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# Analysis of Fatwa in Malaysia on the Provision of Housing Using Zakat Fund

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#### **ABSTRACT**

The usage of zakat fund for housing assistance such as rental, repair, deposit, and construction of a specified size of house unit is well-known in Malaysia. In fact, they have been included in the zakat disbursement schemes. The emerging issue, however, is the development of mass housing using zakat fund. If the mass housing development is meant to accommodate asnaf (zakat recipient), it posed a less religious issue. If it is for the purpose of investment that the proceeds will be spent for asnaf, it invites a discussion on its permissibility from shariah perspective. Seemingly, the critical issue is the degree of directness of the benefits and their possibilities to reach the recipients. Hence, it is the purpose of the study to analyze the current religious rulings in kind of fatwa in Malaysia related to zakat. Consequently, 68 fatwas on zakat shortlisted from the Department of Islamic Development (JAKIM), the Department of Awgaf, Zakat and Pilgrimage (JAWHAR) and the Selangor Mufti Department compilation were studied. Content analysis was adopted for that purposes. The study found that there is no direct fatwa related to this kind of mass housing development. However, Selangor has a general fatwa on the investment of zakat fund from 'amil portion subjected to strict conditions and the building of a hostel for asnaf. The study concluded that the matter is ijtihadi and proposed areas that require shariah rulings based on the construction procurement processes, later on, to be developed as a guideline for zakat funded houses.

#### Keywords: Zakat, Shariah, Asnaf, Housing

#### INTRODUCTION

Zakat has been prescribed in Islam as mandatory following its terms and conditions. It is a kind of religious charity with two prongs objectives that is to clean the wealth of the zakat giver and at the same time to share the wealth with the specified group in the community i.e. *asnaf* (zakat recipients) (Yusuf al-Qardawi, n.d.; JAWHAR, 2012; Azman et. al., 2012; Fuadah et. al., 2015; Hasanah, 2017).

The collected zakat fund has been used for various purposes of the *asnaf* ranging from their accommodation, food, costumes, medication, education, and

transportation that have been packaged under different schemes of zakat disbursement. As far as accommodation is concerned, the practices of providing housing assistance to the eligible *asnaf* could be said as well established in Malaysia (JAWHAR, 2009; Azman and Hasanah, 2015).

The asnaf was given an opportunity to apply for a rental, deposit, repair and construction assistance cost of their house on a small scale. However, the consumption of zakat fund for a mass housing development or for the investment purposes that the benefits would be dedicated to asnaf invites shariah rulings on the matter in kind of fatwa. Basically, a fatwa is a ruling on the point of

Islamic law given by a recognized authority (https://en.oxforddictionaries.com/).

Consequently, it is the aim of the paper to analyse the fatwa on zakat in Malaysia with specific reference to housing provision. In so doing, a compilation of fatwa by JAKIM, JAWHAR and the Selangor Mufti Department was selected. JAKIM compiled fatwas from the National Council of Islamic Affairs without limitation on the topics, likewise, the Selangor Mufti Department though its coverage is within the State of Selangor merely. Meanwhile, JAWHAR compiled fatwas from various States in Malaysia related to the topics of waqaf, zakat, pilgrimage, and baitulmal.

This paper is structured into six parts commencing with the introduction. Part Two explains the shariah legitimacy of zakat and its role towards better living conditions. Part Three describes the administration of Islamic affairs, zakat, and fatwa. Part Four elaborates the research methodology followed by analysis and discussion in Part Five. Part Six concludes the paper with the significant findings.

## Zakat and Housing Provision in Islam

The prescription of zakat is made explicitly by Allah SWT in the Quranic verses, amongst others, is al-Tawbah, verse 11

"But even so, if they repent, establish prayer, and <u>practice zakah</u>, they are your brethren in faith. Thus do we explain the signs in detail for those who understand"

Also, the Hadith of the Prophet SAW;

It is narrated on the authority of 'Abdullah son of 'Umar that the Messenger of Allah said:

(The superstructure of) al-Islam is raised on five (pillars), testifying (the fact) that there is no god but Allah, that Muhammad is His bondsman and messenger, and the establishment of prayer, payment of Zakat, Pilgrimage to the House (Ka'ba) and the fast of Ramadan. (Sahih Muslim 16 c, Book 1, Hadith 21)

Muslim jurists interpreted zakat literally to mean growing and increasing. When it is said about a person, it means to improve, to become better. Consequently, zakat is blessing, growth, cleanliness, and betterment. Technically it is defined as the determined share of wealth prescribed by God to be distributed among deserving categories (Yusuf al-Qardawi, n.d.). The payment of zakat is obligated to Muslim who has reached puberty, is sane, is free, owning the zakatable item for one-year keeping i.e. haul and meeting a minimum amount which determines the zakatability of a person i.e. nisab.

For distribution purposes, Quranic verse al-Tawbah: 60 enumerated eight recipients of zakat as follows:

- i. Fagir (needy)
- ii. *Miskin* (poor)
- iii. *Amil* (workers in zakat administration)
- iv. *Muallaf* (those whose hearts are being reconciled)
- v. *Riqab* (freeing slaves)
- vi. Gharimin (those under liabilities)
- vii. Fi sabilillah (in the way of God)
- viii. Ibnussabil (wayfarers)

The distribution is made according to the *had al-kifayah* (line of sufficiency) of the recipients as understood from the Hadith of the Prophet SAW;

Narrated Abu Huraira: Allah's Messenger (SAW) said, "The poor

person is not the one who goes around the people and ask them for a mouthful or two (of meals) or a date or two but the poor is that who has not enough (money) to satisfy his needs and whose condition is not known to others, that others may give him something in charity, and who does not beg of people." (Sahih al-Bukhari 1479, Book 24, Hadith 81)

In short pillars of zakat are (i) person who gives zakat, (ii) zakatable item or equivalent, (iii) recipients (asnaf), (iv) utterance of zakat giving, (v) zakat administrator ('amil).

'Amil carries the big religious responsibility of zakat administration to the extent that its cost is allocated within the zakat fund itself as one of the asnafs. Efficiency and transparency are paramount important to gain people's confidence and at the same time to uplift the living condition of Thus, accommodation is no the asnaf. exception. It is a human necessity mentioned in the Quran as a place to provide tranquillity and peaceful mind by virtue of the terms maskan and sakana. In this regard, Azman and Zahari (2017) and Spahic (2008) elaborated the house as "maskan" (Arabic) because it offers its inhabitants a chance to take a break from the demands and pressure of the outside world and concentrate on physical. mental and even spiritual recuperation. This elaboration is in conjunction with the Quranic verse "It is Allah Who made your habitations (houses) homes of rest and quiet for you..." (An-Nahl: 80).

For that matter, Azila et al. (2017) laid down all the housing assistance offered under the zakat disbursement schemes in Malaysia. Shawki (1985) gave broad outlines for financing socio-economic infrastructure from zakat fund including low-cost housing. Mohammad Mohit and Nurul Nazyddah

(2011) studied social housing programme under zakat scheme while Mahyuddin (2011) looked into the management of zakat distribution towards achieving the quality of life of the *asnafs*.

#### Administration of Zakat in Malaysia

The structure of zakat administration more or less influences its efficiency and effectiveness. In this regard, each state in Malaysia is governed by their Enactment of Islamic affairs administration in which the provisions on zakat is part of it. These provisions are supported by subsidiary laws and rules for the purpose of implementation (Azman, 2014; Ram and Norfaiezah, 2016; Eza Ellany, 2014).

The state of Selangor for instance, it has Administration of the Religion of Islam Enactment 2003 (hereafter referred to as ARIE 2003) for which zakat is mentioned in Sections 86 to 88. On top of that, it has Zakat and Fitrah Regulations 2012. Talking about the distribution of zakat fund, reference to the Fatwa Committee for any amendments or changes made to the current practice, in this case using zakat fund for mass housing development is required by the Regulations. This legislation framework of zakat administration is quite similar to other states in Malaysia. Table 1 summaries the structure of zakat administration in Malaysia.

**Table 1.** Structure of zakat administration in Malaysia

Structure	States
Zakat administration	Johore, Perak,
solely by SIRC for both	Perlis,
collection and	Kelantan,
distribution	Terengganu
Dwi-system zakat	Federal
administration i.e.	Territories,
collection by a	Negeri
subsidiary, distribution	Sembilan,
by SIRC	

	Melaka,
	Pahang
Privatization of both	Selangor,
collection and	Pulau Pinang,
distribution of zakat on	Sabah,
behalf of SIRC	Sarawak
Separated from SIRC	Kedah
but it is under the	
Sultan of the state	

Source: Adapted from Eza Ellany et al., 2014

#### Fatwa and Zakat Administration

By virtue of the Rules 41 to 43 i.e. zakat disbursement, in the Selangor Zakat and Fitrah Regulations 2012, the relationship between zakat administration and fatwa requirement is made evident. In a religious context, the word "fatwa" carries the answer to the questions related to Islamic point of view produced by the Islamic scholar. This "fatwa" carries more weight than just the random opinion of any person on the street. Islamic scholars are expected to give their "fatwa" based on religious evidence, not based on their personal opinions. Therefore, their "fatwa" is sometimes regarded as a religious (http://www.questionsaboutislam.com).

In so doing, a fatwā is an Islamic legal pronouncement, issued by an expert in religious law (mufti), pertaining to a specific issue, usually at the request of an individual or judge to resolve an issue where Islamic jurisprudence (figh), is unclear. Typically, such uncertainty arises as Muslim society address works new issues http://www.islamicsupremecouncil.org/. For example, the new issue is the development of mass housing using zakat fund. Islam has the answer, but the way answer is sought matters. In this respect, Section 47 of ARIE 2003 states that fatwa could be sought by any person by letter addressed to the Mufti, or by the direction of His Royal Highness the Sultan or the Fatwa Committee may prepare

fatwa on any unsettled or controversial question of or relating to *Hukum Syarak* on its own initiative.

In relation to the power of the Fatwa Committee to prepare a fatwa specified in Section 47 above, Section 48 describes the procedure in making a fatwa. Upon receiving a request for a fatwa, the Mufti may cause any study or research to be carried out as directed by him and a working paper to be prepared. The request will undergo a process of discussion amongst the Fatwa Committee's members specified in Section 46 of the Enactment. The prepared fatwa shall be submitted to the SIRC for deliberation and recommendation be made to the Sultan for his assent. The assented fatwa shall be informed to the State Government to be published in the Gazette. Upon its publication in the Gazette, a fatwa shall be binding on every Muslim in the State of Selangor as a dictate of his religion and it shall be his religious duty to abide by and uphold the fatwa, unless he is permitted by Hukum Syarak to depart from the fatwa in matters of personal observance. In addition, a fatwa shall be recognised by all courts in the State of Selangor of all matters laid down therein (Section 49, ARIE 2003).

Therefore, the law provides a way forward for the issue of mass housing development using zakat fund via the issuance of fatwa succumbed to other laws and policies related to housing development.

#### **METHODOLOGY**

The study starts with an extensive literature review related to Islamic injunctions on zakat, Quranic verses, Prophetic Reports and their exegesis. Besides, the administration of Islamic affairs in particular zakat is dwelt into including the related laws, procedures and fatwas. Reviewing the fatwas, the researcher decided to focus on three sources of fatwa two of which are the government agencies at

the federal level and one is a state level that is the state of Selangor. They are:

- JAKIM (2016), Kompilasi Pandangan Hukum Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan bagi Hal Ehwal Agama Islam.
- JAWHAR (2012), Kompilasi Hukum dan Fatwa Berkaitan Wakaf, Zakat, Haji & Sumber Am.
- Selangor Mufti Department, http://www.muftiselangor.gov.my/perkh idmatan/ fatwa-selangor

Out of fatwas on many other topics, the fatwas on zakat were shortlisted. Before coming to the final list of the fatwa for analysis, overlapped fatwas have been cleaned. In the end, sixty-eight fatwas are ready for analysis. Using a content analysis method, it helps to attain the objective of the study; to examine the availability of fatwa for housing provision using zakat fund in Malaysia generally and in Selangor specifically.

#### ANALYSIS AND DISCUSSION

An analysis was done on the 68 fatwas on zakat compiled by the respective authorities. For JAKIM, it is quite straightforward since the compilation listed down 27 fatwas on zakat under its Chapter 5 out of 330 fatwas compiled from 1970 until 2015.

#### **JAKIM (2016)**

- 1. Zakat payment by Tabung Haji
- 2. Matric system in zakat administration
- 3. Zakatability of KWSP
- 4. Zakatability of Koperasi Shamelin
- 5. Zakatability of MARA
- 6. Zakatability of company

- 7. Zakatability of salary & professional income 1
- 8. Zakatability of korban & aqiqah of deer
- 9. Zakatability of salary & professional income 2
- 10. Women & non-Muslim as 'amil for zakat salary & income at LHDN
- 11. Zakat for a company owned by both Muslim & non-Muslim shareholders
- 12. Zakatability of firms & consultancy company
- 13. Zakatability of company & holdings under PNB
- 14. Zakat on Islamic banks & business company which their main company owned by non- Muslim
- 15. Coordination of a method to determine the amount of zakat fitrah for the whole Malaysia
- 16. Zakatability of salary and its rate
- 17. Amount of zakat fitrah for the whole Malaysia
- 18. Zakatability of Tabung Haji owned company
- 19. Zakat fitrah for a Muslim prisoner
- 20. Zakatability of ANGKASA
- 21. Proposal for standardization of zakat payment by corporate bodies according to States
- 22. Zakatability of FELDA and its companies
- 23. Zakat KWSP upon withdrawal
- 24. Private zakat disbursement and qada' zakat
- 25. Zakat to non-Muslim for da'wah purposes
- 26. Revised hukum on private zakat disbursement

27. Status of zakat requirement for Syarikat Pelaburan Hartanah Berhad (PHB)

Source: Kompilasi Pandangan Hukum Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan bagi Hal Ehwal Ugama Islam Malaysia, 2016.

For JAWHAR, there are 44 fatwas on zakat compiled all together. However, only 19 fatwas are presented in the following Table omitting the overlapped fatwas with JAKIM and Selangor Mufti Department.

## **JAWHAR (2012)**

- 1. Investment of zakat using 'amil's portion
- 2. Determination of necessities' expenses for zakat deduction
- 3. Zakat for properties that generate incomes
- 4. Zakat and administration of public deposits, State Islamic Religious Council Kelantan
- 5. Zakat money used for an economic project
- 6. Rate for zakat, women gold jewellery at Trengganu
- 7. Zakatability of public listed company
- 8. Zakat money used for the administration of Muassasah Gadaian Islam Terengganu
- 9. Niat zakat in salary collection form
- 10. Status of dividend for zakat money in a bank
- 11. Zakat *padi*
- 12. Zakat special account for investment
- 13. Zakat fitrah via short messaging system (SMS)
- 14. Zakat payment via credit card
- 15. Proposal to have a member card for zakat payer

- 16. Zakat to parent
- 17. Administration of surplus zakat
- 18. Status of zakat paying & receiving for muflis
- 19. Collection of zakat salary via LHDN

Source: Kompilasi Hukum dan Fatwa berkaitan Wakaf, Zakat, Haji dan Sumber Am, 2012

## **Selangor Mufti Department (online)**

- 1. Zakatability of share investment
- 2. Zakat by managing company of unit trust
- 3. Zakat for gold women jewellery in Selangor
- 4. Contemporary interpretation of asnaf *gharimin*
- 5. Contemporary interpretation of asnab al-riqab
- 6. Duration for muallaf
- 7. Zakat disbursement schemes in Selangor
- 8. Zakat disbursement in kind of benefits
- 9. Collecton of zakat padi via deduction from its subsidy coupon
- 10. Payment of zakat fitrah via electronic devices
- 11. Using zakat money to pay muallaf's debt before his/her conversion to Islam
- 12. Zakat corporate for GLC Negeri Selangor
- 13. Changing status of unclaimed zakat scholarship & financial assistance to undisbursed zakat
- 14. Usage of zakat money for the emolument of a specified division of Majlis Agama Islam Selangor (MAIS) staff

- 15. Usage of zakat money for allowance of Kakitangan Kompleks Wawasan Balkis (al-riqab)
- 16. Usage of zakat money for the emolument of contract staff MAIS
- 17. Usage of zakat money for group takaful replacing *Pelan Persaraan Kakitangan Lantikan MAIS*
- 18. Usage of zakat money for *Skim Latihan Dalam Perkhidmatan* for MAIS & its Holdings staff
- 19. Usage of zakat money for medical facilities MAIS staff
- 20. Usage of zakat money for *Skim*Latihan Dalam Perkhidmatan Khas
  Bagi Peringkat Sijil, Diploma,
  Sarjana Muda, Sarjana Dan
  Kedoktoran (PhD) for MAIS staff
- 21. Usage of zakat money for a legal fee in the muallaf court case
- 22. Usage of zakat money for court case Baitul Iman

Source:

http://www.muftiselangor.gov.my/perkhidmatan/fatw a-selangor. Accessed 12.09.2018

For Selangor Mufti Department, the fatwas are accessible through its e-fatwa. Altogether, there are 52 fatwas on zakat recorded from 1990 till present. For the purpose of the study, 22 are selected excluding overlapped and yearly zakat fitrah fatwas.

Delving into the actual fatwas, they are very much issue-based raised by parties concerned. Noticeably, the fatwa on zakat disbursement aims at the immediate needs of the eligible *asnaf* by virtue of the term 'fawran' in the Quranic verse al-Tawbah: 60 which means 'immediately'. Although accommodation has been put as one of the considerations in zakat disbursement, food, costumes, medication, education and

transportation are at the top priority. Nevertheless, housing assistance such as rental, repair, deposit, and construction of a specified size of house unit are available in zakat disbursement schemes. Obviously, there is no direct fatwa on mass housing development using zakat fund issued so far.

The closest fatwas that could be implied to housing development using zakat fund are zakat surplus, zakat for economic activities and zakat investment. According to Fatwa Committee of Terengganu (1988), the surplus of zakat must be used for the maslahah of the asnaf whereby Fatwa Committee of Perlis and Melaka (2009) specified actions should be taken to it to include creating a business that could give asnaf long-term benefits. However, Fatwa Committee of Kelantan (1993) purported that zakat fund cannot be used for business which is generally taking a long time to mature and exposed to loss and gain though in case of the business makes profits, the benefits will go to the asnaf. Similarly to Pulau Pinang (2016) when its Fatwa Committee prohibited surplus of zakat to be used for purchasing land for development. These seeming differences of opinion are much influenced by the waqi' (living scenario) of one's state viewed by the respective fatwa committee.

Interestingly, the Fatwa Committee of Selangor (1999) quoted Majma' al-Fiqh al-Islami's (1992) opinion in considering the investment of zakat fund involving 'amil's portion. It is permissible, subject to the following conditions:

- (i) Whenever there is no longer immediate needs of the *asnaf* that are required to be distributed;
- (ii) Investments must be made perfectly the same way as other investments, and it must be based on shariah.
- (iii) There shall be an assurance that the original property invested remains as zakat's assets so as its profits.

- (iv) When there is an urgent need of zakat should be distributed on the desperate needs of the asnaf, the property invested must be readily liquidated.
- (v) Should be done in due diligence to ensure the security and sustainability of the zakat property.
- (vi) Must be done by a group of experts in the related areas with the approval of the authority.

In view of the above conditions imposed on the zakat investment, the study proposes some considerations to be made with regard to mass housing development using zakat fund:

- 1. A master plan of zakat distribution based on an updated database of eight *asnafs* with some percentages allocated for contingencies;
- 2. Adopting list of Shariah-compliant securities issued by the Shariah Advisory Council of the Securities Commission Malaysia;
- 3. Employing experts in real estate planning and investment for their views

- on the viability, profitability and sustainability of the investment;
- 4. Bond by the government to ensure liquidity in a time of urgent needs of the *asnafs*;
- 5. Collective decision of the experts from various stakeholders and authorities including a reference to physical plan and other national policies;
- 6. Collaboration with external and internal funders for progressive zakat development;
- 7. Empowerment of Mufti's Office as a Shariah Advisory Board to zakat housing development.

Given the strict conditions for zakat investment that may affect housing provision using zakat fund, each element in construction procurement processes must be made shariah compliant. Table 2 proposed areas require fatwa as an enabler to zakat housing. This consideration is important towards producing shariah standard on zakat housing construction procurement.

Table 2. Construction Procurement Processes and Areas Require Fatwa for Zakat Housing

ELEMENT		AREAS REQUIRE FATWA FOR ZAKAT
		HOUSING
1.	<u>Initiation/ promotion</u>	
	The processes of recognising the need for a facility.	Feasibility study of the zakat housing projects to justify the usage of zakat fund and the needs to it.
2.	Funding  The provision of the finance required in order for the project to be undertaken.	Tawaqquf – using zakat surplus to fund wholly or partially zakat housing projects other than other sources of fund and construction procurement system available.
3.	Design  The translation of the requirements of the initiator/promoter into drawings and specifications to facilitate construction. The design may be sub-divided into concept/schematic design, detailed design and specialist design.	House design that meets the concept of <i>sakinah</i> (peacefulness) in Islam. <i>Sakinah</i> is associated with <i>maskan</i> that means dwelling unit; from the physiological, physical, cost, internal and external factors.

4.	Statutory Approval	
	The processes of obtaining permissions	Guideline to Local Planning Authority and other
	from the relevant authorities to initiate and	agencies in considering the planning approval for the
	to construct a facility and upon its	zakat housing towards shariah compliant.
	completion occupy and/or use the	
_	completed facility.	
5.	Tendering	
	The process that is used to obtain offers	Permissibility of tendering in Islam based on the
	leading to a contract between a client and	principle of fairgrounds relating to tender documents,
	contractor, a client and consultant or a	tenderers, method, and award.
6.	contractor and subcontractor.  Construction	
0.		The welfare of workers at the construction site
	The processes of physically fitting the various components of a facility together, to	according to Islam; work schedule that allows them to
	form a final structure. Construction may be	perform solat, place for solat, cleanliness, gender
	sub-divided into the management of	relationship, wages/salaries, spiritual inputs, training
	construction and construction products.	etc.
7.	Risk Allocation	
	The susceptibility of each of the above	Detailing the risk management aspect in the fatwa
	generic functions to varying degrees of risk.	issued on the permissibility of investing zakat fund and
	The degree of risk is dependent upon the	extending it to zakat housing projects.
	type of procurement system used and the	
	individual functional roles.	
8.	Maintenance & Management	
	Managing and maintaining the asset and	Inheritance ( <i>faraid</i> ) of the zakat house.
	property for sustainability, functionality,	Applicability of the Strata Management Act 2013 to
	and value of money	zakat housing projects.

Source: Adapted from Khairuddin Abdul Rashid, 2002, p.62.

The Fatwa Committee has been authorized to prepare fatwa on any unsettled or controversial question of or relating to Hukum Syarak on its own initiative under the administration of Islamic affairs Enactment. Therefore, it is timely for shariah standard to be produced with regard to mass housing development using zakat fund detailing the existing fatwa on investment of zakat. This attempt could be in a kind of buying a low-cost house for the transit of asnaf and could also be establishing a collaboration with wakaf to provide a house or accommodation to asnaf and needy In this respect, the issues of Muslim. bankability and inheritance ownership, require attention from the religious authorities.

#### **CONCLUSION**

Zakat is a fixed obligation in Islam but *ijtihadi* in its implementation. In the pursuit of achieving its objectives as social insurance, the authority that governs zakat must be pro-active working hand in hand with other stakeholders including Mufti's office. Fatwa is seen as a reference point to zakat development towards uplifting the living conditions of the recipients in which housing provision is one of the agenda.

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