

THE POLITICAL LAW OF ZAKAT MANAGEMENT IN INDONESIA

Muhammad Bahrul Ilmie

Institut Agama Islam Nahdhatul Ulama Kebumen

Jl. Tentara Pelajar No.55B, Panggel, Panjer, Kec. Kebumen, Kabupaten Kebumen, Jawa Tengah

e-mail: hmb.ilmie@gmail.com

Abdul Ghafur Anshori

Universitas Gajah Mada

Jalan Bulaksumur, Caturtunggal, Kec. Depok, Kabupaten Sleman,

e-mail: abdulghofuranshori1253@gmail.com

Abstrak: Penelitian ini difokuskan mencermati isu hukum dan politik pada Undang-Undang (UU) Nomor 23 Tahun 2011 tentang Pengelolaan Zakat, terutama relasi zakat dan pajak sebagai pemenuhan amanat konstitusi Pasal 29 jo Pasal 34 ayat (1) UUD 1945. Eksistensinya menunjukkan negara bangsa menghadirkan aktualisasi hukum agama di ruang publik, yang pelaksanaannya bersinggungan dengan aspek politik dan ekonomi, tetapi dipahami cukup efektif dan efisien untuk membantu pencapaian tujuan negara. Penelitian ini merupakan penelitian hukum doktrinal dengan pendekatan perundang-undangan, filsafat hukum dan politik. Bahan hukum yang terkumpul, melalui prosedur berpikir deduktif dianalisis dengan menggunakan teori negara hukum, politik hukum, dan keadilan. Temuan penelitian menunjukkan bahwa politik hukum negara dalam menata relasi pengelolaan zakat dan pajak, dengan memperkuat kewenangan negara sebagai ‘amil (kelembagaan) zakat, dalam peran sertanya sebagai regulator sekaligus operator pada pengelolaan dana zakat, karena keterlibatan negara menjanjikan cukup manfaat (keuntungan) untuk kepentingan politik, sosial-ekonomi kenegaraan dalam pemenuhan Pasal 34 ayat (1) UUD 1945

Keywords: politik hukum, zakat, relasi zakat dan pajak, filantropi Islam

Abstract: The focus of this research is on examining legal and political issues in Law Number 23 Year 2011 concerning Zakat Management, mostly on the relationship between zakat/alms and tax as a requirement of the constitutional mandate on article 29 and Article 34 paragraph (1) of the 1945 Constitutional. The results show the state of nation provided actualization of religious law in the public space, which implementation contradicted to political and economic aspects. However, it is effective and efficient enough to help in gaining its objectives. This research method is doctrinal with the legislation, legal philosophy and politics were used as the approach. The legal material collected data, then deductively analyzed, using theories of the rule of law, legal politic, and justice. The political law of a country manages the relationship between zakat and tax management by strengthening the country's authority as 'amil (institutional) of zakat, in its role as a regulator and operator of zakat fund management, because the country involvement provided sufficient benefits for politics, socio-economic of the country to fill the requirements in Article 34 paragraph (1) of the 1945 Constitution.

Keywords: political law; alms; relationship of zakat and tax; Islamic philanthropy

INTRODUCTION

Research on political law related to the zakat management, mainly on the connection or relationship between the obligations of Muslim community on zakat and income tax (red:PPH), is important to be revealed in the academic field to support religious and state life because zakat or *Aṣ-ṣakāt* is one of the five pillars of Islam, and whoever in disobedient, whether in terms of its obligation or the amount which has been agreed by the scholars, is considered in apostasy¹, due to its essential is a must.²

The literatures that criticize implicitly to the political aspects of the zakat management and the possible characteristics of the legal products have not received adequate attention, only a few, which mainly examine the issue of political law of zakat management related to poverty and justice including research by Sri Kusriyah³ and Widyawati⁴.

¹Syekh Muhammad Arsyad Al Banjari, *Kitab Sabilal Muhtadin*, Volume. II, Translated by M. Asywadie Syukur, Ed. 1, (Surabaya: PT. Bina Ilmu, 1987), p.185.

²M. Hasbi Ash-Shiddieqy, *Pedoman Zakat*, Ed. 2, (Semarang: Pustaka Rizi Putra, 2009), p. 13

³Sri Kusriyah, "Politik Hukum Pengelolaan Zakat sebagai Upaya Penanggulangan Kemiskinan di Indonesia (Study Kebijakan Pengelolaa Zakat di Propensi Jawa Tengah)", *Doctoral Dissertation*. Yogyakarta: Doctoral Program (S3) Legal Studies of UII, 2014

Generally, most studies on the existence of zakat have been described by *uṣūl fiqh* method (*Istinbāt* and *Ijtihād*), either in the discussion of classical fiqh books by several ancient scholars, such as al- Kasani in his book *Badā'i'u al-Sanā'i fī Tartibi al-Syarā'I*, or in the discussion of contemporary fiqh books such as Yusuf al-Qardhawī in his book *Fiqh uṣ-ṣakāt*. The preliminary search shows that 'ulamā and/or scholars have recently started to change their field of studies, although they still study zakat from a religious (normativity) and/or religion (historicity) perspective. The recent research trend is the discussion on zakat from the administrative of zakat management and the socio-economic perspective.

This research is basically aimed to complete the weaknesses of the study in political law of zakat management using a legislative approach, legal and political philosophy. It carefully draws the dynamics of political law in the existence of Law Number 23 Year 2011 concerning Zakat Management as positive law, mostly on unrevealed and unknown matters.

⁴Widyawati, "Filantropi Islam dan Kebijakan Negara Pasca Orde Baru: Studi tentang Undang-Undang Zakat dan Undang-undang Wakaf", *Doctoral Dissertation*, Jakarta: UIN Syarif Hidayatullah, 2011

Academic controversial raises the question "how does a political law relate the management of zakat and taxes for the benefit of religion as well as the country?". Based on that question, regarding the law on zakat Management, this study analyses it deeply and systematically based on political law which Mahfud MD defines as a framework on how the law will and should be made and determined the direction in national politics, and its functions.⁵

The determined approaches are sufficient to reveal various issues on the political law on zakat management in Indonesia, hence this research used doctrinal law research with literature, either in the form of primary and secondary legal sources as the main foundation in the research. The data was analyzed deductively using several theories, mostly the theory of the state of law and political law.

RESULTS AND DISCUSSION

1. The Existence of Zakat Management Constitution in the Perspective of Political Law

The national politics concerning the zakat management system in Indonesia, where the condition of the society is

heterogeneous, focus on legal guidance within the development framework of the National Law System, and how efforts to enforce its functions consistently. The political law on zakat management can be divided into the basic dimensions, the purpose dimension, or the reason behind its enactment.⁶ The content of the laws and regulations from the values of Islamic law is the facility for the Muslim community within the National Law System. And every creation of law and regulation is closely related to the time and political situation⁷ which indirectly links the re-actualization dynamics and the contextualization of religious teachings for its followers.

The perspective of legal and political theory by Moh. Mahfud. MD emphasizes the existence of laws in the form of laws and regulations for zakat management as a political product in general. This is based on the reality concept (*das sein*) that laws only as regulations made by the legislature. It is undeniable that positive law (which applies) is a political product because it is crystallization, formalization, legalization of political willingness or domination of the greatest political power. It is different if the law is based on the willingness or

⁵Moh. Mahfud. MD, "Politik Hukum Nasional Sketsa Das Sollen dan Persoalannya", *Unisia*, No. 18 Year. 1993, p. 10.

⁶Abdul Latif and Hasbi Ali, *Politik Hukum*, Ed. 3. (Jakarta: Sinar Grafika, 2014), p. 19, 142

⁷ Ali Imron, *Legal Responsibility: Membumikan Asas Hukum Islam di Indonesia*, Editor: Mashudi, (Yogyakarta: Pustaka Pelajar, 2015), p. 13

necessity (*das sollen*) or negative law (planned) which is not interpreted as law. Then the law is not a political product⁸.

In Indonesia after reformation (1998), zakat is a part of Islamic law, which is compulsory to the Muslim community. Its existence has been accepted and recognized as part of the obligations in a country, and then Islamic law is transformed through the national legislation process⁹. The formalization of zakat law by the country has been marked by the birth of Law (UU) Number 38 of 1999 concerning zakat management. It is also as a sign of the birth of religious law in life through legal pluralism.¹⁰

As time goes by and various national interests' dynamics, the House of Representatives (DPR-RI) revised Law Number 38 of 1999 concerning zakat management because of several matters of legal norm including its management and purpose. Based on the results of 2010 and 2011 National Legislation Priority

Program¹¹, the Law Number 38 Year 1999 got revisions, then resulted in Law Number 23 Year 2011 concerning zakat management, as a continuity of the Islamic law reformation.

Formalization as legalization¹² on zakat law is the real impact of the successful integration (transformation) of religious values and religion into the development process carried out by religious leaders and the government¹³, and it is supported by the legal awareness of the Indonesian Muslim community to accomplish their religious obligations, social responsibilities for religion and the country.

In reality, the obligation of zakat for Muslim communities generally has not been accepted as part of the obligations of the country, because it is perceived merely as a religious obligation and a matter of privacy between beliefs and Allah SWT on its relationship to Science of ideology. However, the existence of the law that regulates the implementation or management of zakat and taxes has transformed zakat into the responsibility for the country, as a form of country

⁸ Moh. Mahfud. MD, *Politik Hukum di Indonesia*, Ed. 6, (Jakarta: Rajawali Pres, 2014), p. 5-6; Radita Ajie, Limit To Open Legal Policy In Legislation Making Based On Constitutional Court Decision, *Jurnal Legislasi Indonesia*, Vol. 13, No. 02, (Juni 2016), p. 114.

⁹H. Muhammad Bahrul Ilmie, "Kompilasi Hukum Islam dan Upaya Pengintegrasian Hukum Islam Ke Dalam Sistem Hukum Nasional", *Thesis*, (Yogyakarta: Program Magister Ilmu Hukum UII, 1998), p. 1

¹⁰ Imam Syaukani dan A. Ahsin Thohari, *Dasar-dasar Politik Hukum*, (Jakarta: Raja Grafindo, 2015), p. 126-128

¹¹House of Representatives of RI decision attachment Number 02/B/DPR/RI/II/2010-2011 concerning the draft of National Legislation Program year 2010 and 2011.

¹² J.J. H. Bruggink, *Refleksi tentang Hukum*, translator Arief Sidharta, Ed. 1, (Bandung: Citra Aditya Bakti, 1996), p. 142

¹³E. Zainal Abidin, "Sosialisasi dan Enkulturasasi Nilai-nilai Agama dalam Proses Pembangunan Nasional (Industrialisasi)", *Unisia*, No. 24 Th. 1994, p. 57

protection for its citizens in carrying out their religious obligations, as mentioned in Article 29 paragraph (1) Law of the 1945 Constitution that says "The State shall be based upon the belief in the One and Only God.

The Law on Zakat Management relates to the Income Tax Law (PPh) and its amendments. The existence of a law is always related to other laws and regulations, as a whole and cannot stand alone completely independent without other laws. It means that every law is a part of the entire existing system of Laws and Regulations.¹⁴

2. The Law Concerning Zakat Management: An Political Economics Need

Abdul Ghofur emphasized that the government's duty is the same as the goal of political law, in addition to manifesting social justice (*justitia socialis*) through laws. A law is fair if the benefits and burdens are divided appropriately because injustice violates human rights or focus on personal interests; moreover, the government maintains real public interests in social life. These interests are seen in the collective

community's objectives, then supported by the government by creating laws.¹⁵

The government, based on the mandate in Article 29 and Article 34 of the 1945 Constitution, the state has legalized the law of zakat management from religious values to help various socio-economic problems within its framework. Moreover, according to Marbun, the authority will create the government's ability to carry out a public legal action, or in juridical language, this authority will create the ability to act in accordance to the law.¹⁶

The implementation of the legal function as a political tool will create political law that is policies from the country through the authorized institutions to determine the intended laws and regulations.¹⁷ In the context of Indonesia, where the majority of the population is Muslim, the laws and regulations on zakat management are necessary and part of microeconomic administration system, but have a macro impact on state administration, mainly on accelerating the efforts to accomplish the state's goals as mentioned in the opening of the 1945 Constitution, that: "... to enhance the

¹⁴Sudikno Mertokusumo, *Bab-Bab tentang Penemuan Hukum*, Ed. 1, (Bandung: Cirta Aditya Bakti, 1993), p. 16

¹⁵Abdul Ghofur Anshori, *Filsafat...*, p. 151

¹⁶S.F. Marbun, "Negara Hukum-Demokrasi dan Peraturan Kebijaksanaan", *Unisia*, No. 34 Th. 1997, p. 35

¹⁷Lauddin Marsuni, *Hukum dan Kebijakan Perpajakan di Indonesia*, Ed. 1, (Yogyakarta: UII Press, 2006), p. 49-50

public welfare ..." absolutely to create a fair and prosperous society.¹⁸

The existence of zakat management law in Indonesia as a concrete norm has become an objective law (*objectief recht*)¹⁹. It is described as binding law in a country (*lex generalis*), but in this context, it must be understood in the limit, narrowly, or differently from its understanding as a general law that applies to all and general.

Even though it is an objective law, but it is also as a special law which is applicable for certain actions or legal relationships that specific to Muslims (*lex specialis*), because in the beginning it is described as rights in term of a subjective law (*subjectief recht*).²⁰

In law, politics, and economics, zakat has been recognized and believed to have great potential, therefore it is an economic necessity for eliminating poverty as part of social problems to enhance the dignity and welfare of society as reflections of the country's objectives. Zakat will be optimally utilized for social empowering, community development, and social improvement.²¹

¹⁸ Ibnu Nujāim al-Misrī, *Al-Aṣyāb wan al-Naẓā'ir*, Ed. 2 (Makkah al-Mukarramah: Nizār Muṣṭafā al-Bāz, 1418H/1997M), p. 124

¹⁹ Fajlurrahman Jurdi, *Logika Hukum*, Ed. 2, (Jakarta: Prenadamedia Group, 2019), p.143.

²⁰ Cermati, Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, (Jakarta: Kencana, 2016), p. 143; E. Sundari dan M.G. Endang Sumiarni, *Politik Hukum...*, p. 74-75.

²¹ Ministry of Religion of RI, *Zakat Community Development Model Pengembangan Zakat*, Cet. 1, (Jakarta:

3. The Political Law in the Law No. 38 Year 1999 Concerning Zakat Management

The Law Number 38 year 1999 concerning Zakat Management after the reformation era is as a concrete norm and a political product through logics and language of laws and regulations²². In terms of its character, it is seen as a responsive law, which is law as a facilitator of various responses to social needs and aspirations from Muslim community²³. Its birth is a success of modernist Muslims for fighting their political demands from the 1950s in order to carry out the Islamization²⁴. The legalization of the zakat provisions through Law Number 38 year 1999 concerning Zakat Management is not only related to zakat itself but also to the things underlie the presence of other forms of others social philanthropies (charity), such as alms, non-religious donations, and others.²⁵

Based on research conducted by IRTI-IDB economists (2010), as quoted by Any

Directorate General of Islamic Community. Guidance Directorate of Zakat Empowerment, 2013), p. 22

²² Bagir Manan, *Dasar-dasar Perundang-Undangan Indonesia*, Ed. 1, (Jakarta: Ind-Hill-Co, 1992), p. 2

²³ Ahmad Muliadi, *Politik Hukum*, (Padang: Akademia Permata, 2013), p. 42.

²⁴ Ministry of Religion of RI, *Membangun Perspektif Pengelolaan Zakat Nasional*, Ed. 1, (Jakarta: Directorate General of Islamic Community. Guidance Directorate of Zakat Empowerment, 2013), p. 27

²⁵ Amelia Fauzia, *Filantropi Islam...*, p. 230 and 246

Setianingrum, et al, the zakat potential in Indonesia has reached 2% of the Gross Domestic Product (GDP). By this assumption, zakat has the potential to reach no less than Rp. 100 trillion per year²⁶. The results of BAZNAS and FE IPB's research (2012), as quoted by Agus Triyanta show the financial potential of zakat in Indonesia has a very extraordinary prospect, reaching 3.4% of GDP or equivalent to Rp. 217 trillion per year²⁷. Through the instrument of the zakat management law, the government implicitly expects to raise the quality of life and improve the poor economic status. Then, it is the responsibility of the country²⁸.

The zakat potential as Islamic philanthropy and legal political instrument through the Zakat Management regulations describes an understanding of the synergy between the government and the great willingness of Muslims, mainly for modernist Muslims to implement the teachings of religious legal norms (read: Islamic law) in daily life inclusively.

The presence of the zakat management regulations, (since the early of 1999) is

²⁶Any Setianingrum, et al, "Zakat As Tax Credit For Harmonize Fiscal Setting In Indonesia", *Jurnal Ekonomi Pembangunan*, Volume 16 No. 1 June 2018, p. 58 and 59

²⁷ Agus Triyanta, *Hukum Ekonomi Islam, dari Politik Hukum Ekonomi Islam Sampai Pranata Ekonomi Syari'ah*, (Yogyakarta: FH UII Press, 2012), p. 109; Ministry of Religion of RI, *Membangun...*, p. 33-35

²⁸ Retrieved from Detik.com-detik Finance, on Wednesday August 23rd, 2017, 14:21 WIB.

expected by the government that zakat management can be optimallized to create a dynamic and creative society who always looking for *riḍā* from Allāh Swt, a faithful and piety society who always strengthening *ukhuwah Islāmiyah*, increasing good deeds, practicing *'amar ma'ruf nahi munkar* for the realization of civilized society, which is fair and prosperous based on Pancasila and the 1945 Constitution that blessed by the God Almighty.²⁹

4. The Political Law in the Law No. 23 Year 2011 Concerning Zakat Management

The state's existence is basically created to meet the political needs of the citizens. The country is an integration of political power, and generally, the state has task to control, regulate, manage a-social power (social tension), organize, and integrate humans and groups to achieve the goals of society as a whole.³⁰

The dynamics of the political law of Law Number 23 Year 2011 concerning zakat management generally has no difference from the dynamics of Law Number 38 Year 1999 concerning previous zakat management. Along with the existence of amendment of the 1945

²⁹The House of Representatives of the Republic of Indonesia (1999), *Proses Pembahasan Rancangan Undang-Undang tentang Pengelolaan Zakat*, p. 33

³⁰Abdul Ghofur Anshori, *Filsafat...*, p. 146

Constitution, the framework in Law Number 23 of 2011 concerning zakat management gets a little change³¹. It can be observed in the entire process of zakat management implementations which are more detailed than Law Number 38 year 1999.

After examining letter d in the preamble of "considering" Law Number 23 Year 2011, it shows that the changes to Law Number 38 Year 1999 are still the same in the focus of managing zakat institutionally and following Islamic *syari'at*. Likewise, in the consideration of "remembering" as the legal basis (juridical) for its formation³², but it is adjusting the authority after the amendment of the 1945 Constitution.

Law Number 23 Year 2011 concerning zakat management in its dynamics and process when in the form of a political text (RUU), as an effort to improve the management of Muslim financial institutional management such as ZIS, by the government it is considered as an ongoing process, which is continuously evaluated and revised in accordance to recent needs. ZIS management professionalism can prevent diversion, inefficiency, and possible abuse for personal

interests, groups or other things that deviate from ZIS's own pure objectives.

The good governance, accountability, and transparency principles, as exemplified by Rasūlullāh Saw and his best friends, have become an inseparable part of the political text (RUU). The experiences of Islamic countries like the Middle East, Malaysia, and Brunei Darussalam have successfully utilized the potential of ZIS for the welfare of the Indonesian as the nation with the largest Muslim population who able to overcome their economic problems by utilizing the potential of ZIS³³

The government believes that zakat management must be handled by a national institution. The tasks of this institution are to coordinate, collect, distribute, and utilize zakat nationally. The perspective of political law that affirms the legalization on zakat management as a new *ius constitutum* or *ius positum* has been marked by the existence of Law Number 23 year 2011³⁴.

The improvement of Law Number 38 year 1999 to Law Number 23 year 2011 concerning zakat management was on the fundamental objective to help and simultaneously accelerate the achievement of the country for public welfare. The

³¹ Law Number 23 year 2011 concerning zakat management.

³² Act number 20, 21, 29, and 34 article (1) UUD 1945. The word "remember" in Law Number 23 year 2011 concerning zakat management.

³³ House of Representative of RI (2011), *Proses Pembahasan Rancangan Undang-Undang tentang Pengelolaan Zakat, Infaq, dan Shadaqoh*, p. 2-3

³⁴ Yusuf Wibisono, *Mengelola Zakat Indonesia, Diskursus Pengelolaan Zakat Nasional dari Rezim UU Nomor 38 Tahun 1999 ke Rezim UU Nomor 23 Tahun 2011*, (Jakarta: Kencana Prenada Media Group, 2015), p. 113

various dynamics around political law as the willingness of the country in the direction of the amendment of Law Number 38 year 1999 to Law Number 23 year 2011 concerning zakat management, generally have changed with the addition of Chapters and Articles that try to "improve" the zakat management system in Islamic society, even though the relationship between zakat and tax has not been changed.

The failure on better zakat and tax regulations, related to the making of laws (regulation makers), is no synchronization (inventory content) between the planned regulations and other existed regulations³⁵. It means there is no serious concern on it, but there is a political will to make zakat part of the country's fiscal policy, hence it is considered to be in the State Budget Revenues and Expenditures (APBN). Thus, the concrete legal norms regarding the relationship of zakat and tax that only make changes to some statements from the previous one (Law Number 38 year 1999), although the proposed ZIS draft provides space for fundamental changes as discussed in the conception of Article 35

³⁵Abdul Jamil, "Progresifitas Hakim Peradilan Agama dalam Praktek Penemuan Hukum Pasca Putusan Mahkamah Konstitusi No. 93/PUU-X/2012 Menuju Putusan yang Keadilan Suatu Keharusan", The Paper was presented on a Seminar of the Law Discovery and Justice in Religious Court after amendment of the Indonesian Constitution No. 93/PUU-X/2012, held by PPs MIAI FIAI UII Yogyakarta, July 29th 2017, p. 1.

paragraph (1) which mentions: "Zakat payment by a *muzakki* reduces income tax"; and in paragraph (2) which mentions: "Provisions regarding zakat as a deduction for income tax referred to paragraph (1) shall be regulated by a Government regulation³⁶."

Conceptually, the legalization of zakat law, as in tax law, shows the choice of state policies on laws to achieve the state goals. Basically, the institution for zakat management in Indonesia for the Muslim community (*muzakki*) in its implementation is very connected to the many principles. The principles of zakat management are the principle of Islamic *syari'at*, trust, benefit, justice, legal certainty, integration, and accountability.

The context of the principle shows a consequence of the zakat management to be normative³⁷ and as the entrance for the Muslim community to fulfill Allah's order for its *kebalifiah* by enforcing justice in his social life³⁸. The Indonesian government as a welfare law state, based on its authority, on behalf of the state as a public legal entity, is obliged to its people to "enhance public welfare" in the context of social welfare as mandated in the "Preamble" of

³⁶ RUU-ZIS from House of Representatives of RI.

³⁷House of Representatives of RI (2011), *Proses*, p. 3.

³⁸ Masdar Farid Mas'udi, *Pajak itu Zakat, Uang Allah untuk Kemaslahatan Rakyat*, Ed. 1, (Bandung: Mizan, 2005), p. xvii

the 1945 Constitution in the fourth paragraph as an abstract norm.

For achieving the country's objectives, the government is given the right to collect taxes and other fees as country's income and its finance³⁹. According to Suryadharma Ali⁴⁰, zakat can be categorized in other fees.

CONCLUSION

Based on the results of the research, it can be concluded that the political law related to the maintenance of zakat management shows in the beginning stage by starting the arrangement (strengthening) the state's authority through *'amil* of zakat (BAZNAS) inclusively following the Islamic Shari'ah, mostly in its involvement as regulator and operator in the zakat management. Concerning the development of zakat and tax management, the government has not shown a strong political will to make zakat an important part of state revenue (APBN) like taxes, hence the legal existence of zakat payments which connected to tax payments is just

such of lip service to taxpayers as well as *muzakki* of zakat.

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³⁹Muqadim, *Perpajakan, Buku Satu*, Edisi Revisi, (Yogyakarta: Ekonisia dan UII Press, 1999), p. 2-3; Adiwarmam A. Karim, *Ekonomi Makro Islami*, (Jakarta: PT. Rajagrafindo Persada, 2007), p. 255-257; Muhammad Djafar Saidi, *Hukum Keuangan...*, p. 9

⁴⁰ Draft of Government's responses on Law of Zakat Management in the meeting to 8th commission of House of Representatives of RI, Jakarta March, 28th2011. Secretariat General of House of Representatives of RI (2011), *Proses...*,

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