

Juristic Discourse on the Delay in Payment and Distribution of *Zakat*

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Abstract: The purpose of *zakat* is to cater the needs of specific recipients thus it should be paid by Muslim then redistributed back to the recipients immediately. Any delay will affect the welfare of the recipients. This paper attempts to examine this issue according to the four Sunni main schools of *fiqh*. This includes the definition of the immediacy and delay in the payment and redistribution of *zakat*, the permitted delays and its consequences. The paper finds that majority of Muslim jurists compel the immediate payment of *zakat*, while others not. The Muslim jurists also had explained critically a wide range of issues relating to the delay problem especially in the payment of *zakat*.

Key words: *Zakat* • Fiqh al-zakat • Comparative jurisprudence • Distribution of *zakat* • Delay of payment

INTRODUCTION

Zakat in Islam is not just an individual ritual obligation between human to his God like prayers or fasting. Instead, *zakat* is also social obligation from qualified Muslim to other Muslim who is in need. The obligation of *zakat* is based on various commands in the Quran and Hadith and there are vast discussions of the jurists on many technical issues relating to its payment and distribution. The nature of *zakat* is to pay a certain amount of wealth from a certain kinds of wealth to specific recipients when the wealth reaches the designated minimal amount of wealth (*nisab*) for a full cycle of a lunar year (*hawl*). In general when *zakat* is due, it is an obligation to a Muslim to pay *zakat* on time to satisfy his religious duty as Islam always encourages any immediate action in doing good things. Allah says in the Quran in *Surah Ali Imran* (3), verse 133, “*And hasten to forgiveness from your Lord and a garden as wide as heavens and earth, prepared for the righteous*”. In line with the verse, Yusuf al-Qaradawi asserts that, the immediacy of *zakat* payment is highly commended

since human is known to be greedy and parsimonious. Moreover, delay of the payment will affect the rights of the needy [1].

However, from a thorough perusal of the classical books of *fiqh*, we find that there is no unanimity among the classical jurists on the point of time when *zakat* should be paid. Some of them claim that *zakat* should be paid on immediate basis while some assert that it can be delayed. This has been a subject of dispute among the jurists since the disagreements on the duration of delay are also noticed within the group of jurists with the view that the payment can be delayed.

Immediacy and Delay in the Payment of *Zakat*:

In general, majority of jurists excluding some Hanafi jurists agree that *zakat* should be paid on immediate basis [2]. This means that once the requirements are fulfilled by the eligible possessors of zakatable wealth, the *zakat* must be paid immediately to the recipients themselves or indirectly to the state or its appointed representatives who act as a medium for the recipients.

Besides, the immediacy of payment as discussed by the jurists also imply that the *zakat* due must be paid completely, with the whole amount of payment received by the recipients. Thus, anything leads to delay such as instalment to the recipients is prohibited. The same prohibition applies to the action of combining different types of wealth for a conjoint payment which requires delay for the reason that the completion of *hawl* for one of the wealth is not fulfilled yet [3]. As a consequence of the delay, the payer is demanded to substitute the wealth if it is damaged upon the waiting of the *hawl* of the other wealth as in the above stated case. This is because he had refused to pay *zakat* which has become an obligation to him immediately similar to the case of late returning of *wadi'a* [4]. Unlike this usual interpretation of immediacy, Ibn Qudama, however allows a period of payment until the arrival of the next *hawl* and considers it still in the axis of an immediate payment [5].

On the other side, for jurists who permit delay, the period of payment allocated varies among them. Basically, the payment is allowed to be made after the completion of the *hawl* at any time in the future during the lifetime of the wealth possessor as long as the owner has an adequate time to perform it [6]. This is termed in Islamic jurisprudence as *wajib muwassa'* (obligation that can be delayed). The main reason behind jurist dispute on the matter is the absolute command (*al-amr al-mutlaq*) found in the verses that rule the payment of *zakat* which say, "... And they must render the dues that are proper on the day that the harvest is gathered ..." (Quran (6): 141) [1] and "On the wealth take alms ..." (Quran (9): 103).

Even though the absolute command in the verses may not necessarily signify an act of immediate payment since it neither determines the time and place of payment, those who insist on immediate payment argue that other factual evidences (*qarina*) found in other evidences (*nas*), have implicitly indicate the obligation of immediacy. Among the factual evidences are the urgency of need of the poor [7] for their lack of basic needs and their probable loss of benefit due to payer's death, loss of wealth or his inability to pay in the future. Delay in payment also would create a conflict in payments since *zakat* is a repetitious obligation (*ibadah*) similar to prayer and fasting, for delay means crossing over to the next payment. A delay also will be against the obligation of the payment, whereby an obligation entails a punishment for neglects. Hence if a delay is possible, the venue for punishment will not exist thus negating an obligation [5].

On the contrary, the latter group maintains that the absolute command in the verses is simply a command of obligation and does not conclude immediacy or delay [8]. This disagreement actually originates from the conflicts between the jurists regarding the theory of *al-amr* (commands) in the *nas* whether the obligation must be immediately executed or can be deferred. The conflicts led to three stands: as for the Malikis and the Hanbalis they see that *al-amr* requires immediate performance, meanwhile for the Hanafis, it does not necessarily require immediate performance and for the Shafis it neither require immediate nor delay performance. For the second group of jurists it is permissible to delay the performance as long as the performer presumes that he can perform it in the future times. For the third group of jurists they maintain theoretically that it will depend on the surrounding indications and clues which lead to whether it implies immediacy or delay because *al-amr* itself does not make any preference of immediacy or delay [9].

In the case of *zakat* payment, majority of jurists conclude that the immediate payment is compulsory since they stick to the theory of *al-amr* as maintained by the first and third group as stated above. Whereas the Hanafis maintain that it can be delayed which is in line with the theory of *al-amr* that they hold above.

After all, we find that the position of the majority of jurists which prohibit the delay in *zakat* payment without any legal excuse is closer to the divine purpose of *zakat* to help the recipients. The classical texts of the jurists of every school of laws provide us with many statements of the jurists who insist on the immediacy of the payment. On this Yusuf al-Qardawi notes, "In my opinion it is not commendable to ignore the position of the jurists of the schools regarding this matter. It is tolerable only if the delay is for one or two days, or even several days as implied in the principles of making ease (*al-yusr*) and avoid difficulties (*raf' al-haraj*)" [1].

In modern days if *zakat* is well institutionalised and integrated in the state system of *bayt al mal* the immediate payment will make the system runs effectively and will certainly benefit the recipients.

Ability to Pay and its Effect on Delaying Payment: As noted above, for the majority of jurists the time of obligation to pay *zakat* starts once all of the requirements to pay *zakat* are fulfilled. These requirements are basically the same among the jurists except the requirement that owner also must have the ability to pay (*imkan al ada'*) as added by Abu Hanifa, Malik and the

Shafi'i. As a result of this, among the jurists who require immediacy, the starting period of payment that is considered not to be a delay varies depending on their views whether payer's ability to pay is a prerequisite for *zakat* payment or otherwise.

Abu Hanifa, Malik, and the Shafi'is, for example hold that the immediacy of payment only takes place once the ability to pay is present even though all of the other requirements for paying *zakat* are already fulfilled beforehand. This ability to pay depends on the availability of wealth from which the owner will use to pay *zakat*, the arrival of collector and also the existence of the designated recipients [10-13]. In the event that the zakatable wealth is not with the owner for example, he is not obliged to pay from his other wealth, even though transfer of his zakatable wealth from another state is allowed in this instance [2]. The requirement that there exist a person to pay too, will be fulfilled by the existence of the recipients, the ruler or his representative. The Shafi'i even allow the payer to settle other important matters like returning a deposit under his safe-keeping (*wadi'ah*) first before fulfilling the payment [2].

While other jurists, mainly the Hanbali jurists who do not consider the ability to pay as one of the requirements, hold that the moment a payer who is a free Muslim owns a *nisab* and reaches a *hawl*, the obligation is enforced [5]. Ibn Qudama in supporting his opinion quoted a Hadith which states that *zakat* on wealth needs to be paid once its *hawl* is completed. He also adds that *zakat* is an *ibadah* and like prayer and fasting, the ability to perform (like a sleeping person for praying and a sick person for fasting) is never a prerequisite [5].

Immediacy and Delay in the Distribution of Zakat:

The above insistence on immediate payment of *zakat* by the owners will explicitly include the distribution of *zakat* to the recipients if the owners pay the *zakat* directly to them. When the state becomes a mediator between the owner and the recipients however, a new venue for delay, that is delay in distribution, might exist.

There are not many instances found in the classical *fiqh* regarding the subject of state's delay in the distribution of *zakat*. Perhaps a good explanation for this is the treatment of distribution as part of the process of the payment of *zakat*. Take an example, the case where some jurists had defined '*al-amilin 'alayha*' as collectors of *zakat* which can be assumed to also include those who disburse *zakat* since it is historically proven that they have been disbursing *zakat* since the Prophet's time [8].

Given the state's role as a representative of the recipients and the right it has in performing an *ijtihad* for the benefit of the ummah, it is expected that in this matter also, the state is given the liberty to perform *ijtihad* when necessary. This is the reason given by the Malikis for example, in allowing a ruler to delay distribution of *zakat* until the next *hawl*, if necessary [14]. Umar also for the matter was said to delay the distribution of *zakat* on livestock where he brought them to a fertile land and only disbursed them a year later [15].

Hence, we may conclude that the state may exercise a delay if it deems it beneficial to the ummah. This view is further supported by the multiple permitted delays given to the state mentioned by the jurists.

Permitted Delays: The jurists however still allow some rooms for delay in some circumstances that may benefit either the payer or the designated recipients, where the benefit may vary from lessening a hardship to accommodation of payment. Notably the permitted delays are at both ends of *zakat* collection and distribution, and may be initiated by either the owner or the state.

For the Shafi'i and the Hanbali jurists a delay will be possible if the payer is afraid of a hardship that might befall him or his wealth if he pays immediately. This is based on a Hadith that disallows harm and detriment. Delay is also allowable for other interests like waiting for those who are needier, provided that the recipients' need has not amplified [12]. Ahmad goes further by also allowing the state and distributor to delay distribution when there are public needs (*maslaha*) like in times of catastrophe [15]. Ibn Qudama, also agrees that delay is permitted if the payer wants to distribute to worthier relatives or those in more needs, and points out that the amount involved in the delay must be insignificant [5].

Abu Hanifa views that payment may be postponed if there is no urgency in immediate payment because the command for payment is absolute and thus not referring to any period of time or place [5]. As for Malik, delay is possible if when *hawl* arrives, payer is traveling and his wealth is at home which is in another state. The delay is allowed until he arrives back home, but if he has enough resources to pay his *zakat* at the time, then he is required to pay it immediately [16]. Some of the jurists also pointedly insist on a moment of delay only, which ranges from a day, to several months of delay.

Consequences of Delay: The prohibited delay has two main effects, namely religious and financial consequences. The majority of jurists believe that a delay

in payment will create an offense in Islamic law, whereby the repercussions include sins and penalty upon the owner. Punishment for the delay varies from invalidity of testimony, disciplinary punishment and seizure of wealth for refusing to pay; to being considered as a disbeliever, thus killed and seizure of his wealth is eligible when he refuses to accept the obligation. It is also worthy to note that the ruler is allowed to seize the *zakat* due no more than necessary only [12].

The owner's obligation to pay *zakat* remains until the due is fully settled regardless of his information about the obligation, the place he is staying whether in an Islamic or non-Islamic state and whether the delay is caused by his neglect or otherwise. The only circumstance that allows an obligation to be waived is when the payer has no wealth left to pay for the due. This is the view of the majority of jurists [12].

The determination of rate of payments and the number of payments that the owner has to settle however, vary among the jurists depending on several inter-related factors, namely;

- the number of years of delay;
- jurists' opinions whether *zakat* obligation is associated with the substance of the zakatable wealth (*ayn*) or related to *dhimma*, that is the liability of the person who is in possession of the wealth;
- the amount of wealth available to pay for the due;
- the owner's contribution towards the delay;
- the owner's contribution towards the damage of the zakatable wealth during the period of delay; and
- whether the owner is still alive or has deceased.

The jurists' opinions whether *zakat* is associated with *ayn* or *dhimma* would mainly determine the number of payments over the years of delays and depending on the availability of the zakatable wealth, the rate of payment will be decided.

It is worthy to note that, in calculating the amount of delayed *zakat* dues over the years, the majority of jurists refer to the accumulation or reduction of wealth at each particular year of obligation, and not those at the point of time of payment, except when at the point of payment, there is a reduction of *nisab* either due to damage, loss, or negligence [12]. Accordingly, for any delay that is above a year, there would be two possible states of zakatable wealth, namely, a reduction of *nisab* after *zakat* is paid for the earlier delayed years, and a state of equivalent to or above the *nisab*. The later state may be contributed by a continuous accumulation of zakatable wealth throughout the delayed years or simply that the zakatable wealth is outstanding in amount.

Jurists who hold that *zakat* obligation is associated with the substance of the zakatable wealth (*ayn*), require that the due be deducted from the zakatable wealth itself, hence any reduction in *nisab* in consequent years will mean that the payer will no longer be obliged to pay. For example, an owner who has 40 goats and has not paid his due for the past three years, has to pay one goat only for the first year of delay since for the last two years, his wealth then is considered to be below *nisab*. This is the view of the majority of jurists including Abu Hanifa, an account of Ahmad, the Malikis and the Shafi is [2]. By contrast, for those who hold that the obligation is associated to owner's *dhimma*, they insist that the owner has to pay a goat for each of the three years, since other wealth can be used to pay the due thus ensuring that the amount of zakatable wealth (in this case the goats) will preserve throughout the years [2].

Likewise, for the first view, the due for a continuously increasing zakatable wealth throughout the years has to recognize any due paid for the previous years first. For example, say that an owner has not paid his *zakat* due for the past two years, where in the first year he had 40 goats and in the second year his goats are eighty. His due then would be a goat each for both of the years. As for those who hold that *zakat* may be paid from his other wealth, they maintain that the owner has to pay according to the amount of zakatable wealth owned in each year. This basically for the case above will necessitate the owner into paying a goat for the first year and another two goats for the second year [2].

Requirement for replacement for the due damaged or lost during the delay with or without neglect either for owner or collector for the majority of jurist is obligatory. The perpetrator is responsible to pay for the damages or losses incurred depending on the availability of their wealth. Ahmad holds that this is the case because delay itself is considered as an act of negligence. Accordingly for the jurists who view that *zakat* is an obligation upon oneself (*dhimma*), owner still has to pay the full amount due because he can pay it from his other wealth even if his zakatable wealth is damaged or lost [17].

In the event that the owner has deceased, the majority of jurists hold that *zakat* has to be paid from his legacy even if there is no *wasiyyah* from him. However, Abu Hanifah sees that if no *wasiyyah* is made the *zakat* is not paid from his legacy. He is considered to die sinfully because of not obeying the obligation of *zakat* [1]. In the case the legacy left is not enough to cover both *zakat* and the other man-debt (the right of man/*haq al adami*) the jurist's opinions have been divided into

three: First, the man debt must be settled first, second, the *zakat* that must be given priority, and the third one, both *zakat* and man-debt must be paid proportionately [3].

From the various views regarding on the problem, we may argue that the penalty and replacement for the payment or distribution problem has been clearly discussed and agreed by the Muslim jurists.

Zakat Distribution Delay: Malaysia's Experience:

The enactments or regulations related to the *zakat* laws in Malaysia show that delay in the payment of *zakat* is recognized as an obligation upon the payers. For instance, such has been stated in Section 54 (1) of the Islamic Religious Council and Malay Custom Enactment 1994 of the state of Kelantan emphasis the obligation of owner to hasten the payment of his *zakat* [18].

Efforts have been made by the institutions to assist the *zakat* observance and consequently its punctuality. Information regarding the eligible payers and the amount obliged are dispersed in both printed and virtual media. Supports are provided to assist owners in performing their obligation like calculators to count their *zakat* and payment counters at multiple venues and medium and. In Wilayah Persekutuan and Selangor for example, the institutions responsible to collect *zakat* has noted clearly in their websites, the definition of the person who is considered to be eligible *zakat* payers. They also provides online calculator to assist payer to calculate their obligation [19].

There also exist legal and administrative mechanisms at the SRICs (State Islamic Religious Councils) that may determine eligible payers, the amount involved and the possible scheduled time of payments. The SIRC were accorded the rights to collect the information needed to identify eligible payers and the expected *zakat* from their zakatable wealth whether in terms of the time of payment or the amount involved [20].

Some collection and distribution centres like in the Wilayah Persekutuan, Selangor, Penang, Negeri Sembilan and Kedah has comprehensive computer systems that can record the information of payers and recipients as well as the amount and history of payments or receipts. The PPZ MAIWP has for example a trace system which can post reminders to possible payers about a month prior to the expected date of payment [21]. The system's objective however is mainly to facilitate its collection and distributions and not with the intent to ensure payer's punctuality in their payments. Still the delay of payments by the owners is not easy to detect given the

characteristics of their zakatable wealth which may be obscure in nature, and the possible inaccessibility of its information.

The SIRC also were given the right to issue notices to possible payers which request them to respond in certain period of time, after which they may pursue with an investigation to seek the reason of non-response or to check the eligibility of the candidate. The mechanism however in some cases are not utilized by the *zakat* collectors and was said to be due to their inefficiency [22]. In respect of delay in the distribution of *zakat* collected by the *zakat* institutions, many studies have raised concerns about consistent high retaining ratios between collected and distributed *zakat* where quite substantial amounts of *zakat* were found to be retained and not disbursed at the same year of collection to the recipients [23-24].

The delay was attributed to large amount of payment received at the end of the year thus limiting the time available to wholly distributing them especially through indirect distributions like programmes and activities aimed at selected groups of recipients instead of individual recipients. Sometimes the collected *zakat* was unable to be totally distributed even after utilizing all the methods of distributions allowed by the SIRC for example the balances from the annual capital budgeting approved for development projects [25].

CONCLUSION

From the above discussion, we might notice that the majority of classical jurists agree not to allow any delay in the payment of *zakat*. Nevertheless, the prohibition is eased when the delay is beneficial to the recipients or in certain circumstances when the delay itself is unavoidable. Still the jurists insist that when the delay occurs, the payment of *zakat* eventually must be settled and reached the rightful recipients. This issue has to be comprehended not only by the eligible payers of *zakat* but also by the institutions whose have been appointed to manage the collection and redistribution of *zakat* to the rightful recipients. It is therefore equally important that the SIRC which is entrusted to collect the *zakat* ensures the process of *zakat* redistribution works efficiently without any delay for the benefit of the recipients.

REFERENCES

1. Al-Qaradawi, Y., 2000. Fiqh Al-Zakat. Beirut: Mussasah al-Risalah, v. 2.

2. Al Nawawi, n.d., *Rawdat al-Talibin*. Beirut: Dar al-Kutub al-Ilmiyyah, v. 2.
3. Al-Maqdisi, 1972. *Al-Sharh al-Kabir*. Beirut: Dar al-Kitab al-Arabi.
4. Qasim, N.M., 2006. *Al-Qawanin al-Zamaniyyawa al-Makaniyya li Daf' al-Zakat*. In *Al-Iqtisad al-Islami*. Jeddah: Majalla Jami'a al Malik 'Abd al-'Aziz.
5. Ibn Qudama, 1972. *Al-Mughni*, Beirut: Dar al-Kitab al-Arabi, v. 2, pp: 539-541.
6. Ibn al-Humam, 1995. *Sharh Fath al-Qadir*. Beirut: Dar al-Kutub al-Ilmiyya.
7. Ibn 'Abidin, 1994. *Radd al-Mukhtar*. Beirut: Dar al-Kutub al-Ilmiyya, v. 3, pp: 191-192.
8. Al-Kasani, *Bada'i al-Sana'i*.
9. Al-Zuhayli, W., 1986. *Usul al Fiqh al-Islami*. Dimashq: Dar al-Fikr, v.1, pp: 229-231.
10. Al-Bahuti, 1982. *Kashshaf al-Qina'*. Beirut: Dar al-Fikr, v. 2, pp: 255.
11. Al-Maqdisi, *Al-Sharh al-Kabir*, v. 2, pp: 464.
12. Al-Nawawi, *Kitab al-Majmu'*, v. 5, pp: 306-307.
13. Al-Azhari, 1970. *Jawahir al-Iklil*. Cairo: Dar Ihya' al-Kutub al-Arabiyya, v.1, pp: 122.
14. Al-Hattab, 1992. *Mawahib al-Jalil*. Beirut: Dar al-Fikr, v. 2, pp: 363.
15. Abu-Ubayd, 1934. *Kitab Al-Amwal*. Cairo: Dar al-Kutub al-Misriyya, pp: 592.
16. Sahnun, 1994. *Al-Mudawwana*. Beirut: Dar al-Kutub al-Ilmiyya, v. 1, pp: 336.
17. Al-Sarakhsi. *Kitab al-Mabsut*, v. 2, pp: 174-176.
18. Section 54(1), Islamic Religious Council and Malay Custom Enactment (Kelantan) 1994.
19. Retrieved Sept 9, 2012 from <http://www.zakat.com.my> and <http://www.e-zakat.com.my>.
20. Section 26-37, Enactment of Zakat (Sabah) 1993.
21. Interview with Encik Razali bin Md Jani, Head of Communication, PPZ MAIWP in June 2008.
22. Yaacob, H.R.M., 2005. *Pengaruh Persekutuan Ekonomi Dalam Menentukan Kaedah Pemungutan dan Pengagihan Zakat*, Dissertation for Master of Syariah, University of Malaya, pp: 164.
23. Mahmud, W., 2001. *Kesan Penubuhan Pusat Zakat Ke atas Pentadbiran Zakat di Negeri Pahang*, Dissertation for Master of Syariah, University of Malaya, pp: 76
24. Karim, Z.A., M.A.S. Zaidi and H. Wahid., 2004. *Pendapatan dan Sasaran Perbelanjaan Dana Zakat di Negeri Perak, Kedah, Selangor dan Negeri Sembilan: Isu dan Cabaran*. In *Prosiding Muzakarah Pakar Zakat*, pp: 79-94.
25. Saleh, A., 1999. *Pelaburan Zakat di Malaysia: Kajian di Batulmal Majlis Agama Islam Wilayah Persekutuan*, Masters Theses, Universiti Kebangsaan Malaysia, pp: 77.