

FATWAS ON ZAKAT IN MALAYSIA – TRENDS AND ISSUES

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ABSTRACT

The obligation and payment of zakat in Malaysia is synonymous with the spread of Islam. From the middle of the last century, the authorised fatwa committees have issued various fatwas related to the collection and distribution of zakat. The article is devoted to the study on these fatwas as issued by the authorised fatwa committees both at the national and state levels. The article aims to provide a holistic understanding of the trends in the fatwas of zakat by reviewing fatwas on both the collection and distribution of zakat. This is achieved through an examination of fatwas on zakat as available in the Jabatan Kemajuan Islam's and the states' portal on fatwas and published collections of fatwas by some states. The review highlights the encompassing development and issues related to zakat tackled by these fatwas throughout times in providing religious verdicts and solutions in facilitating the administration of zakat for both the zakat authorities as well as the public.

Keywords: Zakat, Fatwa, Malaysia

INTRODUCTION

The administration of zakat in Malaysia as in other Islamic religious affairs is shaped by the state of the country's constitution in which its ninth schedule specifies that the Islamic laws are to be regulated by state enactments, and the authority to legislate on these matters is vested in

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the state legislatures and the sultans. As such, to a large extent, the issue of religious authority and administration hinges upon the substantive provisions of the Islamic laws that govern religious matters in each state known as the 'Administration of Islamic Law Enactments'. This enactment provides for the administration of various matters concerning Islam including the establishment, roles, and power of the State Religious Islamic Council (Majlis Agama Islam Negeri), the Mufti, the State Fatwa Committee, the Syariah courts and judges, and the Syariah Prosecutors.

In the context of zakat, its administration is put under the Majlis Agama Islam Negeri (MAIN) while issuance of fatwas is assigned to the Jabatan Mufti (Office of the Mufti) and the adjudication of any offences related to zakat is consigned to the Mahkamah Syariah (Syariah Court) in each state. As the sole authority over the religious affairs, the MAINs are given the right to formulate general policies concerning the administration of zakat matters and to control the mechanisms of its execution.

By and large, the rules regarding the administration of zakat are commonly provided in the states' Islamic administrative enactments, or for Sabah and Kedah in specialised zakat enactments, the Syariah criminal offences enactments and also as provided by the fatwas¹ issued by the Jabatan Mufti in each state. The states' Islamic administrative enactments and their subsidiary legislations provide the administrative regulations for zakat that include the MAINs' authority to regulate and administer zakat, and to determine the appeals from persons who are obliged to pay zakat,² whereas the Syariah criminal offences enactments

¹ Fatwa in its basic form, according to *al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah*, is an explanation of an Islamic ruling on a question raised by someone., See Wizarah al-Awqaf wa al-Shu'un al-Islamiyyah, *al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah*, 1995, vol. 32 p. 20. Throughout the Islamic law history especially after the second hijrah, fatwas provided a continuous source from which the law derived its ever-expanding body of material (*furū* or substantive laws). Wael B. Hallaq, "From Fatwas to Furū", *Journal of Islamic Law and Society*, 1: 1 (1994), 31, 55.

² Only in the state of Kedah and Sabah there are different statutes for zakat law. Siti Mashitoh Mahammad, "Sistem Perundangan Zakat di Malaysia: Antara Realiti dan Harapan" (paper presented at Persidangan Zakat dan Cukai Peringkat Kebangsaan, Kuala Lumpur, 22 May 2007), 3-4.

deal with offences of refusals to pay zakat for those obliged and their punishments.³ The fatwas, on the other hand, are religious verdicts issued by the Jabatan Mufti in each state. In the context of zakat, these offices are consulted based on needs or requests whether made by the zakat institutions appointed by the MAINs regarding the administration of zakat collection and distribution in the state, or by the general public regarding any issues related to zakat.

In the following sections, the article examines the fatwas on zakat as issued by the fatwa's committees in Malaysia to gauge the main trends of the fatwas and the issues surrounding them. The fatwas examined are those which have been gazetted or those available at the general website instituted by the Jabatan Kemajuan Islam Malaysia for the states' fatwa at <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/3>, or in the websites of the respective Jabatan Mufti and the published states' fatwas where available. The discussion begins with the general overview of these fatwas that includes the authorised entity to issue them and the sources of Syariah which underlined many of them. This is followed by a discussion of the fatwas on collection and distribution of zakat which include the fatwas on annual zakat *al-fitr* and nişab of zakat, new types of zakatable assets, new methods of zakat payment, definitions of asnaf, transfer of zakat and zakat on investment. The article ends with some conclusion.

AN OVERVIEW OF THE MALAYSIAN FATWAS ON ZAKAT

The Jabatan Mufti in each state is the authorised body to issue the religious fatwas. These state fatwas complement the Islamic laws codified in the above enactments where they provide the additional source of Islamic law. They represent the most relevant and updated legal opinions for emergent cases of Islamic law for they are issued based on the inquiries made by the public. Most often as well, the fatwas were issued based upon emergent issues of Syariah compliance faced by the authorised institutions that administer the state's Islamic affairs. These also fatwas which are regularly issued based on the administrative needs of these institutions and the public such as the determination of the start

³ See for example Sec. 18, Enakmen Jenayah Syariah Negeri Selangor 1996.

of the lunar months, or the amount of *niṣab* of zakat and zakat *al-fitr* for the year.

These fatwas whereupon publication in the state gazette become binding on every Muslims in that particular state. It is a religious duty of a Muslim to abide and uphold the rulings of these fatwas.⁴ There are also fatwas issued which are not gazetted. These non-gazetted decisions made by the Mufti though non-enforceable, become scholarly religious guidelines for the public and in some cases the policies and practices directing the MAINs' administration.

Besides the fatwas from the states' Jabatan Mufti, there are also fatwas issued nationally by a fatwa committee known as the Jawatankuasa Muzakarah Majlis Kebangsaan Hal Ehwal Ugama Islam (MKI). The committee is represented by the muftis of each state. This national fatwa committee becomes a discussion platform among the muftis for important Islamic issues brought forward to the Majlis Raja-Raja before arriving to a consensual fatwa. The centralised decision-making to a certain extent harmonises the fatwas on a specific issue among the states. They are, however, non-binding upon the nation to follow nor for the state fatwa committees to adopt. Despite the non-enforceability of these fatwas, most often they were later also instituted as the choice of the states' fatwas⁵ as can be seen later in the case of zakat on income.

The fatwas including those on zakat are dominantly influenced by the Shafi`is school of law though there are cases where other schools of Islamic law were also adopted. A study on the influence of the Shafi`is on the fatwas of zakat in the state of Terengganu found that as early as the 1950s, the state authority responsible in issuing the fatwas has started to issue fatwas which are not based exclusively on the dominant Shafi`is opinion regarding every point. The authority rather adopted an eclectic selection of provisions from other schools of laws provided that they had

⁴ The fatwa's authority is stated in all the states' Islamic administrative enactments. See for example Sec. 49(1), Administration of Islamic Law Enactment (Selangor) 2003.

⁵ Mohd Hisham Mohd Kamal, "Office of the Mufti in Malaysia: Legal History and Constitutional Role", *Syariah Law Reports*, 3 (2009), 20.

adequate authority in those particulars which are deemed by the committee so specified in the public interests.⁶

This is in tandem with the adopted approach recognized by the states' enactments where in the issuance of a fatwa, the Muftis, the Legal Committees and the MAINs are required to follow the orthodox tenets of the Shafi'i's school. However, where the public interest so requires, the fatwa issued may be based according to the tenets of other Sunni schools of Islamic law.⁷ The reliance on the Shafi'i school can be seen in the fatwas regarding the completeness of hawl,⁸ and the definition of the asnaf of zakat. Meanwhile, the adoption of views other than the Shafi'i are evident for examples in the fatwas on allowance of appointment of female `amil,⁹ and transfer of zakat to other states by the zakat institution.¹⁰

Studies on the methods of istinbat of these fatwas as well highlighted that the committees in tandem with the changing needs and

⁶ See Wan Zulkifli Wan Hassan "Pengaruh Mazhab Shafi'i dalam Fatwa Mengenai Zakat di Terengganu: Kajian dari Tahun 1953-2005" (PhD thesis, University of Malaya, Malaysia, 2009), 244-333; Muhammad Uzair Gamal Abdul Nasir and Luqman Abdullah (2015), "Fatwa-fatwa Zakat di Negeri Perak: Satu Analisa," *Labuan e-Journal of Muamalat and Society*, 9 (2015), 75-91.

⁷ Sec. 39, Administration of Islamic Law Act (Federal Territories) 1993 reads, "(1) In issuing any fatwa or certifying any opinion, the Mufti shall ordinarily follow the accepted views of the Mazhab Syafie. (2) If the Mufti considers that the accepted view of the Mazhab Syafie will lend to a situation which is repugnant to public interest, the Mufti may follow the accepted view of the Mazhab Hanafi, Maliki, or Hanbali. (3) If the Mufti considers that none of the *qaul muktamad* of the four Mazhab may be followed without leading to a situation which is repugnant to public interest, the Mufti may then resolve the question according to his own judgement without being bound by the *qaul muktamad* of any of the Mazhabs." See also Sec. 54(1), (2) and (3), Administration of Islamic Law Enactment (Selangor) 2003.

⁸ Fatwa Zakat Kumpulan Wang Simpanan Pekerja, Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam, meeting no-5, 16 - 17 February 1982.

⁹ Noor Naemah Abd Rahman, "Amalan Fatwa di Malaysia: Antara Keterikatan Mazhab Dan Keperluan Tarjih", *Jurnal Fiqh*, 4 (2007), 85-102.

¹⁰ Even though transfer of zakat by state to other state is allowed by the Shafi'i, other schools' views also was referred to in the case of a Terengganu's fatwa in clarifying that the decision on transfer can be made at the state's discretion. See Wan Zulkifli, "Pengaruh Mazhab Shafi'i dalam Fatwa Mengenai Zakat di Terengganu: Kajian dari Tahun 1953-2005", 241-4.

current environments, have issued fatwas on zakat based on deduction made through *ijtihad tarjihi* (discretionary). And this discretionary *ijtihad* may also be extended beyond the realms of the four mazhabs. This was particularly evidenced in the fatwa regarding the obligation on zakat on derived income (*al-mal al-mustafad*) even if without completeness of *hawl*. In this case, the view of Dawud al-Zahiri was chosen even if it is against the accepted view of the Shafi'is.¹¹

The fatwas on zakat in Malaysia for the last few decades revolve around both issues of zakat collection and distribution. On collection, there are yearly fatwas on the amount of zakat *al-fitr*, the revised and updated amount of *niṣab* for zakat on gold and other assets with equivalent zakat rates, the clarification on the zakatability for certain types of wealth and the approved modern methods of payment. There are also various fatwas which clarify the rulings on distribution of zakat. This includes the definition, clarification, and revised definition of the recipients of zakat, the utilization of excess of zakat revenue, the feasibility of transfer of zakat to another state and the employment of zakat for investment or for other usages. Some of these fatwas are discussed further in the following sections.

FATWAS ON THE COLLECTION OF ZAKAT

Fatwas on Zakat al-Fitr and Niṣab of Zakat

Regular annual fatwas were issued on both the determination of zakat *al-fitr* and the *niṣab* of zakat by all of the states. Each year, the fatwas on determination of zakat *al-fitr* shall detail out the amount of zakat *al-fitr* that is equivalent to one *sa'* of Baghdad of staple food paid on the morning of *'id al-fitr* or in the preceding month of Ramadan.¹² This zakat is a levy on individuals as an atonement for any shortcomings during the fasting worship of Ramadan. The amount decided is different from one

¹¹ See Noor Naemah Abd Rahman and Mohd Nor Hashri Junoh, "Pendekatan Ijtihad Tarjihi Dalam Amalan Fatwa Jemaah Ulama Negeri Kelantan: Rujukan kepada Fatwa-fatwa 1990an", *Journal Syariah*, (2003), 47-49.

¹² Fatwa Menyeragamkan Zakat Fitrah antara Negeri, Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwat Ugama Islam Malaysia (Jawatankuasa Muzakarah MKI), meeting no-51, 11 March 2002.

state to another reflecting the variation of price of rice in each state though the difference is very small. Over the last 20 years, the amount of zakat *al-fitr* among the states has increased from an average of RM4 to RM7. Some of the states issued two different amount of obligation which reflected prices of two different quality of rice commonly eaten by their residents. In relation to this zakat *al-fitr*, there was also a fatwa in the Federal Territories which clarified that any payment intended as zakat *al-fitr* but was paid outside of Ramadan shall only be considered as payment of other type of zakat.¹³

On the determination of niṣab of zakat, it is an annual exercise to value the price of 85 gram of gold which is the threshold of many types of zakat on wealth such as deposits or savings of money and gold, trade, and income. In the Federal Territories, over the years since 1975, the thresholds showed an increasing trend with only a few years of decrease. The niṣab has increased from RM1,200 in 1975 to RM20,299 in 2021 reflecting the gold price hike over the years.¹⁴

Fatwas on Obligation of Paying Zakat to Zakat Institutions

The national fatwa committee in 2006 decided that even if the religion allows the payment of zakat directly to the eligible recipients, the regulations imposed by the state to pay zakat to the appointed zakat institutions were religiously mandatory. This was based on the obligation of obedience to the leader in matters that are not involving those which are forbidden and are pleasing to Allah. The main consideration provided by the jurists to allow a direct distribution of zakat has always been the difficulty to distinguish between discretionary and non-discretionary zakat. The committee argued that given that the delineation between discretionary and non-discretionary zakat has always evolved throughout time, thus, the deciding factor should revolve around the ability of the

¹³ Fatwa Pembayaran Zakat Fitrah di Luar Ramadan, Jawatankuasa Perundangan Hukum Syarak Wilayah Persekutuan, 19 November 2014.

¹⁴ For the yearly niṣab of zakat (based on 85 grammes of gold), see <https://www.zakat.com.my/info-zakat/arkib-niṣab-tahunan/>

state to provide effective facility to administer zakat.¹⁵ Consequently, several states' fatwa committees later issued fatwas on the same vein.¹⁶

Fatwas on New Types of Zakatable Assets

Traditionally wealth that are subjected to zakat include agriculture produce, mineral and marine, gold, jewellery, money, trade and livestock. Scholars, however, suggest that these lists of wealth are extended to also include new types of wealth like financial securities such as shares, bonds and unit trusts, and wealth of organizations including companies and Islamic financial institutions. The arguments were based on the changes in the relative importance of the forms of wealth over time which warrant a review of the coverage of zakatable assets. By continuing to limit the zakatable assets to traditional assets, injustice in the payment of zakat might happen since eligible individuals who own valuable assets, but which are non-zakatable will escape zakat. This is inconsistent with the objective of redistribution attributed to zakat since some valuable wealth might be excluded from being obliged and consequently less wealth shall be circulated.

There are several fatwas in Malaysia which delved into such an issue and these fatwas have identified several new types of wealth as zakatable assets such as shares, professional income and employment provident funds.

a. Fatwas on Shares

Fatwas on zakat on shares appeared as early as in 1992 when the national fatwa committee reiterated on the obligation of zakat on trade. The fatwa made it clear that the obligation extends to Muslim's owners only on their portion of net income received.¹⁷ The following fatwa by the

¹⁵ Hukum Mengagihkan Zakat Secara Persendirian dan Qada' Zakat, Muzakarah Jawatankuasa Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia (MJFK), meeting no-76, 21-23 November 2006 and gazetted on 7 June 2007.

¹⁶ ibid; Mesyuarat Lembaga Fatwa Negeri Sarawak, Mengagihkan Zakat Secara Persendirian dan Qadha, 5 September 2013.

¹⁷ Fatwa Zakat ke atas Syarikat, Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia (Jawatankuasa Muzakarah MKI) no-31, 9 Dec 1992.

committee on shares also was dedicated to resolve the issue of the obligation of zakat on trade only on the shares owned by Muslims for firms owned by both Muslims and non-Muslims.¹⁸ A fatwa on similar issue was also issued by the Jawatankuasa Perunding Hukum Syara' Negeri Selangor on the same year.¹⁹ In 2011, the committee provided a more extensive clarification whereby the obligation extends to the institutional owners such as firms and cooperatives in which the obligation to pay zakat on trade also apply once the threshold of zakat is achieved. The argument was that the ownership of the organisation is similar to a mixed ownership (*khultoh*). The zakat can be paid by the organisation or if not must be paid by the individual owners of the institutions.²⁰

A more comprehensive fatwa regarding the calculation on zakat on shares was issued by the Wilayah Persekutuan in 2015. The committee decided that the rate of zakat for short-term holdings of shares as happened commonly in trading of shares is 2.5% of the market value of owned shares. Whereas for long-term ownership, the obliged zakat is 2.5% of the asset value of the firm's owned by the shareholder. The same fatwa also decreed that the obligation to pay zakat was only applied to the Syariah compliant shares. Any Syariah-noncompliant shares must be purified where the profits must be channelled to the charity and the remaining principal if attained a hawl must be treated as zakat on savings.²¹

¹⁸ Fatwa Zakat Ke Atas Syarikat Yang Dimiliki Oleh Berbagai Jenis Pemegang Saham Yang Bercampur Muslim Dan Bukan Muslim, Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia, meeting no-50, 10 May 2001.

¹⁹ The fatwa was issued on 24 July 2001 and later gazetted on 28 August 2003. See Mufti Sel. 500-2; PU. Sel. AGM/0007 Jld. 2.

²⁰ Fatwa on Zakat on Stock Trading, Jawatankuasa Perunding Hukum Syara' Negeri Selangor dated 16 Mac 2011 and gazetted on 31 Mac 2011, [MAIS/SU/BUU/02/016/10-1; P.U. Sel. AGM. 0007 Jld. 3].

²¹ Ibid.

b. Fatwas on Zakat on Income

Another new type of zakatable wealth is income from salaries of professional services. The first fatwa on zakat on income in the country was issued by the state of Kedah on 2 January 1986. Much later in 1992, the National Fatwa Committee issued a similar decree obliging zakat on income on those eligible. By mid-2000s, all states except Perak had also issued similar decrees.²² The states' fatwas in general state the decree that zakat on income is obliged on those eligible in the state concerned. The national fatwa that obliges the payment of professional income comes completed with a request for the IRD to consider the zakat payment as a rebate for the calculations of individual taxes.²³ A separate fatwa that obliges the zakat on salaries was issued in 1997.²⁴ These fatwas are brief and only highlighted the obligation of zakat on these types of wealth without a detailed discussion about the point of time of their obligation.²⁵ The justifications for its obligation was briefly forwarded in a fatwa from Malacca issued in 2000 even if again it was silent regarding the time that the obligation begins. The fatwa also delineated the conflicts between the above modern scholars in regards to equating the time of payment with the time of harvest for agricultural produce.²⁶

The fatwa on income from the state of Johore provides a clearer insight about the obligation to pay zakat on income. The fatwa highlights the necessity of satisfying the requirements of zakat, before zakat on

²² Fatwa Zakat Gaji dan Pendapatan Professional, Muzakarah Jawatankuasa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam no-31 & Muzakarah (khas) Jawatankuasa Fatwa Kebangsaan, 9 Dec. 1992. Jabatan Kemajuan Islam Malaysia (JAKIM), *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam* (Putrajaya: JAKIM, 2009), 62.

²³ *ibid.*

²⁴ Fatwa Zakat Gaji dan Pendapatan Professional 2, Muzakarah Jawatankuasa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam, 22 June 1997.

²⁵ See also Fatwa Zakat Pendapatan, Jawatankuasa Perunding Hukum Syara' Negeri Selangor, dated 16 January 2001 and gazetted on 9 May 2002, [Mufti Sel. 500-2; PU. Sel. AGM/0007 Jld. 2]; Fatwa Zakat Pendapatan, Jawatankuasa Syariah Negeri Sembilan, issued on 8 June 1998 and gazetted on 2 July 1998. See JMKNS.209(01)914/1;PU/NS;

²⁶ Malacca's fatwa on income was issued on 22 May 2000 and gazetted on 25 May, 2000 [M.P.U. 14; PMM/0020 Kit. 2].

salaries and professional earnings become obliged. Zakatable yearly income is the gross annual income after considering the expenses for basic necessities of the individual and his dependents for that year. The rate of zakat is similar to zakat on business which is 2.5 percent.²⁷ There are also several related fatwas regarding the obligation to pay zakat on income which were issued by the states' Jabatan Mufti. Such fatwas are like the fatwa obliging 2.5% rate of payment on gross annual income.²⁸

c. Fatwas on Employment Provident Fund

In Malaysia, the employers are required by law to provide savings and retirement plans for their workers. For the worker, at the end of their services whether on planned retirement or in some cases due to disability to work, a lump-sum money or gratuity payments shall be awarded by the employers. Aside from these, for the private sector workers and to some in the public sector, they must contribute a portion of their salaries monthly on top of a certain percentage provided by their employers to a government managed fund, the Employees' Provident Fund (EPF). The EPF manages and invests the fund and every year shall remit the earnings garnered to the employees' respective accounts. Upon retirement, the EPF shall return the money partly or wholly to the retirees depending on their age of retirement. Withdrawals are also possible when a registered employees emigrate, becomes disabled, or requires essential medical treatment. Withdrawal of part of the savings is also permitted for specific purposes like paying the down payments or loan settlements for a member's first house, finances for education and medical expenses, and investments. Given that the mandatory provisions are between 4 to 11 percent of the salaries,²⁹ the amount of payout for some individuals may reach millions of ringgit.

The first fatwa regarding zakat on pay-outs or withdrawals from EPF was issued by the National Fatwa Committee on 17 February 1982.

²⁷ The fatwa of income for Johore was issued on 17 April 2000.

²⁸ The fatwa was issued by Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam on its 56th meeting held on 7 May 2003. JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam*, 69.

²⁹ <http://www.kwsp.gov.my/portal/employers/employersresponsibility/contribution/>

The committee based on the view of the Shafī'i's school that payment of zakat shall be obligated only once *hawl* is completed, decided that Muslim employees are required to pay zakat on their EPF payout only a year after receiving the consent for withdrawals.³⁰ Prior to the age or time of consent for withdrawals, the committee decided that the employee is not obliged to pay any zakat on the outstanding amount in his EPF account. Even if the account is under the employee's name due to the restrictions imposed by the act that governs the establishment of the fund, the employee has limited freedom in withdrawing and disposing his fund.³¹ Without the authority to dispose the account, the committee deemed that the employee does not wholly own the account, thus, is not obliged to pay any zakat for it.

The committee, later on in 2006, revised the fatwas and encouraged the employees to pay zakat for the fund at the time of payout or withdrawals. The argument was that zakat is allowed to be paid in advance of its *hawl* once the *niṣab* is achieved.³² This was the view of the majority of jurists from the Hanafis, Malikis, Shafī'is and Hanbalis who maintained that an advance payment of zakat is possible because it is the reason of its obligation.³³ The rationale of the view has been aptly summed up by an Islamic legal maxim which states that, "Preceding a law before its requirement when its reason precedes, is permissible."³⁴ Thus, when the reason of the obligation of zakat that is *niṣab* exists, the non-conclusion of the *hawl* will not affect the religious acceptance of zakat. Furthermore, when the owner of zakatable wealth is willing to forgo his right to the conclusion of the *hawl*, it no longer becomes a

³⁰ The *fatwa* was issued by the Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam on its 5th meeting held on 16 & 17 February 1982. See JAKIM, *Himpunan Keputusan Muzakarah Jawatankuasa Fatwa Kebangsaan: Berhubung Dengan Isu-Isu Muamalat*, 41-43.

³¹ Sec. 54, Employee Provident Fund, 1991.

³² The *fatwa* was issued by the Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam on its 74th meeting held on 25 to 27 July 2006. See JAKIM, *Himpunan Keputusan Muzakarah Jawatankuasa Fatwa Kebangsaan: Berhubung Dengan Isu-Isu Muamalat*, 41.

³³ Abu Zakariyya Muhyi al-Din ibn Sharaf al-Nawawi (d.676H), *Kitab al-Majmu` Sharh al-Muhadhdhab li al-Shirazi*. (Jeddah: Maktabat al-Irshad. Al-Nawawi, 1977) v. 6, 112-3; Shams al-Din ibn Qudamah Al-Maqdisi (d.682H), *Al-Sharh al-Kabir `ala Matn al-Muqna`* (Beirut: Dar al-Kitab al-`Arabi.al-Maqdisi, 1972), v. 2, 282.

³⁴ This is a translation of (ان تقديم الحكم على شرطه اذا تقدم سببه جائز).

requirement in the payment of zakat. The case was equalized to debt which is paid earlier than the originally promised settlement date.³⁵

The National Fatwa Committee also issued another couple of fatwas regarding the above employee's provident fund. The committee decided that the EPF money of a deceased should be distributed among the descendants according to the Islamic inheritance law. Even if, the deceased has named a trustee for the fund after his death (*wasî*), it would be the trustee's responsibility to disburse the fund according the faraidh law.³⁶ The recognition of the fund as an inheritance of the deceased was further reiterated in another fatwa regarding the issue of recognition of the fund as matrimonial property (*harta sepencarian*) of the deceased spouse.³⁷

Besides the above new zakatable assets, there are also fatwas which tackled the new forms of businesses in the society. In Selangor, there is a fatwa obliging payment of zakat on firms that does not engage in the usual trade of goods but offer services only. This includes consultation firms that offer consultation services and provides professional advices whether individually or collectively owned.³⁸ There is also a fatwa clarifying that firms managing unit trust funds are obliged to pay zakat of 2.5 percent like any other firms. The reason provided is

³⁵ Ahmad ibn Idris Al-Qarafi, (d.684H), *Al-Dhakhirah* (Beirut: Dar al-Gharb Al-Islamiy, 1994) v. 3, 137.

³⁶ The *fatwa* was issued by the Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam on its 49th meeting held on 19 September 2000. See JAKIM, *Himpunan Keputusan Muzakarah Jawatankuasa Fatwa Kebangsaan: Berhubung Dengan Isu-Isu Muamalat*, 53.

³⁷ The *fatwa* was issued by the Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Agama Islam on its 67th meeting held on 22 February 2005. See JAKIM, *Himpunan Keputusan Muzakarah Jawatankuasa Fatwa Kebangsaan: Berhubung Dengan Isu-Isu Muamalat*, 53-55. *Harta sepencarian* is defined under section 2 of the Islamic Family Law (Federal Territories) Act 1984 to mean property jointly acquired by husband and wife during the subsistence of the marriage in accordance with the conditions stipulated by the Syariah law.

³⁸ The *fatwa* was issued by Jawatankuasa Fatwa Selangor and was gazetted on 28 August 2003. See Mufti Sel. 500-2; PU. Sel. AGM/0007 Jld. 2.

because the firms transacted in unit trusts which are considered similar to trading of *`urud al-tijarah* (tradable goods).³⁹

In the state of Johore in 2008, there was a fatwa that obliges an individual who receives his Employee Provident Fund to pay zakat a year after receipt as long as other conditions for eligibility to pay zakat are also met.⁴⁰ Similar fatwa was also issued earlier in 2001 in Selangor, though the owner is also provided with an alternative to pay zakat immediately without waiting for the completeness of one year. The fatwa of Selangor also clearly mentions that the rate for this fund is 2.5 percent.⁴¹

Fatwas on New Methods of Zakat Payment

In tandem with the financial technological era, there are also *fatwas* addressing the issues of paying zakat through the non-conventional methods of payment of zakat. Traditionally, payment of zakat is made with money or kinds as stated in the hadiths either directly to the recipients or through the collectors of zakat who will disburse the zakat on the payers' behalf to the eligible recipients.

With the advancement of the banking and technological systems, many new methods of payment have been created and developed to ease and facilitate the transfer of funds. There are several fatwas issued by local fatwa committees which addressed the legality of zakat payment through modern methods of payment like text messaging, credit cards and internet banking.

In 2001, the Fatwa Committee of Selangor issued a *fatwa* allowing payment of zakat through internet banking. However, the bank that provide the facility cannot be deemed as an *`amil*, thus, disallowing

³⁹ Issued by Jawatankuasa Fatwa Selangor and was gazetted on 7 July 2011. See MAIS/SU/BUU/02/016/12-2; P.U. Sel. AGM. 0007 Jld. 3.

⁴⁰ Issued by Jawatankuasa Fatwa Negeri Johor, issued and gazetted on 1 April 2008.

⁴¹ Issued by Jawatankuasa Fatwa Selangor and was gazetted on 30 August 2001. See Mufti Sel. 500-2; PU. Sel. AGM/0007 Jld. 2.

it to receive any zakat payment or use zakat money to pay for the cost involved in operating such facility.⁴²

In 2008, the Fatwa Committee of Malacca issued two fatwas allowing payment of zakat through modern methods of payment. The first fatwa allows the payment of zakat via a payment instruction through Short Messaging System (SMS).⁴³ In the following month of the same year, the committee issued a fatwa allowing the payment of zakat through Islamic credit cards to ease the payment of zakat. The cost for developing and maintaining the facility and cost of transaction must be borne by the Pusat Zakat Melaka which is the authorized zakat collector of the state.⁴⁴

FATWAS ON THE DISBURSEMENT OF ZAKAT

Fatwas on Definition of Asnaf of Zakat

In overall, the zakat institutions in Malaysia recognize the eight groups of recipients as the exclusive beneficiaries of zakat. The zakat laws in the country clearly outline that distribution of zakat must be channelled to these groups only. Rule (4) of the Baitul Mal (Federal Territory) (Expenditure and Utilisation) Rules that rules the management of zakat at MAIWP, for example, exemplifies this when it dictates that “all moneys and property paid into the Fund by way of zakat shall be spent or used for the (eight) groups of recipients only.”⁴⁵

⁴² Selangor. Issued on 16 January 2001 and gazetted on 9 May 2002. See Mufti Sel. 500-2; PU. Sel. AGM/0007 Jld. 2.

⁴³ The fatwa was issued by Jawatankuasa Fatwa Negeri Melaka on 11 September 2008 and gazetted on 19 November 2009. See JMM/BFB(S)/351/255/02/04; PUNM. 700-02/37.

⁴⁴ The fatwa was issued by Jawatankuasa Fatwa Negeri Melaka on 18 December 2008 and gazetted 19 November 2009. See JMM/BFB(S)/351/255/02/03; PUNM.700-02/37.

⁴⁵ Rule (4), Baitul Mal (Federal Territory) (Expenditure and Utilisation) Rules, 1980, in *Administration of Islamic Law (Federal Territory) Act 1993*, by Mahkamah Syariah, Wilayah-wilayah Persekutuan (Kuala Lumpur: International Law Book Services, 1993), 53-4.

The definition of each group is mostly influenced by the classical jurists' views, especially the Shafi'is, though for some groups like the *fi sabilillah*, the adaptation of the views of contemporary jurists particularly al-Qaradawi is apparent.⁴⁶ In defining the *fuqara`*, for example, the Shafi'is' view where they are needier than the *masakin* is prevalent in these fatwas. At the Lembaga Zakat Selangor (LZS), *faqir* is defined as a Muslim who has no wealth or earning power which can sustain the basic needs of himself or his dependants while *miskin* as a Muslim who has some form of wealth or earning power but still could not fully sustain his needs and that of his dependants.⁴⁷

The definitions also take into consideration current social norms and needs. Those whose hearts are reconciled in general, for example, refer to those newly converted to Islam whom zakat is distributed to, mainly as a gift of appreciation for their conversion or spent for their Islamic education.⁴⁸ Meanwhile, the *fi al-riqab* given the non-existence of debt bondage slaves nowadays has been redefined as those under oppression and subjugation⁴⁹ whether from economic or political powers.⁵⁰

Fatwas on Transfer of Zakat

As stated above, each state has a definite boundary and independent control over its religious matters including the administration of zakat. Given the definite boundary of authority, any collection of zakat made within a state is mandated to be disbursed within that particular state. Thus, a MAIN will only collect zakat in its state, and it will normally distribute it to the recipients residing in the state only. However, transfer

⁴⁶ See for example fatwa on zakat distribution system issued by the Jawatankuasa Perunding Hukum Syarak (Fatwa) Negeri Selangor on 29 Aug. 1994.

⁴⁷ http://www.e-zakat.com.my/baru/agihan/asnaf_layak.asp

⁴⁸ Ibnor Azli Ibrahim and Norziana Salwa Daiman, "Tafsiran Muallaf, al-Riqab dan Fi Sabilillah dalam Pengurusan Agihan Zakat PZS: Satu Penilaian", in *Prosiding Seminar Kebangsaan Pengurusan Harta dalam Islam*, ed. Zamzuri Zakaria et al. (Bangi: Jabatan Syariah, Universiti Kebangsaan Malaysia, 2006), 180-3.

⁴⁹ Fatwa on the Definition of Firriqab, Al-Gharimin, Fisabilillah and Ibnu Sabbil by the Jawatankuasa Syar'iyah Pulau Pinang on 29-May-1995.

⁵⁰ Fatwa Tafsiran Asnaf Lapan dan Kadar Zakat Setiap Kumpulan, Jemaah Ulama Majlis Agama Islam Kelantan on 28 Oct. 2007.

of zakat does take place among the states in Malaysia, especially from the rich states like Wilayah Persekutuan and Selangor to other states which are facing some catastrophe like flood or earthquake.⁵¹ The earliest fatwa on the allowance to transfer zakat out of the state of collection was made by the Jawatankuasa Fatwa Negeri Kedah in 1868. A more recent fatwa, meanwhile was issued by the Jawatankuasa Fatwa Negeri Johor in 2015 allowing similar transfer in the cases of calamities in other states as long as they are the deserving asnaf of zakat.⁵² A fatwa issued by the national fatwa committee in 2005, showcased the overall agreement between the states that any state that is in need of emergent financial assistance to apply directly to any MAIN which has a high collection amount. The right to approve the transfer is left to the MAIN which is transferring the zakat.⁵³

Fatwas on Zakat Investment

Zakat investment refers to any kind of activity that utilizes zakat with the aim of increasing the zakat recipients' future benefits. Aiming for the future benefits of the recipients and not for their current benefits, zakat investment excludes expenditures spent to fulfil the recipients' current needs, like the disbursement of zakat given to cover basic necessities for current consumption purposes only like for food, clothing, shelter, basic education, transport and health care of the recipients.

Modern Muslim scholars propose investment of zakat for several reasons. Channelling zakat funds into long-term investments is considered necessary to fasten the pace of development in Muslim countries. Given the prevalent low per capita income and low productivity of many Muslim countries, zakat can become the new

⁵¹ MAIWP, *Laporan Tahunan 2007*, 24.

⁵² Fatwa Memindahkan Zakat, Jawatankuasa Fatwa Negeri Johor, issued on 14 July 2015. See also Fatwa Berkenaan Kewajipan Membayar Zakat Di Tempat Bekerja Atau Mencari Rezeki, Jawatankuasa Perundangan Hukum Syarak Wilayah Persekutuan no. 109/2018, issued on 31 July 2018.

⁵³ The fatwa was issued at the committee's 68th meeting held on 14 April 2005. See JAKIM, *Keputusan Muzakarah Jawatankuasa Majlis Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam*, 72.

source of funds to finance economic development.⁵⁴ Investment utilizing zakat could be in the form of capital assistance for the needy recipients to set up businesses or attend training that enable them to work and earn their own income. Zakat could be invested to build manufacturing plants or develop industries that can provide jobs for the poor.

The *fatwas* issued by the states that are related to zakat investment include those concerned with the utilization of zakat to finance the development of factories and industries which employ the recipients, the investment of surpluses of zakat, the disbursement of capital assistance to the *faqir* and *miskin*, and the utilization of zakat for the dissemination of Islamic teachings and scholarships for further education.

It is worth noting that suggestions that the MAINs should obtain *fatwas* pertaining to the issues of zakat investment which directly involved the recipients were made as early as the late 1970s. In 1977, the resolutions of a seminar attended by Zakat and Baitulmal officers organized by the Pusat Islam suggested that the MAINs should seek *fatwas* regarding the postponement of distribution to the *fuqara'* and *masakin* for investment and the depositing of excess revenue from zakat after disbursement to all recipients into the Baitulmal so that it could be invested in the best interest of the Muslim society.⁵⁵ However, the first *fatwas* relating to such investment of zakat only appeared in the early 1990s.

In 1994, the Jawatankuasa Perunding Hukum Syara' (Fatwa) Negeri Selangor (the *fatwa* committee of the state of Selangor) issued a *fatwa* allowing capital assistance for the *fuqara'*, *masakin* and *muallafat qulubuhum* in the state. The *fatwa* clearly outlined that the capital assistance could be given either in the form of money, business venues

⁵⁴ Muhammad Anwar, "Financing Socio-Economic Development with Zakat Funds." *Journal of Islamic Economics*, 4: 1 & 2 (1995), 16.

⁵⁵ See resolutions of the "Perjumpaan Pegawai-pegawai Zakat/Baitulmal, Jabatan Ugama Islam Negeri-negeri, 1977/1397", organized jointly by the Majlis Ugama Islam Wilayah Persekutuan and the Prime Minister Department, Kuala Lumpur, May 1977.

and training.⁵⁶ Another *fatwa* regarding the capital assistance was issued in 1998 where a new approach of allocating capital assistance to the above groups of recipients was allowed due to failures of the first approach. Instead of free capital assistance, new capital assistance would be given in two parts; capital which is given free and capital which has to be paid back to the LZS in a certain period of time. The LZS would release all of the capital back to the recipients only once the instalments were paid back.⁵⁷

The Jawatankuasa Fatwa of the State of Terengganu ruled in 1997 that due to delay in transferring the ownership of zakat to the recipients, any investment of zakat in financial institutions was not allowed. However, zakat could be invested in establishing manufacturing factories and providing working tools for the *fufara*’ and *masakin* and their children if the facilities could help them with the works and training that enabled them to earn an income.⁵⁸

There were several *fatwas* on the permission to invest any excess of zakat collection. The Jawatankuasa Perundangan Hukum Syarak Wilayah Persekutuan in December 1995 gave consent to the Baitulmal of MAIWP to invest the excess after the distribution of zakat (*al-faid*) in the most liquid asset possible which could guarantee that the invested zakat be recalled easily at any time.⁵⁹ In an earlier *fatwa* on January 1995, the committee decreed that the excess of allocations for the *fi sabili Allah* group could be used for the dissemination of Islamic teachings.⁶⁰ In the state of Terengganu, the *fatwa* on excess of zakat was issued in 2007 and

⁵⁶ Fatwa Tentang Sistem Agihan Zakat Negeri Selangor, gazetted on 29 August 1994.

⁵⁷ See “Keputusan Jawatankuasa Perunding Hukum Syara’ (Fatwa) Negeri Selangor Darul Ehsan Mengenai Pembaharuan dan Perlaksanaan Agihan Modal” held on 23 March 1998. See <http://www.e-fatwa.gov.my> (accessed on 27 June 2009).

⁵⁸ Minit Kali Ke-2, Penggal ke-4, Bilangan (iii), Mesyuarat Jawatankuasa Fatwa Majlis Agama Islam dan Adat Melayu Terengganu, held on 19 Jan. 1997.

⁵⁹ See *fatwa* issued by the committee in its 34th meeting held on 20 Dec. 1995 in *Keputusan-keputusan Mesyuarat Jawatankuasa Perundangan Hukum Syarak Wilayah Persekutuan: 6 Mac 1975 hingga 6 Mei 2002* (Kuala Lumpur: Jabatan Perdana Menteri, 2002), 198.

⁶⁰ See *fatwa* issued by the committee in its 40th meeting held on 17 Jan. 1995, in *Keputusan-keputusan Mesyuarat Jawatankuasa Perundangan Hukum Syarak Wilayah Persekutuan: 6 Mac 1975 hingga 6 Mei 2002* (Kuala Lumpur: Jabatan Perdana Menteri, 2002), 197.

specifically mentioned that an excess of zakat collection could be invested in any investment projects as long as it benefits the recipients of zakat.⁶¹

Overall, it can be concluded that investment of zakat is generally approved by the MAINs as reflected by the states' administration of Islamic law enactments and the *fatwas*. The *fatwas* that were issued relating to the investment of zakat were scattered and did not necessarily address the same issues from one state to another. The *fatwas* were also more likely to be issued by the states with a more pronounced amount of collection and undoubtedly with more capabilities and needs to undertake investment.

As expected, since each states have their own enactments on the administration of zakat, the rules governing zakat matters as stated in the enactments are non-uniform across the states. Similar trend is also observed about the scope of the states' *fatwas*. Their diversity is influenced mainly by the changing landscape and environment of the local Muslim community. Examples of the diversity are plenty among which are the obligatory zakatable items and the methods or channel of payments approved. Amidst the diversity of the *fatwas*, however, two recurring themes can be discerned – issues in ensuring that the obligation of payment of zakat is fulfilled fully by the Muslim community as well as ensuring more efficiency in the disbursement of zakat to the recipients.

CONCLUSION

From the many *fatwas* above, it can be seen that some of these *fatwas* were issued regularly in fulfilling the administrative needs for the administration of zakat at both the zakat authority level and for the public at large. But most of the *fatwas* were issued based on the emergent issues related to zakat which were shaped by the changing development in business and the advancement of technology used by the people. On the collection of zakat, the *fatwas* centred on the new forms of wealth and the new technological advancement that change the methods of zakat collection. While on the distribution side, the *fatwas* revolve around the

⁶¹ Mesyuarat Jawatankuasa Fatwa Majlis Agama Islam dan Adat Melayu Terengganu, minute no. 7, term no. 7, held on 31 Jan. 2007.

determination of asnaf and the issues of transfer the zakat to outside of state and the investment of zakat. In all, the fatwas were issued in facilitating the collection and distribution of zakat effectively as required by the religion of Islam.

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