

EXPLORING THE POTENTIAL OF USING ZAKAT FUNDS TO PROVIDE MICROFINANCE TO ZAKAT RECIPIENTS: A SHARĪ'AH ANALYSIS

Principal Researcher

Prof. Dr. Aznan Bin Hasan

Research Team

Prof. Dr. Azman Bin Mohd Noor

Asst. Prof. Dr. Habeebullah Zakariyah

Dr. Mahadi Ahmad

Asst. Prof. Dr. Nur Farhah Binti Mahadi

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Zakat is one of the five pillars of Islam, coming immediately after *ṣalāh* and frequently mentioned along with it in the Qur'ān. Its main Sharī'ah objective is *muwāsāh* (the actualisation of the wellbeing of the *ummah*). It demonstrates social justice in wealth distribution by making sure that those endowed with more wealth share a fraction of it with those who are less endowed. This strikes an equilibrium between the rich and poor in the socioeconomic wellbeing of the society. Furthermore, zakat is one of the most effective tools for complying with the normative message of the Qur'ān, chapter 59, verse 7, which says, '...wealth should not circulate among the rich only...' However, since the passage of the golden era of Islam, there has been a perennial stagnation in the effective performance of zakat in realising these objectives (*maqāṣid*) of the Sharī'ah. Among the factors responsible for this unfortunate state of affairs are that the institution of zakat has not hitherto been redeveloped and can never be as

it was in the golden era and that modern nations have not given the institution the same attention they give to the tax system. This then presents the challenge of searching for techniques to better operationalise zakat.

Malaysia is one of the Muslim countries that officially administer zakat on the incomes of individuals and corporations. The authority to collect and disburse it resides with each of the 13 states and the Federal Territory. This authority is a constitutionally determined power. However, the states may delegate these powers to some financial institutions and other corporate bodies to collect and report to the state and in turn get a percentage for administering as per the Shari'ah.

Section 3 of the Malaysian Income Tax Act 1967 generously extended a tax rebate to individual zakat payers¹ while section 44 (11A) of the same Act extended a rebate to companies that pay zakat.² Based on these provisions, a colossal amount of zakat accrues to the state zakat institutions, and companies also make huge deductions to be administered according to the agreements reached with the state religious councils. For example, the State of Selangor, which is one of the highest zakat collectors of the states in Malaysia, collected more than RM868 million of zakat in 2019 only, while in 2020 it collected RM913.0 million of zakat.³ At the level of financial institutions, Bank Rakyat, the sponsor of this research, paid more than RM30 million zakat in 2022⁴ while in 2021 it paid over RM40 million of zakat.⁵ This translates to a positive zakat realisation by the financial institutions in the peninsula country. .

As part of the effort to unlock zakat's potential to empower less privileged segments of the society, a Shari'ah-based research was required to search for a formidable modality to make zakat more beneficial and impactful. Such modality had to start by considering the B40 of Malaysia as well as those who are better off but are not wealthy. The next step taken was to devise a Shari'ah-compliant mechanism by which a portfolio for zakat-based microfinance could be created from the zakat fund. This was successfully done by segmenting the fund into two portfolios, with the larger portfolio going for immediate disbursement and the smaller portion going for microfinance. The *fiqh* concept that was relied upon was the permissibility of delaying zakat distribution due to *maṣlahah*, a concept endorsed by a good number of

¹ Malaysian Income Tax Act 1967, section 3.

² Malaysian Income Tax Act, sec. 44 (11A).

³ Lembaga zakat Selangor (MAIS), 'Ringkasan Prestasi Kutipan Dan Agihan zakat' (Selangor, 2020), <https://drive.google.com/file/d/1P-BxByt8sRapNK3FMM9fVIfyCeqE6LG/view>.

⁴ Bank Raya, "Corporate Info," 2021, https://www.bankrakyat.com.my/c/about/financial_info/financial.

⁵ Bank Rakyat, 'Corporate Info,' 2021, https://www.bankrakyat.com.my/c/about/financial_info/financial.

classical jurists. Microfinance, which entails the extension of small amounts as capital, capital expenditure, and small interest-free loans, was worthy of consideration for making the zakat fund more effectively and efficiently benefiting greater number of zakat recipients.

However, the big challenge was the sensitivity to using zakat for Islamic microfinance. The common initial reaction to such proposals is scepticism. This is because contemporary scholars have tended to restrict the scope of investment of zakat funds in their various fatwas, and this consequently limits the possibility of zakat-based Islamic microfinance. However, this research, relying on the principle that the Shari'ah has a solution to any emerging problem, made efforts to proffer a solution that will protect the Shari'ah objectives of zakat without putting the money at risk. The research relied on the existing fatwa that permitted investment of zakat with strict conditions and the Prophetic traditions that set parameters for giving priority to some potential zakat recipients over others. The research investigated the sanctity of *tamlīk* (transfer of ownership to the beneficiary) in zakat-based microfinance and arrived at the conclusion that the concept of *tamlīk* was not disregarded in the method suggested by this research. This is because it is only after zakat has been distributed to those who need it most that the microfinance portfolio would be used for those who did not receive based on the priority suggested in light of a number of hadith mentioned below in this research. Therefore, *tamlīk* is protected because the zakat money extended to microfinance will come back to the fund. The research proposed some Islamic contracts and interest-free *qard* as the Islamic microfinance instruments and parameters that will guide the implementation of the model. At the end, a risk management framework was proposed to protect the zakat funds against loss.

Two levels of justification are provided for this proposal of zakat-based microfinance. The first is that the suggested mechanism only strengthens the Shari'ah objectives of zakat and does not conflict with them. The second is that, despite the large amounts of zakat collected, there are still many poor who lack microcredit for micro enterprises. They currently have little choice but to apply to financial institutions that offer microfinance facilities on a commercial basis that involves *ribā* and relatively onerous conditions which many poor people are unable to meet. For example, Maybank's microfinance facility is $1.5 + 8\% = 9.5$ per annum.⁶ This rate may be bearable to larger registered SMEs, but it is not affordable for the B40. Therefore, instead of allowing the B40 and those who are better off but not wealthy to remain without

⁶ Maybank2u, 'SME Micro Loan / Financing-I,' 2022, https://www.maybank2u.com.my/maybank2u/malaysia/en/business/financing/working_capital/business/sme_micro_financing.page?

capital for microfinance, and not getting enough zakat for microenterprises, it would be a *maṣlahah* approved by the Sharī'ah to use a portion of zakat funds to extend Islamic microfinance facilities to them without onerous conditions. This is because, due to the many beneficiaries, zakat is distributed in small amounts, and thus many potential zakat beneficiaries still do not receive any.

It is in the context of the abovementioned factors, among others, that this research aimed to come up with an applicable zakat-based microfinance mechanism so that zakat can reach more beneficiaries through zakat distribution and employing a portion for microfinance among the asnaf that were denied distribution due to the Hadith's permission to prioritize the most vulnerable.

1.2 The Structure of the Paper

The research consists of seven chapters. The introductory chapter sketches the background, articulates the research objectives, research questions, statement of the problem, and presents a literature review and the conceptual framework. The second chapter discusses the Sharī'ah objectives of zakat. It analyses the Sharī'ah objectives that are particular to zakat payers, zakat receivers, and the zakat fund. After that, it analyses the Prophetic traditions that regulate distribution of zakat by carefully categorising the recipients according to the level of their need. The third chapter discusses *tamlīk* in zakat distribution and clarifies how zakat-based microfinance does not contradict the concept by establishing that delayed distribution for the purpose of microfinance among the *aṣnāf* (beneficiaries) is permissible. The fourth chapter investigates the jurisprudential issue of delaying distribution of zakat. The fifth chapter answers the question of how it would work. It contains proposals for different formats of utilising zakat in microfinance among the *aṣnāf* including a discussion of the Islamic financial instruments to be used. The sixth chapter aims to establish the risk management strategies for zakat-based microfinance. It details some mechanisms that should be employed by the zakat authority so that the zakat fund would not be exposed to risk in the course of the microfinance. Chapter seven concludes the research. It sums up the major findings, makes recommendations, proposes policy implementations, and discusses the social implications of the research.

1.3 Research Questions

To achieve the desired outcomes of this research, we formulate the following research questions:

1. What are the Sharī‘ah objectives of zakat and what are the Prophetic traditions which support actualisation of these objectives by assisting greater numbers of beneficiaries through microfinance?
2. What is the concept of *tamlīk* in zakat distribution and its relationship with delayed distribution of zakat for microfinance?
3. What is the Sharī‘ah view on investment of zakat and its utilisation for Islamic microfinance?
4. What are the parameters for zakat-based microfinance?
5. How can the risk involved in zakat-based microfinance be managed?

1.4 Research Objectives

The aim of this research is to make zakat instrumental in achieving its inherent Sharī‘ah objective of entrenching the wellbeing of Muslim society. The specific objectives of the research are as follows:

1. To examine the Sharī‘ah objectives of zakat and the Prophetic traditions that support actualisation of the objectives of Sharī‘ah for zakat by assisting greater numbers of beneficiaries through microfinance.
2. To examine the concept of *tamlīk* in zakat distribution and its relationship with delayed distribution of zakat for microfinance.
3. To establish the Sharī‘ah view on investment of zakat and its utilisation for Islamic microfinance.
4. To set parameters for zakat-based microfinance.
5. To propose some risk management measures in zakat-based microfinance.

1.5 Literature Review

There is abundant literature on zakat. However, the focal point of this research is utilisation of zakat for microfinance among the *aṣnāf*. Therefore, the literature review will examine this aspect in order to establish a gap that is to be filled by the current research.

Zakat is an act of worship and a religious obligation. The obligation to pay zakat is evidenced by all the main sources of Sharī‘ah; i.e., the Qur‘ān,⁷ Sunnah,⁸ *ijmā‘*⁹ as well as analogy and reasoning.¹⁰ Eminent *mufasssirs* such as Abū Bakr al-Rāzī al-Jaṣṣāṣ, Abū Bakr ibn al-‘Arabī, and Abū ‘Abd Allāh al-Qurṭubī have extensively elucidated some of the verses on zakat including Sūrah al-Baqarah: 267,¹¹ Sūrah al-An‘ām: 242, Sūrah al-Tawbah: 34, 60, and 103, and several other verses.

Similarly, hadith scholars have identified numerous traditions of the Prophet (ﷺ) which deal with the obligation to pay zakat. Therefore, there is a chapter on zakat in all books of the Sunnah, especially those organised according to *fiqh* topics such as the *Muwaṭṭa‘* of Imam

⁷ As illustrated in Al-Baqarah: 267, ‘O ye who believe! Give of the good things which ye have (honourably) earned, and of the fruits of the earth which We have produced for you.’ Imam al-Ṭabarī comments, ‘Pay zakat out of the good things you earn in your economic activity, such as business, industry, or gold and silver.’ He also reports through several chains from Mujahid that the words ‘good things you have earned’ means by making trade. Read al-Ṭabarī, Ibn Jarīr, *Tafsīr al-Ṭabarī*, edited by Maḥmūd Shākir Abū Fahar and Aḥmad Shākir Abū al-Ashbāl, (Cairo: Maktabah Ibn Taymiyyah, (n.d.)), vol. 3, pp. 555-556.

Imam al-Jaṣṣāṣ in his *Aḥkām al-Qur‘ān*, says ‘It is reported that a group of our predecessors explain Allah words ‘good things you have earned’ as through trade. These include al-Ḥasan and Mujahid. However, the general implication of the words covers also all assets earned by other economic activities,’ Al-Jaṣṣāṣ, Aḥmad ‘Alī al-Rāzī, *Aḥkām al-Qur‘ān*, (Beirut: Dār Iḥyā‘ al-Kutub al-‘Arabīyah, 1992), vol. 1, p. 543.

Imam al-Rāzī points out that the obvious meaning of the verse is that zakat is obligated on every asset human beings earn, including trade assets, gold and silver, and livestock, since all these are earned. Fakhr Al-Rāzī, Muḥammad ‘Umar al-Ḥasan, *Al-Tafsīr al-Kabīr*, (Beirut: Dār al-Fikr, 1981), vol. 2, p. 65.

⁸ Al-Daraqutini reports from Abū Dharr: ‘I heard the Prophet (ﷺ) saying “Zakat is due on camels; zakat is due on lambs; and zakat is due on clothes and housewares.”’ Read Ibn Ḥazm Al-Andalusī, ‘Alī Aḥmad Sa‘īd, *Al-Muḥallā bi al-Āthār*, edited by ‘Abd al-Ghaḥfār Sulaymān al-Bandārī, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2003), vol. 5, pp. 234-235. This is in addition to the general sayings that obligate zakat on all kinds of wealth without discrimination, such as ‘give zakat on your wealth.’ Al-Qaraḍāwī, Yūsūf, *op. cit.*, p. 163. It is noted that trade inventory is the first kind of wealth that comes under the word *māl* used in sayings, because trade inventory is general and may include anything purchased for sale. Al-Suyūṭī, Muṣṭafa, *Maṭālib Uḥl al-Nuhā*, (Syria: al-Maktab al-Islāmī, 1961), vol. 2, p. 96.

⁹ There is a report from Abī ‘Amr ibn Ḥammās, from his father, who said ‘‘Umar passed by me and said, ‘Oh Ḥammās, pay the zakat due on your wealth.’ I answered, I have no wealth except hides and bags.’ ‘Umar replied, ‘Evaluate them and pay the zakat due on them.’ See also *al-Umm* of al-Shāfi‘ī, vol. 2, p. 38, *Sunan al-Bayhaqī*, vol. 4, p. 147. Ibn Ḥazm grades the story weak, claiming that Ḥammās and his son are unknown, whereas Aḥmad Shākir writes in his footnote on *al-Muḥallā*, vol. 5, p. 235, that they are known and trustworthy. The author of *Al-Mughnī*, Ibn Qudāmāh comments: ‘The likes of such a story are common, and none of the Companions negate this ruling, which implies a sort of *ijmā‘* on this matter.’ Ibn Qudāmāh, ‘Abd Allāh Muḥammad, *Al-Mughnī*, edited by ‘Abd Allāh ‘Abd al-Muḥsin al-Turkī and ‘Abd al-Fattāh, (Riyadh: Dār al-‘Ālim al-Kutub, 1st ed., 1986). Abū ‘Ubayd says, ‘All Muslims unanimously agree that trade assets are zakatable, and no other opinion is attributed to any of the knowledgeable people.’ Al-Baghdādī, Abū ‘Ubayd al-Qāsim, *al-Amwāl*, edited by Abū Anas, Syed Rejab, (Meṣir: Dār al-Hudā al-Nabawī, 2007), p. 429

¹⁰ Ibn Rushd mentions that trade assets are wealth intended for growth, like the other three forms of wealth that are unanimously considered zakatable: agricultural products, livestock, and gold and silver. Thus, the analogy is clear and fitting. Ibn Rushd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, edited by Muḥammad Ṣubḥī, (Cairo: Maktabah Ibn Taymiyyah, 1995), vol. 1, p. 217.

¹¹ Allah has commanded in al-Baqarah: 267, ‘O ye who believe, give of the good things which ye have (honorably) earned, and of the fruits of the earth which we have produced for you.’ Imam al-Rāzī points out that zakat is indisputably obligated on every asset human beings earn, including trade assets, gold and silver, and livestock, since all these are earned to purify and sanctify their wealth. Fakhr Al-Rāzī, Muḥammad ‘Umar al-Ḥasan, *Al-Tafsīr al-Kabīr*, *op. cit.*, vol. 2, p. 65. Thus, Allah ordains the due zakat out of these earnings; trade is no exception and its earnings are also zakatable. Al-Jaṣṣāṣ, Aḥmad ‘Alī al-Rāzī, *Aḥkām al-Qur‘ān*, *op. cit.*, vol. 1, p. 235.

Mālik, *Ṣaḥīḥ al-Bukhārī*, *Ṣaḥīḥ Muslim*, *Jāmi‘ al-Tirmidhī*, *Sunan al-Nasā’ī*, *Sunan Abī Dāwūd*, and *Sunan Ibn Mājah*. In *Ṣaḥīḥ al-Bukhārī*, the chapter of zakat contains 172 sayings attributed to the Prophet Muḥammad (ﷺ) and 20 sayings of the companions and the followers.

Inarguably, zakat is one of the fundamental obligations of Islam which has been extensively studied, reviewed and discussed by Muslim jurists. There are extensive discussions of zakat in *al-Kharāj* of Abū Yūsuf, *al-Kharāj* of Yaḥyā ibn Ādam, *al-Amwāl* of Abū ‘Ubayd, *al-Aḥkām al-Sulṭāniyah* of al-Māwardī (Shāfi‘īte), *al-Aḥkām al-Sulṭāniyah* of Abū Ya‘lā (Ḥanbalite), *al-Siyāsah al-Shar‘iyyah* of Ibn Taymiyyah, and several other works.

Jurists maintain that payment of zakat shall be made immediately upon fulfilling all the conditions. Al-Karkhī, a leading Ḥanafīte, asserted that the payment of zakat must be immediate.¹² Similarly, Ibn al-Humām upheld that zakat is a form of assistance to the poor; hence, its payment should be immediate; otherwise, it would not fulfil its role.¹³ The same opinion is to be found in the writings of other jurists from various schools of law, including Mālik, al-Shāfi‘ī, and Aḥmad.¹⁴ Muslim scholars emphasise that good deeds should be done without delay, before obstacles and hindrances arise.¹⁵

A delay in zakat payment without valid reason is sinful and not permitted as it is a right that belongs to other people. This view is firmly supported by al-Nawawī,¹⁶ a Shāfi‘īte, Ibn ‘Abidīn,¹⁷ a Ḥanafīte, and among contemporary scholars, al-Qaraḍāwī.¹⁸ When the delay is inevitable, Shams al-Dīn al-Ramlī asserted that the payer shall compensate the due amount in case of destruction or loss.¹⁹

Having discussed the immediacy of the obligation to pay zakat, there are differences among jurists²⁰ regarding certain detailed aspects of zakat. According to Sheikh Maḥmūd

¹² As mentioned in Sūrah al-Tawbah, 9:60, zakat funds should be disbursed immediately to the right beneficiaries.

¹³ Al-Shawkānī, Muḥammad ibn ‘Alī Muḥammad ibn ‘Abd Allāh, *Fath al-Qadīr*, (Beirut: Dār Ibn Kathīr, 1414H), vol. 1, pp. 482-483, and *Radd al-Muḥtār*, *op. cit.*, vol. 2, pp. 13-14

¹⁴ Al-Qaraḍāwī, Yusūf, *op. cit.*, vol. 2, p. 151.

¹⁵ Al-Shawkānī, *Nayl al-Awtār min Asrār Muntaqa al-Akḥbār*, *op. cit.*, vol. 4, p. 148.

¹⁶ Al-Nawawī, Yaḥyā ibn Sharaf, *al-Majmū‘ Sharḥ al-Muḥadḥab li al-Shīrāzī*, edited by Muḥammad Najīb al-Muṭī‘ī, (Jeddah: Maktabah al-Irshād, n.d.), vol. 5, p. 331

¹⁷ *Radd al-Muḥtār*, vol. 2, p. 14

¹⁸ Al-Qaraḍāwī, Yusūf, *op. cit.*, vol. 2, p. 153.

¹⁹ Al-Ramlī, Shams al-Dīn Muḥammad ibn Abī al-‘Abbās Aḥmad ibn Hamzah Shihāb al-Dīn, *Nihāyah al-Muḥtāj ila Sharḥ al-Minhāj*, (Beirut: Dār al-Fikr, 1984), vol. 2, p. 134

²⁰ Even Imam al-Shāfi‘ī himself had *qawl qadīm* (the old opinions issued during his life in Iraq) and *qawl jadīd* (newer opinions issued during his life in Egypt) which were a result of the two different places he issued them. This coincides with the legal maxim which states *لا يُنكَرُ تَغْيِيرُ الْأَحْكَامِ بِتَغْيِيرِ الْأَرْصَانِ* (it is irrefutable that rulings change in accordance with the change in time). This has been discussed by Sheikh Muṣṭafa al-Zarqā‘ in *Sharḥ al-Qawā‘id al-Fiqhiyyah* and Imam al-Shātibī in *al-Muwāfaqāt*. Read al-Zarqā‘, Aḥmad Muḥammad, *Sharḥ al-Qawā‘id al-Fiqhiyyah*, edited by Abū Ghuddah, ‘Abd al-Sattār and al-Zarqā‘, Muṣṭafa Aḥmad, (Damascus: Dār al-Qalam, 2nd edn., 1989), pp. 227-228. Al-Shātibī, Ibrāhīm Mūsā, *al-Muwāfaqāt*, edited by Mashhūr Ḥasan Āl Salmān, (Cairo:

Shaltūt,²¹ there is a range of opinion among the schools of law regarding the types of wealth that are zakatable²² and the definition and scope of the *aṣnāf* (beneficiaries) of zakat. Arguably, although these differences enrich the discourse on zakat, evaluation of them is needed in order to find the most acceptable opinions, not only with regard to the evidence for them but also with respect to their practicality. This evaluation must be based on the ultimate objectives of zakat as enshrined in the texts of the Qur'ān and Sunnah, which include the establishment of justice and fulfilment of public benefit (*maṣlaḥah*) via the zakat obligation.

It should be noted that consideration of the objectives of zakat should be the paramount concern of *ijtihād* on zakat. For example, the consideration of public benefit (*maṣlaḥah*) and fulfilment of the Sharī'ah objectives in zakat led Mu'ādh, one of the most knowledgeable companions on zakat, to take zakat value in cloth instead of grain,²³ although doing so could be construed as a violation of the explicit words of the Prophet (ﷺ). The discussion on zakat is wide and extensive, and scholars have laid down principles and rulings on the aspects of zakat collection and distribution. In the modern era, another dimension has emerged in the zakat discussion. The question has been raised whether the Sharī'ah objectives of zakat would be better realised for the *aṣnāf* through Islamic microfinance schemes. The argument is that such use of limited resources would be of greater benefit to beneficiaries

Further, there are fatwas which need new consideration owing to changing circumstances that require new *ijtihād*. For instance, the rationale for the Prophet disbursing zakat to *mu'allafat al-qulūb*²⁴ was for the purpose of winning over their hearts since Islam was believed not to be firmly established and needed to be supported by prominent and influential individuals. When 'Umar ibn al-Khaṭṭāb was ruler, he regarded this situation to no longer be relevant. Hence, he decided not to give zakat to such a group anymore. As 'Umar said, quoting the Qur'ān:

فَمَنْ شَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيُكْفُرْ

Dār Ibn 'Affān, n.d.), vol. 2, p. 492. The meaning of changes in rulings caused by changes in time and place is limited to rulings which are *mutaḥayyirāt* (changeable). For *thawābit* (fixed and permanent rules) like the sanctioning of prayers, fasting, the prohibition of adultery, consuming alcohol, likewise, these are constant in every time and place. This is because Sharī'ah applies to all times.

²¹ Maḥmūd Shaltūt, *al-Islām, 'Aqīdah wa Sharī'ah*, (Cairo: Dār al-Shurūq, 1987, 4th edn), p. 109.

²² For instance, some scholars consider the wealth of children and the insane zakatable while others do not. Some scholars consider all agricultural products zakatable while others restrict zakat to specific kinds only. Some consider debts zakatable while others do not. Similar differences exist for business assets and women's jewelry. Some require a certain minimum (*niṣāb*) for zakatability while some do not, etc. Maḥmūd Shaltūt, Ibid. Al-Qaraḍāwī, Yūsūf, *op. cit.*, p. xxi.

²³ Mu'ādh told the people of Yemen, 'Bring me garments or cloth; I will accept them from you in fulfilment of zakat. It is easier for you and more beneficial to the migrants in Madinah.' Abū 'Ubayd comments, 'This certainly applies to the excess above their needs.' Al-Baghdādī, Abū 'Ubayd al-Qāsim, *al-Amwāl, op. cit.*, p. 600.

²⁴ Sūrah al-Tawbah, 9:60.

‘Let him who will, believe; and let him who will, disbelieve.’²⁵

‘Umar’s decision in withholding zakat from this category of recipients was due to his *ijtihad* regarding the ‘illah (ratio legis) that had qualified them to receive zakat. He reasoned that it had ceased to exist, and thus, the legal ruling that was contingent upon it had also ceased to exist.²⁶ ‘Umar’s *ijtihad* was based on his profound understanding of jurisprudential determinations, which enabled him to pinpoint the underlying cause of the ruling (i.e., the reason why new converts legally deserve to get zakat). Should the cause return, the ruling would come into force again.

Proper parameters of the concept of need (*hājah*) must be put in place, and the concept of sufficiency as used in Islamic jurisprudence for the disbursement of zakat proceeds must be fully understood in order to properly extend microfinance to zakat recipients. Muslim jurists are obliged to dissect, scrutinise and compare all opinions and views from the different sources, and not to affirm a particular substantive outcome based on what they subjectively deem to be appropriate. Needs (*hājah*) are subjective and have different levels, and the government has the right to determine where needs are more pressing and urgent. Thus, zakat institutions have to decide whether the disbursement of zakat for the purpose of extending microfinance to recipients who are in dire need of starting a business or engaging in other profitable activities will or will not realise the essential public interests (*maṣlaḥah*) of Muslims. To do so, they need a clear guideline of a specific ruling (*ḥukm*) that is established with the purpose of preventing the any confusion in *fiqh*.

1.5.1 The Role of Islamic Authorities

The assertion that the Islamic authorities are responsible for collection and distribution of zakat is supported by Qur’ānic verses and the actual practice of the Prophet (ﷺ), his companions, and the judicious and wise successors after them. That zakat is a social welfare institution supervised by the state is supported by the following verse of Sūrah al-Tawbah,

‘خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ’²⁷

The word خُذْ (take) is an instruction from Allah to the Prophet (ﷺ) as head of the Islamic state. Abū Bakr understood the verse in that way, using state authority and its law enforcement body

²⁵ Ibn ‘Asākir, *Tārīkh Madīnat Dimashq*, edited by Muḥib al-Dīn Abū Sa‘īd, (Beirut: Dār al-Fikr, n.d.), vol. 35, p. 44.

²⁶ Bakour, Bachar. (2016). The Permanent and Changing Side of Sharia. *International Journal for Muslim World Studies (IJMWS)*. 14. 37-81.

²⁷ ‘Out of their wealth, take a *ṣadaqah* so thou might purify and sanctify them’ Sūrah al-Tawbah (9):103.

to collect and disseminate zakat. Scholars unanimously acknowledge the verb ‘take’ to be addressed to the Prophet (ﷺ) and to whoever runs the affairs of Muslims after him.²⁸

As for Sunnah, there are several sayings that confirm the responsibilities of the Islamic authority in zakat management. Al-Bukhārī, Muslim and others report from Ibn ‘Abbās that when the Prophet (ﷺ) sent Mu‘ādh to Yemen he told him to take *ṣadaqah* from the wealth of the rich and render it to the poor among them. Hāfiẓ Ibn Hajar says, ‘This statement is evidence that the state is the authority that takes zakat and distributes it. Those who refuse to pay shall be forced to do so.’²⁹ Ibn Sa’d adds, ‘The Prophet (ﷺ) told his collectors³⁰ to take only from the surplus and to avoid the best assets of the payers.’³¹ The Prophet (ﷺ) provided zakat officers with advice and directives on how to treat payers of zakat and collect the right amount.³² Scholars unanimously agree that ‘the state must assign zakat collectors as the Prophet (ﷺ) and the successors after him sent collectors; also, there are people who do not know how to pay the zakat due upon them and people who dislike payment due to greed.’³³ Al Bayhaqī reported in his *al-Sunan al-Kabīr* that Shu‘bah said, ‘Give zakat that is due to the government, for the Prophet (ﷺ) has indeed ordained us to do so.’³⁴ Some jurists claim there is *ijmā‘* on the obligation of giving zakat to the state.³⁵ According to them, these verses, Prophetic statements, and opinions of the companions indicate that zakat on any assets must be managed and administered by the Islamic authority and its representatives.

Who is responsible for zakat management today? Assigning the obligation and accountability to the state applies to Islamic governments³⁶ while non-Islamic governments can only collect zakat subject to an Islamic authority’s permission.

²⁸ Al-Qaraḍāwī, Yusūf, *op. cit.*, vol. 2, p. 113.

²⁹ Al-‘Asqalānī, Ibn Hajar, *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, edited by ‘Abd al-‘Azīz ibn ‘Abd Allāh ibn Bāz, Muḥammad Fu‘ād ‘Abd al-Bāqī, and Muḥib al-Dīn al-Khaṭīb, (Cairo: al-Maktabah al-Salafiyah, n.d.), vol. 3, p. 23; Al-Shawkānī, Muḥammad ibn ‘Alī ibn Muḥammad ibn ‘Abd Allāh, *Nayl al-Awtār min Asrār Muntaqa al-Akhbār*, edited by Muḥammad Ṣubḥī ibn Ḥasan Ḥallāq, (Egypt: Dār Ibn al-Jawzī, 1427H/2006M), vol. 4, p. 124..

³⁰ ‘Uyaynah ibn Ḥiṣn was sent to the tribe of Bani Tamim to collect and distribute zakat, Buraydah ibn al-Ḥaṣīb to Aslam and Ghifar, ‘Abbās ibn Bishr al-Ashhalī to Sulaym and Muzaynah, Rāfi ‘bin Makīth to Juhainah, ‘Amr ibn al-‘Āṣ to Fazarah, al-Ḍaḥḥāk ibn Sufyān al-Kilābī to Bani Kilāb, Bushr ibn Sufyān al-Ka‘bī to Bani Ka‘b, and Ibn al-Lutbiyah to Bani Dhubyān. Al-Qaraḍāwī, Yusūf, *op. cit.*, vol. 2, p. 113.

³¹ Al-Zuhrī, Muḥammad ibn Sa’d ibn Manī’, *Ṭabaqāt Ibn Sa’d*, edited by ‘Alī Muḥammad ‘Umar, (Egypt: Maktabah al-Khānjī, 2001), vol. 2, p. 160.

³² Al-Jawzīyah, Ibn Qayyim, *Zād al-Ma‘ād fī Hadī Khayr al-‘Ibād*, edited by Shu‘ayb al-Arnā’ūt and ‘Abd al-Qādir al-Arnā’ūt, (Beirut: Mu’assasat al-Risālah, 2009), vol. 2, p. 472.

³³ Al-Nawawī, Yahya ibn Sharaf, *al-Majmū‘ Sharḥ al-Muḥadḥab li al-Shīrāzī*, *op. cit.*, vol. 6, p. 167.

³⁴ Ibid., vol. 6, pp. 162-164.

³⁵ Abū al-Ḥasan ‘Abd Allāh ibn Muftah, *Sharḥ al-Azhar*, (n.p.: Sharikah al-Tamaddun, 1332H/1914M) vol. 1, p. 529.

³⁶ Islamic government accepts Islam as its ideology and Shari‘ah as foundation for its constitution and social structure.

There is no disagreement that the zakat authority is conferred the power to collect zakat by force if payers refuse to pay it.³⁷ The practical issue here is that the lack of an adequate database detailing those who are eligible to pay zakat hinders enforcement ability against defaulters. The authority can use any suitable *ta'zīr* (monetary punishment) based on the following hadith:

وَمَنْ مَنَعَهَا فَإِنَّا آخِذُوهَا وَشَطْرُ مَالِهِ³⁸

‘Whoever refuses, we will take it and half of his [camels].’

As to whether the zakat fund may be used to finance development projects and business ventures to extend its disbursement beyond the current needs of beneficiaries, especially the poor and needy,³⁹ jurists have held divergent views on this, as will be discussed in detail later in this research.

1.5.2 *Maṣlaḥah*, *Maqāṣid al-Sharī'ah* and Their Relevance to Zakat-based Microfinance

Scholars who approached the issue of utilising zakat from the perspective of *maqāṣid al-Sharī'ah* went beyond the typical approaches of those who limited themselves to literal interpretation of the Qur'ān and Sunnah. Yūsuf al-Qaradāwī, in his masterpiece, *Fiqh al-Zakāh*, has demonstrated various methodologies for establishing rulings on zakat in which principles of *maqāṣid al-Sharī'ah*⁴⁰ are considered. Instead of limiting himself to a particular school of law, al-Qaradāwī has considered opinions from various schools of law. In certain circumstances he even proposed new opinions that were not discussed and considered by previous scholars; for instance, imposing zakat on salaries and giving zakat on a loan (*qard*) basis. Scholars of *uṣūl al-fiqh* require that a *mujtahid* have adequate understanding of the ultimate goals of Sharī'ah rulings as well as the common interest (*maṣlaḥah 'āmmah*) of people at the time that a ruling on an arising issue is sought.

³⁷ Al-Murtaḍā, Aḥmad ibn Yahyā, *al-Baḥr al-Zakhkhār: al-Jāmi' li Madhāhib 'Ulamā' al-Amṣār*, (Beirut: Dār al-Kutub al-Ilmiyyah, 2001), vol. 2, p. 190.

³⁸ *Bulūgh al-Marām*, Kitāb al-Zakāh, 4:604.

³⁹ Hanafites define the poor as a person who has properties and/or income not sufficient to satisfy his or her essential needs. Al-Ḥaṣḥafī, Al-'Alā', *Majma' al-Anhur fī Sharḥ Multaqa al-Abḥar*, edited by Al-Manṣūr, Khalīl 'Imrān, (Dār al-Kutub al-Ilmiyyah, 1st edn., 1998), pp. 220 and 223. The other three major schools of jurisprudence do not define the poor and the needy with regard to *niṣāb*, but to satisfaction of essential needs. A poor person is one whose wealth and income are far from satisfying his or her essential needs, while a needy person is one whose wealth and income fall not much short of the satisfaction of essential needs. Al-Qaradāwī, Yūsūf, *op. cit.*, vol. 2, p. 16.

⁴⁰ Ibn 'Abbās, Mālik and 'Aṭā' said, 'One may take or leave any opinion from anyone except the Messenger of Allah (ﷺ).' Read Al-Qaradāwī, Yūsūf, *op. cit.*, vol. 1, p. xxviii.

The theory of *maṣlaḥah* is based on the doctrine of need and necessity, whereas interest means something in which one has a concern that is not as pressing as need and necessity. Eminent jurists like Muḥammad Saʿīd Ramaḍān al-Būṭī,⁴¹ Abū Ḥāmid al-Ghazālī,⁴² al-Juwaynī,⁴³ al-Rāzī,⁴⁴ Ibn Taymiyyah,⁴⁵ Abū Ishāq al-Shāṭibī,⁴⁶ and Abū al-Ḥusayn al-Baṣrī⁴⁷ have discussed the concept of *maṣlaḥah*, which constitutes one of the major themes in Islamic jurisprudence (*fiqh*). *Maṣlaḥah* is inextricably intertwined with *manfaʿah* (benefit), and when used as a noun it means something considered good or useful.⁴⁸ In a general sense *maṣlaḥah* indicates welfare,⁴⁹ whereas in the juristic sense it denotes general good or public interest. However, the Shāfiʿī jurist Sayf al-Dīn al-Āmidī and Ibn al-Ḥājib of the Mālikī School denied *maṣlaḥah mursalah* as a valid basis of reasoning unless it is based on textual evidence.⁵⁰ It is worthy of notice that, these wide-ranging juristic differences should be considered nothing but a divine mercy.⁵¹ In this regard, *maṣlaḥah* serves as an effective legal tool to tackle the newly arising matters that were not discussed by ancient jurists which require new rulings as a means of coping with diverse affairs in daily life and with the passage of time to ceaseless new cases.

Consideration of *maṣlaḥah* entails more than an understanding of the literal meaning of revelation; it also looks at the underlying meaning and purposes of revelation together with

⁴¹ Al-Būṭī, Muḥammad Saʿīd Ramaḍān, *Ḍawābiṭ al-Maṣlaḥah fī al-Sharīʿah al-Islāmiyah*, (Beirut, Muʿassasat al-Risālah, 2nd edn., 1973).

⁴² Al-Ghazālī places the method of reasoning by *maṣlaḥah* subordinate to *qiyās* and provides certain conditions for its validity. He considers *maṣlaḥah* as a valid principle of reasoning if it is in full agreement with Sharīʿah and its objectives. Al-Ghazālī, Abū Ḥāmid, *Al-Mustasfā min ʿIlm al-Uṣūl*, (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1984).

⁴³ Al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh*, ed. by: ʿAbd al-ʿAzīm Muḥammad al-Dīb, (Al-Mansurah: Dār al-Wafāʾ, 1992), vol. 2, p. 602.

⁴⁴ According to Al-Rāzī, *maṣlaḥah* and *munāsabah* (suitability) are associated with each other. Al-Rāzī, Fakhr al-Dīn Muḥammad ʿUmar al-Ḥasan. *Al-Maḥṣūl fī ʿIlm al-Uṣūl*, edited by Ṭaha Jābir al-ʿAlwānī, (Beirut: Muassasah al-Risālah, 2nd ed., 1992).

⁴⁵ Ibn Taymiyyah opines *maṣlaḥah* is an integral part of the Divine injunctions whose comprehension requires an adequate methodology comprising rational and revelational components. Ibn Taymiyyah, Taqī al-Dīn, *al-Muʿjizāt wa al-Karāmāt wa Anwāʾ Khawāriq al-ʿAdāt wa Manāfiʿ wa Maḍāriḥā*, edited by Maḥmūd ibn Imam Abū ʿAbd Allāh, (Tanṭā: Maktabah al-Ṣaḥābah, 1986) and Ibn Taymiyyah, Taqī al-Dīn, *Majmūʿ al-Rasāʾil wa al-Masāʾil*, edited by Muḥammad Rashīd Riḍā, (Beirut: Dār al-Turāth al-ʿArabī, n.d.).

⁴⁶ *Maṣlaḥah* as expounded by Al-Shāṭibī is to be the objective of Sharīʿah and he claimed that the premise of *maṣāliḥ* can be established by the method of induction. Al-Shāṭibī, Ibrāhīm Mūsa, *op. cit.*

⁴⁷ Al-Baṣrī, Muḥammad ibn ʿAlī al-Tayb Abū al-Ḥusayn, *Al-Muʿtamad fī Uṣūl al-Fiqh*, ed. by Khalīl al-Mays, (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1st edn., n.d.).

⁴⁸ Aḥmad Riḍā, *Muʿjam Matan al-Lughah*, (Beirut: Dār Maktabah al-Ḥayāt, n.d.), p. 479.

⁴⁹ Bosworth, C.E., *The Encyclopedia of Islam*, (Leiden: E. J. Brill, 1978), vol. 4, p. 738.

⁵⁰ Muḥammad Khalid Masud, *Islamic Legal Philosophy: A Study of Abū Ishāq al-Shāṭibī's Life and Thought*. (Islamabad: Islamic Research Institute, 1977).

⁵¹ This context adduced the following hadith, 'Disagreement (of opinion) among my community is a mercy.' This report is at best very weak and at worst absolutely rejected due to the absence of its chain of transmission. See Al-Kamadānī, Adīb, *Ithāf al-Bararah bī Maʿrifat al-Aḥādīth al-Mawḍūʿah al-Mushtahirah*, (Damascus: n.p, 1994), p. 226; Al-Manāwī, Abd al-Raʾūf, *Fayḍ al-Qadīr*, vol. 6, (Beirut: Dār al-Maʿrifah, 1972), 1st edn, p. 212.

robust understanding of jurisprudential rulings. The *maṣlahah* theory qualifies as a dynamic element of the Islamic jurisprudential methodology that provides a firm ground for Islam's continual relevance and its qualification as a complete way of life. It enables *ijtihād* to deal with arising contemporary issues in general and the effective implementation of zakat in particular. One such contemporary question is whether the zakat fund may be used to finance development projects and business ventures to extend its disbursement beyond the current needs of beneficiaries, especially the poor and needy.⁵²

Analogy can be used in some aspects of zakat because its rulings have rational reasoning behind them. Analogy can provide the solution to certain contemporary social problems as zakat institutions have similarities with community-based financial assistance. Successful zakat-based microfinance (microcredit) will produce entrepreneurs who create successful businesses, which will in turn bring benefit to the community by creating productive employment, trade, and overall economic improvement within the society.

Apart from the zakat fund being given after beneficiaries' potential businesses have been evaluated, the recipients would also be guided through entrepreneurship trainings and courses. But first, they would go through a meticulous and thorough inspection process to ensure they are eligible to receive zakat, and they would be closely monitored by the zakat institution's appointed consultants and would be helped to get further capital injections as needed.

Furthermore, by initiating zakat-based microfinance or microcredit to beneficiaries who have no access to other financial services, zakat allows redistribution of wealth within a society and increases the purchasing power of the *aṣnāf*, which will enable them to contribute positively to economic growth. This could be done through a wide variety of means: an interest-free loan (*qarḍ ḥasan*),⁵³ or partnership-based contracts such as *muḍārabah*⁵⁴ and *mushārah*, or debt-based financing such as *salam* (for agriculture-based businesses), *istiṣnāʿ*, *ijārah*, etc.

⁵² Some of the distribution for them are as follows: 1) Capital gift for the *faqīr* or *miskīn* who has the ability or skill, such as carpenter tools for the carpenter, farm yield and plant seeds for the farmer, money for the merchant, etc.; 2) Monthly or annual fund for incapable Muslims, such as senior citizens, paralysed man, orphaned children; 3) To build a house for incapable Muslims; 4) Scholarship for Muslim students whose parents are not able to finance their education. Harun, Nurul Husna, Hazlina Hassan, Nur Syuhada Jasni, and Rashidah Abdul Rahman. 'Zakat for *aṣnāf*' business by Lembaga zakat Selangor.' *Management & Accounting Review (MAR)* 9, no. 2 (2010): 123-138.

⁵³ When repayment of *qarḍ* is made, the zakat institution must distribute the capital to another eligible recipient whose rights have been delayed before.

⁵⁴ For *muḍārabah* in the context of zakat-based microfinancing, the '*amīl*' is regarded as a financier while the *mustahiq* is an entrepreneur to venture into a business they want to venture into. Since *muḍārabah* is based on a profit-sharing system, the '*amīl*' and beneficiaries must share profit and loss as in the agreement. Profit from the acquired business should be distributed to the other *mustahiq*. On the contrary, in the event of a loss, it will be jointly shared between the '*amīl*' and *mustahiq*.

The goal of zakat-based microfinance is to ultimately realise *maṣlahah* by granting impoverished beneficiaries an opportunity to become self-sufficient and by helping *aṣnāf* entrepreneurs succeed by not only providing capital for business and entrepreneurship development schemes but also business guidelines and knowledge. All of that is aligned with the objectives of the Sharī‘ah in general and the objectives of zakat in particular.

The discussion of previous Muslim jurists will be presented here. Al-Nawawī in *al-Majmū‘ Sharḥ al-Muhadhab* says:

قال أصحابنا فإن كان عادته الاختراف أعطى ما يشتري به حرفته أو آلات حرفته قلت قيمته ذلك أم كثر وكون قدره بحيث يحصل له من ربحه ما يفي بكفايته غالباً تقريباً ويختلف ذلك باختلاف الحرف والبلاد والأزمان والأشخاص وقرب جماعة من أصحابنا ذلك فقالوا من يبيع النخل يعطى خمسة دراهم أو عشرة ومن حرفته بيع الجوهر يعطى عشرة آلاف درهم مثلاً إذا لم يتأت له الكفاية بأقل منها ومن كان تاجراً أو خبازاً أو عطّاراً أو صرافاً أعطى بنسبة ذلك ومن كان خياطاً أو نجاراً أو قصاراً أو قصاباً أو غيرهم من أهل الصنائع أعطى ما يشتري به الآلات التي تصلح لمثله وإن كان من أهل الضياع يعطى ما يشتري به ضيعة أو حصّة في ضيعة تكفيه غلتها على الدوام قال أصحابنا فإن لم يكن مخترفاً ولا يحسن صنعة أصلاً ولا تجارة ولا شيئاً من أنواع المكاسب أعطى كفاية العمر الغالب لأمثاله في بلاده ولا يتقدّر بكفاية سنة.

A craftsman would be given an amount sufficient to buy tools and equipment that allow him to work and gain his sustenance. This certainly differs according to time, country, and the ability of individuals. Some of our colleagues give examples that a person who sells vegetables may be given five or ten dirhams, while a person whose profession is selling jewels would be granted ten thousand dirhams if he cannot reach sufficiency with less than that amount. People of other professions would be given according to the requirement of their profession. Farmers would be given farming land or portions thereof that would be sufficient for them to gain sufficiency of sustenance. As for those who have no craft or ability, they must be given sustenance sufficient for the rest of their lives, not restricted to one-year limitations.⁵⁵

Shams al-Dīn al-Ramlī, the commentator on al-Nawawī’s *al-Minhāj*, expresses this concept in the following words:

It is not necessary to give the poor and needy money to suffice for the rest of their lives; they may be given capital investment whose returns would be sufficient for their maintenance provided that ownership of the property is transferred to the poor and can be bequeathed to their heirs....As for professionals and workers, they should be given the capital necessary for their productive work that would provide them with sufficient income. If a person knows more than one profession, the least amount of capital needed would be

⁵⁵ Al-Nawawī, Yahya ibn Sharaf, *op. cit.*, vol. 6, pp. 193-195

given, and if that profession does not produce sufficient income, an added capital investment such as real estate should be granted.⁵⁶

Do these statements expressed by Muslim jurists allow the conclusion that zakat-based microfinance can be extended to the beneficiaries as microcredit facilities besides *qarḍ ḥasan* – for example, in the form of *murābahah*, *ijārah*, *muḍārabah*, *mushāarakah*, etc. – to meet the needs of a business or expand it? The preceding discussion by jurists leads to the view of zakat as regular and continuous relief to the poor whether they are given what satisfies their needs or given regular relief at certain intervals until the recipient procures sufficiency of sustenance. This opinion is tacitly proposed by Imam al-Nawawī,⁵⁷ Ibn al-‘Arabī,⁵⁸ and al-Qurṭubī.⁵⁹ Hence, the utmost objective of zakat distribution is to achieve an adequate and suitable standard of living for beneficiaries and empower them to become economically independent and to improve their lives in society.

Al-Suyūṭī said that a beneficiary has the right to be given his sufficiency from zakat, such as an amount needed to buy equipment or needed capital if the person is a businessman.⁶⁰ That zakat can be used for public interest (*maṣlaḥah ‘āmmah*)⁶¹ was proposed by Rashīd Riḍā,⁶² Maḥmūd Shaltūt,⁶³ and Muḥammad ibn ‘Abd al-Ḥakam.

The *maṣlaḥah* of zakat distribution is that it brings prosperity to the community and increases the demand for consumption of goods, which brings vitality to business. For instance, zakat provides the unemployed with the necessary tools, machinery and capital for production, and it funds job training and etc. For zakat-based microfinancing, the zakat institution provides

⁵⁶ Al-Ramlī, Shams al-Dīn Muḥammad ibn Abī al-‘Abbās Aḥmad ibn Hamzah Shihāb al-Dīn, *Nihāyah al-Muḥtāj ilā Sharḥ al-Minhāj*, *op. cit.*, vol. 6, p. 159; Al-Mardāwī, ‘Alā’ al-Dīn, *al-Inṣāf fī Ma’rifah al-Rājih min al-Khilāf*, (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1995), vol. 3, p. 238; Al-Baghdādī, Abū ‘Ubayd al-Qāsim, *al-Amwāl*, *op. cit.*, p. 565; Al-Qaraḍāwī, Yūsūf, *op. cit.*, vol. 2, p. 13.

⁵⁷ According to Al-Nawawī, capital can be divided into two forms: either cash or equipment appropriate to their respective skills. Al-Nawawī, Yahya ibn Sharaf, *op. cit.*

⁵⁸ Ibn al-‘Arabī in his *Aḥkām al-Qur’ān*, adds, ‘If zakat is practised, and some further need arises, the rich must be obligated to provide for this need by unanimous agreement.’ Ibn al-‘Arabī, Abū Bakar al-Mālikī, *Aḥkām al-Qur’ān*, edited by: Muḥammad ‘Abd al-Qādir ‘Aṭā, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2003), part one, pp. 59-60

⁵⁹ Al-Qurṭubī emphasises the same: ‘Scholars are in agreement that if a need arises after the distribution of zakat, funds must be collected and used for that need.’ Al-Qurṭubī, Muḥammad ibn Aḥmad ibn Abī Bakar ibn Farāḥ al-Anṣārī, *Al-Jāmi’ li Aḥkām al-Qur’ān (Tafsīr al-Qurṭubī)*, edited by: ‘Abd Allāh ibn ‘Abd al-Muḥsin al-Turkī, (Beirut: Mu’assasat al-Risālah, 1st edn., 2006), vol. 2, p. 223

⁶⁰ Al-Suyūṭī, Muṣṭafa, *Maṭālib Ulī Al-Nuhā*, *op. cit.*, vol. 2, p. 136.

⁶¹ This includes building military, mosques, charitable hospitals, roads and armies, non-commercial railroads, military airports, fortifications, and military ships, expenses of training and travelling for speakers who spread the word of Allah.

⁶² Rashīd Riḍā, Muḥammad, *Tafsīr al-Manār*, (Cairo: Dār al-Manār, 2nd edn., 1366H/1947M), vol. 10, p. 585.

⁶³ Maḥmūd Shaltūt, *al-Islām, ‘Aqīdah wa Sharī‘ah*, *op. cit.*, pp. 197-198, and Maḥmūd Shaltūt, *al-Fatāwa*, (Cairo: Dār al-Shurūq, 14th edn., 1987), p. 219.

capital assistance,⁶⁴ either working capital or human capital development, and interest-free financing for the beneficiaries so they are not burdened with loans with added charges. With regard to how much to give, al-Dahlawī states that there can be no specific stipulation of the quantity that provides sufficiency because people have different needs and means of earning. Hence, customary practices will have a role to play in this determination.⁶⁵

Abdul Sattar Abū Ghuddah held that there is a difference between investment of zakat and using zakat to build income-generating projects like hospitals and schools for the *aṣṇāf*.⁶⁶ Aḥmad Azhar argued that the Qur'ān commanded us to distribute zakat to the beneficiaries, but it did not impose on us a specific format by which to deliver the zakat to the beneficiaries, thus allowing scope for the *ijtihād* of the authority. Verse 60 of Sūrah al-Tawbah mentions the poor and the needy in plural form and not in singular form, signifying that our obligation is to alleviate the poverty of the poor people in general and not just one person. Therefore, establishing projects that will benefit the *aṣṇāf* as a group is a *maṣlaḥah*. Moreover, the mention of zakat administrators in the midst of other beneficiaries can be seen as an indication that the zakat authorities have permission to make *ijtihād* in the distribution. This is supported by the legal maxim that the leader's management of affairs of the population at large must be based on *maṣlaḥah*.⁶⁷ 'Abd al-'Azīz al-Khayyāt also contended that it is permissible to use a portion of the zakat fund to establish income-generating projects while the other portion is to be distributed for the immediate needs of the *aṣṇāf*. In arguing for this opinion, he invoked the Ḥanafī School's view that permits delayed distribution of zakat if justified by *maṣlaḥah*. Hence, the investment could take place before the time for distribution.⁶⁸ The task of the current research is to come up with a framework and guidelines that streamline the investment of zakat money for microfinance without violating the Sharī'ah or defeating the Sharī'ah objectives of zakat.

⁶⁴ Zakat distribution in the form of capital had been discussed in the Third Islamic Convention on 11-16 October 1986 in Amman. The convention decided that zakat may be distributed in the form of capital only after the distribution in the form of self-sustenance (in the form of *'aqad al-tamlīk*) is completed as deliberated in Convention on Contemporary Zakat Issues (ندوة قضايا الزكاة المعاصرة) in Kuwait on 2-3 December 1992. Working capital assistance is provided in cash or equipment whereas human capital is in the form of skills training.

⁶⁵ Al-Dahlawī reported that a craftsman is excusable until he finds tools and machines that are needed so he can earn his daily food, while a farmer needs different tools at different cost, whereas a merchant needs inventory... Read: Shāh Walī, Aḥmad ibn 'Abd al-Rahīm, *Hujjah Allah al-Bālighah*, edited by al-Sayed Sābiq, (Beirut: Dār al-Jīl, 1st edn., 2005), vol. 2, p. 46.

⁶⁶ Organisation of Islamic Conference International Islamic Fiqh Academy, 'Tawzīf al-Zakāh fī Mashārī Dhāt Rī' bi Lā Tamlīk Fardī,' *Majallatu Majma' Al-Fiqh Al-Islami*, no. 3 (1986): 61, <https://www.iifa-aiifi.org/ar/1657.html>.

⁶⁷ Aḥmad Azhar, 'Tawzīf al-Zakāh fī Mashārī' Dhāt Rī' bi Lā Tamlīk Fardī,' *Majallat Majma' al-Fiqh al-Islāmī*, no. 3 (1986): 85.

⁶⁸ Ibid.

Hassan argued that the zakat fund could be used for direct and indirect poverty alleviation programmes and that a well-managed zakat fund could replace foreign aid that is received by some Muslim countries.⁶⁹ This finding coincides with Mikail and Obaidullah, both of whom established that zakat, waqf and other Islamic charitable funds are perfect components of Islamic microfinance.⁷⁰ Sastra argued that the features of good microfinance programs are that the loans are small and for short terms, that appraisal of borrowers and investment projects is simplified, and that disbursement is quick after appraisal of a successful business proposal.⁷¹

1.5.3 Conceptual Framework

The legitimacy of utilising zakat funds in providing microfinance to actual and potential zakat recipients is based on the following: a dual zakat distribution system whereby one portion is earmarked for immediate distribution and the other portion for delayed distribution, and the Prophetic tradition that prioritises some eligible zakat recipients over others. Hence, the research explores the *maṣlaḥah* of having a portion that is delayed for a reason approved by the Sharī'ah and which would prevent it from remaining idle.

On the above premise, investing the delayed portion by channeling it to potential zakat recipients in Islamic microfinance would not only prevent it from remaining idle but would also empower the lower-income earners that Islam aims to assist with zakat. When the period ends that was fixed to use the funds for microfinance, the capital reverts to the zakat fund. Then the profit that accrues to the fund is divided into two: one part goes to a reserve account as a buffer against depreciation of the actual zakat collected, and the other part is returned to the zakat fund to augment both portfolios: the delayed one as well as the one for immediate distribution.

Therefore, the relationship of the zakat authority vis-à-vis the zakat fund is *wakālah* (agency), which places a heavy fiduciary duty on the authority to ensure the security of the fund. This is because zakat money is for specific persons mentioned by Allah in the Qur'ān, chapter 9, verse

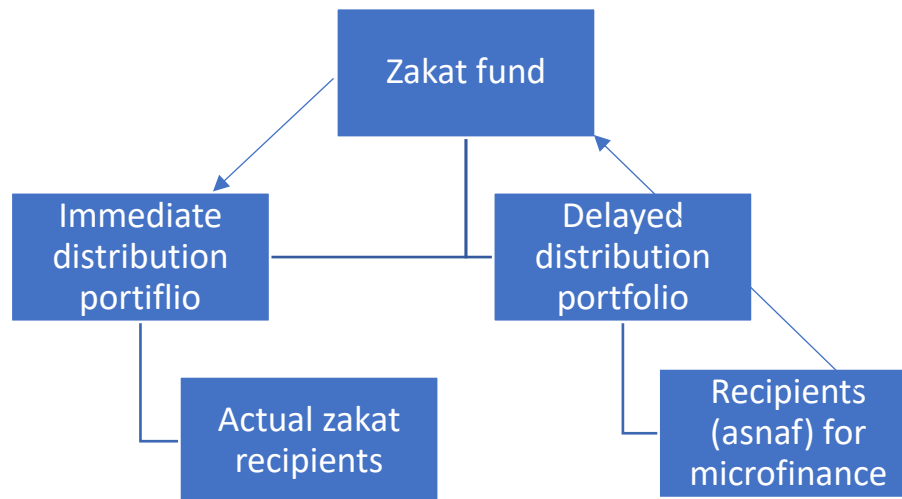
⁶⁹ M Iman Sastra Mihajat and Imam Sastra, 'Developing an Islamic Microfinance Model Using Koperasi Concept for Islamic Bank in Indonesia for Poverty Alleviation,' 2007.

⁷⁰ Mikail, Aḥmad, and Adekunle, 'Utilisation of Zakāh and Waqf Fund in Micro-Takāful Models in Malaysia: An Exploratory Study'; Mohammed Obaidullah and Tariqullah Khan, 'Islamic Microfinance Development: Challenges and Initiatives,' *Islamic Research & Training Institute Policy Dialogue Paper*, no. 2 (2008), p. 15. Said Adekunle Mikail, Muḥammad Ali Jinnah Aḥmad, and Salami Saheed Adekunle, 'Utilisation of Zakāh and Waqf Fund in Micro-Takāful Models in Malaysia: An Exploratory Study,' *ISRA International Journal of Islamic Finance*, 2017, p. 102-4.

⁷¹ Mihajat and Sastra, 'Developing an Islamic Microfinance Model Using Koperasi Concept for Islamic Bank in Indonesia for Poverty Alleviation.'

60, and the responsibility to administer and manage it is vested in the Muslim leaders, as already mentioned in the Qur'ān, chapter 9, verse 103.

Figure 1: The Conceptual Framework



Source: Authors' own.

CHAPTER TWO

THE MAQĀṢIDI APPROACH IN ZAKAT-BASED MICROFINANCE

2.1 Introduction to *Maqāṣid al-Sharī'ah*

This chapter will discuss the inherent Sharī'ah objectives of zakat and also analyse the deducible *maqāṣid al-Sharī'ah* in investment of zakat through the Prophetic traditions that regulate the distribution of zakat. These indicate that in certain cases some potential zakat recipients cannot be given due to the large number of eligible recipients and the priority given to those with the most pressing needs. This evidence led scholars to agree that zakat has its *maqāṣid* that should be considered alongside the existing rules in exercising *ijtihād* on any emerging issue of zakat.⁷²

Maqāṣid al-Sharī'ah is defined as the higher objectives which the Sharī'ah seeks to actualise in the lives of mankind.⁷³ *Maṣlahah* is anything that serves to protect the higher objectives of the Sharī'ah.⁷⁴ The *maqāṣid* are five, namely, protection of the religion, life, intellect, progeny and wealth. The opposite of *maṣlahah* is *mafsadah*, which is any factor that impedes or negates the existence of these five essentials.⁷⁵

2.2 The Sharī'ah Objectives of Zakat Regarding the Zakat Payer

Ibn al-Qayyim posits that there are many Sharī'ah objectives in zakat, some of which are related to the payer while others are related to the zakat receiver. The objectives related to the zakat payers are:⁷⁶

1. The objective of worshipping Allah by payment of zakat. This objective is mentioned in Sūrah al-Bayyinah, verse 5: 'Even though they were only *commanded to worship Allah alone* with sincere devotion to Him in all uprightness, establish prayer, *and pay zakat*. That is the upright Way.' It means that when the zakat payer pays his zakat he has actualised this objective for his own religion before even actualising the objective of assisting the needy.

⁷² Sa'd ibn Muqbil al-Harīrī al-'Anazī, 'Athar Maqāṣid al-Zakāh fī Ahkāmihā al-Shar'īyyah: Maqṣid Muwāsāh Unmūdhan, *Majallat al-Jāmi'ah al-Islāmiyyah li al-'Ulūm al-Shar'īyyah* 2, no. 192 (1439): 309–66.

⁷³ Ibn Ashur, Muḥammad al-Tahīr, *Treatise on Maqāṣid al-Sharī'ah* (The Other Press, 2006), p. 1.

⁷⁴ Al-Ghazali, Abū Hamid Muḥammad ibn Muḥammad Al-Ghazali, *Al-Mustasfā*, ed. Muḥammad AbdulSalam Abdul Shafi (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993).

⁷⁵ Al-Ghazali, 174.

⁷⁶ Ibn Al-Qayyim Muḥammad ibn Abi Bakr Ayub Al-Zar'ī Abū 'Abd Allāh ibn Qayyim Al-Jawzīyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, ed. Muḥammad Abdulsalam Ibrahim (Beirut: Dār al-Kutub al-'Ilmiyyah, 1991). vol. 1, p. 227.

2. The objective of expressing gratitude to Allah for endowing him with the favour of wealth. This objective is mentioned in several verses in the Qur'ān. For example, Allah said: 'And remember when your Lord proclaimed, "If you are grateful, I will certainly give you more. But if you are ungrateful, surely My punishment is severe"' (Sūrah Ibrāhīm, verse 7).
3. The objective of wealth protection. Ibn al-Qayyim said that extracting the zakat portion from wealth shields it from being destroyed or lost.
4. The objective of abiding by Allah's laws without alteration. When the zakat payer pays his zakat according to the rules set by Allah, he is declaring that he is abiding by Allah's rules.
5. The objective of strengthening the social fabric. Zakat paid by owners of wealth creates a society of mutual love and cleanses it of enmity, hatred, social vices and crimes. This is supported by the hadith that says: 'Give gifts and you will love one another.' Zakat is a variant of a gift as it is cash transfer without corresponding consideration from the receiver and without liability of repayment whatsoever.⁷⁷
6. The objective of purifying the soul of the zakat payers. Ibn Taymiyyah said that the terms zakat and *ṣadaqah* have both been used in the Qur'ān. It is called zakat because it purifies the soul of the payer. Allah said: 'Successful indeed are those who purify themselves' (Qur'ān, Sūrah al-A'ālā', verse 14) and in Sūrah al-Shams, verse 9, Allah said, 'The one who purifies his soul succeeds.'

2.3 The Sharī'ah Objectives of Zakat with Respect to the Zakat Recipients

The zakat recipients are the eight *aṣnāf* that Allah listed in Sūrah al-Tawbah, verse 60, as mentioned already in this research. The Muslim jurists, both classical and contemporary, agree that there are Sharī'ah objectives which Allah intended for the zakat recipients as follows:

1. The objective of *muwāsāh* (assistance, consolation and comfort): *muwāsāh* refers to rendering assistance to a person who is in need. This means that Allah ordained on the owners of wealth to come to the assistance of their needy brethren. The scholars said this objective of *muwāsāh* is the most outstanding of the Sharī'ah objectives of zakat as it is found in all the eight recipients of zakat by virtue of poverty, neediness, being

⁷⁷ Taufiq AbdulRahman Salim Al-Uqayilah, 'Athar Zakāh fī al-Ḥadd min In'ikāsāt Taghayyur al-Bi'ah wa Athārihā: Al-Ta'līl al-Maqāsidī li Farīdat al-Zakāh,' in *The 7th International Conference of London Centre of Social Researches, Studies and Consultancies* (Bahrain: Dār Nashiri, 2019), <https://units.imamu.edu.sa/colleges/sharia/sofm/Documents/3kailah4.pdf>.

among the administrators, those whose hearts are being reconciled, by virtue of being a slave, the bondage of indebtedness, or in the cause of Allah, and the wayfarer.⁷⁸ The objective of *muwāsāh* (assistance) plays a role in entitling all these recipients to a share of zakat.

2.4 The Sharī‘ah Objectives of Zakat vis-à-vis the Zakatable Wealth

Ibn Taymiyyah asserted that the word zakat literally means growth, development and purity. Hence the *maqāṣid al-Sharī‘ah* regarding the zakatable wealth consist of the following:

1. The objective of growth. This objective means that payment of zakat from wealth is a booster to the growth and increase of that wealth. The scholars are all in agreement that zakat payment increases wealth. This is why zakat is imposed on property that has the inherent feature of growth, whether the wealth actually underwent growth or not, so long as it is not for personal use.⁷⁹ The meaning of this objective is that any zakatable property has the tendency to increase because Allah has only imposed zakat on the property He created to inherently grow and increase. Examples are the agricultural produce that is harvested every season, livestock that grows through reproduction and production of milk, gold and silver, currency and trade commodities. Some of the verses of the Qur’ān that expressly support the objective of growth and increase of *barakah* are:
 - a. Allah says, ‘Allah destroys interest and gives increase for charities...’ (Qur’ān Sūrah al-Baqarah, verse 276). There is no doubt that *al-ṣadaqāt* in this verse encompasses zakat and other types of charity.
 - b. Allah says, ‘And whatever you give for interest [i.e., advantage] to increase within the wealth of people will not increase with Allah. But *what you give in zakāh, desiring the face [i.e., approval] of Allah - those are the multipliers* (Qur’ān, Sūrah al-Rūm, verse 39). This verse is very direct in its affirming that zakat is a source of *barakah* for wealth from which it is given. Furthermore, this objective implies that Allah wants the owner of zakatable wealth to perform zakat so that He will increase him in wealth as stated in the hadith below.

⁷⁸ ‘Abd Allāh al-Zubayr ‘Abd al-Raḥmān al-Ṣāliḥ, ‘Al-Maqāṣid al-Mar‘iyyah fī Tashrī‘ al-Zakāh’ (Sudan, 2012), <http://www.hssb.gov.sd/ar/content/>.

⁷⁹ Ibn Qudāmāh, ‘Abd Allāh ibn Aḥmad al-Maqdisi Abū Muḥammad Muwaffaq al-Din, *Al-Mughnī fī Fiqh al-Imām Aḥmad Ibn Ḥanbal* (Cairo: Maktabat al-Qāhirah, 1968), vol. 2, p. 467.

- c. Abū Hurayrah (may Allah be pleased with him) reported that the Prophet (ﷺ) said, ‘Two angels descend every morning, one of whom says: “O Allah, give him who spends something in place of what he spends.” The other one says: “O Allah, give destruction to him who withholds.”’⁸⁰
2. The objective of wealth circulation. One of the most expressly communicated objectives of the Sharī‘ah in distribution is that it makes wealth circulate.
3. The objective of wealth protection: this objective means that the zakatable wealth will be protected if the owners pay zakat. This objective is better manifested in the Sharī‘ah preference that zakat be distributed in the location from which the zakatable property was acquired unless the inhabitants of this location are not poor. Then it is allowed to take it to a location that has poor people. This because the zakatable wealth would be safe as everyone in the original location of the wealth is self-sufficient.

2.5 *Maqāsid al-Sharī‘ah* in Excluding the Rich, and Active and Healthy Persons from Zakat

This concept is found in a hadith which states, ‘Zakat is not for the rich nor for one who is strong and able to work and earn,’ as will be discussed in this subsection. If the researchers were able to make a pronouncement that this hadith is yet another sign of the prophethood of our beloved Prophet (ﷺ), they would declare it as such. This is because zakat belongs to the poor and the needy as unequivocally mentioned by Allah in the Qur’ān, chapter 9, verse 60. This means that anyone who possesses the attribute of poverty (*faqīr*) and neediness (*miskīn*) is entitled to zakat even if he has some means of survival that is not sufficient to make him a rich person. However, this hadith may exclude the able-bodied. The Prophet (ﷺ) as the one conveying from Allah used this hadith to make sure the dwindling zakat resources are prioritised among a large population of zakat beneficiaries. It is from this perspective that we see this hadith as one of the signs of prophethood. There is no doubt that Allah, the Exalted, is the one who directed the Prophet (ﷺ) to make this a part of the zakat distribution mechanism when the number of eligible recipients increases. He encouraged able-bodied and healthy persons to work or do business and allow those who are not physically fit to enjoy free zakat money even though all of them are entitled to zakat by virtue of being poor and needy.

⁸⁰ Al-Bukhārī Muḥammad ibn Ismail, *Ṣaḥīḥ al-Bukhārī* (Cairo: Dār al-Sha‘b, 1987), hadith no. 1442, vol. 2, p. 115; Muslim ibn al-Ḥajjāj Abū al-Ḥasan al-Qushayrī al-Nayṣabūrī, *Ṣaḥīḥ Muslim*, ed. Muḥammad Fu‘ād ‘Abdul-Bāqī (Beirut: Dār al-Jīl and Dār al-Āfāq al-Jadīdah, n.d.), hadith no. 1010, vol. 2, p. 700.

For smooth application of zakat based-microfinance, this hadith is a guide for selecting the type of poor person who has priority of unconditional zakat transfer and the poor who should be given zakat money for a microfinance programme. The latter could receive an interest-free loan that should be paid back, or be offered a equity-based contract or receive debt-based financing like *salam*, *istiṣnāʿ*, *ijārah* and the like. Application of this zakat-based microfinance would help to further actualise the major Sharīʿah objective of zakat, which is poverty alleviation. This would in turn lead to actualising a major Sharīʿah objective of finance, which is wealth circulation, as mentioned by Allah in the Qurʾān, chapter 59, verse 7.

2.6 Hadiths for Prioritising Zakat Beneficiaries and the *Maqāsid al-Sharīʿah*

There are a number of hadiths that regulate zakat distribution from the perspective of prioritisation of the zakat beneficiaries. These hadiths provide valuable guidance for proper management of the zakat fund so that it will reach a greater number of beneficiaries who deserve it the most. Hence, this subsection analyses the various versions of the hadith jurisprudentially. Here follow the versions:

1. وَعَنْ حُبَيْبِ بْنِ جُنَادَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ الْمَسْأَلَةَ لَا تَحِلُّ لِغَنِيِّ وَلَا لِذِي مِرَّةٍ سَوِيٍّ إِلَّا لِذِي فَقْرٍ مُدْقِعٍ أَوْ غُرْمٍ مُفْطَعٍ، وَمَنْ سَأَلَ النَّاسَ لِيُثْرِيَ بِهِ مَالَهُ كَانَ خُمُوشًا فِي وَجْهِهِ يَوْمَ الْقِيَامَةِ، وَرَضْنًا يَأْكُلُهُ مِنْ جَهَنَّمَ، فَمَنْ شَاءَ فَلْيُقِلَّ وَمَنْ شَاءَ فَلْيَكْثُرْ». رَوَاهُ التِّرْمِذِيُّ

Ḥubshī ibn Junādah reported Allah’s Messenger as saying, ‘Begging is not allowable to a rich man or to one who has strength and is sound in limb. It is only for one who is in grinding poverty or is seriously in debt. If anyone begs to increase thereby his property, it will appear as lacerations on his face on the Day of Resurrection and as heated stones from hell that he will eat. So let him who wishes ask a little, and let him who wishes ask much.’ This hadith is reported by al-Tirmidhī in his *Al-Jāmiʿ*.⁸¹ According to Ibn al-Jawzī of the Ḥanbalī School, although this chain of reporters is not authentic, it represents the view of the Ḥanbalī School because of a similar hadith that came through an authentic chain of reporters that strengthened the status of this narration.⁸²

2. عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ الْعَاصِ - رَضِيَ اللَّهُ عَنْهُمَا - : أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَحِلُّ الصَّدَقَةُ لِغَنِيِّ، وَلَا لِذِي مِرَّةٍ سَوِيٍّ». أَخْرَجَهُ التِّرْمِذِيُّ، وَأَبُو دَاوُدَ. وَفِي رِوَايَةٍ أُخْرَى: «لِذِي مِرَّةٍ قَوِيٍّ»

⁸¹ Al-Tirmidhī, *Sunan al-Tirmidhī*, vol. 3, p. 33 Edited by Aḥmad Shākir and Muḥammad Fuʾād ʿAbdul-Bāqī.

⁸² Ibn al-Jawzī Jamāl al-Dīn Alī ibn Muḥammad, *Al-Taḥqīq fī Aḥādīth al-Ikhtilāf*, vol. 2, p. 62, 1415 Dār al-Kutub al-ʿIlmiyyah, Beirut.

‘Abd Allāh ibn ‘Amr related that the Prophet (ﷺ) said, ‘Zakat is not allowable to a rich man *or to one who has strength and is sound in limb*.’⁸³ In another version, the hadith uses the term *qawī* (able to work) in place of *sawī* (sound in limb). Reported by al-Tirmidhī and Abū Dāwūd. Imam al-Tirmidhī, after reporting the hadith, said that Abū Hurayrah reported a similar hadith that corroborates the reports of ‘Abd Allāh ibn ‘Amr, Ḥubshī ibn Junādah and Qabīṣah ibn Mukhāriq, who are all companions of the Prophet (ﷺ). Al-Tirmidhī graded the hadith as a good tradition. He added his *fiqh* on the hadith thus: ‘If a man is strong and healthy but found himself to be in need because he has nothing to survive on, and the zakat payer gave him zakat, the payer is considered to have discharged his obligation to pay zakat. The interpretation of this hadith in the view of some scholars is in asking for the zakat [not when he is given without asking].’ A contemporary scholar of hadith, al-Albānī also adjudged this hadith authentic.⁸⁴

Commenting on this hadith, the prominent Shāfi‘ī jurist, al-Khaṭṭābī said *dhu mirrah* in the hadith refers to strong and healthy body that can bear hard work and hard labour. He added that the scholars differed about giving zakat to one who possesses these qualities that allow him to work for earnings. Imam al-Shāfi‘ī is one of the scholars who ruled against giving him zakat. A similar opinion was held by Ishāq ibn Rāhawayh and Abū ‘Ubayd. On the contrary, other scholars, referred to as Aṣḥāb al-Ra’y, held that such a person is allowed to receive zakat if he possesses less than 200 silver dirhams. The implication of the opinion of Aṣḥāb al-Ra’y is that a person whose personal wealth reaches the *niṣāb* and above is not allowed to receive zakat because, according to them, he is a rich person who is instructed to pay zakat.

3. وعن عبد الله بن عدي بن الخيار أن رجلين أخبراه أنهما أتيا النبي - صلى الله عليه وسلم - يسألانه من الصدقة، فقلَّبَ فيهما البصر، رَأَاهُمَا جُلْدَيْنِ، فقال: «إِنْ شِئْتُمَا أُعْطِيَتْكُمَا، وَلَا حَظَّ فِيهَا لَغْنِي، وَلَا قُوَى مَكْتَسَبٍ» رواه أحمد وقواه وأبو داود والنسائي، وقال أحمد: هذا أجود إسناده وفي رواية: ما أجوده من حديث.

‘Ubaydullah ibn ‘Adī ibn al-Khiyār (RAA) narrated that two men told him they went to the Messenger of Allah (ﷺ) asking him to give them something from the zakat money (as he was distributing it at that time). The Messenger of Allah (ﷺ) looked them up and down and found *them to be sturdy and strong*. He said to them, ‘I leave it to your choice. If you will, I shall give it to you, *but this zakat is not for one who is rich nor for one who is strong and able to earn*.’ Related by Aḥmad, Abū Dāwūd and al-Nasā’ī. Aḥmad judged this narration, saying ‘This is

⁸³ Abū Dāwūd,

⁸⁴ Al-Tirmidhī, *Sunan al-Tirmidhī*, vol. 3, p. 33. Edited by Aḥmad Shākir and Muḥammad Fu’ād ‘Abdul-Bāqī, 1975.

the best chain of reporters compared to other versions of this hadith.’ He also remarked, ‘What an authentic hadith!’⁸⁵ The hadith is also authenticated by Al-Albānī who declared that the chain of reporters fulfilled the conditions of Imam al-Bukhārī in authentication of hadith.⁸⁶

2.6.1 The Jurisprudential Discussion of This Hadith

The early scholars are divided into two groups on the implementation of the apparent meaning of this hadith. The first opinion is that this hadith is applicable according to the meaning rendered by the apparent wording. That is, zakat is not lawful for three groups: a) the rich; b) those who are endowed with strength and healthy limbs and have a source of earning; c) those endowed with strength and healthy limbs but have no source of earning. The hadith mentions these two variant categories of poor persons. The *mafhūm al-mukhālafah* (the inverse meaning) of these two variations is that zakat is lawful for those who are not endowed with healthy limbs and have no source of earning. What is fascinating in this hadith is that the Prophet (ﷺ) started by mentioning the prohibition of zakat for the rich and followed it by the prohibition of those endowed with healthy limbs with potential source of livelihood. The mention of this segment of people restricts the *mafhūm al-mukhālafah* that is deduced from the prohibition of zakat for the rich. That is, when he said, ‘Zakat is not lawful for the rich,’ the inverse understanding is that zakat is lawful for the poor. However, the Prophet (SAW) went on to exclude the second category from zakat eligibility as well, that is, someone endowed with healthy limbs, with or without source of earning. This is why some scholars said healthy limbs are equated with richness.⁸⁷ Consequently, such a person is not entitled to zakat.

2.6.1.1 Jurists’ Opinions on This Hadith

The following lists the scholars with their various opinions on the application of this hadith.

1. Imam al-Shāfi‘ī, Ishāq ibn Rāhawayh, Imam Aḥmad ibn Ḥanbal, Abū Thawr, Abū ‘Ubayd, Ibn al-Mundhir, Ibn al-Qaṣṣār, and most importantly, it is the opinion of ‘Abd Allāh ibn ‘Amr, the Companion who reported the hadith; all of them said that zakat is not lawful for someone with healthy limbs.⁸⁸

⁸⁵ Abū Dāwūd Al-Sijistānī, *Sunan Abī Dāwūd*, vol. 2, p. 118; Abū Abdulrahman, *Sunan al-Nasā’ī*, vol. 5, p. 99.

⁸⁶ Al-Albānī, *Ṣaḥīḥ Sunan Abī Dāwūd*, vol. 5, p. 335.

⁸⁷ Abu Al-Hasan Ali Ibn Khalaf Ibn-Battal, *Sharh Sahih Al-Bukhari Li Ibn Battal*, ed. Abu Tamim Yasir Ibn Ibrahim, 2nd ed. (al-Riyadh: Maktabah Al-Rushd, 2003), v. 4, p. 186.

⁸⁸

2. On the hand, Abū Ḥanīfah, Abū Yūsuf, Muḥammad ibn Ḥasan and Imam Mālik said that every poor person, whether strong or incapacitated, is entitled to zakat.⁸⁹ Al-Ṭahāwī from the Ḥanafī School argued that being healthy is not a factor that prohibits entitlement to zakat if the recipient's intention is survival, but it is *ḥarām* for him to collect the zakat if his intention is enrichment.⁹⁰ Furthermore, the Ḥanafī School also responded to the meaning of this hadith by saying that asking for zakat while he is strong and healthy is what is prohibited, but if he is given without asking, it is lawful for him.⁹¹

If the first opinion is to be applied, the person with working capability should definitely not be given zakat. In the context of zakat-based microfinance, this person may be offered microfinance either as an interest-free repayable loan or by another form of financing. According to the second opinion, the prohibition in the hadith only applies to a healthy person who is capable of working; however, if a person with this attribute is given zakat without asking, then it is allowed. In both circumstances, offering the person microfinance instead of zakat can still be strongly considered. In this situation, we believe that the person should not be made aware that this is zakat money. For him to receive it according to the normal conditions of microfinance would be more likely to prevent him from being complacent in using that money properly. However, in case any of them defaulted with valid justification, the debt could be written off. This is because if he is not qualified to ask for zakat because he is healthy with a source of earning, the entity administering the zakat-based microfinance may now offer him zakat by writing off the debt, on the basis of being one of the *ghārimīn*.⁹² However, the microfinance entity would refer back to the zakat fund organisation for consideration as to which of the defaulters deserves to be free of liability and which does not.

On the interpretation of the above hadith, Imam al-Ṭabarī took a position between the two opinions mentioned above. He claimed that there is *khuṣūṣ* (exclusivity) in the hadith, arguing that the *ṣadaqah* that is *ḥarām* for a person with healthy limbs is the obligatory *ṣadaqah*; i.e., zakat. However, voluntary *ṣadaqah* like waqf is lawful for him because waqf is lawful for both rich and poor. He, however, added that if the person with healthy limbs faces

⁸⁹ Ibn Baṭṭāl *Sharḥ Ṣaḥīḥ al-Bukhārī*, vol. 3, p. 522.

⁹⁰ Ibn al-Jawzī, *Kashf al-Mushkil min Hadīth al-Ṣaḥīḥayn*, Dār al-Watan, edited by Ali Ḥusayn Al-Bawwab, (nd) Al-Riyadh

⁹¹ Badr al-Dīn al-ʿAynī, Abū Muḥammad Mahmud, *Sharḥ Sunan Abī Dāwūd*, edited by Abū al-Mundhir Khalid al-Misri, 1999, Maktabah al-Rushd, Riyadh.

⁹²

some financial challenges in his source of earning he will become eligible to receive zakat.⁹³ This opinion sounds more supportive to the opinion held by Imam al-Shāfi‘ī and his supporters.

2.6.1.2 Balancing between the Opinions

Based on the above discussions among various jurists and Islamic schools of jurisprudence, it appears that all the above-mentioned opinions are acceptable. However, some opinions may be more practicable, especially during this time, by looking at the practice of contemporary zakat and the numbers of people who need zakat assistance. Accordingly, if the zakat fund is abundant and has a surplus, the opinion of Abū Ḥanīfah and Mālik that every poor and needy person is qualified to receive zakat, regardless of having healthy limbs and with or without a regular source of earning, would be more practicable. On the contrary, if the zakat revenue is small and insufficient to cater for large number of recipients then the opinion of Shāfi‘ī and Ḥanbalī Schools may be more practicable.

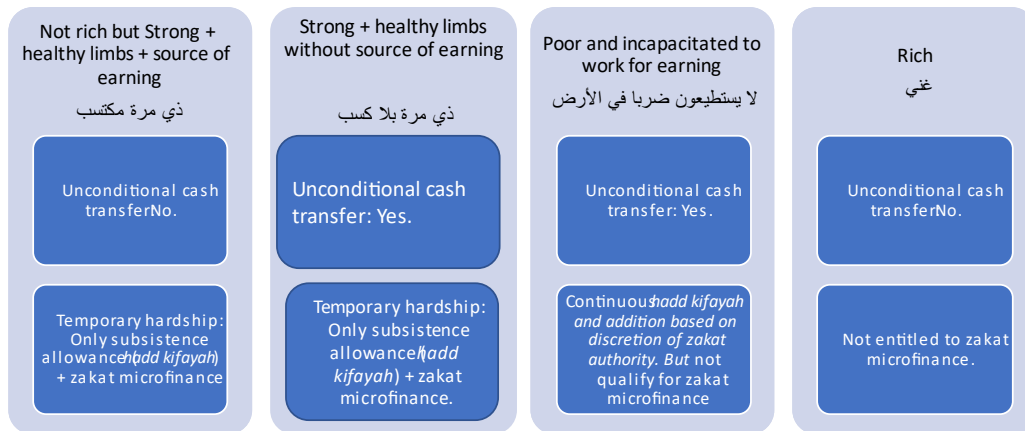
Based on the hadith under discussion and the two jurisprudential opinions arising from it, we may categorise the poor and needy who should be given the fund as recipients of zakat and those who should be given on a microfinance basis into three categories:

1. Non-zakat recipient. This refers to the rich person who has more than sufficient means to live.
2. Potential zakat recipient. This refers to a poor person with healthy limbs and a potential source of income (e.g., he has a potential business proposal or has a business but needs working capital).
3. Actual zakat recipient. This refers to a person with healthy limbs but no source of earning, or one who is temporarily or permanently incapacitated and cannot work to earn.

Figure 2: Relationship of people with Zakat-based microfinance

⁹³ Ibn Baṭṭāl, *Sharḥ Ṣaḥīḥ al-Bukhārī*, vol. 3, p. 522.

Zakat unconditional cash transfer and Zakat Microfinance



Source: Authors' own

To further explain the categorisations in the figure:

1. Rich people are not allowed to receive the fund, neither as zakat nor as microfinance recipients.
2. Healthy persons with a potential source of earning but who are not rich are eligible to receive zakat-based microfinance according to the decision of the authority on the basis of the above-mentioned hadith.
3. We have two actual zakat recipients one of which is a healthy person without a potential source of earning. Such a person is qualified for zakat, with the hope that the zakat money will help him to overcome his difficulties. This zakat money is to cover his subsistence allowance based on *hadd kifayah* (minimum sufficiency). He may also be qualified for zakat-based microfinance if he can justify his business potentiality.
4. Those who are incapacitated and unable to work will receive zakat as recipients but will be disqualified from microfinance funding to prevent risk of default and delinquency.

2.7 How Can the Zakat Fund Support Zakat-Based Microfinance?

To have a smooth zakat-based microfinance operation there must be some zakat fund reserved for that purpose. This involves dividing the fund into two portfolios. One portfolio is for immediate distribution while the other is for delayed distribution. Each time the portfolio for delayed distribution recoups the funds it disbursed for microfinance among the potential zakat recipients, the funds will be redeployed to the portfolio for immediate distribution as shown in the conceptual framework.

The question, however, is whether delaying distribution of zakat is permissible or not, and if it is permissible, to what extent? Having an affirmative answer to this question will allow more room for potentially delaying the distribution. Hence, the next chapter deals with this matter.

CHAPTER THREE

THE SCOPE OF *TAMLĪK* IN ZAKAT DISTRIBUTION

3.1 Introduction

Zakat is a religious and spiritual obligatory duty in which the eligible Muslims are asked to share some portion of their capital with those in the society who are in need of money and means for their essential needs. The latter are known as the *maṣārīf* of zakat. Zakat is at a comparable level of importance as the five obligatory prayers, as both are frequently mentioned together in the Qur'ān and hadith.⁹⁴ Unlike *ṣadaqah*, waqf and other alms of Islam, zakat draws some detailed rules and regulations that apply to stakeholders such as the payers, administrators, and beneficiaries. These are designed to distribute the zakat fund among the beneficiaries properly, to alleviate poverty in the society, or at least decrease it, and to enrich the poor and needy.⁹⁵ The practice of zakat entails two kinds of rights: *ḥaqq Allāh* (the right of Allah) and *ḥuqūq al- 'ibād* (the rights of the poor).⁹⁶ Disregard for its rules and conditions will result in severe punishment in the hereafter. Hence, the practice of zakat needs to be given the same level of attention and consideration as other important obligations in Islam.⁹⁷

1. *Tamlīk* is considered a prime condition in the practice of zakat. It means that the wealthy persons must transfer the ownership of zakat money to the recipients identified in Qur'ān. Classical jurists defined and discussed the concept of *tamlīk* in detail, and they had different views and fatwas about it. Moreover, contemporary scholars have reinterpreted this condition of zakat and expanded the meaning of *tamlīk* in a broad way, which can be applied in a modern context. The reason for the care and concern on the matter is that the Prophet (PBUH) described clearly that zakat money is the *ḥaqq* of Allah (right of God), and *ḥaqq al- 'ibād* (right of the poor); therefore, it must be distributed as per Allah's command. In this regard, Ziyād ibn al-Ḥārith al-Sudā'ī said: I came to the Messenger of Allah and pledged the allegiance of faith. A man came and said, 'Give me charity (from zakat).' The Messenger of Allah said: 'Allah did not leave the distribution of zakat to a prophet or anyone else. He rather retains this right for

⁹⁴ Al-Baqarah: 43; Al-Tawbah: 11.

⁹⁵ Al-Qaraḍāwī, Yusuf, *Fiqh al-Zakāh: Dirāsah Muqāranah li Ahkāmihā wa Falsafatihā fī Daw al-Qur'ān wa al-Sunnah*, vol. 1, p. 92, (Beirut: Mu'assasat al-Risālah, 2006).

⁹⁶ Ibid., 91.

⁹⁷ Ibid., 22.

Himself by allocating it among eight deserving categories. If you are in any of the eight, I will give you your right.’⁹⁸

2. Importantly, as it is well known that zakat beneficiaries are prospective owners of zakat money,⁹⁹ it is up to them to decide the way they prefer to collect the zakat money. In contrast, dictation to the beneficiaries regarding the receipt of zakat money challenges and questions this religious practice of zakat.¹⁰⁰ *Tamlīk* (the transfer of ownership of zakat money from the payers to the beneficiaries) has drawn the attention of contemporary scholars as a matter to be discussed and examined in a broader way. This is due to the classical stipulations which clash with modern approaches to addressing the issue of poverty.
3. The central objective of this paper is to examine *tamlīk* in its broadest sense, which is as follows:
 - Its legal close-fitting definition with regard to zakat money;
 - The scope of *tamlīk* in unconditional actual possession of zakat money by the recipients.

3.2 The Concept of Zakat Distribution

Before discussing delayed distribution of zakat, it is apt to underscore that administration of zakat through proxies takes its root from the Qur’ān, chapter 9, verse 60, in which Allah mentioned zakat administrators among the recipients of zakat. Also, the practice of the Prophet (ﷺ) and his Rightly Guided Caliphs was based on two types of zakat administration by proxy. One was to appoint an administrator to collect and deliver to the Prophet (ﷺ) in Madinah for his onward distribution, as in the case of Ibn al-Lutbiyyah that is mentioned in *Ṣaḥīḥ al-Bukhārī*.¹⁰¹ The other was to appoint the administrator and give him autonomous power to collect and distribute, as in the case of Mu’adh ibn Jabal when the Prophet (ﷺ) sent him to Yemen.¹⁰²

⁹⁸ Al-Sijistānī, Abū Dāwūd Sulayman ibn al-Ash‘ath, *Sunan Abi Dāwūd*, (in *Mawsū‘at al-Ḥadīth al-Sharīf*), p. 1345, (Riyadh: Dār al-Salām).

⁹⁹ Al-Qaradāwī, Yusuf, *Fiqh al-Zakāh: Dirasah Muqaranah li Ahkamiha wa Falsafiha fī Dawai al-Qur’ān wa al-Sunnah*, vol. 1, p. 92.

¹⁰⁰ Hussain, Shahrul. ‘Tamlīk-proper to Quasi-tamlīk: Unconditional Cash Transfer (UCT) of Zakat Money, Empowering the Poor and Contemporary Modes of Distributing Zakat Money with Special Reference to British Muslim Charities.’ *Journal of Muslim Minority Affairs* 41, no. 1 (2021): 179-201.

¹⁰¹ Bukhārī, Muḥammad ibn Ismail, *Ṣaḥīḥ al-Bukhārī*. vol. 3, p. 159; Muslim ibn al-Hajjaj Abū al-Ḥasan al-Qushayri al-Naysabury, *Ṣaḥīḥ Muslim*, vol. 3, p. 1463.

¹⁰² Bukhārī, Muḥammad ibn Ismail, *Ṣaḥīḥ al-Bukhārī*. vol. 2, p. 128

However, after the demise of the Prophet (ﷺ) and his Rightly Guided Caliphs and subsequent just Muslim leaders, questions arose about integrity in the administration of zakat, especially the distribution. This gave jurists due cause to disagree whether it is better to pay by oneself or to pay through the appointed zakat authority who will subsequently distribute it to the designated recipients.¹⁰³ Irrespective of any opposing opinion, the preponderance of the Ṣaḥābah and subsequent jurists preferred that zakat be paid to the zakat authority for his onward distribution to the *aṣnāf*.¹⁰⁴

Therefore, payment of zakat could be defined as taking the quantum of zakat due on one's own wealth and giving it to the rightful beneficiary directly or through a zakat authority acting as an agent of the Muslim leaders.¹⁰⁵ By doing either of these, the payer is considered to have discharged his zakat obligation in the view of the Sharī'ah, even if, in the second alternative, the zakat authority delays the distribution to the bona fide recipients.¹⁰⁶ The zakat authority's distribution of zakat refers to its sharing of the zakat it collected with the bona fide recipients according to the authority's *ijtihād* that the distribution conforms with *maqāṣid al-Sharī'ah*.¹⁰⁷ We can conclude here that if the zakat distribution is delayed by the authority due to certain valid reasons, the zakat payers shall not be liable for anything because they have discharged the obligation set by the Sharī'ah.

¹⁰³ Abū Aḥmad Humaid Ibn Zanjawayh, *Al-Amwal li Ibn Zanjawayh* (Saudi Arabia: Markaz al-Malik Faysal li al-Buḥūth wa al-Dirāsāt al-Islāmiyyah, 1986), vol. 3, p. 1147; 'Abd Allāh ibn Aḥmad Ibn Qudāmah al-Maqdisi Abū Muḥammad Muwaffaq al-Din, *Al-Mughnī* (Cairo: Maktabat al-Qāhirah, 1968), vol. 2, p. 479.

¹⁰⁴ Abū Aḥmad Humaid Ibn Zanjawayh, *Al-Amwal Li Ibn Zanjawayh*. vol. 3, p. 1147-53.

¹⁰⁵ Wahbah Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu* (Damascus: Dār al-Fikr, 1984), vol. 3, p. 2009.

¹⁰⁶ Ibn Taymiyyah, Aḥmad ibn Abdul Halim, *Majmu Fatawa*, ed. Abdulrahman ibn Muḥammad ibn Qasim, *Vol. 25&29, Riyadh: Matabi' al-Riyad* (Saudi Arabia: King Fahd Qur'ān Printing Complex, 1995), vol. 25, p. 81.

¹⁰⁷ 'Umar ibn 'Abd al-'Azīz said about Sūrah al-Ḥajj, verse 41, that it is not only commanding the leaders but also the led; that is: the leaders will request you to perform the obligations of Allah upon you, and you are to obey ungrudgingly and with no difference between open obedience and hidden obedience. Abū al-Fidā' Ismail ibn 'Umar al-Demashqi Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, (Dār al-Taybah li al-Nashr wa al-Tawzī', 1999), vol. 5, p. 437; Ibn Taymiyyah, Aḥmad ibn Abdul Halim, *Al-Hisbah fī al-Islam Aw Wazīfatu Al-Hukumatu Al-Islamiyyah* (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.), p. 25.

3.2.1 The Concept of *Tamlīk* in Zakat Distribution

This subsection will define and discuss *tamlīk*, *qabḍ* and *taṣarruf* (disposal) in the context of zakat distribution. The definitions and discussion of these terms are of central importance because they are paramount in zakat distribution and zakat-based Islamic microfinance.

3.2.1.1 Definition of *Tamlīk*

Tamlīk is an Arabic verb derived from *mallaka/yumalliku*, which means to transfer ownership from one to another.¹⁰⁸ The original three-letter root is *malaka/yamliku*, which means to have ownership or possession of something.¹⁰⁹ Muslim jurists define *tamlīk* as ‘the original ability of *taṣarruf* (disposal) approved by the law, except in some cases’. In this definition, the phrase ‘original ability of *taṣarruf* approved by the law’ excludes an agent (*wakīl*), and the phrase ‘except in some cases’ excludes the interdicted (*mahjūr ‘alayhi*).¹¹⁰ The Māliki scholar Ibn Nishat defines *tamlīk* as ‘an ability given to a human being by the law to derive benefit from an asset (*‘ayn*) or usufruct (*manfa‘ah*) personally or via his agent (*wakīl*), or by taking compensation for an asset or usufruct’.¹¹¹

وعرفه بن الشاط من المالكية بأنه: ‘تمكن الإنسان شرعاً بنفسه أو بنيابة من الانتفاع بالعين أو المنفعة، ومن أخذ العوض عن العين أو المنفعة.

From the above-mentioned definitions of *tamlīk*, it can be concluded that the technical and linguistic meanings of *tamlīk* are the same. Therefore, *tamlīk* of zakat can be defined as distributing zakat fund to the beneficiaries such that the full right of possession is conferred to them.

3.2.1.2 Definition of *Qabḍ*

Possession and disposal are main elements of the payment of zakat money. Linguistically, *qabḍ* is derived from the Arabic verb *qabaḍa/yaqbiḍu*, which means taking something with the entire palm of the hand. Metaphorically, it is used only for receiving something even it does not

¹⁰⁸ Kiranwi, Wahiduzzaman Qasmi, *Al-Qamoos al-Wahid*, vol. 1, p. 1581, (Deoband: Kutub khana Hussainya, 2014).

¹⁰⁹ Ibid., p. 1580.

¹¹⁰ Ibn Nujaym, Zainuddin ibn Ibrahim, *Al-Ashbah wa al-Nazair*, cited by Al-Ratil, Sulaymān Muṣṭafā, *Mabda’ al-Tamlīk wa Madā I’tibārihi fī Sharf al-Zakāh*, (n.d.), available at https://jfslt.journals.ekb.eg/article_11909_27e4a6db96d8a96460fa1f26767abfbd.pdf

¹¹¹ Al-Ratil, Sulaymān Muṣṭafā, *Mabda’ al-Tamlīk wa Madā I’tibārihi fī Sharf al-Zakāh*, (n.d.), available at https://jfslt.journals.ekb.eg/article_11909_27e4a6db96d8a96460fa1f26767abfbd.pdf

involve the entire palm of the hand.¹¹² According to jurists, possession of something refers to having control over its custody and bearing its risk without any hindrance.¹¹³

‘Uthmānī¹¹⁴ has discussed it in detail from the sale and purchase perspective, and according to him, constructive possession is a scenario wherein the buyer has not taken physical custody of the subject of sale but has control of it, and all the rights and obligations of the subject of sale are passed on to him. Furthermore, *takhliyah* is defined as a form of constructive possession where the seller makes the property available for the buyer to take into his physical custody without hindrance.¹¹⁵ It is the opinion of Imam Abū Ḥanīfah and Imam al-Bukhārī that physical possession is not needed for the transfer of risk from the seller to the buyer; rather, *takhliyah* would be enough to confirm constructive possession.¹¹⁶ *Takhliyah* is commonly used in place of *qabḍ* for fixed assets like real estate.

From the above-mentioned discussion, it can be concluded that possession can be:

- a. real possession in which physical custody is taken of the zakat fund;
- b. constructive possession through *takhliyah* where the zakat payer allows the beneficiaries of zakat to take physical possession without any interference.

3.2.1.3 Definition of *Taşarruf*

Taşarruf is derived from an Arabic verb, *taşarrafa*, which means

التقلب في الأمور والسعي في طلب الكسب

to have changes in any matter and to exert effort in pursuit of earning.¹¹⁷

Linguistically, it can be understood from the texts of jurists that it is behaviour which expresses the intention of a human being whether by speech (*qawl*) or action (*fi‘l*), and has legal effect according to Sharī‘ah.¹¹⁸

التصرف عند الفقهاء: هو كل ما يصدر عن شخص بإرادته من قول أو فعل، ويترتب عليه حكم شرعي.

¹¹² Al-Sihah li al-Jawhari, Mufradat al-Ragib and Misbah al-Muneer, cited in Al-Mawsoua al-Fiqhiyya in the definition of Qabḍ.

¹¹³ Al-Kāsānī, Alauddin Abubakar, *Badā‘i‘ al-Ṣanā‘i‘ fī Tartīb al-Sharā‘i‘*, vol. 5, pp. 180-181, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1986).

¹¹⁴ Usmānī, Muḥammad Taqī, *An Introduction to Islamic Finance*, (Karachi: Maktaba Ma‘arif al-Qur‘ān, 2014), p. 98.

¹¹⁵ Usmānī, Muḥammad Taqī, *Ṣiḡḡah Muqṭaraḥah li-Qānūn al-Bay‘ al-Islāmī* [Suggested form for an Islamic law of sale], (Jambusar: Jāmi‘ah ‘Ulūm Al-Qurān, 2016), p. 36.

¹¹⁶ Usmānī, Muḥammad Taqī, (2008), *In‘ām al-Bārī*, (Karachi: Maktabat Hīrā’, 2008), vol. 6, p. 192.

¹¹⁷ Al-Sihah li al-Jawhari, Al-Qamus al-Muhit, Al-Lisan and Misbah al-Muneer, cited in Al-Mawsoua al-Fiqhiyya in the definition of Ṣarf.

¹¹⁸ Ibid.

In other words, any type of speech (*qawl*) or action (*fi'l*) that has *fiqhī* impact can be called *taṣarruf*.¹¹⁹ Hence, the meaning of *taṣarruf* in zakat is that beneficiaries of zakat have full permission (*idhn muṭlaq*) to dispose of the zakat money however they choose, such as for eating, drinking, buying, selling or gifting.

3.2.2 The Juristic Discussion on *Tamlīk*

Jurists held different opinions regarding the condition of *tamlīk* in paying zakat money. The majority assert that *tamlīk* is a key condition for the settlement of zakat; however, Ḥanafīs are stricter on the issue than other jurists. The Ḥanafī scholars' emphasis on the significance of *tamlīk* is reflected in the definitions of zakat given by Ibn Nujaym, al-Zayla'ī and al-Kāsānī.

The debate starts with whether *tamlīk* is a basic condition for distribution of zakat to all eight *aṣnāf* or only to some of them. Three major views emerge from their opinions, which are:

1. Stipulation of *tamlīk* for all eight *aṣnāf* of zakat. This view is adopted by the Ḥanafīs,¹²⁰ Shāfi'īs¹²¹ and Ḥanbalīs.¹²²
2. Stipulation of *tamlīk* only for the first four *aṣnāf*, which are a) *faqīr*, b) *miskīn*, *ʿāmilīn* (zakat workers) and *mu'allafat al-qulūb* (those whose hearts are to be reconciled).¹²³ This is the view adopted by Ibn Taymiyyah¹²⁴ and the Mālikīs,¹²⁵ who further add *ibn al-sabīl*. This is also the opinion of some contemporary

¹¹⁹ Al-Ratil, Sulaymān Muṣṭafā, *Mabda' al-Tamlīk wa Madā I'tibārihi fī Sharf al-Zakāh*, p. 712.

¹²⁰ Ibn Nujaym, Zainuddin ibn Ibrahim, *Al-Bahr al-Raiq*, vol. 2, P. 252, (Beirut: Dār al-Kutub al-'Ilmiyyah, 1454); Al-Kāsānī, Alauddin Abubakar, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, vol. 2, p. 3, (Beirut: Dār al-Kutub al-'Ilmiyyah, 1406); Al-'Aynī, Badruddin Abī Muḥammad, *Al-Bināyah, Sharḥ al-Hidāyah*, (Beirut, Dār al-Fikr, 1980), vol. 3, p. 339; AL-Kalibuli, Abdurrahman ibn Muḥammad, *Majma al-Anhur fī Sharḥ Multaqa al-Abhur*, (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), vol. 2, p. 284; Al-Zuhaily, Wahbah. *Al-Fiqh al-Islami wa Adillatuhu*, vol. 2, p. 752-753, (Damascus: Dār al-Fikr, 1985).

¹²¹ Al-Nawawī, Abū Zakariyya Muhiyuddin, *Al-Majmū' Sharḥ al-Muḥadhdhab*, vol. 5, p. 327, (Dār al-Fikr, n.d.); Al-Sharbīnī, Shamsuddin Muḥammad ibn Aḥmad al-Khatīb, *Mughnī al-Muḥtāj ilā Ma'rifa Ma'ānī Alfāz al-Minhāj*, (Beirut: Dār al-Fikr, n.d.), vol. 3, p. 106; Al-Rāzī, Abū 'Abd Allāh Muḥammad Fakhruddin, *Al-Tafsīr al-Kabīr*, (Beirut: Dār Ihyā' al-Turāth al-'Arabī, n.d.), vol. 16, p. 81; Al-Zuhaily, Wahbah. *Al-Fiqh al-Islami wa Adillatuhu*, vol. 2, p. 752-753.

¹²² Al-Mardāwī, Abū al-Ḥasan Ali ibn Sulayman, *Al-Insāf fī Ma'rifah al-Rājiḥ min al-Khilāf*, vol. 3, p. 217, (Dār Ihyā' al-Turāth al-'Arabī, n.d.); Ibn Muflīḥ, Ibrahim ibn Muḥammad, *Al-Mubdī' fī Sharḥ al-Muqni'*, vol. 2, p. 403, (Beirut: : Dār al-Kutub al-'Ilmiyyah, 1997); Al-Ruhaybānī, Mustafa ibn Saad ibn Abda al-Suyuti, *Maṭalib Ulī al-Nuhā fī Sharḥ Ghāyat al-Muntahā*, (Al-Maktab al-Islāmī, 1994), vol. 2, p. 4; Al-Buhūtī, Mansoor bin Yunus, *Kashshāf al-Qinā' 'an Matan al-Iqnā'*, (Dār al-Kutub al-'Ilmiyyah, n.d.), vol. 2, pp. 270-271.

¹²³ Al-Ratil, Sulaymān Muṣṭafā, *Mabda' al-Tamlīk wa Madā I'tibārihi fī Sharf al-Zakāh*; Al-Jamal, Muḥammad Mahmood, "Sharḥ Tamlīk al-Zakāh wa Atharuhu fī Kayfiyyat Tawzī'ihā", *Dirāsāt*, vol. 47, 2020.

¹²⁴ Al-Mardawī, Abū al-Ḥasan Ali ibn Sulayman, *Al-Insāf fī Marifah al-Rajeh min al-Khilaf*, vol. 3, p. 217, (Dār Ihyā' al-Turāth al-'Arabī, n.d.).

¹²⁵ Al-Dasūqī, Muḥammad ibn Aḥmad ibn Arafah, *Hāshiyat al-Dasūqī 'alā al-Sharḥ al-Kabīr*, vol. 1, p. 498, (Dār al-Fikr, n.d.); Al-Ratil, Sulaymān Muṣṭafā, *Mabda' al-Tamlīk wa Madā I'tibārihi fī Sharf al-Zakāh*.

scholars such as Sheikh Muḥammad Abū Zahrah, Abū al-A‘lā’ al-Mawdūdī and Muṣṭafā al-Zarqā’.¹²⁶

3. No stipulation of *tamlīk*; this view was adopted by Imam al-Shawkānī and others.¹²⁷

Scholars who are of the view that *tamlīk* is stipulated for all eight *aṣnāf* of zakat back up their opinion with some evidence as follows:

- a. The Qur’ānic verse: ‘The *ṣadaqāt* (prescribed alms) are (meant) only to be given to the poor, the needy, to those employed to collect them, to those whose hearts are to be won,¹⁹ in the cause of the slaves and those encumbered with debt, in the way of Allah and to a wayfarer. This is an obligation prescribed by Allah. Allah is All-Knowing, Wise.’

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَرَمِينَ وَفِي سَبِيلِ اللَّهِ
وَأَبْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ¹²⁸

They argued that the meaning of the preposition *li* (for) in this context is *tamlīk*,¹²⁹ which indicates that ownership must be transferred to the other party. They argued that this can be achieved through the possession (*qabḍ*) of zakat money by the *faqīr*, the first class of recipient mentioned after *li*. The other classes of recipient are to be treated like *faqīr* because they are successively mentioned using conjunctions.¹³⁰ This evidence for the stipulation of *tamlīk* is provided by al-Shāfi‘ī, who further added that it is not allowed to pay zakat money to just one category from all eight *aṣnāf*; rather, it is compulsory to pay it to all of them.¹³¹

¹²⁶ Ibid.

¹²⁷ Ibid.; Al-Jamal, Muḥammad Mahmood, “Sharṭ Tamlīk al-Zakāh wa Atharuhu fī Kayfiyyat Tawzī‘ihā”, *Dirāsāt*, vol. 47, 2020.

¹²⁸ Al-Tawbah, 60.

¹²⁹ Al-Anṣārī, Ibn Nizam al-Dīn, *Fawātiḥ al-Raḥamūt bi Sharḥ Musallam al-Thubūt*, (Al-Shamilah al-Dahabiyyah, n.d.), vol. 2, p. 30; Al-Qarāfī, Abul Abbas Shahabuddin Aḥmad, *Al-Dhakhīrah*, (Beirut: Dār al-Gharb al-Islāmī, 1994), vol. 3, p. 140; Al-Zuhailī, Wahbah. *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 2, p. 752-753; Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlīkiḥā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī‘, 1999), pp. 152-153.

¹³⁰ Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlīkiḥā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī‘, 1999), pp. 453-457; Al-Ratīl, Sulaymān Muṣṭafā, *Mabda’ al-Tamlīk wa Madā’ al-Tibārihi fī Sharf al-Zakāh*.

¹³¹ Al-Anṣārī, Ibn Nizam al-Dīn, *Fawātiḥ al-Raḥamūt bi Sharḥ Musallam al-Thubūt*, (Al-Shamilah al-Dahabiyyah, n.d.), vol. 2, p. 30; Al-Sharbīnī, Shamsuddin Muḥammad ibn Aḥmad al-Khatīb, *Mughnī al-Muḥtāj ilā Ma’rifat Ma’ānī Alfāz al-Minhāj*, (Beirut: Dār al-Fikr, n.d.), vol. 3, p. 114; Al-Nifar, Muḥammad Al-Shazli, “Mashrū‘iyyat al-Infāq min Māl al-Zakāh ‘alā al-Maṣāliḥ al-‘Āmmah”, in the book *Al-Zakāh wa al-Takāful al-Ijtimā’ī fī al-Islām*, (Mu’assasat Āl al-Bayt, 1994), p. 436; Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlīkiḥā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī‘, 1999), pp. 453-457.

In this regard, Ibn Nujaym of the Ḥanafī School says: ‘In zakat [payment], *tamlīk* is compulsory.’¹³² Furthermore, Imam al-Kāsānī says: ‘*Tamlīk* is stipulated for the legal validity of zakat payment.’¹³³ Al-Duraynī¹³⁴ supported the meaning of *tamlīk* with another verse of Qur’ān ‘And in their wealth, there was a right for one who asks and for one who is deprived.’¹³⁵

- b. The Qur’ānic verse: ‘And be steadfast in *ṣalāh* (prayer), and give zakat. Whatever good you send forth for yourselves, you will find it with Allah. Certainly, Allah is watchful of what you do.’

وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَمَا تُقَدِّمُوا لِأَنفُسِكُمْ مِنْ خَيْرٍ تَجِدُوهُ عِنْدَ اللَّهِ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ¹³⁶

The giving (إيتاء) of zakat has been mentioned in Qur’ān around 30 times, and the Arabic word إيتاء has the same meaning of *tamlīk*.¹³⁷ Hence, for the valid payment of zakat, there must be *tamlīk* from the authority or directly from the zakat payer.

- c. The Qur’ānic verse: ‘Take *ṣadaqah* (obligatory alms) out of their wealth by which you may cleanse and purify them, and pray for them.’

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ¹³⁸

Allah has named zakat as *ṣadaqah*, and the technical meaning of *ṣadaqah* is well-known; it means ownership is transferred to the poor.¹³⁹ This stand is supported by the hadith of the Prophet (ﷺ): Buraydah said: ‘A woman came to the Messenger of Allah (SWT) and said, ‘I gave a slave girl as *ṣadaqah* to my mother, who has now died and has left that slave girl.’ He said, ‘Your reward is certain, and the inheritance has given her back to you.’

¹³² Ibn Nujaym, Zainuddin ibn Ibrahim, *Al-Bahr al-Raiq*, vol. 2. P. 252;

¹³³ Al-Kāsānī, Alauddin Abubakar, *Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’*, vol. 2, p. 39,

¹³⁴ Al-Duraynī, Muḥammad Fathi, “Al-Maṣāliḥ al-‘Āmmah li al-Ummah wa al-Dawlah: Hal Tu‘addu Maṣrafan min Maṣārif al-Amwāl al-Zakawīyah Shar‘an?”, cited in the book: *Al-Zakāh wa al-Takāful al-Ijtimā’ī fī al-Islām*, (Buḥūth wa Munāqashāt al-Nadwah Allatī ‘Uqīdat fī Ammān fī al-Mamlakah al-Urduniyyah al-Hāshimīyyah 1994), pp. 192-193.

¹³⁵ Al-Dhāriyāt, 19.

¹³⁶ Al-Baqarah, 110.

¹³⁷ Al-Kāsānī, Alauddin Abubakar, *Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’*, vol. 2, p. 39; Al-Zuhaily, Wahbah. *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 2, p. 752-753.

¹³⁸ Al-Tawbah, 104.

¹³⁹ Al-Kāsānī, Alauddin Abubakar, *Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’*, vol. 2, p. 39; Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlīkiḥā fī Daw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī‘, 1999), pp. 453-457; Al-Zuhaily, Wahbah. *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 2, p. 752-753.

بُرَيْدَةَ أَنَّ امْرَأَةً، أَتَتْ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ كُنْتُ تَصَدَّقْتُ عَلَى أُمِّي بِوَلِيدَةٍ وَإِنَّهَا مَاتَتْ وَتَرَكْتُ تِلْكَ الْوَلِيدَةَ . قَالَ 'قَدْ وَجِبَ أَجْرُكِ وَرَجَعْتُ إِلَيْكَ فِي الْمِيرَاثِ'.¹⁴⁰

Imam al-Kāsānī says that the meaning of *ṣadaqah* is *tamlīk*.¹⁴¹ Hence, it can be said that *tamlīk* is a basic requirement for the valid payment of zakat money.

- d. The hadith of the Prophet (ﷺ): Abū Hurayrah reported that a Bedouin came to the Prophet and said, 'Guide me to a deed by doing which I shall enter paradise.' He said, 'Worship Allah and associate nothing with Him, observe the prescribed prayer, pay the obligatory zakat, and fast during Ramadān.

وَعَنْ أَبِي هُرَيْرَةَ قَالَ: أَتَى أَعْرَابِي النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: ذَلَّنِي عَلَى عَمَلٍ إِذَا عَمِلْتُهُ دَخَلْتُ الْجَنَّةَ. قَالَ: «تَعْبُدُ اللَّهَ وَلَا تُشْرِكُ بِهِ شَيْئًا وَتُقِيمُ الصَّلَاةَ الْمَكْتُوبَةَ وَتُؤَدِّي الزَّكَاةَ الْمَفْرُوضَةَ وَتَصُومُ رَمَضَانَ».¹⁴²

In this hadith, the Prophet (ﷺ) used the word أداء which refers to the same meaning of *tamlīk*.

Furthermore, if *tamlīk* were not stipulated in the payment of zakat money, some legal issues would arise:

- 1) It would lead to delay in the payment of zakat money to the rightful beneficiaries whereas . it is not permissible to delay distribution of zakat money more than necessary if deserving beneficiaries are available.¹⁴³
- 2) The interests of the beneficiaries would not be considered or would be infringed upon..¹⁴⁴

Scholars who are of the view that *tamlīk* is stipulated only for the first four *aṣnāf* of zakat, provide some evidence as follows:

- a. The Qur'ānic verse: 'The ṣadaqah (prescribed alms) are (meant) only to be given to the poor, the needy, to those employed to collect them, to those whose hearts are to be won, in the cause of the slaves and those encumbered with debt, in the way of Allah and to a wayfarer. This is an obligation prescribed by Allah. Allah is All-Knowing, Wise.'

¹⁴⁰ Al-Sijistānī, Abū Dāwūd Sulayman ibn al-Ash'ath, *Sunan Abi Dāwūd*, hadith no. 3309, Kitab Al-Aiman Wa Al-Nudhur. <https://Sunnah.com/search?q=Your+reward+became+certain+for+you>

¹⁴¹ Al-Kāsānī, Alauddin Abubakar, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, vol. 2, p. 39; Al-Zuhaili, Wahbah. *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 2, p. 752-753.

¹⁴² Al-Bukhārī, Muḥammad ibn Ismail, *Ṣaḥīḥ al-Bukhārī*, hadith no. 1397, Kitāb al-Zakāh, <https://Sunnah.com/bukhari:1397>.

¹⁴³ Al-Ratil, Sulaymān Muṣṭafā, *Mabda' al-Tamlīk wa Madā' I'tibārihi fī Sharf al-Zakāh*; Al-Shawkani.

¹⁴⁴ Ibid.

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغُرَمِينَ وَفِي سَبِيلِ اللَّهِ
وَأَبْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ¹⁴⁵

Their argument is that the preposition *li* (for) is used for the first four *aṣṇāf*, which means *tamlīk*.¹⁴⁶ The usage of *li* (for) implies that ownership must be transferred to the first four *aṣṇāf*, which can only be achieved through the receipt (*qabḍ*) of zakat money. As far as the last four *aṣṇāf* is concerned, the preposition *li* (for) is not used; rather, the preposition *fī* (in) is used, which does not demonstrate the meaning of *tamlīk*.¹⁴⁷ Hence, *tamlīk* is not mandatory for the payment of zakat money to the last four *aṣṇāf*.¹⁴⁸

Scholars who are of the opinion that *tamlīk* is not mandatory for distributing the zakat money argued thus:

- a) The hadith of the Prophet (ﷺ): ‘Whenever a meal was brought to Allah's Messenger (ﷺ) he would ask whether it was a gift or *ṣadaqah* (something given in charity). If he was told that it was *ṣadaqah*, he would tell his companions to eat it and would abstain from it himself, but if it was a gift he would hurry to share it with them.’

عَنْ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا أُتِيَ بِطَعَامٍ سَأَلَ عَنْهُ أَهْدِيَّةٌ أَمْ صَدَقَةٌ فَإِنْ قِيلَ صَدَقَةٌ قَالَ لِأَصْحَابِهِ كُلُوا وَلَمْ يَأْكُلْ، وَإِنْ قِيلَ هَدِيَّةٌ ضَرَبَ بِيَدِهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَكَلَ مَعَهُمْ¹⁴⁹.

In this hadith, Prophet (ﷺ) permitted the companions to eat the meal of *ṣadaqah* without making them owners of the meal. This act of the Prophet (ﷺ) demonstrates that *tamlīk* is not a requirement for disposing of zakat money.

- b) The hadith of Prophet (ﷺ): ‘Some people from the ‘Uraynah Tribe came to Madinah, and its climate did not suit them, so Allah's Messenger (ﷺ) allowed them to go to the herd of camels [given as zakat], and they drank their milk and urine [as medicine], but they killed the shepherd and drove away all the camels.

¹⁴⁵ Al-Tawbah, 60.

¹⁴⁶ Al-Anṣārī, Ibn Nizam al-Din, *Fawātiḥ al-Raḥamūt bi Sharḥ Musallam al-Thubūt*, (Al-Shamilah al-Dahabiyyah, n.d.), vol. 2, p. 30; Al-Qarāfī, Abul Abbas Shahabuddin Aḥmad, *Al-Dhakhīrah*, (Beirut: Dār al-Gharb al-Islāmī, 1994), vol. 3, p. 140; Al-Zuhaili, Wahbah. *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 2, p. 752-753; Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlīkiḥā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī‘, 1999), pp. 453-457.

¹⁴⁷ Ibid.; Al-Nifār, Muḥammad Al-Shazli, “Mashrū‘ iyyat al-Infāq min Māl al-Zakāh ‘alā al-Maṣālīḥ al-‘Āmmah”, in the book *Al-Zakāh wa al-Takāful al-Ijtimā‘ī fī al-Islām*, (Mu’assasat Āl al-Bayt, 1994), p. 440.

¹⁴⁸ Al-Ratīl, Sulaymān Muṣṭafā, *Mabda’ al-Tamlīk wa Madā’ I’tibārihi fī Sharf al-Zakāh*, p. 720.

¹⁴⁹ Al-Bukhārī, Muḥammad ibn Ismail, *Ṣaḥīḥ al-Bukhārī*, hadith no. 2576, *Kitab al-Hiba wa Fadliha wa al-Tahrid aliha*, <https://Sunnah.com/bukhari:2576>.

So Allah's Messenger (ﷺ) sent [men] in pursuit to catch them, and they were brought, and he had their hands and feet cut, and their eyes were branded with heated pieces of iron, and they were left in the Ḥārrah (a stony place in Madinah) biting the stones.'

عَنْ أَنَسٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ نَاسًا، مِنْ عُرَيْيْنَةَ اجْتَنَوْا الْمَدِينَةَ، فَرَحَّصَ لَهُمْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يَأْتُوا إِبِلَ الصَّدَقَةِ فَيَشْرَبُوا مِنْ أَلْبَانِهَا وَأَبْوَالِهَا، فَقَتَلُوا الرَّاعِيَ وَاسْتَأْفَوْا الذَّوْدَ، فَأَرْسَلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَأَتَى بِهِمْ، فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمَرَ أَعْيُنَهُمْ، وَتَرَكَهُمْ بِالْحَرَّةِ يَعْضُونَ الْحِجَارَةَ.¹⁵⁰

This hadith of the Prophet (ﷺ) demonstrates that *ibn al-sabīl* were given permission to get benefit from the camels given in zakat without making them owners of the camels. This is because the hadith does not include any word indicating that the Prophet (ﷺ) made them owners of the camels; rather, he (ﷺ) permitted them to get benefit from the milk of the camels for their treatment.¹⁵¹ Hence, Imam al-Bukhārī titled this hadith 'the use of the camels of *ṣadaqah* (zakat) and their milk for the *ibn al-sabīl*'.¹⁵²

3.2.2.1 Discussion of the First View

The proponents of this view argue based on the following:

1. To say that the preposition *li* (for) in the verse 60 of Sūrah al-Tawbah is used only to mean *tamlīk* is a subject of argument among the scholars. Different views have emerged on the matter and these are:

- a) The preposition *li* (for) is used to mean *tamlīk* as mentioned above.
- b) The preposition *li* (for) is used for the explanation of the *maṣraf*, not for *tamlīk*.¹⁵³ This was Imam Mālik's counter-explanation.¹⁵⁴ In this case, the

¹⁵⁰ Al-Bukhārī, Muḥammad ibn Ismail, *Ṣaḥīḥ al-Bukhārī*, hadith no. 1501, Kitāb al-Zakāh, <https://Sunnah.com/bukhari:1501>.

¹⁵¹ Al-ʿAynī, Badruddin Abī Muḥammad, *Umdat al-Qārī Sharḥ Ṣaḥīḥ al-Bukhārī*, Kitāb al-Zakāh, (Beirut, Dār al-Kutub al-ʿIlmiyyah), vol. 9, pp. 151-152.

¹⁵² Al-Bukhārī, Muḥammad ibn Ismail, *Ṣaḥīḥ al-Bukhārī*, hadith no. 1501, Kitāb al-Zakāh, <https://Sunnah.com/bukhari:1501>

¹⁵³ Al-Nifar, Muḥammad Al-Shazli, "Mashrūʿiyyat al-Infāq min Māl al-Zakāh 'alā al-Maṣāliḥ al-ʿĀmmah", in the book *Al-Zakāh wa al-Takāful al-Ijtimāʿī fī al-Islām*, (Muʿassasat Āl al-Bayt, 1994), p. 436; Al-ʿAnī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlīkḥā fī Daw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzīʿ, 1999), pp. 152-155; Al-Ratīl, Sulaymān Muṣṭafā, *Mabdaʾ al-Tamlīk wa Madāʾ Iʿtibārihi fī Sharf al-Zakāh*, pp. 721-722.

¹⁵⁴ Al-Kharashī, Muḥammad ibn ʿAbd Allāh, *Sharḥ Mukhtaṣar Khalīl*, (Beirut: Dār al-Fikr li al-Tibāah, n.d.), vol. 2, p. 212; Al-Ṣāwī, Aḥmad, *Bulghāt al-Sālik ilā Aqrab al-Masālik*, (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1995), vol. 1, p. 425.

meaning of the verse is that zakat is paid out to the *faqīr* and the other categories.¹⁵⁵

- c) The preposition *li* (for) is used to mean *ikhtiṣāṣ* (exclusivity). In this case, the meaning of the verse is that *ṣadaqāt* (zakat) exclusively belongs to (*mukhtaṣṣ*) the *aṣṇāf* and not to others.¹⁵⁶ Hence, Imam al-Kāsānī says that Allah made the *ṣadaqāt* (zakat) for the *aṣṇāf* using the preposition *li* (for), and it is used to mean *ikhtiṣāṣ*, which demands that they be exclusively given the zakat.¹⁵⁷
- d) The preposition *li* (for) is used to mean consequence (‘*āqibah*)¹⁵⁸ as mentioned in the verse of Sūrah al-Qaṣaṣ:

فَالْتَقَطَهُ آلُ فِرْعَوْنَ لِيَكُونَ لَهُمْ عَدُوًّا وَحَزَنًا إِنَّ فِرْعَوْنَ وَهَمْلَانَ وُجُودُهُمَا كَانَُوا خَطِئِينَ

‘So the family of Pharaoh picked him up, so that he would become for them an enemy and a [cause of] grief.’¹⁵⁹ It is obvious that this meaning of the preposition *li* is different from the meaning of *tamlīk*.

Analysing the different views on the meaning of the preposition *li*, it can be deduced that the second view is similar to the third view. The preposition is used for *ikhtiṣāṣ*. This opinion is supported by the verse that precedes the verse of *ṣadaqah*: ‘Among them there are those who find fault with you in (the distribution of) *ṣadaqāt* (alms). So, if they are given something out of it, they are quite happy, and if they are given nothing from it, they at once get annoyed. Would that they were content with what Allah and His Messenger had given to them, and were to say, ‘Allah is sufficient for us; Allah and His Messenger will give us (more) out of His grace (when they so will). Indeed, we crave for the pleasure of Allah alone.’¹⁶⁰

وَمِنْهُمْ مَّن يَلْمِزُكَ فِي الصَّدَقَاتِ فَإِنْ أُعْطُوا مِنْهَا رَضُوا وَإِنْ لَمْ يُعْطَوْا مِنْهَا إِذَا هُمْ يَسَخَطُونَ ۚ وَلَوْ أَنَّهُمْ رَضُوا مَا ءَاتَلَهُمُ اللَّهُ وَرَسُولُهُ وَقَالُوا حَسْبُنَا اللَّهُ سَيُؤْتِينَا اللَّهُ مِنْ فَضْلِهِ وَرَسُولُهُ إِنَّا إِلَى اللَّهِ رَاغِبُونَ

In this verse, Allah disqualifies hypocrites from being among the zakat recipients. He, the most glorified, therefore says zakat is exclusively for the *faqīr* and the other seven categories, to the

¹⁵⁵ Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlīkihā fī Ḍaw al-Kitāb wa al-Sunnah, Masarīf al-zakat wa Tamlīkihā fī Dawe al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa Tawzī‘, 1999), pp. 152-155; Al-Ratil, Sulaymān Muṣṭafā, *Mabda’ al-Tamlīk wa Madā I’tibārihi fī Sharf al-Zakāh*, pp. 721-722.

¹⁵⁶ Ibid.

¹⁵⁷ Al-Kāsānī, Alauddin Abubakar, *Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’*, vol. 5, pp. 180-181, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1986).

¹⁵⁸ Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlīkihā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī‘, 1999), pp. 152-155; Al-Ratil, Sulaymān Muṣṭafā, *Mabda’ al-Tamlīk wa Madā I’tibārihi fī Sharf al-Zakāh*, pp. 721-722.

¹⁵⁹ Al-Qasas, 8.

¹⁶⁰ Al-Tawbah, 59.

exclusion of all others.¹⁶¹ Similarly, the meaning of the word *innamā* denotes ‘exclusivity’ which is similar to the meaning of *ikhtiṣāṣ*. Thus, by implication, zakat exclusively belongs to the beneficiaries mentioned in verse 60 of Sūrah al-Tawbah and not for others.¹⁶²

Also, if the preposition *li* is supposedly used to mean *tamlīk*, it cannot be claimed that it is used for *tamlīk al-‘ayn* (transferring the ownership of an asset). As Imam al-Aṣḥānī said that *li* is used for the meaning of *tamlīk* and *istiḥqāq*, and we don’t say that *milk* refers to *milk al-‘ayn*, because it sometimes refers to ownership of usufruct or types of *taṣarruf*.¹⁶³

Furthermore, *tamlīk* cannot be stipulated for all *aṣnāf* because, although the preposition *li* is used for the first four *aṣnāf*, the preposition *fī* is used for the last four *aṣnāf*, and *fī* definitely does not refer to the meaning of *tamlīk*.

2. To say that the Arabic words *أداء* and *عطاء* have the same meaning as *tamlīk* is not acceptable because *إيتاء* is sometimes used for the meaning of *tamlīk* and sometimes for different meanings. For example, if you give (*إيتاء*) some capital to someone for business, or if you give some money to A to pay B, in both cases *إيتاء* does not have the meaning of *tamlīk*.¹⁶⁴

3. To say that *ṣadaqah* has the same meaning as *tamlīk* is not acceptable because *ṣadaqah* refers to the gift in which the giver expects a reward from Allah.¹⁶⁵

3.2.2.2 Discussion of the Second View

There is no reason to differentiate between first four and the last four *aṣnāf*. It was stated earlier that *li* in the verse of Sūrah al-Tawbah is used for the meaning of *ikhtiṣāṣ* (exclusivity) not for *tamlīk*. Thus, it is permissible to pay zakat for the last four *aṣnāf* without *tamlīk* as well as for

¹⁶¹ Al-Nifar, Muḥammad Al-Shazli, “Mashrū‘iyyat al-Infāq min Māl al-Zakāh ‘alā al-Maṣāliḥ al-‘Āmmah”, in the book *Al-Zakāh wa al-Takāful al-Ijtimā‘ī fī al-Islām*, (Mu’assasat Āl al-Bayt, 1994), p. 437; Al-Ratil, Sulaymān Muṣṭafā, *Mabda’ al-Tamlīk wa Madā I’tibārihi fī Sharf al-Zakāh*, pp. 721-722.

¹⁶² Al-Kharashī, Muḥammad ibn ‘Abd Allāh, *Sharḥ Mukhtaṣar Khalīl*, (Beirut: Dār al-Fikr li al-Tibāah, n.d.), vol. 2, p. 212; Al-Ṣawī, Aḥmad, *Bulghāt al-Sālik ilā Aqrab al-Masālik*, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1995), vol. 1, p. 425; Al-Kāsānī, Alauddin Abubakar, *Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’*, vol. 5, pp. 180-181, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1986); Al-Nifar, Muḥammad Al-Shazli, “Mashrū‘iyyat al-Infāq min Māl al-Zakāh ‘alā al-Maṣāliḥ al-‘Āmmah”, in the book *Al-Zakāh wa al-Takāful al-Ijtimā‘ī fī al-Islām*, (Mu’assasat Āl al-Bayt, 1994), p. 436.

¹⁶³ Al-Aṣḥānī, Abū al-Qasim al-Husain ibn Muḥammad, *Al-Mufradāt fī Gharīb al-Qur’ān*, cited by Al-Ratil, Sulaymān Muṣṭafā, *Mabda’ al-Tamlīk wa Madā I’tibārihi fī Sharf al-Zakāh*, pp. 722-723.

¹⁶⁴ Al-Ratil, Sulaymān Muṣṭafā, *Mabda’ al-Tamlīk wa Madā I’tibārihi fī Sharf al-Zakāh*, p. 722.

¹⁶⁵ Ibid.; Al-Jurjānī, Ali ibn Muḥammad, *Kitāb al-Ta’rīfāt*, (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1983), vol. 1, p. 124.

the rest of the *aṣnāf* without *tamlīk*. Based on this, the majority of jurists have ruled that it is allowed to pay zakat to one category from among the eight *aṣnāf*.¹⁶⁶

3.2.2.3 Discussion of the Third View

1. As far as the hadith ‘Whenever a meal was brought to Allah's Messenger (ﷺ) he would ask whether it was a gift or *ṣadaqah*’ is concerned, it is answered that *ṣadaqah* here refers to voluntary *ṣadaqah* not obligatory *ṣadaqah*. This is because the Prophet (ﷺ) allowed all the companions present there, whether rich or poor, to eat the meal.¹⁶⁷

2. As for the hadith of the ‘Urayniyyīn, it is said that it is not general for all the *maṣārif*; rather, it is particular for *ibn al-sabīl*.¹⁶⁸

3.2.2.4 The Preferred View

From the discussion above, it can be concluded that *tamlīk* is stipulated for the payment of zakat according to the majority of classical jurists including the four major schools of Islamic jurisprudence. However, they considered *tamlīk* in different ways. For example, the Ḥanafī School considers it a *rukṇ* (pillar) for the payment of zakat; therefore, their very definition of zakat includes the meaning of *tamlīk*. Thus, based on this stand, a mosque cannot be constructed from the payment of zakat; likewise, the debt of a deceased person cannot be paid from zakat.

Contrary to the Ḥanafī School, *tamlīk* is not considered a *rukṇ* by the other schools of jurisprudence. Thus, the debt of a deceased person can be paid from the zakat fund according to them.

¹⁶⁶ Al-Ratil, Sulaymān Muṣṭafā, *Mabda' al-Tamlīk wa Madā I'tibārihi fī Ṣarf al-Zakāh*, p. 725.

¹⁶⁷ Ibid.; Al-Jamal, Muḥammad Mahmood, “Shart Tamlīk al-Zakāh wa Atharuhu fī Kayfiyyat Tawzī'ihā”, *Dirāsāt*, vol. 47, 2020.

¹⁶⁸ Ibid.; Al-Ratil, Sulaymān Muṣṭafā, *Mabda' al-Tamlīk wa Madā I'tibārihi fī Ṣarf al-Zakāh*, p. 725.

CHAPTER FOUR

THE JURISPRUDENTIAL DISCUSSION ON DELAYING DISTRIBUTION OF ZAKAT

4.1 Postponement of Zakat Payment

The next question is: in case the zakat payer postpones disbursement of zakat funds in order to invest them, is it allowed for the zakat payer to invest these funds? This hinges on the issue of whether it is mandatory to pay zakat immediately, or can it be delayed?

To answer this question, the majority of Ḥanafī scholars, the Mālikīs in the original opinion of the School, the Shāfi'īs and Ḥanbalīs are of the view that zakat assets must be paid immediately with no delay. This is due to the following;

- 1) The Qur'ānic Verse: 'Eat of its fruit when it bears fruits and pay its due on the day of harvest.'¹⁶⁹

كُلُوا مِنْ ثَمَرِهِ إِذَا أَثْمَرَ وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ.

The angle of argument from the verse is that 'pay its due' means to pay zakat, and the command mentions a time frame for doing so: "the day of the harvest," which indicates the immediate performance of what has been ordered. Hence, it is mandatory to disburse zakat funds immediately with no delay.

- 2) The hadith of the Prophet: 'Ā'ishah said that she heard Allah's Messenger say, 'Zakat is never mingled with any property without destroying it.'¹⁷⁰

مَا خَالَطَتِ الزَّكَاةُ مَالًا قَطُّ إِلَّا أَهْلَكَتُهُ.

This is because the postponement of zakat is likely to be a reason for the money to be destroyed.

- 3) The hadith of the Prophet: 'Uqbah ibn al-Ḥārithah related: Once the Prophet (ﷺ) offered the 'Aṣr prayer and then hurriedly went to his house and returned immediately. I (or somebody else) asked him [as to what was the matter], and he said, 'I left at home a piece of gold which was from the charity, and I disliked to let it remain a night in my house, so I got it distributed.'¹⁷¹

عَنْ عُقْبَةَ بْنِ الْحَارِثِ رَضِيَ اللَّهُ عَنْهُ قَالَ: صَلَّى بِنَا النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْعَصْرَ، فَأَسْرَعَ ثُمَّ دَخَلَ الْبَيْتَ، فَلَمْ يَلْبَسْ أَنْ حَرَجَ، فَقُلْتُ أَوْ قِيلَ لَهُ فَقَالَ: 'كُنْتُ خَلَفْتُ فِي الْبَيْتِ تَبْرًا مِنَ الصَّدَقَةِ، فَكَرِهْتُ أَنْ أَبْنِيَهُ فَقَسَمْتُهُ'.

¹⁶⁹ Al-An'ām, 141.

¹⁷⁰ <https://Sunnah.com/mishkat:1793>

¹⁷¹ <https://Sunnah.com/bukhari:1430>

This hadith indicates that zakat should be paid immediately.

4) Also, the needs of the *faqīr* require that zakat be paid immediately. Ibn al-Humām found a textual allusion to that reality in the immediate linkage of *ṣarf* (distribution) to the *faqīr*, whose need is pressing. This provides an indication that it must be paid immediately with no delay..

5) Besides, zakat is an act of worship that is repeated every year like fasting in Ramaḍān; thus, it would not be allowed to delay the disbursement of zakat just as it is not allowed to delay fasting and other acts of worship without any excuse.

In contrast to the first view regarding the postponement of zakat by the zakat payer for the purpose of investment, the Ḥanafī scholar Abū Bakr al-Jaṣṣāṣ and others are of the opinion that it is not mandatory to pay zakat immediately. That is, it can be paid to the recipients on *tarākhi*. It means that whenever he pays the zakat, he will be considered to have paid it properly. Their arguments are as follows:

1. Allah orders the believers to pay zakat as mentioned in various verses of Qur’ān, and this order is left unconditional, which requires that it could be paid on *tarākhi*. No time has been determined for the payment of zakat just as no place has been determined for it.
2. Imam al-Jaṣṣāṣ argued that if someone delays in the payment of zakat while he was able to pay it, and after that the zakat property is destroyed, he would not be liable (*ḍāmin*) to pay that amount as zakat. If it were mandatory to pay zakat immediately, he would be *ḍāmin* and would be asked to pay it.

From the above-mentioned discussion on the postponement of zakat by the zakat payer, it appears that the first view, that it is mandatory to pay zakat immediately, is strong. From the *uṣūl al-fiqh* point of view, it may be said that the demand of Allah conveyed in the command form of the verb does not linguistically require either immediate or delayed compliance. It is contextual clues (*qarā’in*) that would determine whether immediate action is required or a delay is allowed. There are many contextual clues which indicate that zakat should be paid immediately, such as the Qur’ānic verses ‘...race to do good deeds’ (Sūrah al-Baqarah, verse 148), and ‘Hurry towards your Lord’s forgiveness and a Garden as wide as the heavens and earth prepared for the righteous’ (Sūrah Āl ‘Imrān, verse 133), and the hadiths mentioned above.

Hence, based on the preferred view, it is not allowed for the zakat payer to delay in the payment of zakat without any valid reason. Investment cannot be counted as a valid excuse;

consequently, it is not allowed for the zakat payer to delay payment of zakat for the purpose of investment of zakat funds.

As far as postponement of distribution of zakat funds by the state for the purpose of investment, scholars are divided on the issue. There are two major points of view.

4.1.1 Scholars Who Do Not Allow Investment of Zakat Funds

There is a group of scholars who consider zakat investment to be a violation of the Sharī‘ah; for example, Sheikh Muḥammad ibn Uthaymīn, Wahbah al-Zuhaylī, Sheikh Taqī ‘Uthmānī, Muḥammad ‘Aṭā’ al-Sayyid, and Sheikh ‘Abd Allāh ‘Alī ‘Abd Allāh.¹⁷² This view is adopted by ‘ al-Fiqh al-Islāmī in India, and al-Lajnah al-Dā’imah li al-Buḥūth al-‘Ilmiyyah wa al-Iftā in Saudi Arabia.¹⁷³ Their arguments are as follows:

- 1) Verse of Qur’ān: *إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمَوْلَاةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغُرَمِينَ* وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ¹⁷⁴

They argue that the *aṣnāf* of zakat are confined only to these eight categories, and zakat investment would lead to a ninth category. That would violate the meaning of the term *inammā* in the verse, which indicates *ḥaṣr* (restriction to the categories mentioned and exclusion of all else).¹⁷⁵

- 2) Furthermore, zakat investment would postpone the disbursal of zakat money to the *aṣnāf*, whereas the jurists opined that it should be paid immediately to the rightful recipients (*mustahiqqīn*).¹⁷⁶

¹⁷² Majma al-Hukum al-Islamiyy (1987) *Majallat Majma’ al-Fiqh al-Islāmī*, Jeddah; Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998); Doktoralina, Caturida Meiwanto, Nor Asariah Ilias, Zakaria Bahari, and Jazuli Suryadhi. ‘Investment of Zakat Fund in Malaysia.’ *The Journal of Social Sciences Research* (2018): 710-715.

¹⁷³ Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta’šiliyyah li Mustajaddāt al-Zakāh*, p. 482.

¹⁷⁴ Al-Tawbah, 60.

¹⁷⁵ Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta’šiliyyah li Mustajaddāt al-Zakāh*, p. 482; Al-Ānī, Khalid Abdurrazzaq, *Maṣārīf al-Zakāh wa Tamlikihā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī’, 1999), p. 548; Al-Khalīlī, Aḥmad ibn Hamd, “Mashrū‘iyyat Istithmār Amwāl al-Zakāh”, chapter in the book *Al-Zakāh wa al-Takāful al-Ijtimā’ī fī al-Islām*, (Buḥūth wa Munāqashāt al-Nadwah Allatī ‘Uqqidat fī ‘Ammān, 1994), p. 354.

¹⁷⁶ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998); Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta’šiliyyah li Mustajaddāt al-Zakāh*, p. 484; Al-Ānī, Khalid Abdurrazzaq, *Maṣārīf al-Zakāh wa Tamlikihā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī’, 1999), p. 546; Edn; Doktoralina, Caturida Meiwanto, Nor Asariah Ilias, Zakaria Bahari, and Jazuli Suryadhi. ‘Investment of Zakat Fund in Malaysia.’ *The Journal of Social Sciences Research* (2018): 710-715; Shah, Sayed Sikandar. ‘Investment of zakat fund: Modern juristic debate and modes of financing,’ *Journal of Islamic Banking and Finance* 30, no. 3 (2013): 55-66.

- 3) Likewise, they argue that zakat investment could put the zakat money at risk. The capital of the beneficiaries could be lost as a result.¹⁷⁷
- 4) Besides, zakat investment would entail no transfer of ownership to the zakat beneficiaries while the majority of scholars agree that *tamlīk* is a basic condition for the proper payment of zakat.¹⁷⁸
- 5) Finally, investment of zakat funds would deprive the needy of basic needs such as food, clothes, etc. whereas the fundamental objective of the obligation of zakat is to fulfil the need of zakat beneficiaries. Their need cannot be ignored or delayed for the sake of investment. This is because investment would solve the problem of potential poverty while the purpose of zakat is to solve the problem of actual poverty, not potential poverty.¹⁷⁹

4.1.2 Arguments That Justify Zakat Fund Investment

In contrast to the first view, many contemporary scholars are of the view that zakat funds can be invested to enhance and increase the zakat money. This opinion is adopted by Sheikh Mustafā al-Zarqā', Yūsuf al-Qardāwī, and Sheikh 'Abd al-Fattāḥ Abū Ghuddah. This view is further supported by Majma' al-Fiqh al-Islamī of the Organization of Islamic Cooperation, Bayt al-Tamwīl al-Kuwaytī and the Sharī'ah Committee of Bayt al-Zakat in Kuwait.¹⁸⁰ Their arguments are as follows:

1. The Prophet Muḥammad (ﷺ) and the Khulafā al-Rāshidīn used to let the bile products of zakat assets such as cattle, camels and goats to benefit certain people.

¹⁷⁷ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998); Al-Ghufaylī, 'Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta'şīliyyah li Mustajaddāt al-Zakāh*, p. 485; Al-Ānī, Khalid Abdurrazzaq, *Maşārif al-Zakāh wa Tamlīkihā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī', 1999), p. 546; Edn; Doktoralina, Caturida Meiwanto, Nor Asariah Ilias, Zakaria Bahari, and Jazuli Suryadhi. 'Investment of Zakat Fund in Malaysia.' *The Journal of Social Sciences Research* (2018): 710-715.

¹⁷⁸ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at; Al-Ghufaylī, 'Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta'şīliyyah li Mustajaddāt al-Zakāh*, p. 485; Edn; Doktoralina, Caturida Meiwanto, Nor Asariah Ilias, Zakaria Bahari, and Jazuli Suryadhi. 'Investment of Zakat Fund in Malaysia.' *The Journal of Social Sciences Research* (2018): 710-715; Shah, Sayed Sikandar. 'Investment of zakat fund: Modern juristic debate and modes of financing.' *Journal of Islamic Banking and Finance* 30, no. 3 (2013): 55-66.

¹⁷⁹ Al-Ghufaylī, 'Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta'şīliyyah li Mustajaddāt al-Zakāh*, 486; Al-Ānī, Khalid Abdurrazzaq, *Maşārif al-Zakāh wa Tamlīkihā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī', 1999), p. 547; Shah, Sayed Sikandar. 'Investment of zakat fund: Modern juristic debate and modes of financing.' *Journal of Islamic Banking and Finance* 30, no. 3 (2013): 55-66.

¹⁸⁰ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at; Al-Ghufaylī, 'Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta'şīliyyah li Mustajaddāt al-Zakāh*, p. 482; Edn; Doktoralina, Caturida Meiwanto, Nor Asariah Ilias, Zakaria Bahari, and Jazuli Suryadhi. 'Investment of Zakat Fund in Malaysia.' *The Journal of Social Sciences Research* (2018): 710-715.

While the animals were awaiting distribution to the asnaf, their milk was distributed to eligible beneficiaries as it was being produced..¹⁸¹

The hadith of the ‘Uraynah tribesmen supports this assertion in that the Prophet (ﷺ) allowed them to drink the milk of the camels of zakat.¹⁸² The hadith demonstrates that the recipients of zakat (in this case *ibn al-sabīl*) can get benefit from the asset and also from its usufruct (in this case the camels’ milk). So, withholding the corpus (camels) from consumption is a type of investment in which the corpus is utilised to generate future benefits.¹⁸³

Also, Zayd ibn Aslam reported that ‘Umar ibn al-Khaṭṭāb drank some milk which pleased him. He asked the one who had given him the drink where he had gotten that milk. He informed him that he had gone down to a watering-place, which he named, where there were some camels of *ṣadaqah*. The people who were watering the camels had drawn some milk for him, which he had put in his milk-skin, and that was what he had given him. ‘Umar then put his hand in his mouth and vomited it.¹⁸⁴

وَعَنْ زَيْدِ بْنِ أَسْلَمٍ أَنَّهُ قَالَ: شَرِبَ عُمَرُ بْنُ الْخَطَّابِ لَبَنًا وَأَعْجَبَهُ وَقَالَ لِلَّذِي سَقَاهُ: مَنْ أَيْنَ لَكَ هَذَا اللَّبَنُ؟ فَأَخْبَرَهُ أَنَّهُ وَرَدَ عَلَى مَاءٍ قَدْ سَمَاهُ فَإِذَا نَعَمٌ مِنْ نَعَمِ الصَّدَقَةِ وَهُمْ يَسْقُونَ فَحَلَبُوا لِي مِنْ أَلْبَانِهَا فَجَعَلْتُهُ فِي سِقَائِي وَهُوَ هَذَا فَأَدْخَلَ عُمَرُ يَدَهُ فَاسْتَقَاءَهُ.

This incident also supports that camels of charity were not immediately distributed but were held to get benefit from the usufruct.¹⁸⁵

2. The hadith of the Prophet: A man of the Ansār came to the Prophet (ﷺ) and begged from him. The Prophet asked: ‘Have you nothing in your house?’ He replied: ‘Yes, a piece of cloth, a part of which we wear and a part of which we spread (on the

¹⁸¹ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at; Edn; Doktoralina, Caturida Meiwanto, Nor Asariah Ilias, Zakaria Bahari, and Jazuli Suryadhi. ‘Investment of Zakat Fund in Malaysia.’ *The Journal of Social Sciences Research* (2018): 710-715; Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta’šīliyyah li Mustajaddāt al-Zakāh*, (Wizārah al-Awqāf wa al-Shu’ūn al-Islāmiyyah, Qatar, 2009), pp. 487-488; Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlīkiḥā fī Daw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī‘, 1999), pp. 541-547; Al-Khalīlī, Aḥmad ibn Hamd, “Mashrū’iyyat Istithmār Amwāl al-Zakāh”, chapter in the book *Al-Zakāh wa al-Takāful al-Ijtimā’ī fī al-Islām*, (Buḥūth wa Munāqashāt al-Nadwah Allatī ‘Uqqidat fī ‘Ammān, 1994), p. 354-355.

¹⁸² Al-Bukhārī, Muḥammad ibn Ismail, *Ṣaḥīḥ al-Bukhārī*, hadith no. 1501, Kitāb al-Zakāh, <https://Sunnah.com/bukhari:1501>

¹⁸³ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at; Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyya Tasiliyyah li Mustajaddat al-Zakāh*, pp. 487-488; Shah, Sayed Sikandar. ‘Investment of zakat fund: Modern juristic debate and modes of financing.’ *Journal of Islamic Banking and Finance* 30, no. 3 (2013): 55-66.

¹⁸⁴ *Mishkāṭ al-Maṣābīḥ*, hadith no. 2788, Kitāb al-Buyūa, <https://Sunnah.com/mishkat:2788>.

¹⁸⁵ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at; Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyya Tasiliyyah li Mustajaddat al-Zakāh*, p. 488.

ground), and a wooden bowl from which we drink water.’ He said: ‘Bring them to me.’ He brought these articles to him. The Prophet took them in his hands and asked: ‘Who will buy these?’ A man said: ‘I shall buy them for one dirham.’ He said twice or thrice: ‘Who will offer more than one dirham?’ A man said: ‘I shall buy them for two dirhams.’ He gave them to him, took the two dirhams and, giving them to the Ansārī, said: ‘Buy food with one of them, hand it to your family, buy an axehead, and bring it to me.’ When he brought it to him, the Messenger of Allah (ﷺ) fixed a handle on it with his own hands and said: ‘Go, gather firewood and sell it, and do not let me see you for a fortnight.’ The man went away, gathered firewood, and sold it. When he had earned ten dirhams, he came to him. He bought a garment with some of them and food with the others. The Messenger of Allah (ﷺ) said: ‘This is better for you than that begging should come as a spot on your face on the Day of Judgment. Begging is justified only for three people: one who is in grinding poverty, one who is seriously in debt, or one who stands surety and finds it difficult to pay.’¹⁸⁶

أَنَّ رَجُلًا مِنَ الْأَنْصَارِ أَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْأَلُهُ فَقَالَ ‘أَمَا فِي بَيْتِكَ شَيْءٌ؟’. قَالَ بَلَى جُلُسٌ نُلْبَسُ بَعْضُهُ وَنَبْسُطُ بَعْضُهُ وَقَعْبٌ نَشْرَبُ فِيهِ مِنَ الْمَاءِ. قَالَ ‘أَنْتَبِي بِهِمَا’. فَأَتَاهُ بِهِمَا فَأَخَذَهُمَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِيَدِهِ وَقَالَ ‘مَنْ يَشْتَرِي هَذَيْنِ؟’. قَالَ رَجُلٌ أَنَا أَخُذُهُمَا بِدَرْهَمٍ. قَالَ ‘مَنْ يَزِيدُ عَلَى دَرْهَمٍ؟’. مَرَّتَيْنِ أَوْ ثَلَاثًا قَالَ رَجُلٌ أَنَا أَخُذُهُمَا بِدَرْهَمَيْنِ. فَأَعْطَاهُمَا إِيَّاهُ وَأَخَذَ الدَّرْهَمَيْنِ وَأَعْطَاهُمَا الْأَنْصَارِيَّ وَقَالَ ‘اشْتَرِ بِأَحَدِهِمَا طَعَامًا فَأَنْبِذْهُ إِلَى أَهْلِكَ وَاشْتَرِ بِالْآخَرِ قُدُومًا فَأَنْبِذْ بِهِ’. فَأَتَاهُ بِهِ فَشَدَّ فِيهِ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عُودًا بِيَدِهِ ثُمَّ قَالَ لَهُ ‘أَذْهَبْ فَاحْتَطِبْ وَبِعْ وَلَا أَرَيْتَكَ خَمْسَةَ عَشَرَ يَوْمًا؟’. فَذَهَبَ الرَّجُلُ يَحْتَطِبُ وَيَبِيعُ فَجَاءَ وَقَدْ أَصَابَ عَشْرَةَ دَرَاهِمٍ فَاشْتَرَى بِبَعْضِهَا ثَوْبًا وَبِبَعْضِهَا طَعَامًا. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ‘هَذَا خَيْرٌ لَكَ مِنْ أَنْ تَجِيءَ الْمَسْأَلَةُ نُكْنَةً فِي وَجْهِكَ يَوْمَ الْقِيَامَةِ إِنَّ الْمَسْأَلَةَ لَا تَصْلُحُ إِلَّا لِثَلَاثَةٍ لِذِي فَقْرٍ مُدْفِعٍ أَوْ لِذِي غُرْمٍ مُفْطَعٍ أَوْ لِذِي دَمٍ مُوجِعٍ’.

The relation of the hadith to zakat investment is that once it is allowed to invest the asset of the needy (*faqīr*) that is being used for his basic need, it should also be allowed to invest zakat funds before using them for their needs.¹⁸⁷

3. The hadith of the Prophet: The Prophet (ﷺ) gave ‘Urwah a dinar to buy a sacrificial animal or a sheep. He bought two sheep, sold one of them for a dinar, and brought

¹⁸⁶ Al-Sijistānī, Abū Dāwūd, *Sunan Abi Dāwūd*, hadith no. 3384, Kitāb al-Zakāh, <https://Sunnah.com/abudawud:1641>

¹⁸⁷ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at; Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta’šīliyyah li Mustajaddāt al-Zakāh*, p. 490; Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlikihā ft Daw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī‘, 1999), pp. 541-542;

him a sheep and dinar. The Prophet (ﷺ) invoked a blessing on him in his business dealing. After that, had he bought dust, he would have made a profit from it.¹⁸⁸

قَالَ أَعْطَاهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ دِينَارًا يَشْتَرِي بِهِ أُنْجِيَةً أَوْ شَاةً فَاشْتَرَى شَاتَيْنِ فَبَاعَ إِحْدَاهُمَا بِدِينَارٍ فَاتَّاهُ بِشَاةٍ وَدِينَارٍ فَدَعَا لَهُ بِالْبَرَكَةِ فِي بَيْعِهِ فَكَانَ لَوْ اشْتَرَى ثَرَابًا لَرَبِحَ فِيهِ .

The relation of the hadith with zakat investment is that ‘Urwah conducted a transaction for which he had not been appointed as a deputy (*wakīl*). This indicates the permissibility of investing the asset of another without his permission. This is because the Prophet not only allowed this transaction but also blessed him for doing so. If it is allowed to invest another’s property without their permission, it is also allowed to invest zakat funds without the permission of the rightful recipient.¹⁸⁹

4. Abū Mūsā al-Ash‘ari handed zakat funds to ‘Abd Allāh and ‘Ubayd, the sons of ‘Umar, and told them they could purchase with them merchandise from Iraq and then sell it in Madinah. He suggested, ‘You can retain the profit for yourself and surrender the capital sum to ‘Umar.’

This story is very clear evidence for the investment of zakat funds.

5. Umar Ibn Al-Khattab instructed that, guardians should invest the property of the orphans.¹⁹⁰
6. Some scholars broaden the *maṣraf* of *fī sabīl Allah* to involve all types of philanthropic and charitable deeds, such as building a fort, mosque, factory, etc., for public benefit. Once it is allowed to spend zakat money for the benefit of the society, it should be allowed to invest zakat funds to generate profits that can then be used for the recipients of zakat.¹⁹¹
7. Analogy (*qiyās*) of investment of zakat funds with the investment of an orphan’s assets by his guardian. Since scholars have allowed investment of the property of orphans, it should be allowed to invest the zakat funds before paying them to the rightful beneficiaries when the objective of doing so is generation of profits.¹⁹²

¹⁸⁸ Al-Sijistānī, Abū Dāwūd, *Sunan Abi Dāwūd*, hadith no. 3384, Kitab al-Buyua, <https://Sunnah.com/abudawud:3384>

¹⁸⁹ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta’šiliyyah li Mustajaddāt al-Zakāh*, pp. 490-491.

¹⁹⁰ Abu-Bakr Al-Bayhaqi, *Al-Sunan Al-Kubra, Dar Al-Kutub Al-Ilmiyyah, Beirut*, 1994.

¹⁹¹ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), ; Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta’šiliyyah li Mustajaddāt al-Zakāh*, p. 493; Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlikihā fī Daw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī’, 1999), p. 542; Edn; Doktoralina, Caturida Meiwanto, Nor Asariah Ilias, Zakaria Bahari, and Jazuli Suryadhi. ‘Investment of Zakat Fund in Malaysia.’ *The Journal of Social Sciences Research* (2018): 710-715.

¹⁹² Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at; Al-Ghufaylī, ‘Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta’šiliyyah li Mustajaddāt al-Zakāh*, p. 494; Al-Ānī, Khalid

8. Analogy of the investment of zakat asset with waqf property in the sense that both are acts that are done to draw closer to Allah with the hope of a reward from Him. It is well-known that investment of waqf property in order to get benefit from its profits is permitted by scholars. Thus, the same should be so for zakat assets as well.¹⁹³
9. Analogy of zakat investment with advance payment of zakat money. Since some scholars have allowed payment of zakat money to the beneficiaries before it is due when it is for the *maṣlahah* of the beneficiaries, it should also be permissible to invest zakat money for the *maṣlahah* of the zakat recipients.¹⁹⁴

4.1.3 The Preferred View

From the above-mentioned arguments of scholars from both sides, it has become clear that there may be discussion and debate on the arguments presented by scholars.¹⁹⁵ In the researchers' view, however, the opinion of the majority of contemporary scholars, who permitted the investment of zakat funds should be accepted. This is because this view is supported by the action of the Prophet (ﷺ) in the incident of the 'Urayniyyīn. Therefore, according to Ibn Hajar, riding, leasing and similar uses can be allowed on the basis of analogy (*qiyās*). By further extension, this would also cover the permission to invest zakat funds. Another strong item of evidence that supports this view is the case of orphans, whose property is invested in order to save it from being consumed by annual payment of zakat. In this regard, the story of 'Umar when Abū Mūsā al-Ash'arī's use of *bayt al-māl* funds to provide financing (*qirāḍ*) to his two sons, 'Abd Allāh and 'Ubayd, is quite clear evidence for the investment of zakat. Abu Musa al-Ash'ari had referred to this money as "māl Allah", that is, Allah's property. Zakat is also Allah's property. Although Umar earlier disapproved and insisted his two sons must return the capital and the profit, but later approved after of the Sahabah suggested conversion of such financing to *mudharabah*. Additionally, from the economic point

Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlikihā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī', 1999), p. 545; Edn; Doktoralina, Caturida Meiwanto, Nor Asariah Ilias, Zakaria Bahari, and Jazuli Suryadhi. 'Investment of Zakat Fund in Malaysia.' *The Journal of Social Sciences Research* (2018): 710-715; Shah, Sayed Sikandar. 'Investment of zakat fund: Modern juristic debate and modes of financing.' *Journal of Islamic Banking and Finance* 30, no. 3 (2013): 55-66.

¹⁹³ Al-Ghufaylī, 'Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta'ṣiliyyah li Mustajaddāt al-Zakāh*, p. 495.

¹⁹⁴ Ibid., p. 496; Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at; Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlikihā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī', 1999), p. 542.

¹⁹⁵ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), ; Al-Ghufaylī, 'Abd Allāh ibn Mansoor, *Nawāzil al-Zakāh: Dirāsah Fiqhiyyah Ta'ṣiliyyah li Mustajaddāt al-Zakāh*; Al-Ānī, Khalid Abdurrazzaq, *Maṣārif al-Zakāh wa Tamlikihā fī Ḍaw al-Kitāb wa al-Sunnah*.

of view, investment-oriented distribution of zakat money would have a cumulative effect in reducing poverty, which is another dimension worthy of consideration in this issue.

4.2 Proposed Guidelines and Parameters for the Implementation

If zakat evasion attracts punishment of 50,000 years before deciding the final abode of the evader,¹⁹⁶ what will be the punishment of one who mismanages the zakat proceeds? Based on this horrific question, it is necessary to set guidelines for the investment of zakat that would be endorsed by the Sharī'ah. It has been established that it is not permissible to delay distribution of zakat except for reasons that compel such delay and realise the *maṣlahah* of the zakat distribution process. Subject to the reasons that created the delay which eventually led to the investment, the following guidelines and parameters are necessary for the implementation:¹⁹⁷

1. There should be separation between the zakat fund for immediate distribution and the zakat fund for delayed distribution for microfinancing.
2. The decision to utilise zakat funds for microfinance purposes shall come from the zakat authority or equivalent institutions, and the investment must be properly managed by competent, experienced and trusted personnel.
3. The objective of the microfinance is for Sharī'ah-compliant business purposes. Therefore, the recipients of the fund shall not use it for investment, savings or purposes other than businesses.

¹⁹⁶ Abū Hurayrah related that Allah's Messenger (SAW) said, "If anyone owns gold or silver and does not pay the zakat due upon it, on the Day of Judgment it will be formed into plates and heated in the Fire of Hell. Then his sides, forehead and back will be branded with them. Every time they cool off, they will be reheated and he will be branded with them again [and again] during a day that will last fifty thousand years, until judgment has been passed over all [of Allah's] servants. He will then see his path, leading either to Paradise or to Hell." Someone said, "What about camels, Messenger of Allah?" He replied, "Any owner of camels who does not pay the right due upon them—and their milk on the day they get watered is part of the right due upon them—will be cast on a sandy plain on the Day of Judgment. Every single camel he owned—not even a freshly weaned one will be missing—will trample him with their hooves and bite him with their mouths. Each time the first one passes by him, every last one will be made to return, during a day that will last fifty thousand years, until judgment has been passed over all [of Allah's] servants. He will then see his path, leading either to Paradise or to Hell." Someone said, "What about cattle and goats, Messenger of Allah?" He replied, "Any owner of cattle and goats who does not pay the right due upon them will be cast on a sandy plain with them on the Day of Judgment. Not one of them will be missing, even those with twisted horns, without horns or with broken horns. They will gore him with their horns and trample him with their hooves. Each time the first one passes by him, every last one will be made to return during a day that will last fifty thousand years, until judgment has been passed over all [of Allah's] servants. He will then see his path, leading either to Paradise or to Hell." Muslim, *Ṣaḥīḥ Muslim*, vol. 2, p. 680, hadith no. 987.

¹⁹⁷ Wahbah Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu* (Damascus: Dār al-Fikr, 1984), vol. 10, p. 7939-10.

4. There should be a Sharī'ah decision-making authority to decide on the proportion of the zakat fund to be allocated for microfinance purposes and to approve the disbursement to the recipients.
5. An appropriate assessment framework should be established to ensure the honesty of the recipients and the suitability and viability of the proposed businesses.
6. Adequate risk management measures must be put in place to safeguard against loss of capital and profits to the zakat fund.
7. The decision to delay the direct distribution of zakat to the recipients and to utilise it for microfinance purposes must be based on genuine *maṣlaḥah*.
8. The utilisation of the zakat fund for microfinance purposes must have a clear timeline with a maturity date, subject to all the Sharī'ah rules applicable to any Sharī'ah contract used for microfinance.
9. Subject to relevant Sharī'ah principles, the recipients of zakat funds must be explicitly informed that they are responsible for paying off the financing.
10. If the non-payment of the financing is not due to misconduct, negligence or breach of contractual terms, then the recipients may be assessed and allowed to receive the fund under the category of *ghārimīn* (debtors). However, the assessment shall take the normal procedure for *ghārimīn*.
11. There must be continuous monitoring, review, recording, reporting, communication and consultation between the zakat authority and the beneficiaries of zakat-based microfinance.

CHAPTER FIVE

THE CONCEPT OF ISLAMIC MICROFINANCE AND UTILISATION OF ITS INSTRUMENTS IN ZAKAT-BASED MICROFINANCE

5.1 Introduction

This chapter bids to discuss the concept of microfinance from both conventional and Islamic perspectives and the features of each. Furthermore, the Malaysian perspective on microfinance will be an important element in categorising micro, small and medium enterprises (MSMEs). The Malaysian perspective will be derived from Bank Negara's and SMEs Corp's definition of microfinance in 2013-2014 and the categorisation of MSMEs within the country's MSME landscape.

The main objective of the chapter, however, is to propose possible models of zakat-based Islamic microfinancing. To achieve this objective, the chapter will establish the Sharī'ah basis of using zakat for Islamic microfinance by drawing from the existing scholastic fatwas on the legality of investment of zakat. These previous fatwas will form the foundation for various proposed models of zakat-based Islamic microfinance that will not violate the scope of the legality contained in the fatwas of those jurists.

The chapter will explore the various Islamic finance instruments that may be applicable in operationalising the proposed models without violating the *maqāṣid al-Sharī'ah* of zakat as well as remaining within the scope allowed by the fatwas that permit investment of zakat.

5.2 The Definition of Microfinance from the Conventional Perspective

According to the Independent Evaluation Group of the World Bank Group, 'Microfinance can be defined "as attempts to provide financial services to households and micro-enterprises that are excluded from traditional commercial banking services".'¹⁹⁸ It explained further that the target group of microfinance comprises 'low-income, self-employed or informally employed individuals with no formalised ownership titles to their assets and with limited formal identification papers'.¹⁹⁹ The definition mentions financial services without expressly explaining the nature and magnitude of those financial services, thus requiring additional definition to clarify the concept. Another institution under the World Bank Group defined

¹⁹⁸ Independent Evaluation Group, The World Bank Group, Thorsten Beck, 'Microfinance: A Critical Literature Survey,' (Washington, DC, 2015), <https://openknowledge.worldbank.org/bitstream/handle/10986/23546/Microfinance000al0literature0survey.pdf>, p. 3.

¹⁹⁹ Independent Evaluation Group, The World Bank Group, p. 3.

microfinance as "the provision of formal financial services to poor and low-income and, for credit in particular, non-salaried people, as well as others systematically excluded from the formal financial system." As noted, microfinance embraces not only a range of credit products (for business purposes, for consumption smoothing, to fund social obligations, for emergencies, etc.), but also savings, money transfers, and microinsurance.²⁰⁰

The above two definitions have clarified that microfinance is concerned with extension of financial services to the poor and to low-income earners and that these financial services include credit products for business purposes and to support consumption and facilitate savings, as well as money transfers and microinsurance. It is interesting to note that the target group of microfinance identified in these definitions comprises the same people that are eligible for receipt of zakat, thus justifying the aim of this research, which proposes zakat-based microfinance. Despite the universality of the above definitions of microfinance, there are country and regional peculiarities that vary from one jurisdiction to the other; hence, the need for the Malaysian government's perspective on microfinance.

5.3 The Malaysian Perspective on the Concept of Microfinance

Since the research is undertaken to propose zakat-based microfinance models in Malaysia, it is imperative to rely on the definition of microfinance by the Malaysia government under the auspices of Bank Negara Malaysia and the SMEs Corp in 2013-2014. The definition says:

'Microfinancing is small business loans up to RM50,000 for micro enterprises and self-employed individuals. Microfinancing is meant for business financing only, such as for working capital and for capital expenditure. It is not a personal loan.'²⁰¹

The above definition limits microfinancing to a loan of RM50,000 for either business or working capital. From the Shari'ah point of view, limiting the amount of zakat-based microfinance per beneficiary is allowed because it helps achieve the Shari'ah objective of having wealth circulate among many beneficiaries instead of allocating a very large amount for a few beneficiaries.

From the Shari'ah point of view, Muslim jurists held different opinions on the amount of zakat to be given to a poor person. For example, Imam al-Shāfi'ī and Imam Mālik ruled that there is no specific amount of zakat to be given to a beneficiary, but it is left to the *ijtihad* of

²⁰⁰ Consultative Group to Assist the Poor (CGAP), 'A Guide to Regulation and Supervision of Microfinance' (Washington, DC, 2012), <https://www.cgap.org/research/publication/guide-regulation-and-supervision-microfinance>.

²⁰¹ BNM, <https://www.bnm.gov.my/documents/20124/764825/FAQs+on+Pembiayaan+Mikro+April+.pdf>

the zakat authority. However, Imam Abū Ḥanīfah held that the amount per beneficiary should be lower than the *niṣāb* of zakat.²⁰² On the other hand, Sufyān al-Thawrī²⁰³ and Aḥmad ibn Ḥanbal based on hadith reported from the Prophet (peace and blessing of Allah be upon him) said that the maximum amount per beneficiary is fifty dirhams²⁰⁴(RM446.8673125).²⁰⁵ They relied upon hadith reported by Abdallah b. Mas'ud from the Prophet (peace and blessing of Allah be upon him) as saying:

“He who begs from people when he has a sufficiency will come on the day of resurrection with his begging showing itself as scrapes, scratching or lacerations on his face.” On being asked what constituted a sufficiency, God’s messenger replied that it was fifty dirhams or their value in gold.²⁰⁶

However, the disagreement of the Ulama on this matter means that ijtihad is allowed for determination on what to give per recipient. making the issue *ijtihādī*. As such, the opinion of Imam al-Shāfi‘ī and Imam Mālik that left the matter to the zakat authority to decide might be more suitable to serve the purpose of microfinance.

Accordingly, the zakat authority may adopt the national cap of RM50,000 or less for zakat-based microfinance. It should be clarified that the amount to be given shall be subject to the determination of the committee based on the needs of the time.

Furthermore, Although the Malaysian government includes small and medium enterprises in the category of MSMEs, the focus of this research and this chapter is on micro enterprises. There is no Sharī‘ah violation, however, for zakat to also fund the other two categories if a proper Sharī‘ah framework and proper guidelines are formulated and applied accordingly. Below is the figure presenting the three categories of MSMEs in Malaysia.

²⁰² Abū al-Walid Muḥammad ibn Aḥmad ibn Muḥammad Ibn Rushd-Al-Hafid, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Cairo: Dār al-hadith, 2004), p. 2, vol. 39. Abū al-Ḥasan Al-Māwardī, *Al-Ḥāwī al-Kabīr* Beirut: Dār al-Kutub al-‘Ilmiyyah (1994), vol. 8, p. 481.

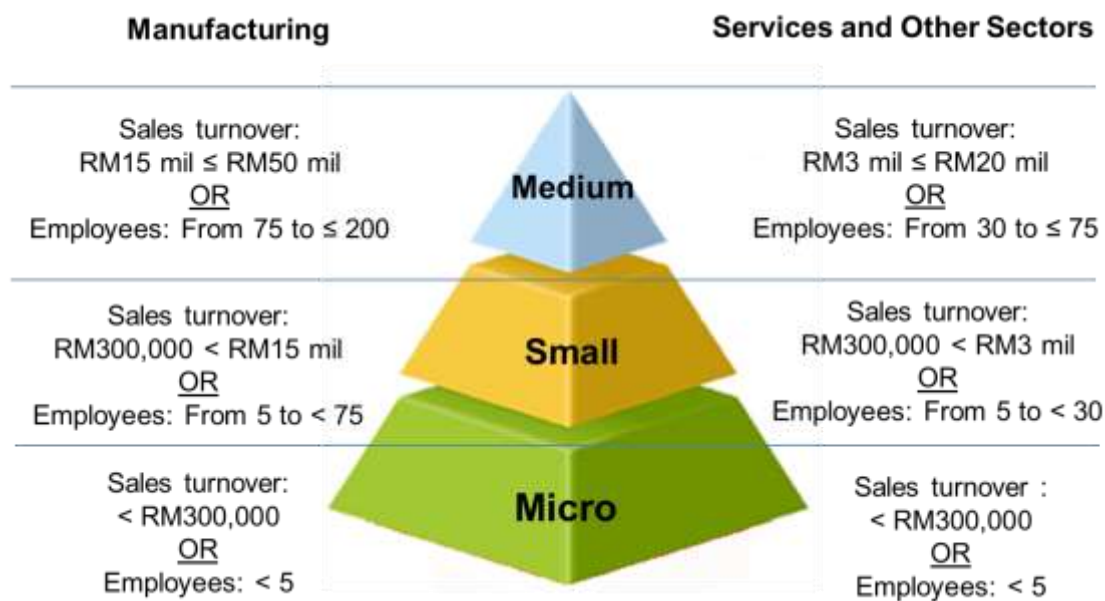
²⁰³ Ibid., p. 2, vol. 39

²⁰⁴ Abu Muhammad Muwaffaq al-Din, *Al-Mughni Fi Fiqh Imam Ahmad Ibn Hanbal*. V. 2, p. 493.

²⁰⁵ 1 dirham (silver)= 2.975 grams x 50 dirhams (silver) = 148.75 grams. Price of 148.75 grams of silver = 1 gram of silver =RM3.00415, RM3.00415 X 148.75= RM446.8673125.

²⁰⁶ Abu Dawud Sulayman Ibn Al-Ash’ath, *Sunan Abu Dawud*, ed. Muhammad Muhyi Al-Deen Abdul Hamid (Damascus: Dar Al-Fikr, n.d.), v. 2, p. 116.

Figure 1: Categorisation of Small and Medium Enterprises in Malaysia.



Source: Malaysian SME Corp

The above figure shows that MSMEs in Malaysia are either manufacturing companies or service-providing companies. Irrespective of type of activity, the MSMEs are classified in three categories based on size: micro, small and medium. Each of these three categories is characterised by numbers of employees or amount of sales turnover in a year.²⁰⁷

Features of microfinance in the Malaysian context are:

1. Loan size: Up to RM50,000.
2. Purpose of financing: Business purposes; i.e., for working capital or capital expenditure.
3. Loan tenure: Varies from 1 month to 7 years.
4. Collateral requirement: No collateral is required.
5. Loan application: Simple application form.
6. Loan documentation: Minimal documents, such as Identity Card, Proof of business (i.e. business registration/license/permit)
7. Proof of income (e.g., bank statement)

²⁰⁷ Malaysian SME Corp, 'SME Definitions,' 2021, <https://www.smecorp.govol.my/index.php/en/policies/2020-02-11-08-01-24/sme-definition>.

8. Utility bills (e.g., electricity, water, phone bills).

The above-mentioned features of microfinancing in Malaysia are Bank Negara's required procedures and documents for microfinancing. From the Sharī'ah point of view, these documents and procedures are permissible,²⁰⁸ and the zakat-based microfinance being proposed by the current research may adopt similar requirements with the condition that none of the requirements becomes difficult for the prospective beneficiaries to meet.

5.4 Zakat Investment

In general, investment is one of the tools for multiplying and increasing the resources of an individual or organisation.²⁰⁹ Economically, investment indicates an activity entailing capital outlay, which means forgoing current consumption for potential profits. The profit could be in two forms: a) tangible assets, for instance, production outputs and income, and b) intangibles, such as education, development, health, etc.²¹⁰

Investment is divided into two different categories: a) materially based, and b) non-materially based investment. The emphasis in the first type of investment is on capital and returns while the latter focuses on enhancement of human beings' capacity by such means as education, health care, welfare and safety, which is known as human capital investment.²¹¹

In the medieval era, Islamic jurists defined investment (*istithmār*) as denoting an activity to generate income and profit or to grow the capital and enhance it. Although the word *istithmār* is not explicitly mentioned in their discussion, other words are used which have similar meanings to investment; for example, *qirād*, *mudārabah*, *shirkah*, *murābahah* and *salam*.²¹²

²⁰⁸ Based on Qur'ān, Sūrah al-Baqarah, verse 282, Allah instructs attestation by contracting parties in a financial transaction to manage risk, particularly credit risk.

²⁰⁹ Chapra, M. U., Khan, S. and Al Shaikh-Ali, A, *The Islamic Vision of Development in the Light of Maqāṣid al-Sharī'ah*, (The International of Islamic Thought: London, 2008), p. 15.

²¹⁰ Aḥmad, Wan Marhaini Wan, *Zakat Investment in Malaysia: A Study of Contemporary Policy and Practice in Relation to Shari'ah*, (PHD Thesis, The University of Edinburgh, 2012), p. 35.

²¹¹ Chapra, M. U., Khan, S. and Al Shaikh-Ali, A, *The Islamic vision of development in the light of Maqāṣid al-Sharī'ah*, (The International Institute of Islamic Thought: London, 2008), p. 15; Al-Parisi, S., Ismail, N. and Indra, (2016). 'The effect of maqāṣid-based development variables on economic growth based on Umer Chapra's Perspective. Case Study: Nine Selected OIC Countries', *Tazkia Islamic Finance and Business Review*, 9(2): pp. 193–225.

²¹² Aḥmad, Wan Marhaini Wan, *Zakat Investment in Malaysia: A Study of Contemporary Policy and Practice in Relation To Shari'ah*, (PHD Thesis, The University of Edinburgh, 2012), p. 36.

In particular, jurists defined zakat investment as an act that develops zakat assets to achieve the goal of multiplying the benefit to zakat beneficiaries in the future. According to al-Fawzān, zakat investment is defined as an activity which involves zakat assets, grow them and benefits the beneficiaries. It is further defined as a tool of business to grow and develop zakat assets by conducting planned investment activities that are performed either individually or collectively.²¹³

5.4.1 Juristic Discussion on Zakat Fund Investment

Classical jurists did not discuss the investment of zakat as part of their treatment of the *fiqh* of zakah.²¹⁴ Therefore, no particular rules or regulations related to zakat investment are found in the writings of the medieval period. However, the topic has attracted the attention of contemporary scholars, and they have discussed it extensively.²¹⁵

According to a logical parsing of the possibilities, zakat funds could be invested as follows:

1. By the recipients of zakat after their possession of zakat funds, or,
2. by the zakat payer before the payment of zakat to the recipients, or
3. by the ruler or his deputy after zakat recipients' possession of zakat funds.

As far as the first possibility is concerned, jurists have clearly mentioned that it is permissible for zakat recipients to invest zakat funds after they have possessed them. As Ibn Nujaym observed, *ṣadaqah* is one of the causes of attaining ownership (*asbāb al-tamalluk*). After possession, these funds become the exclusive property of the recipients, and consequently they can spend and invest them as any owner of funds would be allowed to do. If they choose to invest them, no one has any right to stop them. Also, al-Sharbīnī said that the first four categories of recipients are mentioned with *li* and the last four with *fī*. The use of *li* for the former indicates that they will become owners of zakat funds without any conditions whereas the latter four will become owners with certain conditions. Likewise, al-Nawawī said that it is

²¹³ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at ; Doktoralina, Caturida Meiwanto, Nor Asariah Ilias, Zakaria Bahari, and Jazuli Suryadhi. 'Investment of Zakat Fund in Malaysia.' *The Journal of Social Sciences Research* (2018): 710-715.

²¹⁴ Al-Ānī, Khalid Abdurrazzaq, *Maṣārīf al-Zakāh wa Tamlikihā fī Ḍaw al-Kitāb wa al-Sunnah*, (Dār Usāmah li al-Nashr wa al-Tawzī', 1999), p. 540; Al-Khalīlī, Aḥmad ibn Hamd, "Mashrū'iyat Istithmār Amwāl al-Zakāh", chapter in the book *Al-Zakāh wa al-Takāful al-Ijtimā'ī fī al-Islām*, (Buḥūth wa Munāqashāt al-Nadwah Allatī 'Uqqidat fī 'Ammān, 1994), p. 354.

²¹⁵ Shabbir, Muḥammad Usman, *Istithmār Amwāl al-Zakāh*, (1998), available at ; Al-Ānī, Khalid Abdurrazzaq, *Maṣārīf al-Zakāh wa Tamlikihā fī Ḍaw al-Kitāb wa al-Sunnah*, p. 541; Al-Khalīlī, Aḥmad ibn Hamd, "Mashrū'iyat Istithmār Amwāl al-Zakāh", chapter in the book *Al-Zakāh wa al-Takāful al-Ijtimā'ī fī al-Islām*, (Buḥūth wa Munāqashāt al-Nadwah Allatī 'Uqqidat fī 'Ammān, 1994), p. 354.

permissible for a slave who has contracted to purchase his freedom to do business with zakat funds in order to increase them and pay for his freedom and that there is no difference of opinion in the Shāfi‘ī School on this matter.

5.4.2 The Reliable Fatwas, and the Scope They Set for Investment of Zakat

There are existing fatwas from eminent contemporary scholars that allow for investment of zakat funds. However, these fatwas always come with conditions that restrict the permissibility of the investment. Those fatwas however, are supportive of the objectives of this research. The fatwas are discussed in the subsequent subsections.

5.4.2.1 List of Fatwas on Investment of Zakat

To further ascertain the accurate Shari‘ah view on investment of zakat, which is also relevant to using zakat to extend microfinance to the *aṣnāf*, the following is a list of fatwas issued by contemporary scholars on investment of zakat funds.

5.4.2.1.1 OIC-Fiqh Academy Resolution on Investment of Zakat

OIC Fiqh Academy, Jeddah, in its resolution no. **15 (3/3) of 1986 allowed investment of zakat**. The text of this fatwa reads as follows in translation: Regarding investment of zakat funds:

‘It is permissible, in principle, to deploy zakat funds in investment projects whose ownership will eventually be conferred on the eligible zakat recipients or that will be under control of the legal authority responsible for collecting and distributing zakah, on the condition that the important urgent needs of all deserving recipients have already been fulfilled, also that sufficient measures are taken to ensure safety from losses.’²¹⁶

Relevant Lessons on Investment of Zakat Derived from This Resolution

The first ambit of this resolution allows for investment of zakat in projects that will eventually be owned by the zakat recipients. What is deducible from the wording of this fatwa is that zakat investment is allowed if the intention is to benefit the beneficiaries of zakat.

The resolution implies that the investment could be executed by any individual Muslim that is trusted by the zakat authority or a Islamic financial institution through Islamic contracts of *wakālah* (agency), equity (*mushārah* and *muḍārah*) or *ijārah* so that rentals or revenues

²¹⁶ 1986. Resolution no. 15 (3/3)

from the leasing would be distributed to the zakat recipients or the leasable equipment transferred to the ownership of eligible zakat recipients.

A further deduction is that, if it is permissible to invest zakat money with any trusted investment outfit after fulfilling the requisite conditions, it is more permissible to conduct microfinance with the eligible zakat recipients as preferred by this research.

However, the resolution also made it clear that the conditions that must be fulfilled before it becomes permissible to invest zakat funds are as follows:

1. There must not be any immediate pressing need by the zakat recipients.
2. The zakat authority must ensure that it has taken adequate risk management measures against the loss of funds during the investment.

The second ambit of the fatwa allows the zakat authority to deploy the zakat funds into investment projects that will be owned by the zakat authority on behalf of unspecified zakat beneficiaries. That is, the projects will be in the form of waqf such that only its profits are distributed to zakat beneficiaries while the original asset is inalienable and remains under the custody of the zakat authority.

The relevance of the above fatwa to this research is the permissibility of investment of zakat through any Sharī'ah-approved investment if the investee is a Muslim. This current research on providing microfinance to the *aṣṇāf* is well within the domain of permissibility framed by this fatwa because the fatwa did not restrict the investees to being zakat recipients, whereas the current research restricts it to zakat recipients due to dwindling resources.

5.4.2.1.1 OIC Fiqh Academy Resolution No. 165 (18/3) of 2007

This is another resolution by the OIC Fiqh Academy on investment of zakat. The text of this resolution reads in translation as follows:

Regarding activation of the role of zakat in poverty alleviation, reorganising its collection and distribution through (contemporary) *ijtihād* in Islamic jurisprudence. The Academy resolved as follows:

Secondly, the individual zakat payer is not required to distribute his zakat across the eight categories of zakat beneficiaries. However, if the distribution is handled by the head of the Muslims or his representative, it is recommended to distribute the zakat across the eight categories of zakat beneficiaries, subject to the availability of funds, the existence of need, and the possibility of reaching out to all the *aṣṇāf*.

Thirdly: the original Sharī'ah rule is that zakat should be distributed immediately. However, *it is permissible to delay the distribution due to maṣlahah, or for the return of a poor relative, or if the delay is in order to have a reserve for regular distribution to meet the recurrent needs of the poor who are incapacitated.*

Fourth: Distribution to the Poor (*Faqīr*) and the Needy (*Miskīn*) Zakat Recipients

The poor and the needy are to be given an amount that is enough to cater for their need and suffice them and their dependents based on the *ijtihād* of the authority.

If the poor person is engaged in professional work, he should be given capital expenditure to buy the needed equipment.

If he is good in trading, he should be given the needed capital. If he is engaged in agriculture, then he should be given farm land whose yield will suffice him perpetually. Based on this, it is permissible to deploy the zakat fund into micro enterprises (like household weaving and sewing or workshops for small businesses) that would be owned by the needy and the poor. It is also permissible to establish manufacturing or service projects from zakat money based on Resolution No. 15 (3/3).

Deducible Lesson

The above fatwa contains the permissibility of delaying the distribution of zakat due to *maṣlahah* or as a reserve for regular disbursement to the incapacitated poor Muslims. The fatwa also allows giving enough capital to recipients that want to take part in MSMEs or that need farm land to cultivate if they are interested in agriculture.

Based on the above lessons, the objective of the current research, which is investment of zakat through microfinance for the *aṣnāf*, is supported by this fatwa. Also, it is correct to use the fatwa as a support for the strategy devised by this research by dividing the zakat fund into zakat for immediate distribution and zakat for delayed distribution for microfinance among the *aṣnāf*. Similarly, the fatwa also entails the permissibility of investing zakat fund in a micro enterprise in the following manner:

1. Either with individual zakat recipient or group of zakat recipients or
2. In projects that will generate income for the *aṣnāf* while the ownership is under the custody of the zakat authority. This was earlier approved by the OIC Fiqh Academy's Resolution No. 15 of 1986.

5.4.2.1.3 The Fatwa Council of the Kuwaiti Ministry of Awqaf and Islamic Affairs

This is the third fatwa from the Fatwa Council of Kuwait regarding investment of zakat. The fatwa reads as follows:

It is permissible for the zakat authority to purchase rentable real estate with zakat money for the purpose of investing it for the benefit of eligible zakat recipients with the strict condition that the rentals are distributed to zakat recipients and the ownership of the

corpus resides with them (zakat recipients). This means that if the real estate is sold at any time the proceeds go to eligible zakat recipients.²¹⁷

All the above three fatwas from eminent fatwa bodies approved investment of zakat but with conditions. However, the permissibility supports the objective of this research because, if investment is allowed between the zakat authority and other investment outlets outside the *aṣṇāf* with the intention of retraining the profits to the *aṣṇāf*, then doing the investment with those who fall under the category of *aṣṇāf* is also allowed as doing so more directly deploys the zakat funds for the benefit of the *aṣṇāf*.

5.5 The Potential Islamic Finance Instruments for Use in Zakat-based Microfinance

Sharī'ah has permitted many types of contracts (financing instruments) because they realise benefits and interests (*maṣāliḥ*) for the individual and society, and it has prohibited many types of financing methods because they entail various forms of harm and corruption (*maḥāsīd*) for the individual and society.

The terms of Sharī'ah contracts are used to control and regulate transactions in order to achieve a decent living, social security and economic stability. Financial contracts are the gateway through which a Muslim enters the world of money and business. The terms of Sharī'ah contracts regulate the behaviour of contracting parties, guarantee their rights, preserve wealth from damage, waste and injustice, and create social justice. Sharī'ah contracts are divided into four classifications:

- 1- Exchange-based contracts (*'uqūd al-mu'āwadhāt*) are entered into by two contracting parties to transfer ownership of an asset in return for the transfer of ownership of a consideration. The subject of an exchange contract may be either a tangible or intangible thing in a sale, or usufruct in a lease contract. Exchange contracts are based on each party seeking to maximise personal advantage; however, the rights of both parties must be satisfied at a minimum obligatory level; for example, the consent of both parties to the terms of the contract. An exchange contract that involves deferred delivery of either the object of the contract or the consideration creates a debt.

²¹⁷ Arif Sheikh, 'Hal Yajūz Istithmār Amwāl al-Zakāh?' accessed December 28, 2021, <https://www.alkhaleej.ae/2021-09-24/هل-يجوز-استثمار-أموال-الزكاة/استراحة-الجمعة/منوعات/>.

Examples of debt-based financing instruments are *bay' al-murābahah*, *salam*, *istiṣnā'*, and *ijārah*.²¹⁸

- 2- Partnership contracts (*'uqūd al-mushārah*) entail joint contribution of resources in order to jointly earn profit. They are based on the spirit of cooperation in the sense that profits are shared jointly by the partners and losses are borne by both. Examples of partnership contracts are *mushārah*, *muḍārabah*, *muzārah* and *musāqāh*.²¹⁹
- 3- Charity-based contracts (*'uqūd al-tabarru'āt*) are contracts made by someone on the basis of benevolence (*iḥsān*) and do not require something in return. Examples of contracts based on charity are charitable loan (*qarḍ*), gift (*hibah*), charity (*ṣadaqah*) and waqf. Normally, any attempt to introduce a consideration in the form of an increase to the principal in a loan would disrupt the very purpose of the charity-based contract or the principle underlying it.²²⁰
- 4- Security contracts (*'uqūd al-tawthīqāt*) are means used to confirm and guarantee the rights of the contracting parties which can be referred to when needed or when conflict occurs. These include the contract of guarantee (*ḍamān*), and mortgage (*rahn*). An example from modern banking is the so-called letter of credit. The benefits of these contracts are that they protect people's rights and close the door to deception, tricks and disputes. Security contracts promote trust and stimulate businesses to increase investments because they ultimately guarantee justice and restore rights.²²¹

Islamic microfinance instruments are not very different from traditional Islamic financial instruments, but there are slight differences in procedures, conditions and facilities. Sharī'ah has provided instruments such as *muḍārabah*, *salam*, *istiṣnā'*, *muzārah* and *musāqāh* that can enhance a poor person's capabilities and skills for use in productive processes. Their participation in the implementation of small projects has the potential to significantly contribute to the success of projects, increase production rates, alleviate poverty and unemployment, and move the wheel of the economy..

5.5.1 Qard Ḥasan

²¹⁸ Al-Māwardī, *Al-Ḥāwī al-Kabīr*, Beirut: Dār al-Kutub al-'Ilmiyyah (1999).

²¹⁹ ISRA (2013). *Islamic Financial System, Principles & Operations* (Second ed.). Kuala Lumpur, Malaysia: International Sharī'ah Research Academy for Islamic Finance.

²²⁰ Ibid.

²²¹ *Al-Mawsū'ah al-Fiqhiyyah al-Kuwaytiyyah* (1404 - 1427 H).

One of the instruments of Islamic microfinance is *qarḍ hasan*. According AAOIFI, ‘*Qarḍ* is the transfer of ownership in fungible wealth to a person on whom it is binding to return wealth similar to it.’²²²

5.5.1.1 Elements of a Valid *Qarḍ*

The elements (*arkān*) and conditions of a loan (*qarḍ*) contract are as follows:

- 1- The contract of loan (*qarḍ*) is concluded through offer and acceptance by the use of the words *qarḍ* and *salaf* or any other word or act that conveys the meaning of *qarḍ*.
- 2- The lender must have the legal capacity to make a donation.
- 3- The borrower must have the legal capacity to undertake transactions.
- 4- The subject matter of the contract must be known, fungible (*mithlī*).
 - The borrower comes to own the subject matter of *qarḍ* (the wealth loaned) through possession, and he becomes liable for (the repayment of) a similar subject matter.
 - The applicable rule is the return of the same amount of similar wealth as was given in the loan at the place where it was delivered.²²³

The loan contract (*qarḍ*) belongs to the category of donation contracts; it functions as a form of social security that promotes the interests of people and supports the values of solidarity and compassion in society. Despite the great importance of donation contracts, they have not received proper attention from financial institutions. In Sharī‘ah, donation (*tabarru* ‘) is a contract in which the benefit is for one of the parties to the exclusion of the other, based on the generosity of one of the parties, who seeks thereby a reward from God. A key rule of the loan contract is that the stipulation of excess for the lender is forbidden and amounts to *ribā*, whether the excess is qualitative or quantitative, or whether is a tangible thing or a benefit. Furthermore, the borrower is not permitted to offer tangible property or a benefit to the lender during the term of the *qarḍ*.

5.5.1.2 The Economic and Social Benefits of *Qarḍ Ḥasan*

Sharī‘ah urges the good loan (*qarḍ ḥasan*), and it has affirmed that it is one of the best acts of worship, as Allah said:

من ذا الذي يقرض الله قرضاً حسناً فيضاعفه أضعافاً كثيرة والله يقبض ويبسط وإليه ترجعون [البقرة: 245]

²²² AAOIFI (2017). Sharī‘ah Standards. Manama, Bahrain: Accounting and Auditing Organization for Islamic Financial Institutions.

²²³ Ibid.

‘Who will lend to Allah a good loan which Allah will multiply many times over? It is Allah alone who decreases and increases wealth. And to Him you will all be returned’ (al-Baqarah: 245).

A good loan (*qarḍ ḥasan*) has great importance and great benefits as follows:

- 1- *Qarḍ* is a great principle of cooperation in goodness and righteousness, and this is one of the major principles of Islam.
- 2- *Qarḍ* is a noble act to help the needy and the poor, and they are an important category of society that the rich must take care of.
- 3- *Qarḍ* is a way to spread love and intimacy in society. If people refrain from lending to each other, it may lead to envy and hatred in society.
- 4- *Qarḍ* is a realistic embodiment of the principle of the brotherhood of faith, which the verses of the Qur’ān and the Prophetic hadiths have emphasised.
- 5- *Qarḍ* is considered one of the tools of Islamic economics for financial stability. When financial crises and their phenomena such as economic deflation occur, the Islamic economy uses *qarḍ* as an alternative tool (to reducing interest rates in a traditional economy).

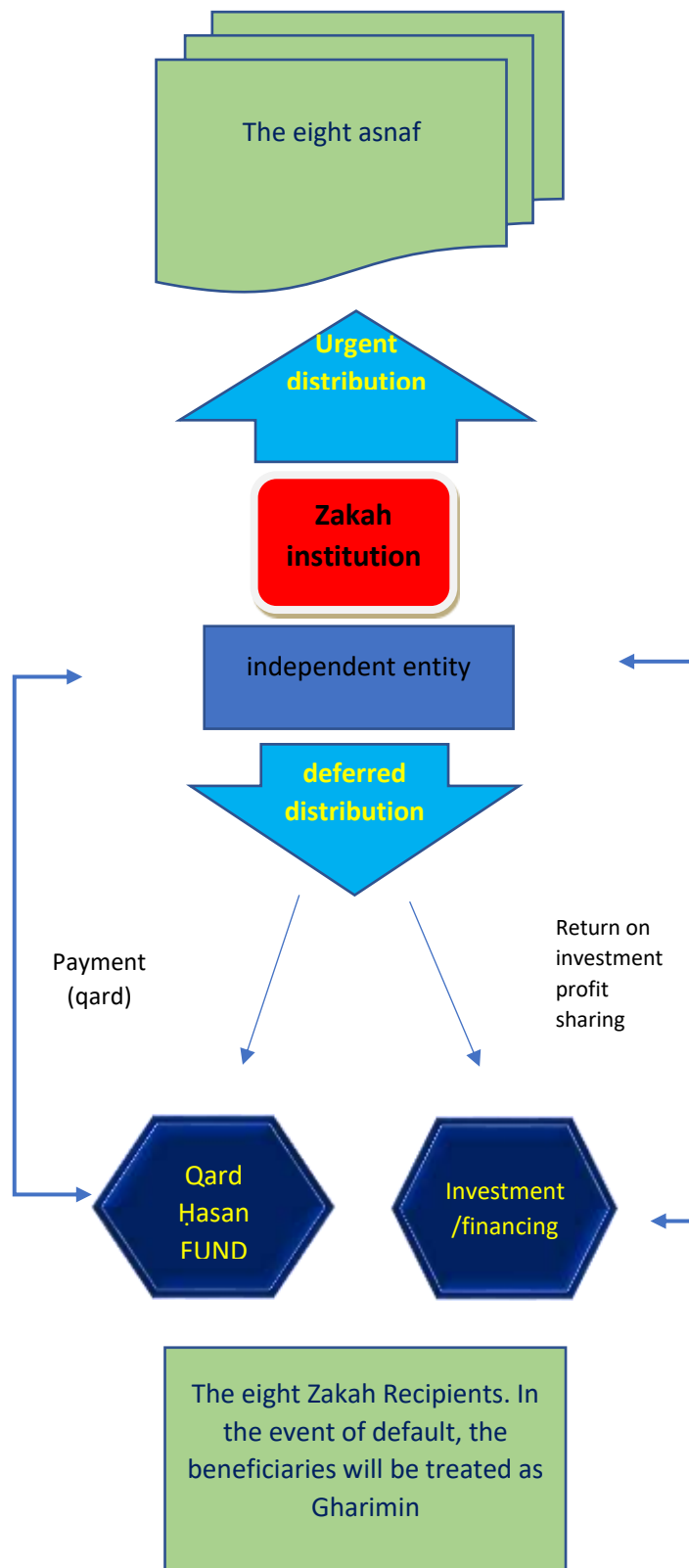
5.5.1.3 Models of Microfinance Using *Qarḍ Ḥasan*

Islamic microfinance institutions (IMIs) have several options for financing small enterprises and poor families. *Qarḍ ḥasan* may be provided directly or indirectly, by supporting them in cash, or supporting their small projects by providing technical facilities, training and rehabilitation, all of which leads in the end to benefiting poor families and improving their standard of living. The potential ways of providing microfinance using *qarḍ* include:

- 1- The IMI functions as an intermediary between the principal lenders and the borrowers as well as a guarantor for the borrowers. This is in order to ensure repayment because it enhances confidence and brings peace of mind to the lenders, In the meantime, the lenders do not have to monitor the borrowers, because the IMI follows up with the borrowers on their behalf.



1. Parallel *qard*: In this model, the IMI represents the borrower, and the supporting institutions are the lender. The IMI creates a special fund for the poor and the needy, for instance, and then borrows from financial institutions, or charitable institutions, or specialised funds, or even from individuals for the benefit of the fund. Then the IMI will loan to the poor, orphans, patients in hospitals, or even owners of microenterprises and so on from this special fund. **.5.2 Equity-Based Contracts for Zakat-Based Microfinance**

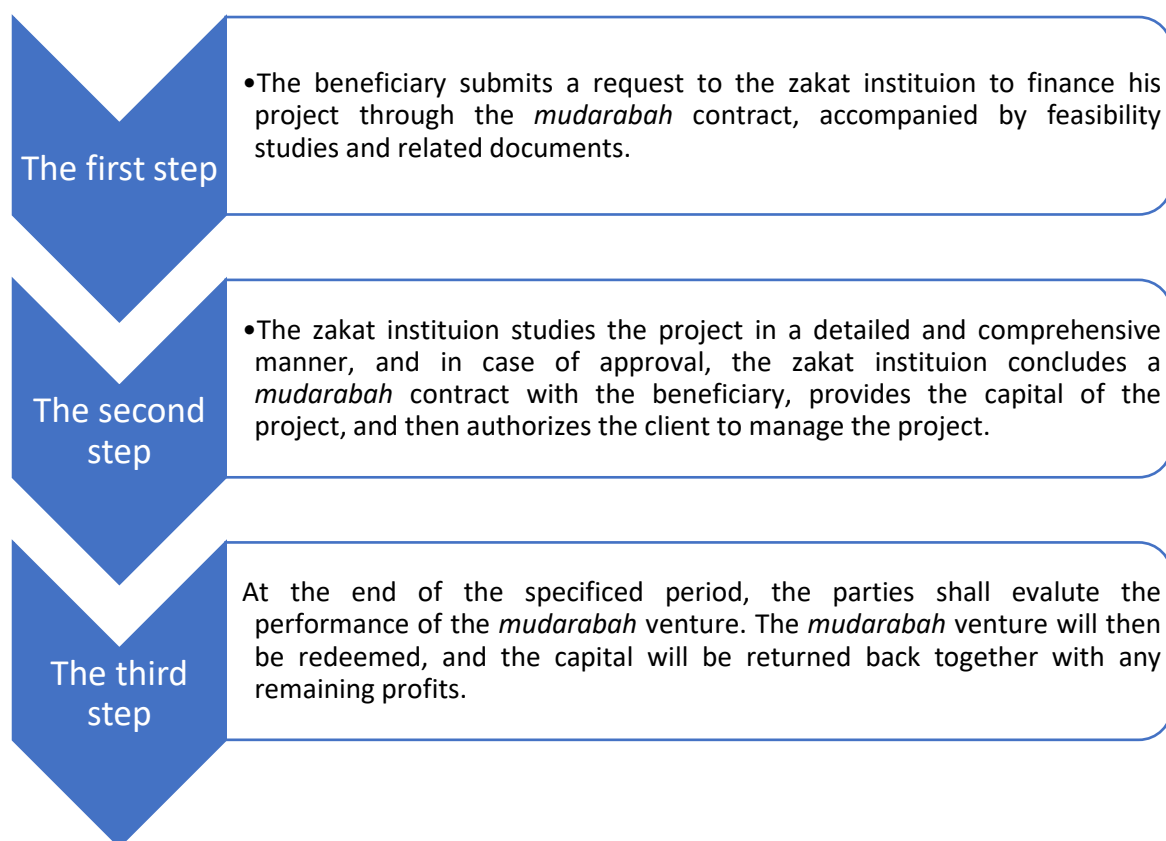


When addressing the issue of strengthening microfinance, it is worth highlighting the most important Islamic tools that contribute significantly to promoting microfinance and supporting small projects.

5.5.2.1 *Muḍārabah*

Muḍārabah is an agreement between two parties in which one of them provides the capital and the other exerts his effort and activity in trading and working with this capital, and the profit is divided between them according to the terms they stipulate.²²⁴

Procedures for Implementation of *Muḍārabah* Are As Follows



Source: authors' own.

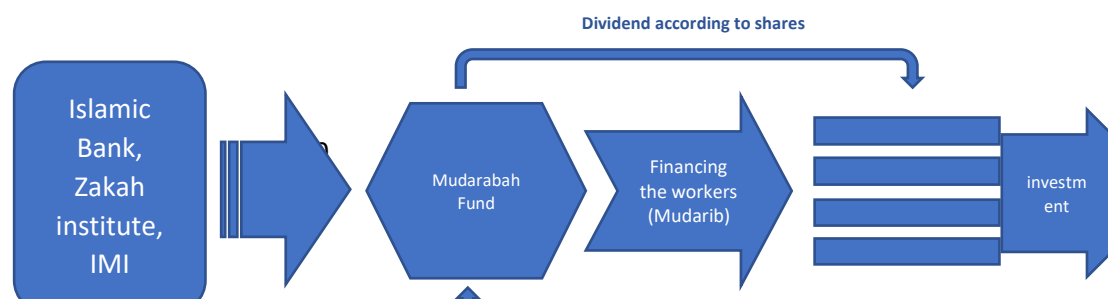
This financing contract takes several forms as in the figure above, the most important of which are:²²⁵

²²⁴ Al-Amīn, Ḥasan, *Al-Muḍārabah al-Shar'īyyah wa Taṭbīqātuhā al-Ḥadīthah*, p. 19, Ḥammād, *Mu'jam al-Muṣṭalahāt al-Māliyyah wa al-Iqtiṣādiyyah fī Lughat al-Fuqahā'*, (Dār al-Qalam, Damascus, 2008), p. 422; Al-Gharīb, Nāsir, *Uṣūl al-Maṣrafiyyah al-Islāmiyyah wa al-Qaḍāyā al-Tashghīliyyah*, p. 149.

²²⁵ Al-Gharib Nasser, *The Principles of Islamic Banking and Operational Issues*, Dār Abolo, Cairo, 1996, p. 149.

- 1- Individual *muḍārabah*: This is the type that small business owners and craftsmen benefit from. The bank, zakat foundation, or Islamic microfinance institution would finance a specific project, and the worker (the *muḍārib*) would contribute his effort and skills, and in the end the profits would be distributed according to what was agreed upon. This unique instrument contributes to the growth of productive and real estate projects, as well as to the spread of industries, crafts and small enterprises, but there is some risk as a result of the absence of values such as honesty and trustworthiness among many beneficiaries. This can, however, be overcome by requiring a solvent guarantor, or a pledge, or other means.
- 2- Mutual (collective) *muḍārabah* (*muḍārabah mushtarakah*): It is a developed form of individual *muḍārabah*, but for individual *muḍārabah*, the Islamic bank or the IMI is the owner of the money (*rabb al-māl*) and the worker is the *muḍārib*. Therefore, the contract is between two parties only: the owner of the money and the worker (*muḍārib*). In this modified form, an Islamic bank or IMI can establish a *muḍārabah* fund that will involve those who do not have money but have skills and abilities that enable them to participate in the fund's capital as participants with their work and effort, not with their money. Participants would include craftsmen and practitioners of simple professions. At the end of the agreed period, the fund would obtain the returns and profits and would distribute them to the workers (*muḍāribs*) according to the shares or investment units previously distributed.
- 3- *Muḍārabah* ending with ownership (*muḍārabah muntahiyah bi al-tamlīk*): This form does not differ much from the previous two types, but this form allows the worker (*muḍārib*) to gradually purchase the share of the IMI at the end of the period through his periodic profits or any legal method.

Model of *Mudarabah*:



1.

5.5.2.2 *Mushārah*:

The *mushārah* contract is one of the most effective contracts for stimulating production, and it contributes to enhancing confidence between the partners, having relatively low risks. Islamic banks and financial institutions resort to this tool when contributing to the capital of productive or service projects.

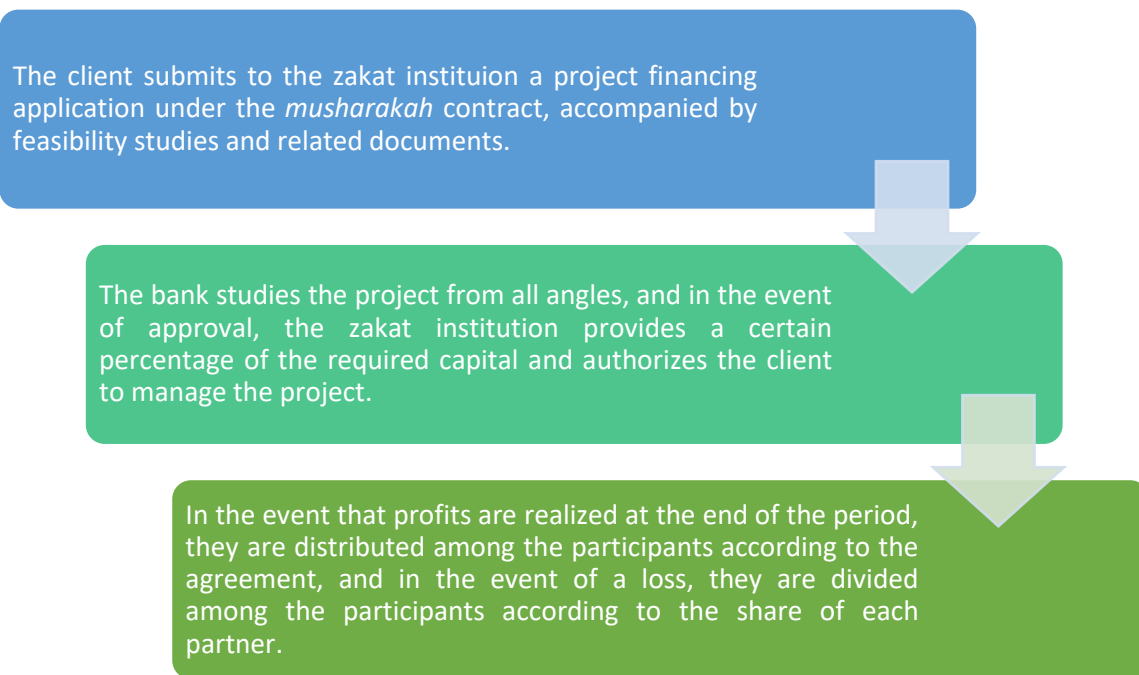
Mushārah is a contract between two or more people in which they agree to carry out a specific economic activity for the purpose of making a profit.²²⁶

According to AAOIFI, *sharikat al-‘aqd* (contractual partnership) means an agreement between two or more parties to combine their assets, labour or liabilities for the purpose of making profits.²²⁷

²²⁶ Shabūr, M. Othman, *Al-Mu‘āmalāt al-Māliyyah al-Mu‘āsirah fī al-Fiqh al-Islāmī*, Dār al-Nafā’is, Amman, p. 333.

²²⁷ AAOIFI, *Shari‘ah Standards*, p. 326.

5.5.2.2.1 Procedures for Implementation of *Mushārah*



The zakat institution will not take part in the management of the *mushārah* but will be a sleeping partner in the *mushārah* venture, while the zakat-based microfinance partner will be the active partner managing the venture.

5.5.2.2.2 Possible Methods of *Mushārah* in Microfinance

The following are the possible methods of *mushārah*'s variants for zakat-based microfinance:

- 1- **Diminishing *mushārah* (*mushārah mutanāqishah*):** in which the microfinance partner will gradually purchase the share of the zakat institution in the *mushārah* venture.
- 2- **Fixed-term *mushārah*:** The zakat institution may also consider investing in limited operations with the beneficiary for a certain period, cycle, or transaction, or a specific commercial activity, or contract to supply, etc. This process would end with the end of the activity.
- 3- **Operational *mushārah*:** It is participation in financing the capital of a particular project, where the zakat institution evaluates the partner's assets and determines their value as a contribution to the capital of the project, and then the zakat institution provides the remaining percentage, provided that the partner's contribution is not less than a certain percentage (30%, for example). The partner may suffice to present his fixed assets and administrative effort as a contribution to the the project, and this kind

of *mushārah* would support productive projects such as agricultural and industrial projects.²²⁸

²²⁸ Al-Salami, Nasr Muhammad, *Al-Ḍawābiṭ al-Sharʿiyyah li al-Istithmār*, Dār al-Īmān, 2008, p. 455-466. *Al-Shāmil fī Muʿāmalāt wa ʿAmaliyāt al-Maṣārif al-Islāmiyyah*, Dār al-Nafāʾis, Amman, 2007, p. 32-40. Gharīb, Nāsir, *Uṣūl al-Maṣrafīyyah al-Islāmiyyah wa al-Qaḍāyā al-Tashghīliyyah*, 1996, pp. 163-167.

CHAPTER SIX

RISK MANAGEMENT IN ZAKAT-BASED ISLAMIC MICROFINANCE

6.1 Introduction

The zakat institution has incentives to provide financial services to eligible beneficiaries²²⁹ through Shari'ah-compliant microfinance schemes or mechanisms in a sustained manner that would increase the number of small enterprises, encourage social inclusion, and promote economic development in the society. This seems to be potentially viable and would be a revolutionary way to assuage poverty. Zakat funds may be provided as start-up capital for their micro-enterprises in the form of outright grants, or interest-free loans (*qard hasan*),²³⁰ or micro-equity. Hence, poverty alleviation and economic empowerment in a society could be materialised through efficient collection and distribution of zakat by the relevant authorities.

The concept of offering microfinance to eligible beneficiaries is adduced from the previously mentioned hadith in which the Prophet (SAW) auctioned the belongings of a poor man who had come to him asking for financial help. He gave him half the proceeds of the sale for his family's needs, purchased an axe with the other half, and instructed him to go cut firewood and sell it. The hadith demonstrates how to design and implement a strategy of poverty alleviation through economic empowerment.

Obaidullah emphasised that good microfinance programs are distinguished by short-term loans,²³¹ immediate disbursement of repeat loans after timely repayment, streamlined

²²⁹ Poor beneficiaries who have no access to financial services, no collateral assets and severely limited credit history loans to acquire financing from banking system because lending to them became very risky and very costly. They are extremely difficult to take advantage of economic opportunities, build assets, and protect themselves against financial shocks. The exclusion of the poor from the financial system (financial exclusion) thus, binds them into a vicious circle of poverty.

²³⁰ When a microfinance institution provides loans based on *qard hasan*, it is allowed to recover the cost of operations and actual expenses from the borrower. It is required that any excess charge be refunded back to the borrower after the actual operational costs are ascertained at the end of the accounting period. AAOIFI in its Shari'ah Standard No. (19) stipulates that Islamic financial institutions can only charge direct costs and expenses related to the disbursement of the debt. Therefore, the majority of Muslim jurists have agreed that all administrative costs and expenses related to the debt or financing must be borne by the debtor, as the purpose of the service and expenses is to facilitate the disbursement of such debt. In such a case, any costs that are charged over and above the amount of direct and actual incurred costs would be considered *ribā*. The Council of the International Islamic Fiqh Academy (IIFA) in Resolution No. 13 (1/3), regarding a service fee for IDB loans, stated that it is allowed to charge a fee for loan-related services. The said fee should be within the limit of the actual expenses; and any fee in addition to the actual service-related expenses is prohibited (*harām*) because it is considered *ribā*.

Financing on the basis of *qard hasan* can be backed by a guarantee under the concept of *kafālah*. It is essential to note that the application of *kafālah* in Malaysia is governed by the Contracts Act, 1950.

²³¹ Credit is usually given in small amounts and requires repayment at weekly intervals and within a short time period. The beneficiary looks forward to repetitive financing in a graduated manner, and this also helps prevent risk of default and delinquency.

borrower and investment appraisal, and convenient location and timing of services.²³² Hence, the zakat institution ought to find the best practice of offering microfinance schemes and improve the efficiency of its portfolio risk management to achieve a better equilibrium between sustainability and outreach. This leads to a very important question: how is the zakat institution to manage its potential and actual risks?

A well-crafted and detailed plan is crucial for managing the risk effectively. There are various instances of risk management in the time of the Prophet (ﷺ). He considered all contingencies he might face during the hijrah to Madinah when he assigned ‘Alī ibn Abī Tālib to replace him on his bed to deceive Quraysh to mitigate and diversify the risk of being killed. Moreover, many Qur’ānic verses show the significance of financial planning to control and mitigate anticipated and perceived risks. It is found in the stories of Prophet Nūḥ²³³ (AS) and Prophet Yūsuf²³⁴ (AS), which can be construed as events that have provided us with good examples of risk management.

6.2 Zakat-based Microfinance Risk Management Framework

This research highlights the importance of having risk management practices in zakat-based microfinance, underlines the risks associated with the operation of zakat-based microfinance, and proposes a risk management framework for it.

The main principle of risk management is to achieve the best possible outcome and reduce volatility or uncertainty of outcomes.²³⁵ ISO 31000 has been unveiled to help manage risks. Its risk management guidelines provide sound principles, a framework, and a process for managing risk as well as for effective management and corporate governance.

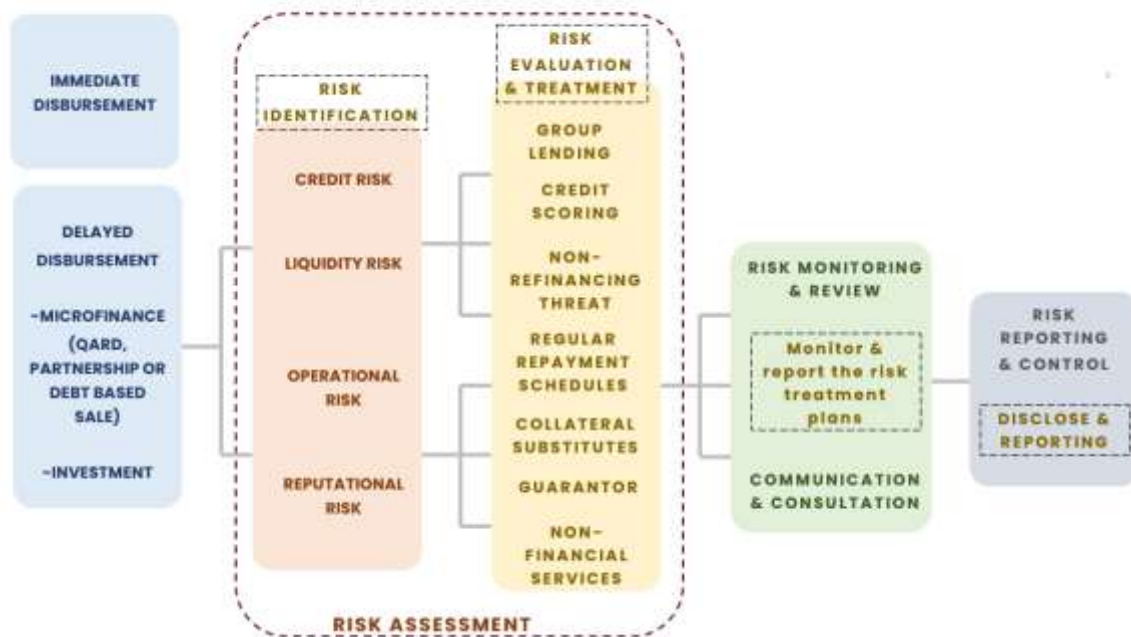
²³² Obaidullah, Mohammed, *Introduction to Islamic Microfinance*, (India: IBF Net Limited, 2008), p. 6.

²³³ Sūrah Hūd (11: 37) gives us an idea of well-engineered structures for safety in catastrophic situations and the significance of readiness to cope with disaster in mitigating any harm to lives and assets whenever disaster strikes. Ṣalāḥ al-Khālīdī, *Al-Qaṣaṣ al-Qur’ānī ‘Arḍu Waqā’i’ wa Taḥlīl Aḥdāth*, (Damascus: Dār al-Qalam, 1st ed., 1998), vol. 1, pp. 149-214.

²³⁴ Prophet Yūsuf interpreted the king’s dream to herald seven years of drought. He advised actively planting crops during the first seven years and rigorously storing most of each harvest as an economic strategy for overcoming the upcoming catastrophe. Sūrah Yūsuf (12: 47-49) acknowledges his preparedness during seven years of drought after seven years of prosperity. Ṣalāḥ al-Khālīdī, *op. cit.*, vol. 2, pp. 71-256, Agha, S. E., & Sabirzyanov, R., ‘Risk Management in Islamic Finance: An Analysis from Objectives of Sharī’ah Perspective’, *International Journal of Business, Economics and Law*, 2015, 7(3), 46-52.

²³⁵ Hopkin, Paul. *Fundamentals of Risk Management: Understanding, Evaluating and Implementing Effective Risk Management*. (London: Kogan Page Publishers, 5th edn., 2018), p. 55.

Figure 4.1: Zakāt-based Microfinance Risk Management Framework
Source: Authors' Own



The zakat-based microfinance risk management framework commences by identifying the potential and actual risks; i.e., credit, liquidity, operational and reputational risks, and continues by assessing or measuring those risks. After discovering and evaluating the risk, it is necessary to determine what kind of actions/activities/treatments can be implemented by the zakat institution to mitigate these potential risks. Otherwise, this can lead to significant failures for the zakat institution. The zakat authority (via its Sharī'ah committee) must provide justification for applying zakat-microfinance among the *aṣṇāf* instead of direct distribution to its beneficiaries. After a decision has been made and implemented by the zakat authority, monitoring and review as well as continuous communication with and consultation for the eligible beneficiaries (the borrowers) are required. Reporting and control comprise the last part of the risk management practices. This proposed framework will be further explained subsequently.

6.3 Risk Identification in the Zakat-based Microfinance Programme

Zakat-based microfinance is not exempted from risk as any business activity must deal with various types of risks and choose the level of risk it has appetite for. Risks associated with this project are discussed as follows:

6.3.1 Credit Risk

Credit risk arises from two sources: financial risk and business risk.²³⁶ Business risk is called *khaṭar* or *mukhāṭarah*²³⁷ by Muslim jurists, which is defined as ‘the possibility of unexpected outcomes’.²³⁸

Credit risk could result in insolvency. Total credit given by the zakat institution to its eligible beneficiaries is measured by the amount of each credit transaction, the volume of credit transactions, and the length of the credit period. Attestation²³⁹ by the contracting parties in a financial transaction is required to manage risk, particularly credit risk.

Limiting the volume of debtors, partially perhaps by reducing the credit period, can prevent the risk. Credit analysis of potential beneficiaries is carried out in order to judge the credit risk of the beneficiaries and to reach a financing decision by zakat authorities.

The question here is who shall compensate the amount due in micro financing in case of any destruction or loss?²⁴⁰ Is it the zakat administrator or the respective beneficiaries who should guarantee its recovery in case of any loss? Who holds the responsibility of being *amīn* here? This should be properly documented prior to subscription to zakat-based microfinance.

²³⁶ Financial risk is the possibility of non-payment or late payment because of the financial circumstances, principally a lack of liquidity of the beneficiaries. Whilst business risk is the possibility of a credit beneficiaries failing to pay because of circumstances connected with their business activities (setback or downturn) and management (bad decision making). Coyle, Brian, *Framework for Credit Risk Management*. (Global Professional Publishing, 2000), pp. 7-13.

²³⁷ *Khaṭar* and *mukhāṭarah* are interchangeably used with *gharar*. ‘Uwayḍah, ‘Adnān ‘‘Abd Allāh Muḥammad, *Nazariyyah al-Mukhāṭarah fī al-Iqtisādī al-Islāmī*, (Herndon: International Institute of Islamic Thought, 2010). According to *Al-Mawsū‘ah al-Fiqhiyyah al-Kuwaytiyyah* (1983-2006) *mukhāṭarah* is the doubtful status of a business transaction in which gain and loss are unknown. Refer Wizārah Al-Awqāf wa Al-Shu‘ūn Al-Islāmiyyah, *Al-Mawsū‘ah al-Fiqhiyyah al-Kuwaytiyyah*, (Kuwait: Dār al-Salāsīl, 1983-2006).

²³⁸ Al-Sharbāṣī, Aḥmad, *Al-Mu‘jam al-Iqtisādī al-Islāmī*, (Beirut: Dār al-Jīl, 1981).

²³⁹ In the following Qur’ānic verse, attestation by contracting parties in a financial transaction is required to manage risk, particularly the credit risk:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ ۚ وَلْيَكُنْ بِبَيْنِكُمْ كَاتِبٌ بِالْعَدْلِ ۚ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ ۚ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا ۚ

‘O you, who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it....’ (Al-Baqarah, 2:282). Attestation is a basic requirement in Islamic commercial law to mitigate the risk of any party denying what was agreed upon. In case of debt, Shari‘ah allows the creditor to receive collateral as the debt security. This is an example of risk management; i.e., mitigating credit risk due to the failure of the debtor in fulfilling his financial obligations. The aforementioned verse indicates that if the trust of the counterparty is insufficient, an effective step must be taken to avoid fraud and unreasonable losses. Usmanī, M. S., *Ma‘ārif al-Qur‘ān*. (Karachi: Idarah Al-Maarif, 1978).

²⁴⁰ Al-Suyūṭī said a beneficiary has the right to be given his sufficiency from zakat, such as an amount needed to buy equipment, or needed capital, if the person is a businessman. Al-Suyūṭī, Muṣṭafa, *Maṭālib Uli al-Nuhā*, op. cit., vol. 2, p. 136.

6.3.2 Liquidity Risk

The risk of bad debts, late payments and deliberate delay could also create a liquidity risk for zakat institutions that have insufficient zakat funds or borrowing capability to finance excessive requests or debtor burdens.

With regard to the investment of the zakat fund, it must be invested into assets that are beneficial, secure and easily liquidated when the need to distribute to eligible recipients arises,²⁴¹ as written earlier in Chapter 1, in order to overcome liquidity risk.

6.3.4 Operational Risk

The operational risk process in zakat-based microfinance consists of various questions. Are zakat-based microfinance management and operational risks adequately monitored in a conscientious manner? Are policies and procedures of the zakat authority clearly defined and adequately adhered to?

The zakat institution should establish a unique operational framework for zakat-based microfinance, as well as a thorough prudential disclosure and reporting apparatus that follows AAOIFI Shari'ah Standard No. 35, item 2/2/4.²⁴²

The zakat institution shall have in place adequate systems and controls, including a Shari'ah Board/Advisor, to ensure that zakat-based microfinance is extended to its eligible beneficiaries in compliance with Shari'ah rules and principles and in alignment with Islamic Financial Services Board (IFSB) Principle 7.1.²⁴³

The zakat institution shall have in place appropriate mechanisms to safeguard the interests of both the zakat payers and the *aṣṇāf*. Therefore, the zakat institution shall ensure that the bases for zakat fund, management and distribution are established, applied and reported in a manner

²⁴¹ Wahbah Zuhayli, *op. cit.*

²⁴² AAOIFI Shari'ah Standard No. 35, Zakat, 2/2/4: In case of establishing a zakat fund, or preparing zakat accounts, clearance by the Shari'ah Board of the institution or the company should be obtained. Clearance by the Shari'ah Board is particularly required for disbursement of the zakat funds when performed directly by the institution/company or through an accredited zakat agency. Moreover, a comprehensive report on zakat disbursements should be presented to the Shari'ah Board on an annual basis.

²⁴³ In compliance with IFSB Guiding Principles of Risk Management for Institutions (other than Insurance Institutions) offering only Islamic Financial Services, Principle 7.1: IIFS shall have in place adequate systems and controls, including Shari'ah Board/Advisor, to ensure compliance with Shari'ah rules and principles.

consistent with the zakat institution's fiduciary responsibilities and consistent with IFSB Principle 7.2.²⁴⁴

The zakat institution shall establish a comprehensive risk management and reporting process to assess the potential impacts and perceived risks of extending zakat-based microfinance to its beneficiaries in order to ensure the zakat institution's good reputation, its soundness of operations and reliability of reporting. Furthermore, a policy of investing zakat funds by the zakat authority in *muḍārabah* and other Sharī'ah-compliant investments must avoid high-risk avenues.

6.3.4 Reputational Risk

Reputational risk is the risk of potential losses to a zakat institution caused by negative perceptions, which could affect its ability to perform well. Inaccuracies, errors and violations in zakat management and performance in offering zakat-based microfinance could potentially tarnish the zakat institution's reputation. Errors in zakat distribution could cause zakat payers to seek other means to pay their zakat, resulting in a decline in the institution's collection of zakat funds and jeopardising the rights of the zakat beneficiaries (*aṣnāf*) who depend on it.

6.4. Risk Evaluation and Treatment in Zakat-based Microfinance

Risk evaluation and risk treatment entail identifying existing controls or mitigation strategies for the potential risks of zakat-based microfinance. Careful thought must be given to how to secure a high repayment rate, mitigate credit risk, and manage adverse selection when the zakat institution (the lender) does not require its poor beneficiaries to provide any collateral. These mechanisms include the use of incentive-mechanism group financing, credit scoring, threats of non-refinancing, collateral substitutes, guarantors, regular repayment schedules and the provision of non-financial services.

6.4.1. Incentive-Mechanism Group Financing

²⁴⁴ IFSB Guiding Principles of Risk Management for Institutions (other than Insurance Institutions) offering only Islamic Financial Services, Principle 7.2: IIFS shall have in place appropriate mechanisms to safeguard the interests of all fund providers.

How can the zakat institution manage credit risk and adverse selection when it provides collateral-free loans for both groups and individuals? Poor credit control heightens the risk of liquidity to the zakat institution that offers microfinance schemes to poor active beneficiaries.

Conventional microfinance has instituted an effective system of credit risk management for extending financing to groups. The zakat institution could likewise apply collateral substitutes through the concept of joint liability whereby repayment of the financing is a shared responsibility of all of the group's members; i.e., each beneficiary is jointly liable for the others' loans and shares the risk. If one defaults or is delinquent, all the group's members face a setback (often in the form of penalties, denial of future credit access, and provisional suspension from the financing). Incentive-mechanism group financing with joint liability controls the problem of adverse selection, and it is an effective credit scoring mechanism. The incentives induced by the joint-liability mechanism in group financing contracts entails that borrowers will share information, and it provides an incentive for peer monitoring and reduces asymmetric information. Recipients would be encouraged or required to participate in groups in order to be entitled to zakat-based microfinance. This will help protect the zakat institution against unforeseen risks and uncertainties resulting in default and delinquency .

Ghatak, Morduch, Van Tassel and Zeller ²⁴⁵ mentioned that borrowers in group lending have impeccable knowledge of their partners, and this mechanism of peer selection and screening among the borrowers and their partners makes the effective cost of borrowing lower to safer borrowers, helps mitigate problems caused by adverse selection and moral hazard and, hence, improves repayment rates and efficiency. The question arises if there is any means for generating high repayment rates from poor borrowers without requiring collateral and without using group financing contracts?

6.4.2 Dynamic Incentives

The dynamic incentives mechanism boils down to the threat not to refinance a delinquent borrower or person who defaults on his debt obligations²⁴⁶ by the denial of future credit. The

²⁴⁵ Ghatak, M., 'Group lending, local information and peer selection,' *Journal of Development Economics*, 60(1), 1999, pp. 27-50; Morduch, J., 'The promise of microfinance,' *Journal of Economic Literature*, 37, 1999, pp. 1569-1614; Van Tassel, E., 'Group lending under asymmetric information,' *Journal of Development Economics*, 1999, 60(1), pp. 3-25; and Zeller, M., 'Determinant of repayment performance in credit groups: The role of program design, intragroup risk pooling, and social cohesion,' *Economic Development and Cultural Change*, 46(3), 1998, pp. 599-621.

²⁴⁶ Ibtissem, Baklouti, and Abdelfettah Bouri, 'Credit risk management in microfinance: The conceptual framework,' *ACRN Journal of Finance and Risk Perspectives* 2, no. 1 (2013): p.14.

defaulter who has considerable needs for future funding to develop his business would find it difficult to find partners that would be willing to co-sign for future funds or secure financing approval.

Default risk can be gauged by using credit scoring to run a creditworthiness analysis of prospective recipients; e.g., scores given by the Central Credit Reference Information System (CCRIS), and Credit Tip-Off Service Sdn Bhd (CTOS).

However, these beneficiaries frequently have no records with credit bureaus, which makes credit scoring difficult in the zakat-based microfinance context. The lack of information can lead to inaccurate evaluations and hence to high arrears and default.

Although it is difficult to know exactly who might default or fail to meet contractual obligations, zakat authorities can lessen the severity of a loss by creating regular repayment schedules²⁴⁷ for the beneficiaries (borrowers).

This mechanism would allow the zakat institution (funder) to develop a long-term relationship with beneficiaries over time and then screen out the worst or undisciplined prospects prior to expanding the micro-credit scheme.

6.4.3 Collateral Substitutes

Generally, collateral serves to decrease default risk in instances where borrower's cash flows can be diverted. Zakat institutions may accept relevant important documents that may demonstrate their capability to meet the criteria that have been set up by zakat institutions as well as tangible assets such as stocks as collateral substitutes in individual financing in zakat-based microfinance.

6.4.4 Guarantor

Should the zakat institution require a guarantor who consents to guarantee the beneficiary's loan under the concept of *kafālah*? The idea here is that the guarantor would act as an *ex ante*²⁴⁸

²⁴⁷ Requires that the eligible beneficiaries (the borrowers) have an additional source on which to rely since the repayment process begins before investments bear fruit. This allows a positive selection of eligible beneficiaries for zakat authorities (the lender).

²⁴⁸ A guarantor acts mainly as an *ex ante* signal that can reduce the problem of adverse selection. A guarantor is someone who trusts the potential borrower and is aware of the possible financial risks. However, finding a person who is prepared to perform this role requires a great deal of effort from the potential borrower and is often difficult. Hence, this requirement may prove to be a formidable hurdle for bad borrowers.

On the other hand, the involvement of a guarantor is also an *ex post* sanction mechanism. Indeed, in case of default of payment, the guarantor would be legally responsible for paying the debt. Apart from the financial burden, these situations can lead to loss of reputation and could end friendships or cause family feuds. Both the borrower and

indicator and *ex post* sanction mechanism; however, the essential role of a guarantor should be as a decisive factor for granting the credit and not as a secondary repayment source.²⁴⁹

Credit management is concerned principally with managing debtors and financing debts that will decrease the default risk and increase repayment rates. The amount of credit granted to eligible beneficiaries should be kept under control. The zakat institution (management) should be aware of the amount of credit to be disbursed and the potential consequences of over-exposure to any single beneficiary. Policies and procedures must be applied for granting financing to beneficiaries, collecting payment and limiting the risks of non-payment.

6.4.5 Restricting Bad Debts

There are various ways to arrange microfinance schemes by a zakat institution that functions to extend Sharī'ah-compliant financing to the lowest economic segments of the society. What can the zakat authority do to minimise bad debts from its beneficiaries on zakat-based microfinance?

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Providing revolving credit through *qard ḥasan* loans out of pooled zakat proceeds ensures that the fund is automatically replenished every time loans are repaid.²⁵⁰ The outcome would be a sustainable Sharī'ah-compliant financial service provider for the beneficiaries. The objective of such a project would be provision of start-up capital to the eligible beneficiaries for microfinancing; the idea would not be to generate maximum returns on investments.²⁵¹

6.4.6 Non-Financing Services

By offering non-financial services, zakat institutions can assist in unlocking the potential of eligible beneficiaries to promote better careers for them, protect the businesses in their portfolio, and eventually solidify the economic recovery, especially post-pandemic.

the guarantor should think seriously about whether they can commit to maintaining the payments. Ibtissem, Baklouti, and Abdelfettah Bouri, *op. cit.*, p. 15.

²⁴⁹ Ibid.

²⁵⁰ Obaidullah, Mohammed, *op. cit.*, p. 31.

²⁵¹ Ibid.

Zakat non-financial services include economic activities, financial education, research and development, often in the form of workshops or training in fisheries, aquaculture and agriculture, which are designed to build the knowledge and capacity of the beneficiaries and eventually empower them financially.

6.5. Risk Reporting and Control: Appropriate Disclosure and Reporting

The zakat institution shall take necessary measures to ensure that management processes are in place for the identification, treatment, monitoring, communication, consultation, disclosure, reporting, and control of the zakat-based microfinance. And these elements must be organised in an appropriate structure. The institution should, moreover, ensure that these processes adhere to Shari'ah, and it should consider all associated contingencies when designing them. After a decision to provide microfinancing to the eligible beneficiaries has been made and implemented by the zakat authority, monitoring, consulting, and reporting usually take place. This is to ensure the zakat-based microfinance is compliance and protect the zakat authority from potential and actual risks. Hence, the zakat institution shall have in place competent staff to undertake the analysis of risk exposures arising from extending zakat-based microfinance to its eligible beneficiaries, and to continuously communicate with them.

6.6 The Zakat Institution and Forward-looking Risk Management

The zakat institution should establish a unique operational framework for zakat-based microfinance as well as a thorough prudential, disclosure and reporting apparatus, customised to the special principles and demands of Shari'ah-compliant microfinancing and investment. Successful risk management requires multi-disciplinary collaboration. Will the zakat authority think of taking adequate action to mitigate the risks? The zakat management personnel must be sufficiently involved with operations to monitor and control the risk and demonstrate adequate commitment, responsibility and competence throughout the project.

Zakat-based microfinance leads to economic empowerment and aims at social transformation of the poor and the realisation of social justice, which will eventually achieve the higher objectives of the Shari'ah. Therefore, zakat-based microfinance by the zakat institution has to display its sustainability and robustness by having in place an appropriate framework and measurement mechanisms when extending zakat-based microfinance to its beneficiaries as well as managing its risks, where applicable.

A profound risk management framework is required to maintain the business stability of the zakat fund. All proposed parameters must be observed in managing the risk to build a stronger and more resilient zakat-based microfinance sector for the future.

CHAPTER SEVEN

CONCLUSION, RECOMMENDATIONS AND SOCIAL IMPACT

7.1 Conclusion

This research was conducted with the aim of exploring the possibility of utilising zakat funds in microfinance among eligible zakat recipients. Due to the importance of this Sharī'ah matter, various issues have been discussed including, among others, the understanding of the Sharī'ah objectives in zakat collection and distribution, analysis of the hadith regarding prioritisation of some beneficiaries over others, the issue of delaying zakat disbursement due to certain considerations, investment of zakat, the concept of *tamlīk*, and relevant parameters in the utilisation of zakat funds in microfinance.

Early on, the study focussed on the concept of *tamlīk* and found that the utilisation of zakat funds in microfinance does not contradict the concept of *tamlīk* because the funds that will be used for microfinance will be repaid and can be used for *tamlīk* later on. This led the study to explore the permissibility of delaying the distribution of zakat due to certain valid reasons.

After a painstaking investigation that employed a qualitative research methodology using content analysis of both primary and secondary materials of the Sharī'ah, the research arrived at the following findings:

1. The zakat authorities should observe the *maqāṣid al-Sharī'ah* in the collection and distribution of zakat.
2. The research found that zakat-based microfinance does not breach the principle of *tamlīk* in zakat distribution as microfinance means that the allocated funds will come back to the zakat institution with profits for onward distribution to the *aṣṇāf*.
3. A delay in distribution of a portion of zakat for microfinance is allowed if there is *maṣlahah* in doing so. However, the decision to delay and to use the delayed amount in microfinance should be carefully studied. As such, the study proposed that the decision and approval should solely be vested with the Sharī'ah committee of the zakat institution.
4. Investment of zakat is allowed on the condition that fulfilment of the immediate needs of the eligible recipients is not compromised.
5. In certain circumstances, to sustain regular disbursement to some eligible zakat recipients, a portion has to be set aside, and it is *maṣlahah* to deploy such portion in low-risk microfinance projects to generate more profits.

6. Zakat-based microfinance will increase outreach to the underserved and unserved sectors of society for the purpose of alleviating poverty and in order to prevent low-income Muslims from resorting to *ribā*-based microcredit.
7. The research proposed sets of parameters to guide the utilisation of zakat in microfinance with *aṣnāf*. It is hoped that these parameters will ensure that the delayed distribution of zakat money will only take place in relevant circumstance (where there is *maṣlahah* in doing so) and that the delayed zakat money will be utilised in viable microfinance proposals without jeopardising the *maqāṣid al-Sharī'ah* in zakat.
8. The research found that there is no Sharī'ah issue if the zakat authority decides not to inform the zakat-based microfinance beneficiaries that the microfinance they receive comes from zakat donations. This is to ensure a greater sense of responsibility on the part of the recipients when using these funds.
9. The zakat money used in microfinance projects can take shape in various Sharī'ah contracts including *qarḍ* and equity-based and exchange-based contracts.
10. The zakat authority has the discretion to waive the liability partially or fully if the defaulter is not found guilty of misconduct and transgression with the capital that he was allocated. This is because he may be classified as one of the *aṣnāf* at the time of his inability to pay back the capital and/or profit.
11. Based on the lessons derived from some Prophetic traditions, the research segmented members of the society in relation to zakat-based microfinance into three categories:
 - i. Non-zakat recipient. This refers to the rich person. He is not eligible for zakat-based microfinance.
 - ii. Potential zakat recipient. This refers to a poor person with healthy limbs and a potential source of income (e.g., he has potential business proposal or has a skill but needs working capital). He is eligible for zakat-based microfinance.
 - iii. Actual zakat recipient. This refers to two type of persons
 - a. One with healthy limbs but no source of earning. He is eligible for zakat-based microfinance.
 - b. Incapacitated to work for earning, temporarily or permanently. He qualifies for regular zakat disbursements as long as his health situation does not improve.
12. The zakat institution should establish a unique operational framework for zakat-based microfinance, as well as a thorough prudential, disclosure and reporting apparatus, customised to the special principles and demands of Sharī'ah-compliant microfinancing and investment.

7.2 Recommendations

The major recommendations of the research are as follows:

1. Zakat institution should establish an independent microfinance institution that manages the allocated zakat fund for microfinance.
2. Allocation of the microfinance fund must be approved by a dedicated Shari'ah committee.
3. Microfinance is to work with relevant partners and stakeholders to achieve the *maqāṣid al-Shari'ah* of zakat, the most important of which is wealth circulation to eradicate unemployment.
4. The research also recommends this framework to be utilised by Islamic social finance institutions such as waqf and *ṣadaqah*.
5. The zakat institutions should work towards establishing zakat-based microtakaful.
6. The microfinance institution shall put in place all necessary risk management measures and use a portion of its profit to form and maintain a reserve account as a buffer against any unexpected loss.

7.3 Social Impacts

The following are the expected social impacts of this research:

1. The findings of the research are expected to spur the effectiveness of zakat in realising its *maqāṣid al-Shari'ah* of poverty alleviation, wealth circulation and creation of more entrepreneurs.
2. Proficient implementation of the findings, the models and parameters is capable of reducing the numbers of zakat receivers and increasing the numbers of zakat payers. Consequently, a society full of happiness and mutual love and improved human dignity would be created.

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distribution with the view of empowering greater numbers of beneficiaries using limited zakat resources.

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