AZKA AKADEMI ZAKAT
PPZ MAIWP
AZJAF
AZKA INTERNATIONAL JOURNAL OF ZAKAT & SOCIAL FINANCE e-ISSN : 2716-6643
Vol.1 No.1 (2020)
azka.zakat.com.my

ZAKAT AS A MEANS OF SOCIAL WELFARE: EXPLORING A RECENT FATWĀ FROM THE MOROCCAN ʿULAMĀʾ ON THE PERMISSIBILITY OF PAYING ZAKAT IN ADVANCE TO HELP THE POOR OF THE COVID-19

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A PEER-REVIEWED ARTICLE
(**RECEIVED** – 15 JUN 2020: **REVISED** – 19 AUGUST 2020: **ACCEPTED** – 14 SEPTEMBER 2020)

ABSRACT

The Coronavirus has contributed effectively to the rise of religious fatāwā in all aspects of life, especially related to solidarity. One of the issues related to Coronavirus is the permissibility of paying zakat in advance to the due date to assist those affected by the pandemic. In this context, the religious Moroccan ʿulamāʾ issued a fatwā allowing a man to pay one or two years of zakat in advance to the due date. As a result, there have been numerous discussions around the issuing of this fatwā and other issues such as the role of ʿulamāʾ within Moroccan society during the epidemiological conditions, and re-establishing a formal zakat system. The objective of this article is to shed light on this recent fatwā to explore the causes and circumstances of this legitimate fatwā. It also aims to discuss the evidence used by the Moroccan ʿulamāʾ to issue this fatwā. By examining the Moroccan ʿulamāʾ fatwā, this article aims to show the role of the ʿulamāʾ in their communities during difficult times.

Keywords: zakat; moroccon ʿulamāʾ; fatāwā; coronavirus pandemic

INTRODUCTION

The Coronavirus has contributed effectively to the rise of religious fatāwā in all aspects of life, especially those related to solidarity. This emergence situation forces the Muslim jurists to exert effort (exercise *Ijtihad*-/Mental effort) and encourages them to issue bold fatāwā that had not happened before. The basis of these fatāwā is: "Jurisprudence of necessities" (فقه الضروريات), and also based on a great rule in Islamic *fiqh*: "necessities permit prohibitions" (Emergencies permit the unlawful) (الضرورات تبيح المحظورات) that has its root in the noble Qur'an. The Almighty said: "but if one is driven by necessity - neither coveting it nor exceeding his immediate need -no sin shall be upon him: for, behold, God is much-forgiving, a dispenser of grace" (Al-Baqara 2:173). These recent religious fatāwā were issued by scholars through various Islamic countries. We sometimes realize that a single fatwā can be accompanied by different jurisprudence opinions. Thus, there will be multiple opinions about the fatwā itself. Several restrictions were imposed on people that resulted in the loss of jobs. In this context, several scholars emphasized that the current circumstances require spending and doing good as this crisis has disrupted the interests of many people of different faiths. So, this period is a time of charity. They also stressed solidarity between people, especially at this time of the Coronavirus pandemic.

Furthermore, these fatāwā indicate that the muftis are aware of their role in clarifying the issues related to coronavirus or others. As it also indicates the participation of ʿulamāʾ in the effort being made to counter this pandemic. Besides, this is an opportunity to establish a new fatwā stage that goes beyond the stereotyping phase that has been associated with ruling policies, corrupt circles, sectarian, partisan, and personal tendencies. One of the issues related to Corona is the permissibility of paying zakat in advance to the due date to assist those affected by the pandemic. Some of religious ʿulamāʾ in Morocco issued a fatwā allowing people to pay one or two years of zakat in advance to the due date. It is a new and bold fatwā, showing us the open scope and capacity of the Islamic religion. It was not issued by the official religious authority of Moroccan state, (the High Council of ʿulamāʾ) in spite it was issued by some of the jurists who are members of it. This fatwā reflects the essence of Zakat and clarifies its role in alleviating poverty and supporting people during the period of quarantine that was imposed by the COVID19 pandemic. The objective of this article is to shed light on a fatwā issued recently to explore the causes and circumstances of this legitimate fatwā. It also aims to discuss the evidence used by Moroccan 'ulema to issue this fatwā. By examining the Moroccan ʿulamāʾ fatwā, this article aims to show the role of the ʿulamāʾ in their communities during difficult times.

LITERATURE REVIEW: PAYING ZAKAT AHEAD OF TIMES

This section aims to examine relevant scholarly works on the above subject so far. The most important aspect that we should emphasize in the first place is that there is no enough contemporary academic writing on the above subject, as all writings belong to the classical writings. However, there are some literatures that have discussed related issues such as the issue of "zuruf tariah"/الظروف الطارئة in Islamic *fiqh* and its impacts on financial contracts. Coronavirus pandemic is considered as "zuruf tariah"/الظروف الطارئة. As an example, some of the papers presented by researchers at the 40th Annual al Baraka Islamic Economics Forum (which took place online in April 2020) discussed the subject of zuruf tariah/الظروف الطارئة including one titled *"*Paying zakat between delay and acceleration during exigent circumstances and pandemics force majeure*"* by al-Mamoun al-Qasimi al-Hasani. In this paper, after many discussions on the above subject, the author came up with the conclusion that zakat should be paid in advance to the due date to help those affected by the coronavirus pandemic. I will limit myself to the jurisprudence books on this subject. Besides, since the article is the highlight of a fatwā issued recently in Morocco, I will consider it also as the most important academic writing on this subject.

THE PERFORMANCE OF WORSHIP IN GENARAL

Concerning the performance of worship before its time, the Muslim scholars agree on that any worship that is subject to a specific time such as prayer and fasting must be performed only when the time comes, because time is one of the causes (*sabab*) of its obligation. Thus, it is prohibited to perform a particular act of worship before its time (Abdelkrim al-Namlah, al-Wājib al-Mūwassa' 'inda al-Usūlyyin, p.106; 1993; /al-Mamoun al-Qasimi al-Hasani, 2020). The Almighty said in the Holy Qur'an: "Establish regular prayers - at the sun's decline till the darkness of the night, and the morning prayer and reading: for the prayer and reading in the morning carry their testimony" (sūrat al-Isrā, verse 78). Allah also said about the fast of Ramadan: "And whosoever of you is present let him fast the month and whosoever of you is sick or on a journey, (let him fast the same) number of other days" (Sūrat al-Baqarah, verse 185). We infer from these verses that obligatory worship that has a specific time must be performed in its time and not prior to it. Concerning acts of worship in which time is not a cause for its obligation, even if it is a condition (*shart*) in it such as zakat, the scholars differ on the permissibility of paying before its time (al-Mahalli, Jalàl Shms al-Din, Sharh àla Matn Jama' al-Jawami' 1/144-45).

PAYING ZAKAT AHEAD OF ITS TIME IN CLASSICAL ISLAMIC *FIQH*

I will provide two views of Muslim scholars about the issue of the permissibility of paying Zakat in advance of its time. The first one is that the majority of scholars, including Shafi'is, Hanafis, and Hanbalis, hold that it is permissible for zakat to be paid in advance, in terms of the principle/the original ruling (Sayyid Sabiq Fiqh-us-Sunnah 2/235). Al- Zuhri did not see any problem in paying zakat before the *hawl* (Tariq Mahmood Hashmi, 2015). When al-Hasan al-Basri was once asked if a man who had paid his zakat for three years in advance fulfilled his obligation, he answered in the affirmative (Sayyid Sabiq Fiqh-us-Sunnah 2/235). According to Shaukani, "This was the view of Shaf'i, Ahmad, and Abu Hanifah. It was supported by al-Hadi and al-Qasim. In support of this view, they formulated their stance on a hadith from 'Ali that the Prophet indicated that he owed (on behalf of the Muslim community) Ibn 'Abbas' due Zakat for that year "and another equal amount too" (Muslim). According to commentators, he had taken two years of Zakat in advance from Ibn 'Abbas on behalf of the community" (al-Shawkānī, Nayl al-Awtar. p: 772); / see also Can Zakat Payment Be Delayed or Advanced? 2020).

The second view is for Imam Malik and some of his followers: Rabi'ah, Sufyan ath-Thauri, Ashhab, Ibn Wahb, Ibn Yunus, and some other scholars from another school. This view prohibits the permissibility of paying Zakat in advance, except in two cases: (1) when the urgent need of people in distressed circumstances compels its early collection for transport to other localities in time for distribution by the end of the Zakat year; and (2) when the schedule of Zakat collectors sets its collection time relatively near its due date" (see Can Zakat Payment Be Delayed or Advanced?, 2020). Scholarly disagreement over the permissibility of paying Zakat in advance stems from how jurists classify Zakat. Maliki jurist by the name of Ibn Rushd sums up the subject as follows: *"The controversy arises from the question whether it is an act of worship or an obligation owed to the poor. The group which considers it an act of worship, like salah (prayers), does not agree that it should be paid before its time. On the other hand, the group which views it as similar to the case of deferred* obligatory *dues approves its voluntary payment in advance"* (Bidayat Al-Mujtahid, 1/274) (Hashmi, 2015). Thus, "Scholars who support the legality of advanced Zakat payment liken it to a debt paid before its due date. They consider Zakat's due date a prerogative of latitude to ease one's financial obligation, which one may voluntarily forego and pay in advance, like paying off a debt in advance" (see Can Zakat Payment Be Delayed or Advanced? 2020).

METHODOLOGY

The method that will be used is the descriptive method. This paper is going to describe the case as it is without examining the causes and effects of this fatwā. The aim is to show the

accumulated changes. Data collection relies on primary sources of new fatwā manuscripts, electronic newspapers, and journals. Several variables will be measured in the subject, namely: fatwā, Zakat, and Moroccan ʿulamāʾ.

THE MOROCCAN ʿULAMāʾ AND PAYING ZAKAT IN ADVANCE IN COVID SITUATION

As for the Moroccan ʿulamāʾ regarding the issue of the legality of paying zakat in advance, they are divided into two groups (see Ben Hamzah calls for the payment of zakat before the deadline to help the poor of Corona, 2020). The first group is represented by Shaykh Mustapha Ben Hamza, a member of the High Council of ʿulamāʾ, and Shaykh Kotb Raissouni. Shaykh Mustapha Ben Hamza opined that it is permissible to pay zakat one or two years in advance and giving it to the poor and needy, especially at present time, because it will serve Maqasid al-Shariah. He formulated his view on many evidences. The first one is the Prophet's Hadith about abou alabas as mentioned in the forgoing discussion. He also said that people nowadays live in special and exceptional circumstances. Therefore, there is a need to resort to jurisprudence of necessity. The Jurisprudence of necessity is not a regular jurisprudence. Therefore, in this case, he said that we must assist people to prove that Islam is a religion of mercy by paying zakat in advance of its time. In this context, he said it is permissible to pay zakat to the Fund that is specifically established to manage the pandemic (see Ben Hamzah calls for the payment of zakat before the deadline to help the poor of Corona, 2020). Shaykh Kotb Raissouni adds that the legality of paying Zakat in advance based on "public interest" (*maslaha*), and on *Istihsan* through the text (nass)" to consider something good", because provisions (ahkam) must adapt to social circumstances (see accelerating Zakat to manage the Corona pandemic is the interest of time, 2020).

The second group is represented by Shaykh Abdullah bin Tahir. He is a religious traditional scholar and preacher in the south of Morocco. He does not represent any official authority institutions related to the fatwā. He issued a manuscript document about the issue of paying zakat in advance. To clarify his opinion, he categorized this document into three parts. The first one includes the views of the Maliki school. The second part brings the opinions of the Hanafi and Shaf'i schools. Finally, he concludes with the last part containing his point of view in an attempt to apply the classical Fiqh on the ground. Generally, regardless of the detail he mentions, he said: the Maliki school prohibits the payment of zakat in advance, even though there is an opinion that sees it is possible to pay before one or two months in advance, and not more than that. Regards to other schools, he brings two opinions, one for shafi'i school, which does not prohibit the payment of zakat before its due time for one year. The second is for the Hanafi School, which allows the payment zakat in advance for a year or two. He also brings the proof, which scholars formulate to clarify their

opinions. After that, he moves to the last part of his document. How do we apply the previous opinions on the current situation to produce appropriate *Fiqh*?

Shaykh Abdullah bin Tahir preferred the religious view of the Maliki Legal School, which stipulated that giving Zakat is prohibited before the term (*Ajal*/*hawl*) prescribed in Islamic law. This general rule is justified by the jurisprudential rule, which is "the pretext of precaution" (taken *Ihtiyat*) (الأخذ بالأحوط). However, Shaykh Abdullah bin Tahir provides an exception to the general rule in which he states that it is permissible to give early Zakat two months before its due time no more that. He carries on justifying this exception by declaring that it is permissible to adopt other Islamic legal schools' views, which stipulate that giving Zakat before its religious term (*al-hawl*), for one year or two, is permissible due to some circumstances/ an urgent need such as the necessities/ الضروريات/ (zuruf tariah). In this regard, Shaykh Abdullah bin Tahir says that Islamic *fiqh* takes the necessities into consideration. For instance, if there are poor people need housing, or patients need medical treatments, or needy students need to be allowance continue their studies, or creating projects to counter unemployment, or helping people afflicted by floods, earthquakes, wars, and fires etc. In such cases, it is possible to pay zakat in advance to its time before two months or even two years. The necessities should be exactly set by rules that provide living standards for people, not extend the necessity to pleasures and tourism.

DISCUSSIONS

How do we respond to these fatāwā? In Morocco, the issuance of fatāwā is limited to the High Council of ʿulamāʾ. It is the highest religious authority in Morocco that represents official Islam in Morocco, leaded by the king Mohammed VI. Its main task is to regulate fatāwā, so it is the only religious authority in Morocco that may formally issue fatāwā. Thus, these fatāwā that we mention it here, officially, are not considered fatāwā binding on the people, but remains only legitimate opinions that binds no one. However, beyond that shadowy vale, there have been numerous profound discussions around several issues such as the issue of the issuing of fatāwā in Morocco, the role of ʿulamāʾ within Moroccan society during the epidemiological conditions, and re-establishing a formal zakat system in Morocco. In addition, the scholars who issue these fatāwā have many followers, and they received high respect in society. So, they have significant impacts on society, especially during the exceptional pandemic circumstances. Given that, their fatāwā raise a set of questions on social media, especially by enthusiastic youth who always oppose the official religious authority. To clarify the context of this recent fatwā, many local media host Shaykh Mustafa ben Hamza, one of the scholars who issued the fatwā, to speak to the public around the fatwā. The matter was further complicated by the silence of official religious authority, which

did not issue any statement on the issue. But we can explain this silence, in Morocco, that the religious authority does not go into the details of the religious life of people. Its role is limited in guiding believers to practice or perform their rites in the correct manner. Also, zakat like Salat is left to the religiosity of a person, so that no one will oblige him to pay zakat. In this context, Morocco does not want to activate the official Zakat Fund in reality despite it being on paper. The only interaction with the questions of the public was from the Minister of Endowment and Islamic Affairs. He announced that His Majesty Med VI gives orders to collect documents to activate the Zakat Fund.

Actually, Zakat assistance has a long and varied history in Morocco. Government collection and distribution of zakat was prominent throughout Moroccan history, up to the twentieth century. The formal "zakat collection ended in 1901 when Morocco adopted a series of administrative and tax reforms supported by Europe and which served as a precursor to formal European control in Morocco through the French and Spanish protectorates. While zakat practice became unofficial after this point, it has remained highly important in Morocco, both as a practice and as a principle inspiring charitable activity more generally" (UNESCWA, report, 2015).

Furthermore, another thing that it also helped revive these discussions is that this fatwā is new to Moroccan society. The majority of Moroccan Muslims follow the Maliki School of jurisprudence. As stated by the Moroccan constitution, the Maliki school is one of the three pillars of Moroccan Islam. It also based on the Ashári theology (namely kalam) and Sunni Sufism (namely tassawuf) (Sawsene Nejjar, 2018). As we have seen in the previous section, the Maliki School prevents the payment zakat before its time. However, the recent fatwā goes beyond official madhab to others to obtain legitimacy for it in the Moroccan context.

Another thing is that time of paying zakat in Morocco is the month of Muharram, the first month in the Hijri calendar, and not Ramadan as the case in Islamic countries. But the new fatwā calls Moroccans to pay zakat before its time.

CONCLUSION

To conclude, the recent fatwā of Moroccan ʿulamāʾ is new because it reflects the Moroccan *Ijtihad* during the Coronavirus pandemic. In our view, this *Ijtihad* indicates that Islamic *fiqh* is flexible and adaptable to reality. It also affirms that Islam provides solutions to all aspects of life, especially those related to solidarity. Zakat is an effective way to care for the needy. Additionally, it indicates that morocco should activate the Zakat Fund. Besides, this fatwā serve as an invitation to the religious authority to interact with society, so that it does not

become a victim of extreme opinions. Finally, Morocco has largely succeeded in reforming and regulating the religious field, but many things still need to be improved.

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