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Article

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Utilisation of *zakāh* and *waqf* fund in micro-*takāful* models in Malaysia: an exploratory study

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Abstract

Purpose – This paper aims to investigate the utilisation of both *zakāh* and *waqf* fund as external resources to ensure micro-*takāful* services are delivered to underserved communities in an effective and sustainable manner. It also addresses Shari'ah issues related to the *zakāh*- and *waqf*-based model.

Design/methodology/approach – The study is a qualitative-based research. It uses both focus group and content analysis approach to gather primary data and identify and interpret relevant secondary data and Shari'ah concepts in developing the *zakāh*- and *waqf*-based micro-*takāful* model.

Findings – It is discovered throughout the investigation of attributes of beneficiaries of *zakāh* and *waqf* institutions as well as micro-*takāful* scheme that all share commonalities in terms of social securities and socio-economic support to low-income households in societies. The study also finds that the disintegration of *zakāh* and *waqf* which form part of the Islamic ecosystem from the micro-*takāful* model makes it less effective and sustainable.

Originality/value – This study appears as a primitive attempt to discuss and develop a *zakāh* and *waqf*-based micro-*takāful* model with reference to Malaysian jurisdiction.

Keywords *Waqf, zakāh, micro-takāful, financial inclusion*

Paper type Research paper

Introduction

Micro-*takāful* is an Islamic form of micro-insurance designed to provide protection to low-income and underserved communities against risk and misfortune. As opposed to regular *takāful* products which target participants with financial capabilities, micro-*takāful* is dedicated to low-income groups that are partly or wholly excluded from formal *takāful* products due to their financial constraints. *Zakāh* and *waqf* are Islamic instruments prescribed for socio-economic development to help and support eligible *zakāh* recipients and *waqf* beneficiaries. This paper investigates the nature of micro-*takāful* as a tool of financial inclusion. It examines how *zakāh* and *waqf* can be harnessed in micro-*takāful* to provide social security and uplift the economic conditions of underserved communities.



The Shari'ah issues related to the use of *zakāh* and *waqf* as part of the micro-*takāful* model are also examined.

Research objectives

This study aims to realise the following objectives:

- to examine the role of *zakāh* and *waqf* in socio-economic development and in what ways both can be streamlined to suit micro-*takāful* models; and
- to identify possible Shari'ah issues related to the operations and contractual obligations in utilising *zakāh* and *waqf* in micro-*takāful* models.

Research methodology

This research is qualitative in nature. It uses the content analysis approach in identifying and interpreting relevant Shari'ah concepts to be used in developing the *zakāh*- and *waqf*-based micro-*takāful* model. The research uses evidence gathered mainly from secondary sources of data. These include the Qur'an and Sunnah (Prophet's teachings) as well as the resolutions of internationally recognised Shari'ah bodies such as the International Fiqh Academy of the Organisation of Islamic Cooperation (IFA-OIC), the Islamic Fiqh Academy of the World Muslim League (IFA-WML) and the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI). Other sources of reference include books, journal articles and conference proceedings on the related topic of discussion.

In developing the theoretical framework and the *zakāh*- and *waqf*-based micro-*takāful* model, a focus group discussion (FGD) was held to seek first-hand expert opinions on micro-*takāful* models in Malaysia and the possibility of incorporating *zakāh* and *waqf* as part of the model. The focus group involved representatives from different stakeholders including the Malaysia *Takāful* Association (MTA), *takāful* operators (TOs) and *zakāh* institutions such as Pusat Pungutan Zakat (PPZ), Lembaga Zakat Selangor (LZS) and Bahagian Zakat (BZ) under Majlis Agama Islam Negeri Johor.

Shari'ah issues related to the *zakāh*- and *waqf*-based micro-*takāful* model

Shari'ah issues in the use of zakāh funds

The Shari'ah issues in the use of *zakāh* funds are divided into two, namely, issues related to *zakāh* allocation and issues related to the operation of *zakāh*-based micro-*takāful*.

Shari'ah issues in zakāh allocation in micro-takāful

The utilisation of *zakāh* in micro-*takāful* stems from discussions of contemporary scholars on the permissibility of utilising *zakāh* for investment or using it to establish microfinance funds or guarantee funds (al-Shubaily, 2012). Thus, the allocation of *zakāh* – whether for investment, Islamic microfinance funds or guarantee funds – has been categorised into three groups based on the source of the *zakāh*:

- (1) *zakāh* allocation by *zakāh* payers;
- (2) *zakāh* allocation by a *zakāh* authority; and
- (3) *zakāh* allocation by *zakāh* recipients.

Classical scholars have two different views on *zakāh* allocation by *zakāh* payers. The first view, held by Mālikī, Shāfi'ī and Ḥanbalī scholars as well as the majority of Ḥanafīs, disallows it, as *zakāh* funds are meant to be used immediately (Ibn Qudāmah, 1983: 2/541;

al-Nawawī, 2002, p. 267; Ibn Juzay, 2013, p. 183). The second view, held by some Ḥanafī scholars such as Abū Bakr al-Jaṣṣās, is that *zakāh* payers have their whole lifetime to meet their obligations of *zakāh*, and payment of *zakāh* is not restricted to a specific period. The nature of this extended obligation (*wājib muawassaʿ*) does not require immediate payment of *zakāh*, as opposed to the first viewpoint (al-Kāsānī, 1986: 2/3). The authors of this paper, however, prefer the first view due to the strong supporting evidence from the Qurʾān and Sunnah, as well as its consistency with the rule regarding the default meaning of the imperative form (الأمر) in the Arabic language.

Regarding *zakāh* allocation by a *zakāh* authority, it does not pose serious Sharīʿah issues as in the case of allocation of *zakāh* funds by *zakāh* payers because the *zakāh* obligation is actually being discharged without delay by *zakāh* payers to the *zakāh* authority. However, the main concern here lies in whether the allocation helps to cater for the urgent needs of *zakāh* recipients. If this is not the case, it would defeat the purpose of *zakāh* altogether. In that regard, the baseline of the arguments and discussions of contemporary scholars is to adopt the view of classical scholars that utilisation of *zakāh* funds should have immediate effect.

Scholars have two views about *zakāh* allocation by a *zakāh* authority. The IFA-MWL in its Resolution No. 6 in its 15th session, the Fatwa Council of Saudi Arabia, al-Zuhaylī, Alwānī, and Taqī Usmani viewed that it is not allowed (al-Fawzān, 2012; al-Shubaylī, 2012). The second view is based on the decision of the IFA-OIC in its Resolution No. 15 (3/3), the Zakat House in Kuwait in its third symposium on contemporary issues on *zakāh* and the Sharīʿah Committee of Kuwait Finance House, which allowed *zakāh* allocation by the management (Zakat House, 2016; al-Fawzān, 2012). The preferred view is the second view that allows *zakāh* allocation by the management. The reason is that the concerns raised by the opposite view can be easily addressed. First is the *zakāh* disbursement delay: there should be no cause for delay once *zakāh* payers have paid their *zakāh* dues, and the *zakāh* management is a legal proxy for the *zakāh* recipients. Second is the denial of the right of *zakāh* recipients: it is established that *zakāh* allocation is for the welfare and benefit of the recipients; therefore, the *zakāh* management is responsible to ensure that the interest of the *zakāh* recipients is taken care of.

With regard to *zakāh* allocation by *zakāh* recipients, classical and contemporary scholars unanimously agree about the permissibility of allocation of *zakāh* by its recipients for investment or other lawful purposes. This view is substantiated by some narrations, especially from Shafīʿī classical books:

Shāfiʿī and Ahmad in a report allowed giving the poor and destitute *zakāh* funds for investment. As such, a person who makes handicrafts would be given *zakāh* funds to purchase a machine to make income that is sufficient to maintain a decent standard of living (al-Nawawī n.d.: 6/193-194).

Sharīʿah issues related to the operation of the zakāh-based micro-takāful model

Sharīʿah issues arise in the distribution of *zakāh* funds. This triggers the following questions: Is it compulsory to disburse *zakāh* funds to all *zakāh* recipients in the micro-takāful plan, or is it allowed to prioritise in accordance with the level of need and urgency? Does the latter alternative violate the concept of *tashrīk* (inclusiveness) implied in the relevant Qurʾānic texts? There is an incidental question to address before addressing these questions: Is it necessary to have all the categories of *zakāh* recipients in one place at the same time? The response to this question came from Imām al-Ghazālī when he categorised the *zakāh* recipients into three major categories. The first category refers to *al-muʿallafah* (those inclined towards Islam) and *al-ʿāmilūn* (*zakāh* collectors). The second category

involves *al-ghuzāh* (those fighting for Allah's cause) and *al-mukātabūn* (slaves). The third category includes the remaining *zakāh* recipients (al-Ghazālī n.d.).

In response to the first question, it is not compulsory to cover all available *zakāh* recipients during *zakāh* disbursement for the following reasons:

- First, Ibn Abbās reported that the Prophet (peace and blessing be upon him) said:

“إن الله افترض عليهم صدقة في أموالهم تؤخذ من أغنيائهم فترد على فقرائهم”

“Allah has prescribed *zakāh* on their wealth, to be taken from the rich and given to the poor” (al-Asqalānī, 2001: 3/307, *ḥadīth* no. 1363).

- Second, the majority of classical scholars favoured giving *zakāh* recipients what is sufficient for their daily needs. The Mālikīs, Shāfi'īs, Hanbalīs and some other scholars did not specify a particular amount due to variation in needs and values over time. Therefore, the Mālikī school leaves it to the *ijtihād* (reasoning) of the *zakāh* management. In the same vein, the Shāfi'ī view that recipients should be given what satisfies their needs, even if the portion reaches the minimum threshold of *zakātable* items. Meanwhile, the discussion of what suffices for *zakāh* recipients prompted the Shāfi'īs to revisit the minimum threshold of eligible items of *zakāh* (Al-Nawawī, 2002, pp. 318-320; Ibn Rushd, 1995: 2/654; Ibn Qudāmah, 1983: 2/707).

Another question relates to whether the contribution made by the *zakāh* management is considered the right of *zakāh* recipients from the *zakāh* fund. As highlighted earlier, scholars who favour *zakāh* allocation for investment or microfinance funds unanimously agreed to give such allocated or invested portion for the benefit of *zakāh* recipients. Therefore, in the case of micro-*takāful*, the contribution is donated and owned collectively by the micro-*takāful* participants, who are also among the *zakāh* recipients. For example, the entitlement from a family micro-*takāful* account solely belongs to the participants. As such, in the event of the death of any of the participants, the fund under this account is subject to conditional *hibah* (gift). This is based on the resolutions of the Shariah Advisory Council of Bank Negara Malaysia in its 165th meeting, which state that after the death of the participant, money coming from the *tabarru'* fund or savings and investment funds would be given to the nominee on the basis of conditional *hibah*. The Sharī'ah committee of the micro-*takāful* operator may decide that the savings and investment funds be subject to the rules of Islamic law of inheritance (*al-mīrāth*).

Sharī'ah issues related to the use of waqf funds for micro-takāful

Acceptance of *waqf* donations by beneficiaries requires further discussion on how to relate it to micro-*takāful*. The consent of prospective *waqf* beneficiaries, if the *waqf* donor specifies the beneficiaries in a *waqf*, is crucial to conclude the *waqf* contract. The same goes for a situation where *waqf* is made as a source for a micro-*takāful* plan. Before proceeding with the micro-*takāful* policy agreement between the *waqf* management and the micro-*takāful* operator, the *waqf* management may first need to have the consent and acceptance of the *waqf* beneficiary. Similarly, in the underwriting policy, micro-*takāful* participants are required to stipulate a nominee. The question is whether the failure of the nominee to give consent would affect the policy? The reply to this question may be attempted from two perspectives. First, the views of classical scholars in respect to acceptance and possession of

specified beneficiaries in a *waqf* contract may be considered. The majority of scholars allow conclusion of a *waqf* contract without the acceptance of the beneficiaries; the same goes for the nominee in a micro-*takāful*. Therefore, the *waqf*-based micro-*takāful* plan can be concluded without the acceptance of the nominee. Second, the issue of *waqf* does not come into the picture. Although the contribution comes from a *waqf*, it is no longer a *waqf*. This is because micro-*takāful* participants are the *waqf* beneficiaries. Their entitlement to claim from micro-*takāful* risk funds represents their portion in *waqf* funds, which they are fully authorised to give to those whom they want, e.g. their nominees or heirs as agreed in the micro-*takāful* policy and endorsed by the relevant Sharī'ah scholars. Also, the payment of micro-*takāful* benefits follows the policy agreed between the micro-*takāful* participants and the micro-*takāful* operator, which has been duly approved by the relevant Sharī'ah committee, and it is not subject to *waqf* rules.

Conclusion and recommendations

This study has examined micro-*takāful* and discussed some pertinent Sharī'ah issues and views of both past and present scholars in respect of utilisation of *zakāh* and *waqf* in the micro-*takāful* model. *Zakāh* is a legal instrument and *waqf* is a voluntary instrument to serve the poor and the needy for attaining social welfare. The effective integration of both concepts in micro-*takāful* to support financial inclusion will certainly have positive impacts on the lives of underprivileged members of the society.

The paper makes the following recommendations:

- The use of *zakāh* and *waqf* funds to complement participants' contribution in micro-*takāful* plans.
- The use of *zakāh* and *waqf* funds to finance the contribution of the whole micro-*takāful* plan.
- The use of *zakāh* and *waqf* to establish mutual assistance funds for micro-*takāful* schemes.
- The fund may have an independent legal personality registered under the relevant authorities under the management of people with technical expertise to deliver micro-*takāful* services to poor and low-income households.
- There is a need for *zakāh* and *waqf* authorities to issue fatwas and work closely with *takāful* operators to come up with micro-*takāful* products to serve the needs of the society.

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