funds in the old way and this is a challenge in itself. All of this will be realized when supported by good regulations. So that the doctrinal legal research method can be interpreted as a research method on statutory rules both from the point of view of the hierarchy of laws and regulations, as well as the harmonious relationship between laws. The writing method used in this journal is a research method that aims to find solutions to legal issues. The writing of this article is the result of a literature review and conceptual review of issues regarding Philanthropic Institutions in the State of Indonesia. The problem approach used is a statutory approach (statute approach), conceptual approach (conceptual approach), and case analysis approach (case analysis approach). The statutory process is carried out by examining all laws and regulations relating to legal issues whether existing

laws are still relevant or whether new laws are needed in order to address issues arising in the midst of society. While the conceptual approach departs from the views and doctrines that develop in the issue of the law itself. By studying the theories and concepts of the issue of study, researchers will find new ideas that can provide solutions to these problems. Hopefully, we can see a good concept and contribute to the world of philanthropy in Indonesia.

The legal materials used in this research are primary and secondary standard materials. Primary traditional materials as referred to in the 1945 Constitution and other laws and regulations related to the legal issues discussed. Secondary traditional materials include materials that support primary conventional materials such as books on Philanthropy and discuss the management of Umat funds, articles in various journals that are references and collections of journals. Then, no less important about scientific journals in the field of law, and other supporting sources.

## RESULTS AND DISCUSSION

### The Concept of Legal Certainty of State Responsibility.

The protection of the entire Indonesian nation through legal instruments is an absolute thing to be realized, because it means nothing to protect the entire nation and the blood of Indonesia if it turns out that there is still injustice felt by the community due to law enforcement not based on legal instruments that are not oriented towards the value of justice. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "The State of Indonesia is a State of Law".# This means that Indonesia is a democratic State of law based on Pancasila and the 1945 Constitution, not based on mere power, but upholds Human Rights.

Humans and all citizens are equal before the law and government. Therefore, the implementation and fulfillment of human rights and the rights and obligations of citizens in order to provide a sense of justice should not be abandoned by the community, government, state institutions, and community institutions both central and regional.

According to Prodjodikoro, there are three important things that must be considered in the application of criminal law, namely the existence of criminal sanctions straf sanctie mentioned in the Criminal Code which can only be imposed on criminal offenders who have been previously determined in the law, the criminal law may not be retroactive and in its application it is prohibited to make analogies. The principle of legality contains the objective of legal certainty. According to Suherman, the principle of legality of the Indonesian Criminal Code is based on the basic idea of legal certainty. Meanwhile, according to Sulardi & Wardoyo, the aspect of certainty requires that in his decision, the judge must be guided by the provisions of the legislation as the principle of the Indonesian State is a state of law.

Therefore, certainty is guaranteed, and legal certainty will be guaranteed if the rules used are positive law, however, certainty is not enough, but the law must also be right, namely the law must be fair. Referring to Artadi's opinion, that the rule of legal certainty in the form of positive law must be accompanied by justice, so that the law is true, because the essence of law is justice. In the context of Siskumnas, the principle of legality should be interpreted as the principle of legal certainty and must also be interpreted as the principle of justice. The existence of a fair legal certainty guarantee is stated in the 1945 Constitution of the Republic of Indonesia Article 28D paragraph (1), that everyone is entitled to recognition, guarantees, protection and certainty of a fair law and equal treatment before the law. Starting from Article 28D paragraph (1) of the 1945 Constitution, in the author's opinion, fair legal certainty can be interpreted as the existence of recognition, guarantees and protection based on positive law based on the principles of justice.

Without justice, it is not called law, therefore, the law that is formed as positive law must be in accordance with the principles of justice. The principles of justice can only take shape as a law that regulates truly to regulate life together concretely when it has been positivized and therefore has certainty about the values of justice. Legal certainty is a very fundamental need of society, while the expectation of a just law can only be fulfilled on the basis of its certainty through legal positivization.

Certainty and justice are law in the sense that for the implementation of good law, positive law must be a realization of the principles of justice which are the basic human demands that must be met. Law is the highest thing (supreme) which is the ideal of mankind throughout the world who crave peace, tranquility, and prosperity. So it can be interpreted as a series of rules regarding the behavior of society in social life, while the main purpose of law is to establish safety, happiness, and order in society.

The state is the largest organization consisting of three elements, namely the existence of an area, the existence of people, and the existence of a government, where in a state there is also a law that functions and aims to realize true justice, provide legal certainty, provide order and security for the community. Organization is an increase in positions or fields of work.

Establishing and maintaining the rights and freedoms of citizens. In an effort to maintain the rights and freedoms of citizens, it is necessary to establish laws formulated in legislation. Such legislation is not the will of individuals or authorities alone, but is the will of all citizens universally.

To provide the greatest and most equitable happiness for every human being. In relation to the purpose of the state, the purpose of the Indonesian state in general can be known from the 1945 Constitution (UUD 1945) or the constitution. This is based on the fourth paragraph of the Preamble of the 1945 Constitution, which states that the purpose of the Republic of Indonesia is to protect the entire Indonesian nation and the entire homeland of Indonesia, to promote general welfare, to educate the nation's life and to participate in the implementation of world order, based on independence, lasting peace and social justice, all based on Pancasila.

State responsibility in international law refers to the responsibility of one state towards another state for failing to fulfill obligations imposed by the international legal system.<sup>#</sup> A state can hold the defendant state responsible for damages. Thus, state responsibility is all about determining on what basis and under what circumstances a state may be deemed to have committed a wrong or internationally wrongful act.

Until now, the concept of state responsibility has not been clear and firm, in other words, there are no clear legal provisions on state responsibility, although these shortcomings do not reduce the importance of the principle of state responsibility as one of the fundamental principles in international law. MN. Shaw suggests several characteristics that indicate the emergence of state responsibility, namely: The existence of an international legal obligation that applies between two specific countries, The existence of an act or omission that violates the international legal obligation, which gives birth to state responsibility, The existence of damage or loss as a result of an unlawful act or omission.

So clearly, state responsibility will arise when there is a violation of an obligation under international law, by a state, The violation causes loss or damage to another state, There is a relationship between the violation and the loss that causes the state that committed the violation to be responsible.

## **Facts on the Development of Philanthropic Institutions in Indonesia**

### **a. The Historical Concept of Philanthropic Institutions**

Philanthropy is a concept that has been found in Islam with the aim of providing a good impact on society. This arises due to the conditions of different social and economic levels of the community so that ideas related to the idea or concept of philanthropy emerge in the midst of society.

In terms of language, philanthropy means generosity, generosity, or social donation, something that shows love for humans. The term philanthropy (philanthropy) is actually derived from the Greek, *philos* (love) and *anthropos* (human), which literally means the conceptualization of the practice of giving, service and association (association) voluntarily to help others in need as an expression of love.

According to James O. Midgley, philanthropy is a social institution that has a three-sided approach to promoting welfare including poverty alleviation, namely the approaches of social service (social administration), social work and philanthropy. Philanthropy as one of the social capitals has been integrated into the communal culture that has been rooted for a long time, especially in rural communities.<sup>#</sup> Cultural facts show that the tradition of philanthropy is preserved through giving charity to friends, family, and neighbors who are less fortunate. Another feature is shown by the demand of the community to prioritize the goal of alleviating the burden of the poor, whose number has increased by 1 to 48% during the economic crisis that has hit Indonesia since 1997.

This kind of philanthropic practice has been going on for a long time in the community, although the pattern of practice is interpersonal and not organized. In addition, the awareness of philanthropy in rural communities not only stems from social norms that uphold the value of solidarity of mutual cooperation and mutual assistance, but also stems from the values of religiosity, which is very possible because religious teachings teach and encourage doing good.

In addition, philanthropy is also one of the elements in religious teachings that is so strong and has a strong positive side that pays attention to worldly problems, especially the problem of poverty. Functionally, religion plays an important role in people's lives, both for traditional and modern societies, religion is where they look for the final and ultimate meaning of life so that all forms of behavior and actions are always oriented towards religious guidance. Religion does not only guide its people to take care of *ukhrowi* (afterlife) life but also concerns worldly life, especially social issues such as poverty.

Poverty is an interesting theme to discuss, especially for social scientists. Many studies offer solutions to overcome poverty, but the face of poverty still exists in the midst of the dynamics of changing times. Efforts to overcome the problem of poverty have been made continuously by experts

throughout the ages in an effort to find the ideal form of poverty alleviation. The theme of poverty is studied not only by developing countries but also developed countries. Before recognizing scientific studies on the problem of poverty, people have carried out traditions that respond to the problem of poverty in the form of giving. Giving in its various forms is not limited to money or goods but also work or various efforts to ease the burden on the poor and improve their welfare is referred to as philanthropy.

Philanthropy plays an important role in overcoming poverty in areas with high poverty rates. Many studies have examined how the ideal concept of managing zakat funds can remain the target of receiving benefits and achieving work programs in reducing poverty. What's more, Indonesia in the survey results from the Charities Aid Foundation or CAF based on the World Giving Index (WGI). In the survey that Indonesia ranked first as the most generous country with a weighted value of 68 percent. When compared to the global generosity of existing countries that Indonesia gets a weight of 62 percent.

In Indonesia itself there are many philanthropic organizations that have the aim of how to overcome poverty in Indonesia, especially in remote areas where the poverty rate is so high. The role of humanitarian organizations is very important and this is in line with the presence of the state and government which help each other in eradicating poverty.

Seeing the very strategic position of the presence of the Philanthropic Institution, it also needs support from the government in terms of regulations and assistance to the institution in optimizing the management of humanitarian funds. When looking at the existing regulations, which have not been able to fully guard or strengthen philanthropic institutions so that they can exist in the midst of society.

#### b. Development of Philanthropy in Indonesia

In the Republic of Indonesia, philanthropic organizations are growing rapidly, especially in big cities where people are actively helping each other. The hope of the presence of this Philanthropic Institution or Social Institution, can provide enormous benefits in the midst of society. In accordance with the hope of improving the welfare of society in all aspects, especially in economic improvement.

The development of philanthropic institutions, especially in Indonesia, which prioritizes the welfare of its people. This is in line with the ideals of this country how to create a sense of justice and prosperity in the midst of society. Not only that, all of this is realized in accordance with the reflection in the preamble of the 1945 Constitution of the Republic of Indonesia (UUD 1945), precisely in the fourth paragraph regarding the purpose of the establishment of the Government of the Republic of Indonesia, namely: "To protect the entire Indonesian nation and the entire Indonesian blood spill and to advance the general welfare, educate the nation's life, and participate in carrying out world order based on independence, lasting peace and social justice".

The important role of a State and all elements of society in upholding welfare, collaborating and cooperating in the same goal will definitely form a concept which can provide very broad benefits to the surrounding community. So that what is the hope of the State and the ideals of the Organization can be achieved by fulfilling community rights and reducing poverty so that jobs will open up for its people. The picture above shows that cooperation between the government and elements of society has great potential to achieve what is hoped for and the desired target.

When looking at the concept of state responsibility in international law, it refers to the responsibility of one state towards another state for not fulfilling the obligations determined by the international legal system. State responsibility is all about determining on what basis and in what circumstances a state can be considered to have committed a wrong or internationally wrongful act.

The state is very responsible for the development of institutions and the development of the world of generosity. How can the state provide or support with regulations that are in accordance with the times or can be in line with the world of philanthropy so that what is ideal can be realized quickly. The law that is used now is still using an old law. Regulations on Charitable Institutions are regulated in the Law of the Republic of Indonesia Number 9 of 1961 concerning the Collection of Money and Goods. Until now it is still in use. There should be regulations that have been set in accordance with the development of Philanthropy in the modern era, especially since Indonesia is known as a country with the largest Muslim majority population in the world. Where one of the potentials that can be explored, developed, and utilized is zakat, Infaq and Sadaqah.

Zakat, Infaq and Sadaqah is one of the alternative solutions in eradicating poverty where poverty is still a problem in this country. The collection of money and goods is a source of funds that is utilized for the welfare of the community, especially in reducing poverty and eliminating social inequality. Therefore, the central government, up to the Province and Regency / City will carry out community empowerment.

In 2011, the government of the Republic of Indonesia issued Law Number 23 of 2011 concerning Zakat Management with the hope that zakat management can be managed properly in accordance with

what is expected by the community. But this still cannot represent what is the hope of the Philanthropic Institution from the Government's Encouragement in Improving Human Resources (HR) which needs support from the government. When this right is managed properly, what is expected in the Constitution and the ideals of all elements of society can be achieved. It is certain that Zakat, Infaq and Sadaqah have enormous potential and impact on society. One of the things that can reduce poverty levels. The Zakat Infak and Sadaqah Management System was already carried out in the era of the Prophet Muhammad at that time in Medina, where Zakat Management was managed optimally and this had a positive impact on the economy in the country where the economy became more stable.

We all know that the creation of social welfare in the midst of society is a task and obligation carried out by the state, social welfare must be realized by the government solely for the benefit of the community. The government in terms of realizing this is assisted by the community by forming businesses engaged in the social sector, so the Government in this case only oversees and issues policies to protect and ensure that community rights have reached the community itself. As stated in Article 3 Paragraph 1 of Law of the Republic of Indonesia Number 6 of 1974 concerning Basic Provisions for Social Welfare, stating that: "The task of the Government is to determine the policy lines needed to maintain, guide, and improve social welfare efforts"

The government in this case is the spearhead of the movement of social activities by issuing policies that favor the community so that the rights of the community itself are fulfilled. When the policy is running well, it is certain that the rights of the community in the social sector will be fulfilled.

Over time, many Philanthropic Institutions have sprung up which were formed by the community in terms of helping the government in overcoming social gaps as stated in Article 1 of the Law of the Republic of Indonesia Number 6 of 1974 concerning Basic Provisions for Social Welfare that every citizen has the right to participate in social welfare efforts.

However, the development of so many philanthropic institutions and can be seen with the regulations issued is not directly proportional. The existing regulations have not been able to ensure that the rights of the community are truly their rights. Such as the problems arising in the Aksi Cepat Tanggap Philanthropy Organization that was frozen by the Government, where there are many people's rights to humanitarian funds collected by the Aksi Cepat Tanggap Philanthropy Organization. Where these funds are needed by the community for their survival needs. Maybe when people who still have money or have more income, surely they will not depend on the funds collected by the Philanthropic Institution. However, this is very different according to the researcher, this is very important and urgent to fulfill because it involves community rights and this needs the role of the government through government policy in overcoming this.

The Government Regulation states that in Paragraph 3, Article 8 of Law of the Republic of Indonesia Number 9 of 1961 concerning the Collection of Money and Goods states that money or goods obtained as a result of criminal acts as referred to in this article are confiscated and used as far as possible to finance similar welfare efforts.

The Government Regulation has not explained in detail about the direction of the funds of the Philanthropy Institution when it is frozen by the Government, from the regulations used by the Government, it is old and there is no replacement law made by the government. Rationally, the Law of the Republic of Indonesia Number 9 of 1961 concerning the Collection of Money and Goods is no longer relevant to current developments, so it is necessary for the Government to clarify so that what is the right of the community can be fulfilled in accordance with what is the ideal of the 1945 Constitution to promote prosperity.

So this requires the principle of legal certainty of protection of the community, we can override the interests of people who still have assets, what about people who really don't have anything at all and are very dependent on generosity that has been facilitated and in the Law of the Republic of Indonesia Number 9 of 1961 concerning the Collection of Money and Goods has not been able to provide certainty that donations can beneficiaries get. So this requires regulations that have regulated so that what is the right of the community can be fulfilled.

Indonesia through legal instruments is an absolute thing to be realized, because it means nothing to protect the entire nation and the blood of Indonesia if it turns out that there is still injustice felt by the community due to law enforcement not based on legal instruments that are not oriented towards the value of justice. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "Indonesia is a State of Law". This means that Indonesia is a democratic State of law based on Pancasila and the 1945 Constitution, not based on mere power, but upholds human rights.

Humans and all citizens are equal before the law and government. Therefore, the implementation and fulfillment of human rights and the rights and obligations of citizens in order to provide a sense of

justice should not be abandoned by the community, government, state institutions, and community institutions both central and regional.

## CONCLUSION

Based on the explanation previously presented, Philanthropic Institutions or Social Institutions, the impact is very large and can provide enormous benefits in the midst of society. In accordance with the hope of improving the welfare of society in all aspects, especially in economic improvement. The development of philanthropic institutions, especially in Indonesia, can be said to be not in accordance with what is expected, so what is needed now is related to regulations that are in accordance with the times.

Therefore, it is necessary to have an important role of a State and all elements of society in upholding welfare, collaborating and cooperating in the same goal will definitely form a concept which can provide very broad benefits to the surrounding community. So that what is the hope of the State and the ideals of the Organization can be achieved by fulfilling community rights and reducing poverty so that jobs will open up for its people.

The state is very responsible for the development of institutions and the development of the world of generosity. How can the state provide or support with regulations that are in accordance with the times or can be in line with the world of philanthropy so that what is ideal can be realized quickly. The current law still uses an old law, namely Law of the Republic of Indonesia Number 9 of 1961 concerning the Collection of Money and Goods, in this law it does not yet reflect legal certainty to beneficiaries, so regulations are needed that reflect a sense of justice in society.

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