

THE ROLE OF ZAKAT IN THE PROMOTION OF SOCIAL JUSTICE FOR PERSONS WITH DISABILITIES IN MALAYSIA

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One of the important aspects of Shariah is to achieve social justice. Zakat (tithe) institution assists those who are poor and needy within the beneficiaries (asnaf) which in turn enables the Shariah to achieve social justice. The institution has become integral part within Malaysian Muslim society whereby government has set up proper mechanism of paying zakat through institution recognized under the law. In this article it will be shown how the fund of zakat in the state of Selangor has managed to provide some assistance to PWD in looking after the welfare and rights as well as striving for achieving social justice. Thus, it can be concluded that the realization of human rights for PWD can be achieved together with the fulfilment of Islamic obligation especially by paying Zakat.

Keywords: *Persons with Disabilities (PWD), Convention on the Rights of Persons with Disabilities and Optional Protocol (CRPD) Zakat, Malaysia, Shariah.*

Introduction

One of the five pillars of Islam is Zakat (tithe). The command to pay zakat is stated in Al-Quran:

“... so establish Salat and give Zakat, and hold fast to Allah ...”

Assistance given by the Muslim rulers to PWD can be traced back to centuries earlier. It can be found in the work of Rispler-Chaim who has written intensively on disability in Islamic Law.² Another scholar, Mohammad Ghaly, has published a comprehensive book on the position of disabled people within Islamic theology and jurisprudence.³ Generally however there is lack of literature on this

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subject.⁴ Not much is known on the topic within the context of Muslims in Southeast Asia.⁵ Thus, this paper hopes to provide a glimpse of the issue as regards to the Federation of Malaysia which has proper institutions in charge of zakat. It is an Islamic religious institution which can be regarded as a mechanism to assist poor people, including the needy PWD, in getting financial support. This paper will analyse the potential of institution like zakat to support human rights and social justice towards disabled people. It will observe initially the role of CRPD as human rights-based treaty that provide social justice towards PWD and Malaysian law that governs zakat institution. The relationship between CRPD, Malaysian law and zakat institution would be beneficial in promoting and protecting the rights of disabled in getting financial support to improve their livelihood and achieving their aspirations.

Convention on the Rights of Persons with Disabilities (CRPD) and The Persons with Disabilities Act 2008 of Malaysia

The existence of the United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol (CRPD) has been significant in promoting and protecting the rights of disabled people worldwide. It became the most comprehensive and first human rights treaty in 20th century dealing with disabled people.⁶ The CRPD has sets a major step forward towards right-based approach within the sphere of disability from medical or charity approach.⁷ Article 1 of the convention states that every disabled are entitled for their rights being promoted and protected through full and equal enjoyment of rights together with respect for inherent dignity.

There are several provisions within CRPD that required state members to take necessary legal and administrative measures to improve socio-economic of disabled people. Article 28 has become key component where State required to recognize two basic socio-economic rights covers such as ‘...adequate standard of living for themselves and their families, including adequate food, clothing and housing...’ and ‘social protection and to the enjoyment of that rights without discrimination on the basis of disability...’.⁸ Article 27 of CRPD meanwhile provides for rights of PWD ‘to work on equal basis

with others; this include the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to PWD.⁹

The Federal Constitution did not specifically describe the protection on the rights of PWD. Nevertheless, certain specific provisions especially under fundamental liberties might be relevant for disabled including Article 5 (personal liberty), Article 8 (equality) and Article 12 (rights of education).¹⁰ The earlier legislation involving PWD was made in 2002.¹¹ However, this legislation never materialise until Malaysia decided to be the party in the CRPD where it signed in 2008 and ratified in 2010. With the signage and ratification of the treaty, Malaysia has to fulfil its duty to enact domestic laws promoting and protecting the rights of PWD. The process to enacted new law protecting the rights of PWD has been made before Malaysia signed the CRPD to ensure proper domestic legal framework being implemented before signing the international treaty. The outcome is the Persons with Disabilities Act 2008 (PWD 2008 Act). It has five (5) parts and 46 sections governing the promotion and protection of this vulnerable group. This act covers the definition, institutional framework and various forms of disability rights. The preamble has stated that this act is *'to provide for the registration, protection, rehabilitation, development and wellbeing of PWD, the establishment of National Council for PWD and matters.'* It has been shown that this Act has provided ample and basic mechanism of disability legislation within local framework. This is a good step to ensure better protection for disabled existed in this country. Government has the responsibility to ensure the implementation of the policy related with disabled by taking into two main consideration; first, available financial and human resources and other factors¹², secondly, in compliance with the Federal Constitutions provisions and other written law as may be relevant.¹³

PWD has been defined in this act as *'include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society.'* There are seven (7) categories of disabled people as been prescribed by Welfare Department; hearing, blind,

deaf, physical, cognitive, mental and multiple disabilities.¹⁴ The rights for PWD in the Act can be categorized five (5) main parts; accessibility to facilities, education, employment, society participation (cultural life, recreation, leisure, sport, information technology) health rehabilitation, situation of risk and humanitarian emergencies). There are several provisions within the act that related towards developing socio-economic towards PWD in Malaysia. Employment rights are also crucial for the life and survival of PWD as sated by section 29. They shall not be discriminate and getting equal basis with others in terms of equal opportunities and remuneration including safe, healthy, protection from harassment and redress of grievances. The employer shall perform their social obligations to promote stable employment for this vulnerable group including providing training, evaluate their abilities and proper employment management. National Council for PWD has the responsibility to promote training, opportunity for self-employment together to ensure appropriate policies and measures including affirmative action program to assist disabled. Right of life and participate in the community has been major concern for sustainable development of PWD.¹⁵

Governmental Institutions relating to Person with Disabilities in Malaysia

There are two main institutions dealing with PWD in Malaysia; National Council for PWD and Department of PWD's Development.¹⁶ At the top of the administrative hierarchy is the Minister responsible for the PWD. Currently, Minister of Woman, Family and Community Development is in charge with the matters related with disabled people. Even though the power is within the Ministry, other Ministries and government agencies, bodies or organizations that relevant with disability issues such as Finance, Education, Transport, Human Resources and Health also co-operate to undertake steps, measures or actions in discharging government's obligations to the PWD community.

The first institution is the National Council for PWD, which is established under Section 3 of the PWD 2008 Act. It is empowered to observe the implementation of national policy and national plan

related with PWD.¹⁷ This council has become inter-related government body that deals with multi-issues involving PWD. The Chairman shall be from Minister of Woman, Family and Community Development while the Secretary General of said ministry will become Deputy Chairman. The Council consists of following members representing various ministries and government departments including Attorney General, the Secretary(s) General of Finance, Transport, Human Resources, Director General of Education, Health, the Chairman of the Commercial Vehicle Licensing Board and not more than ten (10) members appointed by Chairman who have appropriate experience, knowledge and expertise in problems and issues relating with PWD.¹⁸ The function of the Council has been extensively described under Section 9 of the Act which include making recommendations in disability laws and policy related to government, monitoring activities, promoting appropriate measures to assist disabled people, developing any programmes and collecting data, information and research on any matters relating with PWD. In order to assist the Council, the committees may be lead by any member of the Council to observe the functions and powers under the Act. These committees are important since the issues involving disabled are very wide and multi complex especially in education, employment, utilities and health.

The other institution is the Department of PWD's Development which is established under Section 10 of the PWD 2008 Act. It has the duty to assist the Council any matters related with disability. Minister has the power to appoint Registrar General and Registrar under Section 20 to exercise general control and supervision on all matters related with the registration of PWD. The officers of the department deal directly with PWDs on the ground and very much responsible in implementing policies of the government and the PWD 2008 Act.

Zakat and Its Role in the Promotion of Social Justice and Rights of PWD

Zakat is one of the main pillars of Islam similar with praying and other obligations as Muslim. Jurists has defined zakat as 'portion of

a man's wealth which is designated for poor.' Zakat is one of the ways for needy disabled people to obtain financial resources.¹⁹ It assists the society especially Muslims, not just in terms of financial, but also as form of *ibadah*, prayer and act as social and moral aims. The zakat institution is part of the efforts to strengthen social solidarity system. Zakat not only provided individual charity but systematic and regular aid for society. It is part of the social security system in a Muslim nation. The importance of zakat described in a Quranic verse:

*"The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and for the cause of Allah, and (for) the wayfarer; a duty imposed by Allah. Allah is Knower, Wise."*²⁰

One of the fundamental duties of Muslims is payment of the *zakat*, a tax of 2.5% of one's savings each year to be used to help the needy.

*Righteousness is not determined by facing East or West during prayer. Righteousness consists of the belief in God, the Day of Judgment, the angels, the Books of God, His Prophets; to give money for the love of God to relatives, orphans, the destitute, and those who are on a journey and in urgent need of money, beggars; to set free slaves and to be steadfast in prayer, to pay the religious tax (zakat) to fulfill one's promises, and to exercise patience in poverty, in distress, and in times of war. Such people who do these are truly righteous and pious..*²¹

In relation to the importance of Zakat, a hadith from Prophet Muhammad has the meaning of which:

"The son of Adam has basic rights for three things: a house to live in, a piece of cloth to cover his body, a loaf of bread and water."

The idea of zakat in some ways corresponds with the art 18 of the Universal Declaration of Islamic Rights (UIDHR). The right to social security for the disabled is upheld in the UIDHR art. 18 which states:

"Every person has the right to food, shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability."

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They are eight categories of Zakat recipients. No one could dispute or question about recipients or those eligible to receive zakat because it was the decree of Allah as stated in Al Quran.²²

1. *Fakir* or someone who does not have any property or lawful employment or who receive income of no more than 50 percent of their daily basic needs and obligations according to the size of the simple life.
2. *Miskin* or someone who has property or income in excess of 50 percent of their daily basic needs and obligations according to the size of the simple life but did not achieve the basic haddul for basic needs themselves and their dependents.
3. *Amil* i.e. individuals or institutions that are directly involved with charity institutions. They either manage or/and administer the affairs of the collection, distribution or overseeing the financial affairs of charity.
4. *Muallafs* or people have recently embraced Islam.
5. *Riqab* or people who are freeing themselves from the grip of slavery, ignorance or censure by certain parties.
6. *Gharimin* or those who owe money to meet the basic needs of self, family, dependents or people and in need of an immediate solution that allowed by law.
7. *Fi sabilillah* namely those who are struggling or trying to maintain and enhance the appreciation of Islam.
8. *Ibnus sabil* or a wayfarer who faces disruptions (expense) during the trip (Safar) and people who want to start a trip (Safar) required by law.

Zakat is an essential part of Islamic economic theory as it assist poor community and raise concern about social responsibility.²³ All members of the community have obligations to each other. Each Muslim is accountable for the well-being of every other Muslim. In this sense Zakat plays essential role because it promotes care and love members the community. Zakat is the manifestation of the right of help for the community's needy. The implementation of zakat

establishes a relationship of consideration and appreciation between society's members and awakens individual's social spirit. Zakat institution would help to improve the living condition of PWD not just in terms of eradicating poverty among them but also improving their life and getting support system. It is clear from the category of Zakat recipients that the status of PWD does not automatically receive zakat because they are not included in the eight recipients mentioned. PWD can only receive zakat if they qualify and fall within one of the eight recipients specified eg the poor, the poor or the like.

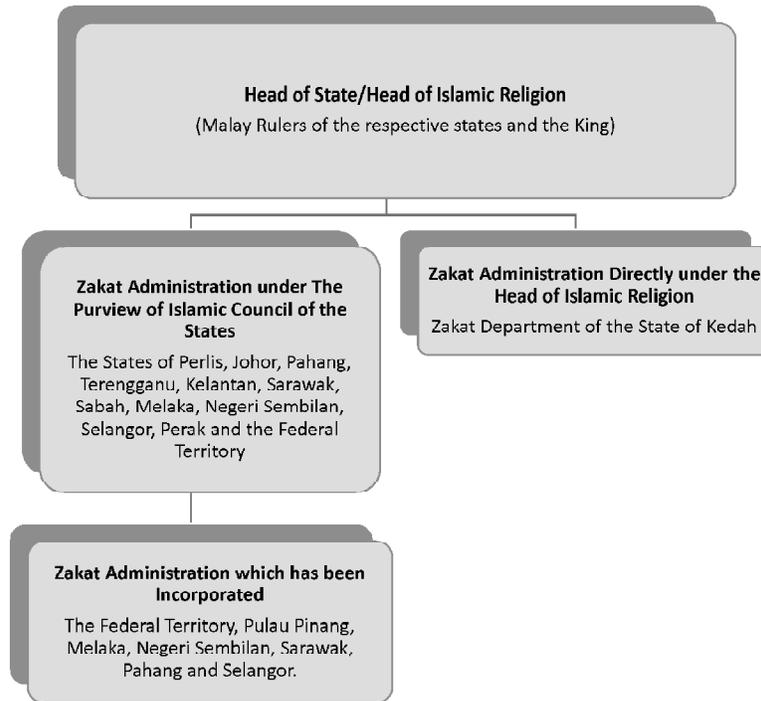
Zakat Institution in Malaysia (Specific Reference to State of Selangor)

In Malaysia, the position of zakat is under jurisdiction of state authority or government. The State List under Ninth Schedule of the Federal Constitution has provided the matters relating with '*...Zakat, Fitrah and Baitulmal or similar Islamic religious revenue...*' is within State government.²⁴ The historical background for zakat institution might be traced back during British Colonial Period. The matters relating with Islamic and Malay custom has been administered under State Islamic Council where spiritual leader (Imam) has given the authority to collect Zakat on behalf of State and distribute to manage Islamic affairs.²⁵ After independence, State Islamic Council come directly under the respective Ruler (Sultan) of every states and HRH Yang Dipertuan Agong for Federal Territories where *amil* or zakat's collector has been appointed to collect zakat and distribute accordingly to rightful beneficiaries. However, the collection was low due to lack of proper mechanisms and heavy workloads face by *amil*. Only after 1990s, the establishment of designated body to collect zakat and distribute properly and professionally has significantly improve zakat institution. It includes appointing specific officers, using computer technology and improving zakat officer's scheme which allows zakat institution to be efficient.²⁶

The Hierarchy of Zakat Administration in the thirteen states and the Federal Territory of the Federation of Malaysia

The head of zakat institution in Malaysia is under the jurisdiction of Yang Dipertuan Agong / Sultan / Raja in every state. Except for Kedah

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which has its own zakat department, zakat institutions in other countries managed through Islamic Religious Council. In some states, zakat institution has been corporatized where it provided proper and efficient management.

The researchers have decided to choose Lembaga Zakat Selangor as the case study to observe how this institution manage their zakat contribution.²⁷ Since 2010, there is increment in the collection and distribution of zakat's money. Almost RM595 millions has been distributed while RM582 millions is collected in 2014. This increment shows Muslim community realized their awareness to pay zakat as social obligation through religion and society.²⁸ Based on the statistic of year 2014, the largest asnaf is *miskin* (destitute) which has been given RM 161 million followed by *fsabilillah* category (RM156 million), fakir/poor (RM 74 million), amil (RM73 million),

gharim (RM 55 million), muallaf (RM 53 million), Riqab (RM 23 million) and finally Ibnu Sabil (RM 800 thousands).

The distribution of zakat's money have been made under five (5) main programs/areas which are social, education, economic, human development and improvement of religious intuition. The largest amount is for social development which consists of RM 286 million, followed by education (RM 162 million), human development (RM 34 million), economic (RM 22 million) and religious institutions (RM 19 million). Specific details have been provided below on the spending involving five (5) main areas. Majority of beneficiaries from social development portion come from poor and destitute *asnaf* where most of them received monthly food and financial assistance, *Eid Fitr* contribution and housing assistance. There is also portions given for medical purpose such as health and dialysis contribution which are given to *asnaf* of '*gharimin*'. The poor and destitute (*fakir and miskin*) *asnaf* are also form the majority groups in receiving education assistance which include school fees, scholarship and education assistance. Other *asnaf* such as *muallaf* and *fisabilillah* are also getting allowances, scholarship and other educational assistance including attending religious schools, allowance for religious teachers. Assistance is also given to religious education which cover activities such as building and repairing religious schools facilities, mosque and prayer rooms. The social development assistance which has been given by the Lembaga Zakat Selangor includes the establishment of 'Baitul Hasanah' management, training and courses regarding *aqidah* and *akhlak*, and assistance to HIV patient. Most of the recipients in this programs come from poor and destitute (*fakir and miskin*) and *riqab asnaf* which include PWD. In order to generate economic sector of the recipients or *asnaf*, assistance are given in business modal assistance to poor and destitute (*fakir and miskin*) and *muallaf asnaf*. These also includes PWD.

Despite the improvement of zakat institution in Malaysia, there are still problems and issues facing this institution. First, there is still lack of awareness from Muslims society to register their disabled children and relatives. It happens when some people believed to avoid public isolation by showing their disabled children and relatives. Apart

from that, they did not know any institutions that might assist them in dealing with disabled. Therefore, it is important to create awareness and setting up Muslims NGOs that related with disabled people to show the concern of Muslim community to promote and protect the rights of PWD.²⁹ Other issues include inefficiency of distribution, prospective payers and capacity building are main concerns relating to zakat institution.³⁰ Although there is the need to give zakat to PWD, there are some requirements needed to be fulfilled.³¹ Applicant must be made through Zakat Centre by fulfilling certain forms and approval from medical/health practitioner if relevant to apply for zakat. The zakat officer will investigate and determine whether the applicant fulfil the requirement to get zakat. The requirements stipulated may include such as family background, salary, types of disabilities that required assistant. Zakat's money will be given according to the need of PWD and it is not automatically provided.³²

Conclusion

Zakat institution has become increasingly relevant and significant in promoting the rights of PWD in socio-economic development through human rights-based approach as stipulated under the CRPD and *Shariah*. It promotes the rights PWD and provide them opportunity to be independent and be able to survive their life on equal basis with others. Zakat institution has become main pillars in developing social justice within society by religious means in Malaysia. It is undeniable that some issues and challenges faced by Zakat authority in dealing with PWD. However by using more systematic and PWD-friendly procedure and mechanism dealing with zakat distribution, as well as more efficient and effective system and well-trained officer employed in the administrative machinery, surely zakat will play greater role in achieving social justice and assisting the needy PWDs in realizing their aspirations.

Acknowledgement

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Notes

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13. Section 14 (b) Persons with Disabilities (PWD) Act 2008.
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