ZAKAH ON SHARES: THEORY AND REALITY IN MALAYSIA

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Abstract: Zakah (Islamic almsgiving) on shares are generally mentioned indirectly in classical *fiqh* books. This is due to the fact that the practice of shares is relatively new in classical Islamic jurisprudence literature. However, the basis of the debate on shares can be traced its establishment and development in the classical *fiqh* discourse. Muslim individual and Muslim-operated companies has been involved in investment and share-trading, thus creating the debate of zakah on shares in Malaysia. Therefore, the objective of this study is to highlight the discussion of zakah on shares based on the reality in Malaysia. The focus of the debate will touch the aspects of legal shares, *fiqh* of zakah and its method of calculation.

Keywords: share, zakah, Islamic economy, calculation method, *fiqh*.

1. INTRODUCTION

Zakah is an important aspect in the administration of Muslim's property in Malaysia and throughout the Muslim countries at large. This is because zakah is one of the instruments for achieving equality of income. With a well-functioning zakah, it enables economic growth and income equality, in other words, economic with equity [1]. In addition, the zakah can develop the economy of the Muslims through effective use of zakah funds. It is also can be a source of income to the nation [2].

Zakah collection in Malaysia has been implemented since then. It has become one of the important sources to improve the economic status of Malaysian society in addition to eradicate poverty. Zakah is collected from various sources such as businesses, farmed crops and livestock property. The scope of zakah collection has grown over time, meaning that it reaches to newer sources such as shares and income [3].

The urgency for zakah payments have began to be emphasized and taken seriously by Muslim individuals in Malaysia. Similar direction also has been occured upon big companies and institutions. There are various types of zakah that were collected in Malaysia such as zakah on gold jewelry, zakah on farming, zakah on livestock, zakah on income and so on. Zakah on shares is one of the types of zakah collected in Malaysia [4].

Based on Zakah Collection Centre of Federal Territory Islamic Religious Council (PPZ-MAIWP) record, the total collection of zakah on shares in 2015 contributed significant amount towards the betterment of *asnaf* and the development of zakah institution in Malaysia. The number of zakah payers on shares in Federal Territory of Malaysia is a total of 697 payers (MYR 1,694,160.23). It can be concluded that the shares is an important source of zakah, and its empowerment on theoretical and exposure can increase the potential of zakah to its objective and finally, the *maqasid syari'ah* (higher objective of religion) on zakah can be achieved.

Therefore, this article will review and analyses the debate of zakah on shares from the *fiqh* perspective. It aims to strengthen the theory and to clarify the position of zakah on shares in Islam. Besides that, the study will also explain the reality of zakah implementation in Malaysia, so that the existing methods can be reviewed and improved near future.

2. RESEARCH METHODOLOGY

This study is based on a qualitative approach in which qualitative data are acquired and analysed. The study was conducted by using data collection in the form of documents such as books, journals, proceedings article, newspapers, reports, and so on. The data is being analysed by using mixed methods.

3. THEORY OF ZAKAH ON SHARES ACCORDING TO THE FIQH PERSPECTIVE

'Share' can be defined as quota owned by the sharing participants at the effective companies that issue shares. The quota is considered part of the company's capital [5].

The capital contributed by individuals to the company also considered as share. Contributors are part of the company's owners and are eligible to receive the benefits and bear the loss together [6]. Shares have a nominal value specified when it first released and also have a market price determined by supply and demand on the stock exchange in which the shares are issued and traded [7].

The original law is permissible because it gives a fair profit to both parties i.e. both companies and investors. But if the shares are invested into illegal businesses, the law will also follow suit [6]. In the debate of zakah on shares, it is convenient to divide it into two parts; known as the zakah on shares in general terms and zakah on shares in the company.

Regarding the zakah on shares, generally the share seller or stock issuer are obliged to pay the zakah. The share seller issued zakah 2.5% of the revenue from the sale of its shares. If the owner of shares sells back its shares in the secondary market, they are obliged to issue 2.5% from the sale of that shares [8].

The obligation of zakah on shares is based on the general texts, as in the Qur'an (2): 267 and al-Hadith. As In al-Hadith, Rasulullah SAW has emphasis on the zakah;

> *"If any owner of gold or silver does not pay what is due on him, when the Day of Resurrection would come, plates of fire would be beaten out for him; these would then be heated in the fire of Hell and his sides, his forehead and his back would be cauterized with them…"* (Narrated by Muslim)

The obligation of zakah on shares is based on the determination of the *'illah* (legal reason). The *'illah* can be extracted from the texts that are: 'property' and 'fertile'. The shares is considered to be part of the assets of a company, and the property is one of the *'illah;* signalling the obligation of zakah. Zakah on shares in the company also is based on the concept of *khultah* (shared zakatable property) in which does not look to the *nisab* (payable amount to zakah) of every shareholders, but simply refers to the *nisab* for the whole company [9].

In order to identify the appropriate method regarding the payment of zakah, several key points are needed to be clarified (divided into parts). Firstly, the types of companies that issued shares, the company is usually divided into two types; which are production companies and business-based company. Secondly, the purpose of the owner of the shares. This can be categorized into two purposes, which are for trading the shares and just to get the profit from the shares. Third; zakah issuer, there are two parties that can become the issuers of zakah on shares, either the company or owners/shareholders [5].

In determining the zakah on shares, scholars has divided into two types of share company; which are production-based company and business-based company. Example of production-based companies are company which hospitality service, marine transportation or land transportation companies, airlines and so on. Shares in such companies are not subjected to zakah according to some scholar. This is due to the share value lies on their tools, equipment (assets) and buildings. But if there is profit from the shares later included with profits from other shareholders, zakah on property can be removed in the circumstances [10].

Share company in the form of business-based company is the company that bought one item and then sold them. An example of this company are the importing companies, trading companies, export companies and goods and equipment companies. Share company in this category are subjected to zakah. This notion is opined by ' Abdul Rahman 'Isa and were accepted by Wahba al-Zuhayli [11] and al-Bassam [12, 13].

However, al-Qaradawi [14] do not agree with this opinion, he stated that the company's business and its production for both (product-based or business-based company) obligatory to pay zakah. Al-Qaradawi said [14]:

> Differentiating the companies into production-based companies and business-based companies, where business-based companies been imposed with zakah and not the latter. This action has no clear reference in the Quran, *sunnah*, *ijma* (consensus) and *qiyas* (deductive analogy). There is no reasonable fact to take zakah on the shares of the injected (or grown) in the business companies and exclude for stocks that are injected in the production company, the shares of which are injected in both companies were expanded capital (fertile), and always give an annual profit , even on profits of the production company is sometimes greater.

Because of the zakah for business companies was based on the concept of zakah on business, it cannot be applied to the production company. Therefore, the zakah subjection to the production companies net profit, not over its capital (because the capital used for equipment and so on). Thus, zakah taken from its net profit rate of 10% is included with zakah on farming [9, 15].

In respect to the purposes of the shares ownership, owners who engaged in stock with the intention to trade these shares, zakah will be imposed annually similar to zakah on business. In this case the share is considered as a trading subject that liable for zakah. Therefore the share owners have to spend a total of 2.5% of the market price at the time of the payment of zakah. But if the owner of the shares only to obtain return profit or to (not involved in the sale and purchase of shares), zakah was imposed when the profit was obtained. Some scholars opine that when the owner received profits, the zakah should be imposed for 10% upon receiving based on the *qiyas* with zakah on farming. While other scholars opined that the profit must completed the period of possession for a year-long (*haul*), and if zakah portion (*nisab*) achieved, zakah will be imposed at 2.5% rate [16].

The next question yet to be answered is - of who will be the payer of zakah, is it the company or the shareholders? This issue involves the company's position and capacity as zakah payers. This capacity is very closely related to the acceptance of the concept of 'legal entitiy' or *syakhsiyyah i'tibariyyah* in Islam. Basically there are three groups in the debate of this issue where [17, 18];

i. Those who accept the concept of *syakhsiyyah i'tibariyyah* and require the payment of zakah by it.

ii. Those who do not accept the concept of *syakhsiyyah i'tibariyyah* thus declining the obligation of zakah on it.
iii. Those who accept the concept of *syakhsiyyah i'tibariyyah* but narrowing the permissibility in terms of having to pay zakah by it.

Therefore, for those who do not require the payment of zakah by *syakhsiyyah i'tibariyyah* surely it will be made compulsory for the shareholders to pay zakah on shares. But for those who accept zakah by *syakhsiyyah i'tibariyyah* allowing the companies who run the business to pay the zakah on shares. But if the company fails to pay the zakah, it shall be the duty of shareholders to pay their zakah.

Throughout these debates, is quite difficult to funneling it down to set as guidelines in the payment of zakah share. Nevertheless our review summarize that the methods to pay zakah on shares is as follows [7, 12]:

1. If a company has to pay zakah on shares similar to the definition to zakah on business, the owner of shares is no longer required to pay their zakah. This principle prevents the redundancy of zakah occur on the same property.
2. When the board of a company did not issue any zakah, then the shareholders have to pay zakah by either one of these methods:
   a. If the owner of the shares traded his share, so the rate of zakah, 2.5% of the market price as of the time of zakah is being issued [19].
   b. If the owner takes the shares just to get a profit (the year of its shares) then the payment of zakah is as follows:
      i. If possible to know the rate for each share of the total assets, therefore require to pay zakah of 2.5% as value from the shares.
      ii. If the owner is unable to determine the amount of its assets, they shall combine the share profits with other wealth in *haul* and *nisab* 2.5%.

In conclusion, the shares must be imposed with zakah at 2.5% because it is a form of business goods. While for shares in the company, zakah is also charged by 2.5% for business companies and 10% (from net profit only) for production companies. The company may issue shares in the principle of *al-khultah*. If the company fails to pay zakah on shares, the shareholders is compulsory to pay it according to the number of their respective shareholdings.

4. THE REALITY OF ZAKAH IN MALAYSIA

Zakah on shares collection already practiced by most of the States in Malaysia. Based on the information obtained, most of the States in Malaysia has adopted zakah on shares collection and only a few States did not explain about the collection of zakah on shares which are Perak, Perlis, Terengganu and Federal Territory. However, it is possible form *fiqh* perspective that zakah on shares is treated as business or income until it is combined together. In addition, in Malaysia, there is a fatwa that has been issued about zakah and the calculation method. Among the fatwas issued is the Melaka State fatwa which is regarding the method of calculation of zakah property for the State of Melaka [20];

(a) The shares still in possession to the end of the year (*haul*), i.e. 2.5 percent of the lowest price between the market price and the purchase price and exceeds the *nisab*. If lowest price could not be determined, then may be determined based on the share price at the end of the year.

(b) The share sale and purchase throughout the year (*haul*), which is 2.5 percent of the value of the sale of shares net of the purchase costs over and exceed the *nisab*.

While the method of calculation of zakah and *sukuk* bonds are 2.5 per cent of the value of the bonds and *sukuk* (Islamic bond) *haul* enough and exceed *nisab*.

Among the important issues in Malaysia is how the calculation of zakah on shares is done. This is clear because share exists in various forms and there are tendencies of jurisprudence which has different calculation approach. For share that is subjected to business zakah, it is surely followed to the method of calculation of zakah on business in which the determination of its value becomes the difference. Basically, the consideration of value to be used in the calculation of zakah is governed by three views which [21];

i. Based on the present value in the market. It is the opinion of the *jumhur*.
ii. Pending until the item is sold, and the value of the sale as a basis of calculation of the business goods. This is the view of Ibn ' Abbas.
iii. Calculated based on the value of the goods at the time they were purchased. This is the view proclaimed by Ibn Rusyd.

While the type of shares payable via juristic inference or (*qiyas*) to *zakah mal al-mustafad*, it is also inclusive to that calculation method. For the shares that is calculated based on zakah *mal al-mustafad*, at least there are three methods that have been proposed by scholars namely;

i. Zakah imposed once the return profit of shares received for 10% of the amount.
ii. Zakah imposed after going through *haul* a year with a rate of 2.5%, as long as sufficient *nisab*.
iii. Zakah imposed by 2.5% as soon as share returns earned.

Therefore, it is not surprising if the existence of a variety of methods of calculation of zakah on shares in Malaysia, in particular. Zahri Hamat [22] has listed methods of accounting zakah shares by types of shares which are shares transacted and shares not transacted over haul period, refer to tables 1 and 2 below

Table 1: Zakah Method of Accounting for Shares Transacted

Method	Statement	Description
First	The value of shares at the end of the haul	This value refers to the value of the stock market on the day of compulsory zakah (present value)
Second	The value of shares at the end of the haul of profits	This value refers to the value of the stock market on the day of compulsory zakah and the profits obtained during the duration of haul (per annum)
Third	Profit share sale	Profit share sale refers to the difference in the value of sales revenue and the cost of acquisition of the shares
Fourth	The lowest value between the market price and the purchase price	The lowest value between the market price and the purchase price over the period of haul (per annum)

Table 2: Zakah Method of Accounting for Shares that are Not Transacted

Me thod	Statement	Description
First	The value of shares at the end of the *haul* period	This value refers to the value of the stock market on the day of compulsory zakah (present value)
Second	The lowest value between the market price and the purchase price	The lowest value between the market price and the purchase price over the period of haul (per annum)

Nor Aini Ali [23] explains the method of accounting zakah on shares from a slightly different perspective. According to her, the practice of zakah on shares in Malaysia is based on the lowest value during the *haul* period if the shares are not traded during the duration of *haul*. If the share sale purchase within *haul*, zakah is calculated based on the profit earned [24]. Apart from that, calculation based on dividend also being implemented for the shares that are difficult to be cashed such as the share in a co-operation [24]. However, recent study by ISRA (International Shari'ah Research Academy for Islamic Finance) suggested that the stock is calculated not using the lowest value but in fact must follow the current value. This is because the calculation is viewed to be more practical and facilitates the calculation of *nisab* for zakah [25].

CONCLUSIONS

The long debate of zakah on shares has been arose among Muslim intellectuals. This is because it is a current issue and even involving transactions and various stakeholders. In brief, the main issues of this debate are the question of who will be responsible to pay the zakah on share and the method of zakah accounting. The study found that zakah on shares has a clear basis in the Islamic jurisprudence literature, therefore the obligation is verified and the issuance is compulsory. For the issue of zakah payer, scholars have different views but the studies showed tendency to choose the company is at responsible, but if the company does not pay the zakah, then the shareholders is obliged to do so. So that the case with the method of payment or accounting zakah on shares, the study shows that the zakah of 2.5% on shares is applied according to the current price at the end of the *haul* of transacted zakah. While for zakah which pending for gain return profit, zakah of 2.5% will be imposed once the return profit obtained and completed *haul* for a year. However, the zakah payer can promptly pay zakah on *ta'jil al-zakah* (zakah in advance) principle.

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