

ADMINISTRATION OF ZAKAT AND WAQAF PROPERTY
IN NEGERI SEMBILAN AND ITS CONTRIBUTION TO
ISLAMIC EDUCATIONAL INSTITUTIONS.

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NEGERI SEMBILAN AND ITS CONTRIBUTION TO ISLAMIC
EDUCATIONAL INSTITUTIONS.

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Abstract

Penulisan projek ilmiah ini adalah bertujuan untuk menjelas tentang pentadbiran harta zakat dan waqaf di Negeri Sembilan dan sumbangan harta tersebut kepada institusi pendidikan islam dan masyarakat. Ia turut menerangkan tentang bagaimana cara untuk memohon sumbangan harta zakat di bawah pentadbiran Negeri Sembilan dan golongan yang layak menerima harta zakat. Penulisan ini turut menjelaskan tentang sumbangan harta waqaf daripada orang ramai untuk tujuan pendidikan. Ia juga menerangkan tentang pengertian, tujuan, kepentingan dan pentadbiran harta tersebut mengikut undang-undang pada masa kini.

Abstract

The purpose in writing this research is to clarify the administration of *zakat* and *waqaf* property in Negeri Sembilan and its contribution to Islamic education and to the Muslim society. It also examines how to apply the *zakat* contribution under the administration of Islamic Religious Council in Negeri Sembilan and who are the groups qualified to receive the *zakat* property. To ascertain this project complete, we used two methods, first, library and second, is an interview. This writing also clarifies the contribution of *waqaf* property from other people for education purpose. It also study the meaning, purpose, importance and the administration this property based on the current law.

ملخص البحث

يتعرض هذا البحث لتوضيح التدبير لمال الزكاة والوقف في نكري سمبيلان وإعاناته في تهذيب المجتمع الإسلامي. ويوضح هذا البحث كيفية طلب هذه الإعانة تحت تدبير مجلس دين الإسلامي في نكري سمبيلان والجماعة التي تتحقق صرف الزكاة. المنهج المستعمل في هذا البحث قاعدتين هما المكتبي والمقابلة. هذا البحث يبحث أيضا عن إعانة مال الوقف من المجتمع الذي تتعرض الى فناء لدرسة. يبحث أيضا عن معنى، لإعانة، أهميتها وكيفية تدبير هذه الاموال وفق القانون الان.

Abbreviation

Ibid	ibidem- in the same place
R.a	Radhi Allahu ‘an hu
S.a.w.	Sallallahu alaihi wasallam
S.w.t.	Subhanahu wa ta’ala
Vol	volume
MAINS	<i>Majlis Agama Islam Negeri Sembilan</i>
KWAN	<i>Klinik Waqaf An-Nur</i>
p.p	Pages
p.	Pages

Glossary

Al-Quran	The holy book revealed by Allah .sw.t. to prophet Muhammad s.a.w.
<i>Hadith</i>	Saying of the Prophet s.a.w.
Prophet	The messenger of Allah in this world
<i>Sunnah</i>	Saying, deed, and approval of the prophet s.a.w.
<i>Ulama</i>	Plural of <i>alim</i> : Islamic jurist
<i>Auliya</i>	helpers, supporters, friends, protectors
<i>Al-Ma'ruf</i>	Islamic monotheism and all that Islam orders one to do
<i>Al-Munkar</i>	polytheism and disbelief of all kinds, and all that Islam has forbidden
<i>Irka'</i>	bow down or submit yourselves with obedience to Allah
<i>Musolla</i>	The place for Muslims to perform the pray
<i>Caliph</i>	Leader of Muslims after the Prophet Muhammad s.a.w passed away.
<i>Sadaqah</i>	To give contribution like property to the way of Allah.
<i>Mujahidun</i>	Those fighting in the holy wars
<i>Ghina</i>	Who have a many of property and can dispense with the material help of others.
<i>Taqarrub</i>	An approach to Allah

<i>al mutawalli</i>	who is merely a manager of the <i>waqaf</i>
<i>fuqaha</i>	who is expert in <i>feqah</i>
<i>jahiliyyah</i>	The period before Islam
<i>syarak</i>	The Islamic rules created by the Allah
<i>ummah</i>	The name for group of Muslims
<i>Asnaf</i>	Who is qualified to get the <i>zakat</i> property.
<i>Nafkah</i>	dependant where it is compulsory like by the father to his family
<i>Muallaf</i>	Who embraced the Islam

CHAPTER ONE

1.0 Background of research.

1.1 Introduction

Zakat is one of the obligations to Muslim to fulfill because its one of the five pillars in Islam. Allah commands every Muslim to pay their *Zakat*. Allah says in the Quran regarding the important the *Zakat*:

أَلَمْ تَرَ إِلَى الَّذِينَ قِيلَ لَهُمْ كُفُّوا أَيْدِيَكُمْ وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ

Have you not seen those who were told to hold back their hands (from fighting) and, perform *As-Salat (Iqamatas Salat)*, and give *Zakat*.¹

Therefore who is ignore that order their will get sin from Allah, but its not compulsory to all of Muslim, who is inability to make its such as poor man In this case there is freedom from the sin. *Zakat* is very important because its is one of the way to help other people especially Muslim.

Waqaf is not an obligation to Muslims, but it's also one of the ways to help other people. It's also a god way to get reward and blessing from Allah. In some case *waqaf* will be compulsory when someone vowed to make it.

¹ Al-Quran, Surah An-Nisa' 4:77.

1.2 Problem statement

Generally, the public is confused about the administration of *zakat* and *waqaf* property. So, this problem will be discussed in the research. The problem is:

1. How this institution manage the *zakat* property?
2. Who are competent to get the *zakat* property?
3. What are the conditions to who want applying the *zakat* and *waqaf* property?
4. What are the contributions of the *zakat* institutions to Muslims?
5. What are the procedure in collecting of *zakat*?
6. What are the contributions of *zakat* and *waqaf* properties to Islamic educational institutions?
7. Who are competent to receive the *waqaf* property?

1.3 Scope of research.

The research will focus in Islamic Religious Council in Seremban and Institutions of *Zakat* in Seremban (*Baitulmal*). This is to know about the administration and the contribution made is this institutions in Islamic education and Islamic institutions.

1.4 Objective of research.

There are several objectives in conducting in research they are as follows:

1. To know how these institutions manage and administer the *zakat* and *waqaf* properties.
2. To know the methods they use in collecting the *zakat* and *waqaf* properties.
3. To know the contributions made by these institutions to Islamic educations and the Islamic institutions.
4. To find out how these institutions applying these to get this property.

1.5 Significance of the study.

A study the administration of *zakat* and *waqaf* property and its contributions to Islamic educational institution is very important. The significance of the study is to know about the administration *zakat* and *waqaf* property in Seremban, Negeri Sembilan.

This study will focus of *zakat* and *waqaf* property. So, it is important to know how these institutions get the property and where they used it. It is also to inform the society about the importance of *zakat* and *waqaf* institutions to the development of the Islamic educational institution in Seremban.

This study cases about this topic also to understand and know how to apply this property and the important this property in modern world.

1.6 Literature Review.

In making the research proposal, there are books that can help in writing the review of literature, but it's very difficult to find the related review to this proposal

The book Guidance to complete a *zakat*, by Abdullah discussed about the obligations to *zakat* it's involved the meaning of *zakat*, and the types of *zakat*. This book also discuss the advantage of *zakat* to Muslim, how to give the *zakat*, and also the penalization to who are ignore the obligations of giving *zakat*. This research will use all subject in this book which are related to this research research. This will come up with the procedure that required every Muslim to pay the *zakat*.

(Issue of syariah and law, from Mohamad Zaina Yahya, Abdul Basir Mohamad, Anwar Fakhri Omar, and Mohd Zamro Muda in Department of Syariah, Faculty of Islamic Education, University Kebangsaan Malaysia). This book discussed the current issues involving the aspect in administration of property, law, issue of fiqh, and other. This book discuss about the *waqaf* involving the meaning of *waqaf*, the commandment of *waqaf*, and also the position of *waqaf* under the Malaysia law. The

article of waqaf will be use as a reference to get information the administration and management of *waqaf* properties. The different methods will be used such as the interview method in collecting the required the data for the research.

1.7 Research methodology.

The objective of this research is to get information how these institutions manage to administer the *zakat* and *waqaf* properties. It's also to know what is the contribution made by the *zakat* and *waqaf* institutions to the Islamic education or Islamic institutions in Seremban.

Therefore, in research will involve the procedure and methodology in collecting the information regarding *waqaf* and *zakat*. This interview will be the main method to be used gathering while getting the required data for the subject of this study. This is to know the procedure in administration the *zakat* and *waqaf* properties by asking the related question in interview. The collected data through interview will be gathered to be analyzed through several methods in analyzation of data. Here are some of the libraries where we can find the required data of libraries as a place to find the required data:

Islamic University College of Malaysia library.

Library of Tun Seri Lanang, UKM Bangi.

Islamic Center Library, Kuala Lumpur.

Some of the collected data which are to be used in this research are from analyzing article, journal, newspaper, and through internet.

CHAPTER TWO

2.0 The Alms (*zakat*).

Another unique and remarkable institution that is part of the major pillar of Islam is *zakat*. The Quranic word *zakat* and the meaning it conveys, has no equivalent in any other language as far as we know. It is not just a form of charity or almsgiving or tax or tithe. The meaning of the Quranic word *zakat* not only includes charity, alms, tithe, kindness, official tax, voluntary contributions and so on. It also combines with all these God-mindedness and spiritual as well as moral motives.

The literal and simple meaning of *zakat* is purity. As a technical term, the word designates the amount in kind or coin which a Muslim with means must distribute annually among the rightful beneficiaries.

The exact meaning of the Arabic word, *zakat* (زكاة) is growth, and by extension, growth in purity of the soul through honest actions and dealing. The word “*zakat*” occurs in the Quranic text in this sense. It also occurs in a figurative sense to designate the contribution that every Muslim, man or woman, of means must make to further social assistance and subsidize establishment and works of public welfare for the benefit and progress to the Islamic Nation. Allah says in the Qur’an:

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ

وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ^۲

The believers, men and women, are *Auliya'* (helpers, supporters, friends, protectors) of one another, they enjoin (on the people) *Al-Ma'ruf* (i.e. Islamic Monotheism and all that Islam orders one to do), and forbid (people) from *Al-Munkar* (i.e. polytheism and disbelief of all kinds, and all that Islam has forbidden); they perform *As-Salat* and give the *Zakat*, and obey Allah and His Messenger.

² Al-Quran, Surah At-Taubah 9:71.

2.1 Importance of the *Zakat* (Poor-Due).

The third pillar of Islam is *zakat* (Poor-due). As it has already been stated that no act is as important in Islam as the prayer, but it would be illogical to say that the position of *zakat* in Islam is exactly similar to that of the prayer. We shall be led to the conclusion that *zakat* ranks next to the prayer based on two instances:

1. After making a mention of faith, the Quran frequently mentions two acts of piety, the prayer and the *zakat*. The image of a true Muslim is set forth by the Quran usually in words like these:

وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَارْكَعُوا مَعَ الرَّاكِعِينَ

And perform *As-Salat* (*Iqamat-as-Salat*), and give *Zakat* and *Irka'* (i.e. bow down or submit yourselves with obedience to Allah) along with *Ar-raki'un*³.

Allah considers the prayer and *zakat* as the twin foundation stones of practical faith. If a person performs these two acts properly, he provides a solid guarantee and practical evidence of following the religion in full. A logical division of the injunctions of faith would make two categories of them:

- i. First, the injunctions which related to the right of Allah and the right of man.
- ii. Second, the injunctions which related to the right of mankind on man.

Thus, the practice of the faith really means that one should acquit himself of the right of Allah as well as of mankind. From the discussion on the prayer already

³ Al-Quran, Surah Al-Baqarah 2:43.

made and the debate on *zakat* that follows, it would transpire that prayer is the essence of the right of Allah, and *zakat* is the essence of the right of man.

2. The payment of *zakat* is precondition and an insignia of faith. The prophet s.a.w. elucidated this point when he said:

“ I have been commanded to fight against people till they testify that there is no good but Allah, and they establish prayer and pay *zakat* and if they do it, then blood and property are guaranteed protection on my behalf and their affairs rest with Allah”⁴

It was not only for the new Muslims that the Quran prescribed the condition of *zakat*, it was for all without any exception. If any Muslim refused to pay *zakat*, an Islamic government was duty bound to punish him.

During the time of Caliph Abu Bakr (r.a), some of the tribes refused to pay *zakat*. He declared war against them. When Umar, the Great (r.a), shown some hesitation in endorsing his action. Abu Bakr (r.a) declared:

“By Allah I would fight definitely against him who makes a distinction between the prayer and *zakat* (poor-due) (because they are put together in the Quran)⁵

This contention was not only accepted by Umar the Great but by all of the companions (r.a). It leads to the inference that the life and property of a Muslim deserve respect as long as he performs the prayer and pays *zakat*.

⁴ Hadith narrated by the Muslim “Islam ideology and the way of life” by Afzalur rahman New edition 1995.

⁵ Islam ideology and the way of life Afzalur rahman New edition 1995.

2.2 Objectives of Zakat (Poor-Due).

Now we must know the purpose for which *zakat* (poor-due) has been made obligatory and what are the objective which are achieved by it. From the study of the Quran and traditions of the Prophet (s.a.w.) transpires that there are three objectives of *zakat*. These are:

2.2.1 Purifications of Soul.

The basic and the objective of *zakat* is the purifications of soul. It purges the lust of wealth, infuses the fear of Allah in man's heart and makes one amenable to good deeds. The Quran says:

وَسِيحِبَّهَا الْأَتْقَى *الَّذِي يُؤْتِي مَالَهُ يَتَزَكَّى

And *Al-Muttaqun* will be far removed from it (Hell) He who spends his wealth for increase in self-purification⁶.

On another occasion Allah addresses and exhorts the Prophet s.a.w in these words:

حُذِّ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلَّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ

سَمِيعٌ عَلِيمٌ

Take *Sadaqah* (alms) from their wealth in order to purify them and sanctify them with it, and invoke Allah for them. Verily! Your invocations are a source of security for them, and Allah is All-Hearer, All-Knower.⁷

This verses make the real importance of *zakat* quite clear. It aims to emancipate the heart from the temporal preoccupations and purifies the soul. Thus the

⁶ Al-Quran, Surah Al-Lail 92:17-18.

⁷ Al-Quran, Surah At-Taubah 9:103.

effect of *zakat* is not limited to the process of purification of the heart alone. It makes a more positive contribution, by providing a stimulus for doing well. The quotations mentioned above highlight these qualities of *zakat*.⁸

Literally *zakat* means both “purifications and growth”. To give a portion of one’s income to the needy, for the pleasure of Allah, is called *zakat* because it purifies the soul and subscribes to its growth and purification.

2.3 Pre-Conditions of Purification.

2.3.1 Pleasure of Allah.

The pleasure of Allah should be the first and foremost considerations while paying *zakat*. It must be free from every other motive.

وَمَا تُنْفِقُونَ إِلَّا ابْتِغَاءَ وَجْهِ اللَّهِ وَمَا تُنْفِقُوا مِنْ خَيْرٍ يُوفَّ إِلَيْكُمْ وَأَنْتُمْ لَا تُظْلَمُونَ

When you spend not except seeking Allah's Countenance. And whatever you spend in good, it will be repaid to you in full, and you shall not be wronged.⁹

2.3.2 Income from honest means.

The second important precondition for *zakat* is that it should be paid out of the income earned only by fair and honest means:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ

O you who believe! Spend of the good things which you have (legally) earned, and of that which we have produced from the earth for you¹⁰

⁸ Islam ideology and the way of life Afzalur rahman New edition 1995.

⁹ Al-Quran, Surah Al-Baqarah 2:272.

¹⁰ Al-Quran, Surah Al-Baqarah 2:267.

2.3.3 Only the good things to be paid.

The third important pre-condition of *zakat* is that whatever is paid should be of good quality. If cheap and worthless stuff is given in *zakat*, it will go in vain. It will be no better than a hypocritical gesture.

وَلَا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ إِلَّا أَنْ تُغْمِضُوا فِيهِ

And do not aim at that which is bad to spend from it, (though) you would not accept it save if you close your eyes and tolerate therein.¹¹

2.3.4 The recipient's self respect should not be hurt.

The fourth pre-condition of *zakat* is that its beneficiary should neither be made to feel grateful for it, nor his feelings and self-respect hurt. Otherwise *zakat* would cease to have any meaning.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُبْطِلُوا صَدَقَاتِكُمْ بِالْمَنِّ وَالْأَذَى كَالَّذِي يُنْفِقُ مَالَهُ رِثَاءَ النَّاسِ

وَلَا يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ

O you who believe! Do not render in vain your *Sadaqah* (charity) by reminders of your generosity or by injury, like him who spends his wealth to be seen of men, and he does not believe in Allah, and in the Last Day¹²

¹¹ Al-Quran, Surah Al-Baqarah 2:267.

¹² Al-Quran, Surah Al-Baqarah 2:264.

2.4 Help the Poor.

The second objective of *zakat* is to help of the poor. The Prophet said:

“Verily Allah has ordained the payment of *zakat* on them (Muslim). It will be taken from the rich and returned to the poor”¹³

Allah said in the Holy Qur’an:

وَأَتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ

And gives his wealth, in spite of love for it, to the kinsfolk, to the orphans, and to *Al-Masakin* (the poor)¹⁴

This verse makes it quite obvious that there is also a social and economic aspect of *zakat* without which its Islamic concept remains incomplete. A person who set apart a portion of his income for the poor undoubtedly arranges for the purification of his soul. That is the reason why the Qur’an regarded *zakat* as a right of the poor to the affluent class of the society.

Allah said in the Holy Qu’ran:

وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ مَّعْلُومٌ * لِّلسَّائِلِ وَالْمَحْرُومِ *

And those in whose wealth there is a known right, for the beggar who asks, and for the unlucky who has lost his property and wealth, (and his means of living has been straitened)¹⁵

This is a right for which an Islamic Government will be prepared even to fight. It is amply illustrated by the instance of the Caliph Abu Bakr (r.a) cited above. Although. this objective of *zakat* is of secondary importance, yet its vital position

¹³ Hadith narrated by the Muslim “Islam a concise” introduction by Neal Robinson First publisher in 1999.

¹⁴ Al-Quran, Surah Al-Baqarah 2:177.

¹⁵ Al-Quran, Surah Al-Ma’arij 70:24-25.

in Islam cannot be underestimated. It possesses a superb importance in this world and in the Hereafter.

2.5 Support of Islam.

Among the secondary objectives of *zakat* is to the help and support Islam. In giving the details of the beneficiaries of *zakat*, the Qu'ran says:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ
وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

As-Sadaqat (here it means *Zakat*) are only for the *Fuqara'* (poor), and *Al-Masakin* (the poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allah's Cause (i.e. for *Mujahidun* - those fighting in the holy wars), and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise¹⁶.

The words “the cause of Allah” denote the struggle made for Islam, particularly for meeting the requirements of the holy wars. It clearly means that meeting the financial requirements of the holy war is also an objective of *zakat*.

2.6 The Due Recipients of *Zakat*.

The Holy Qu'ran classifies the due recipients of *zakat* as follows¹⁷:

1. Poor Muslims, to relieve their distress.

¹⁶ Al-Quran, Surah At-Taubah 9:60.

¹⁷ “Islam at a Glance” by Sadruddin Islahi. Translated by: M.Zafar.Iqbal.

2. Needy Muslims, to supply them with means whereby they can earn their livelihood.
3. New Muslim convert or potential convert, to enable them to settle down and meet their adjustment needs.
4. Muslim slaves, to free them, and Muslim prisoners of war, to liberate them by payment of ransom money.
5. Insolvent Muslim in debt, incurred under pressing needs, to help free them from their liabilities.
6. Muslim employees appointed by a Muslim governor for the collection of *zakat*, to pay their wages.
7. Muslims in service of the cause of God by way of research or study or propagation of Islam or Islam in defense of Muslim right.
8. Muslim wayfarers stranded in a foreign land and in need of help.

2.7 The Administration of *Zakat*.

According to Islamic law, the basic lawful material necessities of life are: sufficiency in food, clothing, and shelter, basic education and medical care. This is the minimum standard of material well-being recognized by Islam.

Sufficiency in food, clothing and shelter constitutes the first stage of what, in Islamic terminology, is called "*Ghina*" (الغني) the state in which one can dispense with the material help of others. The state of "*Ghina*" excludes a person from the category of beneficiary of *zakat* and forbids any lawful claim of the *zakat* funds¹⁸. Moreover, when the state of "*Ghina*" reaches the state legitimate ownership of wealth taxable for *zakat*, the person in question automatically acquires the status of *zakat* payer.

In the broader sense, as in the following "Hadith" the term "*Ghina*" also indicates the state of self-sufficiency that proceeds from a satisfied attitude of mind and the enjoyment of physical fitness.

¹⁸ "Islam a concise" introduction by Neal Robinson First publisher in 1999.

حدثنا زهير بن حرب وابن نمير قالوا: حدثنا سفيان بن عيينه عن أبي الزناد الأعرج عن أبي هريرة قال: قال رسول الله صلى الله عليه وسلم: ليس الغني عن كثرة العرض ولكن الغني غني النفس.

Zuhair ben Harb and Ibn Numair have related unto us, saying: Sufyan ben Uyaynah has related unto us, on the authority of Abu Az-Zinad, (who said) on the authority of Abu Hurairah who said: The Messenger of Allah said: “sufficiency does not depend on an abundance of worldly possessions. Sufficiency means the self-sufficiency of the (Satisfied and capable) soul.¹⁹

The lawful beneficiaries of *zakat* are designated in verse 60 surah 9 of the Qur’an to the effect:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ
وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

As-Sadaqat (here it means *Zakat*) are only for the *Fuqara'* (poor), and *Al-Masakin* (the poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt: and for Allah's Cause (i.e. for *Mujahidun* - those fighting in the holy wars), and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise.²⁰

- 1 The poor of straitened means (الفقراء)²¹. These include all Muslims whose means are, in spite of their best efforts or due to some physical disability,

¹⁹ Hadith narrated by Muslim: “Islam a concise” introduction by Neal Robinson First publisher in 1999.

²⁰ Al-Quran, Surah At-Taubah 9:60.

²¹ Imam Abu Hanifah considers the “*fuqara*” and the “*masakin*” as constituting two distinct classes of beneficiaries. Imam Abu Yusuf however, considers both as grouped into one class of beneficiaries: the poor.

insufficient to adequately provide for the basic lawful material necessities of life.

- 2 The poor destitute (المساكين) These include all Muslims whose means are, in spite of their best efforts or due to some physical disability, either totally lacking or are so deficient as to deny them the basic lawful material necessities of life²².
- 3 The *zakat* officials (العاملون على الصدقة). As a principle, all authorized *zakat* official, all Muslims who regularly serve as members of the various *zakat* staffs, are entitled to receive remuneration payable out of the *zakat* funds. It is generally accepted that such persons comprise²³:
 - a) The collector (المصدقون), whose duty is to collect the *zakat* dues and deposit them in the authorized *zakat* centers.
 - b) The distributors (القسامون), whose duty is to apportion the *zakat* funds.
 - c) The custodians (الحافظون), whose duty is to keep safe and disburse the funds to the lawful beneficiaries. The custodians include: the treasurers, the caretakers, of the *zakat* granaries and *zakat* storehouses, and the caretakers of the domestic animals levied as *zakat* (shepherds, herdsmen, waterers, etc.)
 - d) The measurers (الكيالون), whose duty it is to measure, or weigh, the cereals and other kinds of agricultural produce levied as *zakat*.
The scribes or clerks (الكاتبون), whose duty it is to keep the *zakat* files and records.
 - e) The accountants (الحاسبون), whose duty it is to keep account of the *zakat* revenue and expenditure
 - f) The informer (العارفون), whose duty it is to seek out those persons who are deserving of receiving *zakat* assistance and to inform the *zakat* official of their condition and whereabouts
 - g) The assemblers (الحاشرون), whose duty it is to assemble the *zakat* payers, or the beneficiaries of *zakat*, when required.

²² “Islam a concise” introduction Neal Robinson First publisher in 1999.

²³ “Islam a concise” introduction by Neal Robinson First publisher in 1999.

- h) The officers of charge (رؤساء العاملين), whose duty it is to direct and manage the various *zakat* centers, and who are directly responsible to the state and to the public for the proper functioning of their respective centers.

2.8 *Zakat* under the Modern World

During the colonial era, the state-sponsored collection of *zakat* ceased in most part of the Muslim world. It is widely held, however, that a genuinely Islamic government should organize the collection and distribution of *zakat*, because this comes under the rubric of ordering what is right and forbidding what is wrong.

In recent years, several Muslim countries have therefore taken measures to put this into effect. For example, in Pakistan, since 1981, individuals and corporations have been liable to pay 2 ½ percent *zakat* on accumulated wealth in excess of 2,000 rupees and this has been deducted directly from bank accounts²⁴.

Needless to say, adapting what was originally a levy on surplus gold, silver and livestock to the conditions of modern industrial societies is not without difficulty. Classical Islamic jurisprudence allows the use of analogy in dealing with cases for which there is no direct precedent in the Quran or the hadith. Nevertheless, on such matters the jurists sometimes differ. For example, should *zakat* be levied on the means of production, factories, machinery and the like? It is widely assumed that these are exempt because they do not constitute capital. However, if as some jurists have argued, livestock are not just capital but are analogous to modern means of production, then industrial plant ought to be *zakatable*.

²⁴ “The Law and Institution of *zakat*” by Faristha G. de Zayas Edited by A.Z Abbasi The Other Press Kuala Lumpur 2003

CHAPTER THREE

3.0 Definition of *Waqaf*.

The word '*waqaf*' in the Malay vernacular parlance may mean one of two things depending on the context of its use. If used by itself, it denotes an open and roofed structure meant as public outdoor 'furniture' for people to stop and rest by sitting or lying down. This form of traditional public outdoor furniture or pavilion is almost always made of timber with a minimum of four columns and a low timber platform. However, if the word '*waqaf*' is used along with another such as '*harta waqaf*' or '*tanah waqaf*' or in the verb '*diwaqafkan*' it means the property or land which has been endowed for public use or the act of endowing a property.

Many Muslim countries, special *waqaf* institutions are set up to manage the endowed properties for the benefit of the public in this world and to fulfill the trust of those who had relinquished their rights of ownership in the hope of continued blessings in the afterlife.

Waqaf (plural *awqaf*), used in Islamic law covers religious endowments, family trusts, etc. While in North Africa in particular, the term "*hubs*" (*ahbas*) or "*habis*" (*hubus*) is more commonly used²⁵. The word "*tasbil*" is also used in the same sense, devote to the way of Allah²⁶. The only point concerning *waqaf* on which all Muslim lawyers seem to agree is that their basic purpose is a "good work" (*qurbah*), or "an approach to Allah" (*taqarrub*).

The term *waqaf* literally means to prevent or restrain. In legal terms it means "to protect thing, to prevent it from becoming the property of a third person (*tamlík*)"²⁷

According to Islamic jurists, *waqaf* is the permanent dedication by a Muslim of any property, in such a way that the appropriator's right is extinguished, for charity

²⁵ Anderson, J.N.D. Islamic law in Africa, London, 1954, p. 379; Heffening, loc. Cit., Shorter Encyclopedia of Islam, Leiden, 1961, p. 624.

²⁶ Juynboll, Th.W, Encyclopaedia of Religion and Ethics, Edinburgh, 1914, Vol.VII, P.887.

²⁷ Sarakhsi, mabsut, xii, p.27.

or for religious objects or purpose, or for the founder of the *waqaf* during his lifetime and after his death, for his descendants, and on their extinction, to a purpose defined by the founder²⁸. It follows that there are two categories of *waqaf*. (charity *waqaf* and a family endowment). According to Abu Hanifah:

“It signifies the appropriation of any particular thing in such a way that the appropriator’s right in it shall continue, and the advantage of it shall go to some charitable objects; or it is the detention of a specific thing in the ownership of the *waqif* or appropriator, and the devoting or appropriating of its profits or usufruct in charity, or the poor, or other good objects”.²⁹

Islamic jurists hold the view that *waqaf* is an imperfect form of ownership in which ownership and utility are never combined at the same time by the same person.³⁰ The *waqaf* is considered a juristic person to be represented by the administrator thereof (*al mutawalli*) who is merely a manager of the *waqaf*. Under the shariah, when *waqaf* is created, all right of property passes out of the *waqif* and rest in God Almighty. The founder of a *waqaf* may constitute himself the first *mutawalli*. A *mutawalli* may be a female, or even a non-Muslim. Equally, a body of persons in the form of a committee may be entrusted with the administration of the *waqaf*, but no minor or person of unsound mind can be appointed a *mutawalli*.

According to the *Sunni* Law, the essentials of a valid *waqaf* are:

- i. A permanent dedication of property.
- ii. The dedicator (*waqif*) should be a person professing the Muslim faith, of sound mind, and of age³¹ and must have full right of disposal over his property.
- iii. The dedication should be for a purpose recognized by Islamic Law as religious, pious or charitable.

The essentials of a valid *waqaf* under the *Shia* Law are as follows:

²⁸ Yakan, *Waqaf*, p. 7.

²⁹ Neil B.N Baillie, *Digest of Mohammadan Law Part I* (1st ed 1865), pp. 459 (557).

³⁰ Abu Zahra, on *waqaf*, p. 89.

³¹ Minority under Muslim law terminates on completion of the 15th year. A Muslim who had attained the age of 15 is competent to make a will disposing of his property (Amir Ali, 4th ed, Vol 1, pp.212-213).

- i. It must be perpetual.
- ii. It must be absolute and unconditional.
- iii. Possession must be given of the item dedicated.
- iv. It must be taken out of the dedicator. That is, he should not retain any interest.

3.1 History of *Waqaf*.

According to the general opinion of the Muslims jurist there were no *waqaf* in Arabia before Islam. either in houses or land,³² and this is just an opinion, since there is no evidence otherwise. Furthermore, one of the best known books on Islamic law strongly supported that there were no *waqaf* before Islam to be regarded as philanthropic institutions but as thing to boast of.³³

As far as the Islamic law is concerned, the Muslim lawyer (*fuqaha*) traced the institution to the Prophet himself under the following circumstances. In the tradition of Anas bin Malik, it is said that Prophet wished to purchase gardens from Banu al-Najjar in order to build a mosque. They refused to take the purchase money however and gave the land for the way of Allah³⁴

In human history, the institution of *waqaf* started in Greek community. During the Arabians jahiliyyah period, the Arabian practiced the *waqaf* until the appearance of Islam. So, when Islam comes, it was continues the practice the *waqaf* in accordance with the Islamic Law.

An example of this the mosques of Kubah and Nabawi in Madinah built with *waqaf* property. Because the *waqaf* is very important, it was practiced in Islam since the period of Prophet S.A.W until now. An addition to this the institutions of higher education like University of Al-Azhar in Egypt and Qurawiyyin. Universities in Maghribi were built with *waqaf* property.

³² Shafi'e op. cit., p.58.

³³ Al-Dasuqi, Muhammad ibn Muhammad al-'Arafat, Hashiyah 'ala sharh al-Kabir bi Abi al-Barakat al-Dardir, 1931-34, Vol 4, p.75.

³⁴ Al-Bukhari. Sahih. Cairo. 137 A.H. Wasaya. bab 28. 31. 35.

When we look at the importance of *waqaf* institution under the Islamic system, the Christian communities from the west followed this method based on the success of the *waqaf* institution during the period of Prophet Muhammad s.a.w. until the period of Islamic magnificence in Baghdad, Spain, Egypt, and so on³⁵.

Some of the institutional educations in west were built with *waqaf* property. An example in the Oxford University and University of Cambridge in England. The Billionaires gave part of their properties which are necessarily for the individual. An example of this Bill Gates who gave part from the property to support the researcher in making a research to solve and find antidote in deceases like H.I.V, cancer, heart, and so on.

3.2 Motive of *Waqaf*.

Without shadow of a doubt the motive in *waqaf* is always religious³⁶. The basic purpose of a good work is “*qurbah*” or an approach to Allah “*taqarrub*”³⁷. The motive of law on authorising *waqaf* is to enable the “founder” *waqif* to secure spiritual advancement in life in part and also popularity in this life in the same way as by gift and bequests but in a higher degree.

According to the general principles of Islamic law regarding dispositions of property, a *waqaf* would be legally valid, even though the proper motive might be wanting; for instance, a non-Muslim may make a *waqaf* for meritorious purposes, but he does not believe in the one of Allah Who alone can bestow such reward.

As far as Muslim jurists are concerned, they refer to the essential features of *waqaf* to its religious motive, a desire to approach Allah. It is not stated that the approach to Allah can only be made by an object that is charitable in the sense of

³⁵ <http://www.icnl.org/JOURNAL/vol4iss1/george8.htm>.

³⁶ Shafie. Al-Umm. Cairo. 1961. Vol VI, P.60.

Hilmi, Omar Lfendi, “ Law of Evsaf”, Cyprus, 1922 p.7.

English law. Thus “*sadaqa*” which is a gift made with a desire to approach Allah, may be made equally to the rich and poor.³⁸

According to the majority of Muslim Islam,³⁹ *waqaf* is not exclusively intended for lawyers, it is sufficient if the purpose of a *waqaf* is merely permissible. In Shafie law-books it is expressly stated that a *waqaf* may even be extended to the advantage of the rich. Many *waqaf* such a mosque, cemeteries, and water supplies, are intended for the rich as well as for the poor.

Under the shariah, *waqaf* may be made for any purpose whatever which is recognized by Islam. Thus a Muslim cannot create a *waqaf* for a church or synagogue. A *waqaf*, being a form of *sadaqa* cannot be used for purposes unpleasant to God. *Waqaf* in all systems may be created for the support of the founder’s own immediate descendants, and for collaterals with the remainder to go to the poor. It is to be noted that in “Abadi Law” if a man leaves property as *waqaf* for his descendants, whether for one or two generations, or in perpetuity, his immediate children can either confirm the *waqaf* or reject it, and deal with the property as their own property⁴⁰.

The property capable of being given as *waqaf* are firstly, *Al-Mal al-Mutaqawim* (capable of legal ownership and legal transfer), secondly is a *mulk* (in actual ownership it must be in existence at the time of creation of the *waqaf* and must be capable of immediate delivery.

³⁸ Baillie, op.cit., I, p 564.

³⁹ Tyabji, F.B., Principles of Muhammadan law, Bombay, 1913 p. 361.

⁴⁰ <http://sistersinislam.org.my/Legallit/2004/300704.htm>.

3.3 The form of Creating a *Waqaf*.

It takes to follow the following methods⁴¹:

- i. Divesting of ownership: the founder of the *waqaf* must strip himself of all title in the property settled. According to all systems, a *waqaf* that is recoverable is not valid.
- ii. Formalities of *waqaf*: a *waqaf*, as explained above, may be made either verbally or in writing.
- iii. The formalities by a will: a *waqaf* in death-illness is subject to the same restrictions as, and does not have any priority over, other gifts or legacies.
- iv. It must not be subject to a condition that is not in existence at the time of the constitution of the *waqaf*.
- v. It shall not be timed to commence after death, otherwise it will be tantamount to a will.
- vi. It shall not be subject to an option.
- vii. It shall not be subject to a condition that is inconsistent with the essence of the *waqaf*.
- viii. It must indicate either explicitly or implicitly, the permanence of the *waqaf*, and cannot be revoked after his dedication has been completed.

⁴¹ “Law of waqaf and analytical and critical study” by: S.A Kader Former Judge, High Court Of Madras, Calcutta New Delhi Eastern Law House 1999.

3.4 Condition of Validity of *Waqaf*.

The conditions required for the validity of waqaf are as follows:

- i. The settler "*waqif*" must be of full age, sound mind, and unrestrained in the use of his property.⁴²
- ii. The property to be made *waqaf* "*mawquf*" must be tangible. An incorporeal right cannot be dedicated as *waqaf*, and upon movable property there is a conflict of opinion, the prevalent view being against their dedication. Yet upon beneficial uses, some exceptions have been recognized in favour of a movable accessory to an immovable property. Similarly the dedication of a Quran for reading, and also animals, can be made *waqaf*.⁴³
- iii. The property must be declared *waqaf* with clear intention by the founder. No particular form is necessary and the dedication may be either oral or written.⁴⁴ The founder must clearly express his wishes either by "*waqaffu*", "*sabbaltu*" or if he uses other formula.

The use of any specific term, or phrase, or even the word "*waqaf*" is not necessary for the validity of a *waqaf*, provided there is a clear declaration of the endowment. It is sufficient for the settler to indicate his intention to make the property *waqaf* and to specify the charitable purpose to which it is to be devoted.

It is generally accepted that this declaration is sufficient in itself for the creation of a *waqaf* and that the delivery of possession to the *mutawalli* or administrator is not an essential condition of validity.⁴⁵

It is a settled rule of Islamic law that to create a *waqaf* it is not necessary to use the word "*waqaf*". If the intention to make *waqaf* is apparent, or can be inferred from

⁴² Al-Farabulsi, op.cit., p.10, Juynboll, Th.W., op.cit., p.878.

⁴³ Abdul Rahim. op.cit., p.307:

⁴⁴ Heffening, op.cit., pp.1096-97; Catten., H., loc.cit.; Manek, M.D., Handbook of Muhammadan law, Bombay, 1961, p. 107.

⁴⁵ Ibn Qudamah, op.cit., pp.547-58; Khallaf, op.cit., p.25 Manek, M.D., loc.cit.; Catten, H., loc.cit.

the general tenor of the deed, or from the conduct of the donor, or from the nature of the object in favour of which the grant is made, or from surrounding circumstance at large, it will constitute a valid and binding waqaf, though the word “*waqaf*” might have not been used.

3.5 Registration of *Waqaf*.

3.5.1 36. Registration⁴⁶. (1) Every *waqaf*, whether created before or after the commencement of the Act shall be registered at the office of the board.

(2) Application for registration shall be made by the *mutawalli*, provided that such applications may be made by the *waqif* or his descendants or a beneficiary of the *waqaf* or any Muslim belonging to the sect to which the *waqaf* belongs.

(3) An application for registrations shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:

- a) A description of the *waqaf* properties sufficient for the identification thereof.
- b) The gross annual income from such properties.
- c) The amount of land revenue cesses, rates and taxes annually payable in respect of the *waqaf* properties.
- d) An estimate of the expenses annually incurred in the realization of the income of the *waqaf* properties
- e) The amount set apart under the *waqaf* for:
 - i. the salary of the *mutawalli* and allowances to the individuals
 - ii. purely religious purposes
 - iii. charitable purpose; and

⁴⁶ “Law of waqaf and analytical and critical study” by: S.A Kader, Former Judge, High Court Of Madras. Calcutta New Delhi Eastern Law House 1999.

- iv. any other purpose
- f) Any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the *waqaf* deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the *waqaf*⁴⁷.

(5) Every application made under sub-section(2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the *waqaf* make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the *waqaf* property, the Board shall, before registering the *waqaf*, give notice of the application to the person administering the *waqaf* property and shall hear him if he desires to be heard.

(8) In the case of *waqaf* created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of *waqaf* created after such commencement, within three months from the date of the creation of the *waqaf*:

⁴⁷ "Law of waqaf and analytical and critical study" by: S.A Kader, Former Judge, High Court Of Madras. Calcutta New Delhi Eastern Law House 1999.