

COULD STATE RELIGIOUS COUNCIL IMPOSE COMPULSORY BUSSINESS ZAKAT ON ISLAMIC FINANCIAL INSTITUTIONS AND COOPERATIVE SOCIETIES? A LEGAL ANALYSIS

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Abstract: *Zakat* on business refers to *zakat* that needs to be paid by a company when it fulfills the requirements of *zakat* payment. Within the context of Islamic finance industry, *zakat* is also payable on all securities and shares traded, as well as assets bought by a company for the purpose of resale. However, it seems that there is no specific piece of legislation that requires Islamic financial institutions and state government-linked companies to pay *zakat*. In this regard, the objective of this paper is to analyse the possibility of the state religious council to impose compulsory business *zakat* on Islamic financial institutions and cooperative societies in the state of Kedah. The methodology used for this research is legal research engaging on library-based and comparative analysis method. The study found that the current Malaysian legal framework does not provide adequate avenue for the Islamic Religious Councils at the State level to impose compulsory business *zakat* on Islamic financial institutions and cooperative societies. This paper suggests that further research should be carried out to better appreciate the business landscape of Islamic financial institutions within the context of the legal framework. This is significant so as to understand further the potential of imposing business *zakat* to the institutions which would be in line with the *Shariah* requirements as well as the local laws and regulations of Malaysia.

Keywords: *Business zakat, Islamic financial institutions, Islamic cooperative societies, State religious councils*

INTRODUCTION

The aim and the philosophy of *zakat* is basically to purify the asset or rather to purify one's heart from stingy. There are thirty verses whereby Allah S.W.T command prayers and *zakat*. The *zakat* is imposed on basis of the growth of the asset. There is circulation of wealth from the rich to the *asnaf* /the poor by way of *zakat*. Allah prohibit *riba* because it involves the elements of unjustified enrichment and make *zakat* compulsory. *Zakat* and *waqaf* play an

important roles in voluntary sector in economy system (Mohd Zakhiri, Sabina Hodzic, Ani Munirah Mohamad, 2018).

Zakat on business will be imposed on property that is used for trading purposes (Teh Suhaila, 2017). If a business fulfills the requirements for the payment of *zakat*, such as the ownership of the business belongs to Muslims, the trading attained certain *zakatable* amount (*nisab*) and *zakatable* duration (*haul*), then it is incumbent upon the business owner to pay *zakat* on the amount of the business profits. In the case of share of business was shared by Muslim and non-Muslim, only Muslim share portion is *zakatable*. (<http://www.efatwa.gov.my>). The authority in charge of the collection and distribution of *zakat* is the Islamic religious councils at the respective States in Malaysia.

RESEARCH PROBLEM

Today, there are a lot of Islamic financial institutions and cooperative societies being in operation in Malaysia. Their core business and transactions are Islamic business, and owned entirely or majority by Muslims. Past literature had attempted to assess the policy issues in the *zakat* payment for Islamic banks in Malaysia (Ismail, et. al, 2013; Samad, et. al, 2015; Abbas, et. al, 2018) however, issue remains that there is no single piece of legislation that requires Islamic financial institutions and cooperative societies to pay *zakat*. There is also no standardisation of methodologies with regards to collection and distributions of *zakat* within states in Malaysia. Accordingly, this paper seeks to examine the gap in the literature from the legal perspective as to the imposition of compulsory business *zakat* for Islamic financial institutions and cooperative societies in Kedah.

OBJECTIVE OF STUDY

The objective of this study is to analyse the possibility for the Islamic religious council on Kedah to impose compulsory business *zakat* for Islamic financial institutions and cooperative societies in Kedah.

METHODOLOGY

The methodology used for this research is legal research engaging on library-based and comparative analysis method. The data sources analysed include legal provisions of the Federal Constitution, written laws, State regulations, journal articles and classical textbooks on the legal position of *zakat* and *zakat* management in Malaysia. The comparative analysis method was engaged for the purpose of constantly comparing certain concepts involving *zakat* collection and payment, operations of Islamic financial institutions as well as Islamic cooperatives.

LEGAL JURISDICTION FOR ZAKAT MANAGEMENT IN MALAYSIA

The current position is that the administration of *zakat* in Malaysia falls under the State jurisdiction (save and except for the Federal Territories of Kuala Lumpur, Labuan and Putrajaya which falls under the Federal jurisdiction). For the avoidance of doubt, this means that any rulings on *zakat* matters fall under the jurisdiction of the State, and the Federal government cannot interfere in this matter. Article 74 (2) of the Federal Constitution - Subject matter of federal and State law

(2) Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List. (a)List II – State List, of the Ninth Schedule of the Federal Constitution.

“Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, Organisation and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law, the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom”

POSITION OF ISLAMIC FINANCIAL INSTITUTION AND COOPERATIVE SOCIETIES OPERATE IN THE STATE OF KEDAH

As to the operations of Islamic financial institutions in Malaysia, which relate specifically to the Islamic banking and financial businesses pursuant to Islamic Financial Services Act 2013, the regulatory administration of the same falls within the Federal jurisdiction. Under Article 74 (1) of the Federal Constitution - Subject matter of federal and State laws.

(1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule)..

- (a)List I – Federal List, of the Ninth Schedule of the Federal Constitution 7. Finance, including:
- (a) Currency, legal tender and coinage;
 - (b) National savings and savings banks;
 - (c) Borrowing on the security of the Federal Consolidated Fund;
 - (d) **Loans** to or borrowing by the States, public authorities and private enterprise;
 - (e) Public debt of the Federation;
 - (f) Financial and accounting procedure, including procedure for the collection, custody and payment of the public moneys of the Federation and of the States, and the purchase, custody and disposal of public property other than land of the Federation and of the States;
 - (g) Audit and accounts of the Federation and the States and other public authorities;

- (h) Taxes; rates in the federal capital;
- (i) Fees in respect of any of the matters in the Federal List or dealt with by federal law;
- (j) **Banking**; money-lending; pawnbrokers; control of credit;
- (k) Bills of exchange, cheques; promissory notes and other similar instruments;
- (l) Foreign exchange; and
- (m) Capital issues; stock and commodity exchanges.

What could be gathered from the legal provisions aforementioned is that the authority for administering the banking and financial matters, both conventional and Islamic, is the Central Bank of Malaysia, pursuant to the Central Bank of Malaysia Act 2009 not under the jurisdiction of state.

REGULATOR FOR ISLAMIC FINANCIAL INSTITUTIONS AND COOPERATIVE SOCIETIES: COMPARATIVE ANALYSIS

Central Bank of Malaysia

Banks only pay *zakat* on its business. The bank does not pay *zakat* on behalf of shareholders or depositors (<https://bnm.gov.my>). GP8-I also state A Disclosure, where applicable, on the institution's responsibility towards payment of *zakat* on the business, and on behalf of the shareholders, depositor and others. Bank only pays *zakat* on its business and not on behalf of its depositors and shareholders (Khairunisa Abdul Samad, Roshima Said, 2016)

There is one Islamic bank whereby the bank pay its business *zakat* based shareholder fund and other fund received by the bank as stated in the bank financial report:

“During the financial year, the Bank fulfilled its obligation to pay zakat on its business to state zakat authorities by adopting the capital growth computation and in compliance with the Manual Pengurusan Zakat Perbankan issued by Jabatan Zakat, Wakaf dan Haji (“JAWHAR”), the bank pay zakat on bank portion i.e shareholders fund as well as other funds received except the depositors fund. “

However, there is bank that did not pay the *zakat* because did not get the mandate from the shareholder. Central bank is silent in order to make it compulsory for Islamic bank to pay *zakat* except the Central Bank of Malaysia issued guidelines banking financial reporting GP8-i.

Malaysia Cooperative Commission

As far as business *zakat* in cooperative society is concerned, Malaysia Cooperative Commission issued GP 23 on Cooperative Financial Reporting whereby the cooperative societies is required to pay *zakat* whenever its fulfilled the *haul* and *hisab* (<https://skm.gov.my>).

In this regard, the Central Bank of Malaysia and Cooperative Societies issued the financial reporting guidelines on business *zakat*. Both guidelines provide methods that can be used in computing *zakat*. Nowhere mentioned the power of state authority to make the *zakat* compulsory for these institutions.

FINDINGS AND DISCUSSION

The study found that the current Malaysian legal framework does not provide adequate avenue for the Islamic Religious Councils at the State level to impose compulsory business *zakat* on Islamic financial institutions and cooperative societies. Although the Central Bank of Malaysia and Malaysia Cooperative Society have issued Guidelines for its member institutions to adopt in the calculation and payment of business *zakat*, there is nothing in the provisions and legal rules which make it compulsory for business *zakat* to be paid by the Islamic financial institutions neither the Islamic cooperative societies.

The proper authority to impose compulsory *zakat* is the Islamic Religious Council at each State, for the companies operating within the State only. Needless to say, the Chief Minister is the proper authority to enlist the relevant companies/groups of persons to be accountable to pay compulsory *zakat*. However, it is imperative to note that this would be workable only if each of the branches of the Islamic financial institutions maintain their own account for income/profits, and able to make their own *zakat* calculations.

In the event all the branches of the Islamic financial institutions throughout the nation pool in their income or profits, and only the main office/headquarters would be able to make the *zakat* calculation, then there would be corresponding issues to be considered, *inter alia*:-

- (a) How to determine which Islamic Religious Council shall impose the compulsory *zakat*?
- (b) Is it determinable by the Company Commission Malaysia's registered address of the institution, or the business address?
- (c) What if the institution later on changes its registered or business addresses (due to business demands etc.)?
- (d) Would then the Islamic Religious Council in the new State pass ruling for the new compulsory *zakat* on that specific financial institution?

Fuqahas have difference views that the company is remains to individuals and other view is that the company need to under the concept of *shaksiyyah iktibariah* that is legal entity whereby the company is regarded as individual himself (Azman Mohd Noor, Muhamad Nasir Haron, 2013) . In addition, Perlis State *Shariah* Committee in 1998 passed a resolution that *zakat* is compulsory on stock and trading activities in the state of Perlis. Melaka State *Fatwa* Committee passed a *fatwa* that *zakat* is compulsory to bond and *sukuk* holders in the state of Melaka (Zahri Hamat, 2014).

As such, there is an urgent need for further research be carried out to examine the viability and suitability of allowing Islamic religious councils of each state to impose business *zakat* on Islamic financial institutions and Islamic cooperative societies, and also by taking into account the aforementioned consideration notes.

RECOMMENDATIONS AND CONCLUSION

In conclusion, the study investigated the legal framework for Malaysia in determining if the Islamic religious council for the state of Kedah be allowed to impose compulsory business *zakat* on the Islamic financial institutions and cooperative societies. Although the study found that the present legal framework in Malaysia does not afford the imposition of such compulsory business *zakat*, this findings paved the way for directions for future research. In this regard, it is recommended that further research should be carried out to better appreciate the business

landscape of Islamic financial institutions and cooperative societies within the context of the Malaysian legal framework. This is significant so as to understand further the potential of imposing business *zakat* to the institutions which would be in line with the *Shariah* requirements as well as the local laws and regulations of Malaysia. It is recommended that the Islamic financial institutions and cooperatives societies to have their own *zakat* management manual at their respective institutions.

REFERENCES

- Bharat, K. and Broder, A. (1998). "A technique for measuring the relative size and overlap of public web search engines", *7th International World Wide Web Conference*, April.
- Chau, M., Wong, C.H., Zhou, Y. and Chen, H. (2010). "Evaluating the use of search engine development tools in IT education", *Journal of the American Society for Information Science and Technology (JASIST)*, Vol. 61(2), 288-299.
- Chu, H. and Rosenthal, M. (2010). Search engines for the World Wide Web: a comparative study and evaluation methodology, ASIS. Retrieved on 29 December 2011 from <http://www.asis.org/annual-96/electronic-proceedings/chu.htm>.
- Dreilinger, D. and Howe, A. (1997). "Experiences with selecting search engines using metasearch", *ACM Transactions on Information Systems*, 15(3), 195-222.
- Gao, R., & Shah, C. (2020). "Toward creating a fairer ranking in search engine results." *Information Processing & Management*, 57(1), 102-138.
- Giomelakis, D., and Veglis, A. A. (2019). Search engine optimization. In *Advanced methodologies and technologies in network architecture, mobile computing, and data analytics*. IGI Global, 1789-1800
- Ismail, Y. and Sarif, S. M. (2011). "Availability of literature on engineering ethics in the Internet", *IJUM Engineering Journal*, 12(5), 219-229
- Jim, G., Gao, J. and Wang, Y. (2010). "A multi-agent based knowledge search framework to support the product development process", *International Journal of Computer Integrated Manufacturing*, 23(3), 237-247.
- Lawrence, S. and Giles, C. (1998), "Searching the worldwide web", *Science*, pp. 98-100.
- Leighton, H. and Srivastava, J. (2010). "Precision among www search services (search engines): alta vista, excite, hotbot, infoseek and lycos." Retrieved on 21 December 2011 from <http://www.winona.edu/library/webind2.htm>
- Marsden, S. (2018). How do Search Engines Work? Retrieved on May 10, 2018 from <https://www.deepcrawl.com/knowledge/technical-seo-library/how-do-search-engines-work/>
- Pirkola, A. (2009). "The effectiveness of web search engines to index new sites from different countries," *Information. Research*, 14(2), 1-11.
- Prabowo, R. and Thelwall, M. (1997). "Sentiment analysis: a combined approach," *Journal of Informetrics*, 3(2), 143-157.
- RapidAPI (2019a). Top 8 Best Search Engines (of 2020). Retrieved on 6 December 2019 from <https://rapidapi.com/blog/best-search-engines/>
- RapidAPI. (2019b). How to Use an API (The Complete Guide) [A Simple API Example]. Retrieved on 25 June 2019 from <https://rapidapi.com/blog/how-to-use-an-api/>

- Sullivan, D. (2010). "Major search engines and directories." Retrieved on 28 December 2011 from <http://searchenginewatch.com/author/index.php/dannysullivan>.
- Statista. (2020). Worldwide desktop market share of leading search engines from January 2010 to January 2020. Retrieved on 10 January 2019 from <https://www.statista.com/statistics/216573/worldwide-market-share-of-search-engines/>
- Tajane, T. (2011). "Most used search engines and total market share trend as of March 2011." Retrieved on 28 January 2012 from <http://techzoom.org/most-used-search-engines-and-total-market-share-trend-as-of-march-2011/>
- Thelwall, M. (2008). "Quantitative comparisons of search engine results", *Journal of the American Society for Information Science and Technology (JASIST)*, 59, 1702-1710.
- Tomaiuolo, N.G. and Parker, J.G. (1996). "An analysis of internet search engines: assessment of over 200 search queries," *Computer Library*, 16(6), 58-62.
- Uyar, A. (2009), Investigation of the accuracy of search engine hit counts, *Journal of Information Science*, 35(4), 469-480.
- Wang, H. Xie, M. and Goh, T. (1999). Service quality of internet search engines, *The Journal of Information Science*, 25 (6), 499-507.
- Wang, L., Wang, J., Wang, M., Li, Y., Liang, Y., and Xu, D. (2012). Using Internet search engines to obtain medical information: a comparative study. *Journal of Medical Internet Research*, 14(3), e74.
- Webopedia (2012). Search Engine. Retrieved on 02 February 2012 from http://www.webopedia.com/TERM/S/search_engine.html
- Xiang, Z. and Gretzel, U. (2010). Role of social media in online travel information search, *Tourism Management*, 31, 179-188.