

THE SHARIAH LIMITATIONS TO INVEST ZAKAT FUNDS IN DEVELOPMENT PROJECTS

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محددات الشريعة لاستثمار أموال الزكاة في المشاريع التنموية

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الملخص

أوضح هذا البحث محدودية الشريعة الإسلامية في استثمار أموال الزكاة في مشاريع التنمية، وأظهر أيضا الدور الذي تلعبه الزكاة في تنمية المجتمع الإسلامي بشكل عام. وكان التركيز على الجزء الاقتصادي من خلال مناقشة القضايا التالية: أولاً: دور الزكاة في تمويل الفقراء والمحتاجين من المهنيين بالآلات والأدوات المطلوبة. ثانياً: دور الزكاة في مساعدة رجال الأعمال المتضررين من الأزمات المالية. ثالثاً: دور الزكاة في تمويل المشاريع الإنتاجية تحت عنوان المستفيدين.

الكلمات المفتاحية: الزكاة، الاستثمار، مشاريع التنمية

Abstract

This research clarified the limitations of the Islamic law in investment the Zakat money in the development projects, and also showed the role that Zakat plays in the development of the Islamic society in general. The focus was on the economical part by discussing the following issues: Firstly: the role of the Zakat in financing the poor and the needy professionals by the required machines and tools. Secondly: the role of the Zakat in helping the affected businessmen from the financial crises. Thirdly: the role of the Zakat in financing productive projects and titled to the beneficiaries.

Keywords: Zakat; Investment; Development projects

Introduction

All praise is due to Allah, the lord of the worlds, and may his peace and blessings be upon the seal of messengers, Mohammed, the truthful guide, and upon his virtuous family and companions, and those who follow his guiding footsteps and choose his path of struggle in the cause of Allah until the Day of Judgment.

Islam is a comprehensive religion, as is structures the relation of humans with their lord through worship, and with other humans through social guides, which are inclusive of economic systems.

Economic systems are amongst the pillars of the Islamic foundation placed for society, and amongst the factors leading to this nation's success and development. The Islamic economic system creates a nation independent from others, causing development and superiority of character.

From this, we deduce the importance of Zakah. Apart from its significance as a religious obligation, Zakah is considered to be an economic tool of great value, and one of the main features of an Islamic economic system, as it causes an overall liquidity of property, avoiding the counterproductive idea of keeping it stored, and making it a main source of funding to development and investment projects.

Over the ages, Zakah has been more like a rescue ship from all sorts of poverty and needs. Today, Muslims are in grave need of reviving this great obligation; for poverty has reached its peak, and hunger has torn them apart, even though we are in no shortage of money or treasures, especially oil.

The deficit comes in the form of trustworthy leadership, and that resulted in them helping non others then their enemies, enriching them with our own resources, and leaving poverty to stay as it is.

In these contemporary times, Zakah is just as qualified in playing the same role it did before. For that reason, I chose this topic to research on, hoping that Allah would pave my path to success in doing so, for the sake of serving his divine religion in a field that – in my opinion – still needs much care and research.

This research is divided into two chapters, divided into various sections based on research requirements.

Chapter One

The Meaning of Zakah and its Jurisprudential Ruling

Section One: The Linguistic and Terminological Meaning of Zakah

Part One: The Linguistic aspects of Zakah

Zakah means development and increment, and these meanings are found in Allahs saying: Surah Al Taubah 103, as it purifies people from sin and nurtures their potential rewards. Zakah also comes with the meanings of blessings, complementing, and piety. This includes both matters of this life and the hereafter. The manner in which Zakah is paid is well known, and it is the payment of a portion of one's money to the poor and others with certain conditions (Ibn Al Manzur,1413; Al Zubidi,2001 ; Razi. 1997; Ibn Faris,1999 ; Al Asfahani,1992).¹

Part Two: Zakah as a Terminology

Jurists identified Zakah with a number of definitions, differing in expression and context, but not differing in the overall meaning.

In the Hanafi school of thought, Zakah is “The transfer of ownership of a portion of property to a specific individual, for the sake of Allah Almighty” (Al Midani, 1980).²

In the reference “*Bada’I Al Sana’I*” it is defined as: “Legislatively transferring the ownership of a portion of property to a poor Muslim who is not amongst the Hashimites, and not a man of position, for the sake of Allah Almighty (Al Kasani, 1986).³

In the Maliki school it is defined as follows: Giving out a certain percentage of a specific amount of money with due payments.

Ownership and transfer of ownership (Al Dusuki, 2001)⁴ in the Shaf’I school of thought: “It is a name given to the taking of a certain amount from a specified kind of property based on certain conditions given to certain eligible people.” (Al Nawawi, 2002)⁵ In the Hanbali school of thought: A given right within a certain amount of money eligible for certain groups of people in certain times (Ibn Kadama, 1983).⁶

¹ Ibn Al Manzur, Abu Al Fadl Jamal Al Deen Mohammad Bin Makram: Lisan Al Arab, Beirut, Dar Sadir, 14

- Al Zarbidi, Mohib Al Deen Abu Al Fayd Al Sayed Mohammad Mortada Al Huseini: “Taj Al ‘Arus Min Jawahir Al Kamus”, 10/165, Dar Al Fikr.

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² Al Midani, Abdul Ghani Al Ghoneimi: “Al Libab Fi Sharh Al Kitab, Beirut: Al Alamiya Library, 1980 AD, Pg136.

³ Al Kasani, Alaa Al Deen Abu Bakar Bin Masud: “Bada’I Al Sani’ Fi Tarteeb Al Shar’ai”, 2nd edition, Beirut: Dar Al Kutub Al Ilmiya, 1986 AD, Section 5, Pg5.

⁴ Al Dusuki, Shams Al Deen Mohammad Arafa: “Hashiyat Al Dusuki Ala Al Sharh Al Kabeer”, Dar Ihya’ Al Kutub Al Arabiya, Isa Al Halabi Publisher, Section 1, Pg430

⁵ Al Nawawi, Abu Zakariya Mohyi Al Deen Yahya Bin Sharaf: “Al Majmu’ Sharh Al Madhab”, Reviewed by Adil Abdul Mawjud and others, 1st edition, Beirut, Dar Al Kutub Al Ilmiya, 2002 AD, Section 6, Pg454.

⁶ Ibn Kadama, Muwafak Al Deen Abu Mohammad Abdullah Bin Ahmad Bi Mohammad: “Al Mughni”, Beirut: Dar Al Kitab Al Arabi, 1983, Section 2, Pg433.

Section Two: The Jurisprudential Ruling of Zakah and proof to its Legislative References and the Ruling on the Preventers of Zakah:

Part one: The Ruling of Zakah: Zakah is a main pillar of Islam, and an obligation prescribed to Muslims. There are many proofs to its obligatory nature from both the Quran and Sunnah, and from the consensus of scholars.

Part Two - Proofs from the Quran: Zakah was mention in the Quran several times, and it was matched with prayers twenty-six times. These verses came in a diversity of expressive methods.

In some verses we see the commanding nature of placing Zakah as an obligation, in others we find complementing of Zakah, the clarification of its rulings and secrets, and then warning from neglecting it (Abbas, 1998).¹

Part Three – Proofs from Prophetic Traditions:

Prophetic traditions serve as a confirmation of the obligation of Zakah mentioned in the Quran, in several narrations, such as the following:

What Ibn Omar narrated the Prophet (PBUH) saying:

"Islam has been built upon five things - on testifying that there is no god save Allah, and that Muhammad is His Messenger; on performing *salah*; on giving the *zakah*; on Hajj to the House; and on fasting during Ramadhan." (albukhari 1407)²

CHAPTER TWO

The Verdict on the Investment of Zakat Money in Economic Projects and the Rules Regulating it

The first requirement: The verdict of investing zakat money in economic projects

The investment of the zakat money in economic projects which return an income is a new issue that wasn't known for the scholars previously, as the common practice was to collect the zakat money and distribute it on the people who deserve it and are eligible to receive zakat money.

As for the present time, a huge interest arouses in the investment of zakat money in economic projects especially after the start of major economic projects and the profits they return. Therefore, there has been a lot of research in Fiqh to answer the numerous questions about the religious legitimacy of investing the zakat money or parts of it to establish such major projects to guarantee a continuous income for those eligible. One of the main reasons behind this interest could be the decrease in the zakat money which rendered it insufficient due to the weakness of religious commitment amongst a lot of Muslims.

There are two opinions among present time scholars concerning the investment of zakat money in economic projects which yield income:

The first opinion: The first group opted to legitimize the investment of zakat money in economic projects whether the zakat money is sufficient or not. Some of these scholars are:

Another group of scholars legitimized the investment of zakat money in such project with the condition that the money spent in those projects is taken from the excess money after fulfilling the need of the poor and all the expenses of distributing zakat. The following scholars went for this opinion:

While Dr.Wahbah Alzuhailli stated the condition that the investment shall be made in the cause of Allah.

The second opinion: the second group of scholars came to the conclusion that it's illegitimate to invest the money in economic projects. Some of those scholars are:

The first group based their decision on the following:

- 1- Depending on the Hadiths of prophet about hard work and encouragement to invest. Such as the hadith narrated by Anas bin malik (may Allah be pleased with him) said that when a man of the Ansar came to Prophet Muhammad (may Allah's blessings and peace be upon him) and begged

¹ Abbas, Dr. Fadl Hassan, "Anwar Al Mshkat Fi Ahkam Al Zakat", 1st edition, Amman: Dar Al Furkan, 1998 AD, Pg9

² Sahih Al Bukhari, Book of Iman, Section of Prophet's (PBUH) saying, "Islam has been built upon five things". Hadith number 8, Section 1, Pg13.

from him, he asked him whether he had nothing in his house. When he said that he had a piece of cloth, which he used for wearing as well as for spreading on the ground, and a wooden bowl from which he drank water, he told him to bring them to him, and when he did so he took them in his hand and asked, "Who will buy these?" When a man offered a dirham he asked twice or thrice. "Who will offer more than a dirham?" and he gave them to a man who offered two dirhams. He then took the two dirhams and giving them to the Ansari he said, "Buy food with one of them and hand it to your family, and buy an axe with the other and bring it to me." When he bought it, Allah's Prophetic Messenger fixed a handle on it with his own hand and said, "Go gather firewood and sell it, and don't let me see you for a fortnight." The man went away and gathered firewood and sold it. When he had earned ten dirhams he came to him and bought a garment with some of them and food with others. Then Allah's Prophetic Messenger said, "This is better for you than that begging should come as a spot on your face on the Day of Resurrection. Begging is right for only three people: one who is in grinding poverty, one who is seriously in debt, or one who is responsible for blood-wit he finds it difficult to pay." Based on this Hadith, in which the prophet encouraged the poor man to invest his money (even if it's a small amount) to earn a better living instead of asking for money, and similar Hadiths ; the scholars deduced that investing the money of zakat is encouraged as it will benefit the poor in both cases.

- 2- They based their deduction on the broadening of the rule of "in the sake of Allah" to include all forms of good, and investment will be beneficial to the eligible poor.
- 3- Supported their judgment on the measure of military projects and military machines, and that's taken under the description of for the sake of Allah, when there is the necessity and need to do so. Based on that, some of the scholars justified investing the money of zakat in economic projects in the condition of necessity.
- 4- Though the old scholars obliged the individual ownership, the ownership can be given to a group of eligible people.
- 5- Taking the measure of the money of orphans. As the prophet (s.a.w) stated that it is permissible for the guardians to invest the money of orphans. The money of zakat is neither more important nor less forbidden than the money of orphans. The meaning of this condition is that the money can be managed by a zakat body for a certain number of zakat eligible people without giving them the right to sell the project and distribute it.
- 6- The people eligible for zakat were mentioned in Qur'an. However, the way the money gets to them is not mentioned. Therefore, the important matter is that the money reaches the eligible people the method is of no significance.
- 7- Based on the acclaimed judgment at the current time, what is originally illegitimate can be considered for necessity during our present days.
- 8- Based on the Shafie opinion to enrich the poor and provide them with sufficient money for a lifetime. The governments can use the zakat money to build factories, industrial institutes, commercial institutes and so on...to fulfill the needs of the poor or a group of them and made Waqaf for them (hence they benefit from the revenues but are not allowed to sell the properties).

The second group based their decision on the following:

- 1- The investment of zakat money might lead to the loss of this money as the trade might lead to profit or loss and the guardians of zakat money are not allowed to take that risk with the money of the poor.
- 2- The money invested in agricultural, industrial, and economic projects will delay the delivery of the money to people eligible for zakat while it should be delivered immediately.
- 3- A large portion of the zakat money would be spent for administrative works, which would lead to the loss of the money of the poor.

Justification of the second group “preventions”:

The preventions group justified its opinion on the investment of Zakat money on the following terms:

- 1- Investment of Zakat money could subject it to loss, because business capital is subjected to loss just as it is subjected to profit (Abdullah).¹ It is not the right for those who are in charge of handling the Zakat money to subject it to risks that could harm the interest of the poor in that money.
- 2- Investing the Zakat capital in manufacturing, commercial and agricultural projects, and waiting for the profits from these projects could delay the Zakat reaching those who are dependent on it, and that would be against the opinion of the majority of scholars who agree that Zakat is compulsory immediately for an individual and cannot be delayed (Ulwan).²
- 3- The investment of Zakat capital leads to a huge sum of it spent on operational and administrative fees, which leads to the loss of money that could have gone to those in need (Uthmani).³
- 4- The money collected for Zakat is considered a trust in the hands of those in charge of collecting it, until it is delivered to those eligible, the objective behind this trusteeship relationship is to preserve and not to act and investment is an action thus it is not allowed (Abdullah).⁴
- 5- Investing Zakat leads to eliminating the entitlement of the individual eligible to this money, this is against the opinion of Muslim jurist who condition entitlement of the eligible individual in Zakat, based on the language of the order in the Quran which clearly specifies the entitlement of the individual (Lam Al-Tamlik). Al-Tawba:60.

Response to the preventions:

- 1- Objection to subjecting the Zakat capital to loss, the response is as follows: The possibility of risk in commercial trade does not limit or prevent trade, if this was true an individual would not use his own capital in business, just like risk is possible so is profit and the increase of this capital. Furthermore jurists in the past allowed for zakat money to be invested in a craft tools or goods that would bring the individual profit, it was not prevented because of the possibility of risk, jurists also allowed for trading of Zakat capital for profit during transfers (Al-Wansharisy,1997)⁵, this trade is also subjected to the possibility of profit or loss. Before embarking on a business investment a thorough economic study or what is called a (Feasibility study) should be conducted and based on this study only profitable projects will be selected and unprofitable high risk projects will be avoided. It is important to employ a reliable body of administrators whom can be the eligible individuals themselves, which increase their reliability and responsibility for this capital (Al-Khyat).⁶ Measures like diversifying the projects and fields to decrease risk, along with limiting the amount invested are encouraged. These investments in a year will certainly come to specific profits which will benefit all sides.
- 2- The assumption that investing the money will delay the payment of Zakat and is against the immediate condition of Zakat, the reply is that this condition has been fulfilled with the payment of the money due to the governmental authorities or institutions in charge of collecting Zakat (Al-Qardawi).⁷ Also those responsible can delay Zakat for important reasons, and the proof to this statement is the narration be Anas Ibn-Malik “” (Al-Bukhari,1407) ⁸thus it is allowed for those responsible (imam) to delay Zakat to the next year if he sees appropriate (Ibn

¹ Abdullah, Adam : *Mujma' Al-Fiqh Maazine* 3/1171

² Ulwan: *Ahkam Al-Zkah*. p-97.

³ Uthmani,Taqi: *Mujma' Al-Fiqh Magazine*.3/1135.

⁴ Abdullah, Adam : *Mujma' Al-Fiqh Maazine* 3/1171.

⁵ Al-Wansharisy: *Mi'yar Al-Mu'rab*, chapter 1, p-382

⁶ Al-Khyat, *Mujma' Al-Fiqh Magazine*, 3/1190.

⁷ Al-Qardawi, *Mujma' Al-Fiqh Magazine*, 3/1183.

⁸ Al-Bukhari, *Sahih Al-Bukhari*, the book of Zakat, haidth no. 1502, p- 332

- Hajar,1424).¹ Many of the contemporary scholars are of the opinion that it is permissible to delay Zakat payment for a period up to a year if the Zakat collecting bodies require that much time (Al-Hata, 2001)² but not all of the payments should be delayed, emergency and sensitive cases should be given precedence.
- 3- The loss of a large sum of capital on operational and administrative fees, the response to this judgment is that this fee can be counted as (Al-Amilin Alaiha) those who work for Zakat, those who are in charge of the investment should try to decrease the spending as much as possible. Despite all of these precautions the money spent in this area does not go to waste, but provides work opportunities for many people, who could have been suffering from poverty or unemployment otherwise. Some scholars suggest that the sum allocated for administrative costs should come from voluntary payment and charity, and that these costs can be added to the price of the goods to cover these expenditures.
 - 4- Saying that the body in charge of collecting the Zakat does not have the right to perform any transactions using the capital, the answer to this opinion is that it is not a universal opinion, many jurist have provided text allowing this action, for example the trading of currencies or transferring it in the opinion of the Maliki, Hanbali and Shafi (Alzerqa).³ Similar to the allowance of trade in emergencies and need, investment is also allowed.
 - 5- The objecting on the investment of Zakat money because it is against the condition of ownership by those entitled as agreed by most scholars, the argument against it is that it is not a matter of concise between all scholars, in fact they have differed into four groups and sayings (Al-Khurshi, 2000).⁴ Thus the issue of ownership is not a point with which all scholars agree in the past and today, we can also examine group ownership which is suggested by current scholars (Al-Marghanani, 1419).⁵

These are the opinions of the current scholars in investment of Zakat, and after showcasing the opinion of those who prevent it and those who allow it, I am in favour of the allowance argument concerning the investment of Zakat because of the convincing evidence supporting this opinion. Also it is the opinion of many of today's most noted scholars lead by Dr.Qardawi and Shaykh Alzerqa. The following is a summary of the opinion provided by the Muslim convention of jurists after an in depth discussion joined by more than twenty scholars, and it was agreed unanimously " it is permissible on principle the investment of Zakat capital in projects that end with the ownership of that capital by those eligible for Zakat, and it is to be left for the responsible authorities to decide its allocation according to the urgent needs of the eligible individuals, and to provide the appropriate insurance in case of loss, And Allah knows best" (Al-Abadi,Abdulsalam,).⁶ this opinion was also issued from the third forum on Zakat which is under the world association of Zakat, held in Kuwait in 1992, the forum ended on the following " the forum confirms the opinion of the convention of Muslim jurists on the permissibility of investing Zakat capital in profitable projects, it is allowed on principle in the condition that certain guidelines will be considered (Abdulsalam)⁷. The following of this opinion is a practice of the true meaning of Zakat which is to help the poor, Imam Al-Shatibi Explains in Al-Muwafaqat what is meant by the word Zakat that it is "protect the sole from the vice of scarcity, to take care of the interests of those in need and to revive those soles which are prone to damage"(Al-Shatibi,2004)⁸

The second requirement: Rules of investing Zakat Funds

¹ Ibn Hajar, *Fath Al-Bari*, chapter 7, p- 135.

² Al-Hata, *Mawahib al-jalil sharh mukhtasar khalil*, chapter 2, p-364.

³ *Mujma' Al-Fiqh Magazine*.4/25.

⁴ Al-Khurshi, *Hashiyat Al-khurshi*, chapter 2, p-526

⁵ Al-Marghanani, *Al-hidayah*, chapter1,p-113.

⁶ Al-Abadi, Abdulsalam, *Mujma' Al-Fiqh Al-Islami Magazine*.3/1188

⁷ *Mujma' Al-fiqh magazine*,3/1206

⁸ Al-Shatibi, Ibrahim bin musa, (d.970 Hijrah): *Al-Mufaqqat in usul al-shariah*. Chapter 4,p-285.(Dar Al-Ma'rifah: Lebanon)

If the scholars had decided on the eligibility of investing Zakat funds, then there would exist a set of rules and conditions to be satisfied, which are as follows:

1. That there be a real benefit as a result of the investment, which will belong to those eligible for it, like a permanent income to help them, or as a means of increasing the available funds for Zakat in case of scarcity, and that the benefit obtained from these projects must cover the basic needs such as food, clothing, shelter, medicine, and other necessities, and that the amount of the benefit must be estimated and determined by someone adept.
2. That the funds obtained from Zakat must not be completely spent in investment projects, and a portion of these funds must be converted to cope with urgent matters, which require immediate usage of Zakat funds.
3. That Zakat funds should be invested in legitimate ways and in legitimate matters, and should not be diverted into trading that is haram, or dealing with Riba, which is prohibited in investment matters in general, and is a top prohibition in Zakat funds.
4. That all measures must be undertaken in order to ensure that the projects' assets and revenues must benefit those eligible for Zakat, and not others, such as the rich, unless if they invest in the benefit of the project.
5. That the management and supervision of the projects be assigned to those with enough economic expertise, adeptness and religious trustworthiness, and it is permitted to include a number of virtuous and experienced individuals in the board of directors, which will increase their contentment of Zakat and will also increase the confidence of the Zakat payers.
6. That there should be a probability study precedent to the actual project which will ensure that approximately the profit will be obtained at the end of the project, and if probability of losses is great, and the risk proportion is high, then this project cannot be carried out.
7. That there should be the possibility of formatting the project at any point in time, which means that the objects into cash through sale, for example.
8. If the project is sold for any reason, then the money obtained from this sale becomes part of Zakat funds which will revert back to those entitled for Zakat as usual.
9. That these projects are directed towards an Islamic trust, and that all necessary actions are taken to ensure that the ownership of Zakat funds there, so as to prevent the loss of its assets and prevent it from turning to those who are not entitled for Zakat.

Zakat funds can be invested in trade, through a system of speculation of participation ending in ownership, which can be carried out by authorities of Zakat, or institutions and banks.

Some methods of investing Zakat funds include providing some people and families with an amount enough to create small projects, and the committee in charge of Zakat funds supervises the various stages of the project and follows-up after that, which ensures the feasibility of the work and its usefulness, and the value of the entire project will be as a debit to those entitled, and can be paid through symbolic monthly installments, and this method is used by the Zakat fund of Jordan and the advantage of this method in the investment of Zakat funds is that it does not cost the Zakat Fund foundation large amounts of money, as in the establishment of hospitals and factories. It also encourages individuals to search for productive projects and spreads benefit to individuals and the society. It is also possible to spend the Zakat fund for creating small projects for the poor, and this project will in turn belong to the poor without the need to return the invested amount.

Thus, it can be seen that there exists various ways of investing Zakat funds in accordance with the intent of Islamic laws for the duty of Zakat and which tend to the needs of the poor. Hence, if the Muslim mentality is made to work, the means, which comply with the Islamic laws on one hand and ensure the interest of the poor and the society on the other, will surely not be condemned.

Recommendations:

1. Teaching courses in universities under the faculties of law and economics regarding the contemporary understanding of Zakat, and Zakat management and accounting.

2. Construct various types of informative media which will pay attention to the obligation of Zakat, by clarifying and simplifying its provisions, and stating its social and economical importance, and encouraging Muslims to performing it.
3. The establishment of an institution for Zakat, organized by the private sector, the scholars and those who are trusted by the public, especially during the state's failure to carry out its task towards the obligation of Zakat.
4. Coordination and cooperation and exchange of experiences between institutions and Zakat committees, within the state, and on international levels.
5. To establish a fund for loaning, with good intentions, from the funds of Zakat, and provide a system of careful and structured loaning.
6. The formation of a scientific committee of scholars and economists, to address contemporary issues related to Zakat.
7. Convening of an international Islamic conference on Zakat, periodically, to carry out the collective diligence with respect to jurisprudence of Zakat.
8. Systemization of what is related to Zakat, and establishing a law with clear constitutions, to be referred to and abided by, and reviewed whenever necessary, and avoiding any sources of dispute in the sub-issues regarding Zakat.
9. Interest in providing integrated studies on the outcomes of Zakat in each country, in order to profile the outcomes of Zakat accurately and support it with numbers, especially with the lack of existence of such studies.
10. Students should carry out more researches regarding the topic of Zakat and its findings.

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