



THE ADMINISTRATION AND IMPOSITION OF
ZAKĀH AS A VIABLE ALTERNATIVE FOR THE
INDIVIDUAL INCOME TAX IN MALAYSIA

BY

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ABSTRACT

The administration of *zakāh* in Malaysia is put under the jurisdiction of each state which has resulted in the non-uniformity in the laws and regulations thereto. This non-uniformity together with other problems such as ineffective penalties, the non-existence of meaningful enforcement, the different interpretations and focus given to the types of wealth subjected to *zakāh* and the different interpretations given to the beneficiaries of *zakāh* has prevent this unique system from achieving its objectives properly. Therefore, this thesis tries to find ways to solve these problems. In doing so, a qualitative approach will be applied. This qualitative study, combines the historical methodology, comparative methodology and analytical and critical methodology. The historical methodology is used to explore how *zakāh* was administered in the early day of Islam and its development in Malaysia. It is also used to highlight changes that occur in rules and regulations related to *zakāh*, especially that relates to the wealth subjected to *zakāh* from the days of the Prophet to our present day. The comparative methodology is extensively utilised in revealing differences and similarities between the Islamic system of *zakāh* and the Malaysian individual income tax. Regarding to the analytical and critical methodology, it is used to identify the problems that occur in the administration of *zakāh* in Malaysia and to suggest the best solution for it. For this qualitative research, the data collection depends largely on the library research, where comprises of extensive literature in form of textbooks, articles, seminar papers and relevant statutes are referred to. Reference will also be done to the statistics and economic reports from relevant authorities. Information is also obtained from interviews. At the end, the study concludes that the administration of *zakāh* need to be refined and the most important step that can be taken is to place the administration of *zakāh* in Malaysia under one authority without ignoring the jurisdiction of each state. It is also proven that the Islamic system of *zakāh* can be introduced as a viable alternative for the individual income tax imposed on the Malaysian Muslims. However, this possibility must not be looked from a segmented point of view. Several other supporting system, mechanism and crucial steps must be taken before this approach can be applied. It is hoped that the findings of this study would serve as a useful foundation not only to enhance the administration of *zakāh* in Malaysia but also in introducing the Islamic taxation system as a whole in our multiracial community.

ملخص البحث

ادارية الزكاة في ماليزيا تخضع لسلطة كل ولاية من الولايات. وقوانين الزكاة في هذه الولايات تختلف من ولاية إلى أخرى. وهذا يؤدي إلى عدم الانسجام في تطبيق قوانين الزكاة. وعدم الانسجام هذا إضافة إلى عدم فاعلية العقوبات ومقدار الغرامات المالية لمخالفات قانون الزكاة، والفشل في تطبيق قانون الزكاة والاختلاف في تعيين الأموال الزكوية بين الولايات والاختلاف في تحديد أصناف من تُصرف لهم أموال الزكاة هي المعوقات التي تقف في وجه تطبيق نظام قانون الزكاة من أجل الوصول إلى أهدافه على أتم وجه. ومن أجل ذلك حاول هذا البحث حل هذه المشكلات. وفي هذه المحاولة قد سلك هذا البحث طريق البحث التقييمية. ويتناول هذا الطريق دراسة تاريخية، ودراسة مقارنة، ودراسة تحليلية نقدية. وقد استخدم دراسة تاريخية لمعرفة كيفية إدارة الزكاة في عهد أوائل الإسلام، وتطوراتها في ماليزيا. واستخدم هذا الطريق الدراسي أيضا لمعرفة الأحكام المتعلقة بالزكاة وتطوراتها منذ عهد الرسول إلى يومنا هذا وخصوصا التي تتعلق بأنواع الأموال الزكوية. واما الدراسة المقارنة، فقد استخدم كثيرا في عملية مقارنة بين الزكاة و نظام ضريبة الدخل الماليزي. وبالنسبة إلى دراسة تحليلية نقدية، فقد استخدم في البحث عن المشكلات المتعلقة بإدارية الزكاة في ماليزيا وسبل حلها. وبجانب كل هذه الطرق البحثية والدراسية، قد اعتنى هذا البحث بدراسة مكتبية وخصوصا عند محاولة تجميع المعلومات المتعلقة به. وقد راجع هذا البحث أيضا إلى احصائيات وتقارير اقتصادي المأخوذة من الجهات المتعلقة. وكذلك قد استخدم وسيلة مقابلة شخصية لتجميع المعلومات. وفي نهاية البحث قد توصل إلى ضرورة تصفية نظام الزكاة في ماليزيا. وأهم الخطوات المؤثرة فيها هو وضع إدارية الزكاة تحت تنظيم واحد بدون صرف النظر عن حق كل ولاية على تولية أمور الزكاة ومن خلال هذا البحث أيضا، قد تبين إمكانية الزكاة أن تنزل منزلة نظام ضريبة الدخل الماليزي المنفذ على المسلمين في ماليزيا. ولكن لا بد أن ينظر إلى هذه الإمكانية نظرة متكاملة وليس فرعية جزئية. فقبل تنفيذ هذا الإقتراح لا بد من إيجاد أنظمة مساعدة ووسائل مؤثرة وخطوات موصلة إلى تحقيق ذلك. والرجاء نتج هذا البحث تصير حجر الأساس في تقوية إدارية الزكاة في ماليزيا وفتح الباب لتعرف النظام الضريبي الإسلامي في المجتمع الماليزي المختلف الأجناس.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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CHAPTER ONE

INTRODUCTION

In the 2005 budget speech, *Dato' Seri Abdullah Ahmad Badawi*, the former Prime Minister of Malaysia said:

The effectiveness of financial management will be enhanced to strengthen further the government's financial position. Several major measures will be undertaken, including restructuring the tax system to be more efficient and ensuring that the management of expenditure is cost effective. The Government will continue to ensure the taxation system is more efficient, equitable and business friendly, as well as capable of generating a stable source of revenue. Towards this end, the Government proposes to establish a Taxation System Review Panel comprising of representatives from the public and private sectors. This Panel will review the tax system, including the provisions of the Income Tax Act 1967. The focus of this review is to ensure that tax provisions remain relevant. Existing provisions will be amended to improve clarity and transparency of tax administration.

From the above speech, it is clear that an efficient taxation system plays an important role in strengthening the government's financial position. As a result of this, the Malaysian taxation system has undergone numerous amendments to ensure its efficiency. Islam also has its own taxation system which includes *kharāj*, *jizyah*, and *'ushr*. Beside the taxation system, Islam has also prescribed another financial system. Relying on the fact that Islam is suitable for all times and places, this study will explore the *zakāh* system in Islam, its administration in Malaysia and its viability as a substitute for the individual income tax imposed on Muslims in Malaysia. This will not only help to enhance the administration of *zakāh* in Malaysia, but will also promote the beauty of the Islamic system which is one of the government's

commitments.¹ This study will assist the Muslims to have a better understanding of *zakāh*, and the Malaysian individual income tax from the *Sharī'ah*'s perspective. It is also hoped that the findings of this study would serve as a useful foundation not only to enhance the administration of *zakāh* in Malaysia but also in introducing the Islamic taxation system as a whole in our multiracial community.

SUMMARY OF THE PROPOSED DISSERTATION

This study begins with the examination of *zakāh* within the ambit of the Islamic taxation system. This research will also elaborate briefly other instruments in the Islamic taxation system before proceeding further to study the right of the Malaysian government to impose tax from the *Sharī'ah* perspective. Then this research will compare and contrast the Islamic system of *zakāh* and the Malaysian individual income tax system. A comprehensive study will also be done to find possible ways in making *zakāh* a viable substitute to the individual income tax imposed on Muslims in Malaysia.

STATEMENT OF THE PROBLEMS

Administration of *zakāh* in Malaysia is put under the jurisdiction of each state. This has resulted in the non-uniformity in the laws and regulations thereto. This non-uniformity is one of the main problems that prevent this unique system from achieving its objectives properly. The ineffective penalties for offences related to *zakāh*, the non-existence of meaningful enforcement of its laws and regulations, the different interpretations and focus given to the types of wealth subjected to *zakāh* and the

¹ Utusan Online, 6 May 2009, Malaysia komited perkenal keindahan Islam <http://www.utusan.com.my/utusan/info.asp?y=2009&dt=0506&pub=Utusan_Malaysia&sec=Dalam_Negeri&pg=dn_07.htm> (accessed 6 May 2009).

different interpretations given to the beneficiaries of *zakāh* from one state to another are other problems that make the situation worse. What can be done to solve these problems? Is it possible to place the administration of *zakāh* under a national institution without effecting the states' jurisdiction on it so that its uniformity can be guaranteed? Beside of the placement of *zakāh* under the said institution, what else can be done to solve the other mentioned problems?

Apart from paying the *zakāh*, the Malaysian Muslims also pay other taxes. Among these taxes is the individual income tax. Several issues need further attention here. First, whether the Malaysian government has fulfilled all conditions set by the *Shari'ah* in imposing additional taxes or not? If not, what can be done to accommodate it? On the other hand, if it is permissible, is there any other approach that is better than the current system which allows the Muslims to claim rebate for the *zakāh* that they pay? Second, is it possible to introduce *zakāh* as a viable substitute for the individual income tax imposed on the Malaysian Muslims through the institutionalization of *zakāh*? What benefits can be gained from this approach, and at the same time, what are the mechanism and infrastructures that must be put in place before this approach can be implemented?

HYPHOTESIS

The administration of *zakāh* in Malaysia can be refined by making it a viable substitute for the individual income tax imposed on the Malaysian Muslims.

LITERATURE REVIEW

In so far as the researcher can explore, there is not a single study available that touches directly on the administration of *zakāh* and its imposition as a viable

alternative for the Malaysian individual income tax. Having said that, segmented studies that deal with some parts of this research can be found in a number of existing literature. Materials written on the subject can be divided into two main areas: *Zakāh* and the Islamic taxation system and the Malaysian income tax.

First: *Zakāh* And The Islamic Taxation System

There are numerous books written by Muslim scholars on *zakāh* and other Islamic taxation instruments. If we look into the trend of writing among the Muslim scholars, we will realise that there are two major approaches used in discussing *zakāh* and other instruments in the Islamic taxation systems. Traditional writers on one hand, tend to discuss *zakāh* independently of other Islamic taxation instruments. What can be interpreted from this approach is that they treated *zakāh* as a separate entity. It seems that *zakāh* is something that has nothing to do with taxation. Abū Ya‘la, for instance, discussed *zakāh*,² *fay’*, *ghanimah*,³ *kharāj* and *jizyah*⁴ in different chapters respectively. This approach was also used by Abū ‘Ubayd in his book *Kitāb al-Amwāl*⁵ and al-Māwardī in his book *al-Aḥkām al-sulṭāniyyah*.⁶ There are also a good number of contemporary writers who use this approach. Among them are Sayyid Qutb,⁷ Yūsuf al-Qaraḍāwī⁸ and Muhammad ‘Uthmān Shabīr.⁹

² Abū Ya‘lā, Muḥammad bin al-Ḥusayn, *Al-Aḥkām al-sulṭāniyyah*, (n.p. Dār al-Fikr, 1974), 115-135.

³ Ibid., 136-152.

⁴ Ibid., 153-162.

⁵ Abū ‘Ubayd, Al-Qāsim ibn Salām, *Kitāb al-amwāl*, (Bayrūt: Dār al-Shurūq, 1989), 89-131, 132-175, 629-651.

⁶ Al-Māwardī, *Al-Aḥkām al-sulṭāniyyah*. (Bayrūt, Lubnān: Dār al-Fikr. n.d.), 113-125, 126-141, 142-156.

⁷ Sayyid Qutb, *Al-‘Adālah al-ijtimā‘iyyah fī al-Islām*, (Bayrut: Dār al-Shurūq, 1978) 150-157.

⁸ Al-Qaraḍāwī write a separate chapter on the differences and similarities between *zakāh* and taxation. Al-Qaraḍāwī, *Fiqh al-zakāh*, (Bayrūt, Muassasah al-Risālah, 1986), 2:995-1119.

⁹ Muhammad ‘Uthmān Shabīr, *al-Zakāh wa al-ḍarā‘ib fī al-fiqh al-islāmī in Abḥāth fiqhīyyah fī qaḍāyā al-zakāh al-mu‘āṣarah*, Ed. 2nd., (Urdun: Dār al-Nafā‘is: 2000), 591-625.

On the other hand, there is a tendency among several other contemporary writers to divert from the traditional approach. They group *zakāh* together with other taxation instruments under one name. These writers classified them under the term of *al-mawārid al-māliyyah* (the Financial Resources), together with *kharāj*, *jizyah* and *‘ushr*. Contemporary writers like ‘Abd al-Wahhab Khallaf,¹ Ibrāhīm Fu‘ad Aḥmad⁰ ‘Alī,¹ Ḥusayn Rātib Yūsuf Rayyān¹ and S.A Siddiqi¹ are among those who used this approach. However, S.A. Siddiqi preferred to use the term “public finance” in place of financial resources.

There are also writers who group *zakāh* together with taxation. For instance, M.A. Mannan refers to *zakāh* as tax and put it together with *kharāj* and *jizyah* in the tax structure. However, he still stresses the differences between ordinary tax and *zakāh* where the later, according to him, is a religious sanctity which is not matched by any mode of public finance anywhere else. Rafīq Yūnus al-Maṣrī in his book *al-Maḥṣūl fī ‘ulūm al-zakāh* divides taxation into two. First, the one that is imposed on Muslims which includes *zakāh* and *zakāh al-fitr* together with other additional tax and second is the one that is imposed on non-Muslims which includes the *jizyah*, *kharāj*, *‘ushr* and *al-maks*.¹

4

In *Fiqh al-Zakāh*, al-Qaraḍāwī, gave special attention to matters related to *zakāh* before making comparison between *zakāh* and conventional taxation. For the researcher, this book is among the most important contemporary sources on *zakāh*. The author of this book has brilliantly discussed the rules relating to *zakāh* from the

¹ ‘Abd al-Wahhab Khallāf, *Al-Siyāsah al-Shar‘iyyah*, (Bayrūt: Muassasah al-Risālah, Ed. 2nd, 1984), 111.

¹ Ibrāhīm Fu‘ad Aḥmad ‘Alī, *Al-Mawārid al-māliyyah fī al-islām*, (n.p., Muassasah Sijl al-‘Arab, 1970), 19-155, 165-171, 172-207, 208-227, 228-238.

¹ Ḥusayn Rātib Yūsuf Rayyān, *Al-Riqābat al-māliyyah fī al-fiqh al-islāmī*, (Urdun: Dār al-Nafā’is, 1999), 37-54.

¹ S.A. Siddiqi, *Public financē in Islam*, (Pakistan: Sh. Muhammad Ashraf Publishers, Booksellers & Exporters, 1994), 137.

¹ Rafīq Yūnus Al-Maṣrī, *Al-Maḥṣūl fī ‘ulūm al-zakāh*, (Syria, Dimashq: Dār al-Maktabī, 2006), 27-49.

perspective of the four main *madhhab* namely *al-Shāfi‘ī*, *al-Mālikī*, *al-Ḥanafī* and *al-Hanbali*. The author also elaborated the legality of imposing *zakāh* on several new types of wealth not known before such as shares, bonds, income and factories.

Meanwhile, Mahmūd ‘Ātif al-Banna in his book, *Nizām al-zakāh wa al-ḍarā‘ib fī al-Mamlakah al-‘Arabiyyah al-Sa‘ūdiyyah* focussed on the administration aspect where he described how *zakāh* and income tax system is applied in Saudi Arabia. He also discussed the issue of distributing *zakāh* to the *dhimmi*s, in which he preferred to choose the permissible point of view.¹

5

In *Public finance in Islam*, S.A Siddiqi, has directly discussed the fundamentals of Muslims’ finance. He began with the classification of persons and how they are treated according to Islam. He divided persons into three categories; the Muslims, *dhimmi*s and the *ḥarbī* (enemies). The author further elaborated on the rules relating to *zakāh*, *kharāj*, revenue from the public domain, the custom duties (*‘ushr*), the *jizyah*, the spoils of war (*ghanā‘im*), the tax on mines and other miscellaneous sources of revenue such as treasure trove and estates of deceased persons and other taxes. Besides elaborating on rules related to *zakāh*, the author also discussed *zakāh* in the light of modern theories of taxation. The author also examined how the public financial system was administrated in the days of the four rightly-guided caliphs and the succeeding states such as the Umayyads and the Abbasids.

The historical background of the Islamic economic system was elaborated by Muḥammad al-Ḥuṣārī in his book, *al-Siyasah al-iqtisādiyyah wa al-nuzum al-māliyyah fī al-fiqh al-Islāmī*. He contended that the main sources of income for the state in the era of the Prophet and caliph Abu Bakr were the *zakāh*, *jizyah* and *fay’*. These sources then were expanded in the days of caliph ‘Umar al-Khaṭṭāb to include

¹ Al-Banna, Mahmūd ‘Ātif, *Nizām al-zakāh wa al-ḍarā‘ib fī al-Mamlakah al-‘Arabiyyah al-Sa‘ūdiyyah*, (Riyād: Dār al-‘Ulūm li al-Ṭibā‘ah wa al-Nashr, 1983), 232

kharāj. Muḥammad al-Ḥuṣārī also believed that tax can still be imposed besides *zakāh* in situations where the latter alone cannot fulfil the needs of the community.¹

The classical Islamic government had practiced a complete taxation system based on Islamic concepts of public property and Islamic financial principles.¹ Without the implementation of taxation system which is based on al-Qur'ān, *Sunnah* or by way of *Ijtihād*, the objectives of the Islamic financial policies, undoubtedly, cannot be achieved properly. This is the opinion of Ghāzī Husain 'Ināyah in his work, *al-Nizām al-ḍarībī fī al-fīkr al-mālī al-Islāmī dirāsah muqāranah*. He also elaborated on the definition of tax, basis of taxation and taxation systems from the civil and *Shari'ah* perspectives, including the differences and similarities between *zakāh* and tax in Islam.¹

8

The work of Ṣalāḥ al-dīn 'Abd al-Ḥalīm Sulṭān, *Sulṭah waliyy al-amr fī farḍi waḍā'if māliyyah "al-ḍarā'ib* has provided extensive details on the problem of permissibility to impose additional financial dues besides *zakāh*. In the quest for the answer, the author juxtaposed the opinions of the classical and modern jurists. At the end of the discussions, the author comes with the conclusion that additional financial dues can be imposed with certain conditions that must be firstly met.¹

9

Muḥammad Bāqir al-Ṣadr in his book, *Iqtisādunā* gave a well elaboration on the Islamic economic system. In the said book he stressed that the Islamic economic system is built on three pillars i.e. the concept of *mulkiyyah muzdawajah* (the combine

¹ Muḥammad al-Ḥuṣārī, *Al-Ṣiyāsah al-iqtisādiyyah wa al-nuḍum al-māliyyah fī al-fīqh al-Islāmī*, (Bayrūt: Dār al-Kitāb al-'Arabī, 1986), 493.

¹ Ghāzī Husayn 'Ināyah, *Āl-Nizām al-ḍarībī fī al-fīkr al-mālī al-Islāmī dirāsah muqāranah*, (Iskandariyyah: Muassasah Shabāb al-Jāmi'ah, 2006), 12.

¹ Ibid.

¹ Ṣalāḥ al-dīn 'Abd al-Ḥalīm Sulṭān, *Sulṭah waliyy al-amr fī farḍi waḍā'if māliyyah "al-ḍarā'ib*, (Gīzah: Hajr li al-ṭibā'ah wa al-Nashr wa al-tawzī' wa al-i'lān, 1988), 499-503.

ownership²), the concept of the economic freedom in limited scope² and the concept of social justice.² The writer also emphasised the importance of studying the Islamic economic system as a part of the overall system of Islam itself.² He then elaborated the correlation between the Islamic economic system with the faith, the understanding of Islam about the universe and life, the emotions and feelings that Islam tends to spread, the financial policies of the state, the Islamic political rules, the effort to eliminate usury and other Islamic rules on *muḍārabah*, *takāful a-‘ām* (general solidarity) and social balance, the rules of *jihād* that arrange the relation between the Muslims and non-Muslims during war and the correlation between the Islamic economic system with the Islamic criminal law. In this book, the writer also argued that the religious nature of the Islamic economic system is the element that differentiates the Islamic economic system from other economic systems. This nature also enables the Islamic economic system to success and a competent one in securing the social interest.²

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3

4

If we look into books published by the *Majma‘ al-fiqh al-Islāmī*, we will find quite a number of discussions on several contemporary issues related to *zakāh*. For example, in its third conference which was held in October 1986, the question of whether or not *zakāh* fund can be invested in projects which ownership is given to the beneficiaries of *zakāh* has been tabled. As a result, a resolution was issued to allow it. The authority is also allowed to own the said projects with a condition that its profit

² Means its combine both the concept of ownership in the capitalists and communist systems. Al-Ṣadr, Muḥammad Bāqir, *Iqtisādunā*, (Bayrūt: Dār al-Kitāb al-Lubnānī, 1982), 257-260.

² Ibid., 260-264.

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² Ibid., 264-268.

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² Ibid., 269-272.

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² Ibid., 272-278.

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